

Compendium of International and National Legal Frameworks on Domestic Violence

Volume II of V — Countries A to G

FIRST EDITION, JANUARY 2019



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The Compendium is a working document intended as a reference tool for anyone interested in the topic of Domestic Violence (development practitioners, lawyers, community leaders, academics, researchers, students, etc.). It does not constitute an exhaustive treatment of the legal framework on Domestic Violence and may be updated from time to time.

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DOMESTIC VIOLENCE

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Volume II of V

This compendium on domestic violence is divided in five volumes. Each volume should be observed as a part of the whole.

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FOREWORD

It is undisputed that domestic violence against women and girls remains one of the most extreme forms of gender inequality, a violation of human rights, and a development issue. Domestic violence against women and girls takes many forms, including physical, sexual, emotional, and economic. As a result, women and girls' lives are endangered with negative consequences not only for them, but also for their households, their communities, and society as a whole. It is an epidemic that leads to girls dropping out of school and affects women's ability to acquire more and better jobs; it increases absenteeism at work and limits mobility that hinder productivity and earnings. Altogether, domestic violence impedes women and girls from thriving, and takes away their voice, agency, rights and opportunities. This in turn affects every country's growth and development.

The international community recognizes that domestic violence is an important development challenge, and strides have been made to support countries in acquiring the tools and resources needed to end it along with other forms of discriminatory practices. Twenty-five years ago, the United Nations Declaration on the Elimination of Violence Against Women first called upon States to adopt legislation which prohibits domestic violence and to provide legal protection to end all forms of violence and harmful practices against women and girls in public and private spheres. More recent efforts have called for stronger action to address the underlying structural causes that increase the risks of domestic violence.

The share of countries with laws on domestic violence increased from 70.9 percent to 75.9 percent thanks to legal reforms in seven countries over the last four years, but more remains to be done, as 49 countries still do not have specific laws against domestic violence. Laws are an important step that countries can and should take towards ending violence against women and girls. We must support and strengthen the tools and means to end domestic violence everywhere.

I am pleased to share the following Compendium of International and National Legal Frameworks on Domestic Violence. In it you will find international and regional instruments that address domestic violence, and national legislations adopted to prevent and prosecute such crimes. This is a practical online legal tool to empower those fighting domestic violence and help shape change for the elimination of domestic violence.

We hope this responds to the needs of all persons and professionals interested in this subject as well as those who work with and support women and girls affected or at risk.

Sandie Okoro
Senior Vice President and General Counsel
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INTRODUCTION, DISCLAIMER AND LIMITATIONS

Domestic Violence (DV) is a universal phenomenon that affects millions of women of all social strata worldwide. It is the most pervasive, common, underrecognized, underestimated and underreported type of violence against women. It reflects discriminatory social norms, stereotypes, impunity and gender inequality. It is all too often considered as a “private, family issue”, widely accepted and minimized although it impairs the full enjoyment of life and fundamental rights and freedoms by victims and survivors who are overwhelmingly women.

Domestic Violence (DV) is a development challenge and has a high economic and social cost, including health and medical costs, death, suicide, depression, lost productivity, lost income, , psychological consequences and trauma, increased stress, reactive violence, reduced ability to study or find and hold a job, judicial and prison costs, economic insecurity and abuse, debt, housing instability, homelessness, *inter alia*¹. Beyond data and statistics, DV undermines autonomy and represents an enormous loss in terms of wellbeing not only for the women affected but also for the men who share their lives, for their children, their families and their societies.

The Compendium on International and National Legal Frameworks on Domestic Violence (the “Compendium”) provides a survey of the key international and regional instruments as well as national legislation as they relate to domestic violence.

In this Compendium, DV is understood and defined as gender-specific violence, commonly directed against women, occurring in the family and in interpersonal intimate relationships², and can encompass different types of abuse. As such, it includes legislation addressing DV as any type of violence (physical, sexual, psychological/emotional or financial/economic) committed by an intimate partner or family member. A number of countries have adopted legislation on DV against women specifically while others have not defined the gender of the victim or survivor.

The Compendium is a working document intended as a reference tool for anyone interested in the topic of DV – survivors, advocates, development practitioners, lawyers, policy makers, academics, among others. It does not constitute an exhaustive treatment of the legal framework on DV and may be updated from time to time.

The Compendium consists of topical chapters with jump links to source documents, such as United Nations conventions, regional treaties, and national legislations³. It is based on information available online, offline or both, and relies on research conducted, verified and

¹ Some research shows that DV costs USD 460 billion each year in the USA and USD 4.3 trillion internationally.
https://www.washingtonpost.com/opinions/the-cost-of-domestic-violence-is-astonishing/2018/02/22/f8c9a88a-0cf5-11e8-8b0d-891602206fb7_story.html?noredirect=on&utm_term=.00059cae58fd;

² Based on several United Nations documents, including the United Nations General Assembly, Declaration on the Elimination of Violence against Women, December 20, 1993; United Nations Economic and Social Council 1996; UNHCR 2005; United Nations 2010.

³ Jump links are in bold colored font and can be accessed by clicking on the link which will take the reader to the source document.

updated as of December 2018⁴. The hyperlinked references are not under the control of the World Bank, nor is the World Bank responsible for the accuracy of the content provided through these references. The content of the Compendium does not necessarily reflect the views of the World Bank, its Board of Executive Directors, or the governments they represent. Furthermore, the World Bank does not guarantee the accuracy of the data included in this work.

The research on country-level DV legislation builds on the *Women Business and the Law*⁵ database and includes additional legislation found during the course and time-frame for compiling the research. The Compendium is limited to countries that have adopted specific laws or provisions addressing DV⁶ and includes legislation from almost 160 countries; as such, the absence of a country's name may be due to the fact that no DV legislation has yet been enacted or that no information was available online⁷.

Ending all forms of gender-based violence, including domestic violence, is a critical development objective and comprehensive legislation addressing DV is a key first step towards ensuring prevention and protection. It is also a *sine qua non* condition for any effective strategy to address the problem. Nonetheless, many countries worldwide have yet to adopt laws against DV, while many others have adopted legislation that fails to comprehensively offer protection for the different types of survivors and against the different forms of abuse.

We hope the Compendium will contribute to this urgent and important debate.

Isabella Micali Drossos
Maya Goldstein-Bolocan
Paula Tavares

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⁴ Because it was developed primarily based on information publicly available online, the Compendium includes references to more than several hundred URLs and links to available treaties, laws and electronically published documents. All referenced URLs and links were verified and active at the time they were inserted. There is no guarantee as to their future accessibility nor as to the continued accuracy of the information contained therein after the last date on which they were last accessed and verified.

⁵ See more at <http://wbl.worldbank.org/en/data/exploretopics/protecting-women-from-violence>

⁶ Specific provisions addressing DV may include those in domestic violence laws, criminal codes, or laws on gender-based violence or violence against women more generally, provided they address violence or abuse between spouses, within the family or members of the same household, or in interpersonal relationships, including intimate partner violence.

⁷ When legislative information was not available online but was found by the team of authors, these have been attached as annexes to the Compendium.

VOLUME II

1. ALBANIA

[Law on Measures Against Violence in Family Relations, 2006](#)⁸

CHAPTER I GENERAL PROVISIONS

Article 1 - Scope

The purpose of this law is:

1. To prevent and reduce domestic violence in all its forms by appropriate legal measures,
2. To guarantee protection through legal measures to members of the family who are subject to domestic violence, paying particular attention to needs of children, the elderly and the disabled.

Article 2 – Objectives

1. Objectives of this law are:

- 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,
- b. To direct efforts for the set up of responsible structures and authorities at the central and local level in support of victims and prevention of domestic violence,
- c. To empower the judiciary in taking protection measures against domestic violence,
- ç. To ensure/guarantee quick, affordable and simple services to the victims of domestic violence provided by courts and other law enforcement agencies in compliance to the law

Article 3 - Definitions

Under the meaning of this law, unless specified otherwise in specific provisions thereof, by the following terms we shall understand:

1. “Violence” is any act or omission of one person against another, resulting in violation of the physical, moral, psychological, sexual, social and economic integrity.
2. “Domestic violence” is any act of violence pursuant to point one of this one article committed between persons who are or used to be in a family relation
3. “Members of the family” are:
 - a. Spouses or cohabitating partners or former spouses or former cohabitating partners
 - b. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
 - c. Spouses or cohabitating partners of persons indicated in paragraph b
 - ç. Persons related by direct blood line, including parents and adoptive children of the spouse or of the cohabitating partner
 - d. Brothers and sisters of the spouse if these have been living together during the last 3 months
 - dh. Children of spouses or of cohabitating partners
4. “Victim” is the person who has been subject to violence indicated in point 1 of this article.
5. “Perpetrator” is the person sued for committing violence in family relations at the competent authorities.
6. “Protection order” is an order issued by a court providing protection measures for the victim.
7. “Emergency protection order” is a temporary court order valid until the court issues a protection order.

Article 4 - Subjects

Subjects protected under this law are all persons indicated in article 3 point 3 of this law.

CHAPTER II RESPONSIBLE AUTHORITIES

Article 5 - Responsible Authorities

⁸ Law on Measures Against Violence in Family Relations, Law No. 9669 (18 December 2006), available at [http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/europe/law%20on%20measures%20against%20violence%20in%20family%20relations%20\(2006\)/albania%20%20law%20on%20measures%20against%20violence%20in%20family%20relations%202006doc.pdf?vs=958](http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/europe/law%20on%20measures%20against%20violence%20in%20family%20relations%20(2006)/albania%20%20law%20on%20measures%20against%20violence%20in%20family%20relations%202006doc.pdf?vs=958) (last visited December 30, 2018).

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1. The lead responsible authority under this law is “the Ministry of Labour, Social Affairs and Equal Opportunities.
2. Other responsible line authorities are:
 - a. Local government units;
 - b. Ministry of the Interior; c. Ministry of Health;
 - ç. Ministry of Justice.

Article 6 - Lead Responsible Authority Objectives

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 fulfil 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.

Article 7 - 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 exiting ones, giving priority to specialised centres in respective fields.

Article 8 - 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.
2. Responsible authorities shall respond to any report filed by the victim or other persons indicated by this law, for cases of violence or threat to use violence, including cases of violation of protection orders and emergency protection orders. These authorities keep due records and issue a copy to the victim or to the person accompanying them
3. Line government authorities utilise reasonable means to protect the victim and prevent ongoing violence through:
 - a) Informing the victim or the person accompanying them on the measures to be taken according to the law and authorities they should refer to
 - b) Informing the victim or the person accompanying them on existing social services and accompanying them to

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- appropriate centres and institutions
 - c) Providing for transportation of the victim and the person accompanying them to medical or social services centres
 - ç) Providing them with the protection of a policeman in life endangering cases
4. When there is reasonable doubt that the perpetrator has threatened to or has committed domestic violence or has violated a protection order, police authorities shall immediately verify and take note of this fact
5. Persons who receive reporting because of their function or authority to implement this law and fail to act in its implementation shall be held administratively and/or criminally responsible, applying sanctions of article 248 and 251 of the Criminal Code
6. Police authorities shall record their findings in a written report and start investigations upon their own initiative (*sua sponte*). The incident number for the report should be given to the victim. The police give the incident number to the victim.

Article 9 - Subjects who may report to responsible authorities

1. In the occurrence of a domestic violence act, the victim may address a request to the nearest police unit (to their residence or wherever they are), to their local government unit (municipality, commune), to public health centre in their residence or wherever they are situated or file a petition at the district court of their permanent or temporary residence or that of the perpetrator, to take the necessary measures.
2. In case they witness a domestic violence case, any person may present a request to the authorities mentioned above to take the appropriate measures.

CHAPTER III
PROTECTION MEASURES

Article 10 - Protection measures against DV

1. Protection against domestic violence shall be ensured by/through:
 - a) immediately ordering the defendant (the perpetrator) to refrain from committing or threatening to commit an act of domestic violence against the petitioner (victim) or other family members of the victim as defined in article 3 point 3 of this law or as named in the order;
 - b) immediately forcing the defendant (perpetrator) to refrain from harming, harassing, contacting or communicating directly or indirectly with the victim or other members of their family as defined in article 3 point 3 of this law or as named in the order;
 - c) removing immediately the defendant (perpetrator) from the residence for a certain period of time, determined in the court order and restricting their re- entrance without court authorization;
 - ç) prohibiting immediately the defendant (perpetrator) to be within a certain distance to the victim or members of their family as defined in article 3 point 3 of this law or as named in the order;
 - d) immediately forbidding the defendant (perpetrator) to approach/get near the house, workplace, the original family residence or the future couple's residence or that of other persons and moreover the children's school or any other place commonly frequented by the victim, unless this happens for work-related reasons; dh) immediately placing the victim and the minors in temporary shelters always keeping in mind the best interest of the child;
 - e) limiting or prohibiting the defendant (perpetrator) to see the victim's child based on appropriate conditions;
 - ë) prohibiting the defendant (perpetrator) to enter or stay in the temporary or permanent residence of the victim, or in any part thereof, regardless of any property or possession rights the perpetrator may have over these;
 - f) ordering a court authorized person (member of the police or bailiff) to accompany the victim or the defendant (perpetrator) to the victim's residence and to oversee removal of their personal belongings;
 - 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;
 - gj) ordering the defendant (perpetrator) to allow the victim to possess the commonly used residence or part thereof;
 - h) ordering the defendant (perpetrator) to pay the rent for the permanent or temporary residence of the victim as well as to pay support obligations to the victim, children or other members of the family under their responsibility;
 - i) so long as the protection order is in existence, the property regime shall be in accordance with Family Code articles 57, 58 and 60;
 - j) transferring the temporary child custody rights to the victim and temporarily removing parental rights for the defendant (perpetrator);
 - k) deciding and ordering – depending on the case (under the competence of the court) – the intervention of public or private social services of their place of residence or of organizations whose objective is to support and shelter subjects of domestic violence
 - l) ordering the defendant (perpetrator) to effectuate a periodic payment in favour of cohabitating persons, who as a result of the above mentioned measure, remain deprived of living means. To secure the payment the court may order the employer (of the perpetrator) to transfer the payment directly to the beneficiary. This order shall be an executive

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title;

ll) including the victim of domestic violence to rehabilitation programmes;

m) ordering the defendant (perpetrator) to participate in rehabilitation programmes; if the defendant is ordered to a rehabilitation program, the program managers are required to report weekly to the court on whether the perpetrator is attending and participating. If the defendant (perpetrator) is not, upon request of subjects provided in article 13 of this law, the court will summon the defendant and implement respective provisions of the Criminal Code for hindering execution of court orders.

2. Protection orders, by a court decision, may include several of the protection measures mentioned in point 1 of this article
3. Emergency protection orders, by a court decision, may contain several of the protection measures mentioned under point a through g of this article.
4. In implementing point g of this article the court keeps in mind:
 - a) if the weapons have been seized, they will be returned only after the termination of the protection order and receipt of a court order;
 - b) if weapons have been seized and the person has a weapons authorization card, the court shall notify the appropriate administrative authority or shall suspend the card until termination of the protection order.

Article 11 - Effects of the protection order

1. Notwithstanding any other order or decision issued by the court or any other institution, a protection order containing the above mentioned measures shall be issued by the court in the cases provided by this law.
2. The protection order or the emergency protection order upon its issuance or expiration shall not permanently affect property or custody rights.

CHAPTER IV
JUDICIAL PROCESS FOR PROTECTION ORDERS

Article 12 - Competent authority to issue protection orders for domestic violence cases

1. The competent authority to issue protection orders in domestic violence cases is the district court, family section. The court issues protection orders or emergency protection orders to establish the security measures mentioned under article 10 of this law
2. The interested party may, depending on the case, request the court, in conformity with this law, the issuance of a protection order without prior request for an emergency protection order.
3. After the court has issued an emergency protection order, the interested party may request issuance of a protection order as provided by this act. The subsequent protection order serves to reconfirm the continuance of the emergency protection order and provides for protection measures indicated in article 10 of this law.

Article 13 - Subjects entitled to request for protection orders

1. The petition for protection orders may be presented by:
 - a. The victim themselves
 - b. The victim's legal representative or attorney
 - c. The police/prosecutor
2. The petition for protection orders on behalf of the minor may be presented by:
 - a. The minor's parent or guardian
 - b. The minor's legal representative or attorney
 - c. Relatives of the minor
 - ç. Representatives of the social services office at the municipality or commune, where the minor resides temporarily or permanently, when they have knowledge of the violence committed
 - d. Domestic violence victim protection and rehabilitation centres and services recognised/licensed by the Ministry of Labour, Social Affairs and Equal Opportunities
3. The petition for emergency protection orders may be presented by:
 - a. The victim him/herself;
 - b. The victim's legal representative or attorney;
 - c. The police/the prosecutor;
 - ç. A family member of the victim;
 - d. Representatives of the social services office of the municipality or commune, where the victim temporarily or permanently resides, who have knowledge of domestic violence incidents that have occurred
 - dh. DV victim protection and rehabilitation centres and services recognised/licensed by the Ministry of Labour, Social Affairs and Equal Opportunities
4. When the petition is presented by the police/prosecutor, the victim's wish to drop the case does not have an effect on the

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continuation of the judicial process.

Article 14 - The form of the petition

1. The petition for protection and emergency protection orders shall also contain the following:
 - a. Personal data on the family or blood relations between the victim and perpetrator;
 - b. A clear presentation of the facts and circumstances in which the domestic violence incident occurred, including the reasons why the petitioner fears their security, health or well-being is in danger from the defendant (perpetrator) as mentioned under article 3 points 1 and 2 of the present law
 - c. Specific protection measures requested
 - ç. Petitioner's signature
2. The petition for protection orders may be presented at any time to the court by the persons who are legitimized to do so. Whenever immediate help is requested the petition may also be compiled and presented at the nearest police department and the police officer shall act in conformity with the Law on the State Police.
3. The petitioner is assisted by a lawyer free of charge for the preparation of the petition, completing the necessary documents and filing them in the court.
4. The petitioner is exempt from court taxes/fees. Upon issuance of the protection order, court expenses are charged on the party who committed domestic violence. When the petition is not sustained the petitioner is required to pay for court expenses.
5. Petitions shall be recorded in a special register to the date of their completion.

Article 15- Evidence during the hearing

1. Necessary evidence may be: witness statements, police reports, medical reports, acts of expertise (expert witness declarations) examinations and statements/explanations by the parties, other documents issued by the social workers of the social services department at the municipality and commune, documents issued by legal persons (NPOs) registered pursuant to legislation in force.
2. When the data in the petition point out that police departments, local government offices or health centres possess written proof of the occurrence of domestic violence, these shall immediately issue a certified copy thereof (with official seal) upon the request from the petitioner or from the court. Failure to issue such a document causes responsible persons to be sanctioned according to the Administrative Procedures Code.
3. When the court does not possess all evidence mentioned in paragraph 2 of this article, it assesses the situation based on the description of circumstances and facts regarding occurrence of domestic violence and takes a decision regarding the petition presented by the party.

Article 16- The hearing for protection orders

1. "The court establishes a hearing with regard to a protection order within 15 days from the filing of the petition".
2. While examining the petition, the court may hear testimony from the following persons:
 - a. The victim, her/his legal representative or attorney
 - b. The defendant, his/her legal representative or attorney
 - c. The prosecutor, when he or she filed the petition
 - ç. Representatives from the police
 - d. The representative of the social services department at the municipality or commune of the temporary or permanent residence of the petitioner when the petitioner is younger than 18, when the petitioner is legally incapacitated or when the domestic violence affects these categories/persons
 - dh. Health centres employees services and rehabilitation centres employees, who assisted the victim because of domestic violence
 - e. Witnesses deemed necessary by the court
3. When the petition is presented by the police/prosecutor, the victim's wish to drop the case does not have an effect on the continuation of the judicial process.

Article 17 - Court decision for protection orders

1. The court shall issue a protection order only against the defendant mentioned in the petition. This order may only include measures described in article 10 of this law. The court shall issue a protection order containing one or more of the measures provided in article 10, if it finds that:
 - a. There is sufficient basis to believe that the respondent may commit an act of family violence
 - b. Issuance of the protection order is necessary to protect the security, health and well-being of the victim/s. Based on the court conviction, the protection order may include other persons, family or intimately connected to the victim that may become subjects to domestic violence.
2. A court shall not deny a protection order because of the existence of any other pending action involving any party.
3. The final decision to issue the protection order, which should meet the requirements of article 310 of the Civil Procedure

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Code, shall also contain:

- a. The measure determined by the court
 - b. Time limits for this protection order which should not exceed 12 months, but with a possibility of extension
 - c. A remark that violation of a protection order shall be considered a criminal offence under article 320 of the Criminal Code
 - ç. A note on the right to appeal the protection order within 15 days from its approval or notification to the parties
4. Issuance of protection order shall be notified immediately to the perpetrator who was not present at the hearing, according to article 316 of the Civil Procedure Code. The victim shall be provided with two copies of the original decision, one for own record and the other to present to the police if and when necessary
5. The court shall send within 24 hours a copy of the protection order to the following persons:
- a. The victim and other persons mentioned in the protection order
 - b. The prosecutor, when they present the request
 - c. Social services department of the municipality or commune of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
 - ç. The police department of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently

Article 18 - The hearing for emergency protection orders

1. The court reaches a decision with regard to emergency protection orders within 48 hours from the presentation of petition
2. In the hearing for the emergency protection order the court hears the following persons:
 - a. The victim, their legal representative or attorney
 - b. The perpetrator, their representative or attorney
 - c. The prosecutor, if participating
 - ç. Other petitioners mentioned in article 13 of this law
 - d. Witnesses deemed necessary by the court

Article 19 - Issuance of emergency protection orders

1. The court issues the protection order including one or more measures described in article 10 of this law, if it finds that:
 - a. There is sufficient basis to believe that the defendant (perpetrator) has committed or threatened to commit an act of family violence
 - b. The defendant (perpetrator) presents a direct and immediate threat to the security, health or well-being of the victim or of their family members
 - c. Issuance of the emergency protection order is necessary to protect the security, health and welfare of the victim or their family members who are protected through this order
2. A court shall not deny issuance of an emergency protection order because of the existence of any other pending judicial process involving any party.
3. The final decision to issue the protection order which shall meet the requirements of article 310 of Civil Procedure Code shall contain:
 - a. The measure determined by the court
 - b. Time limits for this emergency protection order which expires at the moment a protection order issued by the court is implemented
 - c. A remark that violation of an emergency protection order constitutes a criminal offence, pursuant to article 320 of the Criminal Code
 - ç. A note on the right to appeal the order within 5 days from its approval or notification to the parties
 - d. The date for the verification of the emergency protection order, which should take place within 20 days from the issuance of the emergency protection order.
4. Issuance of emergency protection order shall be notified immediately to the perpetrator who was not present at the hearing, according to article 316 of the Civil Procedure Code. The victim shall be provided with two copies of the original decision, one for own record and the other to present to the police if and when necessary.
5. The court sends within 24 hours a copy of the emergency protection order to the following persons:
 - a. The victim and other persons mentioned in the emergency protection order
 - b. Petitioners under the meaning of article 13 of this law
 - c. Social services department of the municipality or commune of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
 - ç. The police department of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
6. The court decision issuing an emergency protection order is considered an executive title and shall be implemented

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immediately according to the Civil Procedure Code (article 510/e, 516/c and the following).

Article 20 - The hearing for the verification of the emergency protection order

1. Once the hearing for the issuance of the emergency protection order terminates the court should proceed with the hearing for the protection order based on the petition mentioned in article 16 of this law. At the end of the hearing the court may:
 - a. Decide the withdrawal and termination of the effects of the emergency protection order issued previously by the court when there is no evidence to sustain it
 - b. Refuse to issue a protection order when evidence does not support the previously issued emergency protection order
 - c. Issue a protection order pursuant to article 17 of this law. This court decision may alter terms and conditions of the previously issued emergency protection order, as needed.

Article 21 - The appeal

1. Special appeal may be filed against the decision for the emergency protection order pursuant to the Civil Procedure Code.
2. The court decisions on the protection order or on the emergency protection order may be appealed according to the time limits and rules set out in the Civil Procedure Code.
3. The appeal does not affect the implementation of the protection order or emergency protection order.

Article 22 - Circumstances for amendment, termination or continuation of protection orders

1. In case of fundamental change in circumstances, the victim (or their representative), the perpetrator or if the prosecutor has been participating s/he may present the request for termination or amendment of the protection order.
2. Once this request for termination or amendment of the protection order is received the court examines it according to article 16 of the present law. At the end of the examination the court may:
 - a. Decide the protection order should stay in force;
 - b. Decide the protection order should be amended, if circumstances have fundamentally changed; or
 - c. Decide the termination of the protection order if the criteria established under article 10 point 1 are no longer valid because of fundamental change in the circumstances
3. Presentation of the request for the amendment or termination of the protection order does not suspend the implementation of the protection order.
4. Fifteen days prior to expiration of the protection order, the victim or the person authorised by them may present the request for the continuation of the protection order. When no such request is presented the protection order terminates automatically on the expiration date.
5. Once the court receives the request for the continuation of the protection order, it examines it according to article 16 of this law. At the end of the process the court may:
 - a. Certify the termination of the protection order up to the expiration date; or
 - b. Decide the continuation of the protection order if the criteria of article 17 point 1 of this law are met.

Article 23 - Implementation of judicial decisions

1. The judicial decision containing the emergency protection order is considered an executive title from the moment it is declared by the court (or notified to the parties). The court shall issue an execution order at the same time that it issues an emergency protection order.
2. The judicial decision containing the protection order is an executive title and should therefore be carried out immediately by bailiffs according to the Civil Procedure Code, by police departments, local government authorities (municipality, commune) or the perpetrator voluntarily. The court shall issue an execution order at the same time that it issues a protection order.
3. Social workers and members of the police force shall take all necessary steps to ensure immediate and continuous implementation/execution of protection measures determined pursuant to article 10 of this law.
4. Institutions, shelters, service centres, NPOs licensed to offer services shall implement measures established by the court decision and shall coordinate their actions with the local government authorities and police departments, which are the direct implementers of these decisions.
5. Forced execution of the court order shall be carried out by the bailiff services office, pursuant to Civil Procedure Code provisions (articles 510 and the following)
6. When enforcement institutions, including perpetrators, notified of the court orders refuse to comply voluntarily according to paragraph 2 and 4 of this article, authorities shall proceed with forced implementation/execution pursuant to Civil Procedure Code provisions. In these cases sanctions established by article 320, 320/a of the Criminal Code as well as article 606/3 of the Civil Procedure Code shall apply against the persons who do not respect/abide by the court order.

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FINAL PROVISIONS

Article 24 - Criminal Proceedings

Issuance of a protection order or emergency protection order does not inhibit interested parties to also initiate criminal proceedings with regard to acts or omissions that are classified as criminal offences.

Article 25 - Secondary legislation

The Council of Ministers issues all the necessary secondary legislation to the implementation of this law within 3 months from its entry into force.

Article 26 - Entry into force

This law shall enter into force on 1 June 2007.

[Criminal Code, 1995](#)⁹

Art. 79/c - Homicide because of family relations

The intentional homicide of the person who is the spouse, former spouse, cohabitant, or former cohabitant, close kin or close kin of the spouse of the offender, shall be punishable by not less than twenty years of imprisonment or with life imprisonment.

Article 88 - Serious Intentional Injury

Serious intentional injury inflicting handicap, mutilation or any other permanent detriment to the health, or inflicting interruption of pregnancy, or which has been dangerous to the life at the moment of its inducement, is punishable by three to ten years of imprisonment. The same offence, when committed against several persons, against the person who is the spouse, former spouse, cohabitant, or former cohabitant, close kin or close kin of the spouse of the offender, or when it results in death, shall be punishable by five to fifteen years of imprisonment.

Article 102 - Non-consensual sexual intercourse with mature/adult women

Sexual intercourse by violence with adult females or between spouses or cohabitants, without the consent of one of them, shall be punishable by three to ten years imprisonment.

When the sexual intercourse by violence is done with accomplices, more than once, or when the victim had serious health consequences; this is punishable by imprisonment from five to fifteen years.

When the act has caused the death or suicide of the aggrieved person, it is punished with imprisonment for a term of from ten to twenty years.

Article 121/a - Victimization

Threatening or provoking the person by repeated actions, aiming to cause him a hard and continuous state of anguish and fear for personal security, for the security of relatives or of a person with whom has spiritual relations, or to force him to change his mode of life, is sentenced by imprisonment from six months up to four years. When this offense is committed by the former husband, by the former cohabitant or by the person that has had spiritual relation with the convicted defendant, the punishment is increased with one third of the given sentence.

When this offense is committed against minors, pregnant women or against a person unable to be defended, and also when it is carried out by a masked person or is accompanied with the bearing or use of arms, the sentence is increased up to one second of the given punishment.

Article 130/a - Domestic Violence

Beating and any other act of violence against the person who is spouse, former-spouse, or former cohabitant, next of kin or relatives by marriage with the author of the penal offense, with the consequence of attacking his physical, psycho-social and economic integrity, is sentenced up to two years imprisonment. Serious threat for murder or hard injury against the person who is spouse, former spouse, cohabitant or former cohabitant, next to kin or relatives by marriage with the author of the penal offense, of the consequence of attacking his psychological integrity, is sentenced up to three years imprisonment.

The same offences which are committed repeatedly or in the presence of children, shall be punishable by one to five years of imprisonment.

⁹ Criminal Code, Law No. 7895 (27 January 1995, consolidated version as of 2013), available at https://www.unodc.org/res/cld/document/criminal-code-of-the-republic-of-albania_html/Albania_criminal_code_as_of_2013.pdf (last visited December 30, 2018).

2. ALGERIA

[Law Amending and Supplementing the Penal Code, 2015](#)¹⁰

Law No. 15-19 of 18 Rabie El Aouel 1437, corresponding to 30 December 2015, amending and supplementing Ordinance No. 66-156 of 8 June 1966 introducing the Penal Code.

[...]

Article 1. The purpose of this Act is to amend and to complete Order No. 66-156 of June 8, 1966 introducing the Penal Code.

Art. 2. The provisions of Order No. 66-156 June 8, 1966, supra, are supplemented by Articles 266 bis and 266 bis 1, as follows:

Art. 266. bis - Whoever intentionally causes injuries or commits battery against his spouse is punished according to the following:

1- imprisonment of one (1) to three (3) years if the injuries or beatings did not cause illness or total inability to work for more than fifteen (15) days.

2- imprisonment of two (2) to five (5) years if they caused total inability to work for more than fifteen (15) days.

3- imprisonment from ten (10) to twenty (20) years, if the wounds or blows caused mutilation, amputation, or deprivation of the use of a limb, blindness, loss of an eye, or other permanent invalidity.

4- life imprisonment, if the blows or the wounds were voluntarily inflicted but without intention to cause death, even though this occurred as a result of them.

The offense is established regardless of whether the author lives in the same domicile as the victim.

The offense is also established if the violence is committed by the former spouse and is related to the previous marriage relationship.

The author cannot benefit from mitigating circumstances if the victim is pregnant, disabled, or if the offense was committed in the presence of minor children or under the threat of a weapon.

In the cases provided for in points (1) and (2) mentioned above, the victim's pardon terminates the criminal prosecution.

In the case provided for in point (3), and when there is pardon by the victim, the penalty is imprisonment from five (5) to ten (10) years.

Art. 266. bis 1 - Whoever commits against his spouse any form of assault, or of systematic verbal or psychological violence that puts the victim in a situation that is detrimental to her dignity, or her physical, or psychological, integrity shall be punished with imprisonment from one (1) to three (3) years.

The situation of domestic violence can be proven by all means.

The offense is established regardless of whether the author lives in the same domicile as the victim.

The offense is also established if the violence is committed by the former spouse and it is ascertained that this is related to the previous marriage relationship.

The author cannot benefit from mitigating circumstances if the victim is pregnant or disabled, or if the offense was committed in the presence of minor children or under the threat of a weapon.

The pardon by the victim terminates the criminal prosecution.

¹⁰ Law n° 15-19 (30 December 2015) amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Penal Code, available at <https://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Art. 3. The provisions of Article 330 of Ordinance No. 66-156 of 8 June 1966, referred to above, are amended and corrected as follows:

Art. 330. It is punished with imprisonment from six (6) months to two (2) years and a fine of 50,000 to 200,000 DA:

1- the parent who abandons, without serious reasons, for more than two (2) months the family residence and abdicates all the moral or material obligations deriving from the parental authority or legal tutelage; the two (2) month period can only be interrupted by a return to the family home implying the willingness to resume permanently the family life;

2- the husband who, without serious reason, abandons voluntarily, for more than two (2) months his wife. [...]

Art. 4. The provisions of Ordinance No. 66-156 of 8 June 1966, supra, are supplemented by Article 330 bis as follows:

Art. 330. bis - Whoever exercises any form of coercion or intimidation against his wife in order to dispose of her property or financial assets is punished with imprisonment from six (6) months to two (2) years.

The pardon of the victim terminates the criminal prosecution.

Art. 5. - The provisions of Ordinance No. 66-156 June 8, 1966, supra, are supplemented by Articles 333 bis 1 and 333 bis 2, according to the following:

[...]

Art. 333. bis 3. - Unless the fact constitutes a more serious offense, any aggression committed by surprise, violence, coercion or threat to the sexual integrity of the victim is punished by imprisonment from one (1) to three (3) years and a fine of 100,000 to 500.000 DA.

The penalty is imprisonment of two (2) to five (5) years if the author is a close relative (mahrim) or if the victim is a minor less than sixteen (16) years old, or if the fact committed was facilitated by the vulnerability, illness, infirmity, the physical or psychological vulnerability of the victim, or by her state of pregnancy, and these circumstances were apparent or known to the author ".

Art. 6. The provisions of Article 341bis of Ordinance No. 66-156 of 8 June 1966, referred above, are modified, completed and redacted as follows:

Art. 341. bis – Whoever abuses the authority given to him by virtue of his function or profession by giving orders to others, or by using threats, imposing constraints or exerting pressure for the purpose of obtaining sexual favors, is guilty of committing the offense of sexual harassment and will be punished with imprisonment from one (1) to three (3) years and a fine of 100,000 to 300,000 AD.

It is also guilty of the offense referred to in the previous paragraph, and punished with the same penalty, whoever harasses others by any act, propositions or insinuations having a sexual connotation.

The penalty is imprisonment from two (2) to five (5) years and the fine of 200.000 to 500.000 DA if the author is a close relative (mahrim), or if the victim is less than sixteen (16) years old, or when the act was facilitated by the vulnerability, illness, disability, physical or psychological condition of the victim, or by her state of pregnancy –where these circumstances were apparent or known to the author.

In case of recidivism, the penalty is doubled.

Art. 7. The provisions of Article 368 of Ordinance No. 66-156 of 8 June 1966, referred to above, are modified and corrected as follows:

Art. 368. – They are not punishable, and can give right only to civil compensation, the deductions committed:

- 1- by ascendants to the prejudice of their children or other descendants;
- 2- by descendants to the detriment of their ascendants.

Art. 8. The provisions of Article 369 of Ordinance No. 66-156 of 8 June 1966, referred to above, are modified, completed, and redacted as follows:

Art. 369. - Thefts committed between spouses, parents, relatives or allies up to the fourth degree, included, can only be prosecuted on a complaint by the injured person. The withdrawal of the complaint terminates the prosecution.
..... (the rest remains unchanged)

[...]

3. ANDORRA

[Law on the Eradication of Gender Violence and Domestic Violence, 2015](#)¹¹

[...]

Explanatory Statement

In recent years, societies have become aware of the drama of gender violence and domestic violence and their consequences; For this reason, both at European and international levels, we have started working to eradicate and prevent these types of violence. The Principality of Andorra, following this European and international leadership, has adhered to the Council of Europe Convention on the Prevention of and Fight against Violence against Women and Domestic Violence.

The Organization of the United Nations at the Fourth World Conference of 1995 recognized that gender violence is an obstacle to achieving the goals of equality, development and peace, and that it violates and hinders the enjoyment of human rights and the fundamental freedoms. In addition, it defines it widely as a manifestation of the historically unequal power relations between women and men.

In view of this social and institutional paradigm, it was considered that it was the opportune moment for Andorra to approve a law on the prevention and eradication of these types of violence, but not only to comply with international and European commitments, but also to make it effective our own Constitution and give a legislative response to the social needs of the moment.

In this context, then, talking about gender violence and domestic violence means placing us in front of a problem of great magnitude that encompasses multiple perspectives that also requires multiple multidisciplinary responses.

In recent years, the problem of domestic violence has received special treatment through the Law 91/2010 of December 16, which has echoed the guidelines and recommendations from international organizations, due to the rejection shown to this type of violence in recent years. Likewise, the Criminal Code in force, the Code of criminal procedure, the Law of the Family with its successive modifications and the Immigration Law with its successive modifications complete the legal framework for the protection against gender violence and domestic violence. It is important to stress, however, that the ministry responsible for health and welfare put into operation in 2006 the Multidisciplinary Team of Integral Women's Care, which aims to ensure that adequate care is given to the victims of gender violence in Andorra, as well as to their children. Although it seems clear to say that gender violence is not the same as domestic violence, since one clearly points to the gender and the other, to the family as reference subjects, it must be recognized that the family home is conducive to the exercise of domination relationships that are characteristic of both types of violence. The family home becomes a situation of risk, not only because of the nature and complexity of the affective and sexual relationship, due to its intensity and its privacy, but above all because it constitutes a privileged space for the development of roles of ancestral types. Gender and domestic violence are not just a problem that affects the private sphere, on the contrary, they manifest themselves as the most brutal symbol of inequality in our society.

Prevention of both types of violence is focused on the Law in an integral and multidisciplinary way, beginning with the process of socialization and education. The conquest of equality and respect for human dignity and the freedom of persons must be priority objectives at all levels of socialization. To achieve comprehensive prevention, a law has been designed in which prevention is the transversal axis of the rule in order to promote a change of attitude and eliminate the behaviors that legitimize, allow or incite gender and domestic violence. With this preventative mentality, some actions have been implemented from the educational, academic, social and healthcare, employment and media points of view because, as strategic sectors and with the help of the public authorities, they can establish a culture that does not allow discrimination linked to gender and gender violence but promote attitudes in favor of the peaceful resolution of conflicts and respect for gender issues. In addition, an integral intervention has been designed for the victims of these types of violence to prevent it and prevent them from becoming victims of the perpetrators. For this reason, the Law includes measures to detect risk situations, comprehensive intervention, assistance and protection.

¹¹ Law on the Eradication of Gender Violence and Domestic Violence (Llei per l'eradicació de la violència de gènere i de la violència domèstica), Law No. 1/2015 (15 January 2015), available at http://www.policia.ad/documentacio/genere_domestica.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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The purpose is to achieve a comprehensive recovery of the victim to avoid revictimization. The prevention measures aimed at perpetrators could not be missed, with the aim of changing behavior patterns and avoiding new cases of violence. At the same time, it is important to emphasize that the law creates the National Commission for the Prevention of Gender and Domestic Violence, whose main function is to ensure compliance with the Law, and ensure effective collaboration and coordination among all the departments of the Administration that have the direct or indirect function to act in cases of gender and domestic violence, mainly to achieve the necessary communication and coordination among the various people involved in these processes. It ends with the necessary defense, protection and judicial protection details aimed at cases of gender violence and domestic violence.

The Law is structured into five (5) chapters, twenty-five (25) articles, two (2) additional provisions, two (2) transitional provisions, and three (3) final provisions.

First Chapter - General Provisions

Article 1 - Purpose of the Law

1. This Law aims to act in a comprehensive way to prevent and combat gender violence and domestic violence.
2. This Law establishes the rights of the victims and the measures of sensitization, prevention, training, research, intervention, protection and judicial protection to respond to the needs of victims of any kind of violence of gender or domestic violence.

Article 2 – Definitions

1. Gender violence: It refers to any type of physical or psychological violence exercised against any person on the grounds of gender or gender that implies or may involve physical, sexual, psychological or economic damages or suffering, as well as the threat of said violence, coercion or arbitrary deprivation of freedom, both in the private and public sphere. Gender violence is a type of discrimination that implies a violation of human rights.
2. Domestic Violence: It refers to all acts of physical, sexual, psychological or economic violence that occur within the family, home, or between spouses or de facto couples whether previously or currently together, independently of the fact that the perpetrator has shared (or not) the same address as the victim.
3. Sexual aggressions: They are an expression of disparity of powers. They consist of the use of physical and sexual violence exerted against a gender and minors that is determined by the premeditated use of sex as a weapon to abuse and is practiced from a situation of power (rape, incest, marital rape, sexual harassment, sexual exploitation, etc.).
4. Victims: In accordance with this Act, the person who is subject to one of the types of violence described in the preceding sections, regardless of age, as well as their children and minors, is considered a victim.
5. Secondary victimization: Secondary victimization is understood as the additional abuse exerted against the victims as a direct or indirect consequence of the deficiencies - quantitative or qualitative - of the interventions carried out by the responsible organisms such as social services, health services, legal system, media, police service, etc., in which the victim experiences a new violation of their legitimate rights. These interventions involve emotional harm to the victims.
6. Protocols of action: Rules of action in the case of gender violence or domestic violence established by each intervention area to guarantee homogeneity and quality in the provision of assistance and protection.
7. Collaboration Guide: It is the document prepared by the National Commission for the Prevention of Gender and Domestic Violence that guarantees the carrying out of the actions of ministries and departments of the Administration involved in the prevention, response and prosecution of gender violence and domestic violence.
This Collaboration Guide includes the protocols of action of each intervention area, which provide the necessary measures to avoid duplication of resources and services and establish collaboration mechanisms to offer victims of gender violence or domestic violence, along with networking, a coordinated and integral action between the ministries and the professionals involved.
8. Meeting Point Technical Service: It is the service aimed at addressing and preventing conflicts that arise in family relationships and, especially, in compliance with the regime of visits of daughters and sons established in the processes of separation and divorce of the parents, in the processes of adoption or modification of parent/children measures, as well as in cases of exercise of the guardianship by the Administration. The Technical Meeting Points Service must be carried out in a skilled place and with qualified professionals in gender and domestic violence. It is intended to protect minors and prevent family conflicts. The service may consist of tutored or supervised stays or exchanges.

Article 3 – Scope of application

1. This Law is applicable throughout the territory of the Principality of Andorra and is binding for all public, natural or legal persons, public or private, in accordance with the terms set forth in this Law.
2. All victims of gender violence or domestic violence that reside in the Principality of Andorra, irrespective of their origin, relationship, sex or any other personal or social condition or circumstance, are guaranteed the rights that are specifically recognized in this Law.
In any case, the rights of foreigners established in the treaties and existing international agreements must be respected.

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Article 4 - Guiding Principles

The governing principles that must guide the content and application of this Law are the following:

- a) Prevention as a fundamental and transversal axis: The design of policies and the actions to be undertaken aim at preventing and avoiding actions, omissions or behaviors of gender and domestic violence. Therefore, strategies must be designed in order to promote a change of attitude on the part of society in relation to the prevention and eradication of said actions, omissions or behaviors, and promote strategies for the protection and empowerment of the victims to avoid situations of revictimization.
- b) Comprehensive intervention: The intervention to prevent and combat situations of gender and domestic violence must be multidisciplinary, interdisciplinary, and must be included from the detection to integral recovery. The professionals involved must demonstrate specialized training in each case, as well as specific training to assist minors, when they have to intervene on this group, and work in a coordinated and networked way to avoid secondary victimization.
- c) Gender transversality: The policies and actions that must be carried out should be focused whenever necessary from the gender perspective in order to eliminate social discrimination and sexist behaviors that fosters gender and domestic violence, or other discrimination and inequalities, and that allow this violence or discrimination to be a control mechanism towards the victim.
- d) Citizen participation: The actions carried out must promote the creation, collaboration and participation of entities, unions, associations and organizations that from civil society which have activities against gender violence and domestic violence.

Second Chapter- Rights of Victims and Awareness, Prevention, Training and Research Measures

Article 5 - Rights of the victims

Victims have the following rights:

- a) Right to information: Everyone has the right to receive full information and appropriate advice in relation to gender violence and domestic violence through the corresponding social and healthcare services or other departments of the Administration involved in these processes.

This information must, as a minimum, deal with the rights and measures set forth in this Law and the Law on social services and social welfare services and the places where the services are provided, as well as the actions in case of an emergency.

The access to the information must be effective, for that reason the necessary mechanisms must be articulated so that the person who wants to be informed, may, by his/her personal and social circumstances, have more difficulty to accede to an integral information, but must have the effective exercise of this right guaranteed. The information, edited on any support, must also be offered in the languages of the most representative communities of newcomers, as well as in an accessible and comprehensible format for people with disabilities, such as sign language or other modalities or communication options, including alternative and augmentative systems.

All available information must be accessible through new technologies, particularly in relation to existing resources and care services.

This information should be obtained anonymously, without the need to identify itself or provide any document proving a situation of gender or domestic violence.

- b) Right to full social assistance: Victims have the right to receive comprehensive social assistance that guarantees each of the services and rights specifically included in this Law.

- c) Right to comprehensive health and psychological assistance: Victims have the right to receive healthcare and psychological attention ranging from detection to full recovery whenever possible.

In order to enforce this right, action protocols should be developed that allow for the analysis, evaluation and establishment of minimum criteria in the medical and psychological treatment, both in terms of primary prevention, as well as in secondary and tertiary education, which establish uniform guidelines for action and care for victims at all levels and modalities of health and psychological intervention. They should also promote co-ordination procedures with the rest of the professionals that may or should intervene, the victim's capacity and mechanisms for compiling the evidence of the violence suffered.

These protocols should be reviewed periodically and their application in the field of private health must be encouraged.

- d) Right to legal aid: Anyone has the right to be informed about the rights that victims have, as well as about the legal actions that must be taken to protect them. This information can be obtained anonymously, without the need to identify itself or provide any document proving a situation of gender or domestic violence.

The right to legal assistance involves legal advice and specialized legal assistance in the terms set forth, respectively, in sections 1 and 2 of article 18.

- e) Right to protection, intimacy and privacy: Victims have the right to receive comprehensive, real, effective and immediate protection, even if they are at risk, by activating all available resources. Confidentiality must be guaranteed at all times, and to the extent possible in all procedures, the situation of both the victim and, where applicable, his / her daughters and sons, as well as that of the persons who apply for help in favor of the victim.

- f) Right to information on the procedural and personal situation of the perpetrator: The victim of gender or domestic violence, without the need to form part of the procedure or to have lodged a complaint, has the right to receive information on the procedural and personal situation of the perpetrator, especially of its penitentiary situation and of the imposed measures, as long as these measures affect the victim.

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Article 6 - Awareness and Prevention from the Educational Sphere

1. Sensitization and prevention measures from the educational field are all the tools, actions and policies that are carried out in educational centers and universities in order to raise awareness of the causes and consequences of gender violence and domestic violence, in order to prevent them from establishing peaceful and equal models of coexistence and respect.

2. Educational systems must ensure that the student population acquires, at all school levels, the skills necessary to develop learning in respect for fundamental rights and freedoms, as well as specifically in regard to gender violence and domestic violence.

In addition, at all school levels, the acquisition of competences related to the prevention of conflicts include the ability to solve them in a peaceful way, as well as the knowledge of the coexistence models based on the respect for diversity.

3. Each educational center must support and promote all the sensitization and prevention measures established in this chapter as well as all those that can improve the sensitization and prevention of gender and domestic violence. At the end of the year, each educational center must evaluate the actions that have been carried out.

4. The tutorial action plans of all educational levels carried out in educational centers must provide non-sexist or non-discriminatory academic and professional guidance that helps students to choose without gender connotations and without discrimination among the various academic and professional options, responding to their capabilities and their abilities.

5. The schools and the competent departments of the Government can propose activities to promote awareness, knowledge and prevention of gender violence and domestic violence, both for their own professionals and for the associations of mothers and fathers of students

6. Those responsible for school centers are obligated to notify the corresponding social services of the existence of situations of gender or domestic violence against or between students. The Government, through the competent department, must manage the immediate schooling of children who have to change their school following a situation of gender or domestic violence.

7. In addition to the precautions set forth in this article, educational centers must provide specialized attention to the students who are victims to prevent the consequences of gender or domestic violence.

8. Universities, with due respect to their autonomy, must promote in all academic fields and transversally the training, teaching and research in gender violence and domestic violence, and specifically in university studies of social healthcare professions and the contents must be presented from a gender perspective.

Article 7 – Awareness and Prevention from the Social and Health Field

1. From the social and health field, informative campaigns on the risk factors that can promote gender and domestic violence, as well as the actions that can be undertaken, must be carried out.

2. The Ministry responsible for health and welfare, through the competent department, must support and promote the actions of healthcare professionals for the early detection of any situation of gender violence or domestic violence, and propose measures that they consider necessary to optimize the contribution of the health sector in the fight against gender violence and domestic violence.

Article 8 - Awareness and Prevention in the Workplace

[...]

Article 9 - Awareness and Prevention from the Field of Advertising and the Media

1. The media must avoid all forms of discrimination in the treatment of information, content and programming. Are considered contrary to the law any audiovisual content and advertising that justify, underestimate or incite gender or domestic violence.

2. The Government must incorporate specific awareness and information content on gender-based violence and domestic violence into the channels of public radio and television and promote real equality between women and men.

3. The dissemination of information related to gender violence and domestic violence must be carried out respecting informative objectivity, guaranteeing a dignified treatment for the victims and offering, as far as possible, information on preventive resources, existing healthcare and protection, and the consequences of the violation.

4. When dealing with news or content related to gender violence and domestic violence, the free telephone number of assistance to victims must be made visible

Article 10 - Awareness and Prevention by the Public Authorities

1. Awareness-raising and prevention measures by the public authorities are all actions and policies that aim to prevent gender violence and domestic violence, raise awareness and inform about the consequences applicable to any act of gender violence or domestic violence.

2. With the aim of preventing and eradicating gender violence and domestic violence, public authorities must carry out awareness and information campaigns.

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3. The Statistics Department must include in its statistical plan, the elaboration of statistics that specifically analyze gender violence and domestic violence.

Article 11 – Continued Education Programs

1. The Government must ensure that the initial and continuing training of professionals involved in the detection, intervention and prevention of gender violence and domestic violence is an integral, multidisciplinary and specialized training.

2. The Government, with the collaboration of entities and professionals in the field, must design specific training programs in gender violence and domestic violence. This specific training must differentiate two levels:

a) The level of basic training, aimed at all professionals who indirectly intervene in processes of gender violence and domestic violence.

b) The level of training, aimed at professionals who are directly involved in processes of gender violence and domestic violence. This level should define and determine specific treatments for the different types of vulnerability.

3. The Government must guarantee the training of all professional people who work in the prevention, detection, care, assistance, recovery and repair of situations of gender violence and domestic violence.

Article 12 - Research Programs

1. The Government must promote studies and research projects on all aspects that form the phenomenon of gender violence and domestic violence, such as the causes, consequences, the degree of awareness in society, new mechanisms of prevention and the necessary techniques to eradicate them.

2. These research programs can be developed by the same professionals who intervene in situations of gender violence and domestic violence through reports of evaluation of the actions carried out by the corresponding department, or by means of public aid so that research groups or specialized entities can develop their research.

3. The results of these reports, studies or research, which are considered relevant, should be made public and free through all means to promote social dialogue and improve sensitization, awareness, the prevention and the provision of the service.

Third chapter - Detection and Integral Intervention

Article 13 - Detection of Risk Situations

1. Within the National Plan for social and healthcare services (PNASS), the Government must develop the necessary actions to detect situations of risk or existence of situations of gender violence or domestic violence, through social, health, educational, mediation or citizen care, paying special attention to victims belonging to groups of special risk because of their personal or social situation.

2. In order to achieve this goal, the Ministry responsible for health and welfare, with the participation of the sectors involved, especially the Comprehensive Women's Assistance Team, must develop the specific detection, intervention protocols and prevention.

3. Professionals with sufficient evidence or detecting a possible case of gender violence or domestic violence must inform the competent Social Services or the Women's Comprehensive Attention Team so they can track the case and apply the protocol of action. This communication will be made after informing the victim first and explaining the protocol to be followed and the rights at stake.

4. In the event that there is a high-risk situation for the physical or psychological integrity of the victim or the people in his or her surroundings, the professional must report the situation of ill-treatment to police or judicial authorities, according to what is considered pertinent.

Article 14 - Comprehensive Intervention

1. To guarantee comprehensive intervention, specialized professionals will provide social, health, psychological and legal assistance. These professionals must act in collaboration and through their network.

2. Social, health, psychological and legal assistance in favor of the victims must be provided in the same facilities or nearby, wherever possible, unless the nature of the case does not allow it.

3. The presence of a translator must be guaranteed when necessary and this translator must be the same in the whole process of intervention and recovery.

4. Social, health, psychological and legal assistance, and the rest of intervention measures, are recognized irrespective of the will of the victims to take legal action or to testify against the perpetrator.

5. The Government, through the departments and the corresponding services, must develop protocols of action that in addition to foreseeing the procedures, must be followed in case of intervention, and must establish the mechanisms that allow the collection of evidence in case there is a future judicial process.

Article 15 – Social Assistance

Social assistance must be provided through the corresponding social services in accordance with the provisions of the Law on social services and social welfare services, and in particular:

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- a) Coordinate all the assistance that allows an integral intervention in favor of the victim.
- b) Provide social, psychological and legal assistance services in coordination with health professionals, or, when necessary, refer to specialized professionals and supervise the victim's follow-up and evolution until full recovery to the extent possible.
- c) Manage the free telephone number of assistance to the victims.
- d) Process the social aids in favor of the victims.
- e) Provide social and educational support to the victims.
- f) Provide training assistance that allows victims an integral recovery to prevent revictimization.
- g) Manage a registry of assisted cases in order to provide data, respecting confidentiality, with the competent department for the elaboration of a specific database on situations of gender violence and domestic violence.

Article 16 - Health Care

1. Victims have the right to receive specialized health care, and the corresponding treatment, in order to provide them with full recovery as far as possible.
2. This healthcare must be provided in a coordinated way with the rest of the assistance, respecting the protocol of action provided in article 5 c) to guarantee an integral intervention.

Article 17 - Psychological Assistance

1. Psychological assistance, in coordination with specialized care in the healthcare areas, should provide for the disappearance of the symptoms presented and the total psychological rehabilitation to achieve a comprehensive recovery of the victim to the extent possible, and provide mechanisms to promote autonomy, if necessary, and to prevent future violations.
2. Priorities are considered as interventions with victims who present mental health problems, dependence on addictive substances or other pathologies that require specific psychological treatment.

Article 18 – Legal Assistance

1. The Government must offer the necessary legal advice service for victims of gender violence and domestic violence. This advice aims at providing specific information and counseling for victims of gender violence and domestic violence, whether the information is requested in an express or tacit manner, so that victims know their rights, as well as the institutions and professionals who can assist them to carry out the pertinent administrative and judicial actions that make their rights effective.
2. Apart from the advice mentioned in the previous section, the victims of gender violence and domestic violence should be guaranteed legal specialized assistance through the right to defense and technical assistance, which is free of charge when the applicant certifies an unfavorable economic situation or insolvency, in accordance with the regulations applicable in this matter.

This specialized legal assistance includes all judicial proceedings that are caused, directly or indirectly, by the situation of gender violence or domestic violence, including the execution of the necessary measures.

3. The Bar Association of Andorra must take the necessary measures to ensure that the designation of a lawyer under judicial aid in favor of the victims of gender violence or domestic violence in situations covered under this section, it is done urgently.

Article 19 -Programs of Intervention with Perpetrators

1. The Government must provide, for perpetrators who request it or have been sentenced by final judgement, specific programs for control and re-education treatments.

These programs must be taught by accredited professionals and in different places where the treatments foreseen in the chapter of integral social assistance in favor of the victims are made, and they must treat, at least, the reeducation in matter of gender, the peaceful resolution of conflicts, the psychological treatment and the dependence of substances if necessary.

2. This service aims to ensure the necessary conditions to prevent subsequent situations of gender violence and domestic violence.
3. When appropriate, the Department of Social Welfare must coordinate the technical services of meeting points to carry out the regime of visits of the parents with their daughters and their sons when so agreed administratively, judicially or requested by the parties to avoid confrontation between them or because they consider that it is the most appropriate for the family relationship. These services must be regulated by means of a regulation.

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Article 20 - National Commission for the Prevention of Gender and Domestic Violence

1. The National Commission for the Prevention of Gender and Domestic Violence (hereinafter CONPVGd) is created as a political and technical body to coordinate and cooperate within the Administration with the ministries and departments involved.

2. The CONPVGd is presided by the head of the Ministry responsible for health and social welfare, who can delegate this responsibility to a high position of the aforementioned ministry. The composition is made up of representatives of the various areas of the Government related to social welfare, social services, health, education, work, housing and justice, and must be obligatory and at least one representing the Police Corps and a representative of the Comprehensive Women's Care Team. Notwithstanding the provisions contained in this article, the rest of the competences and the rules of internal operation of the CONPVGd shall be developed by means of a regulation.

3. The CONPVGd's main functions are:

a) Track compliance with the Law.

b) Design strategies to be implemented for the awareness, prevention, detection and assistance of victims.

c) Elaborate the implementation schedule of the Law and the strategies, giving priority to the actions that affect the prevention of the situations of violence of gender and domestic violence.

d) Evaluate the policies and actions carried out.

e) Develop a collaboration and coordination guide in the fight against gender violence and domestic violence. Within the framework of this function, the CONPVGd must guarantee effective collaboration and coordination between all the departments of the Administration that have the direct or indirect functions to act in cases of violence of gender and domestic violence, and mainly, to achieve the necessary communication and coordination among those involved in processes of gender violence and domestic violence.

f) Promote strategic work among ministries and departments involved in sharing methodologies and good practices in the prevention and eradication of gender-based violence and domestic violence.

g) Any other that the CONPVGd decides within the framework of this Law.

The strategies designed by the CONPVGd should be included in the National Social Security and Health Services Plan (PNASS).

Fourth Chapter - Defense, Protection and Judicial Protection

Article 21 - Measures of Institutional Protection

1. Protection in situations of gender violence and domestic violence requires immediate application of all the means and instruments necessary to detect them, to take preventive measures and to articulate appropriate measures to stop the violations.

2. Protection guarantees must be ensured both by technological means and by police services, as well as by any other means that ensures the protection of the victims.

Article 22 - Automatic Invalidity

The dispositions, acts or clauses of legal businesses that constitute or may cause situations of gender violence and domestic violence are null and void.

Article 23 - Judicial Protection

1. Notwithstanding the provisions contained in this Law, as well as in the Social Security and Social Services portfolio, any person considered as a victim of gender or domestic violence may present, in addition to the criminal actions that may arise, an action before of the civil jurisdiction in order to obtain judicial protection to end the violation of the rights that are recognized as a

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result of a situation of gender or domestic violence, to establish the appropriate measures to stop the violation and to avoid subsequent, and obtain a compensation or economic compensation that covers the totality of the damages caused, including moral damage and economic damage. This action is triggered by the procedure established by the current civil procedural regulations.

2. The measures that may be requested and in relation to which the civil courts must take decisions, as long as they have not already been requested or adopted in the criminal field or within the framework of procedures of separation, divorce or establishment or modification of parents/children relations, indicating the duration and conditions of their application, are the following:

- a) Protective orders with the prior valuation of the objective risk situation for victims of gender or domestic violence. The implementation of this measure must be developed by regulation.
- b) Compulsory departure of the defendant from the residence where he has been living with the victims or where the family unit has established their home, and prohibition to return to it.
- c) Removal order, prohibiting the defendant from approaching the victims or other persons who are indicated at a specified distance, which prevents them from approaching anywhere they are located, at their home, or the family's home, at the work place, at a public location or at any other place that is established.
- d) Prohibition of communications, preventing the defendant from any kind of communication, by whatever means, with the victims or with the other persons indicated.
- e) Hiding of information relating to the residence of the victims or of the other persons indicated.
- f) Judicial protection of the victims in the judicial offices as well as in front of any jurisdictional body, to ensure the non-visual confrontation between the victims and the defendant during judicial proceedings.
- g) Suspension of the right to request, possess, carry or use of weapons by the defendant, with the obligation to deposit them where indicated.
- h) Follow-up of medical, psychological, social or any other nature treatment by the defendant.
- i) Any other measure that, according to the criterion of the jurisdictional body, is necessary or appropriate to end the infringement or avoid subsequent violations.

These measures can be taken cautiously and urgently or by virtue of the resolution that ends the process, separately or jointly, in accordance with the current civil procedural norms. In any case, the perpetrator must be warned of the criminal consequences that may result from the non-compliance with the measures taken.

3. The economic compensation is fixed with the previous valuation of the circumstances in which the criminal act has occurred, the seriousness of the injury or the damages that result from this fact, the potential recidivism and the degree of violence exercised.

Article 24 - Judicial Proceedings

1. The jurisdictional body that oversees proceedings for separation, divorce or the modification of parents/children measures must take special consideration of the conflicts or situations of gender or domestic violence occurring in the family nucleus when adopting decision on parental authority, the custody and the regimes of visits of the minors.

Likewise, it must adopt the necessary measures to ensure that, among other aspects, the exercise of guardianship, custody and visitation regimes do not constitute a danger to the rights and security of minor children or of the custodial parent and relatives or other persons concerned.

In the event that there may be such a danger, the court may adopt the measures indicated in section 2 of article 23 and the other measures established in the applicable regulations in force, and may also suspend, in a precautionary manner or under its final decision, the exercise of the parental authority, custody and visiting regimes, or establish that this regime of visits is carried out through a meeting point or by means of other mechanisms that guarantee the safety of children under age.

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2. In the rest of the civil proceedings where there is reasonable evidence of a situation of gender or domestic violence, the jurisdictional body that has attributed the knowledge must adopt the precautionary or definitive measures indicated in section 2 of article 23 and the other measures established in the applicable regulations in force and aimed at guaranteeing the protection of victims of these types of violence.

In particular, the jurisdictional bodies must take the necessary measures to protect the victims of gender or domestic violence that are located in the judicial units and ensure that there is no visual confrontation between the victim and the suspect perpetrator during the legal proceedings.

Article 25 - Active Legitimation

Without prejudice to the individual legitimacy of persons victims of gender or domestic violence, legally constituted associations, entities and organizations that have within their purpose the defense and promotion of human rights and, in particular, the fight against gender or gender violence have legal ground to promote judicial actions in defense of the rights and interests of the associated people who are part of the judicial process, provided they have their express authorization.

First Additional Provision - Collaboration with Private Entities

In order to optimize public resources and improve the efficiency of the provision of services, the Government, if it considers it necessary, can establish collaboration agreements to carry out the assistance to the victims provided in the third chapter, as well as the intervention programs with perpetrators included in article 19 of this Law.

Second Additional Provision – Data Exchange

The Government and the other entities that intervene, in accordance with Law 15/2003, of December 18, qualified for the protection of personal data and the pertinent regulations, can communicate the data to comply with the provisions set forth in this Law.

First Transitory Provision – Signed Agreements

The agreements signed with the Government by private or public entities to comply with any of the provisions of this Law that are in force upon the entry into force of this Law are fully valid until they are reviewed or finalized in accordance with the provisions established in the corresponding agreement, without prejudice to the adaptations required by the application of this Law.

Second Transitory Provision - Action Protocols

The Government is empowered to review existing protocols in each of the areas and to adapt the content to the provisions established in this Law.

First Final Provision - Enabling Regulations

The Government is instructed to dictate the regulations that are necessary to develop this Law.

Second Final Provision - Qualified Articles

The first and fourth chapters of this Law, as well as articles 5 and 18, that include rights reserved by qualified law, according to article 40 of the Constitution of the Principality of Andorra, have the status of qualified law.

Third Final Provision- Entry into Force

This Law shall enter into force on the day following its publication in the Official Gazette of the Principality of Andorra.

[...]

4. ANGOLA

[Law Against Domestic Violence \(2011\)](#)¹²

CHAPTER I GENERAL PROVISIONS

Article 1 - Object

The present law establishes the legal regime of prevention of domestic violence, of protection and assistance to victims and aims to:

- (a) prevent, combat and punish the perpetrators of acts of domestic violence;
- (b) inform victims of domestic violence crimes about their rights;
- (c) ensure police and judicial protection to victims of domestic violence;
- (d) create specialized services for the victims of domestic violence against competent authorities;
- (e) encourage associations and other civil society organizations focused on preventing domestic violence;
- (f) promote awareness-raising policies in the areas of education, information, health and social support;
- (g) hold the perpetrators of domestic violence administratively, civilly and criminally accountable;
- (h) create spaces for counseling and temporary shelter of those involved;
- (i) discourage any act which, based on customs, threatens the dignity of the person;
- (j) move the agent away from the victim, when necessary, given the seriousness of the situation;
- (k) respond rapidly, effectively and in an integrated manner with emergency social services to support the victim.

Article 2 - Scope

The present law shall apply to events that take place within the family or outside the family with anyone who, for reasons of proximity, affection and education, is related to the victim, and they can take place especially:

- a) in kindergartens;
- b) in nursing homes;
- c) in hospitals;
- d) in schools;
- e) in women's or men's boarding schools;
- f) in similar areas of relevant community or social interest.

Article 3 - Definition and type of domestic violence

1. For the purposes of this law, domestic violence is any action or omission that causes injury or physical deformation and temporary or permanent psychological damage which threatens the person in the context of the relationships provided for in the previous article.

2. Domestic violence is classified as:

- a) sexual violence - any conduct that requires someone to witness, perform or participate in a sexual intercourse through violence, coercion, threats or putting the person in a situation of unconsciousness or impossibility to resist;
- b) patrimonial violence - any action which provides retention, subtraction, partial or total destruction of the objects, documents, work tools, movable or immovable property, values and rights of the victim;
- c) psychological violence - any conduct that causes emotional damage, decreased self-esteem or that impairs or disrupts the full psycho-social development;
- d) verbal violence - any action involving the use of improprieties, whether or not accompanied by of offensive gestures, whose purpose is to humiliate and disregard the victim, constituting slander, defamation or injury;
- e) physical violence - any conduct that offends the physical health and integrity of the person;
- f) family abandonment - any conduct that seriously and repeatedly, disregards the provision of assistance in accordance with the law.

CHAPTER II SPECIFIC PRINCIPLES

¹² Law Against Domestic Violence (Lei contra a violência doméstica), No. 25/11 (14 July 2014), available at <http://www.cidadao.gov.ao/VerLegislacao.aspx?id=539> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article 4 - Principle of prevention of domestic violence

The principle of prevention of domestic violence consists in inhibiting the occurrence of acts of domestic violence, in particular by:

- a) promoting respect for and recognition of others' personality and dignity;
- b) promoting family reconciliation councils and other inter-family forums to resolve conflicts;
- c) promoting gender equality;
- d) strengthening protection for pregnant women, children and the elderly in the family and social environment, guaranteeing mechanisms of assistance;
- e) promoting dialogue, morality and traditional values recognized by the community that do not jeopardize the dignity of the human person;
- f) creating mechanisms conducive to accountability of sexual relations between ascendants and descendants or siblings, especially against children.

ARTICLE 5 - Principle of confidentiality

The principle of confidentiality is:

- a) respecting the privacy, good name and honor of the ones involved in acts of violence;
- b) keep confidentiality of the data obtained under the process on domestic violence.

ARTICLE 6 - Principle of criminal liability

Whoever practices any act that constitutes domestic violence provided for in Article 3 shall be punished in accordance with provisions of this law and criminal law in general.

CHAPTER III PREVENTION AND SUPPORT MEASURES

Article 7 - Education

The State shall integrate, in school curricula, subjects that aim to prevent crimes of domestic violence providing children and young people with basic concepts, in particular:

- a) on the phenomenon of violence and its various manifestations, origins and consequences;
- b) on the law and respect for privacy and confidentiality of private life;
- c) on parental behaviors and their interrelationship in family life;
- d) on symbolic violence and its structural and institutional character;
- e) on relations of power which spot the personal, group and social interactions;
- f) on the relationship between children, adolescents, young people and adults.

Article 8 - Awareness and information

The State ensures the promotion of prevention policies of domestic violence, through:

- a) development of scripts and educational products for families;
- b) awareness-raising and information on education for gender equality within communities;
- c) expansion of the knowledge and exchange with national and foreign entities, of the information, the identification and dissemination of good practices.

Article 9 - Social assistance

1. The State shall encourage the development of family counseling institutions with a view to prevent domestic violence.
2. For the purposes of the previous paragraph, these institutions shall be based, preferably, on the areas of social, human and medical sciences.

Article 10 - Formation

Trainings shall be provided on gender issues and domestic violence to professionals that work with domestic violence issues.

CHAPTER IV MEASURES OF PROTECTION OF THE VICTIM

Article 11 - Statute of the victim

Once the criminal proceedings for infringement considered domestic violence are initiated, as specified by the present law, the injured person automatically acquires the status of victim for legal purposes, and has the following legal rights:

- a) access to shelters;
- b) preferential service to obtain proof by the competent authorities;

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- c) institutional, public or private support, free of charge;
- d) issuing a declaration of the status of a victim of domestic violence.

Article 12 - Protection measures

1. Adequate protection is ensured to the victim, to the victim's family or to persons in a similar situation, whenever the competent authorities consider that there is a serious threat of vengeance acts or strong evidence that privacy is seriously disrupted.
2. Notwithstanding the procedural rules provided by the Criminal Code, the Code of Criminal Procedure and other supplementary legislation, when a crime of domestic violence has taken place, the Public Prosecutor's Office or the judge may apply, whenever the gravity of the situation so warrants, within 72 hours, one of the following measures to protect the victim:
 - a) temporarily refer the victim of domestic violence to a provisional shelter;
 - b) prohibit contact between the victim and the perpetrator in places that involve any judicial proceeding in the presence of both, in particular in Court buildings and others;
 - c) determine the psychosocial support for no longer than six months, unless exceptional circumstances impose its extension;
 - d) prohibit or restrict the presence of the perpetrator of the crime in the residence of the victim, at the victim's workplace, school, or any other places that the victim regularly attends;
 - e) seize the weapons that the perpetrator has in his power which shall remain under authority custody;
 - f) prohibit the perpetrator from owning and using firearms, and refer to the competent authority for the necessary provisions;
 - g) determine the return to the residence to whomever left for personal safety reasons, in the presence of the competent authority.
3. In cases where the perpetrator lives with the victim, the measure of injunction shall be to keep the perpetrator away from the common residence, whenever such action appears necessary.
4. The provisions of the preceding paragraphs shall not prevent the application of the other solutions contained in the specific legislation regarding protection of the victim's family.

Article 13 - Protection of property

1. The property of the victim that the perpetrator of the crime retains without the victim's authorization must be immediately examined by the competent authority and returned to the victim.
2. Without prejudice to the provisions of the previous paragraph, when the property of the victim or of the perpetrator of the offense have been used in the commission of the offense, they may be seized under legal terms for evidence purposes.
3. The agreements on common property shall be made in accordance with the system of assets adopted by both marriage or de facto union.
4. The provisions of this Article apply irrespective of the agreements concluded within the framework of trust between the parties involved.

Article 14 - Prevention of Secondary Victimization

The victim has the right to be heard in a private environment, and appropriate conditions should be laid down to prevent secondary victimization and prevent the victim from suffering any kind of pressure.

Article 15 - Victim residing in another State

Whenever the victim of domestic violence cannot personally participate in judicial proceedings for residing overseas, the victim can testify through videoconferencing, teleconferencing or other means legally provided for.

Article 16 - Cessation of victim status

1. The status of a victim of domestic violence ceases with the archiving of the complaint in the preliminary phase by an order of rejection of the complaint, or after the res judicata.
2. The termination of the status of victim does not prevent that the competent authorities, considering the concrete circumstances, keep the social support measures that have been previously established.

Article 17 - Free service

Medical, psychological, social and legal support for victims of domestic violence is guaranteed free of charge until the termination of the status of victim, by the special public services and other civil society organizations for this purpose.

CHAPTER V
ADMINISTRATIVE MEASURES

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Article 18 - Administrative resolution of conflicts

1. Conflicts resulting from acts of domestic violence denying the complaint may be administratively solved by public or private bodies aimed at this purpose.
2. For conflict resolution resulting from domestic violence, the bodies referred to in the preceding paragraph shall rely on negotiation techniques that favor reconciliation.
3. The provisions of paragraph 1 of this Article does not hamper the victim's right to compensation.

Article 19 - Shelter and protection spaces

1. The State shall promote and coordinate the development of shelters for victims and perpetrators of domestic violence defined in its own regulations.
2. In the creation of shelters provided for in paragraph 1 of this Article, account shall be taken of gender, age and safety of those involved.
3. Notwithstanding the provisions of the previous paragraph, the persons involved in domestic violence should go to different shelters, depending on whether they are victims or perpetrators of the crime.

Article 20 - Support to the perpetrator

1. The State shall promote the creation of conditions necessary for the psychological and psychiatric support of the perpetrator of the crime of domestic violence.
2. Recovery programs should be developed and implemented for domestic violence perpetrators.

Article 21 - Reconciliation Meetings

1. Without prejudice to other procedures and measures that have been adopted, if the conflict persists, meetings between victim and perpetrator can be promoted, under the terms to be regulated, once obtained the express consent of both parties, and ensuring the necessary safety conditions and the presence of an accredited mediator.
2. The reconciliation meetings referred to in the paragraph above, aim at restoring family and social harmony and the legitimate interests of the victim and the perpetrator of the crime of domestic violence.

CHAPTER VI
CRIMINAL PROCEDURE AND LIABILITY

Article 22 - Detention in flagrante delicto

In case of detention of the agent for crime of domestic violence, in flagrante delicto, the detainee shall remain detained until an opportunity of meeting with the competent magistrate for questioning or for summary judgment hearing.

Article 23 - Detention outside the flagrant offense

Notwithstanding the provisions of criminal procedural law, the detention of the perpetrator of the crime of domestic violence may be carried out by an order of the Public Prosecutor's Office, if there is a fear of continuation of the criminal activity or if it is essential for the safety of the victim in accordance with in the law.

Article 24 - Complaint, denunciation and withdrawal

1. The complaint can be made by the injured person or by whomever is legitimate under the law.
2. The complaint can be made by any person or authority having knowledge of the criminal act.
3. The victim of domestic violence can withdraw the complaint in any stage of the process, except in cases forbidden by the law.
4. A claim or complaint may be filed, verbally or in writing, by telephone, electronically or to the police authority or to the Prosecutor's Office.
5. Upon receipt of the claim or complaint, the competent authorities shall ascertain their veracity, for criminal procedure purposes, in accordance with the law.
6. Whoever makes a false claim or complaint incurs in the penalty applicable to the crime of slanderous denunciation.

Article 25 - Crimes that do not allow withdrawal

1. Without prejudice to the provisions of criminal legislation, withdrawal is not admitted in the following cases because they constitute public crimes in domestic violence matters:
 - a) the serious and irreversible offense to the physical or psychological integrity;
 - b) the repeated lack of food supply to the child and due care for the pregnant woman;
 - c) sexual abuse of minors or elderly people under custody or guardianship and the incapables;
 - d) the misappropriation of inherited assets that, because of their pecuniary value, jeopardizes the social dignity of the heirs;

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- e) the evasion, alienation or encumbrance of assets of the family, considering their pecuniary value;
 - f) the practice of traditional or non-traditional marriage with children under of fourteen years old or incapable.
2. Those who practice one of the facts provided for in subparagraphs (a) and (c) of the preceding paragraph shall be sentenced to imprisonment of two to eight years, if another more serious penalty does not fit in accordance with the legislation in force.
3. Any person who commits one of the acts referred to in subparagraphs (b), (d), (e) and (f) of paragraph 1 of this article shall be imprisoned for up to two years, if another more serious penalty does not apply in accordance with the legislation in force.
4. The penalties provided for in the preceding paragraphs do not prevent the perpetrator from compensating the victim, in accordance with the law.

Article 26 - Elements of the claim or complaint

The claim or complaint shall contain the following elements:

- a) the complete identification, if possible, of the victim and the perpetrator;
- b) the domestic, family or other relationship between the perpetrator and the victim;
- c) a description of the facts giving rise to the complaint;
- d) the history of domestic violence, if any.

Article 27 - Self-report

1. The claimant or complainant shall be served, with priority, by competent authorities which are required to draw up the self-report, containing:

- a) all the elements contained in the claim or complaint, under the terms of the previous article;
- b) the name and age of the victim, of the perpetrator and of the dependents, if any;
- c) summary of facts and protective measures proposed by the victim.

Article 28 - Service to the claimant or complainant

1. In cases of domestic violence, the investigation of the occurrence shall register it and, without prejudice to the provided by the Code of Criminal Procedure, adopt immediately the following procedures:

- a) hear the victim or the claimant and to draft the complaint;
- b) collect the necessary evidence for the clarification of the circumstances in which the event occurred;
- c) immediately refer the case to the competent magistrate;
- d) determine that the victim be examined and, if necessary, that other expert examinations be performed;
- e) listen to the agent and the witnesses;
- f) accompany the victim to access his or her assets for immediate use.

2. For the purposes of the preceding paragraph, specialized services for the treatment of domestic violence crimes shall be created within the investigation and prosecution bodies and the Prosecutor's Office.

Article 29 - Duty to attend

Whoever is legally notified by the competent authority and recklessly does not attend, responds for the crime of disobedience punishable by the law.

Article 30 - Right to compensation

1. The victim of domestic violence has the right to obtain, from the perpetrator of the crime, compensation for damages.
2. The compensation referred to in the preceding paragraph shall be in the light of the seriousness of the aggression and the economic condition of those involved.
3. If the claim for compensation was not deducted in the civil compensation claim within the criminal proceedings or separately, in case of conviction, the court may establish an amount for compensating the victim for the damages suffered.

CHAPTER VII
FINAL AND TRANSITIONAL PROVISIONS

Article 31 - Regulation

The regulation of this law is incumbent upon the Executive power.

Article 32 - Interpretation

The interpretation and application of this law shall consider the conditions of vulnerability of the victim in situation of domestic violence.

Article 33 - Doubts and omissions

The doubts and omissions resulting from the implementation of this law shall be resolved by the National Assembly.

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Article 34 - Subsidiary law

The omissions in this law shall be regulated alternatively, by the rules provided by the Criminal Code and the Code of Criminal Procedure, the Civil Code and the Code of Civil Procedure and the Family Code.

Article 35 - Implementation

This law shall enter into force on the date of its publication. Seen and approved by the National Assembly, in Luanda, on 21 June 2011.

5. ANTIGUA AND BARBUDA

[Domestic Violence Act, 2015](#)¹³

AN ACT to provide greater protection for victims of domestic violence and to make provision for the granting of protection orders and for matters incidental thereto and connected therewith.

**PART I
PRELIMINARY**

1. Short title and commencement

(1) This Act may be cited as the Domestic Violence Act 2015.

(2) The Minister may by Notice published in the *Gazette* appoint a date on which this Act comes into force.

2. Interpretation

In this Act—

“applicant” means a person, including a child, who is or has been in a domestic relationship with the respondent and who makes an application pursuant to section 5;

“approved social worker or advocate” means a person experienced or qualified in social welfare and approved by the Minister in writing;

“child” includes a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and the *Domestic Violence Act, 2015*. 8 No. 27 of 2015 respondent or either of them, and an adopted child, a stepchild, or a child who is treated as a child of the family;

“Clerk” means the Clerk or Deputy Clerk of the Court;

“cohabitant” means a person who is living or has lived with a person of the opposite sex as a husband or wife although not legally married to each other;

“dependant” includes a person over the age of eighteen years who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or the respondent for his or her welfare; or who is over the age of 18 years but is under the age of 25 years and is receiving full time education at an educational institution or undergoing training for a trade, profession or vocation.

“Commissioner of Police” means the Commissioner of Police appointed pursuant to Police Act, Cap. 330;

“Court” means the Magistrates court or any other court of competent jurisdiction;

“cyberstalking” means the use of the Internet or other electronic means to stalk or harass a person and in particular includes:

(a) using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act anonymously or repeatedly whether or not conversation occurs; or

(b) threatening to inflict injury on the person or property of the person communicated with or any member of his or her family or household;

with intent to harass, intimidate, torment, or embarrass a person.

“domestic relationship” means a relationship between an applicant 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 cohabit or cohabited with each other in a relationship of some permanence;

(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 would be family members related by affinity if the persons referred to in paragraph (b) were, or were able to be

¹³ Domestic Violence Act, No. 27/2015 (8 March, 2016), available at <http://laws.gov.ag/acts/2015/a2015-27.pdf> (last visited, October 26, 2018).

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married to each other; or

(f) they share or shared the same household or residence;

“domestic violence” means:

(1) any controlling or abusive behaviour that harms the health, safety or well-being of the applicant or any child in the care of the applicant and includes but is not limited to the following—

- (a) physical abuse or threats of physical abuse;
- (b) sexual abuse or threats of sexual abuse;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to or destruction of property; or
- (i) entry into the applicant’s residence without consent, where the parties do not share the same residence.

(2) For the purposes of the definition of domestic violence, threats, intimidation, harassment or stalking include threats, intimidation harassment or stalking or and cyberstalking on the Internet or by electronic means.

“economic abuse” includes—

- (a) the deprivation or threatened deprivation of any or all economic or financial resources to which the applicant is entitled under the law or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments of the shared household; or
- (b) the disposal or threatened disposal of household effects or other property in which the applicant has an interest;

“emergency monetary relief” includes—

- (a) compensation for monetary losses suffered by the applicant and any child at the time of the issue of an Interim Protection Order as a result of domestic violence;
- (b) loss of earnings;
- (c) medical and dental expenses;
- (d) moving and accommodation expenses; or
- (e) interim expenses;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by the respondent to the applicant and includes—

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain;
- (c) the repeated exhibition of obsessive possessiveness, or jealousy which is such as to constitute serious invasion of the applicant’s privacy, liberty, integrity or security;

“firearm” shall have the meaning assigned to it in the Firearms Act, Cap. 171; “harassment” includes—

- (a) engaging in a pattern of conduct that induces the fear of harm ;
- (b) watching or loitering outside of or near the building or place where the applicant resides, works or carries on business, studies or happens to be;
- (c) repeatedly making telephone calls or inducing another person to make telephone calls to the applicant, whether or not the conversation ensues;
- (d) repeatedly sending electronic mail or text messages to the applicant;
- (e) repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles, or other objects to the applicant’s home or place of work;

“Interim Protection Order” means an order made pursuant to section 6;

“intimidation” means uttering, conveying or causing any person to receive a threat which induces fear;

“Minister” means the Minister responsible for Social Services;

“order” means an Interim Protection Order or a Final Protection Order; “police officer” has the meaning assigned to it in the Police Act, Cap. 330;

“physical abuse” means any act of assault;

“prescribed” means prescribed by the Regulations made pursuant to the provisions of this Act;

“protection order” means an order made pursuant to section 6; and a final Protection Order issued pursuant to section 13;

“respondent” means a person who is or has been in a domestic relationship with the applicant and against whom the applicant has obtained or is endeavouring to obtain an order pursuant to section 6 or section 13;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

“shared household” means a household where the applicant and the respondent live or lived together in a domestic relationship;

“stalking” includes the repeatedly following, pursuing or accosting of the applicant;

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“victim” means any person whom alleges to have been subjected to an act of domestic violence;

3. Duty to inform victim and applicant of rights

(1) A police officer, at the scene of an incident of domestic violence, or when the incident of domestic violence is reported shall—

- (a) inform the victim of his or her rights in the manner as stated in Schedule I; and
- (b) hand a printed copy of the information relating to the right of the victim pursuant to paragraph (a) as soon as possible thereafter

4. Arrest by police officer without warrant

Subject to section 21, a police officer may arrest a person at the scene of an incident of domestic violence, without a warrant, whom he or she reasonably suspects of having committed an offence containing an element of violence.

PART II
PROTECTION ORDERS

5. Application for protection order

(1) An applicant may apply to the Court for an Interim Protection Order pursuant to section 6 in accordance with Form I in Schedule II, on the ground that the respondent has engaged in domestic violence.

(2) The Clerk shall inform the applicant that they may seek assistance from the Directorate of Gender Affairs.

(3) The application referred to in subsection (1) shall be made by way of an affidavit in which shall be stated—

- (a) the facts on which the application is based;
- (b) the nature of the order applied for;
- (c) the name of the police station at which the applicant is likely to report any breach of the protection order.

(4) Notwithstanding the provisions of any other law, an application made pursuant to subsection (1) may be brought on behalf of the applicant by any other person, who has a material interest in the well-being of the applicant, including a police officer, a social worker or advocate, save and except that the application shall be brought with the consent of the applicant, except in circumstances where the applicant is-

- (a) a child;
 - (b) physically or mentally incapacitated by unsoundness of mind or a disability;
 - (c) unconscious; or
 - (d) under the influence of intoxicating liquor or drugs.
- (e) uncooperative but there exists credible information on which the case may be pursued

(5) Pursuant to subsection (4) (a) a child may apply for a protection order through—

- (a) a person with whom the child normally resides or resides with on a regular basis or any adult member of his or her household; or
- (b) a parent or guardian or a person who is in loco parentis to the child.

(6) The application referred to pursuant to subsection (1) may be brought outside the ordinary hours of the Court or on a day which is not an ordinary day for the sitting of the Court.

(7) The application made pursuant to subsection (1) may be accompanied by supporting affidavits of persons who have knowledge of the matter concerned.

(8) The applicant may request that his or her physical address be omitted from the protection order.

(9) The application and affidavits shall be lodged with the Clerk of the Court who shall forthwith submit the application and the affidavits to the Court.

(10) In considering the application made pursuant to subsection (1), the Court—

- (a) may require further oral evidence or evidence by affidavit; and
- (b) shall record any oral evidence referred to in paragraph (a).

6. Power of Court to grant Interim Protection Order

(1) The Court may make an Interim Protection Order on an *ex parte* basis, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant.

(2) Where the Court is satisfied that the respondent is committing, or has committed or is likely to engage in conduct that would constitute an act of domestic violence, the Court shall grant an Interim Protection Order against the respondent, in accordance with Form II in Schedule II.

(3) In exercising his or her powers pursuant to the provisions of this section, the Court shall not refuse to grant an Interim Protection Order by reason of the fact that the respondent has not been given notice of the proceedings.

(4) An Interim Protection Order granted pursuant to subsection (1) shall call upon the respondent to show cause on the return date specified in the Interim Protection Order as to why the Interim Protection Order should not be confirmed.

(5) The return date referred to in subsection (4) shall not be less than ten days after service has been effected upon the

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respondent pursuant to provisions of section 11.

(6) An Interim Protection Order may be made for such period of time as the Court considers necessary but shall not exceed thirty days.

(7) An Interim Protection Order is automatically extended for a period of fifteen days where the Court is unable to hear and determine the proceedings before the expiry of the period in sub- section (6).

7. Terms of Protection Order

(1) In granting an Interim Protection Order pursuant to section 6 or a final Protection Order pursuant to section 13, the Court may prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) enlisting the help of any person to commit any such act of domestic violence;
- (c) entering the shared household, save and except that the Court shall only impose this prohibition only if it appears to be in the interests of the applicant or any child;
- (d) entering a specified part of the shared household;
- (e) entering the residence of the applicant;
- (f) entering the place of employment of the applicant;
- (g) entering the place of schooling or care of any child;
- (h) preventing the applicant or any child who ordinarily lives or lived in the shared household from entering or remaining in the shared household or a specified part of the shared household;
- (i) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant as the case may be;
- (j) approaching the applicant within a specified distance; or
- (k) committing any other act as specified in the order.

(2) In addition to the conditions stated in subsection (1), the Court may—

- (a) direct that any or all of the conditions of an order be applied for the benefit of a child;
- (b) direct that the respondent—
 - (i) return to the applicant, specified property that is in his or her possession or under his or her control;
 - (ii) pay emergency monetary relief to the applicant;
 - (iii) pay interim monetary relief to the applicant for the benefit of the child or children, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to the provisions of any other law;
 - (iv) immediately vacate any shared household for a specified period, whether or not the shared household is owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) make or continue to make payments in respect of rent or mortgage payment for premises occupied by the applicant having regard to the financial needs and resources of the parties; or
 - (vi) applicant or both, receive professional counselling or therapy from a person or an agency or from a programme which is approved by the Department responsible for Social Services.

(3) Notwithstanding the foregoing, the Court may impose any additional conditions which it deems reasonably necessary to provide and protect the safety of the applicant, a child or children, including but not limited to an order that a police officer shall accompany the respondent to a specified place to supervise the collection of personal property.

(4) The Court may direct that any or all of the prohibitions or conditions contained in an Interim Protection Order or a final Protection Order apply for the benefit of a child.

(5) The Court may—

- (a) refuse the respondent contact with any child if it is shown that such contact is not in the best interests of the child; or
- (b) order structured contact with any such child.

(6) Subject to section 25, the Court shall not refuse to grant an Interim Protection Order or a final Protection Order on the basis that a single act has been committed or a single threat has been made by the respondent, or on the basis that the acts or threats when viewed in isolation, appear to be minor or trivial.

(7) Where pursuant to subsection (2) (b) (vi) the Court makes an order which *inter alia* directs counselling, the Order shall specify-

- (a) that the Court receive written notification from the counsellor or therapist of sessions missed by the applicant, the respondent or both, as the case may be without reasonable excuse; and
- (b) the date by which the counsellor or therapist shall submit a report to the Court in respect of the counselling or therapy, such report to include a prognosis for recovery.

(8) Where the Court makes an Order which *inter alia*,—

- (a) directs that the respondent vacate any shared household; or
- (b) directs the respondent to return to the applicant any specified property that is in his or her possession or control,

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the Court may, in the same Order, if it is in the opinion of the Court necessary, and notwithstanding any other law, direct a police officer to remove the respondent either immediately or within a specified time from the shared household, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises, in order to supervise the removal of property belonging to the applicant and to ensure the protection of the applicant.

8. Matters to be considered by Court

In determining whether or not to impose one or more of the prohibitions specified in section 7, the Court shall have regard to the following—

- (a) the nature, history, or pattern of the domestic violence that has occurred and whether a previous Interim Protection Order or a final Protection Order has been issued;
- (b) the need to protect the applicant and any other person for whose benefit the order has been granted from further domestic violence;
- (c) the welfare of any child or children;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused as a result of making the order;
- (f) the income, assets and financial obligations of the respondent, the applicant and any other person affected by the order;
- (g) any other matter, that in the circumstances of the case, which the Court considers relevant.

9. Undertaking from respondent

- (1) In any proceedings pursuant to the provisions of this Act, the Court may at any time before the taking of evidence, accept an undertaking from the respondent given on oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constituted domestic violence.
- (2) Where an undertaking is given pursuant to subsection (1) the Court shall make an Interim Protection Order or a final Protection Order, as it deems fit, in respect of the undertaking.
- (3) An undertaking may deal with all matters that may be dealt with under an Interim Protection Order or a final Protection Order as the Court sees fit, having regard to the matters referred to in section 8.
- (4) An undertaking shall remain in force for the period stated in the undertaking, but shall not exceed three years.
- (5) Sections 14, 15, 16, Part IV and Part V shall apply in relation to an undertaking as they do to an Interim Protection Order or a Final Protection Order.

10. Seizure of firearm and dangerous weapons

- (1) The Court may make an Order directing a police officer to seize any firearm or dangerous weapon in the possession of the respondent, if the affidavit made pursuant to section 5 (3) contains information to the effect that—
 - (a) the respondent has threatened or expressed the intention to kill or injure any person, including himself or herself, by means of the said firearm or dangerous weapon; or
 - (b) possession of the said firearm or dangerous weapon is not in the best interests of the respondent or any other person as a result of the respondent's—
 - (i) state of mind or mental condition;
 - (ii) inclination to violence, whether a firearm or a dangerous weapon was used in the violence or not; or
 - (iii) the use of or dependence of intoxicating liquor or drugs.
- (2) The Court shall direct the Clerk to refer a copy of the affidavit made pursuant to section 5 (3) to the Commissioner of Police, if the Court had ordered the seizure of any firearm pursuant to the provisions of this Act.

11. Service of notice of proceedings

- (1) Upon an application made for an Interim Protection Order pursuant to section 5 and the granting of such order by the Court, a copy of the application and the Interim Protection Order, together with the notice of the date on which, and the time at which the respondent is to appear before the Court to show cause as to why the Interim Protection Order should not be confirmed, shall be served personally on the respondent.
- (2) A notice of the proceedings pursuant to subsection (1) shall be issued in accordance with Form III in Schedule II.
- (3) Where an application is filed in respect of a child, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable be served on the parent or guardian of the child with whom the child normally resides or resides with on a regular basis.
- (4) A notice of proceedings which is issued and served pursuant to this section shall be deemed to be a summons that is duly served pursuant to the rules of the Court's made pursuant to section 33 and shall compel the respondent to appear in Court to answer to the application.
- (5) A notice of proceedings issued pursuant to the provisions of this Act may be served on the applicant or his or her agent and

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the Court shall receive proof of service by affidavit in accordance Form IV in Schedule II.

(6) Where the hearing of an application is adjourned because the application and notice of the proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

12. Validity of Interim Protection Order

(1) The Interim Protection Order issued pursuant to section 6 shall have no effect until it has been served on the respondent in the manner provided for in section 11.

(2) A copy of the affidavit made pursuant section 5 and the record of any oral evidence noted pursuant to section 5 (10) (b), shall be served on the respondent with the Interim Protection Order.

(3) Upon service or upon receipt of a return of service, the Clerk shall forthwith serve a certified copy of the Interim Protection Order and the original warrant of arrest contemplated pursuant to section 23 to the applicant.

13. Power to grant Final Protection Order

(1) If the respondent does not appear on the return date as stated pursuant to section 6(4), the Court shall proceed to hear and determine the matter and the Interim Protection Order shall be confirmed if the Court is satisfied that proper service has been effected upon the respondent, and, a Final Protection Order shall be issued in accordance with Form V in Schedule II.

(2) If the applicant does not appear either in person or represented by an attorney-at-law or advocate, on the return date as stated pursuant to section 11, and the respondent appears in court, the Court may—

(a) dismiss the application;

(b) having received a reasonable excuse for the non-appearance of the applicant, adjourn the hearing upon such terms as it deems just; or

(c) where it is satisfied, having regard to the submissions before him or her, that it is appropriate for evidence to be given by affidavit pursuant to this section, the Court may so direct, but the Court shall, on the application of any other party, order the attendance of cross examination of the person making such affidavit.

(3) If the respondent appears on the return date in order to show cause as to why the Interim Protection Order should not be confirmed, the matter shall be adjourned to enable the Clerk to notify the applicant of the date of the hearing.

(4) The respondent shall, not less than ten days before the date of hearing, file with the Clerk supporting affidavits showing cause as to why the Interim Protection Order should not be confirmed.

(5) A copy of the affidavits of the respondent shall forthwith be served on the applicant.

(6) The applicant, upon receipt of the affidavits may, before the date of the hearing, file a replying affidavit together with any supporting affidavits with the Clerk in which shall be stated the reasons why the Interim Protection Order shall be confirmed.

(7) A copy of the replying affidavit of the applicant shall forthwith be served on the respondent. (8) On the date of the hearing, the Clerk submit to the Court the —

(a) application for the Interim Protection Order;

(b) the Interim Protection Order granted;

(c) any supporting affidavits made by the respondent; and

(d) any replying affidavits made by the applicant.

(9) At the hearing of the matter, the Court may—

(a) decide the matter on the papers in the absence of either or both of the parties or

(b) refer the matter for oral evidence.

(10) At the conclusion of the hearing pursuant to subsection (9) (a) or (b), the Court—

(a) may confirm, amend, or set aside the Interim Protection Order; and

(b) shall issue an order in accordance with Form V in Schedule II.

(11) The Clerk shall forthwith notify the parties of the result and shall pursuant to the provisions of this Act—

(a) serve the original Final Protection Order referred to in subsection (10) on the respondent;

(b) serve a certified copy of the Final Protection Order referred to in subsection (10) on the applicant.

(12) A Final Protection Order shall be for such period as the Court considers necessary but shall not exceed three years.

(13) Where a Final Protection Order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

14. Explanation of orders

(1) Where the Court proposes to make an Interim Protection Order or a Final Protection Order and the respondent is before the Court, the Court shall explain to the respondent—

(a) the purpose, terms and effect of the order;

(b) the consequences of failing to comply with the order; and

(c) the means by which the order may be varied or revoked.

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15. Service of orders

Where an Interim Protection Order or a Final Protection Order is made or varied by the Court –

- (a) the Clerk shall arrange for the order to be drawn up in accordance with Form VI in Schedule II and filed with the Court; and
- (b) the Court shall serve a copy of the order on—
 - (i) the respondent;
 - (ii)
 - (iii)

any other person to whom the order is to apply whether or not the person is a party to the proceedings; and the police officer in charge of the police station located nearest to the area where the respondent or the applicant resides.

16. Service other than personal service

(1) Where the Court has not been able to serve notice of proceedings pursuant to section 11 or an Interim Protection Order or a Final Protection Order, upon the respondent personally, he or she may make an order for substituted service of the notice of the proceedings or order, as the case may be.

(2) For the purpose of subsection (1), “substituted service” means—

- (a) [registered post to the last known address of the respondent;
- (b) leaving the document at the last known address of the respondent;] ; or
- (c) service in such manner as the Court may direct.

PART III

VARIATION AND REVOCATION OF INTERIM PROTECTION ORDER AND FINAL PROTECTION ORDER

17. Variation and revocation of orders

(1) Where an order is in force, a party to the proceedings in respect of whom the order was made may make an application to the Court in accordance with Form VI in Schedule II, for an order varying or revoking the original Interim Protection Order or Final Protection Order.

(2) On an application made pursuant to subsection (1), the Court may by order, vary or revoke the Interim Protection Order or the Final Protection Order.

(3) A copy of an application made pursuant to this section shall be served on each person who is a party to the proceedings in respect of which the original Interim Protection Order or Final Protection Order was made.

(4) The Court shall have regard to the matters specified in section 8, in determining whether to vary or revoke an order in accordance with Form VII in Schedule II.

PART IV ENFORCEMENT OF ORDERS

18. Breach of orders

(1) Subject to subsection (2), a person against whom an order has been made and who—

- (a) has had notice of the order; and
- (b) contravenes any provision of the order or fails to comply with any direction of the Court, commits an offence and is liable—
 - (i) on a first conviction to a fine not exceeding nine thousand dollars or to a term of imprisonment not exceeding three months;
 - (ii) on a second conviction, to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding one year or both;
 - (iii) on any subsequent conviction, to a period of imprisonment not exceeding five years.

(2) Where an order contains a direction of the Court pursuant to section 7 that the respondent seek counselling or therapy and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.

PART V

POLICE POWERS OF ENTRY AND ARREST

19. Duties of police officers

(1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

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

No. 27 of 2015 23 *Domestic Violence Act, 2015*. (3) A domestic violence report shall be in accordance with Form VIII in

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Schedule II shall

include but not be limited to—

- (a) the name of the parties;
- (b) the relationship and sex of the parties;
- (c) information relating to the history of domestic violence between the parties;
- (d) the date and time the complaint was received;
- (e) the type of the abuse and the weapon used, if any.

20. Issue of warrant

(1) Where the Court is satisfied, by information on oath, that—

(a) there are reasonable grounds to suspect that a person on a premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and

(b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the Court may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

21. Police powers of arrest without warrant

(1) For the avoidance of doubt, a police officer may act in accordance with the provisions of the Criminal Procedure Act, where he or she has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.

(2) Nothing in this section authorises the entry onto premises by a police officer, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1).

(3) Where a police officer exercises a power of entry pursuant to subsection (1), he or she shall immediately submit a written report to the Commissioner of Police, through the head of his division where the incident occurred, and the report shall contain the following information—

- (a) the reasons for entering the premises without a warrant;
- (b) the offence being committed or about to be committed; and
- (c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

22. Duty of police officer to assist victims

Where a police officer has entered onto the premises pursuant to section 4, section 20 and 21 (1) the police officer shall—

- (a) give assistance to a person who has suffered injury;
- (b) ensure the welfare and safety of a child who may be on the premises; and
- (c) prevent any further breach of law.

23. Warrant of arrest and procedure upon arrest of respondent where Court issues Interim Protection Order

(1) In granting an Interim Protection Order pursuant to section 6, the Court may make an Order—

- (a) authorising the issue of a warrant for the arrest of the respondent, in accordance with Form IX in Schedule II; and
- (b) suspend the execution of such warrant, subject to compliance with any prohibition, condition, obligation or order imposed pursuant to section 7.

(2) The warrant referred to in subsection (1) shall remain in force unless the Interim Protection Order is set aside.

(3) A police officer shall—

- (a) execute a warrant of arrest upon its production and receipt of an affidavit in accordance with Form X in Schedule II wherein it is stated that the respondent has breached any prohibition, condition or obligation or order imposed pursuant to section 7; or
- (b) arrest the respondent upon receipt of an affidavit by the applicant in the Form described as Form X as specified in Schedule II wherein it is stated that —
 - (i) an Interim Protection Order has been issued pursuant to section 6 or that a Final Protection Order has been issued pursuant to section 13;
 - (ii) a warrant of arrest for the respondent has been issued;
 - (iii) the warrant of arrest has been lost or destroyed; and
 - (iv) the respondent has breached any prohibition, condition, obligation or order imposed pursuant to section 7.

(4) The Clerk shall issue a second or further warrant of arrest upon the applicant filing an affidavit in which it is stated that—

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- (a) the respondent has not been arrested; or
 - (b) the warrant of arrest issued has been lost or destroyed.
- (5) Subject to the provisions of this Act the provisions of the Criminal Procedure Act relating to the—
- (a) manner of execution of warrants of arrest;
 - (b) arrest;
 - (c) detention, search, release from custody; and
 - (d) criminal prosecution of the respondent;
- shall apply with the necessary changes applicable in respect of warrants of arrest issued pursuant to subsection (1).
- (6) A respondent arrested pursuant to subsection (3) shall—
- (a) not be released—
 - (i) unless the Court orders the release; and
 - (ii) the respondent, having been given a reasonable opportunity to do so, adduces evidence which satisfies the Court that the interests of justice permit his or her release from detention in custody;
 - (b) be brought before the Court as soon as reasonably possible, but not later than—
 - (i) forty eight hours after arrest; or
 - (ii) at the end of the first Court date, after the expiry of the forty eight hours, if the forty eight hours expire outside the ordinary court hours or on a day which is not an ordinary court day; and
 - (c) be criminally charged with—
 - (i) an offence contemplated pursuant to section 37; and
 - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

24. Powers of arrest where a Final Protection Order is in force

Where a Final Protection Order is in force and a police officer believes on reasonable grounds that the respondent has committed or is committing a breach of the Final Protection Order, he or she may detain and arrest the respondent without a warrant.

25. Existing criminal law to apply

- (1) Subject to subsection (2), where a person is arrested pursuant to section 20 or 21, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or attempting to commit any of the offences and shall be dealt with accordingly.
- (2) Where upon hearing the evidence pursuant to section 13 for the granting of a Final Protection Order, the Court is satisfied that—
- (a) the incident was an isolated one;
 - (b) there are circumstances which make it desirable to preserve the family unit; and
 - (c) the conduct complained of is not sufficiently grave to warrant the imposition of the order or the penalty, as the case may be;
- the Court may, with the consent of the applicant, withhold the granting of a Final Protection Order or the imposition of any penalty as prescribed by law and require the respondent to enter into a bond of good behaviour for a period not exceeding six months.
- (3) Where a bond of good behaviour has been entered into pursuant to subsection (2), the Court may prescribe such additional conditions as follows—
- (a) that the parties receive professional counselling, including family counselling;
 - (b) that the parties report to a probation officer at certain fixed intervals;
 - (c) that the matter be reviewed by the Court within three months.
- (4) A bond of good behaviour entered into pursuant to subsection (2) shall be forfeited where the Court is satisfied that—
- (a) the respondent has continued to engage in conduct amounting to domestic violence against the applicant;
 - (b) based on a report from a probation officer, social worker or a police officer, domestic violence is likely to be perpetrated against the applicant ; or
 - (c) the applicant has become fearful of the respondent to the extent that he or she is no longer willing to continue the relationship.

PART VI GENERAL

26. Conduct of proceedings

- (1) No other person shall be present during the hearing of any proceedings pursuant to the provisions of this Act except—
- (a) an officer of the Court;
 - (b) parties to the proceedings and their attorneys-at law or advocate;
 - (c) witnesses; or
 - (d) any other person permitted by the Court to be present.

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(2) A witness shall leave the courtroom if asked to do so by the Court.

(3) Nothing in this section shall limit any other power of the Court to hear proceedings in camera or to exclude any person from the courtroom.

(4) Where an application is made on behalf of a child, the parent or guardian of that child or the person with whom the child normally resides with on a regular basis shall be entitled to be a party to the proceedings.

(5) Nothing in this section shall prevent a child or children, on whose behalf an application for an order is made, from being heard in the proceedings and where the child expresses his or her views, the Court shall take account of those views having regard to the age and maturity of the child and the ability of the child to express his or her views.

27. Evidence

In any proceedings pursuant to the provisions of this Act, other than criminal proceedings, the Court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law.

28. Standard of proof

Every question of fact arising in any proceedings pursuant to the provisions of this Act, other than criminal proceedings shall be decided on a balance of probabilities.

29. Restriction of publication of reports

(1) Subject to subsection (4), a person shall not publish any report of proceedings pursuant to the provisions of this Act, other than criminal proceedings, except with the leave of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year.

(3) Nothing in this section limits—

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the Court to punish any contempt of Court.

(4) This section shall not apply to the publication of any report in any publication that—

(a) is of a *bona fide* professional or technical nature; or

(b) is intended for circulation among members of the legal or medical profession, officers of the public service, police officers, psychologists, marriage counsellors or social workers.

30. Orders by consent

In any proceedings pursuant to the provisions of this Act, the Court may make any order with the consent of all the parties to the proceedings.

31. Appeals

(1) A person aggrieved by—

(a) an order of the Court; or

(b) the refusal of the Court to make an order;

may, within twenty eight days after the decision of the Court appeal to the High Court.

(2) Except where the Court who makes an order pursuant to the provisions of this Act otherwise directs, the operation of such an order shall not be suspended by virtue of an appeal made pursuant to this section, and every order may be enforced in the same manner and in all respects as if no appeal pursuant to this section were pending.

32. Protection of mortgage

(1) The rights conferred on any person in respect of any property by an order made pursuant to the provisions of this Act shall be subject to the rights of any person entitled to the benefit of the mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any enactment or in any other instrument, no money payable under any mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of the order pursuant to the provisions of this Act.

33. Rules of the Court

The Chief Justice may make rules regulating the practice and procedure of the Court with respect to proceedings under this Act, providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

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34. Property rights

Nothing in this Act shall be construed as altering the rights of a spouse to ownership of property.

35. Obligation to report ill-treatment of children

(1) Notwithstanding the provisions of any other law, any dentist, medical practitioner, nurse, psychologist, social worker, or a teacher who examines, attends to or deals with any child in circumstances giving rise to reasonable suspicion that such child has been subject to acts of domestic violence as a result of which such child suffers from injury, whether single or multiple, shall immediately notify a police officer and or the Department responsible for Social Services of the said circumstances.

(2) A person referred to in subsection (1) shall not be liable in respect of any notification given in good faith in accordance with this section.

**PART VII
PROVISIONS RELATING TO BAIL**

36. Bail

(1) Notwithstanding any provisions in any law relating to bail, where the Court is required to determine whether to grant bail in respect of an offence committed pursuant to the provisions of this Act, the Court shall consider—

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child where the respondent or the applicant has custody of that child;
- (c) the welfare of any child being a member of the household; and
- (d) any hardship that may be caused to the respondent or other members of the family if bail is not granted.

(2) Notwithstanding any provisions in any law relating to bail, the Court in granting bail, may order that the recognisance be subject to such of the following conditions as the Court considers appropriate—

- (a) that the respondent not harass or molest or cause another person to harass or molest the applicant;
- (b) that the respondent not be present on the premises in which the applicant works or resides; and
- (c) that the respondent not be in a locality in which is situated the premises in which the applicant works or resides.

(3) Where a police officer believes on reasonable grounds that a person, who has been granted bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

**PART VIII
OFFENCES AND PENALTIES**

37. Offences

Notwithstanding the provisions of any other law, any person who assists a person to contravene any prohibition, condition or obligation or order imposed pursuant to section 7 commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

**PART IX
REGULATIONS**

38. Regulations

The Minister may make regulations to give effect to the provisions of this Act.

**PART X
REPEALS AND TRANSITIONALS**

39. Repeal

The Domestic Violence (Summary Proceedings) Act 1999 is repealed.

40. Definitions for Part X

In this part—

“commencement” means the commencement of the provision in which the term appears. “repealed Act” means the Domestic Violence (Summary Proceedings) Act 1999.

41. Domestic violence order to continue to have effect

(1) This section applies to a domestic violence order made or varied under the repealed Act that was in force immediately before the commencement of this Act.

(2) The domestic violence order is taken to have been made or varied under this Act.

(3) A condition of the domestic violence order is taken to be a condition imposed under Part 2 of this Act.

(4) If an adult was named in the domestic violence order under section 4 of the repealed Act, the adult is taken to be a person

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named in the order under Part 2 of this Act.

(5) If a child was named in the domestic violence order under section 4 of the repealed Act, the child is taken to be a person named in the order under Part 2 of this Act.

(6) A reference in section 18 of this Act includes an offence under section 5 of the repealed Act.

42. Application for protection order

(1) This section applies to an application for a protection order under the repealed Act if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to have been made under section 5 of this Act.

43. Domestic violence committed before commencement

A court may make an order under a provision of this Act in relation to domestic violence committed before the commencement of the provision.

44. Application for variation of domestic violence order

(1) This section applies to an application for the variation of a domestic violence order under section 10 of the repealed Act, if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to be an application under section 17 of this Act.

45. Application for revocation of domestic violence order

(1) This section applies to an application for the revocation of a domestic violence order under [section X] of the repealed Act if, on the commencement, the application had not been finally dealt with.

(2) The application is taken to be an application, under section 17 of this Act, for a variation of the order by stating an earlier date on which the order ends.

46. Service and other things done in relation to continued applications

(1) This section applies to an application under the repealed Act that, under this part, is taken to be an application made under this Act.

(2) The service of a copy of the application, or another thing done in relation to the application, before the commencement is taken to have been done under this Act.

47. Appeal

(1) This section applies to an appeal against an order or a decision under section 24 of the repealed Act if, on the commencement, the appeal had not been finally dealt with.

(2) The appeal is taken to be an appeal under section 31 of this Act.

48. Restriction on publication of proceedings

A reference in section 29 to a proceeding under this Act includes a proceeding under the repealed Act.

49. Restriction on obtaining copies of documents

A reference in section 29 to a proceeding under this Act includes a proceeding under the repealed Act.

50. References to repealed Act

If the context permits, a reference in another Act or document to the repealed Act may be taken to be a reference to this Act.

6. ARGENTINA

[Law on the Comprehensive Protection of Women, 2009](#) ¹⁴

[...]

TITLE 1

GENERAL PROVISIONS

¹⁴ Law on the Comprehensive Protection of Women, (Ley de Protección integral a las mujeres), Law No. 26.485 (11 March 2009) available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/150000-154999/152155/norma.htm> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article 1 - Scope of application. Public order. The provisions of this law are of public order and applicable throughout the territory of the Republic, with the exception of the procedural provisions established in Chapter II of Title III hereof.

Article 2 - Object. The purpose of this law is to promote and guarantee:

- a) The elimination of discrimination between women and men in all aspects of life;
- b) The right of women to live a life without violence;
- c) The suitable conditions to sensitize and prevent, sanction and eradicate discrimination and violence against women in any of its manifestations and in all spheres;
- d) The development of inter-institutional public policies on violence against women;
- e) The removal of sociocultural patterns that promote and sustain gender inequality and power relations over women;
- f) Access to justice for women who suffer violence;
- g) Comprehensive assistance to women who suffer violence in public and private areas that carry out programmatic activities for women and/or specialized services against violence.

Article 3. Protected Rights. This law guarantees all the rights recognized by the Convention for the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Convention on the Rights of Children and Law 26.061 of Comprehensive Protection of the Rights of Girls, Boys and Adolescents and, especially, those referring to:

- a) A life without violence and discrimination;
- b) Health, education, and personal safety;
- c) Physical, psychological, sexual, economic or patrimonial integrity;
- d) That one's dignity be respected;
- e) Decide on the reproductive life, number of pregnancies and when to have them, in accordance with the Law 25.673 on the Creation of the National Program of Sexual Health and Responsible Procreation;
- f) Intimacy, freedom of belief and thought;
- g) Receive adequate information and advice;
- h) Enjoy comprehensive assistance, protection, and security measures;
- i) Enjoy free access to justice in cases that fall within the scope of application of this law;
- j) The real equality of rights, opportunities, and treatment between men and women;
- k) A respectful treatment of women who suffer violence, avoiding any conduct, act or omission that produces further victimization.

Article 4 - Definition. Violence against women is understood as any conduct, action or omission, which directly or indirectly, both in the public and private spheres, based on an unequal power relationship, affects their life, liberty, dignity, physical integrity, psychological, sexual, economic or patrimonial, as well as their personal security. Those perpetrated by the State or its agents are included.

Indirect violence is considered, for the purposes of this law, any conduct, action, omission, disposition, criterion or discriminatory practice that puts women at a disadvantage with respect to men.

Article 5 - Types. In particular, the following types of violence against women are included in the definition contained in the preceding article:

1. Physical: The type used against a woman's body that produces pain, damage or risks producing it and any other form of abuse or aggression that affects her physical integrity.
2. Psychological: The type that causes emotional damage and diminishes self-esteem or harms and disturbs full personal development or that seeks to degrade or control their actions, behaviors, beliefs and decisions, through threats, harassment, stalking, restriction, humiliation, dishonor, discredit, isolation, and manipulation. It also includes guilt, constant surveillance, demand for obedience and submission, verbal coercion, persecution, insult, indifference, abandonment, excessive jealousy, blackmail, ridicule, exploitation and limitation of the right of circulation or any other means that cause harm to her psychological health and self-determination.
3. Sexual: Any action that implies the violation in all its forms, with or without genital access, of the right of the woman to decide voluntarily about her sexual or reproductive life through threats, coercion, use of force or intimidation, including rape within marriage or other related or kinship relationships, whether or not there is cohabitation, as well as forced prostitution, exploitation, slavery, harassment, sexual abuse and trafficking in women.

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4. Economic and patrimonial: The type that aims at causing an impairment in the economic or patrimonial resources of women, through:

- a) The disturbance of the possession, tenure or ownership of their property;
- b) The loss, theft, destruction, retention or undue embezzlement of objects, work tools, personal documents, property, values and patrimonial rights;
- c) The limitation of the economic resources destined to satisfy their needs or deprivation of the indispensable means to live a dignified life;
- d) The limitation or control of their income, as well as the payment of a lower salary for the same task, within the same place of work.

5. Symbolic: The type that aims through stereotyped patterns, messages, values, icons or signs to transmit and reproduce domination, inequality and discrimination in social relations, naturalizing the subordination of women in society.

Article 6. Modalities. For the purposes of this law, modalities are understood as the ways in which the different types of violence against women are manifested in different areas, with the following in particular:

a) Domestic violence against women: the violence exercised against women by a member of the family group, regardless of the physical space where it occurs, which damages the dignity, the well-being, physical, psychological, sexual, economic or patrimonial integrity, the freedom, including the reproductive freedom and the right to full development of women. Family group is understood as originating in kinship either by consanguinity or by affinity, marriage, de facto unions and couples or courtship. It includes current or past relationships, cohabitation is not required;

[...]

TITLE II

PUBLIC POLICIES

CHAPTER I - GUIDING PRINCIPLES

Article 7. Guiding principles. The three branches of the State, whether national or provincial, will adopt the necessary measures and ratify in each of their actions the unrestricted respect for the constitutional right to equality between women and men. For the fulfillment of the purposes of this law, they must guarantee the following guiding principles:

- a) The elimination of discrimination and unequal power relations over women;
- b) The adoption of measures aimed at raising awareness in society, promoting values of equality and delegitimizing violence against women;
- c) Assistance in a comprehensive and timely manner for women suffering from any type of violence, ensuring free, rapid, transparent, and effective access to services created for this purpose, as well as promoting the sanction and reeducation of those who exercise violence;
- d) The adoption of the principle of transversality will be present in all adopted measures as well as in the execution of the regulations and provisions, interinstitutional collaboration and coordination of budgetary resources;
- e) The incentive to cooperation and participation of civil society, engaging private entities and non-state public actors;
- f) Respect for the right to confidentiality and privacy, prohibiting the reproduction for private use or public dissemination of information related to situations of violence against women, without the authorization of the person who suffers it;
- g) The guarantee of the existence and availability of economic resources that allow compliance with the objectives of this law;
- h) All actions leading to the realization of the principles and rights recognized by the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women.

CHAPTER II

COMPETENT BODY

Article 8. Competent body. The National Council for Women will be the governing body responsible for designing public policies to implement the provisions of this law.

Article 9. Competences. The National Council for Women, to guarantee the achievement of the objectives of this law, must:

- a) Prepare, implement, and monitor a National Plan of Action for the Prevention, Assistance and Eradication of Violence against Women;
- b) Articulate and coordinate actions for compliance with this law, with the different areas involved at the national, provincial and municipal levels, and with universities, unions, business, religious, and women's rights organizations and other areas of civil society with competence in the matter;

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- c) Convene and constitute an ad honorem Consultative Council, made up of representatives of civil society organizations and specialized academic circles, whose role will be to advise and recommend courses of action and appropriate strategies to face the phenomenon of violence;
- d) Promote in the different jurisdictions the creation of comprehensive and free assistance services for women who experience violence;
- e) Guarantee approaches tending to empower women who experience violence that respect the social, political and cultural nature of the problem, not allowing models that consider forms of mediation or negotiation;
- f) Generate the minimum standards for early detection and addressing situations of violence;
- g) Develop technical assistance programs for the different jurisdictions dedicated to prevention, early detection, early assistance, reeducation, inter-institutional referral and the elaboration of protocols for the different levels of care;
- h) Provide permanent capacity building, education, and training on the subject to public officials in the sectors of the judiciary, police and security forces, and the Armed Forces, which will be taught in a comprehensive and specific manner according to each area of action, from a basic module respecting the principles enshrined in this law;
- i) Coordinate with the legislative fields a specialized training for legislators and advisors on violence against women and on the implementation of the principles and rights recognized by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women;
- j) To promote, through professional associations and societies, the training of personnel of the services that, because of their activities, may intervene in cases of violence against women;
- k) Design and implement Registries of situations of violence against women in an interjurisdictional and interinstitutional manner, in which the basic indicators approved by all competent Ministries and Secretariats are established, independently of those determined by each area for specific purposes, and agreed upon within the framework of the Federal Councils with competence in the matter;
- l) Develop, promote and coordinate with the different jurisdictions the criteria for the selection of data, the modalities for the registries, and the basic indicators, disaggregated, at a minimum, by age, gender, marital status and profession or occupation of the parties, link between the woman who experiences violence and the man who use it, nature of the facts, measures taken and their results, and sanctions imposed on the violent person. The identity of women who experiences violence must be protected;
- m) Coordinate with the judiciary the criteria for the selection of data, the modalities of the Registries and indicators that will be included by those who work in both branches, independently of those criteria that are specific to each branch in function of their objectives.
- n) Analyze and disseminate periodically statistical data and research results in order to monitor and adapt public policies through the Observatory of Violence Against Women;
- ñ) Design and publish a Guide of Services, to be regularly updated, in coordination with the different jurisdictions, that provides information about programs and direct assistance services;
- o) Implement a free and accessible telephone line in an articulated manner with the provinces through relevant government agencies, aimed at providing support, information, and advice on existing resources in the prevention of violence against women as well as assistance to those who experience it ;
- p) Establish and maintain a Registry of non-governmental organizations specializing in the subject in coordination with the jurisdictions and conclude agreements for the development of preventive activities, control and execution of assistance measures for women experiencing violence and the rehabilitation of men who use it;
- q) Organize awareness campaigns on violence against women, informing about the rights, remedies and services that the State guarantees and encourage social condemnation of all forms of violence against women. Publish information materials to support the actions in the different areas;
- r) To enter into agreements with public bodies and / or private institutions for any action conducive to compliance with the scope and objectives of this law;
- s) Convene and put into operation the Consultative Council of civil society organizations and draft its internal operating regulations;
- t) Promote at the community level the importance of working in networks, in order to develop inter-institutional and intersectoral models of care and prevention that unify and coordinate the efforts of public and private institutions;
- u) Guarantee access to specific care services for women prisoners.

CHAPTER III - BASIC GUIDELINES FOR STATE POLICIES

Article 10. - Technical strengthening of jurisdictions. The national State must inter-institutionally promote and strengthen the different jurisdictions for the creation and implementation of comprehensive services to assist women who experience violence and the people who use it, and must guarantee:

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1. Education and training campaigns aimed at the community to inform, raise awareness and prevent violence against women in the areas in which they develop their interpersonal relationships.

2. Units specialized in violence at the first level of attention that work on the prevention and assistance of acts of violence, which will coordinate their activities according to the standards, protocols and established registries and will have a comprehensive approach of the following activities:

- a) Interdisciplinary assistance for the evaluation, diagnosis and definition of approach strategies;
 - b) Groups of mutual assistance;
 - c) Free legal aid and support;
 - d) Coordinated approach with the health sector that provides medical and psychological assistance;
 - e) Coordinated approach with the social sector that provides assistance programs aimed at promoting human development.
- 3.- Economic assistance programs for the self-reliance of women.

4.- Community accompaniment programs to sustain the women's self-reliance strategy.

5. Day centers for the comprehensive strengthening of women.

6. Temporary shelters for the care and lodging of women who experience violence in the cases in which staying in their residence implies an imminent threat to their physical, psychological or sexual integrity, or that of their family group. These must be oriented towards the immediate integration to their family, social and work environment.

7.- Re-education programs aimed at men who use violence.

Article 11. Public policies. The national State will implement the development of the following priority actions, promoting its articulation and coordination with the different Ministries and Secretariats of the national Executive Power, provincial and municipal jurisdictions, universities and civil society organizations with competencies in the matter:

1. Chief of Cabinet of Ministers - Secretariat of Cabinet and Public Management:

- a) Promote specific policies that implement current regulations on sexual harassment in the national public administration and guarantee the effective enforcement of the principles of non-discrimination and equal rights, opportunities and treatment in public employment;
- b) Promote, through the Federal Council of Public Administration, similar actions in the field of provincial jurisdictions.

2.- Ministry of Social Development of the Nation:

- a) Promote policies aimed at reconnecting socially and professionally women who experience violence;
- b) Prepare prioritization criteria for the inclusion of women in social strengthening and promotion plans and programs and in emergency assistance plans;
- c) Promote training and financing projects for the labor integration of women in assistance procedures against violence;
- d) Support projects for the creation and implementation of programs for emergency care for women and the care of their children;
- e) To enter into agreements with banking entities in order to facilitate credit lines for women experiencing violence;
- f) Coordinate with the National Secretariat for Childhood, Adolescence and Family and the Federal Council for Children, Adolescents and Family on the care criteria that are set for girls and adolescents who experience violence.

3.- Ministry of Education of the Nation:

- a) Articulate within the framework of the Federal Council of Education the inclusion in the basic curriculum contents of the gender perspective, the practice of tolerance, respect and freedom in interpersonal relations, gender equality, the democratization of family relations, the validity of human rights and the delegitimization of violent models of conflict resolution;
- b) Promote measures for the early detection of violence against women to be included in teacher training plans;
- c) Recommend measures to foresee the immediate schooling of the children and adolescents who are affected by a change of residence derived from a situation of violence, until the expulsion of the aggressor from the residence is permanent;
- d) Promote the incorporation of the theme of violence against women in tertiary and university curricula, both at the undergraduate and graduate levels;
- e) Promote the revision and updating of textbooks and didactic materials with the aim of eliminating gender stereotypes and discriminatory criteria, promoting equality of rights, opportunities and treatment between women and men;
- f) The measures previously proposed will be promoted within the scope of the Federal Council of Education.

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4.- Ministry of Health of the Nation:

- a) Incorporate the problem of violence against women in women's comprehensive health programs;
- b) Promote the discussion and adoption of the instruments approved by the Ministry of Health of the Nation on violence against women within the scope of the Federal Health Council;
- c) Design specific protocols for the early detection and care of all types and modalities of violence against women, primarily in the areas of primary health care, emergencies, medical clinic, obstetrics, gynecology, traumatology, pediatrics, and mental health, specifying the procedure to be followed for the care of women who experience violence, safeguarding the privacy of the person assisted and promoting a non-sexist medical practice. The procedure must ensure the obtaining and preservation of evidence;
- d) Promote services or programs with interdisciplinary teams specialized in the prevention and care of violence against women and/or those who use it through protocols for care and referral;
- e) Launch the implementation of a Registry of persons being assisted because of violence against women, which coordinates the national and provincial levels.
- f) Ensure the specialized assistance of children witnessing violence;
- g) Promote agreements with the Superintendence of Health Services or the body that will replace it in the future, in order to include prevention and assistance programs for violence against women, in medical-welfare establishments, social security and health entities of pre-pay medicine, which must be included in their coverage under equal conditions than other benefits;
- h) Encourage the continuous training of health medical personnel in order to improve early diagnosis and medical attention with a gender perspective;
- i) Promote, in the framework of the Federal Health Council, the follow-up and monitoring of the application of the protocols. To this end, national and provincial agencies may enter into agreements with institutions and civil society organizations.

5. Ministry of Justice, Security and Human Rights of the Nation:

5.1. Ministry of Justice:

- a) Promote policies to facilitate women's access to justice through the implementation and strengthening of information centers, legal advice and free legal aid;
- b) Promote the application of agreements with professional associations, academic institutions and civil society organizations to provide specialized and free legal aid;
- c) Promote the unification of criteria for the preparation of judicial reports on the situation of danger of women who experience violence;
- d) Promote coordination and cooperation among the various judicial bodies involved in order to improve the effectiveness of judicial measures;
- e) Promote the elaboration of a protocol for receiving complaints of violence against women in order to avoid unnecessary judicialization of those cases that require another type of approach;
- f) Foster instances of exchange and articulation with the Supreme Court of Justice of the Nation to encourage the different levels of the Judicial Power to provide specific training on the subject;
- g) Encourage the formation of specific training spaces for legal professionals;
- h) Promote research on the causes, nature, severity and consequences of violence against women, as well as the effectiveness of the measures applied to prevent it and repair its effects, disseminating the results periodically;
- i) Guarantee access to specific care services for women prisoners.

5.2. Security Secretary:

- a) To promote in the police and security forces, the development of interdisciplinary services that provide support to women who experience violence to optimize their care, referral to other services and compliance with judicial provisions;
- b) Develop, within the scope of the Internal Security Council, the basic procedures for the design of specific protocols for the police and security forces in order to provide adequate responses to prevent further victimization, facilitate due attention, assistance and police protection to women who come to file complaints at the police headquarters;
- c) Promote the articulation of the police and security forces that intervene in cases of violence against women with government institutions and civil society organizations;
- d) Sensitize and train the police and security forces on the subject of violence against women within the framework of respect for human rights;
- e) Include subjects and/or specific curriculum contents on the human rights of women and especially on violence with a gender perspective in the training programs of the police and security forces.

5.3. Secretariat for Human Rights and the National Institute against Discrimination, Xenophobia and Racism (INADI):

- a) Promote the inclusion of the problem of violence against women in all the programs and actions of the National Human Rights Secretariat and INADI, in coordination with the Federal Council of Human Rights.

6.- Ministry of Labor, Employment and Social Security of the Nation:

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[...]

8.- Secretariat of the Media and Communications of the Nation:

- a) Promote, through the National Media System, the dissemination of permanent sensitization and awareness-raising messages and campaigns aimed at the population in general and, in particular, about women's right to live a life free of violence;
- b) Promote in the mass media the respect for the human rights of women and the treatment of violence from a gender perspective;
- c) Provide training to professionals of the mass media in the subject of violence against women;
- d) Encourage the elimination of sexism in the media;
- e) Promote, as a topic of corporate social responsibility, the diffusion of advertising campaigns to prevent and eradicate violence against women.

CHAPTER IV - OBSERVATORY OF VIOLENCE AGAINST WOMEN

Article 12. Creation. The Observatory of Violence against Women is created within the framework of the National Council for Women, aimed at the monitoring, collection, production, registration and systematization of data and information on violence against women.

Article 13. Mission. The Observatory will have the mission of developing a permanent information system that provides inputs for the design, implementation, and management of public policies aimed at the prevention and eradication of violence against women.

Article 14. Functions. The functions of the Observatory of Violence against Women are to:

- a) Collect, process, record, analyze, publish and disseminate periodic and systematic and comparable diachronic and synchronic information on violence against women;
- b) Encourage the development of studies and research on the evolution, prevalence, types and modalities of violence against women, its consequences and effects, identifying those social, cultural, economic and political factors that are associated with or may constitute causal violence;
- c) Incorporate the results of their research and studies into the reports that the National State submits to regional and international organizations on violence against women;
- d) To enter into cooperation agreements with public or private, national or international organizations, with the purpose of articulating the development of interdisciplinary studies and research;
- e) Create an information network and disseminate to the public the data collected, studies and activities of the Observatory, through its own website or linked to the portal of the National Council for Women. Create and maintain a documentary base permanently updated and open to the public;
- f) Examine good practices in the prevention and eradication of violence against women and innovative experiences in the matter and disseminate them for the purpose of being adopted by those national, provincial or municipal bodies and institutions that consider it;
- g) Articulate actions with government agencies with competence in the area of women's human rights in order to monitor the implementation of policies for the prevention and eradication of violence against women, to evaluate their impact and prepare proposals for actions or reforms;
- h) Encourage and promote the organization and periodic celebration of public debates, with the participation of research centers, academic institutions, civil society organizations and representatives of public and private, national and international organizations with competence in the subject, encouraging the exchange of experiences and identifying issues and problems relevant to the public agenda;
- i) Provide training, advice and technical support to public and private organizations for the implementation of the Registries and protocols;
- j) Articulate the actions of the Observatory on Violence against Women with other Observatories that exist at the provincial, national, and international levels;
- k) Publish the annual report on the activities developed, which should contain information on the studies and research carried out and proposals for institutional or regulatory reforms. The report will be disseminated to the public and promoted to the authorities with competencies in the matter so that they adopt the corresponding measures.

Article 15. Integration. The Observatory of Violence against Women will be composed of:

- a) A person appointed by the Presidency of the National Council of Women, who will exercise the Directorate of the Observatory, and must have accredited training in social research and human rights;
- b) An interdisciplinary team suitable for the subject.

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TITLE III

PROCEDURES

CHAPTER I - GENERAL DISPOSITION

Article 16. Minimum rights and guarantees of judicial and administrative procedures. State agencies must guarantee women, in any judicial or administrative procedure, in addition to all the rights recognized in the National Constitution, the International Human Rights Treaties ratified by the Argentine Nation, the present law and the laws that consequently dictate, the following rights and guarantees:

- a) To the gratuitousness of the judicial proceedings and of the specialized legal aid;
- b) To obtain a timely and effective response;
- c) To be heard personally by the judge and by the competent administrative authority;
- d) To have the person's opinion considered when reaching a decision that affects that person;
- e) To receive urgent and preventive judicial protection when any of the rights set forth in article 3 of this law are threatened or violated;
- f) To the protection of their privacy, guaranteeing the confidentiality of the proceedings;
- g) To participate in the procedure by receiving information about the status of the case;
- h) To receive a humane treatment, avoiding further victimization;
- i) To the full extent of acceptable evidence to accredit the facts denounced, considering the special circumstances in which the acts of violence take place and the identity of the witnesses;
- j) To oppose the performance of forensic examination of one's body outside the area defined in a judicial order. In case of consent to a forensic examination, women have the right to be accompanied by someone they trust. These forensic examinations must be carried out by specialized professional personnel trained from a gender perspective;
- k) To have efficient mechanisms to denounce officials for the breach of established deadlines and other irregularities.

Article 17. Administrative Procedures. The local jurisdictions may determine the procedures before or after the judicial authority for compliance with this law, which will be applied by the municipalities, communes, promotion committees, boards, delegations of the Provincial Councils of Women or decentralized areas, judged of peace or any organism that they deem suitable.

Article 18. Complaint. The people who work in welfare, social, educational and health services, in the public or private sphere, who during the execution of their tasks, become aware of an act of violence against women in the terms of this law, will be obliged to introduce a complaint, as appropriate, even in those cases in which the act of violence does not constitute a crime.

CHAPTER II

PROCEDURE

Article 19. Scope of application. The local jurisdictions, in the scope of their competencies, will dictate their rules of procedure or adhere to the procedural regime described in this law.

Article 20. Characteristics of the procedure. The procedure will be free and summary.

Article 21. Presentation of the complaint. The presentation of the complaint for violence against women may be made before any judge of any jurisdiction or instance or before the Public Ministry, orally or in writing. The identity of the complainant will be protected.

Article 22. Competition. The judge competent in the matter according to the types and modalities of violence in question will hear in the case. Even in case of incompetence, the intervening judge may order the preventive measures that he considers pertinent.

Article 23. Policy services. In the event that, when providing a police service, vulnerability becomes apparent and suggests the possible existence of violence against women, the case should be transmitted to the competent judicial authority within the twenty-four (24) hours.

Article 24. Persons who can file the complaint. The denunciations may be made:

- a) For the woman who considers herself affected or her legal representative without any restriction;
- b) The girl or adolescent directly or through her legal representatives in accordance with the provisions of Law 26.061 on the Integral Protection of the Rights of Girls, Boys and Adolescents;

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- c) Any person when the affected person has a disability, or because of his/her physical or mental condition, he/she could not formulate it;
- d) In cases of sexual violence, the woman who has suffered it is the only one entitled to introduce the complaint. In case the complaint is introduced by a third party, the woman will be summoned to ratify or rectify it in twenty-four (24) hours. The competent judicial authority will take the necessary precautions to prevent the case from having a public status.
- e) The criminal complaint will be mandatory for any person who performs work in welfare, social, educational and health services, in the public or private, who on or occasion of their tasks will be aware that a woman experiences violence for which the facts could constitute a criminal offense.

Article 25. Protective assistance. At each stage of the procedure, the presence of a companion will be accepted as a protective aid ad honorem, provided that the woman who experiences violence requests it with the sole purpose of preserving her physical and psychological health.

Article 26. Urgent preventive measures.

- a) During any stage of the procedure, the intervening judge may, ex officio or at the request of a party, order one or more of the following preventive measures according to the types and modalities of violence against women defined in articles 5 and 6º of the present law:
 - a. 1. Deliver a restraining order against the alleged aggressor to the place of residence, work, study, leisure or places of habitual attendance of the woman who experiences violence;
 - a.2. Order the alleged aggressor to cease acts of disturbance or intimidation that he directly or indirectly commits towards the woman;
 - a.3. Order the immediate restitution of the personal belongings to the petitioner, if the petitioner has been deprived of them;
 - a.4. Prohibit the alleged aggressor from buying and holding weapons, and order the seizure of those in his possession;
 - a. 5. Order measures conducive to providing medical or psychological assistance to those who experience or use violence, when they so require, through public agencies and civil society organizations with specialized training in the prevention and care of violence against women;
 - a.6. Order security measures at the woman's residence;
 - a.7. Order any other measure necessary to guarantee the safety of the woman who experiences violence, stop the situation of violence and avoid the repetition of any act of disturbance or intimidation, aggression and mistreatment of the aggressor towards the woman.
- b) Without prejudice to the measures established in subparagraph a) of this article, in cases of domestic violence against women, the judge may order the following urgent preventive measures:
 - b.1. Prohibit the alleged aggressor from alienating, disposing, destroying, hiding or transferring marital property of the conjugal community or those held in common by the domestic partners;
 - b.2. Order the expulsion of the aggressor from the common residence, regardless of the ownership thereof;
 - b.3. To decide the reinstatement of the woman in the common residence if she had left it, after excluding the alleged aggressor from this residence;
 - b.4. Order the public force to accompany the woman who experiences violence to her residence to withdraw her personal effects;
 - b.5. In the case of a couple with children, a provisional amount for child support will be established, if applicable, in accordance with the background information of the case and according to the rules that govern the subject;
 - b.6. In the event that the victim is a minor, the judge, by means of a well-founded decision and considering the opinion and the right to be heard from the girl or adolescent, may grant custody to a member of her family group, by consanguinity or affinity, or with other members of the extended family or the community.
 - b.7. Order the provisional suspension of the visitation regime;
 - b.8. Order the alleged aggressor to refrain from interfering, in any way, in the exercise of custody, upbringing, and education of the children;
 - b.9. Arrange the inventory of the marital property of the conjugal community and the property of those who use and experience violence. In the cases of cohabiting couples, the inventory of the assets of each one will be stipulated;
 - b.10. Grant the exclusive use of the furniture of the house to the woman who experiences violence, for the period she deems appropriate.

Article 27. Powers of the judge. The judge may dictate more than one measure at a time, determining the duration of these according to the circumstances of the case, and must establish a maximum term, by founded order.

Article 28. Hearing. The intervening judge will set a hearing, which must be attended in person, under penalty of nullity, within forty-eight (48) hours of ordering the measures of article 26, or if none of them is adopted, from the moment the parties are informed of the notice of the complaint.

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The alleged aggressor will be obliged to appear under penalty of being brought before the court with the help of the public force.

In said hearing, the judge will hear both parties separately under penalty of nullity, and will order the measures the judge deems pertinent.

If the victim of violence is a girl or adolescent, the provisions of Law 26.061 on the Integral Protection of the Rights of Girls, Boys and Adolescents must be considered.

Mediation or conciliation hearings are prohibited.

Article 29. Reports. Whenever possible, the intervening judge may request a report made by an interdisciplinary team to determine the physical, psychological, economic or other damages suffered by the woman and the dangerous situation in which she finds herself.

Said report shall be sent within a period of forty-eight (48) hours, in order to be able to apply other measures, interrupt or cease any of those mentioned in article 26.

The intervening judge may also consider the reports that are prepared by the interdisciplinary teams of the public administration on the physical, psychological, economic or other damages suffered by the woman and the dangerous situation, avoiding producing new reports that could further victimize her.

The judge can also consider reports from professionals of civil society organizations that are suitable for the treatment of violence against women.

Article 30. Test, principles and measures. The judge will have broad powers to order and lead the procedure, being able to arrange the necessary measures to investigate the events, locate the whereabouts of the alleged aggressor, and protect those who are at risk of new acts of violence, ruling by the principle of obtaining the material truth.

Article 31. Resolutions. The principle of broad evidentiary freedom will be used to prove the facts denounced, evaluating the evidence offered in accordance with the principle of sound criticism. The presumptions that contribute to the demonstration of the facts will be considered, as long as there are serious, precise and concordant indications.

Article 32. Sanctions. In case of failure to comply with the ordered measures, the judge may assess the desirability of modifying or expanding them, or order new ones.

Faced with a new breach and without prejudice to the corresponding civil or criminal liabilities, the Judge must apply some of the following sanctions:

- a) Warning or reprimand for the act committed;
- b) Communication of the acts of violence to the organism, institution, union, professional association or place of work of the aggressor;
- c) Compulsory attendance of the aggressor to reflective, educational or therapeutic programs tending to the modification of violent behavior.

Likewise, when the breach constitutes disobedience or another crime, the judge must bring the matter to the knowledge of the judge with competence in criminal matters.

Article 33. Appeal. The resolutions that grant, reject, interrupt, modify or order the cessation of any of the urgent preventive measures or impose sanctions, will be appealable within the term of three (3) business days.

The appeal against resolutions that grant urgent preventive measures will be granted in relation and with devolutive effect.

The appeal against resolutions ordering the interruption or cessation of such measures shall be granted in relation and with suspensive effect.

Article 34. Follow-up. During the processing of the case, for the time deemed appropriate, the judge shall control the effectiveness of the measures and decisions adopted, either through the appearance of the parties in court, as often as ordered, and/or through the intervention of the interdisciplinary team, who will prepare periodic reports about the situation.

Article 35. Repair. The injured party may claim civil redress for damages and injury, according to the common rules that govern the matter.

Article 36. Obligations of the officials. The police officers, judicial officers, health agents, and any other public official to whom the affected women go, have the obligation to report on:

- a) The rights that the legislation confers to women who experience violence and the government services available for their attention;
- b) How and where to be led to be assisted in the procedure;
- c) How to preserve the evidence.

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Article 37. Records. The Supreme Court of Justice of the Nation will keep sociodemographic records of the denunciations made about acts of violence addressed in this law, specifying, at a minimum, age, marital status, profession or occupation of the woman who experiences violence, as well as of the aggressor; link with the aggressor, nature of the facts, adopted measures and their results, as well as the sanctions imposed on the aggressor.

The courts that intervene in the cases of violence foreseen in this law must submit annually the pertinent information for this registry.

Access to records requires well-founded reasons and prior judicial authorization, guaranteeing the confidentiality of the parties' identity.

The Supreme Court of Justice of the Nation will elaborate statistics, that will be publicly accessible, that allow to know, at least, the characteristics of those who use or experience violence and its modalities, link between the parties, type of measures adopted and their results, and type and amount of sanctions applied.

Article 38. Collaboration of public or private organizations. The judge may request or accept as *amicus curiae* the collaboration of organizations or public or private entities dedicated to the protection of women's rights.

Article 39. Exemption from charges. The actions based on this law will be exempt from the payment of stamps, fees, deposits and any other tax, without prejudice to the provisions of Article 68 of the Code of Civil Procedure and Commercial Law of the Nation in matters of costs.

Article 40. Supplementary norms. The corresponding procedural regimes will be of supplementary application, according to the types and modalities of violence denounced.

TITLE IV

FINAL PROVISIONS

Article 41. In no case the behaviors, acts or omissions foreseen in this law will imply the creation of new types of crime, nor the modification or derogation of the existing ones.

Article 42. Law 24.417 of Protection against Family Violence, will be applicable in those cases of domestic violence not foreseen in this law.

[...]

[Law on the Protection Against Family Violence, 1994](#)¹⁵

Article 1. Any person who suffers injuries or physical or mental abuse by any of the members of the family group may report these facts verbally or in writing before the judge with competence in family matters and request related precautionary measures. For the purposes of this Law, a family group is understood as originating in marriage or de facto unions.

Article 2. When the victims are minors or incapable, elderly or disabled, the facts must be reported by their legal representatives and/or the Public Ministry. The social and educational welfare services, public or private, health professionals and all public officials will also be required to make the complaint in light of their work. The minor or incapable can directly inform the Public Prosecutor's Office of the facts.

Article 3. The judge will require a diagnosis of family interaction to be carried out by experts from various disciplines to determine the physical and psychological damages suffered by the victim, the danger of the situation, and the social and environmental situation of the family. The parties may request other technical reports.

Article 4. The judge may adopt, upon becoming aware of the facts of the complaint, the following precautionary measures:
Order the expulsion of the perpetrator from the dwelling where the family group lives;
Prohibit the perpetrator's access to the residence of the victim as well as to work or study places;
Order the reinstatement in the residence at the request of the person who had to leave it for reasons of personal security, excluding the perpetrator;

¹⁵ Law on the Protection Against Family Violence (Ley Nacional 24.417 Proteccion contra la violencia familiar), Law No. 24.417 (December 7, 1994), available at <http://www.notivida.com.ar/legnacional/Ley%20NACIONAL%2024.417%20PROTECCION%20CONTRA%20LA%20VIOLENCIA%20FAMILIAR.html> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Provisionally enact child support, custody, and right of communication with the children.
The judge will establish the duration of the measures arranged according to the background of the case.

Article 5. The judge, within 48 hours of the adoption of the precautionary measures, will summon the parties and the Public Ministry to a mediation hearing urging them and their family group to attend educational or therapeutic programs, taking into account the report of article 3.

Article 6. The regulation of this law will provide the necessary measures in order to provide the defendant and his family with free psychological medical assistance.

Article 7. Of the denunciations presented, participation will be given to the National Council for Minors and the Family in order to address the coordination of public and private services that mitigate and, where appropriate, overcome the causes of mistreatment, abuse and all type of violence within the family.
For the same purpose, public bodies and non-governmental entities dedicated to the prevention of violence and assistance to victims may be convened by the judge

Article 8. Incorporated as the second paragraph to article 310 of the Code of Criminal Procedure of the Nation (law 23.984) the following:

"In the proceedings for some of the crimes foreseen in the second book, titles I, II, III, V, and VI, and title V, chapter I of the Penal Code, committed within a cohabitating family group, even if it consisted of de facto unions, and the circumstances of the case presume that they can be repeated, the judge may order the defendant's expulsion from the residence as a precautionary measure. If the defendant had duties of family assistance and the expulsion would jeopardize the subsistence of the dependents, the Adviser of Minors will be requested to intervene so that suitable actions are taken. "

Article 9. Provinces are invited to dictate norms of the same nature to those foreseen in the present law.

7. ARMENIA

[Prevention of Violence Within the Family, Protection of Victims and Restoration of Peace in the Family, 2017](#) ¹⁶

CHAPTER 1: GENERAL PROVISIONS

The Republic of Armenia National Assembly has adopted this law with a view to:

Provide special protection to the family as a natural and fundamental unit of society;

Set forth legal mechanisms to prevent violence within the family, ensure safety and protection of the victims of violence within the family, and guarantee their rights and legitimate interests; Ensure safety of the family members and assist in restoring peace in the family;

Regulate activities of competent bodies in preventing violence within the family and protecting victims of violence within the family;

Stipulate legal grounds for operation of bodies responsible for provision of psychological, material and social assistance to the victims of violence within the family and their social rehabilitation.

Article 1: Scope of law

1. This law shall stipulate legal and organizational grounds for prevention of violence within the family and protection of victims thereof, provide a definition of violence within the family, set forth the competences of bodies designated to prevent violence within the family and protect the victims thereof, identify the types of protective measures, grounds for their use, particularities of reconciliation of victims of violence within the family and perpetrators, and legal protection of information about the victims of violence within the family.

Article 2: Principles for prevention and protection of victims of violence within the family

1. Public and local authorities, their officials and nongovernmental organizations in their activities for prevention and protection of victims of violence within the family shall adhere to the following principles:

1) Primacy of providing safety and protection to victims of violence within the family;

2) Supporting the family as the natural and fundamental unit of society, strengthening traditional values and restoring peace in the family;

¹⁶ Law on Prevention of Violence within the Family, Protection of Victims of Violence Within the Family and Restoration of Peace in the Family (13 December 2017), available at <http://www.refworld.org/pdfid/5a6b2e274.pdf> (last visited December 30, 2018). Unofficial translation by UNHCR.

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- 3) Priority of the child's best interests;
- 4) Guarantee equal rights and prohibit of discrimination;
- 5) Access to justice;
- 6) Privacy of information on private and family life;
- 7) Cooperation between public and local authorities and civil society.

Article 3: Violence within the family and its forms

1. For the purposes of this law the "violence within the family" shall mean an act of physical, sexual, psychological or economic violence occurring between the family members as well as an act of negligence.

2. Forms of violence within the family shall include:

- 1) Physical violence – battering stipulated in the Republic of Armenia Criminal Code and other acts of violence, intentional infliction of health impairment, unlawful deprivation of liberty, intentional infliction of severe physical pain;
- 2) Sexual violence – offences against sexual integrity and sexual freedom stipulated in the Republic of Armenia Criminal Code;
- 3) Psychological violence – intentional infliction of severe mental suffering, including a genuine threat of physical, sexual or economic violence, intentional and regular acts resulting in a justified fear in person for his/her or a family member's personal safety, regular violation of human dignity, extreme social isolation, forced abortion;
- 4) Economic violence – forcing a person into material dependence or controlling that person by depriving the latter of vital means of existence (food, clothing, housing, medicine), by unlawfully limiting the rights to possess, dispose or use property solely or jointly owned by the person, by restricting the rights of the person to education or free choice of employment;
- 5) Negligence – intentional failure to provide minimum necessary living conditions (food, clothing, housing, healthcare and medical service, education) to the child by a parent or legal guardian, or minimum necessary living conditions (food, clothing, housing, healthcare and medical service) to incapable or disadvantaged parents by their capable and adult children when the parent or legal guardian or the capable adult children have appropriate information and resources as well as access to relevant services.

Article 4: Main terms of the law

1. For the purposes of this law the terms used therein shall have the following meaning:

- 1) Members of the family: a. spouse (including the person in common marriage), former spouse, parent (including stepparent, adopting parent, foster parent), child (including adopted, stepchild or godchild), spouse of the adopting parent, parents of the spouse, parents of the former spouse regardless of sharing the same residence; b. grandmother, grandfather, sister and brother (including half-brother and halfsister), sister-in-law, brother-in-law, and son-in-law and daughter-in-law for the spouse's parents when sharing the same residence.
- 2) Support center – public entity providing social services stipulated in the Republic of Armenia Law on Social Assistance;
- 3) Shelter (care center for victims of violence within the family) – a safe temporary accommodation provided to the victims of violence within the family and persons under their care in cases stipulated in this law where they receive social services set forth in the Republic of Armenia Law on Social Assistance;
- 4) Perpetrator of violence in the family – a natural person against whom there is a warning, emergency intervention or protective decision in the manner prescribed in this law;
- 5) Victim of violence in the family – a natural person who sustained violence in the family as determined by a warning, an emergency intervention or a preventive decision or a judgment of the court that entered into force;
- 6) Person under care – a child, an elderly person or a person with disability living with the victim of violence within the family under the permanent care of the latter;
- 7) Competent police officer – a police officer of specialized unit for prevention of violence within the family and protection of victims of violence within the family;
- 8) Rehabilitation program – comprehensive program for the perpetrator of violence within the family aiming to prevent repeated violence through provision of psychological and social assistance, health rehabilitation and abolishment of bad habits (alcohol abuse, drug addiction, abuse of toxic substances, gambling addiction).

CHAPTER 2: PROTECTION MEASURES FOR VICTIMS OF VIOLENCE WITHIN THE FAMILY

Article 5: Types of protection measures for victims of violence within the family

1. Protection measures for victims of violence within the family are:

- 1) Warning,
- 2) Decision for emergency intervention, and
- 3) Protective decision

2. The decision to apply protection measures shall be well-grounded. The protection measures shall be applied following the principles set forth in this law and ensuring the proportionality of intervention. The application of those measures shall not hinder the institution of a criminal case and criminal prosecution stipulated by law.

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Article 6: Warning

1. Warning shall be applied when the Police identifies a case of violence within the family for the first time, it does not have evident elements of an offence and there are no grounds for an emergency intervention. The warning decision shall include a notification on applicable legal sanctions in case of continuing or repeated violence. The warning is issued as soon as possible after learning about the case.
2. A copy of the well-grounded warning decision issued by the police officer shall be served to the perpetrator of violence within the family against signed acknowledgment. The content of decision shall be communicated to the perpetrator via phone if the latter is absent at the scene of action; if impossible, a copy of the decision shall be sent to the perpetrator via official e-mail or registered mail to the address of registration.
3. The warning decision is subject to appeal in the hierarchical order within one month after the perpetrator of violence within the family has received it or its content was communicated to him via phone as well as in the court within deadlines stipulated in the Republic of Armenia Administrative Procedure Code.
4. The police officer shall send a copy of the well-grounded warning decision issued to the support center of the permanent residence of the perpetrator of violence within the family which shall as soon as possible offer rehabilitation program services to the perpetrator of violence within the family to prevent new acts of violence.

Article 7: Emergency intervention order

1. An emergency intervention order is made by a competent police officer to protect the life and health of a member of the family if one member of the family has committed violence against another member of the family and there is a reasonable belief of imminent risk of repeated or continuing violence. An emergency intervention order may also be made if a violent act without elements of offence is committed within one year after receiving a warning.
2. The validity term of an emergency intervention order shall not exceed twenty days. If during the validity term of an emergency intervention order the court examines the application for a protective decision, then it shall be effective until the ruling of the court.
3. An emergency intervention order may apply the following restraining measures:
 - 1) Immediately and forcibly remove the perpetrator of violence within the family from the residence of the victim of violence within the family and prohibit his return until the deadline established in the order;
 - 2) If they live separately, prohibit the perpetrator of violence within the family to visit the workplace, school, leisure places or residence of the victim of violence within the family and, if necessary, persons under victim's care as well as other venues attended by the latter;
 - 3) Order the perpetrator of violence within the family to stay from the victim of violence within the family (and persons under the victim's care, if necessary) at such a distance that will not raise in the latter a reasonable fear for personal safety. The order to apply this measure shall specify the distance;
 - 4) Order the perpetrator of violence within the family to surrender all firearms under his possession until the expiry of the deadline specified in the order. If the perpetrator of violence within the family possesses firearms, he shall immediately surrender those firearms to the police officer issuing the order at the time when this restraining order is communicated to him;
 - 5) Prohibit the perpetrator of violence within the family to communicate with or contact the victim of violence within the family (and persons under her care, if necessary) through phone, mail or other forms of communication.
4. Restraining order may apply to any or all measures of the section 3 of this article specifying the same or different deadlines for those measures. The decision maker shall follow the principles of this law ensuring the proportionality of restraint when selecting the restraining measures.
5. If the person under imminent threat is a minor or an incapable person, the competent police officer issuing the order shall send a copy of that order and relevant records to the guardianship and trusteeship body which shall assess the situation and undertake measures stipulated in law and its charter.
6. If the emergency intervention order is issued against the only legal representative of a minor or incapable person living with the latter then the guardianship and trusteeship body, upon the receipt of a copy of the order but no later than within 24 hours, shall arrange the care of such minors or incapable persons following the procedure set forth by the Republic of Armenia legislation and based on their best interest.
7. A well-grounded decision of the competent police officer to issue an emergency intervention order shall become effective once it is served to the perpetrator of violence within the family. Its copy shall be served to the perpetrator of violence within the family against signed acknowledgment; if the latter is absent at the scene of action, the content of decision shall be communicated to the perpetrator via phone; if impossible, a copy of the decision shall be sent to the perpetrator via official e-mail or registered mail to the address of registration.
8. When applying the restraining measure stipulated in the section 3, clause 1 of this article the competent police officer issuing an emergency intervention order shall stay at the residence of the victim of violence within the family until the perpetrator of violence within the family collects his belongings and leaves the residence of the victim of violence within the

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family. After the effectiveness of the order, the perpetrator of violence within the family may take his belongings from that venue only once and accompanied by a police officer.

9. The competent police officer issuing an emergency intervention order shall immediately submit a copy of the order and relevant records to the chief of his unit.

10. The perpetrator of violence within the family shall refrain from such actions that will lead to nonfulfillment of obligations set forth for the perpetrator of violence within the family in the emergency intervention order. If the perpetrator of violence within the family intentionally and regularly commits such actions, the emergency intervention order may be revoked by the competent police officer issuing it. The same officer may revoke the emergency intervention order if as a result of peaceful settlement procedure set forth in this law peace in the family is restored as well as if prior to its expiry the court decides to apply protection order.

11. The Police shall supervise the implementation of the emergency intervention order by the perpetrator of violence within the family.

12. The competent police officer issuing an emergency intervention order shall send a copy of the order to the support center at the permanent residence of the victim of violence within the family.

13. The restraining measure stipulated in the section 3, clause 3 of this article shall not apply when the meeting between the perpetrator of violence within the family and the victim of violence within the family is arranged in the scope of peaceful settlement procedure stipulated in this law with the permission of the support center at the premises of the center or in the presence of a relevant specialist of the center.

14. Failure to comply to requirements of the emergency intervention order by the perpetrator of violence within the family shall entail liability under the law.

15. The emergency intervention order shall indicate the deadline for its appeal, the appeal body including the court where the order can be challenged, and the legal sanctions for breaching the order. The emergency intervention order can be challenged in the order of hierarchy within five days of notifying the perpetrator of violence within the family, and in the court within the deadline established by the Republic of Armenia Administrative Procedure Code. The appeal against the order shall not suspend its implementation. The administrative appeal shall be examined and a resulting decision shall be made within five days of its receipt.

Article 8: Protection order

1. The victim or alleged victim of violence within the family or the support center with the consent of the latter may submit to the court an application for protection order. If the victim of violence within the family is a minor or a person ruled by the court as incapable or with limited capability, the motion for the protection order could be made by close relatives, the legal representative and the guardianship and trusteeship body.

2. The effectiveness of an emergency intervention order does not exclude the possibility to apply for a protection order.

3. The protection order is issued to protect the victim of violence within the family and persons under the victim's care and prevent new acts of violence within the family.

4. The protection order is issued for a period of up to 6 months and can be extended by the court for up to 3 months twice on the basis of a well-grounded application justifying the need for such extension.

5. The protection order may apply the following restrictions:

1) Immediately and forcibly remove the perpetrator of violence within the family from the residence of the victim of violence within the family and prohibit his return until the deadline established in the order. When establishing the deadline of this measure the court shall take into consideration the possibility and expediency of moving the victim of violence within the family and persons under her care to a shelter and availability of other places of residence for the perpetrator of violence within the family;

2) If they live separately, prohibit the perpetrator of violence within the family to visit the workplace, school, leisure places or residence of the victim of violence within the family and, if necessary, persons under the victim's care as well as other venues attended by the latter;

3) Order the perpetrator of violence within the family to stay from the victim of violence within the family (and persons under her care, if necessary) at such a distance that will not raise in the latter a reasonable fear for personal safety. The order to apply this measure shall specify the distance;

4) Order the perpetrator of violence within the family to surrender to the Police all firearms under his possession until the expiry of the deadline specified in the order;

5) Require the perpetrator of violence within the family to share with the victim of violence within the family the living expenses for their common minor children or adult children with disabilities and persons under their joint care by paying the amount of alimony specified in the Republic of Armenia Family Code. The court may require the perpetrator of violence within the family to cover other necessary expenses of the victim of violence within the family resulting from the violent act;

6) Prohibit child visitations, if necessary;

7) Prohibit the perpetrator of violence within the family to communicate with or contact the victim of violence within the family (and persons under her care, if necessary) through phone, mail or other forms of communication;

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- 8) Require the perpetrator of violence within the family to attend a rehabilitation program.
6. Restrictions stipulated in the section 5 of this article may apply individually or jointly specifying the same or different deadlines for those measures.
7. The Republic of Armenia Civil Procedure Code shall set forth the application requirements for protection order, the application review procedure, the judicial acts to be adopted by the court, the appeal procedure and the grounds for revoking a protection order. The Republic of Armenia Law on Advocacy shall set forth the grounds and procedure for providing a public defender for legal representation of the victim of violence within the family in the court.
8. If the protection order is issued against the only legal representative (or representatives) of a minor or incapable person living with the latter then the court shall instruct the guardianship and trusteeship body to arrange temporary care of such minors or incapable persons in accordance with the Republic of Armenia legislation and based on their best interest.
9. The Police shall supervise the implementation of the protection order by the perpetrator of violence within the family. The perpetrator of violence within the family may take his belongings from the residence of the victim of violence within the family once every two months accompanied by a police officer if the restraining measure stipulated in the section 5, clause 1 of this article is applied. If the perpetrator of violence within the family possesses firearms at the time of issuing the order s/he shall immediately and no later than within 10 hours surrender them to the Police if the restraining measure stipulated in the section 5, clause 4 of this article is applied. The Republic of Armenia Ministry of Justice's Service for Compulsory Enforcement of Judicial Acts shall ensure the implementation of requirement set forth in the section 5, clause 5 of this article, while the Competent Authority shall oversee the implementation of requirement foreseen in clause 8 of the same section.
10. The restraining measure stipulated in the section 5, clause 3 of this article shall not apply when the meeting between the perpetrator of violence within the family and the victim of violence within the family is arranged in the scope of peaceful settlement procedure stipulated in this law with the permission of the support center at the premises of the center or in the presence of a relevant specialist of the center.
11. Failure to comply to requirements of the protection order by the perpetrator of violence within the family shall entail liability under the law.

Article 9: Termination of an emergency intervention order and protection order due to institution of criminal case

1. If in the scope of criminal investigation of violence within the family the perpetrator of violence within the family is detained or compulsorily placed in the medical facility, or the protection measures stipulated in the Republic of Armenia Criminal Procedure Code such as personal safety of the protected person, protection of her residence and property, relocation of the protected person to new residence, change of identification documents or change of appearance of the protected person are applied to the victim of violence within the family then the restraining measures stipulated in the emergency intervention order and the protection order prohibiting the perpetrator to approach the victim, her residence or venues frequently attended by her are suspended for the period of the latter measures being effective.
2. An emergency intervention order may be issued and an application for a protection order may be submitted if in the scope of criminal investigation of violence within the family the perpetrator of violence within the family is not detained or compulsorily placed in the medical facility and the investigation body has not applied the protection measures of the section 1 of this article. If in the scope of criminal investigation of violence within the family the perpetrator of violence within the family is detained or compulsorily placed in the medical facility and the investigation body has applied the protection measures of the section 1 of this article, an emergency intervention order may be issued and an application for a protection order may be submitted if restraining measures stipulated thereof are not related to prohibiting the perpetrator to approach the victim, her residence or venues frequently attended by her.

Article 10: Conciliation of the perpetrator and the victim of violence within the family

1. The conciliation of the victim and the perpetrator of violence within the family shall be done during the effectiveness of emergency intervention and protection orders following the procedure established by the Head of the Competent Authority.
2. The conciliation is done upon an application of the perpetrator or the victim of violence within the family submitted to the support center. The support center shall receive a written consent of the other party to participate in the conciliation prior to commencing the process. The support center terminates the conciliation process if there is a reasonable belief that the victim of violence within the family takes part in that process influenced by threats.
3. The victim or the perpetrator of violence within the family may ask the court to revoke the protection order if conciliation is reached during the effectiveness of the order.
4. The victim or the perpetrator of violence within the family may ask the competent police officer who issued the emergency intervention order to revoke it if conciliation is reached during the effectiveness of the order.
5. No conciliation process is arranged if the victim of violence within the family is a minor or an incapable person.

Article 11: Preventive registration and deregistration of the perpetrator of violence within the family

1. The perpetrator of violence within the family against who a warning, an emergency intervention order or a protection order is issued as well as an adult with criminal record for family violence shall be registered by the Police for preventive purposes. A

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social worker from the local center providing social services set forth in the Republic of Armenia Law on Social Assistance shall, in the scope of preventive registration, carry out monitoring to prevent acts of violence within the family by an adult; in case of a minor the monitoring shall be carried out by the Police in the manner established by the Head of the Competent Authority or the Chief of Police.

2. The person under preventive registration is deregistered if within one year following the last act of violence within the family new emergency intervention or protection orders are not issued against him or he is not convicted for such crime.

3. In the scope of preventive registration the police officer and the social worker from the local center shall have at least monthly meetings with the registered person and the victim of violence within the family to raise awareness. The social worker from the local center shall immediately notify the Police if a risk of repeated violence is identified during the monitoring.

Article 12: Nonuse of protection measures against minors or incapable persons

1. Emergency intervention or protection orders are not issued against a minor or an incapable person.

2. The juvenile perpetrator of violence within the family shall be referred by the Police to relevant community-based or state centers implementing rehabilitation programs following the procedure adopted by the Republic of Armenia Government for juvenile crime prevention, if there are no elements of crime in his actions.

3. If the perpetrator of violence within the family is an incapable person then relevant provisions of the Republic of Armenia Law on Psychiatric Assistance and the Republic of Armenia Civil Procedure Code shall apply.

CHAPTER 3: BODIES AND SPECIAL INSTITUTIONS WITH MANDATE TO PREVENT VIOLENCE WITHIN THE FAMILY AND PROTECT VICTIMS OF VIOLENCE WITHIN THE FAMILY AND SOURCES OF THEIR FUNDING

Article 13: Bodies and special institutions with mandate to prevent violence within the family and protect victims of violence within the family

1. The following entities shall prevent violence within the family and protect victims of violence within the family as part of their competences:

1) National Competent Executive Authority for social issues (hereinafter referred to as “the Competent Authority”);

2) Police;

3) National Competent Executive Authority for education;

4) National Competent Executive Authority for healthcare;

5) Guardianship and trusteeship bodies;

6) Special institutions providing support to victims of violence within the family:

a. support centers,

b. shelters.

2. State and local authorities within the scope of their competences shall support the fight against violence within the family and collaborate in this area with the Competent Authority. In this area the aforementioned authorities also participate in creating public awareness and providing social and material assistance to victims of violence within the family.

Article 14: Mandate of the Competent Authority in the area of prevention of violence within the family and protection of victims of violence within the family

1. In the area of preventing violence within the family and protecting victims of violence within the family the Competent Authority shall:

1) Develop the national strategy and coordinate the implementation of activities resulting from it; 2) Facilitate centralized registration of family violence cases following the procedure established by the Government decree and include information from the Police, Investigative Committee, Special Investigation Service, the Prosecutor’s Office and the Republic of Armenia Judicial Department as well as data not registered by them and provided by support centers, guardianship and trusteeship bodies, and the National Competent Executive Authorities for education and healthcare; compile and annually publish relevant case statistics on its official website;

3) Review root causes, conditions and consequences of violence within the family, develop programs to eliminate them;

4) Oversee the compliance of shelters and their staff to requirements set forth for them by the Government; following the procedure established by the Republic of Armenia Government license provision of social services to victims of violence within the family through the shelters by nonprofit legal entities;

5) Establish shelters, conclude Government approved sample shelter financing agreements with nonprofit legal entities, oversee the operation of shelters partially or fully financed by the Competent Authority, including control over the use of funds;

6) Arrange regular trainings for staff of support centers and shelters and cooperate in this field with relevant nongovernmental organizations;

7) Regularly publish publicly available list of communication channels (including the phone numbers of a free “Hotline” service for victims of violence within the family that support centers must have) that the victims of violence within the family, the

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members of their family and others can use to immediately contact an employee of the support center or a relevant specialist engaged by the center to receive pro bono necessary help (in case of people with disabilities this help shall also be accessible for them);

8) Pursuant to the procedure established by the Government open and manage an account for provision of temporary assistance to victims of violence within the family. The account is replenished by allocations from the Government budget, donations from natural persons and legal entities and other lawful sources;

9) Approve the procedure for arranging and conducting the conciliation process between the victim and the perpetrator of violence within the family;

10) Establish the monitoring procedure for prevention of violence within the family by adults in the scope preventive registration;

11) Approve the rehabilitation program for perpetrators of violence within the family.

2. A Violence in the Family Prevention Council operates under the Head of the Competent Authority and provides to the latter recommendations on the national strategy for prevention of violence within the family, programs deriving from the strategy, legislative reforms, public awareness activities and other issues. The Council members work on pro bono basis. The Council has equal number of:

1) representatives from the Executive, the Police, the Republic of Armenia Investigative Committee, the Prosecutor's Office;

2) representatives of nongovernmental organizations;

3) staff of support centers and shelters nominated by the Head of the Competent Authority.

3. The Council shall also have one representative from the staff of the Human Rights' Defender. 4. The Government shall set forth the procedure for forming the Council and its functions, and the Republic of Armenia Prime Minister shall approve its membership.

Article 15: Mandate of the Police in the area of prevention of violence within the family and protection of victims of violence within the family

1. In the area of preventing violence within the family and protecting victims of violence within the family the Police shall:

1) Facilitate the operation of a specialized unit for prevention of violence within the family and protection of victims of violence within the family. The Government shall approve a special uniform for the specialized unit and the Chief of Police shall set forth the training procedure and other distinct operational features;

2) Specify the procedure for preventive registration as well as the monitoring procedure for prevention of violence within the family by juveniles in the scope of preventive registration and for this purposes meet with them at least monthly;

3) Explain to individuals who informed the Police about violence against them within the family their rights and possibility to benefit from available services, refer them to support centers if necessary, make a decision to transfer victims of violence within the family and persons under their care to the shelter in cases and following the procedure specified in this law;

4) Arrange regular trainings on prevention of violence within the family and protection of victims of violence within the family for its relevant officers; facilitate participation of its relevant officers in trainings organized by other bodies and organizations;

5) Issue emergency intervention orders stipulated in article 7 of this law, oversee the implementation of relevant provisions in the emergency intervention and protection orders following the procedure set forth by the Chief of Police;

6) Develop criteria to assess the imminent threat specified in article 7 of this law and organize mandatory training for its relevant officers to introduce them specific aspects of application of the aforementioned criteria;

7) Submit statistics it maintains on cases of violence within the family to the Competent Authority.

Article 16: Mandate of the National Competent Executive Authority for Education in the area of prevention of violence within the family

1. In the area of preventing violence within the family the National Competent Executive Authority for education shall:

1) Conduct regular trainings for teachers and educators on their role in prevention of violence within the family and procedure for notifying relevant authorities about the cases of violence within the family;

2) Review curricula with a view to prevent violence within the family and exclude the encouragement of violence within the family in textbooks and teaching materials, include into curricula topics on the nature of violence within the family and its impact on family and society, and on values of a traditional family.

Article 17: Mandate of the National Competent Executive Authority for Healthcare in the area of prevention of violence within the family 1. In the area of preventing violence within the family the National Competent Executive Authority for healthcare shall:

1) provide free primary healthcare to victims of violence within the family, set forth the procedure for registration of information about persons seeking medical assistance as a result of violence within the family and the criteria for notifying the Police, the Republic of Armenia Investigative Committee or the Prosecutor's Office about the cases of violence within the family; 2) Implement awareness campaigns to introduce the staff of healthcare facilities to the criteria and procedure for

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notifying the Police, the Republic of Armenia Investigative Committee or the Prosecutor's Office about the cases of violence within the family;

3) Conduct regular trainings at healthcare facilities to inform about psychological and other services available for persons seeking medical assistance as a result of violence within the family and their referral to support centers.

Article 18: Mandate of guardianship and trusteeship bodies in the area of prevention of violence within the family and protection of victims of violence within the family 1. In order to prevent violence within the family and protect victims of violence within the family the guardianship and trusteeship bodies in the scope of their competences shall:

1) Request a protection order from the court in cases stipulated in the law and notify the law enforcement bodies about violence or real threat of violence within the family against a minor or a person ruled by the court as incapable or with limited capability;

2) Following procedure established by the law and their charter arrange care for children and incapable persons who are left without care as a result of violence within the family.

Article 19: Support center

1. Support center shall:

1) Inform persons who approached the support center about their rights, available services, protection measures stipulated in the law and procedure to benefit from them in a plain language (in case of people with disabilities in a manner understandable for them);

2) Arrange provision of free and necessary psychological and legal assistance and other necessary services to the victims of violence within the family;

3) Make a decision to transfer victims of violence within the family and persons under their care to the shelter upon their consent and in cases and following the procedure specified in this law; 4) Review root causes and conditions of violence within the family, manage statistics of cases of violence within the family and submit the results to the Competent Authority;

5) Following the procedure established by the Competent Authority arrange the rehabilitation of perpetrators of violence within the family, offer the latter relevant assistance and participation in some activities as a part of rehabilitation program as soon as possible after the receipt of a copy of the warning or emergency intervention order;

6) Offer psychological assistance to the victim of violence within the family as soon as possible after the receipt of a copy of the warning or emergency intervention order;

7) Implement or facilitate the implementation of conciliation process between the victim and the perpetrator of violence within the family on terms stipulated in article 10 of this law and following the procedure set forth by the Head of the Competent Authority;

8) Assist the victims of violence within the family in finding job and receiving social assistance from the state or relevant organizations;

9) Upon the consent of the person applying to support center and to ensure her safety, check with a relevant unit of the Police the presence of grounds for issuing a warning or an emergency intervention order as well as apply to the court to receive a protection order in cases prescribed in this law.

Article 20: Shelter

1. The state shall undertake necessary measures to guarantee the existence and operation of shelters. The shelter shall be established by the Competent Authority, a nonprofit organization founded by the local authority or other nonprofit legal entities.

2. The Competent Authority may conclude an agreement with nonprofit legal entities on establishing a shelter or supporting the operation of an existing shelter by the latter which shall include a procedure for the Competent Authority's control over the activities of that shelter, including control over the use of allocated financial resources. The location for a new shelter is determined by the Competent Authority under this law based on recommendations of need assessments by territorial bodies providing social services under the Republic of Armenia Law on Social Assistance. The financed nonprofit legal entity is selected through a tender procedure stipulated in the Republic of Armenia legislation.

3. Relevant entities shall be licensed by the Competent Authority to establish the shelter and the licensing procedure shall be specified by the Government. The Government may provide support to nonprofit legal entities for the establishment and operation of the shelter as stipulated in the legislation.

4. The shelter shall have necessary amenities, sanitary-hygienic and fire safety conditions that meet the requirements set forth by the Republic of Armenia legislation, care and education facilities for children and satisfy other requirements specified by the Republic of Armenia Government.

5. Victims of violence within the family and persons under their care (hereinafter for the purposes of this article referred to as "beneficiaries") may be accommodated at the shelter upon their request if there is a reasonable belief that the violence may repeat or continue. Children shall be accommodated at the shelter at least with one of the parents or another legal representative. Decision to accommodate the person at the shelter can be made by:

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1) The Police if there is a threat to life or health;

2) The support center after receiving opinion of a territorial body providing social services stipulated in the Republic of Armenia Law on Social Assistance. The decision to accommodate a person at the shelter shall be well-reasoned.

6. Shelter shall:

1) freely provide to beneficiaries safe living space, psychological, legal and social assistance drawing, if needed, on the relevant specialists, food and clothing as well as space with appropriate furniture and supplies for lessons to children;

2) arrange referral of beneficiaries to healthcare facilities for medical treatment and assistance, if needed and with the consent of beneficiaries.

7. The beneficiaries shall be accommodated at the shelter for no longer than 12 months. The shelter shall determine the length of stay as recommended by specialists providing needed assistance and taking into account the presence or absence of threats for their safety, the possibility for them to live alone or with another person and other relevant factors considering the consent of beneficiaries to stay at the shelter as a mandatory condition.

Article 21: Funding sources for special institutions preventing violence within the family 1. Support centers and shelters shall be financed by their founders, the state budget in cases stipulated by this law and the Republic of Armenia legislation, and other sources of financing permitted under the law.

CHAPTER 4: LEGAL REGIME FOR PROTECTION AND PROCEDURE FOR DISCLOSURE OF INFORMATION ABOUT VICTIMS OF VIOLENCE WITHIN THE FAMILY

Article 22: Inviolability of private and family life

1. Information about private life obtained by competent authorities in relation to cases of violence within the family and/or offenses related to victims or alleged victims of violence within the family is confidential. Disclosure of information about a victim or an alleged victim of violence within the family without her consent through media or other channels that may lead to her identification is prohibited unless otherwise stipulated in the Republic of Armenia legislation.

2. Police officers, staff of support center and shelter shall not disclose information about the location of victims of violence within the family and persons under their care accommodated at the shelter or other information that may help to find their location. 3. Breach of the right to inviolability of private or family life shall entail legal liability and the consequent damage to the person shall be compensated as specified in the law.

CHAPTER 5: TRANSITIONAL AND FINAL PROVISIONS

Article 23: Final section and transitional provisions

1. This law shall come into force one month after the day of its official promulgation except provisions of sections 3 and 4 of this article.

2. The Government and the bodies stipulated in this law shall adopt legal texts foreseen in this law within three months after its effectiveness. The prime minister shall approve the membership list of the Council at the Competent Authority, and the Head of the Competent Authority shall convoke the first meeting of the Family Violence Prevention Council.

3. Chapter 2 and section 2 of article 22 of this law shall come into force six months after its official promulgation.

4. Provisions on services provided by support centers and shelters shall come into force one year after the official promulgation of this law.

5. Competent authorities referred to in this law shall arrange required trainings on application of protection measures and provision of social services stipulated in this law before the effectiveness of relevant provisions.

REPUBLIC OF ARMENIA LAW ON “AMENDMENT AND ADDENDA IN THE REPUBLIC OF ARMENIA CODE OF ADMINISTRATIVE VIOLATIONS”

Article 1: Add a new article 47.14 to the chapter 5 of the Republic of Armenia Code of Administrative Violations (hereinafter referred to as “Code”) dated December 6, 1985 that reads: “Article 47.14: Disclosure of location of the victim of violence within the family accommodated at the shelter 1. Disclosing the location of a person accommodated at the shelter designated in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family to a person not eligible to receive this information by a person who obtained this information while carrying out official or in-service responsibilities shall entail a fine in the amount from two to four hundredfold of the minimum wage.”

Article 2: Add a new article 20615 to the chapter 141 the Code that reads: “Article 20615: Intentional failure to implement the emergency intervention order or the protection order 1. “Intentional failure by the perpetrator of violence within the family to implement requirements stipulated in article 7, section 3, clause 5 and article 8, section 5, clauses 6 to 8 of the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family shall entail a fine in the amount from eighty to hundredfold of the minimum wage.”

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Article 3: Add the number “20615” in article 223, section 1, clause 1 after the number “20613”. Article 4: Add the number “47.14,” in article 224, section 1 after the number “44.2,”. Article 5: Add the number “47.14,” in article 254, section 1, clause 3 before the number “172.3”, and substitute the phrase “and 182” with the phrase “182 and 20615”. Article 6: This law shall come into force six months after the day of its official promulgation.

REPUBLIC OF ARMENIA LAW ON “ADDENDUM IN THE REPUBLIC OF ARMENIA CRIMINAL CODE”

Article 1: Add a new article 353.1 to the chapter 31 of the Republic of Armenia Criminal Code dated April 18, 2003 that reads: “Article 353.1: Intentional failure to implement the emergency intervention order or the protection order 1. “Intentional failure by the perpetrator of violence within the family to implement requirements stipulated in article 7, section 3, clauses 1 to 4 and article 8, section 5, clauses 1 to 4 of the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family shall entail a fine in the amount from three to five hundredfold of the minimum wage or detention for the term of one to three months or imprisonment for a maximum term of six months.”

Article 2: This law shall come into force six months after the day of its official promulgation.

REPUBLIC OF ARMENIA LAW ON “ADDENDUM IN THE REPUBLIC OF ARMENIA ADMINISTRATIVE PROCEDURE CODE”

Article 1: Add a new chapter 31.3 to the section 5 of the Republic of Armenia Administrative Procedure Code dated December 5, 2013 that reads: “CHAPTER 31.3. APPEAL PROCEDURE FOR EMERGENCY INTERVENTION ORDER

Article 222.11: Emergency intervention order appeal cases

1. The appeal against an emergency intervention order specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family shall be reviewed in accordance with the regulations stipulated in this Code taking into account peculiarities of this chapter.

2. If an appeal is launched against an emergency intervention order specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family, the court shall make one of the decisions listed in article 77, section 1 of this Code within 36 hours after receiving the application.

3. Notice on emergency intervention order appeal case to the applicant, the respondent and the victim of violence within the family or her legal representative shall be served immediately after setting the date of the court session. A public notice cannot serve as a way of notification.

4. The court shall review an appeal against an emergency intervention order specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family and make a substantive judgment within 48 hours after the admission of the application. Article 2: This law shall come into force six months after the day of its official promulgation.

REPUBLIC OF ARMENIA LAW ON “ADDENDA IN THE REPUBLIC OF ARMENIA CIVIL PROCEDURE CODE”

Article 1: Add a new article 149.16 to the chapter 22.3 of the Republic of Armenia Civil Procedure Code (hereinafter referred to as “Code”) dated June 17, 1998 that reads: Article 149.16: Conciliation under protection order applications 1.Provisions on conciliation of this chapter shall not apply to official decisions made pursuant to the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family and the procedure set forth in chapter 35.1 of this Code. In the aforementioned cases the conciliation between the victim and the perpetrator of violence within the family shall follow the procedure set forth in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.

Article 2: Add a new chapter 35.1 to the Code that reads: “Chapter 35.1

PROCEDURE FOR ISSUING PROTECTION ORDER

Article 201.1: Submission of application

1. The application for protection order specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family shall be submitted to the court of general jurisdiction at the residence address of the alleged victim of violence within the family or at the location of support center submitting such application with the consent of the alleged victim.

Article 201.2: Content of application

1. In addition to requirements set forth in article 87 of this Code, the application for a protection order shall also include:

- 1) Information about the person to whom the restrictions of the protection order will apply;
- 2) Relevant provisions of the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family;
- 3) Information on relations in the family and/or blood ties between the respondent and the alleged victim of violence within the family;

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- 4) Information supporting the existence of a real threat of violence within the family;
 - 5) Note on application of restrictions set forth in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family;
 - 6) Note that the respondent is on preventive registration pursuant to the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.
2. Warnings on impermissibility of violence within the family and/or emergency intervention orders issued against the respondent pursuant to the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family shall be attached to the application, if available.

Article 201.3: Review of application

1. Applications for protection orders shall be reviewed in accordance with the regulations stipulated in this Code taking into account peculiarities of this chapter.
2. The court ex officio shall clarify the merits of the case. The court shall not be limited by evidence, motions, proposals, explanations and objections presented by the parties, and may undertake adequate measures to obtain available and accessible information on actual facts required for judgment of the case.
- 5.¹⁷ The court shall make a decision on the admission of the case within 3 days after the receipt of application.
6. The court shall examine the application for issuing a protection order and adjudicate within 7 days after the decision on admission of the case.

Article 201.4: Judicial act

1. After examining the case, the court adopts the following substantive judgments:
 - 1) Grant the application and issue a protection order;
 - 2) Reject the application;
 - 3) Partially grant the application and apply one or several restrictions specified in the application; 4) Partially grant the application and apply restriction(s) other than those specified in the application.
2. Shall the court identify evident elements of an offence during the examination of application, it makes a motion to the Republic of Armenia Prosecutor General to check the presence of grounds for institution of a criminal case without suspending the proceedings.
3. The substantive judgment of the court shall come into force after its promulgation.
4. The court may revoke the protection order before the deadline specified therein if conciliation specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family is reached between the perpetrator and the victim of violence within the family. The perpetrator or the victim of violence within the family shall submit to the court an application to revoke the protection order and the conciliation agreement concluded with participation of the support center. The court makes a decision to revoke the protection order without convoking a court session.
5. The protection order may also be revoked upon a motion of the perpetrator of violence within the family if established that the victim of violence within the family intentionally and regularly commits actions that make impossible for the perpetrator of violence within the family to fulfil his obligations under the protection order.
6. The decision shall indicate the validity term of the protection order. The protection order may stipulate:
 - 1) the need to relocate the victim of violence within the family or persons under her/his care to a shelter;
 - 2) payment of treatment costs for the victims of violence within the family by the perpetrator.
7. The protection order is sent to the perpetrator and the victim of violence within the family and to the applicant, if the application is made by a person other than the victim of violence within the family. If necessary, copies of the order are provided to the Police, the Competent Authority specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family and the Republic of Armenia Ministry of Justice's Service for Compulsory Enforcement of Judicial Acts to oversee the execution of the order. The order is also sent to the guardianship and trusteeship body if the interests of a minor or incapable person are involved."

Article 3: This law shall come into force six months after the day of its official promulgation.

REPUBLIC OF ARMENIA LAW ON "AMENDMENTS IN THE REPUBLIC OF ARMENIA LAW ON SOCIAL ASSISTANCE"

Article 1: Annul article 2, section 1, clause 7 of the Republic of Armenia Law on Social Assistance AL-231-N dated December 17, 2014.

Article 2: Redraft article 12, section 2, clause 3 of the law to read: "3) victims of violence within the family as a shelter specified in the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family for up to 12 months."

Article 3: Article 1 of this law shall come into force one month after the day of its official promulgation, and article 2 shall come into force one year after the day of its official promulgation.

¹⁷ Numbering as in the law.

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REPUBLIC OF ARMENIA LAW ON “ADDENDUM IN THE REPUBLIC OF ARMENIA LAW ON ADVOCACY”

Article 1: Add a new clause 16 to article 41, section 5 of the Republic of Armenia Law on Advocacy AL-29-N dated December 14, 2004 that reads: “16) Victims of violence within the family the Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.”

Article 2: This law shall come into force six months after the day of its official promulgation.

REPUBLIC OF ARMENIA LAW ON “ADDENDUM IN THE REPUBLIC OF ARMENIA CRIMINAL PROCEDURE CODE”

Article 1: Add a new section 4 to article 183 of the Republic of Armenia Criminal Procedure Code (hereinafter referred to as “Code”) dated July 1, 1998 that reads: “4. Irrespective of the victim’s complaint, the prosecutor is eligible to institute a criminal case on violence within the family for offenses specified in section 1 of this article, if the person due to his/her helpless state or dependence from the alleged perpetrator is unable to protect own lawful interests. In such instances the criminal case is instituted and investigated following general procedure established by this Code and the criminal proceedings are not dismissed in case of conciliation between the victim and the accused.”

Article 2: This law shall come into force one month after the day of its official promulgation.

8. AUSTRALIA

8.1. FEDERAL

[Family Law Act, 1975 \(As amended\)](#)¹⁸

Part I—Preliminary

1 Short title

This Act may be cited as the Family Law Act 1975.

2 Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

[...]

4AA De facto relationships

Meaning of de facto relationship

(1) A person is in a de facto relationship with another person if:

(a) the persons are not legally married to each other; and

(b) the persons are not related by family (see subsection (6)); and

(c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has effect subject to subsection (5).

Working out if persons have a relationship as a couple

(2) Those circumstances may include any or all of the following:

(a) the duration of the relationship;

(b) the nature and extent of their common residence;

(c) whether a sexual relationship exists;

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(e) the ownership, use and acquisition of their property;

(f) the degree of mutual commitment to a shared life;

(g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

(h) the care and support of children;

(i) the reputation and public aspects of the relationship.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

¹⁸ Family Law Act 1975, Act No. 53 (as amended up to 1 January 2018), available at <https://www.legislation.gov.au/Details/C2018C00003> (last visited December 30, 2018).

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(4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(5) For the purposes of this Act:

(a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and

(b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

When 2 persons are related by family

(6) For the purposes of subsection (1), 2 persons are related by family if:

(a) one is the child (including an adopted child) of the other; or

(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

(c) they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

4AB Definition of family violence etc.

(1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

(a) an assault; or

(b) a sexual assault or other sexually abusive behaviour; or

(c) stalking; or

(d) repeated derogatory taunts; or

(e) intentionally damaging or destroying property; or

(f) intentionally causing death or injury to an animal; or

(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or

(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

(3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

[...]

Division 11 – Family violence

68N Purposes of this Division

The purposes of this Division are:

(a) to resolve inconsistencies between:

(i) family violence orders; and

(ii) certain orders, injunctions and arrangements made under this Act that provide for a child to spend time with a person or require or authorise a person to spend time with a child; and

(aa) to ensure that orders, injunctions and arrangements of the kind referred to in subparagraph (a)(ii) do not expose people to family violence; and

(b) to achieve the objects and principles in section 60B.

68P Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order

(1) This section applies if:

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(a) a court:

- (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
- (ii) makes a recovery order (as defined in section 67Q) or any other order under this Act that expressly or impliedly requires or authorises a person to spend time with a child; or
- (iii) grants an injunction under section 68B or 114 that expressly or impliedly requires or authorises a person to spend time with a child; and

(b) the order made or injunction granted is inconsistent with an existing family violence order.

(2) The court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child:

- (a) specify in the order or injunction that it is inconsistent with an existing family violence order; and
- (b) give a detailed explanation in the order or injunction of how the contact that it provides for is to take place; and
- (c) explain (or arrange for someone else to explain) the order or injunction to:
 - (i) the applicant and respondent in the proceedings for the order or injunction; and
 - (ii) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
 - (iii) the person protected by the family violence order (if that person is not the applicant or respondent); and
- (d) include (or arrange to be included) in the explanation, in language those persons are likely to readily understand:
 - (i) the purpose of the order or injunction; and
 - (ii) the obligations created by the order or injunction, including how the contact that it provides for is to take place; and
 - (iii) the consequences that may follow if a person fails to comply with the order or injunction; and
- (iv) the court's reasons for making an order or granting an injunction that is inconsistent with a family violence order; and
- (v) the circumstances in which a person may apply for variation or revocation of the order or injunction.

(3) As soon as practicable after making the order or granting the injunction (and no later than 14 days after making or granting it), the court must give a copy to:

- (a) the applicant and respondent in the proceedings for the order or injunction; and
- (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); and
- (c) the person protected by the family violence order (if that person is not the applicant or respondent); and
- (d) the Registrar, Principal Officer or other appropriate officer of the court that last made or varied the family violence order; and
- (e) the Commissioner or head (however described) of the police force of the State or Territory in which the person protected by the family violence order resides; and
- (f) a child welfare officer in relation to the State or Territory in which the person protected by the family violence order resides.

(4) Failure to comply with this section does not affect the validity of the order or injunction.

68Q Relationship of order or injunction made under this Act with existing inconsistent family violence order

(1) To the extent to which:

- (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
- (b) the order or injunction is inconsistent with an existing family violence order; the family violence order is invalid.

(2) An application for a declaration that the order or injunction is inconsistent with the family violence order may be made, to a court that has jurisdiction under this Part, by:

- (a) the applicant or respondent in the proceedings for the order or injunction mentioned in paragraph 68P(1)(a); or
- (b) the person against whom the family violence order is directed (if that person is not the applicant or respondent); or
- (c) the person protected by the family violence order (if that person is not the applicant or respondent).

(3) The court must hear and determine the application and make such declarations as it considers appropriate.

68R Power of court making a family violence order to revive, vary, discharge or suspend an existing order, injunction or arrangement under this Act

Power

(1) In proceedings to make or vary a family violence order, a court of a State or Territory that has jurisdiction in relation to this Part may revive, vary, discharge or suspend:

- (a) a parenting order, to the extent to which it provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child; or
- (b) a recovery order (as defined in section 67Q) or any other order under this Act, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or

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(c) an injunction granted under section 68B or 114, to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child; or

(d) to the extent to which it expressly or impliedly requires or authorises a person to spend time with a child:

(i) an undertaking given to, and accepted by, a court exercising jurisdiction under this Act; or

(ii) a registered parenting plan within the meaning of subsection 63C(6); or

(iii) a recognisance entered into under an order under this Act.

(2) The court may do so:

(a) on its own initiative; or

(b) on application by any person.

Limits on power

(3) The court must not do so unless:

(a) it also makes or varies a family violence order in the proceedings (whether or not by interim order); and

(b) if the court proposes to revive, vary, discharge or suspend an order or injunction mentioned in paragraph (1)(a), (b) or (c)—the court has before it material that was not before the court that made that order or injunction.

(4) The court must not exercise its power under subsection (1) to discharge an order, injunction or arrangement in proceedings to make an interim family violence order or an interim variation of a family violence order.

Relevant considerations

(5) In exercising its power under subsection (1), the court must:

(a) have regard to the purposes of this Division (stated in section 68N); and

(b) have regard to whether spending time with both parents is in the best interests of the child concerned; and

(c) if varying, discharging or suspending an order or injunction mentioned in paragraph (1)(a), (b) or (c) that, when made or granted, was inconsistent with an existing family violence order—be satisfied that it is appropriate to do so because a person has been exposed, or is likely to be exposed, to family violence as a result of the operation of that order or injunction.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

Registration of revival, variation, discharge or suspension of orders and other arrangements

(6) The regulations may require a copy of the court's decision to revive, vary, discharge or suspend an order, injunction or arrangement to be registered in accordance with the regulations. Failure to comply with the requirement does not affect the validity of the court's decision.

68S Application of Act and Rules when exercising section 68R power

(1) The following provisions do not apply to a court exercising the power under section 68R:

(a) section 65C (who may apply for a parenting order);

(b) subsection 65F(2) (parenting order not to be made unless parties attend family counselling);

(c) section 60CG (court to consider risk of family violence);

(d) section 69N (requirement to transfer certain proceedings);

(e) any provisions (for example, section 60CA) that would otherwise make the best interests of the child the paramount consideration;

Note: Even though the best interests of the child are not paramount, they must still be taken into account under paragraph 68R(5)(b).

(f) any provisions of this Act or the applicable Rules of Court specified in the regulations.

(2) If a court is exercising the power under section 68R in proceedings to make an interim family violence order or an interim variation of a family violence order:

(a) the court has a discretion about whether to apply paragraph 60CC(3)(a) (about taking into account a child's views etc.); and

(b) any provisions of this Act or the applicable Rules of Court specified in the regulations do not apply.

(3) A court exercising the power under section 68R may, as it thinks appropriate, dispense with any otherwise applicable Rules of Court.

68T Special provisions relating to proceedings to make an interim (or interim variation of) family violence order

(1) If, in proceedings to make an interim family violence order or an interim variation of a family violence order, the court revives, varies or suspends an order, injunction or arrangement under section 68R, that revival, variation or suspension ceases to have effect at the earlier of:

(a) the time the interim order stops being in force; and

(b) the end of the period of 21 days starting when the interim order was made.

(2) No appeal lies in relation to the revival, variation or suspension.

8.2. STATE AND SELF-GOVERNING TERRITORIES

8.2.1. AUSTRALIAN CAPITAL TERRITORY

[Family Violence Act, 2016 \(As amended\)](#) ¹⁹

Family Violence Act 2016
An Act to protect people from family violence, and for other purposes

Preamble

1 In enacting this Act, the Legislative Assembly recognises the following principles:

- (a) family violence is unacceptable in any form;
- (b) freedom from family violence is a human right;
- (c) the justice system should respect and protect all human rights in accordance with the Human Rights Act 2004 and international law;
- (d) family violence is best addressed through a coordinated legal and social response of assistance to victims and the prevention of violence by such things as promoting the accountability of perpetrators of family violence and the appropriate intervention by the police and the courts.

2 The Legislative Assembly also recognises the following features of family violence:

- (a) anyone can be a victim of family violence: it occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
- (b) family violence is predominantly committed by men against women and children;
- (c) family violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years;
- (d) children exposed to family violence are particularly vulnerable and the exposure may have a serious impact on their current and future physical, psychological and emotional wellbeing.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the Family Violence Act 2016.

[...]

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (signpost definitions) to other terms defined elsewhere.

For example, the signpost definition 'firearm—see the Firearms Act 1996, section 6.' means that the term 'firearm' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg conduct, intention, recklessness and strict liability).

Note 2 Penalty units

¹⁹ ACT Legislation, Family Violence Act 2016 (with amendments up to A 2018-12 included), available at <https://www.legislation.act.gov.au/a/2016-42/> (last visited December 30, 2018).

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The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects and important concepts

Division 2.1 Objects

6 Objects of Act

The objects of this Act include—

- (a) to prevent and reduce family violence; and
- (b) to ensure the safety and protection of people, including children, who fear, experience or witness family violence; and
- (c) to encourage perpetrators of family violence to be accountable for their conduct.

7 How objects are to be achieved

This Act aims to achieve its objects by—

- (a) giving the courts power to make family violence orders to protect people from family violence; and
- (b) creating offences to enforce family violence orders; and
- (c) ensuring that access to the courts is as simple, quick and inexpensive as is consistent with justice; and
- (d) by recognising family violence orders made elsewhere in Australia and New Zealand.

Division 2.2 Important concepts

8 Meaning of family violence

- (1) In this Act:

family violence means—

- (a) any of the following behaviour by a person in relation to a family member of the person:
 - (i) physical violence or abuse;
 - (ii) sexual violence or abuse;
 - (iii) emotional or psychological abuse;
 - (iv) economic abuse;
 - (v) threatening behaviour;
 - (vi) coercion or any other behaviour that—
 - (A) controls or dominates the family member; and
 - (B) causes the family member to feel fear for the safety or wellbeing of the family member or another person;

or

- (b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.

Examples—par (b)

1 overhearing threats being made in another room of the house

2 seeing an assault or seeing injuries on a family member who has been assaulted

3 seeing people comfort a family member who has been abused

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Without limiting subsection (1), family violence by a person in relation to a family member of the person includes the following:

- (a) sexually coercive behaviour;
- (b) damaging property;
- (c) harming an animal;
- (d) stalking;
- (e) deprivation of liberty.

- (3) In this section:

economic abuse, of a family member, means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member—

- (a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or
- (b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.

Examples

1 stopping the family member from having access to money to meet normal living expenses

2 requiring the family member to transfer or hand over control of assets or income

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3 stopping the family member from trying to get employment

4 forcing the family member to sign a legal document such as a power of attorney, loan, guarantee

5 forcing the family member to claim social security payments

emotional or psychological abuse, of a family member, means behaviour by a person that torments, intimidates, harasses or is offensive to the family member including by the person's exploitation of power imbalances between the person and the family member.

Examples

1 stopping the family member from visiting or having contact with family or friends

2 stopping the family member from engaging in cultural or spiritual practices

3 repeated derogatory or racist comments

4 threatening to disclose personal information about the family member

5 threatening to withhold medication, personal health care items or other things necessary to the family member's health or quality of life

6 threatening to self-harm as a way of intimidating the family member

9 Meaning of family member

In this Act:

family member, of a person, means—

- (a) a domestic partner or former domestic partner of the person; or
- (b) an intimate partner or former intimate partner of the person; or
- (c) a relative of the person; or
- (d) a child of a domestic partner or former domestic partner of the person; or
- (e) a parent of a child of the person.

Note 1 A domestic partner need not be an adult (see Legislation Act, s 169).

Note 2 Intimate partner—see s 10.

Relative—see s 11.

10 Meaning of intimate partner

(1) In section 9:

intimate partner, of a person—

(a) means someone with whom the person has an intimate relationship, whether they are members of the same household or not; but

(b) does not include—

(i) a domestic partner; or

(ii) another person with whom the person has a relationship only because a service is provided between

them—

(A) for fee or reward; or

(B) on behalf of another person (including a government or corporation); or

(C) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.

(2) For subsection (1), factors that indicate whether there is an intimate relationship between 2 people

include, but are not limited to, the following:

(a) the extent to which each is personally dependent on the other;

(b) the extent to which each is financially dependent on the other (including any arrangements for financial support);

(c) the length of the relationship;

(d) the frequency of contact between each other;

(e) if there is, or has been, a sexual relationship;

(f) the extent to which each is involved in, or knows about, the other's personal life;

(g) the degree of mutual commitment to a shared life;

(h) if the 2 people share care or support for children or other dependents.

11 Meaning of relative

(1) In section 9:

relative, of a person—

(a) means the person's—

(i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or

(ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or

(iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or

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- (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
- (v) nephew, niece or cousin; and
- (b) if the person has or had a domestic partner (other than a spouse or civil union partner)—includes someone who would have been a relative mentioned in paragraph (a) if the person had been married to or in a civil union with the domestic partner; and

Note For ACT law, a person acquires relatives through civil union in the same way as they acquire them through marriage (see Civil Unions Act 2012, s 6 (2)).

- (c) includes—
 - (i) someone who has been a relative mentioned in paragraph (a) or (b) of the person; and
 - (ii) if the person is an Aboriginal or Torres Strait Islander person, the following people:
 - (A) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community;
 - (B) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and
 - (iii) someone regarded and treated by the person as a relative; and
 - (iv) someone with whom the person has a family-like relationship; and
 - (v) anyone else who could reasonably be considered to be, or have been, a relative of the person.
- (2) For subsection (1) (c) (iv), factors that indicate whether there is a family-like relationship between 2 people include, but are not limited to, the following:
 - (a) the extent to which each is personally dependent on the other;
 - (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
 - (c) the length of the relationship;
 - (d) the frequency of contact between each other;
 - (e) the extent to which each is involved in, or knows about, the other's personal life;
 - (f) if the people live together or relate together in a home environment;
 - (g) if the relationship is regarded as being family-like by the community in which each live.

Example

a relationship between a person with disability and the person's carer that has developed into a relationship that is like that between family members

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[...]

Part 3 Family violence orders

Division 3.1 Matters to be considered when making family violence orders

14 Matters to be considered—family violence orders

- (1) In deciding whether to make a family violence order, a court must consider the following:
 - (a) the objects of this Act in section 6;
 - (b) the affected person's perception of the nature and seriousness of the respondent's alleged conduct;
 - (c) the welfare of any child that is an affected person;
 - (d) the accommodation needs of the affected person and any child of the affected person or respondent;
 - (e) any hardship that may be caused to the respondent or anyone else by the making of the order;
 - (f) any previous family violence or personal violence by the respondent in relation to the affected person or anyone else;
 - (g) any previous family violence order made in relation to the respondent;
 - (h) any previous contravention of a family violence order by the respondent;
 - (i) the need to ensure that property is protected from damage.

Note An affected person includes any child who hears, witnesses or is otherwise exposed to family violence committed against another person (see s 8 (1), def family violence, par (b) and dict).

- (2) The court may also consider anything else the court considers relevant.
- (3) A failure of the court to comply with subsection (1) in relation to a family violence order does not affect the validity of the order.

(4) In this section:
family violence order—

- (a) means a protection order or an after-hours order under this Act; and
- (b) includes the following:

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- (i) a protection order under the Personal Violence Act 2016;
 - (ii) a protection order under the Domestic Violence Agencies Act 1986 as in force at any time;
 - (iii) a protection order under the Domestic Violence and Protection Orders Act 2001 as in force at any time;
 - (iv) a protection order under the Domestic Violence and Protection Orders Act 2008 as in force at any time;
 - (v) a restraining order under the Magistrates Court Act 1930 before 27 March 2002;
 - (vi) an order under a law of a State, another Territory or New Zealand that has or had the same effect, or substantially the same effect, as a protection order under this Act or a protection order under the Personal Violence Act 2016.
- 15 Family Law Act order
- (1) In deciding whether to make a family violence order, a court must enquire whether a Family Law Act order applies to—
- (a) any child of the affected person and respondent; or
 - (b) any other child that is an affected person.
- Note 1 A family violence order means a protection order or an after-hours order (see dict).
- Note 2 The Family Law Act 1975 (Cwlth), s 68R gives a Territory court, in a proceeding for a family violence order, jurisdiction under certain circumstances to revive, vary, discharge or suspend a Family Law Act order.
- (2) In this section:
Family Law Act order—
- (a) means a parenting order, recovery order, injunction, undertaking, parenting plan or recognisance mentioned in the Family Law Act 1975 (Cwlth), section 68R; and
 - (b) includes any proceeding for a parenting order, recovery order, injunction, undertaking, parenting plan or recognisance.

Division 3.2 Applications for protection orders

16 Who may apply for protection order?

- (1) An affected person may apply to the Magistrates Court for a protection order.
Note 1 Only a police officer may apply for an after-hours order (see s 99).
Note 2 A child younger than 10 years old cannot be a respondent to an application for a protection order (see s 75).
- (2) The following people may apply to the Magistrates Court for a protection order for an affected person:
 - (a) a police officer;
 - (b) a litigation guardian for the person or any other person with a right to apply for the person.

[...]

[Australian Capital Territory Crimes Act, 1900 \(As amended\)](#) ²⁰

Part 3. Sexual Offences

Section 69. Marriage no bar to conviction

The fact that a person is married to a person on whom an offence against section 54 is alleged to have been committed shall be no bar to the conviction of the first mentioned person for the offence.

[...]

8.2.2. NEW SOUTH WALES

[Crimes \(Domestic and Personal Violence\) Act, 2007 \(As amended\)](#) ²¹

An Act to protect persons from domestic and personal violence; to repeal Part 15A of the Crimes Act 1900; and to make consequential amendments to other Acts and instruments.

Part 1 Preliminary

1 Name of Act

This Act is the Crimes (Domestic and Personal Violence) Act 2007.

²⁰ ACT Crimes Act 1900 (A1900-40), (Republication No 117, Effective 1 September 2018), available at <https://www.legislation.act.gov.au/a/1900-40/current/pdf/1900-40.pdf> (last visited December 30, 2018).

²¹ New South Wales Legislation, Crimes (Domestic and Personal Violence) Act 2007, No. 80 (current version for 21 June 2018 to date), available at <https://www.legislation.nsw.gov.au/#/view/act/2007/80> (last visited December 30, 2018).

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2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

applicant officer—see section 25.

apprehended domestic violence order means an order under Part 4.

apprehended personal violence order means an order under Part 5.

apprehended violence order means:

(a) a final apprehended violence order, or

(b) an interim apprehended violence order.

apprehended violence order proceedings means proceedings under this Act in relation to an apprehended violence order or an application for an apprehended violence order.

authorised officer has the same meaning as in the Law Enforcement (Powers and Responsibilities) Act 2002 and includes the Registrar of the Children's Court.

child means a person under the age of 16 years.

Children's Magistrate includes the President of the Children's Court.

court means:

(a) the Local Court, or

(b) the Children's Court,

(c) (Repealed)

exercising jurisdiction under section 91.

defendant means the person against whom an apprehended violence order is made or is sought to be made.

domestic relationship—see section 5.

domestic violence offence—see section 11.

final apprehended violence order means an apprehended domestic violence order or an apprehended personal violence order.

interim apprehended domestic violence order means an interim apprehended domestic violence order made by a court or Registrar under Part 6 or an authorised officer or senior police officer under Part 7.

interim apprehended personal violence order means an interim apprehended personal violence order made by a court or Registrar under Part 6 or an authorised officer under Part 7.

interim apprehended violence order means an interim court order or a provisional order.

interim court order means an interim apprehended domestic violence order or an interim apprehended personal violence order made by a court or registrar of a court under Part 6.

intimidation—see section 7.

issuing officer—see section 25.

non-local domestic violence order means a non-local DVO within the meaning of Part 13B.

parent has the same meaning as in the Children and Young Persons (Care and Protection) Act 1998.

personal violence offence—see section 4.

property recovery order means a property recovery order made under section 37.

protected person means the person for whose protection an apprehended violence order is sought or made.

provisional order means an interim apprehended domestic violence order or an interim apprehended personal violence order made under Part 7.

Registrar means a Registrar of the Local Court or the Registrar of the Children's Court.

relative—see section 6.

senior police officer means a police officer of or above the rank of sergeant.

stalking—see section 8.

Note.

The Interpretation Act 1987 contains definitions and other provisions that affect the interpretation and application of this Act.

(2) If an apprehended violence order is varied, a reference in this Act to the order is a reference to the order as so varied.

(3) A reference in this Act to a person being present in court includes a reference to a person being present in court by way of audio visual link, being facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

(4) A reference in this Act to a finding of guilt includes a reference to the making of an order under section 10 of the Crimes (Sentencing Procedure) Act 1999.

(5) Notes included in this Act do not form part of this Act.

4 Meaning of "personal violence offence"

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In this Act, personal violence offence means:

- (a) an offence under, or mentioned in, section 19A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 43, 43A, 44, 45, 45A, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 73, 78A, 80A, 80D, 86, 87, 91P, 91Q, 91R, 93G, 93GA, 110, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the Crimes Amendment (Apprehended Violence) Act 2006) or 562ZG of the Crimes Act 1900, or
- (b) an offence under section 13 or 14 of this Act, or
- (b1) an offence under section 109, 111, 112, 113, 114, 115 or 308C of the Crimes Act 1900, but only if the serious indictable offence or indictable offence referred to in those sections is an offence referred to in paragraph (a) or (b), or
- (c) an offence of attempting to commit an offence referred to in paragraph (a), (b) or (b1).

5 Meaning of “domestic relationship”

(1) For the purposes of this Act, a person has a domestic relationship with another person if the person:

- (a) is or has been married to the other person, or
- (b) is or has been a de facto partner of that other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a detention centre within the meaning of the Children (Detention Centres) Act 1987), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person’s culture.

Note.

“De facto partner” is defined in section 21C of the Interpretation Act 1987.

(2) Two persons also have a domestic relationship with each other for the purposes of this Act if they have both had a domestic relationship of a kind set out in subsection (1) (a), (b) or (c) with the same person.

Note.

A woman’s ex-partner and current partner would therefore have a domestic relationship with each other for the purposes of this Act even if they had never met.

6 Meaning of “relative”

For the purposes of this Act, a person is a relative of another person (the other person):

- (a) if the person is:
 - (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
 - (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
 - (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
 - (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
 - (v) a nephew or niece, or
 - (vi) a cousin,of the other person, or
- (b) where the person has a de facto partner (the person’s partner)—if the other person is:
 - (i) a father, mother, grandfather, grandmother, step-father or step-mother, or
 - (ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or
 - (iii) a brother, sister, half-brother, half-sister, step-brother or step-sister, or
 - (iv) an uncle or aunt, or
 - (v) a nephew or niece, or
 - (vi) a cousin,of the person’s partner.

7 Meaning of “intimidation”

(1) For the purposes of this Act, intimidation of a person means:

- (a) conduct amounting to harassment or molestation of the person, or
- (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or
- (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

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(2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

8 Meaning of "stalking"

(1) In this Act, stalking includes the following of a person about or the watching or frequenting of the vicinity of, or an approach to, a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

(2) For the purpose of determining whether a person's conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

Part 2 Objects of Act in relation to domestic and personal violence

9 Objects of Act in relation to domestic violence

(1) The objects of this Act in relation to domestic violence are:

(a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
(b) to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons, and

(c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and

(d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.

(2) This Act aims to achieve those objects by:

(a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking, and

(b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice.

(3) In enacting this Act, Parliament recognises:

(a) that domestic violence, in all its forms, is unacceptable behaviour, and

(b) that domestic violence is predominantly perpetrated by men against women and children, and

(c) that domestic violence occurs in all sectors of the community, and

(d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and

(e) that domestic violence occurs in traditional and non-traditional settings, and

(f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and

(f1) the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities, and

(g) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.

(4) A court that, or person who, exercises any power conferred by or under this Act in relation to domestic violence must be guided in the exercise of that power by the objects referred to in this section.

10 Object of Act in relation to personal violence

(1) The object of this Act in relation to personal violence is to ensure the safety and protection of all persons who experience personal violence outside a domestic relationship.

(2) This Act aims to achieve that object by:

(a) empowering courts to make apprehended personal violence orders in appropriate circumstances to protect people from violence, intimidation (including harassment) and stalking, and

(b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice, and

(c) ensuring that other avenues of dispute resolution are encouraged where appropriate.

Part 3 Domestic violence and other offences

11 Meaning of "domestic violence offence"

(1) In this Act, domestic violence offence means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being:

(a) a personal violence offence, or

(b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or

(c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

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(2) In this section, offence includes an offence under the Criminal Code Act 1995 of the Commonwealth.

[...]

Division 2 Application for order

48 Making of application for an order

(1) An application for an order is to be made in accordance with this Part, despite any provision of any other Act or law (whether or not enacted or made before or after the commencement of this section).

(2) An application for an order may be made only by:

(a) a person for whose protection the order would be made, or

(a1) the guardian of the person for whose protection the order would be made, in the case of a person in respect of whom a guardianship order within the meaning of the Guardianship Act 1987 is in force, or

(b) a police officer.

(3) Despite subsection (2), an application for an order may be made only by a police officer if, at the time the application is made, each person for whose protection the order would be made is a child.

(4) An application for an order:

(a) may be made by more than one person, and

(b) if made by a police officer, may be made on behalf of more than one person, and

(c) if made by a person for whose protection the order would be made (the applicant), may also be made by the applicant on behalf of any other person with whom the applicant has a domestic relationship.

(4A) A court may refer an application for an order to the Commissioner of Police at any time if:

(a) the applicant is not a police officer, and

(b) a person for whose protection the order would be made is a child at the time of the application, and

(c) the court considers that it would be in the best interests of the child for a police officer to appear in the application.

(5) A court may deal with an application even though the court has only a facsimile transmission or other copy of the application.

(6) An applicant for an order who is 16 years of age or over, but under 18 years of age, has full capacity to make the application and to apply for a variation or revocation of the order.

(7) A reference in sections 52, 55 (2), 73 (4), 77 (7), 78 (1) and 84 (6) to a protected person includes a reference to the guardian of the person in the case of an application for an order made by the guardian of a person on the person's behalf (as referred to in subsection (2) (a1)).

49 Circumstances in which police must make application for order

(1) An application for an order must be made if a police officer investigating the matter concerned suspects or believes that:

(a) a domestic violence offence or an offence against section 13 has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or

(b) an offence under section 227 (Child and young person abuse) of the Children and Young Persons (Care and Protection) Act 1998 (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or

(c) proceedings have been commenced against a person for an offence referred to in paragraph (a) or (b) against the person for whose protection an order would be made.

(2) The application may be made by any police officer.

(3) An application need not be made in the circumstances referred to in subsection (1) if an apprehended violence order is already in force for the protection of the person concerned or if an application has been made for a provisional order for the protection of the person.

(4) An application need not be made in the circumstances referred to in subsection (1) if the person for whose protection an apprehended violence order would be made is at least 16 years of age at the time and the police officer investigating the matter believes:

(a) that the person intends to make the application, or

(b) that there is good reason not to make the application.

(5) However, if the police officer investigating the matter believes that there is good reason not to make the application, the police officer must make a written record of the reason.

(6) For the purposes of subsection (4), the reluctance of the person to make an application does not, on its own, constitute a good reason for a police officer not to make an application if the police officer reasonably believes that:

(a) the person has been the victim of violence or there is a significant threat of violence to the person, or

(b) the person has an intellectual disability and has no guardian.

49A False or misleading applications for apprehended personal violence order

A person is guilty of an offence if:

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- (a) the person makes a statement (whether orally, in a document or in any other way), and
- (b) the person does so knowing that the statement is false or misleading in a material particular, and
- (c) the statement is made to a Registrar or Magistrate for the purpose of making an application for an apprehended personal violence order under section 18.

Maximum penalty: Imprisonment for 12 months or 10 penalty units, or both.

[...]

[NSW Crimes Act 1900 \(As amended\)](#) ²²

Part 3. Offences against the person

Division 10. Offences in the nature of rape, offences relating to other acts of sexual assault etc.

61T Offender married to victim -

The fact that a person is married to a person:

- (a) upon whom an offence under section 61I, 61J, 61JA or 61K is alleged to have been committed is no bar to the firstmentioned person being convicted of the offence, or
- (b) upon whom an offence under any of those sections is alleged to have been attempted is no bar to the firstmentioned person being convicted of the attempt.

[...]

8.2.3. NORTHERN TERRITORY

[Domestic and Family Violence Act \(As amended\)](#) ²³

DOMESTIC AND FAMILY VIOLENCE ACT

An Act to provide for the protection of persons in a domestic relationship against violence, and for related purposes

PREAMBLE:

The Legislative Assembly enacts this Act because it recognises:

- (a) domestic violence is unacceptable behaviour that society does not condone; and
- (b) domestic violence has:
 - (i) negative and long-lasting consequences for victims and others exposed to it; and
 - (ii) negative consequences for the community, the workplace and the economy.

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the Domestic and Family Violence Act.

2 Commencement

This Act commences on the date fixed by the Administrator by Gazette notice.

3 Objects of Act and their achievement

- (1) The objects of this Act are:
 - (a) to ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence; and
 - (b) to ensure people who commit domestic violence accept responsibility for their conduct; and
 - (c) to reduce and prevent domestic violence.
- (2) The objects are to be achieved by providing for the following:
 - (a) the making of domestic violence orders to protect people from domestic violence and to encourage the people committing it to change their behaviour;
 - (b) the registration of orders made in other jurisdictions;

²² New South Wales Crimes Act 1900, No. 40, (current version for 26 October 2018 to date), available at <https://www.legislation.nsw.gov.au/#/view/act/1900/40/part3/div10/sec61t> (last visited December 30, 2018).

²³ Northern Territory of Australia Legislation, Domestic and Family Violence Act (as in force on 25 November 2017), available at <https://legislation.nt.gov.au/Legislation/DOMESTIC-AND-FAMILY-VIOLENCE-ACT> (last visited December 30, 2018).

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- (c) the enforcement of those orders.

Part 1.2 Interpretation

[...]

Division 2 Important concepts

Subdivision 1 Concepts relating to domestic violence

5 Domestic violence

Domestic violence is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:

- (a) conduct causing harm;

Example of harm for paragraph (a)

Sexual or other assault.

- (b) damaging property, including the injury or death of an animal;

- (c) intimidation;

- (d) stalking;

- (e) economic abuse;

- (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).

Note

Under Part 2.2, a DVO may be sought, and made, against a person if the person counsels or procures someone to commit the domestic violence, see section 17.

6 Intimidation

- (1) Intimidation of a person is:

- (a) harassment of the person; or

Examples of harassment for paragraph (a)

- 1 Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.

- 2 Giving or sending offensive material to the person.

- (b) any conduct that causes a reasonable apprehension of:

- (i) violence to the person; or

- (ii) damage to the property of the person, including the injury or death of an animal that is the person's property; or

Example of conduct for paragraph (b)(i)

Sexually coercive behaviour.

- (c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.

- (2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct (especially domestic violence) in the person's behaviour.

7 Stalking

Stalking, a person, includes engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person:

- (a) intentionally following the person;

- (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity.

8 Economic abuse

Economic abuse, of a person, includes any of the following conduct (or any combination of them):

- (a) coercing the person to relinquish control over assets or income;

Example of coercion for paragraph (a)

Using stand-over tactics to obtain the person's credit card.

- (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;

- (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;

- (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.

Subdivision 2 Concepts relating to domestic relationships

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9 Domestic relationship

A person is in a domestic relationship with another person if the person:

- (a) is or has been in a family relationship with the other person; or
- (b) has or had the custody or guardianship of, or right of access to, the other person; or
- (c) is or has been subject to the custody or guardianship of the other person or the other person has or has had a right of access to the person; or
- (d) ordinarily or regularly lives, or has lived, with:
 - (i) the other person; or
 - (ii) someone else who is in a family relationship with the other person; or
- (e) is or has been in a family relationship with a child of the other person; or
- (f) is or has been in an intimate personal relationship with the other person; or
- (g) is or has been in a carers relationship with the other person.

10 Family relationship

(1) A person is in a family relationship with another person if the person:

- (a) is the spouse or de facto partner of the other person; or
- (b) is otherwise a relative of the other person.

Examples of relatives for paragraph (b)

Stepchild, parent, step-parent, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.

(2) A relative of a person includes someone who, according to Aboriginal tradition or contemporary social practice, is a relative of the person.

Note

Section 19A of the Interpretation Act contains definitions of certain domestic relationships, including spouse, de facto partner and stepchild.

11 Intimate personal relationship

(1) An intimate personal relationship exists between 2 persons if the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition.

(2) In addition, an intimate personal relationship exists between 2 persons, whether or not the relationship involves a sexual relationship, if the persons date each other.

(3) In deciding whether an intimate personal relationship exists under subsection (2), the following may be taken into account:

- (a) the circumstances of the relationship, including, for example, the level of trust and commitment;
 - (b) the length of time the relationship has existed;
 - (c) the frequency of contact between the persons;
 - (d) the level of intimacy between the persons.
- (4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.

[...]

Chapter 2 Domestic violence orders

Part 2.1 Preliminary matters

16 Objects of Chapter

The object of this Chapter are to provide for:

- (a) the making of domestic violence orders to protect people from domestic violence; and
- (b) the variation and revocation of domestic violence orders.

17 When person taken to have committed domestic violence

A person who counsels or procures someone else to commit conduct that, if committed by the person would be domestic violence, is taken to have also committed the conduct.

Part 2.2 Making of domestic violence orders

18 When DVO may be made

(1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

Note

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Because of the objective nature of the test in subsection (1), the issuing authority may be satisfied on the balance of probabilities as to the reasonable grounds even if the protected person denies, or does not give evidence about, fearing the commission of domestic violence.

(2) In addition, if the protected person is a child, the authority may make a DVO if satisfied there are reasonable grounds to fear the child will be exposed to domestic violence committed by or against a person with whom the child is in a domestic relationship.

19 Matters to be considered in making DVO

(1) In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance.

(2) In addition, the issuing authority must consider the following:

- (a) any family law orders in force in relation to the defendant, or any pending applications for family law orders in relation to the defendant, of which the issuing authority has been informed;
- (b) the accommodation needs of the protected person;
- (c) the defendant's criminal record as defined in the Criminal Records (Spent Convictions) Act;
- (d) the defendant's previous conduct whether in relation to the protected person or someone else;
- (e) other matters the authority considers relevant.

20 Presumption in favour of protected person with child remaining at home

(1) This section applies if:

- (a) the defendant and protected person normally live in the same home with a child (whether or not the child is also a protected person); and
- (b) in deciding the conditions of a DVO, the issuing authority imposes a restraint on the defendant having contact with the protected person or child.

(2) The issuing authority must presume the protection of the protected person and child are best achieved by them living in the home.

(3) To avoid doubt, this section does not prevent a DVO including a premises access order.

[...]

8.2.4. QUEENSLAND

[Domestic and Family Violence Protection Act, 2012 \(As amended\)](#) ²⁴

Domestic and Family Violence Protection Act 2012

An Act to provide for protection of a person against violence committed or threatened by someone else if a relevant relationship exists between the persons
2012 No. 5s 230sch

1 Preamble

In enacting this Act, the Parliament of Queensland recognises the following—

1 Australia is a party to the following instruments—

Universal Declaration of Human Rights

United Nations Declaration on the Elimination of Violence Against Women

United Nations Convention on the Rights of the Child

United Nations Principles for Older Persons

2 Living free from violence is a human right and fundamental social value.

3 Domestic violence is a violation of human rights that is not acceptable in any community or culture and traditional or cultural practices can not be relied upon to minimise or excuse domestic violence.

4 Domestic violence is often an overt or subtle expression of a power imbalance, resulting in one person living in fear of another, and usually involves an ongoing pattern of abuse over a period of time.

²⁴ Domestic and Family Violence Protection Act 2012, (current from 1 December 2017 to date), available at <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2012-005> (last visited December 30, 2018).

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5 Domestic violence can have serious impacts on people who experience it, including physical, emotional and psychological harm, and can result in death.

6 Perpetrators of domestic violence are solely responsible for their use of violence and its impacts on other people.

7 Domestic violence is most often perpetrated by men against women with whom they are in an intimate partner relationship and their children; however, anyone can be a victim or perpetrator of domestic violence.

8 Domestic violence is a leading cause of homelessness for women and children.

9 Children who are exposed to domestic violence can experience serious physical, psychological and emotional harm.

10 Behaviour that constitutes domestic violence can also constitute a criminal offence.

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the Domestic and Family Violence Protection Act 2012.

2 Commencement

This Act commences on 17 September 2012.

Division 2 Main objects

3 Main objects

(1) The main objects of this Act are—

(a) to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and

(b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and

(c) to ensure that people who commit domestic violence are held accountable for their actions.

(2) The objects are to be achieved mainly by—

(a) allowing a court to make a domestic violence order to provide protection against further domestic violence; and

(b) giving police particular powers to respond to domestic violence, including the power to issue a police protection notice; and

(c) imposing consequences for contravening a domestic violence order or police protection notice, in particular, liability for the commission of an offence.

4 Principles for administering Act

(1) This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.

(2) Subject to subsection (1), this Act is also to be administered under the following principles—

(a) people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives should be minimised;

(b) to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under this Act;

(c) perpetrators of domestic violence should be held accountable for their use of violence and its impact on other people and, if possible, provided with an opportunity to change;

(d) if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics;

Examples of people who may be particularly vulnerable to domestic violence—

women

children

Aboriginal people and Torres Strait Islanders

people from a culturally or linguistically diverse background

people with a disability

people who are lesbian, gay, bisexual, transgender or intersex

elderly people

(e) in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;

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(f) a civil response under this Act should operate in conjunction with, not instead of, the criminal law.
2015 No. 34s 4Division 3 Interpretation

[...]

Division 1 Preliminary

7 Purpose of this part

- (1) This part explains how domestic violence is dealt with under this Act, including setting out some of the ideas that are important for an understanding of this Act.
- (2) In particular, this part defines particular words used in this Act, including, for example, what is domestic violence and the relationships that are protected by this Act.

Division 2 Domestic violence

8 Meaning of domestic violence

(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that—

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.

(2) Without limiting subsection (1), domestic violence includes the following behaviour—

- (a) causing personal injury to a person or threatening to do so;
- (b) coercing a person to engage in sexual activity or attempting to do so;
- (c) damaging a person's property or threatening to do so;
- (d) depriving a person of the person's liberty or threatening to do so;
- (e) threatening a person with the death or injury of the person, a child of the person, or someone else;
- (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
- (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
- (h) unauthorised surveillance of a person;
- (i) unlawfully stalking a person.

(3) A person who counsels or procures someone else to engage in behaviour that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.

(4) To remove any doubt, it is declared that, for behaviour mentioned in subsection (2) that may constitute a criminal offence, a court may make an order under this Act on the basis that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.

(5) In this section—

coerce, a person, means compel or force a person to do, or refrain from doing, something.

unauthorised surveillance, of a person, means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.

Examples of surveillance by using technology—

reading a person's SMS messages

monitoring a person's email account or internet browser history

monitoring a person's account with a social networking internet site

using a GPS device to track a person's movements

checking the recorded history in a person's GPS device

unlawful stalking see the Criminal Code, section 359B.

9 Meaning of associated domestic violence

Associated domestic violence means behaviour mentioned in section 8(1) by a respondent towards—

- (a) a child of an aggrieved; or
- (b) a child who usually lives with an aggrieved; or
- (c) a relative of an aggrieved; or
- (d) an associate of an aggrieved.

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10 Meaning of exposed to domestic violence

A child is exposed to domestic violence if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence.

Examples of being exposed to domestic violence—

- overhearing threats of physical abuse
- overhearing repeated derogatory taunts, including racial taunts
- experiencing financial stress arising from economic abuse
- seeing or hearing an assault
- comforting or providing assistance to a person who has been physically abused
- observing bruising or other injuries of a person who has been physically abused
- cleaning up a site after property has been damaged
- being present at a domestic violence incident that is attended by police officers

11 Meaning of emotional or psychological abuse

Emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

Examples—

- following a person when the person is out in public, including by vehicle or on foot
- remaining outside a person's residence or place of work
- repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent
- repeated derogatory taunts, including racial taunts
- threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent
- threatening to withhold a person's medication
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity

[...]

23 What orders can a court make to prevent domestic violence

(1) A court can make a domestic violence order against a respondent for the benefit of an aggrieved.

(2) A domestic violence order means—

- (a) a protection order; or
- (b) a temporary protection order.

(3) A temporary protection order is an order made in the period before a court decides whether to make a protection order for the benefit of an aggrieved.

(4) Sometimes, the court can make a domestic violence order even though the person against whom the order is made—

- (a) is not notified about an application for a domestic violence order; or
- (b) does not appear in court.

24 Who can a domestic violence order protect

(1) As well as the aggrieved, the following persons can be protected by a domestic violence order—

- (a) a child of the aggrieved;
- (b) a child who usually lives with the aggrieved;
- (c) a relative of the aggrieved;
- (d) an associate of the aggrieved.

(2) A child who usually lives with the aggrieved means a child who spends time at the residence of the aggrieved on a regular or on-going basis.

(3) An associate of the aggrieved means either of the following persons if it is reasonable to regard the person as an associate—

- (a) a person whom the aggrieved regards as an associate;
- (b) a person who regards himself or herself as an associate of the aggrieved.

[...]

(4) A person mentioned in subsection (1) is protected by being specifically named in the domestic violence order under section 52 or 53.

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(5) The person may be specifically named in the domestic violence order when it is made or at a later time if it is varied.

(6) The specifically named person is called a named person.

25 Who can apply for a protection order

(1) An application for a protection order can be made only by—

(a) an aggrieved; or

(b) an authorised person for an aggrieved; or

(c) a police officer under section 100(2)(a); or

(d) a person acting under another Act for the aggrieved.

[...]

(2) An authorised person for an aggrieved means—

(a) an adult authorised in writing by the aggrieved to appear on behalf of the aggrieved; or

(b) an adult whom the court believes is authorised by the aggrieved to appear on behalf of the aggrieved even though the authority is not in writing.

[...]

(3) A person who may make an application for a protection order under subsection (1) may make other applications or bring other proceedings under this Act in relation to a domestic violence order made because of the application for the protection order.

[...]

8.2.5. SOUTH AUSTRALIA

[Intervention Orders \(Prevention of Abuse\) Act, 2009 \(As amended\)](#) ²⁵

Part 1—Preliminary

1—Short title

This Act may be cited as the Intervention Orders (Prevention of Abuse) Act 2009.

3—Interpretation

(1) In this Act, unless the contrary intention appears—
abuse and act of abuse—see section 8;

ammunition has the same meaning as in the Firearms Act 2015;

associated order means a problem gambling order or tenancy order made in association with a final intervention order;

case manager means a person responsible for supervision of a defendant's participation in an intervention program;

child means a person who has not attained 18 years of age;

Children's Protection Act order means an order made under the Children's Protection Act 1993;

cognitive impairment includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);

(c) a mental illness;

contravene includes fail to comply;

Court means the Magistrates Court of South Australia;

defendant—see section 6;

domestic abuse—see section 8(8);

²⁵ Intervention Orders (Prevention of Abuse) Act 2009 (current), available at

[https://www.legislation.sa.gov.au/LZ/C/A/Intervention%20Orders%20\(Prevention%20of%20Abuse\)%20Act%202009.aspx](https://www.legislation.sa.gov.au/LZ/C/A/Intervention%20Orders%20(Prevention%20of%20Abuse)%20Act%202009.aspx) (last visited December 30, 2018).

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domestic partner means a person who is a domestic partner within the meaning of the Family Relationships Act 1975, whether declared as such under that Act or not;

domestic violence concern—see sections 15A and 29C;

Family Law Act order means an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the Family Law Act 1975 of the Commonwealth;

final intervention order means—

- (a) an interim intervention order (whether issued by a police officer or the Court) confirmed as a final intervention order by the Court under section 23; or
- (b) a final intervention order issued by the Court under section 23 in substitution for an interim intervention order;

firearm has the same meaning as in the Firearms Act 2015;

firearms terms—see section 14;

foreign intervention order means an order, notice or other form of requirement under the law of another State, a Territory of the Commonwealth or New Zealand declared by regulation to be a foreign intervention order;

interim intervention order means—

- (a) an interim intervention order issued by a police officer under section 18; or
- (b) an interim intervention order issued by the Court under section 21;

intervention order means—

- (a) an interim intervention order; or
- (b) a final intervention order,

as the case requires;

intervention program means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- (e) a combination of any 1 or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

intervention program manager means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

issuing authority—

- (a) in relation to an interim intervention order—means the police officer who, or the Court that, issues the interim intervention order; and
 - (b) in relation to a final intervention order—means the Court—
 - (i) that confirms the interim intervention order as a final intervention order under section 23; or
 - (ii) that issues the final intervention order under section 23 in substitution for an interim intervention order,
- (as the case may be);

[...]

4—Application of Act outside State

This Act applies to an act of abuse whether it takes place in or outside this State and an intervention order may be issued against a person resident in or outside this State.

Part 2—Objects of Act

5—Objects of Act

The objects of this Act are—

- (a) to assist in preventing domestic and non-domestic abuse, and the exposure of children to the effects of domestic and non-domestic abuse, by providing for—
 - (i) the issuing of intervention orders; and
 - (ii) the issuing of associated orders relating to problem gambling and tenancy agreements; and
 - (iii) the registration of foreign intervention orders; and
 - (iv) the enforcement of South Australian and foreign intervention orders; and
- (b) to provide special police powers of arrest, detention and search in connection with issuing, serving and enforcing intervention orders; and
- (c) to further protect persons suffering or witnessing domestic or non-domestic abuse by—

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- (i) providing for special arrangements for witnesses in proceedings under this Act; and
- (ii) imposing limitations on publishing reports about proceedings or orders under this Act.

Part 3—Intervention and associated orders

Division 1—General

6—Grounds for issuing intervention order

There are grounds for issuing an intervention order against a person (the defendant) if—

- (a) it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person; and
- (b) the issuing of the order is appropriate in the circumstances.

7—Persons for whose protection intervention order may be issued

- (1) An intervention order may be issued for the protection of—
 - (a) any person against whom it is suspected the defendant will commit an act of abuse; or
 - (b) any child who may hear or witness, or otherwise be exposed to the effects of, an act of abuse committed by the defendant against a person.
- (2) An intervention order may be issued for the protection of a person even if that person is not an applicant for the order and the application is not made on his or her behalf.
- (3) If an issuing authority proposes to intervene against a defendant for the protection of more than 1 person, it may do so by issuing a single intervention order or by issuing multiple intervention orders, as it considers appropriate in the circumstances.

8—Meaning of abuse—domestic and non-domestic

- (1) Abuse may take many forms including physical, sexual, emotional, psychological or economic abuse.
- (2) An act is an act of abuse against a person if it results in or is intended to result in—
 - (a) physical injury; or
 - (b) emotional or psychological harm; or
 - (c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or
 - (d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.
- (3) Emotional or psychological harm includes—
 - (a) mental illness; and
 - (b) nervous shock; and
 - (c) distress, anxiety, or fear, that is more than trivial.
- (4) Emotional or psychological harm—examples

Without limiting subsection (2)(b), an act of abuse against a person resulting in emotional or psychological harm may be comprised of any of the following:

- (a) sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity;
- (b) unlawfully depriving the person of his or her liberty;
- (c) driving a vehicle in a reckless or dangerous manner while the person is a passenger in the vehicle;
- (d) causing the death of, or injury to, an animal;
- (e) following the person;
- (f) loitering outside the place of residence of the person or some other place frequented by the person;
- (g) entering or interfering with property in the possession of the person;
- (h) giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;
- (i) publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;
- (j) communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person;
- (k) keeping the person under surveillance;
- (l) directing racial or other derogatory taunts at the person;

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- (m) threatening to withhold the person's medication or prevent the person accessing necessary medical equipment or treatment;
- (n) threatening to institutionalise the person;
- (o) threatening to withdraw care on which the person is dependent;
- (p) otherwise threatening to cause the person physical injury, emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or domestic autonomy or to cause damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

[...]

8.2.6. TASMANIA

[Family Violence Act, 2004 \(As amended\)](#) ²⁶

Family Violence Act 2004

An Act to provide for an integrated criminal justice response to family violence which promotes the safety of people affected by family violence

[Royal Assent 17 December 2004]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Family Violence Act 2004.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Objects of Act

In the administration of this Act, the safety, psychological wellbeing and interests of people affected by family violence are the paramount considerations.

4. Interpretation

In this Act, unless the contrary intention appears –

affected child means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence;

affected person means a person against whom family violence is directed;

Chief Clerk of Petty Sessions means the person holding office as the Chief Clerk of Petty Sessions under section 16 of the Justices Act 1959 ;

Director, MPES means the Director, Monetary Penalties Enforcement Services appointed under section 8 of the Monetary Penalties Enforcement Act 2005 ;

economic abuse means an offence in accordance with section 8 ;

emotional abuse or intimidation means an offence in accordance with section 9 ;

external family violence order means an order made by a court of New Zealand which has been made to prevent family violence;

Family Court order means an order made under Part 7 of the Family Law Act 1975 of the Commonwealth;

family relationship means a marriage or a significant relationship within the meaning of the Relationships Act 2003 , and includes a relationship in which one or both of the parties is between the ages of 16 and 18 and would, but for that fact, be a significant relationship within the meaning of that Act;

family violence means family violence as defined in section 7 ;

family violence offence means any offence the commission of which constitutes family violence;

FVO means a family violence order made under section 16 ;

harassing means doing any one or more of the following actions in respect of a particular person:

²⁶ Family Violence Act 2004 (version current from 12 December 2017 to date), available at <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2004-067> (last visited December 30, 2018).

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- (a) following the person;
- (b) keeping the person under surveillance;
- (c) loitering outside the residence or workplace of the person;
- (d) loitering outside a place that the person frequents;
- (e) entering or interfering with the property of the person;
- (f) sending offensive material to the person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the person;
- (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the person;
- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the person to be apprehensive or fearful;
- (i) contacting the person by postal, telephonic, electronic or any other means of communication;

interim FVO means an interim FVO made under section 23 ;

PFVO means a police family violence order made under section 14 ;

premises includes any, or any part of any, of the following (whether a public place or private property):

- (a) an area of land;
- (b) a building or structure (whether movable or immovable), including a residence;
- (c) a vehicle, vessel or aircraft;
- (d) a caravan or trailer;

property includes everything animate or inanimate that is capable of being owned;

rehabilitation program assessment means an assessment of the suitability of a person to take part in a structured treatment program designed to reduce the likelihood that a person who has committed a family violence offence will re-offend;

relevant Family Court order means, in relation to an FVO or a PFVO, a Family Court order relating to access between –

- (a) the person for whose benefit the FVO or PFVO is sought or made or the person against whom the FVO or PFVO is sought or made; and

- (b) a child who is a member of the family of either of those persons;

residential premises means residential premises within the meaning of the Residential Tenancy Act 1997 ;

residential tenancy agreement means a residential tenancy agreement within the meaning of the Residential Tenancy Act 1997 ;

risk screening means an assessment carried out by a police officer of the likelihood of the repetition or escalation of family violence;

safety audit means an audit carried out by a police officer of the physical and other measures immediately available to enhance the safety of an affected person or affected child and includes the preparation of a plan to implement those measures;

spouse or partner of a person means another person with whom the person is, or has been, in a family relationship.

5. Meaning of "court"

(1) Subject to subsection (2) , "court" means a court of summary jurisdiction within the meaning of the Justices Act 1959 .

(2) A court when constituted by one or more justices may only exercise the jurisdiction prescribed by rules of court made under section 144 of the Justices Act 1959 .

6. Act to prevail

Where there is an inconsistency between this Act and another Act, this Act prevails to the extent of that inconsistency.

PART 2 - Family violence offences

7. Family violence

In this Act –

family violence means –

- (a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:

- (i) assault, including sexual assault;
- (ii) threats, coercion, intimidation or verbal abuse;
- (iii) abduction;

- (iv) stalking within the meaning of section 192 of the Criminal Code ;

- (v) attempting or threatening to commit conduct referred to in subparagraph (i) , (ii) , (iii) or (iv) ; or

- (b) any of the following:

- (i) economic abuse;
- (ii) emotional abuse or intimidation;

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(iii) [Section 7 Amended by No. 32 of 2015, s. 4, Applied:06 Oct 2015] contravening an external family violence order, an interim FVO, an FVO or a PFVO; or

(c) [Section 7 Amended by No. 32 of 2015, s. 4, Applied:06 Oct 2015] any damage caused by a person, directly or indirectly, to any property –

(i) jointly owned by that person and his or her spouse or partner; or

(ii) owned by that person's spouse or partner; or

(iii) owned by an affected child.

8. Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

(a) coercing his or her spouse or partner to relinquish control over assets or income;

(b) disposing of property owned –

(i) jointly by the person and his or her spouse or partner; or

(ii) by his or her spouse or partner; or

(iii) by an affected child –

without the consent of the spouse or partner or affected child;

(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

9. Emotional abuse or intimidation

(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

(2) In this section –

a course of conduct includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.

9A. Limitation period for offences under section 8 or 9

A complaint for an offence against section 8 or 9 must be made against a person within 12 months from the day on which the action, or the last action, that made up the course of conduct to which the matter of complaint relates, occurred.

10. Power of police to enter certain premises

(1) A police officer may, without warrant, and using such force as is necessary, enter and remain on premises for such period as he or she considers reasonably necessary to prevent family violence –

(a) at the request of a person who apparently resides on the premises; or

(b) if the officer reasonably suspects that family violence is being, has been or is likely to be committed on those premises.

(2) A police officer who enters premises under subsection (1) may –

(a) arrest, without warrant, any person on those premises to facilitate the issue of a PFVO, or the making of an application for an FVO, in respect of that person; and

(ab) orally direct any person on the premises to remain on the premises in the company of the police officer, or another police officer stated in the direction, for as long as is reasonably necessary to conduct a search under subsection (3) in respect of that person; and

(b) remain on those premises in order to conduct a risk screening, safety audit or forensic examination with such assistance as is necessary and reasonable in the circumstances.

(2A) If a person is directed to remain on premises under subsection (2)(ab), a police officer may use such force as is reasonably necessary to detain the person and conduct a search under subsection (3).

(3) A police officer who enters premises under subsection (1) may, without warrant –

(a) search any person on those premises whom the officer reasonably suspects of having in his or her possession any object which the police officer reasonably suspects has been used, or may be used, to commit a family violence offence or has been created in the commission of a family violence offence; and

(b) search those premises for the presence of any such object; and

(c) seize and retain any such object.

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- (4) If a police officer reasonably suspects that a person has committed family violence and in so acting has used or created an object, the officer may, without warrant and using such force as is necessary –
- (a) enter any premises on which the officer reasonably suspects that the object may be found; and
 - (b) search those premises for the object; and
 - (c) search any person who the officer reasonably suspects has possession of the object; and
 - (d) seize and retain the object; and
 - (e) arrest, without warrant, any person on those premises to facilitate the issue of a PFVO, or the making of an application for an FVO, in respect of that person.
- (5) Where a police officer reasonably suspects that –
- (a) a person has committed, or is likely to commit, family violence; and
 - (b) the person is in possession or control of a firearm –
- the police officer may enter premises, without warrant and using such force as is reasonably necessary in the circumstances, in order to search for and seize the firearm.
- (6) On an application made by a police officer or by any person who claims to be the owner of an object seized and detained under subsection (2A) , (3) , (4) or (5) , a court may order that the object –
- (a) be forfeited to the Crown; or
 - (b) be destroyed; or
 - (c) be returned to the owner; or
 - (d) be otherwise disposed of in such manner as the court thinks fit.
- (7) If a police officer reasonably suspects that a person has committed family violence, the officer, without warrant and using such force as is reasonably necessary in the circumstances, may –
- (a) enter any premises on which the officer reasonably suspects the person may be found; and
 - (b) search those premises for the person; and
 - (c) arrest the person.
- (7A) For the purpose of exercising his or her powers under this section, a police officer may authorise any other person, including another police officer, to assist the police officer as is necessary in the circumstances.
- (7B) A person authorised under subsection (7A) to assist a police officer may use such force as is reasonably necessary in the circumstances to so assist.
- (7C) A person must comply with a direction given to the person by a police officer under subsection (2)(ab) .
- Penalty: Fine not exceeding 80 penalty units.
- (8) In this section –
- object means any matter, material or thing and includes firearms.

11. Arrest and detention

- (1) Where a police officer reasonably suspects that a person has committed family violence, the officer may arrest that person without a warrant.
- (2) Subject to subsection (4) , a person taken into custody under this section or section 10 must be brought before a court as soon as practicable after being taken into custody unless released unconditionally or under section 34 of the Justices Act 1959 .
- (3) Subject to subsection (4) of this section, section 4 of the Criminal Law Detention and Interrogation Act 1995 applies to a person taken into custody under subsection (1) .
- (4) A police officer may detain a person taken into custody under subsection (1) for a period reasonably required to do any or all of the following:
- (a) determine the charge or charges which should be laid in relation to the family violence;
 - (b) carry out a risk screening or safety audit;
 - (c) implement the measures identified by a safety audit where it is practical to do so;
 - (d) make and serve a PFVO or an application for an FVO.
- (5) In deciding whether to arrest a person under subsection (1) , the police officer is to give priority to the safety, wellbeing and interests of any affected person or affected child.
- (6) A police officer may detain a person for a period reasonably required to enable the police officer to determine the status of a non-local DVO, as defined in the Domestic Violence Orders (National Recognition) Act 2016 .

[...]

[Tasmania Criminal Code Act, 1924 \(As amended\)](#) ²⁷

²⁷ Tasmania, Criminal Code Act 1924 (4 April 1924, version current from 12 December 2017 to date), available at <https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1924-069> (last visited December 30, 2018).

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SCHEDULE 1

PART I - Introductory

Chapter 20 -

20. When compulsion a defence

(1) Except as provided by section 64, compulsion by threats of immediate death or grievous bodily harm, from a person actually present at the commission of the offence, shall be an excuse for the commission, by a person subject to such threats, and who believes that such threats will be executed, and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion, of any offence other than treason, murder, piracy, offences deemed to be piracy, attempting to murder, rape, forcible abduction, aggravated armed robbery, armed robbery, aggravated robbery, robbery, causing grievous bodily harm, and arson.

(2) A married woman shall be in the same position as regards compulsion by her husband as if she were unmarried.

[...]

8.2.7. VICTORIA

[Family Violence and Protection Act, 2008](#)²⁸

Family Violence and Protection Act 2008

Preamble

In enacting this Act, the Parliament recognises the following principles—

- (a) that non-violence is a fundamental social value that must be promoted;
- (b) that family violence is a fundamental violation of human rights and is unacceptable in any form;
- (c) that family violence is not acceptable in any community or culture;
- (d) that, in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect.

In enacting this Act, the Parliament also recognises the following features of family violence—

- (a) that while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons;
- (b) that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;
- (c) that family violence—
 - (i) affects the entire community; and
 - (ii) occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
- (d) that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse;
- (e) that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

The Parliament of Victoria therefore enacts:

SECT 1 Purpose

The purpose of this Act is to—

- (a) maximise safety for children and adults who have experienced family violence; and
- (b) prevent and reduce family violence to the greatest extent possible; and
- (c) promote the accountability of perpetrators of family violence for their actions.

SECT 2 How purpose is to be achieved

This Act aims to achieve its purpose by—

- (a) providing an effective and accessible system of family violence intervention orders and family violence safety notices; and
- S. 2(ab) inserted by No. 23/2017 s. 5.
- (ab) providing for the sharing of information that is relevant to assessing and managing a risk of family violence; and

²⁸ Family Violence and Protection Act, No. 52 (23 September 2008), available at

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/083D69EC540CD748CA2574CDO015E27C/\\$FILE/08-52a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/083D69EC540CD748CA2574CDO015E27C/$FILE/08-52a.pdf) (last visited December 30, 2018).

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S. 2(b) amended by No. 23/2017 s. 15(a).

(b) creating offences for contraventions of family violence intervention orders and family violence safety notices; and

S. 2(c) inserted by No. 23/2017 s. 15(b).

(c) providing a framework for achieving consistency in family violence risk assessment and family violence risk management.

[...]

SECT 5 Meaning of family violence

(1) For the purposes of this Act, family violence is—

(a) behaviour by a person towards a family member of that person if that behaviour—

(i) is physically or sexually abusive; or

(ii) is emotionally or psychologically abusive; or

(iii) is economically abusive; or

(iv) is threatening; or

(v) is coercive; or

(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

[...]

(2) Without limiting subsection (1), "family violence" includes the following behaviour—

(a) assaulting or causing personal injury to a family member or threatening to do so;

(b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;

(c) intentionally damaging a family member's property, or threatening to do so;

(d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;

(e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

(3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

SECT 6 Meaning of economic abuse

For the purposes of this Act, economic abuse is behaviour by a person (the first person) that is coercive, deceptive or unreasonably controls another person (the second person), without the second person's consent—

(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.

[...]

SECT 7 Meaning of emotional or psychological abuse

For the purposes of this Act, emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

[...]

SECT 8 Meaning of family member

(1) For the purposes of this Act, a "family member", in relation to a person (a "relevant person"), means—

(a) a person who is, or has been, the relevant person's spouse or domestic partner; or

(b) a person who has, or has had, an intimate personal relationship with the relevant person; or

(c) a person who is, or has been, a relative of the relevant person; or

(d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or

(e) a child of a person who has, or has had, an intimate personal relationship with the relevant person.

(2) For the purposes of subsections (1)(b) and (1)(e), a relationship may be an intimate personal relationship whether or not it is sexual in nature.

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(3) For the purposes of this Act, a "family member" of a person (the "relevant person") also includes any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship, including the following—

- (a) the nature of the social and emotional ties between the relevant person and the other person;
- (b) whether the relevant person and the other person live together or relate together in a home environment;
- (c) the reputation of the relationship as being like family in the relevant person's and the other person's community;
- (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;
- (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;
- (f) any financial dependence or interdependence between the relevant person or other person;
- (g) any other form of dependence or interdependence between the relevant person and the other person;
- (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person;
- (i) the provision of sustenance or support between the relevant person and the other person.

Example

A relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members.

(4) For the purposes of subsection (3), in deciding whether a person is a family member of a relevant person the relationship between the persons must be considered in its entirety.

SECT 9 Meaning of domestic partner

(1) For the purposes of this Act, "domestic partner" of a person means—

- (a) a person who is in a registered relationship within the meaning of the Relationships Act 2008 with the person; or
- (b) an adult to whom the person is not married but with whom the person is in a relationship as a couple where one or each of the persons provides personal or financial commitment and support of a domestic nature for the support of the other person.

(2) For the purposes of subsection (1)(b), the following is irrelevant—

- (a) the genders of the persons;
- (b) whether or not the persons are living under the same roof.

(3) Also, for the purposes of subsection (1)(b), a person is not the domestic partner of another person—

- (a) if the person provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation, including a government or non-government agency, a body corporate or a charitable or benevolent organisation; or
- (b) merely because they are co-tenants.

(4) In deciding whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the Relationships Act 2008 as may be relevant in a particular case.

SECT 10 Meaning of relative

(1) For the purposes of this Act, a relative of a person—

(a) means any of the following, whether of the whole blood or half-blood or by marriage, and whether or not the relationship depends on adoption of the person—

- (i) the person's father, mother, grandfather or grandmother;
- (ii) the person's son, daughter, grandson or granddaughter;
- (iii) the person's brother or sister;
- (iv) the person's uncle or aunt;
- (v) the person's nephew or niece;
- (vi) the person's cousin; and

(b) for an Aboriginal or Torres Strait Islander person—includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative.

(2) For domestic partners, a "relative" includes a person who would be a relative if the domestic partners were married to each other.

SECT 11 Meaning of family violence intervention order, final order and interim order

(1) For the purposes of this Act, a family violence intervention order means—

- (a) a final order referred to in subsection (2); or
- (b) an interim order referred to in subsection (3).

[...]

[Family Violence Protection Amendment Act, 2017](#) ²⁹

1 Purposes

The main purposes of this Act are—

(a) to amend the Family Violence Protection Act 2008—

(i) to require the court to make a family violence intervention order for a child if the court makes an order for an affected family member; and

(ii) to amend requirements for explaining family violence intervention orders; and

(iii) to provide for a court to order alternative service; and

(iv) to extend the maximum duration of family violence safety notices; and

(v) to make other miscellaneous amendments to that Act; and

(b) to amend the Coroners Act 2008—

(i) to establish the Victorian Systemic Review of Family Violence Deaths unit and to provide for its objectives and functions; and

(ii) to enable the Coroners Court to include information relating to family violence intervention orders or recognised domestic violence orders in its published findings, recommendations and reports; and

(c) to amend the County Court Act 1958 and the Magistrates' Court Act 1989 to give the Koori Court Division of each of those courts jurisdiction in relation to certain family violence matters; and

(d) to amend the Crimes Act 1958 to provide that a prosecution for a certain offence must not be commenced without the consent of the Director of Public Prosecutions; and

(e) to amend the Criminal Procedure Act 2009 to provide for the use of recorded evidence-in-chief by certain witnesses in certain criminal proceedings; and

(f) to amend the Public Health and Wellbeing Act 2008 in relation to the inclusion of family violence measures in municipal public health and wellbeing plans; and

(g) to repeal the Family Violence Protection Amendment Act 2014; and

(h) to make consequential amendments relating to the National Domestic Violence Order Scheme Act 2016.

[...]

[Prevention of Family Violence Act, 2018](#) ³⁰

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

(a) to establish the Family Violence Prevention Agency and to provide for the functions, powers and duties of the Agency; and

(b) to establish the Board of the Family Violence Prevention Agency and to provide for the functions of the Board; and

(c) to provide for the appointment of the chief executive officer of the Family Violence Prevention Agency.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 18 June 2019, it comes into operation on that day.

[...]

4 Guiding principles

(1) It is the intention of Parliament that a function, duty or program under this Act be carried out in a way that is consistent with the following principles—

(a) that all persons should live in a safe and equal society free from violence;

(b) that gender inequality within society is connected to the existence of discrimination, family violence and violence against women and the prevention of these forms of violence contributes to a more equal society;

(c) that equality and respect should be promoted across the community, including wherever people live, work, study, learn, engage and play;

²⁹ Family Violence and Protection Amendment Act 2017, No. 19 of 2017 (16 May 2017), available at

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/C94BEB3E0B1834A3CA258122000DC2F0/\\$FILE/17-019aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/C94BEB3E0B1834A3CA258122000DC2F0/$FILE/17-019aa%20authorised.pdf) (last visited December 30, 2018).

³⁰ Prevention of Family Violence Act 2018, No. 41 (11 September 2018), available at

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/758F550767CA974ECA258305000D00FF/\\$FILE/18-041aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/758F550767CA974ECA258305000D00FF/$FILE/18-041aa%20authorised.pdf) (last visited December 30, 2018).

- (d) that the contribution and participation of all persons in the social, cultural, economic and political life of society should be promoted;
- (e) that gender equality and respectful relationships should be promoted.
- (2) The Parliament does not intend by this section to create in any person any legal right or give rise to any civil cause of action.

[...]

8.2.8. WESTERN AUSTRALIA

[Restraining Orders Act, 1997 \(As amended\)](#) ³¹

[...]

An Act to provide for orders to restrain people from committing family violence or personal violence by imposing restraints on their behaviour and activities, and for related purposes.

[Long title amended by No. 38 of 2004 s. 4; No. 49 of 2016 s. 4.]

[...]

4. Terms used: family relationship and family member

(1) In this Act —

family relationship means a relationship between 2 persons —

- (a) who are, or were, married to each other; or
 - (b) who are, or were, in a de facto relationship with each other; or
 - (c) who are, or were, related to each other; or
 - (d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;
- or
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
 - (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

(2) In subsection (1) —

other personal relationship means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

related, in relation to a person, means a person who —

- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
- (b) is related to the person's —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

(3) In this Act a person is a ***family member*** of another person if the persons are in a family relationship.

[Section 4 inserted by No. 38 of 2004 s. 6; amended by No. 49 of 2016 s. 6.]

³¹ Restraining Orders Act 1997 (consolidated version current as at 12 December 2018), available at https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a1817_currencies.html (last visited December 30, 2018).

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[...]

8.2.8.1.1 5A. Term used: family violence

- (1) A reference in this Act to ***family violence*** is a reference to —
- (a) violence, or a threat of violence, by a person towards a family member of the person; or
 - (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —
- (a) an assault against the family member;
 - (b) a sexual assault or other sexually abusive behaviour against the family member;
 - (c) stalking or cyber-stalking the family member;
 - (d) repeated derogatory remarks against the family member;
 - (e) damaging or destroying property of the family member;
 - (f) causing death or injury to an animal that is the property of the family member;
 - (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
 - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
 - (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
 - (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
 - (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
 - (l) causing any family member who is a child to be exposed to behaviour referred to in this section.
- (3) For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.

[Section 5A inserted by No. 49 of 2016 s. 7.]

[...]

Part 1B — Family violence restraining order

[Heading inserted by No. 49 of 2016 s. 14.]

10A. Objects

The objects of this Part are as follows —

- (a) to maximise the safety of persons who have experienced, or are at risk of, family violence;
- (b) to prevent, or reduce to the greatest extent possible, the incidence and consequences of family violence;

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- (c) to protect the wellbeing of children by preventing them from being subjected or exposed to family violence;
- (d) to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others;
- (e) to make perpetrators of family violence accountable to the court for contraventions of court-imposed restrictions designed to prevent them from committing further family violence.

[Section 10A inserted by No. 49 of 2016 s. 14.]

10B. Principles to be observed in performing functions in relation to FVROs

- (1) In performing a function under this Act relating to FVROs, a person, court or other body must have regard to the following —
 - (a) the need to ensure that persons at risk of family violence are protected from that violence;
 - (b) the need to prevent behaviour that could reasonably be expected to cause a person to apprehend that they will have family violence committed against them;
 - (c) the particular need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being subjected or exposed to family violence;
 - (d) that perpetrators of family violence are solely responsible for that violence and its impact on others and should be held accountable accordingly;
 - (e) that complex emotional factors arising from coercion, control and fear often make it difficult for victims of family violence to report the violence or leave a family relationship in which family violence is being committed;
 - (f) the need to understand the impact of factors such as culture (including Aboriginal and Torres Strait Island culture), language, sexual orientation, gender identity, age, disability and remoteness of location in reporting family violence or leaving a family relationship in which family violence is being committed;
 - (g) that perpetrators of family violence who are children have special needs and that these must be taken into account;
 - (h) the need to identify, to the extent possible, the person or persons in a family relationship most in need of protection from family violence, including in situations where 2 or more family members are committing that violence;
 - (i) the need to recognise that perpetrators of family violence might seek to misuse the protections available under this Act to further their violence, and the need to prevent that misuse;
 - (j) that in order to encourage victims of family violence to report that violence and seek help, proceedings under this Act should be conducted in a way that treats victims with respect and dignity and endeavours to reduce the degree to which victims might be subject to re-traumatisation during those proceedings.
- (2) The person, court or other body is to have regard to the matters set out in subsection (1)(a), (b) and (c) as being of primary importance.

[Section 10B inserted by No. 49 of 2016 s. 14.]

[...]

10G. Restraints on respondent

- (1) In making an FVRO a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —

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- (a) committing family violence against the person seeking to be protected; or
 - (b) if the person seeking to be protected by the order is a child, exposing a child to family violence committed by the respondent; or
 - (c) behaving in a manner that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them.
- (2) Without limiting the restraints that may be imposed under subsection (1), a court may restrain the respondent from doing all or any of the following —
 - (a) being on or near premises where the person seeking to be protected lives or works;
 - (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the person seeking to be protected;
 - (d) stalking or cyber-stalking the person seeking to be protected;
 - (e) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
 - (f) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if the respondent is the owner of, or has a right to be in possession of, the property;
 - (g) distributing or publishing, or threatening to distribute or publish, intimate personal images of the person seeking to be protected;
 - (h) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (g).
- (3) A restraint may be imposed on the respondent on such terms as the court considers appropriate.
- (4) An FVRO may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.
- (5) If an FVRO imposes a restraint referred to in subsection (4), or for some other reason the court is satisfied that it is necessary to do so, the court is to ensure that the order makes provision for the person seeking to be protected, or the respondent, to recover personal property, and other property of a kind prescribed in the regulations, from a place specified in the order —
 - (a) in the manner set out by the court in the order; or
 - (b) in accordance with the procedures set out in the regulations.
- (6) An FVRO may inform the respondent that certain behaviour and activities are unlawful.

[Section 10G inserted by No. 49 of 2016 s. 14.]

[...]

Part 1C — Behaviour management order

[Heading inserted by No. 49 of 2016 s. 14.]

[...]

10J. Objects

The objects of this Part are to provide for a court that has made a final order that is an FVRO to make an additional order —

- (a) to assess the eligibility of the respondent for a programme designed —

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- (i) to encourage the respondent to accept responsibility for the respondent's family violence and the effect it has on others; and
 - (ii) to encourage the respondent to stop committing further family violence;
- and
- (b) if appropriate, to require the respondent to attend the programme.

[Section 10J inserted by No. 49 of 2016 s. 14.]

[...]

Part 2A — Provisions for FVRO and VRO

[Heading inserted by No. 49 of 2016 s. 22.]

[...]

Division 2 — Telephone applications

[...]

19. How to make telephone application

An application under this Division for an FVRO or VRO —

- (a) is to be made to an authorised magistrate; and
- (b) may be made by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods; and
- (c) need not be in a particular form.

[Section 19 amended by No. 49 of 2016 s. 28.]

20. When telephone application may be heard

- (1) An authorised magistrate may hear a telephone application if the authorised magistrate is satisfied that —
 - (a) it would not be practical for an application for an FVRO or VRO to be made in person because of —
 - (i) the time when, or the location at which, the behaviour complained of occurred, is occurring or is likely to occur; or
 - (ii) the urgency with which the order is required;
 - or
 - (b) there is some other factor that justifies making an FVRO or VRO as a matter of urgency and without requiring the applicant to appear in person before a court.
- (2) If an authorised magistrate is not satisfied of those matters, the authorised magistrate is to dismiss the application.
- (3) The dismissal of a telephone application under subsection (2), or the failure by a police officer to make a police order, does not prevent an application for an FVRO or VRO being made in person in relation to the same facts.

[Section 20 amended by No. 38 of 2004 s. 18(5); No. 49 of 2016 s. 29.]

21. How hearing to be conducted

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- (1) The hearing of a telephone application may be conducted by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods, as the authorised magistrate considers appropriate.

[...]

9. AUSTRIA

[Police Security Law, 1993 \(As amended\)](#)³²

§38a Prohibition to enter and expulsion order for the protection from violence

(1) The police departments shall have the power to prohibit a person, on the basis of certain facts, in particular in case of a previous dangerous attack, when it is believed there is an immediate danger to life, health or freedom;

1. from entering a residence in which a vulnerable person lives and their immediate surroundings or

[...]

(2) In the case of a prohibition to enter order, the organs of the police shall

1. inform the person in danger of the area to which the prohibition does not apply, the scope of the prohibition on access pursuant to paragraph 1 (1) being determined in accordance with the requirements of effective preventive protection,
2. expel the perpetrator from the area covered by the prohibition of entry pursuant to paragraph 1 in case he refuses to leave this area
3. confiscate all the keys to the residence covered by the prohibition of entry order pursuant to paragraph 1 still in the perpetrator's possession
4. give him the opportunity to bring with him urgently needed items of personal need and to find out about the lodging possibilities he might have.

In the event of an expulsion order from one's home, particular care must be taken to ensure that this interference with the private life of the person concerned preserves the proportionality (§ 29). If the need arises for the person concerned to visit the dwelling or a facility referred to in paragraph 1 subparagraph 2 which he is forbidden to enter, he may do so only in the presence of a police officer.

(3) The departments of the police services are obliged to require from the offender the declaration of a point of delivery for the purpose of notification of suspension of the prohibition of access, the charge for a preventive legal explanation (para 6a) or an injunction under §§ 382b and 382e EO. If he fails to do so, the delivery of such documents may be obtained by depositing without prior delivery attempt until such time as an announcement is made. The offender must be alerted to the consequences.

(4) The police are further obliged to inform:

1. the endangered persons of the possibility of an interim injunction under §§ 382b and 382e EO and of suitable victim protection institutions (§ 25 Abs. 3) and
2. if minors are at risk, immediately
 - a. the locally responsible child and youth welfare carrier according to § 37 Federal Child and Youth Welfare Act 2013 (B-KJHG 2013), BGBl. I Nr. 69, and
 - b. the head of a facility pursuant to para. 1 item 2 for which the prohibition on entry has been imposed

(5) In the documentation of the order of a prohibition to enter not only to the relevant circumstances for the intervention, but also to take into account those for a procedure according to §§ 382b and 382e EO or for a risk assessment within the meaning of § 22 B-KJHG 2013 by the competent child and youth welfare agency

(6) The prohibition to enter order shall be announced to the safety authority immediately and shall be reviewed within 48 hours. If the safety authority finds that the prohibition on restraint should not have been ordered, it must immediately lift that prohibition; the endangered person must be informed without delay that the prohibition to enter is lifted; the cancellation of the prohibition to enter as well as the information of the endangered person have to be notified verbally or in writing by personal delivery. The keys accepted in accordance with para. 2 are to be removed from the perpetrator with the revocation

³² Police Security Law (Sicherheitspolizeigesetz) (1 May 1993, as amended up to 2018), available at <https://www.jusline.at/gesetz/spg/paragraf/38a> (last visited December 30, 2018). Unofficial translation by Compendium team.

of the prohibition to enter, in the case of an application for the issuance of an interim injunction under §§ 382b and 382e EO at the ordinary court

(6a) If the prohibition to enter pursuant to paragraph 6 is not waived, the perpetrator may be summoned by the police during an upright prohibition to enter (paragraph 8) to demonstrably be instructed about law-abiding behavior, if this intervention seems necessary because of the personality of the offender or the circumstances (preventive legal information). § 19 AVG applies.

(7) Insofar as a prohibition of access pursuant to para 1 no. 2 is imposed together with a prohibition on access pursuant to para 1 no. 1, the former may also be ordered for the local sphere of action of another security authority (sections 8 and 9); this must be notified immediately. The execution beyond the review of the prohibition of entry (paragraph 6) is incumbent on the respectively locally responsible safety authority.

(8) Compliance with a barring order must be checked at least once during the first three days of its validity by police organs. The prohibition of access ends two weeks after it has been ordered. If the police inform the ordinary court about the submission of an application for an injunction pursuant to Sections 382b and 382e EO within this period, the prohibition on access shall be extended until the date of notification of the decision of the ordinary court to the defendant, but no longer than four weeks from the order. If the application is withdrawn, the barring order ends two weeks after it has been ordered, if the application is withdrawn after the renewal of the prohibition, as soon as the police becomes aware of the withdrawal by notice from the ordinary court.

(9) The ordinary court must notify the locally competent police office of the submission of an application for an injunction pursuant to §§ 382b and 382e EO and its scope as well as any withdrawal.

Civil Procedure Act, 2009 ³³

§ 382b EO Protection against violence in residences

1. A court or tribunal can order a person who harms another person by a physical attack, a threat of such or a behavior that compromises another person's mental health that makes further cohabitation unreasonable, at the request of the harmed person:

1. to apply for the abandonment of the residence and its immediate surroundings; and
 2. to prohibit the return to the residence and its immediate surroundings if the residence serves to satisfy the applicant's urgent requirement of accommodation.
2. In the case of preliminary injunctions pursuant to (1), no time limit shall be set to bring the action (section 391 (2)) if the injunction is granted for a maximum of six months.
3. Main proceedings within the meaning of Section 391 (2) may be proceedings for divorce, suspension or annulment of marriage, proceedings for the division of marital property and marital savings and procedures for clarifying the right to use the residence.

§ 382c Procedure and Ruling

1. The defendant's hearing prior to the injunction pursuant to § 382b paragraph 1 shall in particular be disregarded if the defendant poses an imminent threat to the defendant. This can be mainly a result of a report from the police which the Court has requested or ex officio. The police is obliged to send such reports to the courts without delay. However, if the application is made without unnecessary delay after a ban (§ 38a para. 7 SPG), it must be delivered to the defendant immediately.
2. If the applicant does not request anything else, the order to leave the residence is, to be delivered to the defendant by the enforcement forces during the execution. The date thereof must be notified to the applicant.
3. The content of the decision, which shall decide on the application of an interim injunction pursuant to § 382b, and of a decision repealing the injunction, shall also be immediately communicated to:

In the territory of a municipality for which the state Police Department is at the same time the police of the first instance, the State Police Department, otherwise the competent local district administrative authority which acts as the police,

If one of the parties is a minor, the locally responsible child and youth support institution.

If the defendant has notified his location to the public security authorities on the grounds of an expulsion pursuant to § 38a paragraph 3 SPG, this shall be deemed to be the issuing location for the court proceedings. If the defendant has refrained from making such a notification despite having been informed of the legal consequences, the procedure may be carried out in the

³³ Civil Procedural Law - Enforcement Act (Executions Ordnung) (1 June 2009), available online at <https://www.jusline.at/gesetz/eo/paragraf/382b>, last visited December 30, 2018). Unofficial translation by Compendium team.

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proceedings relating to the injunction by filing for as long as possible without prior delivery attempt (§ 8 and 23 Delivery Act) until a issuing location is notified to the court.

§ 382d Execution

1. Interim injunctions pursuant to § 382b are to be executed immediately ex officio or upon request.
2. In the case of an interim injunction pursuant to § 382b abs. 1 EO, the executing body must expulse the defendant from the residence and remove all keys to the apartment and be brought to court. It shall provide the defendant with the opportunity to carry his personal valuables and documents, as well as those things which serve his sole personal use or the exercise of his profession.
3. If the defendant is not present during the execution of an interim injunction pursuant to § 382b para 1, the enforcement force shall, on his request, give him, within two days, the opportunity to collect his belongings from the residence in the sense of paragraph 2. The defendant must be informed by the enforcement force about this right by leaving a message on the residence door.
4. The court may also entrust the enforcement force with the execution of an interim injunction pursuant to § 382b with the members of the police services available to them. In this case, these institutions, as enforcement forces, shall be obliged, at the request of the applicant, to execute the injunction in accordance with § 382b by direct orders and coercive measures and to report on it to the court that the injunction order.

§ 382e General Protection Against Violence

(1) A court or tribunal can order a person who harms another person by a physical attack, a threat of such or a behavior that compromises another person's mental health that makes further cohabitation unreasonable, at the request of the harmed person:

1. To prohibit the stay at designated locations and
2. To avoid meeting and having contact with the applicant

In so far this does not contravene the serious interests of the defendant.

(2) In the case of temporary injunctions pursuant to para. 1, no time limit for bringing the action (§ 391 para. 2) shall be determined if the provisional injunction is taken for a maximum of one year. The same applies to an extension of the temporary injunction after the defendant has violated it.

(3) If a temporary injunction pursuant to para. 1 is passed together with a temporary injunction pursuant to § 382b para. 1, § 382b para. 3 and para. 382c para. 4 shall apply mutatis mutandis.

(4) The court may entrust the police with the execution of temporary injunctions pursuant to para. Section 382d (4) shall be applied mutatis mutandis. In addition, temporary injunctions pursuant to para. 1 are to be carried out in accordance with the provisions of the third section of the first part.

[...]

§ 382g Protection from encroachments of the private sphere

(1) The right to protection from encroachments of the private sphere can be secured in particular by the following means:

1. Prohibition of personal contact and prohibition of persecution of the vulnerable party;
2. Prohibition of written, telephone or other contact,
3. Prohibition of residence at designated places,
4. Prohibition of the transfer and dissemination of personal data and photographs of the party at risk;
5. Prohibition to order goods or services using personal data of the party at risk from a third party,
6. Prohibition of inducing a third party to take up contacts with the vulnerable parties

(2) In case of interim injunctions pursuant to (1) subparagraphs 1 to 6, no time limit shall be set for bringing the action (section 391 (2)) if the injunction is granted for a maximum of one year. The same applies to an extension of the injunction following the infringement by the defendant.

(3) The court may entrust the enforcement of temporary injunctions pursuant to paragraph 1 items 1 and 3 to the police. Section 382d (4) shall apply mutatis mutandis. For the rest, temporary injunctions pursuant to paragraph 1 shall be executed in accordance with the provisions of the third section of the first part.

[Second Protection Against Violence Act, 2009](#) ³⁴

ARTICLE I - CHANGE OF THE EXECUTION ORDER

³⁴ Second Protection Against Violence Act, Law Nr: GP XXIV IA 271/A AB 106 S. 16 BR: 8072 AB 8085 S. 768 (8 April 2009), available at https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_40/BGBLA_2009_I_40.pdf#sig (last visited December 30, 2018). Unofficial translation by Compendium team.

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The execution order, No. 79/1896, last amended by the Amendment Order Amendment 2008, Federal Law Gazette I No. 37/2008, is amended as follows:

1. § 382b including heading reads:

"Protection against violence in residences

§ 382b. (1) A court or tribunal can order a person who harms another person by a physical attack, a threat of such or a behavior that compromises another person's mental health that makes further cohabitation unreasonable, at the request of the harmed person:

1. to apply for the abandonment of the residence and its immediate surroundings; and
2. to prohibit the return to the residence and its immediate surroundings if the residence serves to satisfy the applicant's urgent requirement of accommodation.

(2) In the case of preliminary injunctions pursuant to (1), no time limit shall be set to bring the action (section 391 (2)) if the injunction is granted for a maximum of six months.

(3) Main proceedings within the meaning of Section 391 (2) may be proceedings for divorce, suspension or annulment of marriage, proceedings for the division of marital property and marital savings and procedures for clarifying the right to use the residence. "

1. The previous § 382e receives the paragraph designation § 382h.

2. The following § 382e including the heading is inserted:

General protection against violence

§ 382e. (1) A court or tribunal can order a person who harms another person by a physical attack, a threat of such or a behavior that compromises another person's mental health that makes further meetings unreasonable, at the request of the harmed person

1.To prohibit the person to stay at designated places and

2.To avoid meeting and contacting the applicant,

In so far this does not contravene the serious interests of the defendant.

(2) In the case of temporary injunctions pursuant to para. 1, no time limit for bringing the action (§ 391 para. 2) shall be determined if the provisional injunction is taken for a maximum of one year. The same applies to an extension of the temporary injunction after the defendant has violated it.

(3) If a temporary injunction pursuant to para. 1 is passed together with a temporary injunction pursuant to § 382b para. 1, § 382b para. 3 and para. 382c para. 4 shall apply mutatis mutandis.

(4) The court may entrust the police with the execution of temporary injunctions pursuant to para. Section 382d (4) shall be applied mutatis mutandis. In addition, temporary injunctions pursuant to para. 1 are to be carried out in accordance with the provisions of the third section of the first part.

Section 382g (2) and (3) read:

"(2) In the case of interim injunctions pursuant to (1) subparagraphs 1 to 6, no time limit shall be set for bringing the action (section 391 (2)) if the injunction is granted for a maximum of one year. The same applies to an extension of the injunction following the infringement by the defendant.

(3) The court may entrust the enforcement of temporary injunctions pursuant to paragraph 1 items 1 and 3 to the police.

Section 382d (4) shall apply mutatis mutandis. For the rest, temporary injunctions pursuant to paragraph 1 shall be executed in accordance with the provisions of the third section of the first part. "

In Section 387 (3) the last sentence reads:

"If only a temporary injunction pursuant to § 382e is sought, then the competent court shall be the district court of the district in which the petitioner has his or her general place of jurisdiction in disputes."

The following paragraph 4 is added to section 387:

"(4) By way of derogation from subsection (2), in the cases referred to there, an injunction pursuant to section 382g is the responsibility of the district court, in which the party at risk has its general place of jurisdiction in disputes."

Section 390 (4) reads:

"(4) The granting of a temporary injunction pursuant to § 382 (1) (8) lit. a, §§ 382a, 382b, 382e or 382g cannot be made dependent on a security deposit. "

Section 393 (2) reads:

"(2) In the proceedings for temporary injunctions under §§ 382b, 382e and 382g, the cost compensation obligation is governed by the provisions of the Code of civil procedure."

[...]

After § 75 the following § 75a is inserted:

"§ 75a. (1) A party may refrain from specifying its place of residence in written submissions if it entertains a legitimate interest in secrecy and names a representative; the place of residence is to be announced to the court in a separate written statement. (2) The information provided by the party on the place of residence shall be kept secret by the court. Documents containing details of the place of residence of the party must also be submitted anonymously by the party. Of all other documents containing such information, the court shall produce an anonymized copy. The originals should also be kept locked and stored in a suitable place. These parts are excluded from the right of inspection of the parties. (3) At the request of the opposing party, the court shall notify the opposing party of the place of residence if the legitimate interest of the opposing party in the claim outweighs the interests of secrecy. (4) The court shall decide on the applications under subsections (1) and (3) without contestable decision.

[...]

ARTICLE V - AMENDMENT OF THE CRIMINAL CODE

The Criminal Code, Federal Law Gazette No. 60/1974, last amended by the Federal Law No. 109/2007, is amended as follows:

[...]

After section 107a the following § 107b including the heading is inserted:

"Continued use of force

Section 107b. (1) Anyone who continues to use force against another person for a longer period shall be punished with imprisonment of up to three years.

(2) Violence within the meaning of paragraph 1 is exercised by anyone who abuses another person on the body or commits intentionally punishable acts against life and limb or against freedom with the exception of the punishable acts according to sections 107a, 108 and 110.

(3) Is to be punished with imprisonment of six months to five years who

[...]

2. By the act exercises a comprehensive control on the behavior of the injured person or causes a significant restriction of the autonomous living of the injured person.

(4) Anyone who commits an act under paragraph 3 in a painful manner or repeatedly commits offenses against sexual self-determination and integrity in the context of continued violence under paragraph 3 shall be punished with imprisonment of one to ten years. If an act under subsection (3) results in bodily harm with serious consequences (§ 85) or if the violence under subsection (3) is exercised for more than one year, the perpetrator is imprisoned for five to fifteen years, if the death of the injured person ensues the offender is to be punished with imprisonment from ten to twenty years.

(5) The offender shall not be punished in accordance with the above provisions if the offense is punishable by a different provision with a more severe penalty. "

[...]

ARTICLE X - AMENDMENT OF THE LAW FOR VICTIMS OF CRIMES

The Act for Victims of Crimes, Federal Law Gazette No. 288/1972, last amended by Federal Law No. 129/2008, is amended as follows:

In Section 2 the point at the end of Z 9 is replaced by a semicolon and the following Z 10 is added: "10. Lump sum compensation for pain money. "

After § 6 the following § 6a including headline is inserted:

"Lump sum compensation for pain money

Section 6a. Help according to § 2 Z 10 is for a serious bodily injury (§ 84 Abs. 1 Criminal Code) as a result of an act within the meaning of Section 1 (1) as a one-time cash payment of € 1,000. If the offense entails a bodily injury with severe consequences (§ 85 Criminal Code), a one-time amount of € 5 000 is due. "

[...]

10. AZERBAIJAN

[Law on Prevention of Domestic Violence, 2010](#) ³⁵

³⁵ Law on Prevention of Domestic Violence, No 1058-IIIQ (22 June 2010), last amended by Law No 763-VQD (30 June 2017), available at <http://evaw-global->

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This Law defines and regulates actions aimed at prevention from violence committed through abuse of close relative relations, or current or past cohabitation and its negative legal, medical and social outcomes; provision of legal assistance and social protection of persons aggrieved from domestic violence; as well as eradication of conditions giving rise to domestic violence.

Chapter I. GENERAL PROVISIONS

Article 1 General conditions. Basic Definitions

1.0. The Law uses the following definitions:

1.0.1. “Domestic violence” - means a deliberate infliction of physical and moral damage by persons to others, covered under this Law, caused by abuse of close relative relations, current or past cohabitation;

1.0.2 A person aggrieved from domestic violence (hereinafter referred to as “aggrieved person”) - is a person who has been suffered physically or morally as a result of the deliberate actions against him/her, envisaged in Articles 1.0.3 – 1.0.6 of this Law, by a member of person’s family living together, a close relative, a person cohabiting in an informal marriage or a person previously cohabitated with him/her.

1.0.3. “Domestic physical violence” - denotes deliberate use of physical action by persons covered under this Law towards each other, i.e. using force to breach personal inviolability, beat, inflict injury or damage to health, torture, or limit the right to freedom.

1.0.4. “Domestic psychological violence” - denotes deliberate use of psychological pressure or actions aimed at producing intolerable psychological situation by persons covered under this Law towards each other; .

1.0.5. “Domestic application of illegal limitations of economic character” - means actions by persons covered under this Law towards each other aimed at deprivation of the right to own, dispose of or use property, or obtain income, or at creating, sustaining and abusing the situation of economic dependency.

1.0.6. “Domestic sexual violence” - denotes actions of sexual character committed against will by persons covered under this Law towards each other.

1.0.7. “Prevention of domestic violence” -means legal, social and deterrent measures performed to remove the threat of domestic violence.

1.0.8. “Support centres” - are public and non-governmental institutions established for provision of legal, medical, psychological, social and other assistance to aggrieved persons;

1.0.9. “Protective order” - denotes an act of limitations applied on contingent actions of the person who committed domestic violence against the aggrieved person.

Article 2. Legislation of the Republic of Azerbaijan on Prevention of Domestic Violence

The legislation of the Republic of Azerbaijan Republic on Prevention of Domestic Violence consists of the Constitution of the Republic of Azerbaijan, international agreements that the Republic of Azerbaijan is a party to, the present Law and other normative legal acts.

Article 3. Main Principles in the Field of Prevention of Domestic Violence

3.0. Main principles of prevention of domestic violence comprise the following:

3.0.1. provision of basic human rights and freedoms to everyone as stipulated by the Constitution of the Republic of Azerbaijan and the legislation of the Republic of Azerbaijan;

3.0.2. prohibition of discrimination against women;

3.0.3. inadmissibility of interference into anyone’s personal and family life, except for cases and limits determined in the legislation;

3.0.4. observance of confidentiality for protection of personal and family privacy;

3.0.5. rehabilitation of infringed rights of persons aggrieved from domestic violence;

3.0.6. mutual cooperation of state bodies and non-governmental organizations in the field of prevention of domestic violence.

Article 4. Persons subject to the Law

4.0. This Law applies to the following persons:

4.0.1. close family members (husband, wife, parents, children, grandmothers, grandfathers, grandchildren, siblings, step brothers and sisters, adoptive parents and adoptees) as well as other relatives living jointly;

4.0.2. formerly married couples cohabiting or living separately after dissolution of marriage;

4.0.3. individuals appointed guardians or foster parents, as well as persons under guardianship or in foster care;

4.0.4. men and women cohabiting in informal marriages, as well as close relatives living jointly with persons cohabiting in

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informal marriages.

Chapter II PROCEDURE FOR REVIEW OF COMPLAINTS ABOUT DOMESTIC VIOLENCE

Article 5. State Bodies Responsible for Review of Complaints Related to Domestic Violence

5.1. Complaints related to domestic violence are reviewed in the manner defined in the criminal-procedural legislation, in case such complaints contain information about committed or premeditated crimes.

5.2. Complaints related to domestic violence are reviewed by relevant executive authorities if such complaints do not contain elements of composition of crime. The procedure of reviewing the complaints related to domestic violence with absence of elements of composition of crime is defined by relevant executive authorities.

Article 6. Examination of Complaints about Domestic Violence

6.1. The following are considered as grounds for conducting an examination related to domestic violence:

6.1.0. a complaint by an aggrieved person or his/her family members;

6.1.2. a petition received from natural or legal persons, state and local self-government authorities, including educational or health institutions, non-government organizations, means of mass media;

6.2. Complaints about cases of committing domestic violence received by officials of state and local self-government authorities, commissions for affairs and protection of rights of juveniles, guardian and foster care bodies, educational and health institutions, and support centres during performance of their official duties shall be submitted to relevant executive authorities defined in Article 5 of this Law.

6.3. Complaints related to domestic violence are reviewed only with consent of an aggrieved person or his/her legal representative if such complaints do not contain elements of composition of crime;

Article 7. Measures to be Taken along with Criminal Prosecution where the Crimes Related to Domestic Violence Examined as Defined in the Criminal-Procedural Legislation

7.0. After confirmation of the information related to domestic violence, along with duties related to prosecution of crimes defined in the relevant legislation, the measures to be taken shall be as follows:

7.0.1. provide an aggrieved person with immediate medical aid, temporary shelter in a support centre, clothing and food at public expense, as well as forward information about the aggrieved person to the relevant executive authority for conducting a course of psychological rehabilitation;

7.0.2. clarify circumstances that have caused to provoke domestic violence, and take measures to preclude them;

7.0.3 ensure prevention of violence and its non-recurrence, and provide for security of the aggrieved person during the examination;

7.0.4. assist in normalization of relations between parties and resumption of family affairs during the period of examination;

7.0.5. ensure registration with preventive purposes of persons who have committed domestic violence, and conduct educational and deterrent works with them;

7.0.6. explain to family members suffering from domestic violence their rights and the use of remedies established by the state and determined by this Law;

7.0.7. make a decision about issuance of a protective order as established hereunder;

7.0.8. if grounds for initiation of criminal case have not been defined as a result of examination of a complaint related to domestic violence, forward the complaint to the relevant executive authority;

7.0.9. as necessary, assist other state entities conducting examination of complaints about domestic violence.

Article 8. Duties of the State Related to Domestic Violence Not Examined as Defined in the Criminal-Procedural Legislation

8.0. Duties of the state related to domestic violence not examined as defined in the criminal-procedural legislation consist of provision of the following:

8.0.1. accept the information received in relation with domestic violence in the manner determined by law, register it, carry out examination of the information in the shortest time feasible, in relevant cases, conduct examination immediately on spot, and hear parties separately;

8.0.2. if a complaint received contains information indicating information about committed or premeditated crime, forward the complaint further accordingly;

8.0.3. explain to a complainant his/her rights and the matter of responsibility for persons committing domestic violence as well as the procedure for bringing a suit to the court;

8.0.4. take measures to prevent repetition of actions causing the complaint and violence;

8.0.5. take measures to provide for security of the aggrieved person during the period of examination;

8.0.6. as necessary, provide legal assistance to the aggrieved person, provide him/her with shelter in a public support centre, clothing and food, medical and psychological aid, and to take measures to provide him/her with education, a job, vocational retraining and to ensure his/her social protection;

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- 8.0.7. take actions to protect rights and legal interests of juveniles suffering from domestic violence;
- 8.0.8. assist in normalization of relations between parties and resumption of family affairs;
- 8.0.9. serve a person who has committed domestic violence a warning of non-recurrence, and control execution of this warning;
- 8.0.10. take actions related to calling the persons to account who committed domestic violence;
- 8.0.11. take actions to issue a protective order to an aggrieved person;
- 8.0.12. organize actions stipulated in Article 13 of this Law;
- 8.0.13. establish a databank and organize collection of statistic information related to domestic violence, considering the requirements of legislation on confidentiality of information;
- 8.0.14. implement normative regulation in relation to activities of non-governmental support centres and provide their accreditation;
- 8.0.15. co-operate with international and non-governmental organizations in the field of prevention of domestic violence;
- 8.0.16. render assistance to other state entities in their actions in the field of prevention of domestic violence.

Article 9. Decision on Results of Examination of Complaints on Domestic Violence in the Manner Envisaged in Article 5.2 of this Law

9.0. One of the following decisions shall be made depending on the results of the examination of the complaints in the Manner Envisaged in Article 5.2 of this Law:

- 9.0.1. serve a person who has committed actions associated with domestic violence a warning of non-recurrence with explanation of responsibility established by law and give a short-term protective order to the aggrieved person
- 9.0.2. apply to the court for termination or restriction of parental rights of a person who has committed actions associated with domestic violence in the manner established by law;
- 9.0.3. apply to competent state authorities for bringing a person whose actions contain corpus delicti or material elements of an administrative offence to criminal or administrative account in the manner established by law;
- 9.0.4. apply to the court to issue a long-term protective order to an aggrieved person;
- 9.0.5. provide an aggrieved person with shelter in a support centre.

Article 10. Protective order

10.1 A short-term or long-term protective order may be issued to an aggravated person of domestic violence in accordance with this Law. 10.2. Short-term protective order may forbid a person who has committed domestic violence to:

- 10.2.1 commit violence again;
- 10.2.2. search for an aggrieved person if his/her whereabouts are unknown to him/her;
- 10.2.3. take other actions causing nuisance to an aggrieved person;
- 10.3. Long-term protective order may include the following along with specified in Article 10.1. of this Law:
 - 10.3.1. rules for the communication of a person who has committed actions associated with domestic violence with his/her under-age children;
 - 10.3.2. rules for the use of accommodation or shared property;
 - 10.3.3. terms for covering expenses related to medical and legal assistance rendered to an aggrieved person by a person who has committed domestic violence;
 - 10.3.4. information on explanation regarding the responsibility for non-compliance with the protective order in accordance with legislation.

10.4. A protective order is executed in the manner established by the legislation related to execution of court orders. An individual failing to comply with a protective order bears criminal responsibility in the manner established by the legislation regarding non-compliance with court orders.

Article 11. Warning of non-recurrence of domestic violence and issuance of short-term protective orders

11.1. If actions of such person do not amount to criminal responsibility, but infringe the rights and legal interests of an aggrieved person, the relevant executive authority may serve a written warning of non-recurrence of these or similar actions to a person who has committed domestic violence and issue short-term protective order to an aggrieved person; 11.2. The relevant executive authority shall serve a warning to the person who committed a domestic violence within 24 hours of application and immediately shall issue a short-term protective order to an aggravated person for a period of 30 days. A complaint may be lodged at the court about issuance of a warning.

11.3. Disregard for the short-term protective order's requirements by a person who has committed actions associated with domestic violence may be the grounds for issuing a long-term protective order.

Article 12. Rules for Issuance of Long-term Protective Order

- 12.1. If a person who has committed actions associated with domestic violence disregards a warning of non-recurrence, an aggrieved person or the relevant executive authority is entitled to apply to the court for obtaining a long-term protective order.
- 12.2. A long-term protective order is effective for a period of 30 to 180 days. A court decision on the issue of a long-term

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protective order is made in the manner determined by the legislation.

12.3. To prevent disclosure of the parties' personal and family secrets as well as to support interests of juveniles, a case about issuance of a long-term protective order may be heard at a closed session of the court in the manner established by law.

12.4. A decision on the issuance of a long-term protective order comes into force immediately and its term is counted from the day of issuance.

12.5. A decision about issuance of a protective order may be disputed by lodging a complaint with the court in the manner established by law. An appeal to a court of higher instance shall not cease the execution of the decision about the protective order.

12.6. Each party shall be provided with a copy of the long-term protective order on the day it is issued.

Chapter III

PREVENTIVE ACTIONS AGAINST DOMESTIC VIOLENCE

Article 13. Types of Preventive Actions against Domestic Violence

13.1. Preventive actions against domestic violence comprise the following types:

13.1.1. legal actions, i.e. examination of cases of domestic violence, and calling persons who have committed domestic violence to account;

13.1.2. social actions, i.e. actions concerning social protection of aggrieved persons suffered from domestic violence, including provision at public expense of temporary shelter, legal and medical assistance and socially-oriented measures;

13.1.3. informative actions, i.e. raising awareness of negative legal, medical and social consequences of domestic violence to the public and other public education activities related to prevention of domestic violence.

13.2. State programs are adopted with respect to preventive actions against domestic violence conducted by the relevant executive authority.

Article 14: Legal Actions in the Field of Prevention of Domestic Violence

14.0. Legal actions in the fields of prevention of domestic violence comprise the following:

14.0.1. criminal prosecution related to domestic violence;

14.0.2. calling persons to account who have committed domestic violence;

14.0.3. protection of the rights, freedoms and legal interests of aggrieved persons, provision for their security during the course of the examination;

14.0.4. legal assistance to aggrieved persons at public expense;

14.0.5. execution of court decisions regarding cases of domestic violence;

14.0.6. supervision of execution of a warning issued with regard to domestic violence;

14.0.7. termination or restriction of parental rights of persons who have committed actions associated with domestic violence in the manner established by law;

14.0.8. collection of statistical data on domestic violence;

14.0.9. ensuring confidentiality of domestic violence information in the manner established by law;

14.0.10. execution of normative regulation of activities of non-governmental support centres and their accreditation;

Article 15. Social Actions in the Field of Prevention of Domestic Violence

15.0. Social actions in the field of prevention of domestic violence comprise the following:

15.0.1. organization of social protection of aggrieved persons, assistance to them in obtaining relevant documents and social allowances in the manner determined in the legislation;

15.0.2. assistance to aggrieved persons in continuing education;

15.0.3. assistance to aggrieved persons in finding employment and their vocational retraining;

15.0.4. medical aid to aggrieved persons at public expense;

15.0.5. organization of psychological rehabilitation courses for aggrieved persons;

15.0.6. establishment of support centres for aggrieved persons;

15.0.7. measures to provide social care to aggrieved children;

15.0.8. other measures for protection of aggrieved persons.

Article 16. Informative Actions in the Field of Prevention of Domestic Violence

16.1. Informative actions related to domestic violence aim to prevent domestic violence, establish normal relations in the families, and eradicate circumstances that give rise to domestic violence and negative legal, medical and social consequences they cause.

16.2. Informative actions in the field of prevention of domestic violence comprise the following:

16.2.1. public education activities against domestic violence;

16.2.2. raise awareness of circumstances that give rise to domestic violence and negative legal, medical and social consequences

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they cause;

16.2.3. raise awareness of means used to prevent domestic violence;

16.2.4. promotion family relations based on high culture and mutual respect among population;

16.2.5. examination and analysis of circumstances that give rise to domestic violence, elaboration of programs and recommendations aimed at prevention of domestic violence, organization of educational activities;

16.2.6. registration with preventive purposes of persons who have committed domestic violence and conducting discipline-preventive work with them;

16.2.7. explaining of responsibility for committing domestic violence defined in the law;

16.2.8. serving a warning of non-recurrence to persons who have committed domestic violence;

16.2.9. conducting surveys on domestic violence;

16.3. guidelines for registration with preventive purposes of persons who have committed domestic violence and conducting discipline-preventive work with them shall be determined by the relevant executive authority.

Article 17. Ensuring Confidentiality in Assisting Aggrieved Persons

17.1. A fact of domestic violence against an individual as well as personal and family information obtained while rendering assistance to aggrieved persons is considered confidential.

17.2. Confidentiality of information obtained during the examination of domestic violence complaints, collection of statistical data on domestic violence and rendering assistance to aggrieved persons as well as prevention of disclosure of personal and family secrets shall be guaranteed.

17.3. Confidentiality of domestic violence related information collected in a databank is ensured by the relevant executive authority maintaining the databank. Domestic violence information may be disclosed only in cases and guidelines provided in the legislation. Statistical data on domestic violence shall be disclosed on the anonymous basis.

17.4. Officials who failed to ensure confidentiality in examination of domestic violence complaints bear responsibility in accordance with law.

Article 18. Domestic Violence Databank

18.1. The domestic violence databank is created by the relevant executive authority.

18.2. The databank includes information on occurrence of cases of domestic violence, individuals who complained to state bodies about cases of domestic violence, examination and results of examination of cases of domestic violence, criminal and administrative offenders with regard to cases of domestic violence, court orders, including orders on termination and restriction of parental rights, as well as restoration and removal of restrictions of parental rights, information about accredited support centres and their activities, etc.

18.3. Guidelines on organization and performance of the databank are set by the relevant executive authority.

18.4. State bodies and support centres shall provide information about cases of domestic violence to the relevant executive authority.

18.5. The relevant executive authority shall prepare summaries and analytical documents on the basis of domestic violence information contained in the databank.

Article 19. Support Centres

19.1. Public support centres for aggrieved persons are established by relevant executive authority. Services rendered by public support centres are free of charge. 19.2. Support centres shall:

19.2.1. provide legal and medical assistance to aggrieved persons;

19.2.2. assist aggrieved persons in finding employment and their vocational retraining;

19.2.3. arrange a psychological rehabilitation course for aggrieved persons;

19.2.4. assist aggrieved persons in preparing relevant documents with respect to social protection and in obtaining social allowances;

19.2.5. provide aggrieved persons with emergency shelters;

19.2.6. take measures to restore normalcy in families of aggrieved persons;

19.2.7. carry out informative actions with regard to domestic violence;

19.2.8. organize mutual support groups of aggrieved persons;

19.2.9. implement other activities related to social protection of aggrieved persons.

19.3. Support centres, as necessary, shall provide shelter to juveniles suffered from domestic violence for up to three months and to other aggrieved persons for up to two months.

19.4. Support centres may be established by local self-government authorities and non-governmental organizations. Apartments of individuals, with their consent, may be used as support centres on charity bases.

19.5. Non-governmental support centres must be accredited by the relevant executive authority.

19.6. Guidelines for activities of support centres and accreditation procedures for non-governmental support centres are elaborated by the relevant executive authority.

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Chapter IV FINAL PROVISIONS

Article 20. Responsibility for Violation of Law

Persons breaching provisions of this Law and other legislative acts on domestic violence bear responsibility in the manner established by law.

[...]

11. BAHAMAS

[Domestic Violence \(Protection Orders\) Act, 2008](#)³⁶

[...]

**AN ACT TO PROVIDE FOR THE GRANTING OF PROTECTION ORDERS IN CIRCUMSTANCES SURROUNDING DOMESTIC VIOLENCE
AND FOR RELATED AND CONSEQUENTIAL MATTERS**

[...]

1. This Act may be cited as the Domestic Violence (Protection Orders) Act.

2. In this Act —

“child” includes an adopted child, a stepchild or a child who is a member of the household of the complainant and is treated as such by the complainant and the complainant's spouse or partner;

“clerk” means the clerk of the court;

“complainant” means a person who applies under this Act for a protection order;

“court” means the Magistrates Court having jurisdiction to hear the application save where otherwise provided in this Act;

“the Department” means the Department of Social Services/Rehabilitative and Welfare Services;

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependant;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

persistent intimidation by the use of abusive or threatening language;

depriving that person of the use of his property;

interfering with or damaging the property of the person;

the forced confinement of the person;

making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person;

“financial abuse” means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependance;

“harassment” includes —

the intimidation of a person by —

persistent verbal abuse;

threats of physical violence;

the malicious damage of the property of a person; or

any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct

which is offensive or objectionable to the recipient, including, but not limited to: epithets derogatory or suggestive comments,

slurs or gestures and offensive posters, cartoons, pictures, emails, telephone calls or drawings but not being an occasional

compliment of a socially acceptable nature;

stalking;

the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the

hindering of a person in the use thereof; or

the indulgence or engagement in a pattern of behaviour by a person that would or likely have the effect of undermining the emotional or well-being of another;

“magistrate” has the meaning as in the Magistrates Act;

“partner” means —

³⁶ Domestic Violence (Protection Orders) Act (1 December 2008) http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0024/DomesticViolenceProtectionOrdersAct_1.pdf (last visited December 30, 2018).

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A party to a common law relationship between a man and a woman living with, or who have lived with, each other in the same household as if they were husband and wife; and
a person who would, but for the fact of not living in the same household, be said to be having or have had with a person of the other sex and intimate relationship;

“physical abuse” means any act or omission which causes physical injury to a complainant or his child and includes the commission of or an attempt to commit any of the offences of the nature listed in the First Schedule in relation to the complainant or his child;

“protection order” means an order under section 3 or 5;

“respondent” means the person referred to in section 4(2);

“spouse” includes a former spouse;

“stalking includes” —

persistent following of a person from place to place;

the watching or besetting of the place where a person resides, works, carries on business or happens to be;

persistent telephoning or other attempts at communicating with a spouse, partner or child or other member of that spouse's household and knowing that such course of conduct would likely cause annoyance to that spouse, partner or member:

Provided nothing in paragraphs (a), (b) or (c) applies to conduct on the part of a person acting in the performance of his duties in providing security for the benefit of another.

3. (1) Where on an application made in accordance with section 4 in respect of a person and without prejudice to section 5(6) the court is satisfied on the balance of probabilities that a person —

(a) has engaged in or has threatened to engage in conduct that is capable of constituting domestic violence or an attempt to commit domestic violence against the spouse, partner or child of that person or some other member of the household; or

(b) without prejudice to paragraph (a), has engaged in conduct that may reasonably be regarded as harassment of the spouse, partner or child, or other member of the household,

and unless that person is restrained, is likely to engage in further conduct that would constitute conduct referred to in paragraph (a) or (b), it may make an order, in this Act referred to as a protection order, restraining the person from engaging in that conduct or in similar conduct.

(2) Subject to subsection (3), on an application for a protection order under subsection (1), the court may where it considers that it is necessary to do so in order to ensure the safety of the spouse, partner or child pending the hearing and determination of the application, make an interim protection order before considering the application.

(3) Without prejudice to sections 4(9) and 5(6) the court shall not make an interim protection order under subsection (2), unless the application for such an order is supported by oral evidence on oath or by evidence on affidavit given by the complainant.

(4) Subject to sections 18(1) and 20(2), a protection order made by the court under subsection (1) may be for such period of time as the court considers necessary, but may, on the application of the complainant or the respondent, be varied or revoked.

4. (1) An application for a protection order in accordance with Form 1 in the Second Schedule may be made by way of complaint by —

(a) the spouse or partner of the person against whom the order is sought where the domestic violence was committed or the harassment conducted against that spouse, partner or a child of the household;

(b) any other member of the household, not being a spouse, partner or child;

(c) the Commissioner of Police;

(d) with the leave of the court, a person other than a person mentioned in paragraph (a), as agent for a person to whom that paragraph applies; or

(e) an officer of the Department on behalf of a child against whom the domestic violence was committed or the harassment conducted.

(2) The person against whom the order is sought shall be the respondent to the application.

(3) Where an application for a protection order has been made to the court under subsection (1), the court shall issue a copy of the application together with a summons in accordance with Form 2 set out in the Second Schedule to the respondent forthwith to be served personally on the respondent.

(4) Where it appears to the Court that it is not reasonably practicable to serve personally on the respondent a copy of an application for a protection order, or any other document required under the Act to be served personally the court may —
order that the copy of the application be served by such other means as the court thinks just;
make an order for substituted service.

(5) Notwithstanding anything in this or any other Act, any document required to be served under this Act may be served by an attorney-at-law or his agent.

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(6) Where it is proved to the satisfaction of a magistrate on oath that the summons and the copy of the application referred to in subsection (3) or (4) was served on the respondent within what appears to the magistrate to be a reasonable time and the respondent failed to appear at the time and place appointed for the hearing, the magistrate may — proceed to hear and determine the matter in the absence of the respondent; or where the court is satisfied, having regard to the information before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the court.

(7) Where a complainant is a person referred to in paragraph (b), (c) or (d) of subsection (1), a protection order shall not be made in respect of the application unless notice of the application in accordance with Form 2 of the Second Schedule was given to the spouse or partner against whom the domestic violence was committed or the harassment was conducted or to any other interested party concerned.

(8) The court shall endeavour to hear an application for a protection order within two days after the date of service of the application or as soon as practicable thereafter.

(9) A court may make a protection order where it considers just to do so upon the evidence presented to it notwithstanding the absence of the oral testimony of the person against whom the domestic violence or harassment is alleged to have been or attempted to have been perpetrated.

(10) Notwithstanding anything to the contrary in any law any statement signed by that person in the presence of a police officer or officer of the Department to whom that person made the allegation may be adduced in evidence by the officer for the purposes of this section.

5. (1) Upon the appearance before the magistrate of a respondent the magistrate may if he considers, having regard to the particulars of the complaint and any representations made, that the subject matter of the complaint may be ameliorated through counselling or parenting sessions carried out or arranged by officers of the Department the magistrate may adjourn further hearing of the application and refer the parties to the Department for that purpose.

(2) Where the court adjourns any proceedings under subsection (1) it may request an officer of the Department to present before it on a specified date a report in writing as to whether any progress has been made towards a resolution of the complaint.

(3) Upon receipt of that report which shall not include any other information or details of what transpired at any counselling session the court may deal with the complaint as it sees fit in accordance with this Act.

(4) Prior notice of each date on which a report is to be presented pursuant to subsection (2) shall be given to the parties and shall be construed for the purposes of the hearing of the complaint as an adjourned date of hearing.

(5) In proceedings under this Act the court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the complaint or any other conduct that constitutes domestic violence.

(6) Where an Undertaking is given under subsection (5) the court may make a protection order or interim order, as it deems fit, in respect of the Undertaking.

(7) An Undertaking may deal with all matters that may be dealt with under a Protection Order or Interim Order as the Court sees fit, having regard to the matters referred to in section 9 (1).

(8) An Undertaking shall be deemed to remain in force for the period stated in the Undertaking or if it was made the subject of a protection order or interim protection order, for the period stated therein but shall not exceed two years.

(9) Subsections (3) through (6) and subsection (8) of section 4, sections 10 (2), 11, 13 and 19 apply in relation to an Undertaking as they do apply to a protection order, interim order or an application for such an order.

6. (1) Subject to subsection (3) no application shall be made by a person to a magistrate for a protection order against his or her spouse or partner if there are pending in the Supreme Court proceedings by either of them in respect of their relationship or of any child of that relationship save however that application may be made in the Supreme Court as if the same were an application made to a magistrates court and for that purpose the provisions of this Act regarding the powers of that court on such an application including the Forms set out in the Second Schedule shall mutatis mutandis apply.

(2) Where proceedings as mentioned in subsection (1) are instituted in the Supreme Court while a protection order is pending against one spouse or partner nothing in this Act shall preclude a judge of that court from varying or discharging that order as he sees fit.

(3) Without prejudice to subsection (1) any court seised of a matter that involves contested issues between spouses or partners may, if it considers it just having regard to the nature of the matter and of any behaviour displayed or said to have been displayed by one party to the other, on its own motion exercise any of the powers conferred by the other sections of this Act as if a complaint had been lodged or an application made under this Act.

7. (1) Evidence on an application for a protection order may be given on affidavit.

(2) It is not necessary to call a person who made an affidavit pursuant to subsection (1), to give evidence unless a party to the proceedings or the court hearing the application so requires.

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8. (1) Subject to this Act, a protection order may include provisions restraining the respondent —
- (a) from being on premises on which the complainant for the protection order or the child or member of the household in respect of whom the order was made, resides;
 - (b) from being on premises that are the place of work of the complainant or the place of education or work of the child or member of the household in respect of whom the order was made;
 - (c) from being in a specified locality, being a locality in which premises as mentioned in paragraph (a) or (b) or any other premises the court deems it necessary to specify, are situated;
 - (d) from approaching within a specified distance of the complainant or the child or member of the household in respect of whom the order was made;
 - (e) where the person continues to reside with the complainant or the child or member of the household in respect of whom the order was made, from entering or remaining on the premises, while intoxicated or under the influence of a drug;
 - (f) from causing another person to engage in the conduct referred to in paragraph (a) or (c) of subsection (3);
- (2) A protection order may —
- (a) require the respondent to —
 - (i) leave the premises referred to under paragraph (a) of subsection (1);
 - (ii) continue any legal or other obligation the respondent may have to pay the rent, mortgage, utilities or taxes of the premises referred to in that sub-paragraph where the respondent is asked to leave under sub-paragraph (i);
 - (iii) allow the complainant to enter and remain on the premises referred to in paragraph (c) of subsection (1); or
 - (b) specify conditions subject to which the respondent may be on premises or in a locality specified in the order.
- (3) A protection order that includes a provision mentioned in paragraph (a) of subsection (1) may also include a provision —
- (a) restraining the respondent from taking possession of personal property of either the complainant or the respondent, being property that is reasonably needed by a member of the complainant's household;
 - (b) directing the respondent to give possession of such of that property as is specified in the order, to a specified member of the respondent's household;
 - (c) requiring the respondent to pay compensation for monetary loss incurred by a complainant as a direct result of conduct that amounted to domestic violence;
 - (d) requiring the respondent to pay interim monetary relief to the complainant for the benefit of the complainant and any child where there is no existing order relating to maintenance until such time as an obligation for support is determined pursuant to any other written law;
 - (e) requiring the respondent to relinquish to the police any firearm licence, firearm or other weapon which may or may not have been used but which the court considers just to order;
 - (f) prohibiting the respondent from damaging property of the complainant or a child of the complainant or respondent; or
 - (g) prohibiting the respondent from causing another person to engage in the conduct referred to in paragraph (a) or (f).
- (4) Notwithstanding section 2 in paragraphs (b), (c) and (d) “complainant” means a person against whom the offence was committed or who was harassed.
- (5) A protection order shall, in each case, provide that the parties to the order or any child in respect of whom the order was made, attend the Family Services Division of the Department or such other agency as the court specifies, for appropriate professional counselling and therapy, due regard being had to the business or employment responsibilities of the parties.
- (6) Where a protection order has been made in accordance with subsection (5), the Family Services Division of the Department or any other agency specified by the court under subsection (5) shall forward to the court a report setting out the dates on which counselling took place, the nature of the counselling and therapy carried out and the response given to the counselling and therapy by the parties to the order and any child in respect of whom the order was made not later than one month before the expiration of the order or at such time as the court specifies.
9. (1) In determining an application for a protection order, the court shall have regard to the following —
- (a) the need to ensure that persons are protected from violence and harassment;
 - (b) the welfare of any child who is a member of the respondent's household;
 - (c) the need to preserve and protect the institution of marriage and to give protection and assistance to the family as a natural and fundamental group unit of society;
 - (d) the accommodation needs of the members of the household;
 - (e) any hardship that will be caused to the respondent or to any other person as a result of the making of the order; and
 - (f) any other matter that in the circumstances of the case, the court considers relevant.
- (2) An order under section 8(3)(c) for the payment of compensation, which shall be received by the court on behalf of the complainant, shall not exceed ten thousand dollars and shall include but not be limited to —
- (a) loss of earnings;
 - (b) medical and dental expenses;
 - (c) moving and accommodation expenses;

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(d) reasonable legal costs.

(3) In determining whether to make an order that includes a provision of the kind mentioned in subsection (2) or (3) of section 8, the court shall also take into account the property, income and financial resources, and the financial obligations, of the complainant and the respondent.

(4) In having regard to the matters referred to in subsections (1) and (3), the court shall consider the matters referred to in paragraphs (a) and (b) of subsection (1) as being of primary importance.

10. (1) Subject to this Act, a protection order shall not be made by the court unless the respondent has had actual notice in the Form 2 set out in the Second Schedule, of the application for the order.

(2) Where a protection order or an interim protection order is made or varied by the court, the clerk shall forthwith —

(a) arrange for an order in the Form 3 or in the Form 4 as the case may be set out in the Second Schedule to be formally drawn up and filed in the court;

(b) cause a copy of the order referred to in paragraph (a) to be served personally on the respondent;

(c) cause a copy of the order referred to in paragraph (a) to be forwarded to —

(i) the Commissioner of Police and to the police officer in charge of the police station that is situated in the jurisdiction of the place of residence of the complainant and respondent; and

(ii) any other person who was a party to the proceedings.

11. (1) Where —

(a) the court proposes to make a protection order or an interim protection order; and

(b) the respondent is before the court,

the court shall, before making the order, explain to the respondent in language that he understands, the matters contained in subsection (2).

(2) The matters referred to in subsection (1) are —

(a) the purpose, terms and effect of the proposed order;

(b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and

(c) the means by which the proposed order may be varied or revoked.

12. (1) Where an agreement, including a mortgage or a lease of premises provides that, if the respondent ceases to reside in his or her place of residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's household the person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with a particular order without prejudice to the continuing obligations of the respondent under the agreement, mortgage or lease.

(2) Where the court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the court shall at the time of making an order, direct that a notice in accordance with Form 5 in the Second Schedule be sent by the clerk of the court to the person referred to in subsection (1).

13. Where —

(a) a protection order or an interim protection order is made and the respondent —

(i) was present at the time the protection order or interim protection order was made; or

(ii) was not present at the time the protection order or interim protection order was made, and a copy of the protection order or interim protection order has been served personally on the respondent or it had been necessary to effect that service by substituted service; and

(b) the respondent contravenes the order in any respect,

the respondent is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months or to both.

14. (1) Subject to subsection (2), where the court makes a protection order the court may -

(a) where it is satisfied that the respondent has caused actual bodily harm to the complainant or to the child concerned as the case may be;

(b) where it considers that the respondent is likely to cause actual bodily harm again; and

(c) where the complainant has applied for a power of arrest to be attached to the protection order either before or at any time during the hearing of the application, attach a power of arrest to the protection order.

(2) No power of arrest may be attached to a protection order unless the respondent has been given notice that such a power has been applied for.

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(3) Where a power of arrest is attached to a protection order, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such a provision of the protection order as falls within paragraphs (a) and (b) of subsection (1) by reason of that person's use of violence or, as the case may be, of his entry into any premises or area.

(4) Where a power of arrest is attached to a protection order and a person to whom the order is addressed is arrested under subsection (3) —

(a) he shall be brought before the court within the period of twenty-four hours beginning at the time of his arrest, or, as soon as reasonably practicable thereafter, and dealt with for an offence under section 13; and

(b) he shall not be released within that period except on the direction of the court, but nothing in this section authorizes the detention of that person at any time after the expiry of that period.

15. (1) A person mentioned in section 4(1) may lay before a court an information in accordance with section 13.

(2) Where a prosecution for an offence under section 13 is instituted by summons, the summons shall require the person to appear to answer the information at a time not later than three sitting days of the court after the time at which the summons is issued.

(3) Service of the summons referred to in subsection (1) shall be effected at least twenty-four hours before the time appointed in the summons for the hearing of the information.

(4) For the purposes of subsection (3) and section 14(4) no account shall be taken of any Saturday, Sunday or public holiday.

16. (1) A police officer may, without warrant enter any premises for the purpose of giving assistance to anyone present thereon —

(a) if he has reasonable grounds to suspect that a protection order is being violated; or

(b) if upon the invitation of a person resident at the premises he has reasonable grounds to suspect that a person therein has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person therein.

(2) Nothing in this Act shall be construed as limiting the powers conferred by any other law upon a court or a police officer except where it is provided in this Act that the provision herein is notwithstanding anything to the contrary in that other law.

(3) Where a police officer exercises a power of entry upon private premises in accordance with the foregoing provisions of this section, he shall as soon as practicable thereafter submit a written report to the officer in charge of the police station to which he is assigned.

17. The power of the court to make a protection order or an interim protection order in respect of a person may be exercised notwithstanding that the person has been charged with an offence arising out of the same conduct as that out of which the application for the protection order arose.

18. (1) A protection order remains in force for such period, not exceeding three years, as the court specifies in the order.

(2) Where a protection order contains a prohibition or condition of the kind specified in section 8, the court may specify different periods, being periods none of which exceeds the period specified pursuant to subsection (1), as the period for which each prohibition or condition is to remain in force.

(3) Subject to this section, an interim protection order remains in force for such period, not exceeding fourteen days as the court specifies in the order.

(4) Where —

(a) the court adjourns the hearing of an application for a protection order; and

(b) an interim order is in force in respect of the respondent, the court may, by order, extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

(5) An interim protection order made on an application under section 3, ceases to be in force —

(a) where a protection order is made on that application and the respondent is present at the time the protection order is made, when the protection order is made;

(b) where a protection order is made on that application but the respondent is not present at the time the protection order is made, when the protection order is served on the respondent; or

(c) when the application is dismissed.

19. (1) Where a protection order or an interim protection order is in force, a party to the proceedings in which the order was made may apply to the court that made the order or a court of like jurisdiction in accordance with Form 4 set out in the Second Schedule for an order varying or revoking the order set out in the Second Schedule.

(2) On an application under subsection (1), the court may by order, vary or revoke the protection order or the interim protection order as the case may be.

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(3) The clerk shall cause a copy of an application under this section to be served personally on each person other than the applicant, who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order under subsection (2), the court shall have regard to the matters specified in section 9 and to any report made pursuant to subsection (6) of section 8 in relation to the parties.

20. (1) Where a protection order is in force in respect of a person who files pursuant to section 6(1) an application for similar relief in the Supreme Court that order shall —
subject to section 6(2) remain in force until expiry and shall not be varied by a magistrates court before its expiration;
not abate merely by reason that matrimonial proceedings have been subsequently instituted in the Supreme Court by either of the parties concerned.

(2) An order made under section 8(3)(d) for the benefit of a party to or a child of a marriage shall be deemed to be an order made under section 4 of the Matrimonial Causes (Summary Jurisdiction) Act but shall not extend beyond the duration of the protection order.

21. (1) Where one party to a marriage is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or by virtue of any written law giving that party the right to remain in occupation, and the other party to the marriage is not so entitled, then, subject to the provisions of this Act, the party not so entitled shall have the following rights (in this section referred to as “rights of occupation”)

(a) if in occupation, a right not to be evicted or excluded from the matrimonial home or any part thereof by the other party except with the leave of the court given by an order under this section; and

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the matrimonial home.

(2) So long as one party to a marriage has rights of occupation, either party to the marriage may apply to the Supreme Court for an order —

(a) declaring, enforcing, restricting or terminating those rights;

(b) prohibiting, suspending or restricting the exercise by either party of the right to occupy the matrimonial home; or

(c) requiring either party to permit the exercise by the other party of that right.

(3) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the conduct of the parties to the marriage in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision —

(a) may exclude part of the matrimonial home from a party's right of occupation (and, in particular, a part used wholly or mainly for or in connection with the trade, business or profession of the other party);

(b) may order a party occupying the matrimonial home or any part thereof by virtue of this section to make periodical payments to the other in respect of the occupation; or

(c) may impose on either party obligations as to the repair and maintenance of the matrimonial home or the discharge of any liabilities in respect of the matrimonial home.

(4) Orders under this section may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further ordered.

(5) Where a party is entitled under this section to occupy a matrimonial home or any part thereof and makes any payment in or towards satisfaction of any liability of the other party in respect of mortgage payments affecting the matrimonial home, the person to whom the payment is made may treat it as having been made by that other party, but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned party against the other to an interest in the matrimonial home by virtue of the payment.

(6) The rights of occupation of a party to a marriage shall continue only so long as the marriage subsists and the other party is entitled as mentioned in subsection (1) to occupy the dwelling house.

22. (1) Where each of two parties to a marriage is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling in which they have or at any time have had a matrimonial home, either of them may apply to the Supreme Court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.

(2) In relation to orders under this section, subsections (3) and (4) of section 21 shall apply as they apply in relation to orders under that section.

(3) Where each of two parties to a marriage is entitled to occupy a dwelling by virtue of a contract, or by virtue of any written law giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.

(4) In determining for the purposes of this section whether two parties to a marriage are entitled to occupy a dwelling house, there shall be disregarded any right to possession of the dwelling conferred on a mortgagee of the dwelling house under or by virtue of the mortgage, whether the mortgagee is in possession or not.

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(5) For the purposes of this Act —

“apartment” means a separate and self-contained set of premises constructed for use as a place of residence and forming part of a building from some other part of which it is divided;

“child of the family” has the same meaning as in the Matrimonial Causes (Summary Jurisdiction) Act;

“dwelling” means a building used or intended to be used mainly as a separate dwelling or place of residence and includes an apartment;

“matrimonial home” means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage, in any case where —

(a) either or both of the parties —

(i) owns the dwelling,

(ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling, or

(iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated and, by reason of holding those shares, is entitled to the exclusive occupation of the dwelling; and

(b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of any application under the provisions of this Act;

“mortgage” includes a charge and mortgagor and mortgagee shall be construed accordingly;

“mortgagor” and “mortgagee” includes any person deriving title under the original mortgagor or mortgagee.

23. (1) A person shall not publish in a newspaper or by broadcast or otherwise disseminate to the public the identity of a party to a proceedings in connection with a protection order or information from which the identity of such a party may readily be ascertained.

(2) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely —

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of any other publication, the person who publishes it; and

(c) in the case of a broadcast, any body corporate which transmits or provides the programmes in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper, shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(3) Nothing in this section limits —

(a) the provisions of any other enactment relating to prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of a court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that -

(a) is of a bona fide professional or technical nature; or

(b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counselors or social welfare workers.

24. (1) The business of a court shall, so far as is consistent with the due dispatch of business, be arranged in such manner as may be necessary for separating the hearing and determination of applications under this Act from other business.

(2) No person shall be present during the hearing and determination by a court of any application under this Act except —

(a) members and officers of the court;

(b) parties to the case before the court, counsel and attorneys and witnesses and other persons directly concerned in the case;

(c) counsel and attorneys in attendance for other cases;

(d) any other person whom the court may permit to be present.

(3) During the taking, in any application under this Act, of any evidence which, in the opinion of the court, is of an intimate or indecent character, the court may, if it thinks it necessary in the interest of the administration of justice or of public decency, direct that all persons, not being members or officers of the court or parties to the case their counsel and attorneys or other persons directly concerned in the case, be excluded from the court during the taking of that evidence.

(4) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

(5) Nothing contained in this section shall affect the exercise by the court of the power to direct what witnesses shall be excluded from the court until they are called for examination.

(6) Notwithstanding any other law to the contrary, in any hearing of an application for a protection order made by an officer of the Department under paragraph (e) of section 4(1) in respect of a child, the spouse or partner of a person against whom the order is sought is a compellable witness.

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25. (1) Notwithstanding any other law to the contrary, where the court is required to determine whether to grant bail in respect of an offence under this Act, the matters that it shall take into account shall include —

- (a) the need to ensure that persons are protected from violence and harassment;
- (b) the welfare of the child, where the respondent or a victim of the alleged offence has custody of a child who has not attained the age of 18 years; and
- (c) any hardship that may be caused to the respondent or to members of the respondent's household if bail is not granted or a particular condition is imposed.

(2) The court may grant bail on such terms and conditions as it thinks fit.

(3) Where —

- (a) bail has been granted to a person upon conditions; and
- (b) the person contravenes or fails to comply with any condition,
- (c) the bail is thereupon forfeited and the respondent is liable to be rearrested.

26. (1) Subject to subsection (3), an appeal against an order made by a magistrate's court under this Act shall lie in the same manner as if it were an order to which section 54 (2) of the Magistrates Act applies.

(2) Where an appeal against an order is made by the respondent under subsection (1), the court shall impose in respect of any recognizance made by the respondent in relation to the appeal such conditions as it considers necessary for the safety and protection of the complainant.

(3) An appeal under this Act does not lie from —

- the making, variation or revocation of an interim protection order; or
- the refusal of the court to make an interim protection order.

(4) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under subsection (1) and every such order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

27. Whenever a police officer intervenes in a matter for which a protection order may be sought under this Act, the police officer shall, as soon as possible take the following steps —

- (a) where a victim indicates that he has suffered injuries though not visible, which require medical assistance, the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;
- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal belongings from a place where the would be respondent may reside;
- (d) advise the victim of domestic violence on the importance of preserving the evidence;
- (e) inform the victim as to his rights and of services which may be available to assist him, be they government or private services.

28. (1) Where a police officer intervenes in an incident of domestic violence, he shall prepare a written report of same which shall contain the allegations of the persons involved and the witnesses, the type of investigation conducted and how the incident was resolved.

(2) The police officer in charge of every police station shall ensure that all records of domestic violence complaints and cases are properly compiled so as to facilitate easy reference to data.

(3) The police officer in charge of every police station shall ensure that confidentiality is maintained with respect to the identity of persons involved in all matters of domestic violence though inspection of that data may be made by an officer of the Department duly authorized by the Minister to do so.

29. The Ministry responsible for social services shall be responsible for —

- (a) promoting and developing educational programmes for the prevention of domestic violence;
- (b) studying, investigating and publishing statistics and other relevant reports on the domestic violence problem in The Bahamas, its causes, manifestations and scope; the consequences and the options for confronting and eradicating it, in conjunction with The Bahamas Police Force;
- (c) identifying groups and sectors in society in which domestic abuse is manifested and educating these groups and sectors making them aware of the skills required to combat domestic violence;
- (d) creating an awareness among society with regard to the needs of victims of domestic violence and their families;
- (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;
- (f) the establishing of programmes on information support and counselling services for victims of domestic violence;
- (g) encouraging the establishment of shelters for victims of domestic violence;

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- (h) encouraging programmes of services for boys and girls who come from homes where there is abuse and violence;
- (i) providing training and orientation services for persons who assist in the treatment and counselling of victims of domestic violence and abuse;
- (j) analyzing and carrying out in conjunction with other studies on the need for education and retraining of persons who engage in conduct that constitutes domestic violence and abuse and for their rehabilitation.

30. Rules of court may be made by the Rules Committee constituted by section 75 of the Supreme Court Act for carrying into effect the provisions of this Act, including the provision of any forms to be used for the purposes of this Act.

31. Nothing in this Act shall be deemed to have altered any right a spouse may have to ownership of property.

32. (1) The provisions of the Sexual Offences and Domestic Violence Act mentioned in the first column of the Third Schedule are amended in the manner and to the extent set out in the second column of that Schedule.

(2) Any amendment set out in the Third Schedule shall not affect anything duly done or to be done consequent upon proceedings instituted prior to the coming into operation of this Act and any such thing may continue to be done as if this Act had not come into operation.

(3) Without prejudice to subsection (2) reference in all laws or to any document existing prior to the date of the coming into operation of this section to the Sexual Offences and Domestic Violence Act shall after that date be construed and read as a reference to that Act as amended by this Act.

[...]

12. BAHRAIN

[Law on Protection from Domestic Violence, 2015](#) ³⁷

[...]

First Chapter - General Provisions

Article (1)

In the application of the provisions of this Law, the following words and expressions shall have the meanings assigned to them hereafter, unless the context otherwise requires:

Ministry: Ministry of Social Development.

Minister: Minister of Social Development.

Family: For the purposes of this law, family members are:

- 1) husband and wife by a legal marriage contract, and their children and grandchildren.
- 2) children of one of the spouses from another legal marriage.
- 3) father and mother of any of the spouses.
- 4) brothers and sisters of any of the spouses.
- 5) person under the care of an alternative family.

Domestic violence: Every act of harm within the family that is inflicted by one of its members, "aggressor", on another one "victim".

Domestic violence crimes: The following acts are, according to the provisions of the present law, considered domestic violence crimes:

- 1) The act of physical abuse: any attack, using any means, on the body of the victim.
- 2) The act of psychological abuse: Any act that leads to psychological damage for the victim, including libeling and insulting.

3) The act of sexual abuse: According to the provisions of this law, an act of sexual abuse shall include any of the following acts committed by the aggressor against the victim:

(A) Sexually assaulting or exploiting or forcing the victim, by any means, to satisfy the desires of the aggressor or any other third party.

B) Exposing the victim to sexual content or behavior;

³⁷ Law on Protection from Domestic Violence, Law No. 17 (5 August 2015), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101717/122684/F1526654905/K1715.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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4) The act of economic abuse: Any act that leads to depriving the victim of their right or freedom to dispose of their property. Protection Order: the order issued by Public Prosecution, the competent court or the investigating judge to protect the victim in accordance with the conditions provided for in this law.

Second Chapter - Family Guidance Department

Article (2)

A department called the Family Guidance Department is established in the Ministry to provide family guidance and awareness raising services in the field of domestic violence and is heading a number of family counseling centers or offices.

Article (3)

The Minister shall issue the provisions and decisions regulating the licensing of family counseling centers.

Article (4)

Except for the family counseling centers and offices established by the Ministry, no private legal or moral person may open a family counseling center unless a license is obtained from the Ministry in accordance with the requirements and procedures issued by a decree from the Minister.

Article (5)

The competent technical bodies of the Ministry shall inspect community or family counseling centers to verify the compliance with the provisions of this law and the decisions issued in implementation thereof.

Article (6)

The Minister of Justice, Islamic Affairs and Endowments shall issue a decision, in agreement with the Minister, to authorize some of the technical bodies referred to in Article 5 of this Law to become judicial inspectors.

Third Chapter - Measures of protection against domestic violence

Article (7)

The Ministry shall provide services and take the following measures to reduce domestic violence, in cooperation and coordination with all the official institutions, each according to its specialization, as follows:

- 1) Raise public awareness about the dangers and effects of domestic violence.
- 2) Provide and disseminate complete information on the services related to family counseling, treatment, rehabilitation and shelters, their providers and how to access them.
- 3) Provide the necessary shelters to accommodate victims of domestic violence.
- 4) Provide family counseling, psychological, social and health guidance, and rehabilitation services for the victim and the aggressor.
- 5) Provide legal assistance to the victim when necessary.
- 6) Monitor lawsuits related to domestic violence via representatives appointed to attend the hearings of the competent courts.
- 7) Provide specialized training programs and lectures in the field of domestic violence for the officials responsible for enforcing this law and for judges and prosecutors.
- 8) Disseminate data on domestic violence and prevention to reduce domestic violence without undermining personal freedom and privacy.
- 9) Encourage and support scholarly studies and research in the field of domestic violence.
- 10) Create a hotline to receive complaints of domestic violence.
- 11) Develop national indicators that monitor and measure cases of domestic violence in cooperation with the concerned authorities.

Article (8)

Without prejudice to Article 9 of the Code of Criminal Procedure or any other law, every person who is subject to domestic violence or any family member shall have the right to file a complaint about the occurrence of domestic violence. Anyone who is aware of a domestic violence incident by virtue of his or her work, medical or educational profession shall inform Public Prosecution or police stations of such incident.

Article (9)

Both Public Prosecution and police stations are committed to:

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- 1) Ensure that the person who has reported domestic violence is protected, by not disclosing their name or identity unless judicial proceedings require otherwise.
- 2) Listen to parties and witnesses, including children in appropriate separate rooms, and allow each of them to speak freely and confidentially;
- 3) Maintain confidentiality in all communications, correspondence and procedures related to domestic violence cases.

Article (10)

The Public Prosecution or police stations must receive complaints regarding domestic violence and must take all the necessary legal procedures.

Article (11)

The Ministry of Education is working on the development of curricula that would contribute to the promotion and dissemination of a culture rejecting domestic violence and strengthening family ties.

Article (12)

In case of receiving complaints of domestic violence, police stations should undertake the following actions:

- 1) Transfer the victim to the nearest hospital or health center for treatment when necessary.
- 2) Upon an order issued by Public Prosecution, the victim shall be transferred to one of the Ministry's shelters, especially children, and as soon as possible.

Article (13)

The Public Prosecution may issue an interim decision, causing the victim to be transferred outside their family to protect them, provided that the victim is brought before the lower criminal court if he/she is a minor or incompetent, within two weeks, to identify the person who will provide care for him/her temporarily or permanently.

Article (14)

When receiving a complaint of domestic violence, Public Prosecution must write a report containing the following information:

- 1) The time, date and place of receipt of the complaint.
- 2) The name of the complainant and their personal information.
- 3) The start time and end time of the investigation.
- 4) The type of violence committed against the victim and the tool used, if any.
- 5) A statement indicating whether children were exposed to violence, have witnessed it or were subjected to it.
- 6) Any further information indicating the circumstances, causes and consequences of the incidence of violence.
- 7) Any relevant documents or document that the victim wishes to attach to the report.
- 8) Any protective measures taken upon receipt of the complaint.

Article (15)

The Public Prosecution may spontaneously, or at the request of the victim, issue a protection order which commits the aggressor to the following:

- 1) To maintain distance from the victim.
- 2) Not to approach the places of protection or any place mentioned in the protection order.
- 3) Not to damage the personal property of the victim or of any family member.
- 4) Enable the victim or their authorized representative to receive their necessary personal belongings.

The protection order may not exceed one month. It may be renewed by order of the lower criminal court, provided that the protection period does not exceed three months in case it is violated by the aggressor.

Any party to the dispute may appeal the protection order within seven days from the date on which the party is notified. The party may request to cancel the order or amend it. The appeal is made to the lower criminal court if the order is issued by the Public Prosecution and to the grand criminal court, considered to be the appeal court, if it is issued by the lower criminal court.

Fourth Chapter - Penalties

Article (16)

Any person who contravenes the protection order shall be punished with imprisonment for a period not exceeding one month and a fine not exceeding one hundred dinars or either one of these penalties.

Article (17)

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Without prejudice to any more severe penalty in the Penal Code or any other law, any person who contravenes the protection order using violence against any of the persons covered by the provisions of this law shall be liable to imprisonment for a period not exceeding three months and a fine not exceeding two hundred dinars.

Article (18)

Anyone who establishes a family counseling center or office without obtaining a license to do so or continues to operate in a licensed center after an administrative decision to revoke the license or to temporarily close the center has been issued, shall be punished with imprisonment and a fine of not less than two hundred dinars.

Fifth Chapter - Final Provisions

Article (19)

Without prejudice to the provisions of Article 9 of the Code of Criminal Procedure, a victim or their representative may, according to the circumstances in cases of domestic violence, withdraw the complaint at any stage of the case; criminal proceedings shall then end. Withdrawal is not possible in the case of crimes.

Article (20)

The Prime Minister and the Ministers, each within his own jurisdiction, shall implement the provisions of this Law which shall come into effect starting from the day following its publication in the Official Gazette.

[...]

13. BANGLADESH

[...]

[Domestic Violence \(Prevention and Protection\) Act, 2010](#) ³⁸

An Act to provide as a signatory state of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979 and the Convention on the Children's Right, 1989 and to establish equal rights for women and children guaranteed in the Constitution of the People's Republic of Bangladesh prevention of domestic violence, protection of women and children from domestic violence and for matters connected therewith or incidental thereto.

WHEREAS it is expedient and necessary as a signatory state of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979 and Convention on the Children's Right, 1989 and to establish equal rights for women and children guaranteed in the Constitution of the People's Republic of Bangladesh prevention of domestic violence, protection of women and children from domestic violence and for matters connected therewith or incidental thereto:-

THEREFORE it is hereby enacted as follows:-

Chapter-One
Introduction

1. Short title, extent and commencement.- (1) This Act may be called the Domestic Violence (Prevention and Protection) Act, 2010.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context –

(1) "Application" means a petition submitted to the court for any sort of remedy under this Act either by a victim or any other person on behalf of a victim;

(2) "Code" means The Code of Criminal Procedure, 1898 (Act V of 1898);

(3) "Compensation order" means an order given under section 16 of this Act;

(4) "Child" means a person below the age of eighteen years;

(5) "Custody order" means an order granted under section 17 of this Act;

(6) "Domestic violence" means any act as defined in section 3 of this Act;

³⁸ Domestic Violence (Prevention and Protection) Act, Law No. 58 (October 2010) available at https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf (last visited December 30, 2018).

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- (7) "Enforcement Officer" means the Upazila Women Affairs officer under the control of the Department of Women Affairs or any officer appointed by the government on this behalf under section 5;
- (8) "Family" comprises of those persons who live or have, at any point of time, lived together in a shared residence, when they are related by consanguinity or marriage or adoption or member of joint family;
- (9) "Family relationship" means a relationship between two persons who are related by consanguinity or marriage or adoption or member of joint family;
- (10) "Interim Protection order" means an order passed under section 13 of this Act;
- (11) "Protection order" means an order given under section 14 of this Act;
- (12) "Residence order" means an order granted under section 15 of this Act;
- (13) "Respondent" means any person, against whom any sort of remedy under this Act has been sought for;
- (14) "Rules" means rules framed under this Act;
- (15) "Safe place" means any home or institution maintained or managed by any person or agency or organization approved by the government or which is considered as safe place for victim by the court;
- (16) "Shared residence" means a residence where-
 - (a) the victim lives;
 - (b) at any stage has lived singly or along with the respondent in a family relationship;
 - (c) which owned or tenanted either jointly by the victim and the respondent, or owned or tenanted by either of them;
 - (d) which either the victim or the respondent or both jointly or singly have any right, title, interest or equity;
 - (e) which may belong to the family of which the respondent is or was a member, irrespective of whether the respondent or the victim has any right, title or interest;
- (17) "Shelter home" means any home or institution with residential facilities maintained or managed by the government or by private organization, where victim can stay safely on temporary basis;
- (18) "Victim" means a child or woman who is or has been or is at risk of being subjected to domestic violence by any other member of the family to whom a family relationship exists;
- (19) "Women" means any woman irrespective of age.

Chapter-Two
Domestic Violence

3. Domestic violence.- For the purpose of this Act, domestic violence means physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom victim is, or has been, in family relationship.

Explanation: For the purpose of this section-

- (a) "Physical abuse"- that is, 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 victim and includes assault, criminal intimidation and criminal force;
- (b) "Psychological abuse"- that includes but is not limited to:-
 - (i) verbal abuse including insults, ridicule, humiliation, insults or threats of any nature;
 - (ii) harassment; or
 - (iii) controlling behaviour, such as restrictions on mobility, communication or selfexpression;
- (c) "Sexual abuse"- that is, any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the victim;
- (d) "Economic abuse" that includes but is not limited to:-
 - (i) deprivation of all or any economic or financial resources or property to which the victim is entitled under any law or custom whether payable under any law or custom or an order of a court or any other competent authority;
 - (ii) not allow to use the articles of daily necessities to the victim;
 - (iii) deprivation or prohibiting the victim from applying legal rights to her stridhan or dower or alimony or any consideration for marriage or any property owned by the victim;
 - (iv) transferring without consent of the victim or prohibiting the victim from applying legal rights to any assets whether movable or immovable owned by her;
 - (v) deprivation or prohibiting the victim from applying legal rights to continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the family relationship.

Chapter-Three
Duties and Responsibilities of Police Officer, Enforcement Officer and Service Provider, etc.

4. Duties and responsibilities of Police Officer.- A Police Officer, 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 or her, shall inform the victim-

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- (a) of her right to make an application for obtaining a relief by way of any orders under this Act;
- (b) of the availability of medical services;
- (c) of the availability of services of the Enforcement Officers;
- (d) where applicable, of her right to free legal services under the Legal Aid Act, 2000 (Act 6 of 2000);
- (e) of her right to file a complaint under any other existing law; and
- (f) other duties and responsibilities prescribed by the government in this behalf.

5. Appointment of Enforcement Officer.- (1) For the purpose of this Act, the Government shall, by notification in the official gazette, appoint one or more Enforcement Officers in each upazila, thana, district or in a metropolitan area and shall also notify the area or areas within which an Enforcement Officer shall exercise the powers and functions conferred on him or her by or under this Act.

(2) The terms and conditions of service of the Enforcement Officer shall be such as may be prescribed rule.

6. Duties and responsibilities of Enforcement Officer.-

(I) The Duties and Responsibilities of Enforcement Officer shall be as follows:-

- (a) to assist the court in discharge of its functions under this Act;
 - (b) to provide report to the court regarding domestic violence;
 - (c) to forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction the domestic violence is alleged to have been committed;
 - (d) to make an application to the Court, if the victim so desires, claiming relief for issuance of a protection order;
 - (e) to take necessary steps so that the victim is provided legal aid under the Legal Aid Act 2000 (Act 6 of 2000), and make available the application form along with other facilities free of cost;
 - (f) to maintain a list of all legal aid and human rights organization or psycho-social counseling services, shelter homes and medical facilities within the jurisdiction of the Court;
 - (g) to refer the victim to a safe shelter home if the victim so requires and forward a copy of a report of having lodged the victim in a shelter home to the police station and the Court having jurisdiction in the area where the shelter home is situated;
 - (h) to refer the victim for medical examination if required and forward a copy of the medical report to the police station and the Court having jurisdiction in the area where the domestic violence is alleged to have taken place;
 - (i) to ensure that the order for compensation is executed; and
 - (j) to perform such other duties as may be prescribed by rules.
- (2) The Enforcement Officer shall be under the supervision of the Court, and shall perform the duties and responsibilities imposed on him/her by the Government or by the Court under this Act.

7. Service provider and their duties and responsibilities.-

(1) Subject to the provisions of this Act and rules framed under it, any voluntary association registered under the Societies Registration Act, 1860 (Act XXI of 1860), or the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance XLVI of 1961) or a nonprofit company or organization registered under the Companies Act, 1994 (Act 18 of 1994), or any non-profit organization or institution registered at NGO Affairs Bureau under Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance XLVI of 1978), any other organization approved by the Government under any other law for the time being in force with the objective of inter alia protecting the human rights especially the rights and interests of women and children by any lawful means including providing of legal aid, medical, financial or other assistance shall be treated as a service provider for the purposes of this Act.

(2) Duties and responsibilities of a service provider shall be as follows:-

- (a) record the domestic incident report in the prescribed form if the victim so desires and forward a copy thereof to the Court and the Enforcement Officer having jurisdiction in the area where the domestic violence took place;
- (b) refer the victim for medical examination and forward a copy of the medical report to the Enforcement Officer and the police station within the local limits of which the domestic violence took place;
- (c) refer the victim to a shelter home, if she so requires and forward a report of the lodging of the victim in the shelter home to the police station within the local limits of which the domestic violence took place.
- (d) perform such other duties and responsibilities as may be prescribed by rules.

8. Duties of shelter homes.- On request by a victim or on her behalf, a police officer, an Enforcement Officer or any other person, the authority responsible for a shelter home shall provide shelter to the victim therein.

9. Duties of medical service provider.- On request by a victim or on her behalf, a police officer, an Enforcement Officer, a service provider or any other person, the person incharge of the medical facility in the hospital, clinic or medical centre shall provide medical aid to the victim.

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Chapter-Four
Rights of Victim, Remedies, etc.

10. Right to reside in the shared home.- The victim shall have every right to reside in the shared residence due to family relationship.

11. Application to Court.-

- (1) A victim or on her behalf, a police officer, an Enforcement Officer, a service provider or any other person, can apply to get remedy according to the provisions of this Act.
- (2) Every application under sub-section (1) shall be submitted in such form as may be prescribed by the rule.
- (3) The Court, shall fix up the date of hearing the victim within 7(seven) working days after receiving the application under sub-section (1).

12. Place of filing application.- A petition under this Act may be filed in any court under whose local jurisdiction the following places are situated-

- (a) the applicant resides;
- (b) the respondent resides;
- (c) the place where the domestic violence occur; or
- (d) the place where the victim temporarily resides.

13. Interim protection order and issuance of notice.-

- (1) The Court, upon receipt of an application under section 11, if satisfied by examining the documents submitted thereto that there is prima facie that the respondent has committed or possibility of committing or abetting to commit domestic violence, then an ex parte interim protection order may be issued against the respondent and simultaneously a show cause notice to the respondent to reply within 7(seven) working days why permanent protection order shall not be issued against him.
- (2) The notice may be issued by registered post, process server, law enforcing agencies or by any other ways prescribed by the rules.

14. Protection order.- The Court may, after giving the parties an opportunity of being heard, satisfied that domestic violence has taken place or is likely to take place, issue a protection order in favour of the victim and issue order restraining the respondent from committing following acts, namely:-

- (a) from committing any act of domestic violence;
- (b) aiding or abetting in the commission of any acts of domestic violence;
- (c) prohibiting or restraining from entering any protected person's place of employment, business, or educational institution or other institution which the protected person ordinarily visits;
- (d) prohibiting or restraining from making any personal, written, telephone, mobile phone, email or any other form of communication with the protected person;
- (e) prohibiting from causing violence to the dependants of the victim or any relatives or any person who gives assistance to the victim from domestic violence;
- (f) any other act that may be cited in the protection order.

15. Residence orders.-

- (1) The court, on the basis of application may issue the following residence orders, namely:-
 - (a) restraining the respondent from residing or visiting the shared residence or specified part thereof where the victim resides;
 - (b) restraining the respondent from dispossessing or in any other manner disturbing the possession of the victim from the shared household;
 - (c) directing the Enforcement Officer to make arrangement for a safe shelter or safe place for the victim and her child/children, if the victim so consents to her placement in such alternative arrangement, during the existence of the protection order and if the continuous stay of the protected person at the shared residence is considered by the Court to be not safe for the protected person;
 - (d) directing the respondent to secure the same level of alternate accommodation for the victim as enjoyed by her in the shared residence or to pay rent for the same, if the circumstances so require;
 - (e) requiring the respondent against whom the order is made to permit any protected person, accompanied by the Enforcement Officer, to enter the offender's residence, shared or not, for the purpose of collecting the protected person's personal belongings including her medical, educational and professional records, documents and certificates, passport, bank

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account documents, savings certificate and other investment papers and documents, personal income tax documents, jeweler, cash money, mobile phone, household goods and valuables of any description;

(f) order against the respondent to permit any protected person to have the continued use and expenses of a vehicle which has previously been ordinarily used by the protected person.

(2) If a right to exclusive occupation of a shared residence or any part thereof is granted to the protected person, such order shall not affect any title or interest that the respondent against whom the order is made;

(3) The Court, shall make an order evicting the person against whom the order is made from the whole of a shared residence that is solely owned by him or her, it is satisfied that there is no other way to secure the personal safety of the protected person for the time being: Provided that such order shall revoked, if-

(a) a suitable safe shelter or safe place or alternative residence is found for the protected person; or

(b) the Court being otherwise satisfied that it is no longer necessary to continue the order for securing the personal safety of the protected person.

(4) The Court may impose any additional conditions or pass any other direction which it may deem reasonably necessary or incidental to protect or to provide for the safety of the victim or her child/children or any member of her family.

(5) The Court may require the respondent to execute a bond, with or without sureties, that neither he/she nor any of his/her family members will commit any further acts of domestic violence.

(6) While passing an order under sub-section (1), sub-section (2) or sub-section (3) the Court may also pass a written order directing the officer in charge of the nearest police station to give protection to the victim or her child/children.

(7) The Court may direct the respondent to return to the possession of the victim any immovable property, her stridhan or dower or alimony or any other marital property and moveable assets, valuables, documents, certificates and any other property or valuable security to which she is entitled.

16. Compensation order.-

(1) If there is any personal injury or financial loss or trauma or psychological damage or damage to movable or immovable property or any possibility of such damage or loss as a result of domestic violence, she may file a claim for compensation either along with the application under section 11 or separately later on.

(2) The Court shall disposed of the application submitted under sub-section (1) within 6(six) months of it's receive.

(3) The Court, in the process of disposal of the application submitted under sub-section (1), after giving the parties opportunity of being heard, subject to the provisions of subsection (4), award such monetary compensation as it deems reasonable.

(4) Before disposal of the application submitted under sub-section (1), the Court may give responsibility on a person or any organization to find out the actual loss or damage and during the hearing of the claim for such compensation may take into consideration the following facts:

(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 injury;

(c) temporary or permanent effect of such injury; (d) any loss of earnings, present and prospective, arising there from;

(e) the amount and value of the movable or immovable property taken or transferred or destroyed or damaged;

(f) reasonable expenses already incurred by or on behalf of the victim in securing protection from violence.

(5) The Court may pass an order against the respondent for the maintenance of the victim as well as her children, if any, which is adequate, reasonable and consistent with the standard of living of the victim.

(6) The Court may an order of lump sum payment or monthly payments of maintenance, if it deems fit.

(7) The Court shall send a copy of the compensation order made under this section to the concern parties and to the Officer in Charge of the police station within the local limits of whose jurisdiction the respondent ordinarily resides or stay.

(8) If the respondent is an employee of government, non-government, semi-government or an autonomous organization, then a copy of the compensation order shall be sent to the higher authority of the respondent.

(9) If the respondent fails to pay the compensation according to the order made under subsection (3), the Court may direct the employer or a debtor of the respondent, to directly pay to the victim or to deposit in her bank account a portion of the wages or salaries or debt due to or accrued to the credit of the respondent.

(10) The compensation imposed under this section may be realized according to the provisions of the Public Demands Recovery Act, 1913(Bengal Act III of 1913).

17. Custody orders.- Notwithstanding anything contained in any other law for the time being in force, the Court may, at any stage of hearing of the application for a protection order or for any other relief under this Act grant order for temporary custody of any child or children of the victim to the victim or to any applicant in favour of the victim and if necessary, the arrangements for any visit to such child or children by the respondent.

18. Court to give copies of order free of cost.- The Court shall, in all cases where it has passed any order under this Act, order that a copy of such order shall be given free of cost to the parties to the application, the officer in-charge of the concern police station, the Enforcement Officer and if applicable, any service provider.

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19. Duration and alteration of orders.- (l) A protection order made under the section 14 shall be in force till the application for discharge submitted by the victim and accepted the same by the Court.

(2) If the Court, on receipt of an application from the victim or the respondent, is satisfied that there is a change in circumstances requiring alteration, modification, amendment or revocation of any order made under this Act, it may, for reasons to be recorded in writing pass such order, as it deems appropriate.

Chapter-Five
Disposal of Application, Trial, Appeal, etc.

20. Disposal of cases.-

(1) The Court shall, dispose of every application made under this Act within a period of 60 (sixty) working days from the date of issuance of notice.

(2) Where the concerned Court fails to dispose of the application within the stipulated time under sub-section (1) on unavoidable reasons, reasons to be recorded in writing it shall disposed of the case within another 15(fifteen) working days and shall inform the matter in writing to the appellate court.

(3) Where the concerned Court again fails to dispose of the case within the extended time under sub-section (2), reasons to be recorded in writing it shall disposed of the case within another 7(seven) working days and shall inform the matter of such time extension in writing to the appellate court.

(4) Where the concerned Court again fails to dispose of the case within the extended time under sub-section (3), it shall dispose of the case as soon as possible and shall send a written report in every 7(seven) days to the appellate court, but the appellate court either by the application of any party or its own motion may transfer the case to any other appropriate court.

(5) When any case is transferred under sub-section (4), it shall be disposed of on priority basis and action shall be taken from the stage where it was pending, as if it was pending in this court on that stage and it was never transferred.

21. Trial.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, any application or trial of an offence or any proceeding under this Act shall be tried of by a First Class Magistrate or where applicable, by a Metropolitan Magistrate.

(2) In granting the compensation order the Judicial Magistrate or Metropolitan Magistrate shall have no pecuniary jurisdiction.

22. Procedure of trial. –

(1) Save as otherwise provided in this Act, for disposal of any application or trial of an offence or any proceeding under this Act the provisions of the Code of Criminal Procedure shall be applicable.

(2) For disposal of any application or trial of an offence or any proceeding under this Act the provisions of summary trial laid down in chapter XXII of the Code of Criminal Procedure shall be applicable.

23. Proceedings to be held in camera.- The Court, either on the consent of the concern parties or its own motion deem necessary, it may conduct the proceedings under this Act in camera.

24. Local inquiry.– In the process of disposal of any application or proceeding the court may direct, after due notice to the parties, to make local inquiry to ascertain the truth of the incidence and such inquiry shall be completed within the stipulated time given by the court.

25. Service of order.-

(1) Any order issued by the court under this Act shall be served to the parties according to the procedure laid down in the Code of Criminal Procedure.

(2) Any order issued by the court under this Act shall be served by the process server of the court or by the police officer or by the Enforcement Officer: Provided that the warrant of arrest shall be served by the police officer.

(3) The process server or the police officer or the Enforcement Officer shall serve the copy of the order within 3(three) working days and submit the service return to the court along with a certificate that such order was duly served.

(4) If necessary, in addition to the above methods order or notice may be served by registered post or by courier service or by any other ways prescribed by the rules, and for these additional ways the cost of service shall be borne by the applicant.

26. Trial in absentia of the respondent.-

(1) Where the notice for appearance of the respondent was served properly and the respondent does not appear before the court or after appearing once remains absent at the subsequent date, the court recording its decision so to do, try the case in absence of the respondent and disposed of the case ex parte.

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(2) Where the notice for appearance of the respondent was served properly and the respondent does not appear before the court or after appearing once remains absent at the subsequent date, the court may, issue warrant of arrest against the respondent.

27. Rejection of complaint.- When any complaint is being rejected by a court due to the absence of the complainant, the court by whom the complaint was rejected, on the basis of application made by the complainant and also on satisfactory ground, may revive the case from the stage where it was rejected: Provided that the application must be submitted within 30 (thirty) working days of rejection and such application must not be submitted more than once.

28. Appeal.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, for the purpose of this Act the Chief Judicial Magistrate or where applicable, the Chief Metropolitan Magistrate court shall be deemed the appellate court.

(2) The appeal against any order under this Act shall be filed by any aggrieved party within 30 (thirty) working days from the date of passing of the order to the Chief Judicial Magistrate or where applicable, to the Chief Metropolitan Magistrate court.

(3) The appeal shall be disposed of within 60 (sixty) working days from its filing and it must not be transferred more than once without any valid reason.

Chapter-Six
Offence, Punishment, etc.

29. Cognizance, bailability and compoundability.- The offence committed under this Act shall be cognizable, bailable and compoundable.

30. Penalty for breach of protection order.- A breach of protection order by the respondent shall be an offence under this Act and shall be punishable with imprisonment which may extend to 6(six) months, or with fine which may extend to 10(ten) thousand Taka, or with both and repetition of any offence shall be punishable with imprisonment which may extend to 2(two) years, or with fine which may extend to 1(one) lakh Taka, or with both.

31. Community welfare service.-

(1) The Court, if it deems fit, instead of passing an order of sentence against the respondent under section 30, may pass an order to perform various community welfare services by the respondent and responsibility may be vested upon any institution or organization to supervise such services.

(2) From the income gained by the respondent due to the community welfare services under sub-section (1), the Court may pass an order to pay such portion of the income to the victim and where applicable, to her child/children or any dependants as it deems appropriate.

(3) For the purpose of the sub-section (1) and (2) rules may be framed.

32. Punishment for false complaint.- If any person with the motive of causing loss to any other person knowing that there is no cause of complaint under this Act, nevertheless makes a complaint, shall be punishable with imprisonment which may extend to 1(one) year, or with fine which may extend to 50(fifty) thousand Taka, or with both.

Chapter-Seven
Miscellaneous

33. Public Servants.- The Enforcement Officers, while acting or purporting to act in pursuance of any of the provisions of this Act shall be deemed to the public servants within the meaning of section 21 of the Penal Code, 1860.

34. Accountability of Enforcement Officer.- If any Enforcement Officer fails or refuses to discharge his or her duties as directed by the Court without any sufficient reason, he or she shall be liable for departmental proceeding.

35. Act not in derogation of any other law.- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

36. Power to make rules. - The Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

37. Authentic English text.- The Government may, by notification in the Official Gazette, published an authentic text of the original Bengali Act in English: Provided that in the event of conflict between the Bengali and the English text, the Bengali text shall prevail.

14. BARBADOS

[Domestic Violence \(Protection Orders\)\(Amendment\) Act, 2016](#) ³⁹

OBJECTS AND REASONS

This Bill would amend the *Domestic Violence (Protection Orders) Act*, Cap. 130A to

- (a) make provision for a comprehensive definition of the term “domestic violence”;
- (b) extend the classes of persons who are considered to be victims of domestic violence;
- (c) ensure that victims of domestic violence receive the appropriate counselling or therapy;
- (d) facilitate the enrolment of perpetrators of domestic violence in the appropriate rehabilitative programmes;
- (e) extend the classes of persons who may intervene in applications before the Court on behalf of victims of domestic violence;
- (f) establish the duties and powers of members of the Police Force in relation to allegations of domestic violence, including the power to issue emergency protection orders;
- (g) maximise the safety and protection of victims and ensure that perpetrators of domestic violence are held accountable, and for related matters.

Short title

1. This Act may be cited as the *Domestic Violence (Protection Orders) (Amendment) Act, 2016*.

Amendment of section 2 of Cap. 130A

2. Section 2 of the *Domestic Violence (Protection Orders) Act*, in this Act referred to as the principal Act is amended by

- (a) **deleting the definitions of “child”, “harassment” and “spouse”, and**
- (b) **inserting in the appropriate alphabetical order the following definitions:**

“child” means a person under 18 years of age who is not married and is considered to be in a domestic relationship by virtue of continued residence or a relationship of consanguinity or affinity with a perpetrator or victim of domestic violence and includes an adopted child, a stepchild and a ward;

“child abuse” means any act of domestic violence perpetrated against a child and includes causing or permitting a child to witness, hear or be exposed to acts of domestic violence;

“cohabitational relationship” means a relationship where persons who are not legally married are living together in the same household as husband and wife;

“dependant” means a person who, by some physical, mental or other disability is wholly or partly maintained by a perpetrator or victim of domestic violence;

“domestic relationship” means the relationship between a perpetrator of domestic violence and victim who is a spouse, former spouse, child, dependant or other person who is considered to be a relative of the perpetrator by virtue of consanguinity or affinity and includes cohabitational and visiting relationships;

“domestic violence” means the wilful infliction or threat of infliction of harm by one person in a domestic relationship upon another person in that relationship and includes child abuse, emotional abuse, financial abuse, physical abuse and sexual abuse;

“emotional abuse” means any act by a perpetrator which causes psychological pain or injury to a victim and includes harassment, the use of threatening words or behaviour and withholding from a victim, access to the victim’s child, parent or guardian;

“financial abuse” means the exercise of control by a perpetrator over a victim’s access to financial resources through coercion, deception or intimidation, the effect of which is to hinder the victim’s financial independence or ability to maintain a child or dependant or to ensure financial dependence on the perpetrator and includes exploitation of the victim’s financial resources and withholding the financial support necessary to maintain a victim, child or dependant;

“harassment” includes:

- (a) intimidation of a victim by a perpetrator through
 - (i) persistent verbal abuse;
 - (ii) threats of physical violence;

³⁹ Domestic Violence (Protection Orders) (Amendment) Act, (19 January 2016), available at https://www.barbadosparliament.com/uploads/bill_resolution/907d022cc76d0c58b3353e80836ba3e6.pdf (last visited December 30, 2018).

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- (iii) malicious damage to the victim's property;
 - (iv) persistently contacting the victim by any means, including via e-mail, facsimile, post, telephone or text message;
 - or (v) any other means;
 - (b) persistently following a victim about from place to place;
 - (c) hiding clothes or other property owned or used by a victim or depriving the victim of the use thereof;
 - (d) approaching, besetting or watching the house or other place where a victim resides, works, carries on business, studies or happens to be;
 - (e) publishing on the internet or by any other mass medium, statements or other material relating to a victim without the victim's consent;
 - (f) keeping a victim or the victim's communications under surveillance without the victim's knowledge or consent;
 - (g) any other act, the purpose of which is to intimidate, scare or cause a victim to apprehend harm;
- "perpetrator" means a person who commits an act of domestic violence;
- "person at risk" means a person named in an emergency protection order for whose safety the order is issued;
- "physical abuse" means any act or omission by a perpetrator which causes pain or injury to the body of a victim;
- "respondent" means a person against whom an application for a protection order is made;
- "sexual abuse" means the performance by a perpetrator of a sexual act on a victim by the use of force, threats, fear, manipulation or guile and includes the actual or attempted commission of any of the offences stated in Part I of the *Sexual Offences Act*, Cap. 154;
- "spouse" means a party to a marriage or cohabitational relationship; "subordinate police officer" has the meaning assigned to it by section 2 of the *Police Act*, Cap. 167;
- "victim" means a person against whom an act of domestic violence is committed and includes a child;
- "visiting relationship" means a relationship where the parties do not live together in the same household, but in which there are romantic, intimate or sexual relations."

Amendment of section 3 of Cap. 130A

3. The principal Act is amended by deleting section 3 and substituting the following:

Protection order

- 3.(1) Where on an application made in accordance with section 4, the Court is satisfied on a balance of probabilities that a person has engaged in or has threatened to engage in behaviour that constitutes domestic violence, the Court may make an order, in this Act referred to as a protection order, restraining the person from engaging in that conduct or similar conduct.
- (2) Subject to subsection (3), on an application for a protection order under subsection (1), the Court may, where it considers that it is necessary to do so in order to ensure the safety of the victim pending the hearing and determination of the application, make an interim protection order before considering the application.
- (3) The Court shall not make an interim protection order under subsection (2), unless the application for a protection order is supported by oral evidence on oath or by evidence on affidavit given by the complainant.
- (4) Subject to sections 16 (1) and 18(3), a protection order made by the Court under subsection (1) may be for such period of time as the Court considers necessary, but may, on the application of the complainant or the respondent, be varied or revoked.
- (5) The Court may make an interim protection order at any time before or during the hearing of an application for an order under subsection (1), whether or not the respondent is present at the proceedings or has been given notice thereof.
- (6) Where an interim protection order is made by the Court, the Court shall fix a date for further consideration of the application, which shall be no later than the date on which the order will expire.
- (7) An interim protection order shall be served on the respondent as soon as possible after it is made and the respondent shall be summoned to appear before the Court for a further hearing of the matter, at which time the Court may
- (a) fix a new date for the hearing of the substantive application and extend the interim protection order until the date fixed for the hearing of the substantive application or until such time as the Court considers necessary, which shall not exceed a period of 28 days from the date of filing of the application;
 - (b) revoke the interim protection order; or
 - (c) hear the substantive application and make a protection order under subsection (1)."

Amendment of section 4 of Cap. 130A

4. The principal Act is amended by deleting section 4 and substituting the following:

Application for protection order

- 4.(1) An application for a protection order shall be made in accordance with Form 1 as set out in the Schedule to this Act by
- (a) the spouse of the person against whom the order is sought where an act of domestic violence was committed against that spouse or a child;
 - (b) any other person in a domestic relationship with the person against whom the order is sought, where an act of domestic violence was committed against that person or a child;

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- (c) the Commissioner of Police on behalf of a victim of domestic violence;
 - (d) a person other than the persons mentioned in paragraphs (a) to (c), as an agent for a victim of domestic violence, including a Social Worker, Probation Officer or representative of a non- governmental organisation which renders support services to victims of domestic violence, where that person has obtained,
 - (i) leave of the Court; and
 - (ii) in the case of a victim who is mentally capable of providing consent and over the age of 18 years, the consent of the victim; or
 - (e) a Child Care Officer or Welfare Officer on behalf of a child or a person who is mentally handicapped, against whom an act of domestic violence was committed.
- (2) The person against whom the order is sought shall be the respondent to the application.
- (3) Where an application for a protection order has been made to the Court under subsection (1), the Court shall issue a copy of the application together with a summons, in accordance with Form 2 set out in the Schedule, to the respondent forthwith to be served personally on the respondent.
- (4) Where it appears to the Court that it is not reasonably practicable to serve the respondent personally with a copy of an application for a protection order, the Court may
- (a) make an order for substituted service, including service by
 - (i) registered post to the last known address of the respondent;
 - (ii) leaving the document at the last known address of the respondent; or
 - (iii) advertisement in 2 daily newspapers printed and published in Barbados, which service is deemed to have been effected on the date of the later advertisement, the cost of which shall be borne by the complainant; or
 - (b) order that the copy of the application be served by such other means as the Court thinks just.
- (5) Notwithstanding anything in this Act, any document required to be served under this Act may be served by an attorney-at-law or his agent.
- (6) Where a complainant is a person referred to in paragraph (c) or (d) of subsection (1), a protection order shall not be made in respect of the application unless notice of the application in accordance with Form 2 of the Schedule was given to the victim.
- (7) Where it is proved by evidence on oath to the satisfaction of the Court that a summons and the copy of the application were served on the respondent in accordance with subsection (3) or (5) within what appears to the Court to be a reasonable time, and the respondent fails to appear at the time and place appointed for the hearing, the Court may
- (a) proceed to hear and determine the matter in the absence of the respondent; or
 - (b) where the Court is satisfied, having regard to the information before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.
- (8) Where the respondent is present but the complainant or person on whose behalf a complaint is made or their attorney-at-law fails to appear at the time and place appointed for hearing, the Court may
- (a) where it is satisfied that there is a reasonable excuse for the absence of the complainant or person on whose behalf the complaint is made or their attorney-at-law, adjourn the hearing of the matter until such time and on such terms as it considers just; or
 - (b) dismiss the application and make an order as to costs.
- (9) An application for a protection order shall be heard within 2 days after the date of service of the application or as soon as practicable thereafter”.

Amendment of section 5 of Cap. 130A 5.

Section 5 of the principal Act is amended by deleting subsection (1) and substituting the following:

“(1) Evidence on an application for a protection order may be given on affidavit in accordance with Form 2A as set out in the Schedule to this Act”.

Amendment of section 6 of Cap. 130A

6. The principal Act is amended by deleting section 6 and substituting the following:

Form of protection orders

- 6.(1) Subject to this Act, a protection order may include provisions restraining the respondent from
- (a) being on the premises on which the complainant for the protection order or the child in respect of whom the order was made, resides;
 - (b) being on the premises that are the place of education or work of the complainant or the place of education or work of the child in respect of whom the order was made;
 - (c) being in a specified locality, being a locality in which premises as mentioned in paragraph (a) or (b) or any other premises the Court deems it necessary to specify, are situated;
 - (d) approaching within a specified distance of the complainant or the child in respect of whom the order was made;

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- (e) entering or remaining on the premises, while intoxicated or under the influence of a drug, where the respondent continues to reside with the complainant or the child in respect of whom the order was made;
- (f) causing another person to engage in the conduct referred to in paragraph (a) or (c) of subsection (3).
- (2) A protection order may
- (a) require the respondent to
 - (i) leave the premises referred to in paragraph (a) of subsection (1);
 - (ii) continue any legal or other obligation the respondent may have to pay the rent, mortgage, utilities or taxes of the premises referred to in that sub-paragraph where the respondent is asked to leave under sub-paragraph (i);
 - (iii) allow the complainant to enter and remain on the premises referred to in paragraph (c) of subsection (1);
 - (iv) pay compensation for pecuniary loss suffered by the complainant as a result of the acts of domestic violence committed by the respondent, including medical expenses, legal expenses, loss of earnings, the cost of accommodation, the cost of transportation or any other expense reasonably incurred by reason of injury to the complainant's person or property;
 - (v) make payments to the complainant for the maintenance of a dependant of the complainant and respondent;
 - (vi) where no order is in force under Part III of the *Maintenance Act*, Cap. 216 or Part II of the *Minors Act*, Cap. 215 for the maintenance of a child of the respondent or Part VI of the *Family Law Act*, Cap. 214 for the maintenance of the complainant or a child of the respondent, make interim payments to the complainant for the benefit of the complainant or a child of the respondent until such time as an order is made under the *Maintenance Act*, Cap. 216, the *Minors Act*, Cap. 215 or the *Family Law Act*, Cap. 214;
 - (vii) where no order is in force under Part III of the *Maintenance Act*, Cap. 216 with respect to the legal custody of a child of the respondent or Part II of the *Minors Act*, Cap. 215 or Part V of the *Family Law Act*, Cap. 214 with respect to custody of or access to a child of the respondent, grant custody to the complainant or such other person as the Court specifies, until such time as an order is made under the *Maintenance Act*, Cap. 216, the *Minors Act*, Cap. 215 or the *Family Law Act*, Cap. 214;
 - (viii) surrender to the police, for the duration of an interim or final protection order, any licences or permits issued under the *Firearms Act*, Cap. 179 and any ammunition, firearms or other weapons in the possession or control of the respondent, whether or not such weapons were used to commit an act of domestic violence; or
 - (b) specify conditions subject to which the respondent may be on premises or in a locality specified in the order.
- (3) A protection order that includes a provision mentioned in paragraph (a) of subsection (1) may also include a provision
- (a) restraining the respondent from taking possession of personal property of either the complainant or the respondent, being property that is reasonably needed by a member of the respondent's household;
 - (b) directing the respondent to give possession of such property as is specified in the order, to a specified member of the respondent's household;
 - (c) prohibiting the respondent from damaging property of the complainant or a child of the complainant or respondent; or
 - (d) prohibiting the respondent from causing another person to engage in the conduct referred to in paragraph (a) or (c).
- (4) A protection order shall, in each case, provide that the respondent against whom the order was sought, attend the Family Services Division of the Welfare Department or such other agency as the Court specifies, for appropriate counselling and therapy.
- (5) Where an order referred to in subsection (4) is made against a male respondent, the Court shall direct that the respondent enrol in an appropriate programme that is facilitated by the Ministry responsible for Social Care.
- (6) A protection order may, in each case, provide that the complainant or any other person, including a child, in respect of whom the order was made, attend the Family Services Division of the Welfare Department or such other agency as the Court specifies, for appropriate counselling and therapy.
- (7) Where a protection order includes provisions under subsections (4), (5) or (6), the Family Services Division of the Welfare Department, the coordinators of any programme that is facilitated by the Ministry responsible for Social Care or any other agency specified by the Court, shall submit to the Court a report setting out the following:
- (a) the dates on which counselling took place;
 - (b) the nature of the counselling and therapy carried out; and
 - (c) the response given to the counselling and therapy by the parties to the order.
- (8) The report referred to in subsection (7) shall be submitted to the Court not later than one month before the expiration of the protection order or at such other time as the Court specifies.
- (9) For the purposes of this section "complainant" means a person against whom domestic violence was committed or who

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was harassed.”.

Amendment of section 7 of Cap. 130A

7. Section 7 of the principal Act is amended in subsection (1) by deleting paragraph (c).

Insertion of sections 11A to 11E into Cap. 130A

8. The principal Act is amended by inserting immediately after section 11 the following as sections 11A to 11E:

Duties of members of the Police Force 11A.

- (1) A member of the Police Force shall respond to every complaint alleging domestic violence.
- (2) The Commissioner of Police shall keep a Domestic Violence Register for the purpose of recording information obtained by a member of the Police Force who responds to a complaint alleging domestic violence.
- (3) A member of the Police Force who responds to a complaint alleging domestic violence shall complete a report in accordance with Form 6 set out in the Schedule to this Act and record the information in a Domestic Violence Register to be maintained by the Commissioner of Police.
- (4) A member of the Police Force shall, as soon as is practicable after completing a report in accordance with subsection (3), provide the person making the complaint with a copy of the report.
- (5) Where practicable, when responding to a complaint alleging domestic violence, a member of the Police Force shall render assistance to a victim of domestic violence by
 - (a) seeking medical attention for a victim who has suffered injury;
 - (b) accompanying the victim onto premises for the purpose of retrieving personal property;
 - (c) ensuring the welfare and safety of children and other persons who are on the premises; and
 - (d) preventing further breaches of the law.
- (6) A member of the Police Force shall, as soon as is practicable after receiving a complaint alleging domestic violence, verbally inform the victim of domestic violence of the victim's rights and provide a printed copy of those rights as set out in Form 7 of the Schedule to this Act.
- (7) A member of the Police Force shall, pursuant to an order issued under section 11B or an order of the Court, seize any ammunition, firearms or other weapons in the possession or control of the perpetrator, whether or not those weapons were used to commit an act of domestic violence.

Power to issue emergency protection order

- 11B.** (1) Where a member of the Police Force exercises his power of arrest in accordance with section 12(4), a subordinate police officer may issue an emergency protection order in accordance with Form 8 as set out in the Schedule to this Act, where he has reasonable cause to believe that the issue of an order is necessary to ensure the safety of a person at risk.
- (2) A subordinate police officer may issue an emergency protection order under subsection (1) without the consent of the person at risk.
- (3) In determining whether to issue an emergency protection order under subsection (1), the subordinate police officer shall consider
- (a) whether the person at risk has immediate access to the Court to make an application in accordance with section 4;
 - (b) the likelihood that the perpetrator will continue to commit acts of domestic violence against the person at risk;
 - (c) the welfare of any children residing with the perpetrator or the person at risk;
 - (d) any hardship that may be caused if the order is issued; and
 - (e) any other matter that, in the circumstances of the case, the member of the Police Force considers relevant.

Service of emergency protection order

- 11C.**(1) Where an emergency protection order is issued, it shall be served personally by a member of the Police Force on the perpetrator as soon as is reasonably practicable after the order is issued.
- (2) An order served under subsection (1) shall remain in force until such time as an order is made by the Court pursuant to an application under section 4, but no longer than 7 days from the date on which it is issued.
- (3) A member of the Police Force who serves an emergency protection order shall explain to the perpetrator in a language that he understands,
- (a) the purpose, terms, duration and effect of the order; and
 - (b) the consequences that may follow if the perpetrator fails to comply with the terms of the order.
- (4) A member of the Police Force shall, as soon as is reasonably practicable after serving an emergency protection order, notify the person at risk of the emergency protection order and the purpose, terms, duration and effect of that order.

Effect of emergency protection order

11D. Where an emergency protection order is served on a perpetrator, the perpetrator shall immediately cease to engage in behaviour that constitutes harassment or domestic violence towards the person at risk and, for the duration of the order, shall

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- (a) vacate any premises occupied by the person at risk; and
- (b) surrender to a member of the Police Force any licences or permits issued under the *Firearms Act*, Cap. 179 and any ammunition, firearms or other weapons in that person's possession or control, whether or not such weapons were used to commit an act of domestic violence.

Breach of emergency protection order

11E. (1) Where an emergency protection order is issued and served in accordance with sections 11B and 11C and the perpetrator contravenes the order in any respect, the perpetrator is guilty of an offence and is liable on summary conviction to a fine of \$2 500 or to imprisonment for a term of 6 months or to both.

(2) A person who is arrested for contravention of an emergency protection order shall be brought before the Court within a period of 24 hours beginning at the time of the arrest, or as soon as reasonably practicable thereafter.”.

Amendment of section 12 of Cap. 130A

9. Section 12 of the principal Act is amended by

(a) deleting subsections (3) and (4) and substituting the following:

“(3) Where a power of arrest is attached to an order under subsection (1), a member of the Police Force may arrest without a warrant, a person whom he has reasonable cause to suspect is in breach of such order, by reason of that person's use of violence or unauthorised entry into the premises or areas referred to in section 6(1).

(4) A member of the Police Force may arrest without a warrant a person whom he has reasonable cause to suspect has committed or is about to commit an act of domestic violence, where a failure to act immediately may result in serious physical injury or death.”; and

(b) inserting immediately after subsection (4) the following as subsection (5):

“(5) Where a person is arrested under subsection (3) or (4), he shall be brought before the Court within the period of 24 hours beginning at the time of his arrest, or as soon as reasonably practicable thereafter.”.

Amendment of section 14 of Cap. 130A

10. The principal Act is amended by deleting section 14 and substituting the following:

Power to enter premises

14.(1) A member of the Police Force may, without a warrant, enter any premises for the purpose of giving assistance to anyone present

(a) if he has reasonable grounds to suspect that an emergency protection order, an interim protection order or a final protection order is being breached; or

(b) if, upon the invitation of a person resident at the premises or independently, he has reasonable grounds to suspect that a person on the premises has suffered or is in imminent danger of suffering physical injury at the hands of some other person.

(2) Where a member of the Police Force exercises a power of entry under subsection (1), he shall, as soon as is reasonably practicable after exercising the power, submit to the Commissioner of Police through the Station Sergeant for the district in which the incident occurred, a report which shall include

(a) the reason for entering the premises without a warrant;

(b) the offence being committed or about to be committed;

(c) the manner in which the investigation was conducted; and

(d) the measures taken to ensure the safety and protection of the person at risk of injury.”.

Amendment of section 16 of Cap. 130A 11. Section 16 of the principal Act is amended by deleting subsections (3) and (4).

Insertion of section 19A into Cap. 130A

12. The principal Act is amended by inserting immediately after section 19 the following as section 19A:

“Obligation to report child abuse

19A. (1) A person who attends to, examines or otherwise interacts with a child and is aware or has reasonable cause to suspect that the child is a victim of domestic violence, shall immediately notify the Child Care Board or a member of the Police Force of that suspicion.

(2) A person who

(a) is aware or has reasonable cause to suspect that a child is a victim of domestic violence and fails to notify the Child Care Board or a member of the Police Force; or

(b) knowingly and maliciously makes a false, inaccurate or misleading statement to the Child Care Board or a member of the Police Force, alleging that a child is a victim of domestic violence, is guilty of an offence and liable on summary conviction to a fine of \$5 000 or imprisonment for a term of 12 months or to both.”.

15. BELARUS

[Law on Basic Activities Aimed at Offence Prevention, 2014](#) ⁴⁰

Chapter 1. General Provisions

Article 1. Basic Definitions

The following general terms and definitions are utilized in the current Law:

individual prevention of offenses shall be defined as activities of subjects of offence prevention to provide a corrective impact on a citizen of the Republic of Belarus, a foreign citizen and a stateless person (hereinafter, unless otherwise specified by this Law - a citizen) in order to prevent the commission of offenses, carried out in accordance with this Law and other acts of legislation;

domestic violence shall be defined as intentional actions of a physical, psychological, or sexual nature of a family member in relation to another family member that violates his/her rights, freedoms, legitimate interests and causing him/her physical and/or mental suffering;

general prevention of offenses shall be defined as activities of offence prevention subjects to identify the causes and conditions of offenses conducive to their perpetration, and taking measures to eliminate them, impact on social processes and phenomena in order to prevent unlawful behavior of citizens, carried out in accordance with this Law and other legislative acts;

family members shall be defined as close relatives, other relatives, disabled dependents and other citizens who live together with a citizen in common household with him/her.

[...]

CHAPTER 3

GENERAL OFFENCE PREVENTION

Article 11. Regional integrated offences prevention plans

Regional integrated offences prevention plans should ensure that preventive measures are taken to prevent:

[...]

domestic violence;

[..]

Relevant meetings on crime and corruption are aimed to coordinate regional comprehensive plans on offence prevention prior to their approval by local executive and administrative bodies of the regional and basic territorial levels, as well as monitor the implementation of preventive measures provided in them.

[..]

Article 17. Basic preventive measures to prevent domestic violence

Local executive and administrative bodies in collaboration with internal affairs bodies, health authorities, state health organizations, education authorities, educational institutions, labor, employment and social protection bodies, social service institutions, and other organizations take measures to identify and eliminate the causes of domestic violence and conditions conducive to it, organize activities to assist victims of violence.

Local executive and administrative bodies, in cooperation with internal affairs bodies, education authorities, educational institutions, labor, employment and social protection bodies, other organizations, provide information and education on the prevention of domestic violence, organize training, retraining and advanced training of specialists in the field of prevention of domestic violence.

⁴⁰ Law on Basic Activities Aimed at Offence Prevention, No. 122-3 (04 January 2014) , available at http://world_of_law.pravo.by/text.asp?RN=h11400122 (last visited December 30, 2018) Unofficial translation provided by the compendium team.

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Local executive and administrative bodies make decisions on the establishment of state organizations, their structural subdivisions to provide temporary shelter services to citizens affected by domestic violence, and take measures, if necessary, in accordance with the procedure established by the Council of Ministers of the Republic of Belarus to provide temporary residence to a citizen whom a restraining order is issued.

Social service institutions, other state organizations, their structural subdivisions that provide social services to citizens who have suffered from domestic violence, keep records on assistance provided to citizens who have suffered from domestic violence, compile, systematize and analyze the information received.

Internal affairs bodies in cooperation with social service institutions, other state organizations, and their structural subdivisions provide social services to citizens affected by domestic violence, state health organizations, educational institutions, organizations operating housing stock and (or) providing housing and communal services, within their competence, carry out preventive measures to identify the facts of domestic violence and citizens committing domestic violence.

The internal affairs bodies keep records of offenses committed by family members in relation to other family members, summarize and systematize the information received.

The prosecution authorities, internal affairs bodies, local executive and administrative bodies, other state bodies, state health organizations, educational institutions in order to protect the rights, freedoms and legitimate interests of children, within their competence, prepare documents for making decisions on the recognition of citizens partially incapacitated, on the removal of a child from parental custody without deprivation of parental rights or deprivation of parental rights, on the application of compulsory security measures and treatment of people suffering from mental disorders (diseases).

The internal affairs and prosecution authorities explain to citizens who have suffered from domestic violence their right to file a criminal complaint or a statement of administrative offense, inform them on organizations that assist victims of domestic violence, they also, within their competence, prepare documents for the adoption of decisions on bringing citizens who commit domestic violence to administrative or criminal liability.

State health organizations provide medical and psychological assistance to citizens who have suffered from domestic violence, notify other subjects of crime prevention according to their competence on committed domestic violence, submit information on citizens affected by domestic violence, and citizens who committed domestic violence who received medical help.

[...]

CHAPTER 4 INDIVIDUAL PREVENTION OF OFFENSES

Article 24. Preventive conversation

Preventive conversation is an oral explanation to a citizen of the public danger of preparing and committing offenses, legal consequences resulting from committing offenses, and also convincing a citizen of inadmissibility of committing them.

Preventive conversation is held with a citizen:

[...]

... whose behavior in public places, at the place of residence, work, study or lifestyle, give reason to believe that he/she might commit an offense;

[..]

Article 26. Official warning

Official warning is a written explanation to a citizen of the inadmissibility of preparing or committing offenses in order to prevent the repetition of committing offenses.

An official warning is issued to a citizen:

[...]

...brought to administrative responsibility for the offense under Articles 9.1, 9.3, 17.1 of the Code of Administrative Offenses of the Republic of Belarus committed against a family member;

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[...]

Article 28. Preventive record

Preventive record is the observation of the behavior of a citizen in respect of whom a decision has been made to file preventive record, in order to prevent him/her from preparing or committing offenses and exerting a preventive effect on him.

Preventive record is carried out in relation to a citizen:

[..]

... brought to administrative responsibility for the offense under Articles 9.1, 9.3, 17.1 of the Code of Administrative Offenses of the Republic of Belarus committed against a family member within a year after the official warning was issued to him/her

[...]

Article 31. Restraining order

Restraining order is an establishment of restrictions on the commission of certain actions for a citizen who has committed domestic violence.

Restraining order is applied after the decision to impose an administrative penalty for the offense provided in Articles 9.1, 9.3, 17.1 of the Code of Administrative Offenses of the Republic of Belarus , committed against a family member, to a citizen:

issued an official warning in accordance with paragraphs 3 and 5 part 2 Articles 26 of the current law . The restraining order is imposed within a year after the official warning was issued to him/her

preventive record is carried out on the ground of paragraph 3 and 4 part 2 Article 28 of the current Law

Restraining order is issued to a citizen in writing by the head of the internal affairs body or his/her deputy within three days from the receipt of the decision to impose an administrative penalty for the offense provided in Articles 9.1, 9.3, 17.1 of the Code of Administrative Offenses committed against a family member.

According to a restraining order, a citizen in respect of whom it has been issued is prohibited:

from attempting to find out the place of stay of a citizen (citizens) who has suffered (s) from domestic violence, if this citizen (s) is (are) in a place unknown to a citizen who has committed domestic violence;

to visit the location of a citizen (citizens) who has suffered from domestic violence, if this citizen (citizens) is (are) temporarily located outside of a joint place of residence with a citizen in respect of whom a restraining order has been issued;

to communicate with a citizen (citizens) who has suffered from domestic violence, including by telephone, using the global computer network Internet.

With a written consent of an adult citizen (citizens) who has suffered from domestic violence a citizen who has committed domestic violence is obliged to temporarily leave a joint place of residence with the citizen (citizens) who has suffered from domestic violence and prohibits dispose of joint property.

Restraining order containing the duty and prohibition specified in part five of this article shall be approved upon by the relevant prosecutor in the absence of a written consent of the citizen (citizens) who has suffered from domestic violence, if this citizen (citizens) is (are) dependent on the citizen in respect of whom a restraining order has been issued, or for other reasons is not capable of independently protecting his/her rights and legitimate interests/

Restraining order shall be announced to a citizen in respect of whom it has been issued by an official of the internal affairs body within two days from the date of the issuance of such a restraining order explaining his/her rights and obligations provided in Article 32 of this Law. A protocol on receipt of a copy of the restraining order and the explanation of the rights and obligations of the citizen in respect of whom the restraining order has been issued shall be compiled. The protocol shall be signed by a citizen in respect of whom the restraining order was issued and the official who handed it in. In case the citizen who is handed a copy of the restraining order refuses to sign the protocol, the official makes an entry in the protocol.

Restraining order comes into force from the moment of its announcement to a citizen in respect of whom it is made.

Within two days from the day a restraining order is issued, its copy shall be sent to an appropriate prosecutor, handed over to the adult citizen who suffered from domestic violence, and also sent to the appropriate local executive and administrative body for information and, if necessary, for taking measures to prevent domestic violence in accordance with this Law and other legislative acts.

In case there is more than one citizen who suffered from domestic violence, a copy of a restraining order is given to each of these adult citizens.

The prohibitions and obligations specified in the fourth and fifth parts of this article are established by the head of the internal affairs body or his/her deputy for a period of three to thirty days from the day the restraining order is issued to a citizen in respect of whom it is issued.

The decision to terminate restraining order may be taken by the head of the internal affairs body or his/her deputy upon the application of the relevant adult citizen (s) affected by domestic violence.

Cancellation of the decision on the imposition of an administrative penalty for an offense under Articles 9.1, 9.3, 17.1 of the Code of Administrative Offenses of the Republic of Belarus committed against a family member, entails termination of restraining order.

[...]

16. BELGIUM

Law on Temporary Residence Barring Order in Case of Domestic Violence, 2012 ⁴¹

CHAPTER 1-GENERAL PROVISION

Article 1. This law governs a matter referred to in Article 77 of the Constitution.

CHAPTER 2-BARRING ORDER

Article 2. For the purposes of this law, "barred person" means the person to whom a barring order has been imposed.

Article 3. § 1. If facts or circumstances indicate that the presence of a person of age at the residence poses a serious and immediate threat to the safety of one or more persons occupying the same residence, the Public Prosecutor may order a barring order in respect of that person.

§2 The barring order entails, for the remote person, the obligation to leave immediately the common residence and the prohibition to enter, stop by or be present there and the prohibition of entering in contact with the persons referred to in § 4, 3 °, who occupy this residence with him/her.

§ 3. The barring order shall apply for a maximum of 10 days from the date of its notification to the person concerned.

§ 4. The order of the public prosecutor is recorded in writing and contains, inter alia:

- (1) a description of the residence and the duration of the measure;
- (2) the facts and circumstances which gave rise to the barring order, referred to in § 1;
- (3) the names of the persons with whom the barred person can no longer come into contact;
- (4) the sanctions that may be imposed in the event of non-compliance with the prohibition.

§ 5. The Public prosecutor immediately communicates the contents of the order to the barred person and to those who occupy the same residence. A copy of his decision shall be notified by the most appropriate means of communication to the chief of the local police force of the police zone in whose area of operations the affected residence is located.

The public prosecutor contacts the help center for victims of his/her office so that the center assists and informs people who occupy the same residence as the barred person.

If the situation that gave rise to the barring order is so urgent, the decision of the public prosecutor may be communicated verbally to the barred person. In this case, a copy of the order is communicated as soon as possible to the barred person.

§ 6. At the latest within twenty-four hours of the notification of the order, the barred person informs the public prosecutor where, and through which means he/she is reachable during the period of the prohibition.

⁴¹ Law on Temporary Residence Barring Order in Case of Domestic Violence (Loi relative à l'interdiction temporaire de résidence en cas de violence domestique), (15 May 2012), available at <http://www.ejustice.just.fgov.be/eli/loi/2012/05/15/2012009239/moniteur> (last visited December 30, 2018). Unofficial translation by Compendium team.

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§ 7. The public prosecutor may at any time lift the barring order if he/she considers that the threat referred to in § 1 has ended or, if the circumstances justify it, modify the terms of this measure. In this respect, he/she acts in accordance with §§ 4 and 5.

Article 4. § 1. At the latest on the first day of the opening of the court following the date of the order of barring order, the public prosecutor transmits it to the District Court of the jurisdiction in which the affected residence is located. The public prosecutor also communicates to the District Court and to the parties the minutes that gave rise to the barring order and, where appropriate, his decision to lift the prohibition or to modify the modalities, as well as the minutes recording breaches of the prohibition.

§ 2. Within twenty-four hours of the communication of the order, the District Court shall fix the date and time of the hearing at which the case may be heard. The hearing shall take place within the time limit referred to in Article 3 (3).

By court order, the clerk notifies the parties mentioned in the order of the public prosecutor, the place, date and time of the hearing and, where appropriate, invites them to submit a request for urgent and provisional measures or provisional measures relating to the common residence.

The clerk also communicates the day and time of the hearing to the public prosecutor who ordered the barring order.

Article 5. § 1. If the parties or the Public Prosecutor make the request in writing or orally at the hearing, the justice shall hear the case and hear the parties present.

The case is heard in the council chamber. However, the District Court may, in any event, depending on the circumstances, order public hearing of the proceedings either ex officio or at the request of the Public Prosecutor or a party to the case.

§ 2. During this hearing, the District Court shall decide, upon request, on compliance with the conditions referred to in Articles 3 and 4.

It may lift the barring order or extend, by motivated ruling, a maximum of three months from the judgment, if and insofar as the facts or circumstances referred to in Article 3, § 1, justify it on the date of judgment.

The decision is provisionally enforceable.

§ 3. By judicial notice, the clerk notifies the parties of the judgment and informs them of the remedies available to them. He/she also communicates the judgment to the public prosecutor.

§ 4. The District Court may at any time, at the request of one of the parties or of the public prosecutor and by motivated ruling, modify the terms of the barring order or lift the barring order if the circumstances of the case require it.

§ 5. The case remains active in the District Court until the barring order ends. In case of new elements, it can be brought before the District Court by conclusions or by written request, deposited or addressed to the clerk.

Article 730, § 2 (a) of the Judicial Code is not applicable to these cases.

§ 6. During the period of the barring order, the parties may introduce a request for urgent and provisional measures by means of pleadings or by written request, filed or addressed to the clerk.

§ 7. The barring order terminates if the District Court has not ruled within the time limit referred to in article 3, § 3. The barring order terminates ipso jure if the joint residence is the object of a judicial decision.

[Law to Punish non-Compliance with the Temporary Residence Prohibition in Cases of Domestic Violence, 2012](#) ⁴²

[...]

CHAPTER 2: Repression of the non-respect of the barring order referred to in the law of May 15, 2012 relating to the temporary barring order in case of domestic violence.

Article 2. The barred person, referred to in article 2 of the law of 15 May 2012 on the temporary barring order in case of domestic violence, who violates the prohibition imposed on him/her by the Public prosecutor will be punished with imprisonment from eight days to six months and a fine of 26 euros to 100 euros or one of those penalties only.

[...]

[Law Providing Allocation of the Family Residence to a Spouse or Legal Cohabitant Who Has Been the Victim of Physical Violence by her/his Partner, 2003](#) ⁴³

⁴² Law to Punish non-Compliance with the Temporary Residence Prohibition in Cases of Domestic Violence and to Amend Sections 594 and 627 of the Judicial Code (Loi tendant à réprimer le non-respect de l'interdiction temporaire de résidence en cas de violence domestique et modifiant les articles 594 et 627 du Code judiciaire), (15 June 2012), available at <http://www.ejustice.just.fgov.be/eli/loi/2012/06/15/2012009264/moniteur> (last visited December 30, 2018). Unofficial translation by Compendium team.

⁴³ Law Providing for the Allocation of the Family Residence to a Spouse or Legal Cohabitant Who Has Been the Victim of Physical Violence by her/his Partner, and Completing Article 410 of the Penal Code (Loi visant à l'attribution du logement familial au conjoint ou au cohabitant légal victime d'actes de violence physique de son partenaire, et complétant l'article 410 du Code pénal), (January 28, 2003), available at

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Article 1. This law governs a matter referred to in Article 78 of the Constitution.

Article 2. Article 410, paragraph 2, of the Criminal Code, inserted by the law of 24 November 1997 and amended by the law of 28 November 2000, is completed as follows:

"In addition, in the case referred to in Article 398, paragraph 1, the maximum penalty shall be increased to one year's imprisonment."

Article 3. In Article 223 of the Civil Code, the following paragraph is inserted between paragraphs 2 and 3:

"If one spouse has committed an act referred to in Articles 375, 398 to 400, 402, 403 or 405 of the Penal Code [rape, voluntary assault and battery, manslaughter, homicide] against the other person or has attempted to commit an act referred to in Articles 375, 393, 394 or 397 of the same Code, or if there are serious indications of such behavior, the victim spouse will be granted, except in exceptional circumstances, the enjoyment of the conjugal residence if she/he makes the request. "

Article 4. In Article 1447 of the same Code, inserted by the Law of 14 July 1976, the following paragraph is inserted between paragraphs 1 and 2:

"Except in exceptional circumstances, will be granted the request of a spouse who has been victim of an act referred to in Articles 375, 398 to 400, 402, 403 or 405 of the Penal Code [rape, voluntary assault and battery, manslaughter, homicide] or an attempt to an act referred to in section 375, 393, 394 or 397 of the same Code, or where the other spouse has been convicted on that account by a decision that has become *res judicata* and the divorce has been pronounced against her/him, that is, when the decision pronouncing the divorce is based in whole or in part on that fact. "

Article 5. Article 1479 of the same Code, inserted by the law of 23 November 1998, is supplemented by the following paragraph:

"If a legal cohabitant has committed an act referred to in Articles 375, 398 to 400, 402, 403 or 405 of the Penal Code [rape, voluntary assault and battery, manslaughter, homicide] against the other person or has attempted to commit an act referred to in Articles 375, 393, 394 or 397 of the same Code, or if there are serious indications of such behavior, the latter will be granted, except in exceptional circumstances, the enjoyment of the common residence if she/he so requests."

Article 6. In Article 1280 of the Judicial Code, as amended by the Laws of 14 July 1976, 2 February 1994, 30 June 1994 and 20 May 1997, the following paragraph is inserted between paragraphs 6 and 7:

"If one spouse has committed an act referred to in Articles 375, 398 to 400, 402, 403 or 405 of the Penal Code [rape, voluntary assault and battery, manslaughter, homicide] against the other person or has attempted to commit an act referred to in Articles 375, 393, 394 or 397 of the same Code, or if there are serious indications of such behavior, the victim spouse will be granted, except in exceptional circumstances, the enjoyment of the conjugal residence if she/he makes the request. "

[Criminal Code, 1867 \(As amended\)](#) ⁴⁴

Art. 410. In the cases mentioned in sections 398 to 405 [voluntary assault and battery, manslaughter, homicide], if the offender committed the crime or offense against his father and mother or other ascendants, in a direct or collateral line to the fourth degree, the minimum penalty for these articles will be doubled in the case of imprisonment, and increased by two years in the case of imprisonment.

The same shall apply if the offender commits the crime or offense against his spouse or the person with whom he cohabits or has cohabited and maintains or has maintained a lasting emotional and sexual relationship.

In addition, in the case referred to in article 398, paragraph 1, [voluntary assault and battery] the maximum penalty is increased to one year's imprisonment.

17. BELIZE

[Domestic Violence Act, 2007](#) ⁴⁵

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2003012833 (last visited December 30, 2018). Unofficial translation by Compendium team.

⁴⁴ Criminal Code (8 June 1867, with amendments up to 27 September 2018), available at http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&caller=list&cn=1867060801&la=f&fromtab=loi&tri=dd+as+rank#LNK0096 (last visited December 30, 2018). Unofficial translation by Compendium team.

⁴⁵ Domestic Violence Act, 2007 (17 January 2008), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94750/111289/F-388015036/BLZ94750.pdf> (last visited December 30, 2018).

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[...]

PART I
Preliminary

1. This Act may be cited as the

DOMESTIC VIOLENCE ACT, 2007.

2. In this Act, unless the context otherwise requires

“applicant” means a person described in section 3 who applies, or on whose behalf an application is made for a Protection Order, an Occupation Order, a Tenancy Order, a Counseling Order, an Order for payment of financial compensation, an Interim Order, or any other order specified in Part II of this Act;

“child” means a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is the child of the applicant and the respondent or either of them, and includes

- (a) an adopted child;
- (b) a stepchild;
- (c) a child who is treated as a member of the family or who resides in the household residence on a regular basis but who is or has not been married;
- (d) a child, whether or a child of either the applicant or the respondent, who is or has been living in the household residence as a member of the family;
- (e) a child of a man and woman who are legally considered common law spouses, whether or not the man and woman still cohabit as common law spouses;
- (f) a child of a man and woman who are or have engaged in a visiting relationship as cohabitants;
- (g) a child of whom either the man or the woman is a guardian;

“Clerk” means the Clerk or Deputy Clerk of the Court;

“cohabitant” means a person who has lived with, is living with, or is in a visiting relationship with, a person of the opposite sex as a husband and wife although not legally recognized as a common law or legal spouse of that person;

“Court” means the Family Court established under the Family Court Act or a court of summary jurisdiction;

“de facto spouse” in relation to a person, means a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person as that person’s husband or wife though not legally married to each other, or if not living together, is a parent, but not a grandparent, of a child of the first-mentioned person, or is pregnant by the first-mentioned person, and includes a cohabitant, a person in a visiting relationship;

“dependant” includes a person over the age of eighteen years who by reason of mental or physical disability, age or infirmity is reliant on either the applicant or respondent for his welfare;

“domestic violence” includes physical, sexual, emotional, psychological or financial abuse committed by a person against a spouse, child, de facto spouse, or any other person who is a member of the household of the applicant or the respondent;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person, including

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- (a) persistent intimidation by the use of abusive or threatening language;
- (b) persistent following of the person from place to place;
- (c) depriving that person of the use of his property;
- (d) interfering with or damaging the property of the person;
- (e) the watching or besetting of the place where the person resides, works, carries on business, attends for education, or happens to be;
- (f) making persistent or unwelcome telephone calls to the person;
- (g) the willful or reckless neglect of a child, spouse, or dependant;
- (h) the forced confinement of the person, child, spouse;
- (i) verbal or non-verbal threats of physical violence;
- (j) inducing, coercing or forcing a person, without the person's consent, to take a drug that alters the will of that person, or that reduces the capacity of that person, to resist;

"drug" means a substance or product prescribed under Part I, II or III of the Second Schedule of the Misuse of Drugs Act;

"financial abuse" means a pattern of behaviour of any kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to, financial resources so as to ensure financial dependence;

"guardian" in relation to a child, includes a person who has custody of that child;

"household residence" means

- (a) in relation to both spouses, the dwelling house that is used habitually by both or either of them as the only or principal family residence together with any buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household;
- (b) in relation to a man or a woman who are no longer spouses or in relation to de facto spouses, the dwelling house that was last used habitually by either of them, before or after they ceased to be spouses or de facto spouses, as the only or principal family residence, together with any land, buildings, or improvements appurtenant thereto and used wholly or mainly for the purposes of the household;

"Interim Order" means an Order made under section 11;

"Minister" means the Minister responsible for Social Development or Social Services;

"Occupation Order" means an Order referred to in section 8;

"Order" includes a Protection Order, an Occupation Order, a Tenancy Order, a Counseling Order, an Order for the payment of financial compensation, or any other order prescribed in Part II of this Act;

"parent" means a person who is a parent or grandparent in relation to a child, dependant, spouse or respondent, as the case may be

- (a) by blood;
- (b) by marriage;
- (c) by adoption;

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and includes a guardian or any person who has actual custody of a child;

“personal effects” includes privately owned items, such as clothes, keys, or identification documents, that are regularly worn or carried on one’s person;

“physical abuse” includes any act or omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the First Schedule.

“police officer” means a member of the Belize Police Department;

“Protection Order” means an Order made pursuant to subsection (1) of section 4;

“respondent” means a person against whom an application for an Order is made;

“sexual abuse” includes sexual contact of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the offences listed in the First Schedule;

“spouse” includes

- (a) a woman who cohabits with a man as if she were in law his wife;
- (b) a man who cohabits with a woman as if he were in law her husband;
- (c) a former spouse;
- (d) a de facto spouse;
- (e) a former de facto spouse.

“Tenancy Order” means an Order made pursuant to section 8;

“tenant” in relation to any dwelling house, includes any person

- (a) whose tenancy has expired or has been determined;
- (b) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house, and the term “tenancy” has a corresponding meaning;

“visiting relationship” means a non-cohabitational relationship between a man and a woman who, although not legally recognized as common law spouses, have or had a relationship which may or may not have produced a child.

PART II
Orders

3.

(1) A person referred to in subsection (2) may apply to the Court for any of the Orders provided under this Act on the ground that the respondent is engaging, has engaged, or threatens to engage, in domestic violence.

(2) An application under subsection (1) may be made by

- (a) the spouse of the respondent;
- (b) a member of the respondent’s household residence, either on his own behalf or on behalf of any other member of the household;
- (c) a child;

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- (d) a dependant;
- (e) a parent or guardian;
- (f) a person who has a child in common with the respondent;
- (g) a police officer;
- (h) an experienced or qualified person in social welfare, being a public officer duly appointed by the Public Services Commission;
- (i) any child by consanguinity or affinity of either the spouse or the respondent who is not a member of the household of either the spouse or the respondent;
- (j) an officer of the Women's Department, being a public officer duly appointed by the Public Services Commission.

(3) A child or a dependant may apply for an Order provided under this Part through

- (a) a person with whom the child or dependant normally resides or resides with on a regular basis, or by any adult member of his household; or
- (b) a parent or guardian of, or a person who is in loco parentis to, the child or dependant; or
- (c) a social service officer, or an officer of the Women's Department referred to in subsection (2)(h) and (j) respectively.

(4) Notwithstanding subsection (3), a police officer, a social service officer or an officer of the Women's Department may apply for an Order provided under this Part on behalf of an applicant referred to in subsection (2).

(5) Where an application referred to in subsection (3) or (4) is on behalf of a child or dependant, the parent or guardian of the child or dependant shall have the right to be a party to the proceedings.

(6) Where an application referred to in subsection (4) relates to an applicant who is an adult, the applicant shall be a party to the proceedings.

(7) Nothing in this Act shall preclude a person from applying for

- (a) a Protection Order and an Occupation Order; or
- (b) a Protection Order and a Tenancy Order; or
- (c) notwithstanding section 3 of the Summary Jurisdiction (Procedure) Act, a Protection Order, an Order for medical costs, relocation costs, legal costs, or compensation for monetary loss; or
- (d) a Protection Order and a Counseling Order; or
- (e) a Protection Order and a combination of any of the Orders specified in paragraphs (a) to (d).

4.

(1) Where, on an application made by a person described in section 3, the Court determines, on a balance of probabilities, that domestic violence has occurred, it may issue a Protection Order and any other Order described in subsection (7) of section 3, containing any or all of the prohibitions and directions set out in section 5.

(2) The Court shall grant a Protection Order and any other Order described in subsection (7) of section 3 where it is satisfied that the respondent

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- (a) is engaging in, or has engaged in, domestic violence against a person specified in the application;
- (b) has engaged in domestic violence against a person and, unless restrained, is likely to engage in further conduct that would constitute domestic violence; or
- (c) has threatened to engage in conduct that would constitute domestic violence and, unless the respondent is restrained, the respondent is likely to engage in conduct that would constitute that, or another domestic violence offence,

and in either case, having regard to all the circumstances of the case, the Order is necessary for the protection of the applicant or any other person specified in the application, or is in the best interests of a child.

5.

(1) A Protection Order may

- (a) prohibit the respondent from
 - (i) engaging or threatening to engage in conduct which could constitute domestic violence towards the applicant;
 - (ii) being on premises specified in the Order, that are premises frequented by the applicant including any residence, property, business, university, school or place of employment;
 - (iii) being in a locality specified in the Order;
 - (iv) engaging in direct or indirect communication with the applicant;
 - (v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;
 - (vi) approaching the applicant within a specified distance;
 - (vii) causing or encouraging another person to engage in conduct specified in paragraphs (i) to (vi); and
- (b) direct that the Order be applied for the benefit of and extended to a parent, child, dependant, other member of the household residence, or de facto spouse; and
- (c) direct that the respondent
 - (i) return to the applicant specified personal property belonging to the applicant that is in his possession or under his control;
 - (ii) pay compensation for monetary loss incurred by the applicant as a direct result of conduct that amounted to domestic violence;
 - (iii) pay interim monetary relief to the applicant, or to any person specified in the Order, for the benefit of any child, where there is for the time being no existing order relating to maintenance, until such time as an obligation for the financial maintenance of the child is determined pursuant to any other written law;
 - (iv) immediately vacate any place or residence for a period of not less than three months and not more than three years, whether or not the place or residence is jointly owned or leased by the respondent and the applicant, or solely owned and leased by the respondent or the applicant;

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- (v) pay the rent, or a portion of the rent specified in the Order in respect of any place or residence referred to in paragraph (iv);
 - (vi) make or continue to make payments in respect of rent or mortgage payments for premises occupied by the applicant;
 - (vii) ensure that reasonable financial and material care and support is provided in respect of a child or dependant;
 - (viii) relinquish to the police any firearm or other weapon which he may have in his possession or control and which has been used in domestic violence; and
- (d) direct the respondent, applicant, child or any other person specified in the Order to receive professional counseling or therapy
 - (i) from any person or agency or from a programme approved by the Minister in writing;
 - (ii) from the Family Services Division in the Ministry responsible for Social Services.
- (2) An order made under subsection (1) may contain such other prohibitions and directions as consented to by the applicant or respondent or both.
- (3) The Court may make an Order that includes a prohibition of the kind referred to subsection (1)(a)(ii) and (v) 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)(a)(v) relates.
- 6.** Where the Court makes a Counseling Order under subsection (1)(d) of section 5, the Order shall specify
 - (a) that the Court shall receive written notification from the counselor or therapist of sessions missed without reasonable excuse; and
 - (b) the date by which the counselor or therapist shall submit a report to the Court in respect of the counseling or therapy, such report to include where applicable any prognosis of recovery.
- 7.**
 - (1) Where the Court makes an Order under subsection (1)(c)(ii) of section 5 which directs the payment of compensation, such financial compensation shall include, but shall not be limited to
 - (a) loss of earnings;
 - (b) medical and dental expenses;
 - (c) relocation and moving expenses;
 - (d) accommodation expenses; and
 - (e) reasonable legal costs, including the cost of an application under this Act.
 - (2) The payment of financial compensation by a respondent shall be received by the Clerk on behalf of the applicant.
- 8.**
 - (1) Where the Court makes an Order under subsection (1) of section 5 which
 - (a) directs that the respondent vacate any place or residence; or
 - (b) directs that the respondent return to the applicant specified personal property in the respondent's possession or control; or

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- (c) directs that the respondent pay the rent or mortgage, or a portion of the rent or mortgage of any place or residence referred to in paragraph (c)(iv) of subsection (1) of section 5,

the Court may, in the same Order, if it thinks it necessary and notwithstanding any other law, direct a police officer to remove the respondent immediately or within a specified time from the said place or residence, or to accompany the applicant, as the case may be, either immediately or within a specified time, to the said place or residence in order to supervise the removal of property belonging to the applicant and to ensure the protection of the applicant and any other person on the place or residence.

- (2) Where an agreement, including a mortgage or a lease of premises provides that, if the respondent ceases to reside in his place of residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's family, the person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with an Order made under this Part.
- (3) Where the Court is satisfied on evidence before it that an agreement referred to in subsection (2) exists in relation to the respondent, the Court shall, at the time of making an Order, direct that a copy of the Order be sent to the person referred to in subsection (2) by the Clerk of the Court.
- (4) An Occupation Order shall grant the applicant the right to live in the household residence or any other premises forming part of the household residence for such period and on such terms and subject to such conditions as the Court thinks fit.
- (5) A copy of an Occupation Order shall be served on the respondent by a police officer or a bailiff and the court may, at its discretion, receive proof of such evidence by affidavit in Form 6 prescribed in the Second Schedule.
- (6) Where the household residence in respect of which an application is made is being rented, the Court may take a Tenancy Order, ordering the respondent to continue paying the rent so long as the Tenancy Order remains in force, and directing the applicant to continue residing in the household residence for such period and on such terms and subject to such conditions as the Court thinks fit.
- (7) Where an Occupation Order or a Tenancy Order is made, the person for whose benefit the Order is made shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which the Order relates, for the period specified in the Order.
- (8) On or after making an Occupation Order or a Tenancy Order the Court may, subject to subsection (9), make an Order granting to the applicant the use, for such period and on such terms and subject to such conditions as the Court thinks fit, of all or any of the following, namely
 - (a) furniture;
 - (b) household appliances; and
 - (c) household effects;in the household residence or other premises to which the Order relates.
- (9) Notwithstanding subsection (8), an Order under that subsection shall continue in force for a period of six months unless the Court otherwise directs, but, in any event, shall expire if the Order made in relation to the household residence expires or is otherwise discharged by the Court.
- 9. In determining whether or not to impose one or more prohibitions or directions in any Order made under this Part, the Court shall, without limitation, have regard to the following
 - (a) the nature, history or pattern of domestic violence that has occurred and whether any previous Order or Interim Order has been issued;

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- (b) the need to protect the applicant and any other person whose benefit an Order has been issued from further domestic violence;
- (c) the best interests and welfare of any child;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused to the applicant or the respondent as a result of issuing the Order;
- (f) the income, assets and financial obligations of the respondent, the applicant, and any other person affected by the Order;
- (g) the need to preserve and protect the institution of marriage and other matrimonial relationships whilst affording protection and assistance to the family as a unit;
- (h) any other matter that in the circumstances of the case the Court considers relevant.

10.

(1) An Order made under this Part may be for such period as the Court considers necessary, but shall not exceed three years.

(2) Where an Order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

11.

(1) On an application for a Protection Order, the Court may make an interim Order, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant or the best interests and welfare of any child or dependant.

(2) An Interim Order may be made by the Court at any time either before or during the hearing of the application whether or not –

- (a) the respondent is present at the proceedings; or
- (b) the respondent has been given notice of the proceedings.

(3) An Interim Order may be made for such period of time as the Court considers necessary but shall not exceed a period of twenty-one days.

(4) Subject to subsection (3), an Interim Order may contain any or all of the prohibitions or directions specified in section 5(1)(a).

(5) Where an Interim Order is made, the Court shall summon the respondent to appear at a further hearing of the matter as soon as possible after the making of the Interim Order, and at such further hearing the Court may

- (a) extend the period of the Interim Order for such further period or until the date fixed for the hearing of the application, such period not to exceed forty-two days from the date of the application;
- (b) revoke the Interim Order; or
- (c) hear the application and make any Order provided in this Part in substitution for the Interim Order,

whether or not the respondent appears at the proceedings.

(6) Where an Interim Order is granted ex-parte the respondent shall be served, personally or otherwise, with a copy of the Order, and the Court may receive proof of such service by affidavit in Form 6 prescribed in the Second Schedule.

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12.

(1) In proceedings under this Act the Court may at any time before the taking of evidence, accept an undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the application or any other action that constitutes domestic violence.

(2) Where an undertaking is given by a respondent under subsection (1), the Court shall make such Orders or Interim Orders as it deems fit in respect of the undertaking.

PART III

Proceedings in respect of applications for Orders

13.

(1) An application for an Interim Protection Order and any other Interim Order provided in subsection (4) of section 11, or for a Protection Order or any other Order provided in subsection (7) of section 3, shall be made in the prescribed form, being Form 1 in the Second Schedule and shall be filed with the Clerk upon payment of the requisite filing fees.

(2) Except as otherwise provided for by this Act, the Summary Jurisdiction (Procedure) Act shall apply mutatis mutandis in respect of an application made under subsection (1).

(3) Proceedings in respect of an application under subsection (1) shall be held in camera unless the Court, in its discretion, directs otherwise.

(4) Where an application under subsection (1) is made on behalf of a child or dependant, the parent or guardian of that child or dependant, or the person with whom the child or dependant normally resides or resides with on a regular basis is entitled to be a party to the proceedings.

(5) Nothing in subsection (4) shall prevent a child or dependant, on whose behalf an application is made under subsection (1), from being heard in the proceedings, and where the child or dependant expresses views, the Court shall take account of those views having regard to the age, maturity and mental capacity of the child or dependant, and the ability of the child or dependant to express such views coherently and with sufficient clarity.

14. The Clerk shall fix a date for the hearing of an application made under subsection (1) of section 13 which shall be no more than five days after the date on which the application is filed.

15.

(1) Subject to subsection (2)(b) and subsection (5) of section 11, a copy of an application made under subsection (1) of section 13 together with the notice of the date on which, and the time and place at which, the application is to be heard, shall be served so far as is practicable, personally on the respondent by a bailiff or police officer.

(2) A notice of proceedings shall be issued by the Clerk in the prescribed form, being Form 2 in the Second Schedule.

(3) Where an application is made under subsection (1) of section 13 in respect of a child or dependent, a copy of the application, together with the notice of the date on which, and the time and place at which, the application is to be heard, shall as soon as practicable, be served personally by a bailiff or police officer on the parent or guardian or other person with whom the child or dependant normally resides or resides with on a regular basis.

(4) A notice of the proceedings which is issued and served under this section shall, for all legal purposes, be deemed to be a summons that is duly issued and served under the Summary Jurisdiction (Procedure) Act and compels the respondent to appear in court to answer the application as if it were the complaint to which that Act applies.

(5) The Court shall receive oral evidence from the police officer as to the proof of service of each application and notice of proceedings.

(6) Where the hearing of an application is adjourned because the application and the notice of proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing shall be the date, time and place stated in the new notice of proceedings.

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16. Where notice of proceedings has been served on the respondent in accordance with section 15 and the respondent fails to appear in person at the time fixed for the hearing, the Court may

- (a) proceed to hear and determine the matter in the respondent's absence; or
- (b) where the Court is satisfied, having regard to the material before it, that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

17.

(1) If, on the date of the hearing the application the respondent appears in court, but neither the applicant nor the person on whose behalf the application is made appears either in person or represented by his attorney-at-law, the Court may

- (a) dismiss the application;
- (b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing upon such terms as it deems just; or
- (c) where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit, the Court may so direct, but the Court shall, on the application of any other party, order the attendance for cross examination of the person making such an affidavit.

(2) The respondent may at any time apply to the Court on the prescribed form. Being Form 3 in the Second Schedule for any Order or Interim Order to be varied or revoked by the Court.

18. Where the Court proposes to make an Order or an Interim Order and the respondent is before the Court, the Court shall, before making the Order or the Interim Order, explain to the respondent

- (a) the purpose, terms and effect of the proposed Order or the Interim Order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed Order or the Interim Order; and
- (c) the procedure by which the proposed Order or Interim Order may be varied or revoked.

19. Where an Order, or an Interim Order, is made or varied by the Court

- (a) the Clerk shall arrange for the Order or the Interim Order to be drawn up on the prescribed form, being "Form 4" in the Second Schedule, and filed in the Court; and
- (b) the Court shall cause the bailiff or police officer to serve a copy of the Order or the Interim Order, as the case may be
 - (i) on the respondent;
 - (ii) on the applicant;
 - (iii) on any other person to whom the Order or the Interim Order is to apply, whether or not such a person is a party to the proceedings; and
 - (iv) the police station located nearest to the area where the respondent and the applicant reside.

20.

(1) Where the Court has not been able to serve notice of proceedings of the Order, as the case may be, upon the respondent personally, it may, on application being made by the application supported by affidavit of the person having conduct of the proceedings, make an Order for substituted service of the notice of proceedings or Order, as the case may be.

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(2) For the purpose of subsection (1)(b) “substituted service” means

- (a) service by registered post to the last known address of the respondent;
- (b) leaving the documents at the last known address of the respondent;
- (c) service by advertisement in two weekly newspapers, which service is deemed to have been effected at midnight on the date of the later advertisement, or
- (d) service in such other manner as the Court may direct.

21. Unless provided otherwise in this Act, a respondent shall not be bound by an Order or an Interim Order

- (a) where he was not present at the time of the making of the Order or the Interim Order; or
- (b) where the Order has not been served on him personally or in accordance with section 20.

PART IV

Variation, and Revocation of Orders

22.

(1) Where an Order is in force, a party to the proceedings in respect of whom the Order was made may apply to the Court on the prescribed Form, being Form 3 in the Second Schedule, for an Order varying or revoking the original Order.

(2) On an application under subsection (1), the Court may, by Order, vary or revoke the Order or the Interim Order.

(3) A copy of an application under this section shall be served by a police officer, so far as is practicable, personally on each person who was a party to the proceedings in respect of which the original Order or Interim Order was made.

(4) In determining whether to vary or revoke an Order or an Interim Order, the Court shall have regard to whether there has been any significant change to the matters specified in section 9.

PART V

Enforcement Orders

23.

(1) Subject to subsection (2), a person against whom an Order or an Interim Order has been made who

- (a) has had notice of the Order or the Interim Order; and
- (b) contravenes any provision of the Order or the Interim Order, or fails to comply with any direction or prohibition of the Court stated in the Order or Interim Order, commits an offence and is liable -
 - (i) on a first conviction, to a fine not exceeding nine thousand dollars, or to imprisonment for a period of twelve months, or to both such fine and period of imprisonment;
 - (ii) on a second conviction, to a fine not exceeding fifteen thousand dollars and not less than twelve thousand dollars, or to imprisonment for a period of twenty-four months, or to both such fine and period of imprisonment.
 - (iii) on any subsequent conviction to a period of imprisonment of five years.

(2) Where a person is convicted of an offence under this Act, the Court may, in lieu of imposing a sentence of imprisonment (but not the fine) as provided in subsection (1), make an order (herein called “a Rehabilitation Order”) requiring the convicted person to undergo probation in a re-education or rehabilitation program for persons in a similar situation, and to engage in community service work each week-end for one year.

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(3) A Rehabilitation Order shall only be made in the following circumstances-

- (a) where the person is a first time offender under this Act and has no previous convictions for such offences;
- (b) where the convicted person has not previously breached an Order or an Interim Order made pursuant to this Act;
- (c) where a suitable program of education and training is available for such persons.

(4) Before making a Rehabilitation Order under this section, the Court shall have regard to any submissions and representations by the prosecution and the defence.

(5) A Rehabilitation Order may be made subject to such conditions as the Court may think fit to impose.

(6) Where the person in respect of whom a Rehabilitation Order is made fails to comply with the conditions thereof the Court may, after holding an inquiry, revoke the Rehabilitation Order and proceed to pass sentence in accordance with subsection (1).

PART VI

Police Power of Entry and Arrest

24.

(1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

(2) It shall be the duty of a police officer responding to a domestic violence complaint

- (a) to complete a domestic violence report which shall form part of a National Domestic Violence Register to be maintained by the Commissioner of Police; and
- (b) to forward a copy of that domestic violence report to each of the Magistrate's Court and Family Court having jurisdiction over the district in which the complaint of domestic violence occurred.

(3) A domestic violence report shall be in the form prescribed as "Form 5" of the Second Schedule and shall include but not be limited to

- (a) the name of the parties;
- (b) the relationship and sex of the parties;
- (c) information relating to the history of domestic violence between the parties;
- (d) the date and time the complaint was received;
- (e) the type of the abuse and the weapon used, if any.

25. Where a Magistrate is satisfied, by information on oath, that-

- (a) there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the Magistrate may issue a warrant in writing authorizing a police officer to enter the premises specified in the warrant at any time within twenty-four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the

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peace or to protect life or property, including seizing a weapon alleged to have been used in the commission of a domestic violence offence and thus needed for the purpose of an investigation or trial.

26.

(1) Where a police officer has been invited onto premises by a person apparently resident in those premises, for the purpose of giving assistance to that person or another who has suffered or is in imminent danger of suffering physical injury at the hands of another person in a situation amounting to domestic violence, the police officer may, without a warrant, enter the premises for the purpose of giving assistance and shall take such action as is reasonable to prevent the commission or repetition of the violence complained of.

(2) Where a police officer has been refused entry onto premises and has reasonable cause to believe that a person is engaging in or threatening to engage in conduct which amounts to domestic violence, and failure to act immediately may result in physical injury or death, the police officer may enter those premises without a warrant, for the purpose of

- (a) arresting the person whom he suspects of engaging in conduct amounting to domestic violence;
- (b) giving assistance to a person who has suffered injury;
- (c) ensuring the welfare and safety of a child who may be on the premises; and (d) preventing any further breach of the law.

(3) Nothing in this section authorizes the entry onto premises by a police officer, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (2).

(4) Where a police officer exercises a power of entry under subsection (2), he shall immediately submit a written report to the police officer in charge of the police station where the incident occurred, and such report must contain the following information

- (a) the reasons for entering the premises without a warrant;
- (b) the offence being committed or about to be committed; and
- (c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.

27. Where an Order or an Interim Order is in force and a police officer

- (a) is satisfied, by way of complaint, that a breach of the Order or Interim Order has occurred; or
- (b) believes on reasonable grounds that a person has committed or is committing a breach of the Order or Interim Order,

he may detain and arrest that person with or without a warrant.

28.

(1) Subject to subsection (2), where a person is arrested under section 26 or 27, the person shall be charged in accordance with the relevant provisions of the criminal law for committing or threatening to commit any of the offences listed in the First Schedule and shall be dealt with accordingly.

(2) Where an application for an Order has been made or where a person has been arrested and charged under section 26 or 27 and after hearing all the evidence the Court is satisfied that

- (a) the incident was an isolated one;
- (b) there are circumstances which make it desirable to preserve the family unit; and

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- (c) the conduct complained of is not sufficiently grave to warrant the imposition of either the Order or the penalty, as the case may be,

it may, with the consent of the applicant or complainant, as the case may be, withhold the granting of an Order or the imposition of any penalty as prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into under subsection (2) the Court may prescribe such additional conditions as follows:

- (a) that the parties receive professional counseling, including family counseling;
- (b) that the parties report to a social service officer at certain fixed intervals;
- (c) that the matter be reviewed by the Court within three months.

(4) A bond of good behaviour entered into under subsection (2) shall be forfeited where the Court is satisfied that

- (a) the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant;
- (b) based on a report from a social service officer, social worker, police officer or such other person, domestic violence is likely to be perpetrated against the applicant or complainant; or
- (c) the applicant or complainant has become fearful of the respondent or defendant to the extent that he is no longer willing to continue the relationship.

29. Where direct oral evidence of a fact would be admissible in any proceedings under this Act, a document containing a statement made by the complainant which forms part of the record compiled by the police and tending to establish that fact, shall be admissible in evidence in circumstances where

- (a) the complainant refuses to be sworn as a witness; or
- (b) having been sworn as a witness, gives oral evidence which is inconsistent or contradictory to the statement forming part of the police record.

Provided that the statement contains a declaration by the maker and signed before a magistrate or a justice of the peace to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true.

PART VII
Miscellaneous

30.

(1) Where the Court is required to determine whether to grant bail in respect of an offence under this Act, the Court shall consider

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child where the defendant or victim of the alleged offence has custody of that child;
- (c) (c) the welfare of any child being a member of the household;
- (d) any hardship that may be caused to the defendant or other members of the family if bail is not granted;

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- (e) the defendant's record with regard to the commission of violent acts and whether there is evidence in the record of physical or emotional abuse to children; and
- (f) any other matters which may be relevant to the case in question.

(2) The Court may, in granting bail under this section, order that the recognizance be subject to such of the following conditions as the Court considers appropriate and which can, as far as practicable, be imposed taking into account the circumstances of each case

- (a) that the defendant not harass or molest or cause another person to harass or molest the victim of the alleged offence;
- (b) that the defendant not be on the premises in which the victim resides or works;
- (c) that the defendant not be in a locality in which are situated the premises in which the victim resides or works; and
- (d) where the defendant continues to reside with the victim, that the defendant not enter or remain in the place or residence while under the influence of alcohol or a drug.

(3) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognizance, the police officer may arrest the person without a warrant.

31. An appeal shall lie to the Supreme Court from any judgment or Order of the Court made or given under this Act and the procedure in respect of such an appeal shall be as laid down in the Supreme Court of Judicature Act and any Rules made thereunder.

32. Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

33. Whenever a police officer intervenes in a case of domestic violence or abuse, the police officer shall, as soon as possible, take all reasonable measures within his power to prevent the victim of domestic violence from being abused again and shall also take the following steps

- (a) where a victim indicates that he has suffered injuries, though not visible, which require medical treatment, the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;
- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal effects from a place where the respondent may reside;
- (d) advise the victim as to his rights and services which may be available to assist him, be they government or private services.

34. The Ministry responsible for Social Development shall be responsible for

- (a) promoting and developing educational programs for the prevention of domestic violence;
- (b) studying, investigating and publishing reports on the domestic violence problem in Belize, its manifestations and scope; the consequences and the options for confronting and eradicating it, in conjunction with the Belize Police Department;

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- (c) identifying groups and sectors in society in which domestic abuse is manifested and educating these groups and sectors by making them aware of the skills required to combat domestic violence;
- (d) creating an awareness among society with regard to the needs of victims of domestic violence and their families;
- (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;
- (f) the establishing of programmes on information support and counseling services for victims of domestic violence;
- (g) encouraging the establishment of shelters for victims of domestic violence;
- (h) encouraging programmes of services for persons, including children and dependants who come from homes where there is abuse and violence;
- (i) providing training and orientation services for persons who assist in the treatment and counseling of victims of domestic violence and abuse;
- (j) analyzing and carrying out studies on the need for education and retraining for persons who engage in conduct that constitutes domestic violence and abuse and for their rehabilitation.

35.

(1) Subject to subsection (4) of this section, no person shall publish any report of proceedings under this Act (other than criminal proceedings), except with the leave of the Court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in this section limits

- (a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or
- (b) the power of the Court to punish any contempt of Court.

(4) This section shall not apply to the publication of any report in any publication that

- (a) is of a bona fide professional or technical nature; or
- (b) is intended for circulation among members of the legal or medical professions, officers of the public service, psychologists, marriage counselors or social welfare workers.

36. Nothing in this Act shall be deemed to have altered any right which a spouse may have to ownership of property.

37. Nothing in this Act shall be regarded as removing any jurisdiction which the Supreme Court may have in respect of the matters referred to under this Act.

38.

(1) Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

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- (2) In any proceedings under this Act (other than criminal proceedings) including proceedings by way of appeal, the court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law or not.
39. In any proceedings under this Act a Court may make any order by the consent of all parties to such proceedings.
40. The Minister may make Regulations for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed.
41. The Minister may from time to time, by Order published in the Gazette, amend any of the Schedules to this Act.
42. On the commencement of this Act, the Domestic Violence Act stands repealed.
43. This Act shall come into force on a day to be appointed by the Minister by Order published in the Gazette.
44. Where an act or omission which constitutes a domestic violence offence under this Act is also an offence under any other law, nothing in this Act shall affect the operation of such other law and the accused person may be charged and tried under such other law notwithstanding the provisions of this Act, so, however, that the victim of such offence shall be entitled to all the protections and remedies granted by this Act.

[...]

[Criminal Code, 2000](#)⁴⁶

72.

(1) A male spouse commits marital rape against the female spouse if the first mentioned spouse has sexual intercourse with the other spouse in any of the circumstances specified in subsection (2) –

- (a) without the consent of the female spouse; and
- (b) knowing that the female spouse does not consent to sexual intercourse, or recklessly not caring whether the female spouse consents or not.

(2) The circumstances referred to in subsection (1) are as follows –

- (a) the spouses have separated and thereafter have lived separately and apart within the meaning of the Married Persons (Protection) Act;
- (b) there is in existence a separation agreement in writing between the spouses;
- (c) proceedings for the dissolution of the marriage or for a decree of nullity of marriage have been instituted;
- (d) there has been made or granted against one of the spouses an order or injunction, as the case may be for non-cohabitation, non-molestation, ouster from the matrimonial home or the personal protection of the other spouse;
- (e) one of the spouses has given an undertaking with regard to the matters specified in paragraph (d);
- (f) the act of sexual intercourse is preceded or accompanied by or associated with, assault and battery, harm or injury to the female spouse.

(3) In this section, “spouse” means a party to marriage and does not include a party to a ‘common law union’. (4) No prosecution shall be brought for the offence of marital rape except with the consent of the Director of Public Prosecutions.

⁴⁶ Criminal Code Chapter 101, (revised edition 31 December 2000), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68422/66703/F1776464508/BLZ68422.pdf> (last visited December 30, 2018).

[...]

18. BENIN

[Law on the Prevention and Repression of Violence against Women, 2012](#) ⁴⁷

[...]

TITLE 1 GENERAL PROVISIONS CHAPTER I PURPOSE AND DEFINITION OF CONCEPTS

Article 1 -

The purpose of this Act is to combat all forms of violence against women and girls in the Republic of Benin. Through its criminal, civil and social components, it aims to provide a multidisciplinary response to violence against women and girls.

Article 2 –

Violence against women is defined, in this Act, as any act of gender-based violence that causes or is likely to cause physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.

The infringements concern:

- Physical or moral, sexual and psychological violence within the family such as beatings, marital rape, sexual assault and sexual abuse, female genital mutilation as provided for in Act 2003-03 of 3 March 2003 on the repression of the practice of female genital mutilation in the Republic of Benin, forced or arranged marriages, "honour" crimes and other traditional practices harmful to women.

- Physical or moral, sexual and psychological violence within the community, including rape, sexual assault and abuse, sexual harassment as provided for in Act 2006- 19 of 5 September 2006 on the repression of sexual harassment and protection of victims in the Republic of Benin and intimidation at work, in educational institutions and other places, procuring, trafficking and forced prostitution.

For the purposes of this Act, violence against women also includes the failure of a medical or paramedical officer to exercise due diligence during childbirth, or to refrain from performing his or her professional duty.

Article 3- In this Act, the following definitions apply:

- abortion: the use of means or substances intended to cause the premature expulsion of the foetus or, more generally, the artificial termination of pregnancy in women;

- harassment: the act of repeatedly giving orders, using words, gestures, writings, messages, threats, coercion, pressure or any other means to obtain favours of any kind, including sexual favours from a person in a situation of vulnerability or subordination, for his benefit or for the benefit of a third party against the will of the woman being harassed;

- incest: sexual intercourse perpetrated on a person with whom we have family ties up to and including the third degree;

- incitement of minors to debauchery: the act of acting on minors in order to satisfy the passions of others or in any case as an intermediary agent of corruption and debauchery;

- forced marriage: any marriage or cohabitation contracted or decided without the free and informed consent of both parties concerned;

- female genital mutilation: all interventions including partial or total removal of the female genital or external organs or injury

⁴⁷ Law on the Prevention and Repression of Violence against Women (Loi Portant prévention et répression des violences faites aux femmes), No. 2011-26 (9 January 2012), available at <http://www.bj.undp.org/content/dam/benin/docs/emancipationdesfemes/violences-faites-aux-femmes.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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to the female genital organs practiced for cultural or religious reasons or for any other non-therapeutic reason;

- paedophilia: an adult's erotic attraction to children. More specifically, adults who touch or have sex with a minor;

- Traditional practices harmful to women: acts derived from customs and practices that harm women. These include, inter alia:

- dietary restrictions in the event of pregnancy or childbirth,
- force-feeding, which consists in overfeeding underage girls in order to make them physically fit for marriage,
- degrading widowhood rites,
- violations of women's freedom of movement,
- pressure on the woman through the children.

- forced prostitution: the inducing of one or more persons to perform an act or acts of a sexual nature, by force, by threat of force or coercion or by taking advantage of the inability of such persons to freely give their consent in order to obtain a pecuniary or other benefit;

- pimping: the activity of a person who promotes the debauchery of others by acting as an intermediary, thereby benefiting from the fruits of that activity;

- forced sterilisation: the act of committing or causing to be committed on a woman without her free consent or without a justified medical decision, an act likely to deprive her of her biological and organic reproductive capacity;

- rape: any act of vaginal, anal or oral penetration by the sex of another person or vaginal or anal penetration by any object without the intelligent and voluntary consent of the person entered. However, consent is not valid for underage women under the age of sixteen (16). The penetrated person is not obliged to fight against his aggressor. Being married to the penetrated person is not an excuse for the crime of rape;

- domestic violence: abuse of power or willful neglect to dominate, subdue, control or assault women physically, verbally, psychologically, patrimonially, economically and sexually, inside and outside the home family, whether the perpetrator is related to or has been linked to his victim by relations of kinship, blood or marriage, marriage, cohabitation or whether he has or has had a de facto relationship with him;

- violence in the workplace: [...]

- domestic violence: any physical or sexual violence committed by a person against another person when both parties are married, concubine, or inbred, or live in the same house, or when both parties have had an intimate relationship in the past, but are no longer together;

- economic violence: the use of one's means to slow down or prevent the economic or financial development of any person, or to prevent any person from enjoying socio-economic rights;

- patrimonial violence: any act or negligence affecting the victim's survival and consisting of transforming, subtracting, destroying, withholding or diverting objects, personal documents, property and values, economic rights or economic resources intended to cover his needs and which may be extend to damage to the commons or the property of the victim;

- physical violence: any type of act resulting in non-accidental damage, through the use of physical force or any type of weapon or object that may or may not cause internal or external injuries or both;

- psychological or moral violence: the subjection of any person to repeated acts or words whose object or effect is a deterioration of living conditions likely to affect his rights and dignity, to impair his physical or mental health or compromise his plans or his future. It is also an act or negligence that is detrimental to psychological stability, abandonment, repeated inattention, excessive jealousy, insults and humiliation, devaluation, marginalization, lack of affection, indifference, infidelity, destructive comparisons, rejection, restriction of self-determination and threats; situations that can lead to the victim sinking into depression, to isolate themselves, to lose self-esteem, even to commit suicide;

- sexual violence: any act that has the effect of degrading or causing damage to the body and / or sexuality of the victim and which therefore affects his freedom, dignity and physical integrity. It is the expression of an abuse of power dictated by the supremacy of the man over the woman who is thus denigrated and treated as an object; all other similar forms that harm or undermine the dignity, integrity or freedom of women;

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- zoophilia: [...]

TITLE 2
AWARENESS, PREVENTION AND DETECTION MEASURES
CHAPTER I
EDUCATIONAL FIELD

[...]

Article 5 -

The fight for equality between men and women is a national priority.

To this end, the principles and teachings of mutual respect between the sexes, learning to live together, rejecting and condemning violence, developing critical thinking skills and analysing violence and all gender inequalities will be taken into account in the teaching curricula.

These teachings must provide training in the knowledge of and respect for human rights and fundamental freedoms and in understanding the concrete situations that affect them. Similarly, the education system will include, in its quality principles, the removal of obstacles that make it difficult to achieve full equality between men and women, and especially violence against women. They provide training adapted, in content and methods, to the economic, social and cultural developments of the country.

Article 6 -

The school is responsible for transmitting and acquiring knowledge and working methods.

It aims at gender diversity and real equality between men and women, girls and boys, young girls and young boys, particularly in terms of guidance, detection of violence suffered by young people and the fight against sexism.

Article 7 -

The ministries in charge of national education, in collaboration with the family ministry and the justice ministry shall adopt the necessary measures to ensure that in the initial training programs of the teaching staff, a specific training policy on gender equality and the fight against violence against women be mandatory, and subject to evaluation, so as to make them acquire the necessary knowledge and techniques, to ensure:

- education in respect of fundamental rights and freedoms, and equality between men and women in the exercise of tolerance and freedom in accordance with the democratic principles of community life;
- education on conflict prevention and peaceful conflict resolution in all areas of personal, family, and social life;
- early detection of domestic violence, especially against women.

Article 8 -

Public or private schools must provide for the immediate enrolment, in similar or related sections, of girls who are victims of violence and forced to change their residence.

Children affected by a change of residence caused by acts of violence against women must also be taken into account.

Article 9 -

The State, local authorities and/or private structures must provide for a broad program of additional and continuous training for professionals involved in fighting violence against women.

CHAPTER II
IN THE FIELD OF ADVERTISING AND COMMUNICATION MEDIA

Article 10 -

Any advertisement that uses degrading, degrading, dehumanizing, and vexatious representations of women and men and the relations between them is considered illegal.

Article 11 -

The High Authority for Audiovisual and Communication (HAAC) must ensure the equitable representation of women and men

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in the media, in particular by avoiding, as far as possible, degrading and vexatious representations, by combating sexist stereotypes and by avoiding an unbalanced presence of persons of both sexes in the programs broadcasted. The broadcasters' specifications must include these principles.

The power to sanction the concerned media must be exercised.

Article 12 -

As soon as this law is published, the High Authority for Audiovisual and Communication is responsible for:

- the verification of pornographic content of the various media programs;
- the pre-market verification of compliance with the law of cinematographic works: video cassettes, DVDs, Internet broadcasting and any distribution of pornographic scenes.

It focuses on the representation of violence, pimping, and incitement to commit them, as well as incitement to engage in prostitution.

It may suspend the marketing of illegal content. It then informs the Ministry of the Interior and refers the matter to the public prosecutor for prosecution under the Criminal Code.

CHAPTER III IN THE HEALTH AND SOCIAL FIELD

Article 13 -

The State has an obligation to promote, through social and health structures, the early detection of cases of violence against women.

To this end, it must develop awareness-raising programs, initial and ongoing training for social and health personnel with a view to improving clinical and psychological care and helping to rehabilitate female victims.

In all cases of rape, the justice system must request the competent health facilities for mandatory testing for HIV/AIDS and other sexually transmitted infections for the victim and the perpetrator in order to assess the possibility of contamination that would cause further harm to the victim.

The costs are borne by the State.

Article 14 -

The initial and in-service training of all health professionals as well as professionals in the medico-social sector includes specific training on violence against women and its consequences for public health.

This training, which will take place every year, including in a multidisciplinary manner, and will be evaluated, aims to promote the prevention, early detection, assistance and rehabilitation of women victims of violence.

University administrations and competent schools must ensure that these training contents are included in the training programme for medical, paramedical and social professionals.

CHAPTER IV JUDICIAL AND PARA-JUDICIAL FIELD

Article 15 –

The State has an obligation to promote the intervention of judicial and para-judicial institutions in cases of violence against women.

To this end, it must develop sensitization programs, initial and ongoing training for judicial and parajudicial staff, with the aim of improving the effective care and rehabilitation of female victims.

Given the fact that the majority of rapes and domestic violence take place in the private domain, hidden from the eyes of potential witnesses, the Beninese justice system has to widen the categories of admissible evidence and take into account the victims' oral testimony.

The testimony of a victim alone can support an intimate conviction.

Article 16 –

The initial and continuing training of all judicial and parajudicial professionals includes specific mandatory education on domestic and sexual violence and their consequences in terms of public health.

This multidisciplinary education aims to promote the prevention, assistance and rehabilitation of women victims of violence and will be the subject of an annual evaluation by the ministries concerned.

Each prosecutor's office must designate at least one of its trained members to represent the Public Prosecutor's Office in all cases of domestic and sexual violence.

Each court of first instance must appoint at least one investigating judge to investigate all cases of domestic and sexual

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violence.

The State must reinforce the capacity of judicial police officers so that in each police station or gendarmerie brigade, cases of domestic and / or sexual violence are taken care of.

University administrations and competent schools must ensure that these training contents are included in the training programme for judicial staff, court staff, armed forces, public security and similar professionals.

TITLE III THE RIGHTS OF WOMEN VICTIMS OF VIOLENCE

CHAPTER I

THE RIGHT TO INFORMATION, SOCIAL ASSISTANCE AND FREE LEGAL ASSISTANCE

Article 17 -

The State must ensure that women enjoy their rights to physical and moral integrity, freedom, security, equality and non-discrimination on grounds of gender.

Article 18 -

In each department, the social promotion centres must take care of women victims of violence in order to provide them with emergency social services, reception and assistance.

These services are organized to meet urgent needs and provide sustainable multidisciplinary support.

The multidisciplinary services provided for in this framework include specifically:

- information for victims;
- psychological and psychiatric support;
- social support;
- medical support;
- the service of judicial police officers;
- the follow-up of legal and administrative procedures;
- preventive training on gender equality;
- support for job training and professional reintegration;
- easy access to reception centres.

Article 19 -

Minors who will be in the custody and supervision of the victim are also entitled to comprehensive social assistance through these social services.

Article 20 -

Women victims of violence, including young girls threatened with forced or arranged marriage, young girls in care, sexually abused girls are considered as priorities in accessing reception centres.

In the event of domestic or conjugal violence where both parties occupy the same dwelling, the abused party shall be entitled to continue to temporarily occupy the dwelling.

CHAPTER II

RIGHTS IN THE EMPLOYMENT FIELD

Article 21:

An employee who has been the victim of violence in or outside the company will be entitled to a temporary reduction or reorganization of her working schedule, to a geographical change, upon her request and after obtaining the opinion of the occupational doctor, to an assignment in another establishment, the suspension of her employment contract, and the resignation without notice.

At the end of the suspension of her employment contract, the employee returns to her previous job.

Article 22:

Absences or non-observance of working hours justified by the physical or psychological situation of the employee related to violence against women can only give rise to sanction by decision of the social services, support services or health services. The employer must be informed within seventy-two (72) hours.

The employee benefits from a guarantee of remuneration during these absences.

Article 23:

The entrepreneur must take all necessary measures to prevent, terminate and/or punish any verbal or non-verbal words, acts

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or behavior with a sexual, or sexist connotation, or other behavior based on the actual or alleged sexuality, the object or effect of which is to undermine the rights and dignity of women or girls, or to create an intimidating, hostile, degrading, humiliating or offensive environment, in particular by informing employees, establishing investigating procedures and precautionary measures.

Article 24:

The occupational doctor is empowered to propose individual measures such as changes of posts justified by considerations relating in particular to age, physical resilience, violence suffered by women in or outside of the enterprise, or the state of physical and mental health of the workers.

Article 25: The woman civil servant who is a victim of violence, who would be obliged to abandon her workstation in the locality where she was in service, in order to ensure the effectiveness of her protection or her right to integrated social assistance, will enjoy a preferential right to another work position of the same level and grade, with similar characteristics, which is vacant and available.

The competent public administration shall be obliged to inform the woman who has been the victim of violence of the vacant posts to be filled in the same locality or in the localities which the person concerned would expressly request.

Article 26:

Women victims of violence, who are civil servants, enjoy the same conditions provided for in articles 21, 22, 23, 24 and 25 of this law.

TITLE IV THE INSTITUTIONAL FRAMEWORK SINGLE CHAPTER CREATION OF COMPETENT STRUCTURES

Article 27 - The Government formulates and implements public policies to combat violence against women.

Article 28 - During the first ordinary session of the National Assembly, the Government submits a report on the implementation of its policy to combat violence against women.

TITLE V CIVIL AND CRIMINAL PROVISIONS

CHAPTER I CIVIL PROVISION

Article 29 –

When, pursuant to this Law, a woman brings an action before a court for offences against her physical or psychological integrity or that of the children, the residence of the child shall be determined automatically by the competent judge in favour of the female victim.

The decision may be modified by the judge or court depending on the judgment.

CHAPTER II CRIMINAL PROVISIONS

Article 30 – For any criminal offence related to physical or sexual violence, the fact that the victim and the perpetrator have a domestic relationship, as defined in article 3 of this law, shall be regarded as an aggravating circumstance.

The maximum penalty in criminal matters is increased by five (5) years imprisonment and the maximum penalty in criminal matters is increased by at least ten (10) years.

Article 31 –

Any person who is guilty of, or complicit in a forced or arranged marriage, or forced cohabitation, as defined in Article 3 of this Law, shall be punished by imprisonment from one (1) to three (3) years and a fine of five hundred thousand (500,000) to two million (2,000,000) francs.

All persons who are complicit in the planning and/or realization of such a marriage or cohabitation are also guilty.

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Article 32 –

Psychological violence as defined in article 3 of this law shall be punishable by a fine of up to one million (1,000,000) francs.

Article 33 –

Economic violence as defined in article 3 of this law shall be punishable by a fine ranging from five hundred thousand (500,000) to two million (2,000,000) francs, without prejudice to civil compensation equal to the compensation provided for by the Persons and Family Code.

Article 34 - Forced prostitution [...]

Article 35 - Forced sterilization [...]

Article 36 - Zoophilia [...]

Article 37 - All traditional practices harmful to women constitute common law offences and are punished as such. All other acts of violence not specifically provided for in this law are in accordance with the legislation in force.

[...]

19. BHUTAN

[Domestic Violence Prevention Act, 2013](#) ⁴⁸

PREAMBLE

[...] IT IS THE PURPOSE of this Act to ensure a prompt and just legal remedy for the victims of domestic violence; facilitate access to remedies for immediate and effective assistance, shelter homes and protection to the victims of domestic violence and to introduce measures which seek to ensure that the relevant organs of the State give full effect to the provisions of this Act.

CHAPTER I PRELIMINARY

Short title, commencement and extent

1. This Bill shall:

- (1) Be called as the DOMESTIC VIOLENCE PREVENTION ACT OF BHUTAN 2013;
- (2) Come into force on the 7th Day of the 2nd Month of the Water Female Snake Year of the Bhutanese Calendar, corresponding to 18th Day of March 2013; and
- (3) Extend to whole of Bhutan.

Application

2. This act shall apply only to violence as described in section 4 of this Act occurring within domestic relationship and shall not extend to other types of violence in the society.

CHAPTER II DOMESTIC VIOLENCE

Domestic violence

3. For the purpose of this Act, domestic violence means violence against a person by another person with whom that person is, or has been in a domestic relationship.

4. For the purpose of this Act, violence means any act, omission or behavior towards a person which results in physical, sexual, emotional or economic abuse.

- (1) "Physical abuse" includes any act or conduct of the defendant which:
 - (a) Causes bodily injury, pain, harm, or danger to life;

⁴⁸ Domestic Violence prevention Act, (18 March 2013), available at http://www.nab.gov.bt/assets/uploads/docs/acts/2014/Domestic_Violence_Prevention_Act_of_Bhutan_2013eng10th.pdf (last visited December 30, 2018).

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- (b) Impairs the health or development of the victim; or (c) Otherwise violates the dignity of the victim.
- (2) "Sexual abuse" includes any conduct of sexual nature that humiliates, degrades or otherwise violates the dignity of the victim.
- (3) "Emotional abuse" includes distress caused by:
- (a) Intimidation;
 - (b) Harassment;
 - (c) Damage to property;
 - (d) Threats of physical abuse or sexual abuse;
 - (e) Degrading or humiliating verbal conduct; or
 - (f) Any other conduct that violates the dignity of the victim.
- (4) "Economic abuse" includes:
- (a) Unreasonable deprivation of economic or financial resources and facilities which the victim is entitled to use or enjoy, which results in emotional distress or hardship;
 - (b) Disposal of household effects, any alienation of assets whether movable or immovable, valuable shares securities, bonds and the like or other property in which the victim has share or is entitled to use by virtue of the domestic relationship or which may be reasonable required by the victim or children or any other property jointly or separately held by the victim; or
 - (c) Prohibition or restriction to continued accesses to resources, accounts or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship.
5. For the purpose of this Act, domestic relationship means:
- (1) Spousal relationship; or
 - (2) A family relationship; or
 - (3) An intimate personal relationship; or
 - (4) Ordinarily shares a household with a defendant.

CHAPTER III IMPLEMENTING AUTHORITY

Competent authority

6. The government shall establish a competent authority responsible for the effective implementation of this Act.
7. Until the competent authority is established under section 6 of this Act, the National Commission for Women and Children (NCWC) shall function as the competent authority.

Function of the competent authority

8. The competent authority shall:
- (1) Develop, coordinate and monitor such programs and activities for the effective implementation of this Act by the relevant agencies;
 - (2) Develop reintegration programs and activities to facilitate livelihood of the victims;
 - (3) Conduct periodic study to monitor the situation of domestic violence;
 - (4) Develop programs and activities to advocate against domestic violence;
 - (5) Take all measures to ensure that the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
 - (6) Conduct periodic sensitization and awareness training on the issues addressed by this Act; and
 - (7) Establish central database management system in order to maintain upto date record of all the domestic violence cases in the country.

Finance

9. The government shall provide adequate budget for the effective implementation of this Act.

Functions of the Government

10. The Government shall:
- (1) Ensure all the relevant agencies/focal persons to collaborate with the Competent Authority for effective implementation of this Act.
 - (2) Through concerned agencies or institutions provide community based services responding to special needs, problems, interests and protection of victims of domestic violence.

CHAPTER IV COMPLAINT

Reporting

11. A complainant may report the domestic violence to:

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- (1) Royal Bhutan Police;
- (2) Protection officer;
- (3) Service provider/the social welfare officer;
- (4) Competent Authority; or
- (5) Members of the Local Government.

12. The authorities mentioned under section 11(2, 3, 4 & 5) shall upon receipt of the complaint conduct physical verifications and report immediately to the nearest police station, if the victim so desires.

Registration of complaint

13. A complaint of domestic violence may be registered in the police station by:

- (1) The victim;
- (2) Any person acting in the best interest of the victim;
- (3) Any person having care or custody of a victim who is a minor;
- (4) The protection officer or the social welfare officer of the service provider caring for the victims;
- (5) Educational Institutions; or
- (6) The police personnel may *suo moto* register the complaint.

14. The police personnel, social welfare officer and protection officer shall maintain a record of all complaints and reports under this Act and shall contain:

- (1) The names, sex and relationship of the parties;
- (2) The domestic violence alleged, whether it involved any weapon or resulted in personal injuries and whether the injuries inflicted required medical treatment;
- (3) Whether the defendant is a recidivist or not; and
- (4) Any other information, if necessary.

Procedure and content of complaint

15. A complaint may be made orally or in writing or through other means of communication and if made orally, it shall be reduced to writing and read over to the complainant.

16. A complaint in writing or reduced to writing shall be signed by the complainant.

17. Every complaint shall be kept confidential and shall not be disclosed except to the investigation officer, Court and prosecuting agency if required.

18. The identity of the complainant shall be protected and shall not be disclosed except by the order of the Court.

Petition before Court

19. A petition on domestic violence may be filed before the Court by:

- (1) Royal Bhutan Police;
- (2) The Victim;
- (3) The Complainant;
- (4) Protection Officer;
- (5) Competent Authority; or
- (6) Service Providers.

Establishment of Protection Unit or desk

20. There shall be Women and Child Protection Unit or desk at every police station which shall be adequately staffed with at least one female police personnel with relevant expertise in domestic violence.

Duties of police personnel

21. In addition to Royal Bhutan Police Act, a police personnel shall:

- (1) Protect the victim and ensure that further violence is not perpetrated;
- (2) Investigate the domestic violence and refer for the prosecution as per the existing laws;
- (3) Aid or assist in obtaining shelter, medical treatment or any other services or measures deemed appropriate for the victim;
- (4) Advise the victim of his or her right under this Act; and
- (5) Take statement of the victim by the police personnel of preferably the same sex.

22. If the offence is of misdemeanor and below, and the defendant is not a recidivist, a police personnel may release the defendant on surety if detained or may allow the matter to be settled mutually if the victim so desires, considering:

- (1) The nature and circumstance of the offence;

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- (2) The frequency and severity of the abuse;
- (3) The age, maturity and state of mind of the victims;
- (4) The reparation of the injury and compensation to the victim;
- (5) The safety of the family; or/and
- (6) The best interest of the victim.

CHAPTER V PROTECTION OFFICER AND SERVICE PROVIDER

Appointment of a Protection Officer

- 23. The government in consultation with the Competent Authority shall designate Child Welfare Officer as Protection Officer to exercise the powers and perform the duties conferred under this Act.
- 24. The Protection Officer, appointed under this Act shall possess such qualification and experience as may be prescribed by the Competent Authority.
- 25. The terms and conditions of Protection Officer shall be in accordance with the relevant laws.
- 26. The Protection Officer shall be under the supervision and guidance of the Competent Authority for discharge of duties under this Act.

Duties of Protection Officer

- 27. The Protection Officer shall:
 - (1) Assist the law enforcement agencies in the discharge of their functions under this Act;
 - (2) Ensure that a domestic violence incident is reported to the police station and service providers, in such form and manner as may be prescribed and forward a copy to the Competent Authority;
 - (3) Make an application to the Court or police station, if the victim so desires, for issuance of a interim protection/protection order or registration of crime information report;
 - (4) Assist the victim to avail free legal aid and relief provided under the relevant law;
 - (5) Maintain a list of all service providers that provide legal aid, counseling, shelter home and medical facility in a local area within the jurisdiction of the Court;
 - (6) Accommodate the victim in shelter home, if the victim so requires and inform the police station and the Court of competent jurisdiction;
 - (7) Get the victim medically examined and forward a copy of the medical report to the police station, and the Court of competent jurisdiction if required;
 - (8) Facilitate compliance of Court order;
 - (9) Ensure non-disclosure of the informer and victim's identity, and any information obtained from the victim except to the lawful authority;
 - (10) Monitor the situation of domestic violence in his or her area of jurisdiction;
 - (11) Carry out advocacy programs and activities against domestic violence in his or her area of jurisdiction; and
 - (12) Perform such other duties as may be prescribed under rules and regulations.

Conflict of interest

- 28. The Protection Officer shall declare any conflict of interest that may arise or appear to arise between his or her duty and private interest, pecuniary or otherwise. In the event of conflict of interest, the case may be referred to the Women and Child Protection Unit /Desk with Royal Bhutan Police.

- 29. If a Protection Officer fails or refuses to discharge the duties as required under this Act without sufficient cause, he or she shall be liable for administrative action under the relevant laws.

Service Provider

- 30. Any registered Civil Society Organization with the objective of protecting the rights of victims shall be accredited by the Competent Authority as a service provider for the purpose of this Act.

- 31. The Competent Authority shall submit a list of the accredited service provider and services available to the Court and police.

- 32. Every service provider shall have a certified Social Welfare Officer.

Function of Social Welfare Officer

- 33. A Social Welfare Officer shall:
 - (1) Function as a nodal entity of the service provider dealing with the domestic violence victims;
 - (2) Record the domestic violence incident report;

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- (3) Get the victim medically examined and forward the medical report to the police station;
- (4) If the victim desires, file a petition before the Court through protection officer;
- (5) If the victim desires, submit the complaint of domestic violence to the police station having jurisdiction;
- (6) Ensure that the victim is accommodated in the shelter home if the victim so desires; and
- (7) Assist victim with livelihood until such time the victim can sustain himself or herself.

34. If any social service provider fails or refuses to discharge the duties as required under this Act without sufficient cause, he or she shall be liable under the relevant laws.

Health services

35. The Ministry of Health shall:

- (1) Establish appropriate facilities with trained medical and health personnel to cater to victims of domestic violence; and
- (2) Establish a One Stop Crises Centre which shall facilitate the victims in receiving the medical treatment and maintain records of treatment of victim.

36. The Medical and Health Personnel shall:

- (1) Provide necessary medical treatment to the victim and inform the police along with medical report if the victim so desires; and
- (2) Conduct medical examination with due regard to the right of privacy of the victim.

Community Services

37. The community may provide or strengthen a wide range of community based support measures for the victim, including community centre and services to respond to the problems of victim who is at risk.

38. The community may with assistance from Competent Authority provide such services and measures to the victim to facilitate livelihood and to re-integrate into the society.

39. The government shall endeavor to provide assistance to the community to establish facilities to provide adequate shelter for victim who has no home to live in or is not able to live at home.

40. A volunteer, voluntary organization, social institution and other community resources may contribute effectively to address the issues related to domestic violence in the community.

CHAPTER VI CONDUCT OF TRIAL

Conduct of trial proceeding

41. The Court shall hear the cases of domestic violence under this Act expeditiously in accordance with Civil and Criminal Procedure Code.

42. Notwithstanding anything contained in the Civil and Criminal Procedure Code, no person may be present during the hearings except:

- (1) Court officials;
- (2) The parties to the case;
- (3) Any person who filed an application on behalf of the victim or complainant;
- (4) Jabmi or legal representative of the party to the case;
- (5) Witnesses if any;
- (6) One or two person supporting the victim;
- (7) One or two person supporting the defendant; or
- (8) Any person the Court may permit.

43. The Court may, if satisfied, in the interest of justice exclude any person from attending the hearing.

44. Notwithstanding anything contained in this Act, the Court may hear the case *in camera*.

No publicity

45. Unless the Court authorizes, the proceeding shall not be published in any newspaper, magazine or transmitted through audio-visual electronic medium in any form which may reveal details of the case or disclose the identity of the parties to the case.

46. The media shall maintain professional standards including privacy in reporting and covering cases of domestic violence.

47. The media shall assist the prevention and creation of awareness on domestic violence through positive publication.

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Duty of the Court

48. The Court shall inform the victim or his or her *Jabmi* or legal representative of:

- (1) The relief available under this Act;
- (2) The effect of any order which may be granted by the Court;
- (3) The right to file a separate criminal complaint against the defendant if a separate criminal offence has been committed by the defendant; and
- (4) The right to claim compensation for any loss suffered or injury caused by domestic violence.

49. The Court shall maintain a record of petition filed, interim protection order and protection order issued by the Court under this Act.

Counseling

50. The Court at any stage of the proceeding under this Act may direct the defendant or victim, either singly or jointly to undergo counseling with any service provider who possesses such qualification and experience in counseling or institution identified by Competent Authority which renders counseling to the victims of the domestic violence.

51. The Court at any stage of the proceeding under this Act may direct the defendant and/or victim to undergo mandatory rehabilitation, if deemed necessary.

Bail and Bond

52. Where the Court is required to determine whether to grant bail to the defendant, the Court may consider, *inter alia*:

- (1) The need to secure the health, safety and well-being of the victim, and child;
- (2) Any hardship that may be caused to the members of the family if bail is not granted; and
- (3) Any other matter which may be relevant.

53. If the Court grants bail to the defendant, such bail order shall include conditions that the defendant:

- (1) Shall not harass or molest the victim or family members of the victim;
- (2) May not reside on the premises where the victim resides; and
- (3) Shall not violate any other conditions issued by the Court.

CHAPTER VII

INTERIM PROTECTION AND PROTECTION ORDER

Application

54. Where an act of domestic violence is or being committed or there is a threat to commit, an application for interim protection order or a protection order may be submitted to the Court by:

- (1) The victim;
- (2) The complainant;
- (3) Any person acting in the best interest of the victim;
- (4) Any person having care or custody of a victim who is a minor;
- (5) The protection officer or the social welfare officer of the service provider caring for the victims; or
- (6) Competent Authority.

Content of protection order/interim protection order

55. A protection order/interim protection order may, where appropriate:

- (1) Prohibit the defendant or the person from committing or aiding to commit the domestic violence;
- (2) Prohibit the defendant from entering any place or premises where the victim resides and works;
- (3) Direct the defendant to pay monetary relief in respect of the victim's needs and those of any child or dependent of the victim;
- (4) Direct the temporary custody of any child or dependent of the victim and defendant to any person or institution;
- (5) Regulate or deny the defendant to have access to child if the Court is so satisfied in the best interest of the child;
- (6) Direct the defendant to afford the victim or any child or dependant of the victim access to their place of residence and the use of facilities associated therein;
- (7) Direct the defendant to pay adequate compensation in the prescribed manner for any personal or physical injury, pain, or loss suffered by the victim;
- (8) Direct the victim and the defendant to undergo counseling if necessary;
- (9) Direct the defendant to do any act which the Court considers necessary or desirable for the well-being of the victim or any child or dependant of the victim; or/and

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(10) Any other conditions as the Court may deem necessary.

Interim protection order

56. A Court may issue an interim protection order before commencement of trial, where reasonable grounds exist without show-cause notice to the defendant if necessary.

57. An interim protection order shall be issued by the Court in the presence of the parties or their Jabmi or legal representative.

58. Notwithstanding section 57 of this Act, a Court may issue an interim protection order ex-parte, if the Court is satisfied that there is prima facie evidence that:

- (1) The defendant is committing or has committed domestic violence; and
- (2) Undue hardship may be suffered by the victim or an irreparable harm may be caused as result of such domestic violence if an order is not issued immediately.

59. The Court shall give a copy of interim protection order to the victim, complainant, Protection Officer, Social Welfare Officer of the Service Provider, Royal Bhutan Police and defendant or legal representatives.

60. An interim protection order shall remain in force as specified in the order or unless it is substituted by the protection order.

Protection order

61. Upon registration of an application for protection order under section 54 of this Act, the Court shall serve a show cause notice to the defendant directing him or her to respond to the notice on the date specified which shall not be more than fifteen days.

Determination of an application for protection order

62. The Court shall determine an application as soon as it is filed after issuing the show cause notice to the defendant under section 61 of this Act.

63. The Court may conduct the hearings for protection order independently or concurrently to the trial proceedings.

64. The Court shall not deny protection order on the grounds that other legal remedies are available.

65. The Court may modify or confirm the interim protection order into protection order or terminate the interim protection order and may issue protection order:

- (1) If the defendant fails to appear within the date specified under section 61 of this Act;
- (2) During or on completion of the trial proceeding if necessary; or
- (3) During protection order hearing if necessary.

66. The Court shall give a copy of protection order to the victim, complainant, Protection Officer, Social Welfare Officer of the Service Provider, Royal Bhutan Police and defendant or legal representative.

67. A protection order shall not bar a party from initiating civil or criminal proceeding.

68. A protection order shall remain in force for a maximum period of nine months, which may be extended if required, unless the order is annulled by the Court earlier at the joint request of the parties.

Variation or setting aside of protection order

69. The Court may set aside or vary the protection order if it is:

- (1) Satisfied that the conduct of the defendant is improved; and
- (2) The application for setting aside or variation for protection order is made with the consent of the victim.

Finality and enforcement of interim protection and protection orders

70. Any interim protection order or protection order issued by the competent Court shall be final and binding unless appealed and revoked by the higher Court or revoked by the same Court.

71. If the defendant breaches any term or condition of an interim protection order or protection order issued by the Court, the victim or his or her legal representative may enforce the order through the assistance of the Royal Bhutan Police or by filing a petition of enforcement before the competent Court.

72. Upon filing a petition of enforcement under section 71 of this Act, the Court may direct the Royal Bhutan Police to enforce the order along with an arrest warrant if necessary.

Seizure of arms and dangerous weapons

73. The Court may through separate order or through interim protection order or protection order require the Royal Bhutan Police to seize any arm or dangerous weapon in the possession or under the control of a defendant/victim, if the Court is satisfied that:

- (1) The defendant/victim has threatened or expressed the intention to kill or injure himself or herself or any person in a domestic relationship, whether by means of such arm or dangerous weapon: or

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(2) Considering the condition of the defendant/victim, the possession of such arm or dangerous weapon is not in the best interest of the defendant/victim or any other person in a domestic relationship.

74. Any arm or dangerous weapon seized under section 73 of this Act shall:

- (1) Be given a distinctive identification mark and retained in police custody for such period of time as the Court may determine; and
- (2) Be returned to the defendant or if the defendant is not the owner of the dangerous weapon to the owner thereof, by order of the Court and on such conditions as the Court may determine.

CHAPTER VIII OFFENCE AND PENALTY

Offence

75. Any person who commits domestic violence within the meaning of sections 4(1) and (2) of this Act shall be liable for offence as per the Penal Code of Bhutan.

76. Any person who commits domestic violence within the meaning of section 4 (3) and (4) of this Act shall be liable for offence of:

- (1) Petty misdemeanour; or
- (2) Misdemeanour, if aggravated circumstance is present.

77. A person who violates section 17 and 18 of this Act shall be liable for penalty under the Penal Code of Bhutan.

78. A defendant shall be liable to the next higher degree of punishment if he or she was earlier convicted, or convicted again on the same or similar offence.

79. Any person who fails to comply with the terms and conditions of an interim protection order or protection order shall be liable for an offence of contempt of Court.

Reporting of false information

80. Any person who knowingly gives or causes to be given any false or misleading information relating to the commission of domestic violence by a person with malicious intent shall be guilty of an offence of petty misdemeanour.

81. The Court shall consider the mitigating and aggravating circumstances provided in this Act when the defendant is sentenced.

Mitigating circumstances

82. The mitigating circumstances for sentencing under this Act may include:

- (1) Absence of prior record of domestic violence of the defendant;
- (2) Commission of domestic violence under duress or under the instigation of another person by the defendant; or
- (3) Any other circumstance the Court may deem appropriate.

Aggravating circumstances

83. The aggravating circumstances for sentencing under this Act shall include:

- (1) Commission of crime by the defendant who has previously been convicted of a crime that was punishable by imprisonment/*thrimthue* or crime of the same or similar nature;
- (2) Posing a grave risk of death or serious bodily injury to the victim;
- (3) Causing bodily injury to victim with a weapon; or
- (4) Commission of domestic violence as a result of intoxication.

Compensation

84. The Court may order a defendant who is sentenced for an offence of domestic violence under this Act to pay appropriate compensation or damages in addition to the sentence.

85. If the Court determines that compensatory damages are appropriate, then a defendant convicted of an offence shall pay appropriate compensatory damages at the rate of the minimum wage at the time of an offence for:

- (1) Ten years to the surviving spouse or next of kin of the victim and the cost for forty–nine days for seven people towards the expense incurred in the funeral rites of the deceased victim, when the crime has resulted in the death of the victim;
- (2) Ten years if the crime causes permanent total disability to the victim;
- (3) Seven years, if the crime causes permanent partial disability to the victim;
- (4) Five years, if the crime causes temporary total disability to the victim; or
- (5) The daily wage lost of victim when the crime has resulted in temporary loss of wages.

86. In addition to compensation or damages, the Court may order the defendant to pay expenses of the victim's medical treatment or other ancillary and incidental expenses incurred on account of the offence committed by the defendant.

Offences not provided under this Act

87. Any offence not specified under this Act relating to the offence of domestic violence shall be governed by other relevant laws of Bhutan.

Immunity from liability

88. No legal proceeding shall lie against the protection officer and service providers for any damage caused or likely to be caused for any act done or discharge of duties in good faith under this Act.

CHAPTER IX MISCELLANEOUS

Rule making power

89. The Competent Authority may frame rules and regulations for the effective implementation of this Act.

Amendment

90. The amendment of this Act by way of addition, variation, or repeal shall be effected by a simple majority of the respective Houses or vote of not less than two-thirds of the total members of the Parliament present and voting on the motion submitted by one third of the members of either House.

Authoritative text

91. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text.

[Domestic Violence Prevention Rules and Regulations, 2015](#)⁴⁹

Chapter 1 - PRELIMINARY

To ensure effective implementation of the Domestic Violence Prevention Act of Bhutan, the Competent Authority hereby adopts this Change this as Rules and Regulation in accordance with section 89 of the Act.

Short Title, Extent and Commencement

1. This Rule shall:

- a. Be called the Domestic Violence Prevention Rules and Regulations of Bhutan, 2015;
- b. Come into force with effect from the 1st Day of January 2015 corresponding to 11th Day of the 11th Month of the Wood Male Horse Year of the Bhutanese Calendar;
- c. Extend to the whole of the Kingdom of Bhutan; and
- d. Come into effect through an Executive Order.

Purpose

2. The purpose of this Rules and Regulations is to prevent domestic violence, provide support for the victims and ensure a prompt and just legal remedy.

Scope

3. This Rules and Regulations shall apply to all domestic violence matters irrespective of their age, sex, nationality, religion, cast and creed.

Rule of Construction

4. In this Rules and Regulations, the singular shall mean plural and masculine shall include the feminine.

Supersession

5. Any existing guidelines, rules, orders, circulars and practices inconsistent with this Rules and Regulations shall be superseded.

Authority for Amendment and Interpretation

6. The authority for amendment and interpretation of any provision under this Rules and Regulations shall vest with the Competent Authority as provided under the Act.

⁴⁹ Domestic Violence Prevention Rules and Regulations (1 January 2015), available at <http://www.ncwc.gov.bt/en/files/publication/Domestic%20Violence%20Prevention%20Rules%20and%20Regulation.pdf> (last visited December 30, 2018).

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Chapter 2 - DOMESTIC VIOLENCE

7. In accordance with Section 3 of the Act, domestic violence means violence against a person by another person with whom that person is, or has been in a domestic relationship.

For the purpose of this Rules and Regulations, domestic violence is categorized as physical, sexual, emotional or economic abuse.

8. Physical abuse shall include any act or conduct of the defendant which:

- a. Causes bodily injury, pain, harm or danger to life;
- b. Impairs the health or development of the victim; or
- c. Violates the dignity of the victim

9. Sexual abuse shall include any act of sexual nature that humiliates, degrades or otherwise violates the dignity of the victim.

10. Emotional violence shall include distress caused by:

- a. Intimidation;
- b. Harassment;
- c. Damage to property
- d. Threats of physical abuse or sexual abuse;
- e. Degrading or humiliating verbal conduct; or
- f. Any other conduct that violates the dignity of the victim.

11. Economic abuse shall include:

- a. Unreasonable deprivation of economic or financial resources and facilities that the victim is entitled to use or enjoy, which results in emotional distress or hardship;
- b. Disposal of any assets or property in which the victim has share or entitled to use by virtue of being in a domestic relationship or which may be reasonably required by the victim or children or any other property jointly or separately held by the victim; or
- c. Prohibition or restriction to continued accesses to resources, accounts or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship

12. As prescribed under Section 5 of the Act, domestic relation shall include relationship between the spouse, family members, intimate partners or any other person with whom the defendant ordinarily shares a household.

Chapter 3 - COMPETENT AUTHORITY

13. In line with Section 6 of the Act, the National Commission for Women and Children, or any other authority established by the Government shall be the Competent Authority of the Act.

14. The Competent Authority shall have jurisdiction to exercise powers within the territory of the Kingdom of Bhutan in relation to the prevention and protection of the rights of the victims of domestic violence.

Functions of Competent Authority:

15. The Competent Authority shall:

- a. Develop such programs and activities for the effective implementation of the Act by relevant agencies as follows:
 - i. Identify relevant partners for the effective implementation of the Act;
 - ii. Develop a consolidated capacity development program for all partner stakeholders mandated by the Act;
 - iii. Develop Terms of References, Guidelines or Standard Operating Procedure, as and when required;
 - iv. Determine the qualification required for the Protection Officers.
- b. Coordinate such programs and activities for the effective implementation of the Act by relevant agencies as follows:
 - i. Coordinate with relevant partners to develop programs for reintegration of the perpetrators into the society;
 - ii. Liaise with partner stakeholders in coordinating life skills development programs for the service providers;
 - iii. Set up a systematic coordination mechanism amongst the relevant stakeholders, and promote effective coordination and communication within the stakeholders; and
 - iv. Coordinate any other activities pertaining to domestic violence to ensure the effective implementation of the Act.
- c. Monitor such programs and activities for the effective implementation of the Act by the relevant agencies as follows:
 - i. Prepare a consolidated report on the domestic violence situation in the country on an annual basis;
 - ii. Ensure that the institutional mechanisms mandated under the Act are established;
 - iii. Ensure that the victims are reintegrated into the family and society;
 - iv. Issue directives for the clarification on any of the provisions of this rule;

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- v. Monitor the functioning of the Protection Officers appointed under the Act;
 - vi. Conduct monitoring visits to the services providers to ensure the protection of the rights of victims;
 - vii. Monitor and ensure effective execution of Judgment and court orders; and
 - viii. Monitor any other activities related to domestic violence.
- d. Prepare periodic reports on the situation of domestic violence in the country as follows:
- i. Initiate and coordinate with relevant agencies to publish reports on the situation of domestic violence in the country; and
 - ii. Maintain and publish reports on services rendered to the victims and cases disposed.
- e. Take all measures to ensure that the provisions of the Act are given wide publicity through various means including public media at regular intervals as follows:
- i. Use all forms of media to advocate against domestic violence to achieve positive impact;
 - ii. Conduct awareness and sensitization programs through all forms of media;
 - iii. Develop manuals and programs for all relevant agencies on advocacy;
- f. Build the capacity of relevant stakeholders to ensure effective implementation of the Act as follows:
- i. Conduct trainings for the certification of social welfare officers on a need basis;
 - ii. Conduct trainings for the Protection Officers;
 - iii. Conduct capacity building programs for the implementing partners;
 - iv. Build capacities of the media professionals on sensitive reporting;
 - v. Conduct periodic sensitization and awareness training on the issues addressed by this Act; and
 - vi. Utilize the services provided by the relevant agencies in advocacy.
- g. Establish central database management system in order to maintain up to date record of all the domestic violence cases in the country;
- i. Develop and maintain a national central data base system with a data administrator;
 - ii. Compile and update data from the relevant agencies from time to time; and
 - iii. Maintain a case record.
- h. Mobilize resources to support the establishment of institutions mandated by the Act, including the establishment of One Stop Crisis Centers, Women and Child Protection Units/Desks and for providing Legal Service; and

Register

16. The Competent Authority shall maintain a register of all the Service Providers and Protection Officers.
17. The register shall include the following details:
- i. Name, sex, address, status and other relevant information;
 - ii. Name and address of the service providers including the name and contact details of the Social Welfare Officer; and
 - iii. List of services available with each of the service providers.
18. The name and contact details of the Protection Officers, and the name and address of the Service Providers shall be made available online in electronic format.
19. The details shall be updated by the Competent Authority regularly.
20. The Competent Authority shall share details prescribed under Rules and Regulation 17 with all the stakeholders.

Accreditation

21. As prescribed under section 30 of the Act, the Competent Authority shall accredit a registered national civil society organization as a Service Provider under the Act.
22. The Competent Authority shall have the power to suspend or revoke the accreditation of a Service Provider.

Chapter 4 PROTECTION OFFICER

Appointment of Protection Officer

23. In accordance with section 23 of the Act, the Government shall in consultation with the Competent Authority designate the Child Welfare Officer as Protection Officer to carry out the duties under the Act.
24. All the Protection Officers will be registered with the Competent Authority and shall function under the supervision of the Competent Authority for discharge of duties under this Act and thereby shall be accountable to the Competent Authority.

Minimum Criteria for Protection Officers

25. A Protection Officer shall possess such qualification and experience as follows:
- a. Be a Bhutanese citizen;
 - b. Has not been adjudged mentally unfit for employment by a competent medical doctor;
 - c. Does not have any criminal record of domestic violence or not convicted for any other crime;
 - d. has a minimum of a bachelors degree in social work, psychology, gender, child development, education, counseling,

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sociology and where such a person is not available, a person with at least with a bachelors degree with a diploma in any of the above mentioned fields or discipline; or

e. Any other requirement that the Competent Authority deems necessary.

26. The Competent Authority shall review and update the criteria for the Protection Officers from time to time.

27. In addition to the Code of Ethics for the civil service, the Protection Officers shall adhere to the Code of Ethics as may be developed by the Competent Authority.

Functions of the Protection Officer

28. In accordance with section 27 of the Act, the Protection Officer shall:

- a. Assist the law enforcement agencies in the discharge of their function under the Act
- b. Ensure that a domestic violence incident is reported to the police station and service provider and forward a copy to the Competent Authority;
- c. Make an application to the Court or police station, if the victim so desires, for issuance of the interim protection/ protection order or registration of crime information report;
- d. Notwithstanding Rule 27 (c) of this Rules and Regulation, shall inform the Police where aggravating circumstances exist;
- e. Assist the victim to avail free legal aid and relief provided under relevant laws;
- f. Coordinate with the service providers to accommodate the victim in shelter home, if the victim so requires and inform the police and Court of competent jurisdiction;
- g. Get the victim medically examined and forward a copy of the medical report to the police station, and Court of competent jurisdiction;
- h. Facilitate compliance of the Court order;
- i. Maintain a list of all Service Providers including legal aid, shelter home, counseling and medical facility within his jurisdiction;
- j. Maintain confidentiality of the cases;
- k. Monitor the situation of domestic violence in his area of jurisdiction;
- l. Maintain proper case record of the cases reported within his area of jurisdiction;
- m. Submit quarterly report to the Competent Authority on any issues pertaining to the Act;
- n. Seek support from the Local Government while facilitating the cases; and
- o. Perform such other functions as may be deemed necessary by the Competent Authority.

Chapter 5

ROLE OF COURT AND JUDICIAL PROCEEDINGS OF THE CASES OF DOMESTIC VIOLENCE

Role of Court

29. The Court shall:

- a. Inform the victim or his Jabmi or legal representative of the following:
 - i. Relief available under the Act;
 - ii. The effect of interim protection/protection order or any other order granted by the court;
 - iii. The right to file a separate criminal complaint against the defendant if he has committed a separate criminal offence
 - iv. The right to claim compensation for any loss suffered or injury caused by domestic violence
- b. Issue interim protection/protection order to the victim in accordance with section 54 of the Act
- c. Maintain a record of petitions filed, interim protection/protection orders issued by the Court under this Act.
- d. Issue a copy of interim protection/protection order to the victim, complainant, Protection Officer, Social Welfare Officer, Police and defendant or legal representatives
- e. Not deny Protection Order on the grounds that other legal remedies are available; and
- f. Render any other services and support for effective implementation of the Act.

30. In addition to the function prescribed under Rule 28 of this Rules and Regulation, the Court may:

- a. Direct the defendant or victim, either singly or jointly to undergo counseling with any Service Provider who possesses such qualification and experience in accordance with section 50 of the Act;
- b. Direct the defendant and/or victim to undergo mandatory rehabilitation at any stage of the court proceeding if deemed necessary;
- c. Direct the defendant who is sentenced for any offence of committing an act of domestic violence under this act to pay appropriate compensation for the damages caused or loss suffered by the victim;
- d. Facilitate special needs services if the victim has a disability; and
- e. Prioritize the case over other cases.

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Judicial Proceedings

31. As per section 41 and 42 of the Act, the court shall conduct the hearing expeditiously keeping in view protecting the interest of all parties specifically that of a victim.

32. The Court may conduct the proceeding of cases relating to domestic violence in camera and may in the interest of the victim exclude any person from attending the Court proceeding.

33. In the best interest of the victim, the testimony of the victim under the oath may be recorded and submitted to the Court as evidence where appropriate.

34. The proceedings of the Court shall not be published in any form of media which may reveal the details of the case and disclose the identity of the parties to the case.

Interim Protection Order and Protection Order

35. For the purpose of chapter VII of the Act, in the event where the victim requires protection, an application for the interim protection order or protection order may be submitted to the Court.

36. The Court may order the Royal Bhutan Police or the Competent Authority to monitor the enforcement of the interim protection/protection order.

Chapter 6 - ROLE AND FUNCTIONS OF RELEVANT GOVERNMENT INSTITUTIONS AND OFFICIALS

Functions of the Government

37. In line with Section 6, 9, 10 (1&2) and 39 of the Act, the Government shall:

- a. Establish a Competent Authority responsible for the effective implementation of the Act and this Rule
- b. Provide adequate budget for the effective implementation of the Act and this Rule
- c. Ensure all relevant agencies/focal persons to collaborate with the Competent Authority for effective implementation of the Act;
- d. Through concerned agencies or institutions provide community based support services responding to special needs, problems, interests and protection of victims of domestic violence; and
- e. Endeavour to provide assistance to the community to establish facilities to provide adequate shelter for victim who has no home to live in or is not able to live at home.

Role of Local Government Officials

38. The Local Government officials shall:

- a. Receive complaints on domestic violence;
- b. Upon receipt of the complaints, conduct physical verifications and report the incident of the domestic violence to the nearest police station, if the victim so desires or to the Protection Officer/ Social Welfare Officer;
- c. Assist the Protection Officer/Social Welfare Officer and other relevant agencies in Domestic Violence cases; and
- d. Render necessary service and support for effective implementation of the Act and this Rule.

Functions of the Royal Bhutan Police

39. In accordance with section 20 of the Act, the Royal Bhutan Police shall:

- a. Establish Women and Child Protection Unit or Desk at every police station;
- b. Provide adequate staff with at least one female police personnel with relevant expertise in domestic violence;
- c. Create awareness and advocacy on domestic violence.

Role of Police Personnel

40. In furtherance to section 21 of the Act, a police personnel shall:

- a. Maintain record of all cases related to domestic violence and share information with the Competent Authority;
- b. Render cooperation and support to the Competent Authority and Service Providers;
- c. Enforce interim protection/protection order;
- d. Maintain confidentiality of the case; and
- e. Record the testimony of the victim and submit the evidence to the Court where appropriate.

41. The police personnel shall maintain a separate record of all the cases settled mutually under the Act.

42. The Police personnel shall submit the details of the cases settled mutually to the Competent Authority and ensure that these cases are monitored regularly.

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Education Institutions

43. Educational Institutions shall ensure that the children experiencing domestic violence on a recurrent basis are registered with the police station or reported to the concerned agencies. The institutions shall endeavor to create awareness on gender equality and ill effects of domestic violence.

Functions of the Ministry of Health

44. The Ministry of Health shall:

- a. Establish appropriate facilities with trained professional to cater to victims of domestic violence;
- b. Establish a One Stop Crises Centre which shall facilitate the victims in receiving the medical treatment along with other support services and maintain records of treatment of the victim.

Roles of Health Personnel:

45. The health personnel shall:

- a. Provide necessary medical treatment to the victim;
- b. Conduct medical examination with due regard to the right of privacy of the victim preferably by same sex;
- c. Inform the Police along with the medical report if the victim so desires;
- d. Notwithstanding Rule 45 (c) of this Rules and Regulations, the medical professional shall inform the police If the defendant;
 - i. Is a recidivist;
 - ii. Is likely to pose a grave risk of death or serious bodily injury to the victim;
 - iii. Impairs or likely to impair the health or development of the victim;
 - iv. Causes or likely to cause bodily injury to the victim with a weapon;
 - v. Conducted sexual offence that humiliates, degrades or otherwise violates the dignity of the victim; or
 - vi. Committed domestic violence as a result of intoxication.
- e. Maintain confidentiality of the cases;
- f. Facilitate access to other support services like shelter, counseling, and legal services;
- g. Create awareness on domestic violence; and
- h. Render any other services and support for the effective implementation of the Act.

Role of One-stop Crisis Centre Personnel

46. In addition to the role of health personnel prescribed under Rule 45 of this Rules and Regulations, the personnel of the One Stop Crisis Centre shall:

- a. Provide medico-legal services;
- b. Train health workers in dealing with domestic violence cases and create awareness on domestic violence;
- c. Collaborate with the Village Health Workers and Out Reach Clinics to create awareness on domestic violence at the community level;
- d. Maintain record of all cases related to domestic violence and share information with the Competent Authority; and
- e. Render any other services and support for the effective implementation of the Act.

47. The Competent Authority, Service Provider and the Law Enforcement agencies shall render professional support to the One Stop Crisis Centre for the implementation of the Act as and when required.

Chapter 7 - ROLE OF CIVIL SOCIETY ORGANIZATIONS, MEDIA AND COMMUNITIES

48. In accordance with section 30 of the Act, any registered national Civil Society Organization with the objective of protecting the rights of victims may be accredited by the Competent Authority as a Service Provider for the domestic violence victims.

Accreditation of Service Provider

Application

49. The application for accreditation shall be in a format approved by the Competent Authority and it shall:

- a. Be in writing;
- b. Bear the Official Seal of the Organization
- c. Specify address of the Organization;
- d. Specify the Social Welfare Officer of the organization; and
- e. Provide the details of services the organization seeks to provide.

Prerequisite

50. The prerequisite for granting accreditation shall be as follows:

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- a. Submit a written application for accreditation expressing their interest;
- b. Be a registered national Civil Society Organization with the Civil Society Organization Authority as per the Civil Society Organization Act of Bhutan;
- c. Have clear objective of protecting the rights of the victims as per the Act;
- d. Comprise of a Social Welfare Officer certified by the Competent Authority;
- e. Comprise of at least two relevant counselors certified by Bhutan Board of Certified Counselors or any other equivalent Institutions; and
- f. Have basic facilities to provide the services.

51. In addition to Rule 49 and 50 of this Rules and Regulations, the Service Provider shall submit evidence of its capacity to provide such services along with a copy of financial statement evidencing its financial capacity.

Accreditation

52. The Competent Authority upon receiving the application shall form a committee to review and take appropriate decision on the application.

53. The decision of the committee shall be made available to the applicant in not less than two weeks from day of submitting the application.

Role of the Service Provider

54. A Civil Society Organization accredited as the Service Provider for the purpose of the Act shall:

- a. Create awareness on the provisions pertaining to the Act;
- b. Provide services as per the accreditation;
- c. Maintain confidentiality on cases;
- d. Maintain a record of all the case registered;
- e. Disclose any information related to domestic violence to the Competent Authority whenever deemed necessary; and
- f. Submit biannual report to the Competent Authority as per Form no.3 of this Rules and Regulations

Renewal of Accreditation

55. The accreditation of a Service Provider shall be granted for a period of three years and may apply for renewal of accreditation three months prior to the date of expiry. The accreditation of a Service Provider shall be renewed if:

- a. During the period of accreditation, the Service Provider has proved its efficiency and effectiveness in providing services in accordance with the Act;
- b. It fulfills the basic requirement as per this Rules and Regulations; and
- c. Any other requirements that the Competent Authority deems necessary.

Suspension of Accreditation:

56. The Competent Authority may at any time suspend the accreditation, if the Service Provider contravenes any provision of the Act and this Rules and Regulations including the failure to:

- a. Discharge the duties as required under the Act without sufficient cause;
- b. Provide adequate care services and protection of the rights of the victims;
- c. Maintain appropriate and adequate services;
- d. Submit biannual reports to the Competent Authority;
- e. Maintain a record of all the case registered; or
- f. Fulfill any other requirement which the Competent Authority deems fit.

Revocation of Accreditation

57. The Competent Authority may at any time revoke the accreditation of the Service Provider, if Service provider fails to:

- a. Rectify the suspension order within three months unless the Service Provider's accreditation has been suspended based on force majeure;
- b. Maintain the confidentiality of the cases; or
- c. Prevent institutional corruption.

58. The Competent Authority shall:

- a. Serve in writing the notice of the revocation or suspension to the Service Provider;
- b. Publish such notice of suspension or revocation of the particular Service Provider through the media, upon the final decision.

Social Welfare Officer

59. In accordance with section 32 of the Act, every Service Provider shall designate at least one certified Social Welfare Officer.

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Qualification of the Social Welfare Officer

60. A person to be certified as Social Welfare Officer shall:

- a. Be a Bhutanese Citizen;
- b. Have minimum of Bachelor's Degree;
- c. Be nominated by the accredited Service Provider;
- d. Have at least one year of experience in relevant field;
- e. Produce reference letter from the Organization which he/she has previously worked with;
- f. Have successfully completed training provided by the Competent Authority;
- g. Be of sound mind;
- h. Not have been convicted of moral turpitude; and
- i. Not have a past criminal conviction and sentenced to imprisonment.

Functions of the Social Welfare Officer

61. As prescribed under section 33 of the Act, a Social Welfare Officer shall:

a. Function as a nodal entity of the Service Provider dealing with the domestic violence victims as follows:

- i. Inform the victims of the remedies available;
- ii. Disseminate the services available for the victims of Domestic violence to the public;
- iii. Ensure the protection of rights of the victims; and
- iv. Render services of any kind to victims.

b. Record the domestic violence incident report by maintaining a proper case record;

c. File a petition before the Court through Protection Officer, if the victim so desires by coordinating with the Law Enforcement agencies and Protection Officers;

d. Submit the complaint of domestic violence to the Police Station having jurisdiction, if the victim so desires and assist the victim throughout until the case is settled;

e. Get the victim medically examined and forward the medical report to the Police Station;

f. Ensure that the victim is accommodated in the shelter home if the victim so desires. If the Service Provider does not have the shelter services, coordinate with the Competent Authority and other Service Providers to accommodate the victim;

g. Assist the victim with livelihood until such time the victim can sustain himself by collaborating with the Competent Authority and other Service Providers; and

h. Render any other services which the Competent Authority deems fit.

Role of Media

62. In line with section 45, 46 and 47 of the Act, the media shall:

- a. Maintain professional standards including privacy in reporting and covering cases of domestic violence;
- b. Assist the prevention and creation of awareness on domestic violence through positive publications;
- c. Not publish any matter on adjudication of proceedings related to cases of domestic violence in any form unless authorized by the Court; and
- d. Protect the best interest of the victim by not publishing in any form the details of case and identity of the victim.

Role of Community

63. The community may:

- a. Provide or strengthen a wide range of community based support measures for the victim, including community centre and services to respond to the problems of victim who is at risk;
- b. Seek assistance from Competent Authority to provide such services and measures to the victim to facilitate livelihood and to re-integrate into the society;
- c. Seek support from the Government to establish facilities to provide adequate shelter for victims who have no home to live or are not able to live at home; and
- d. Render any services and support for implementation of the Act.

Chapter 8

PROCEDURAL MATTER FOR DEALING WITH CASES OF DOMESTIC VIOLENCE BY THE PROTECTION OFFICER AND SOCIAL WELFARE OFFICER

Complaint

64. A Complainant may report the case of domestic violence to:

- a. Police;
- b. Protection Officer;
- c. Service Provider/ Social Welfare Officer;

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- d. Member of the Local Government; or
- e. Competent Authority.

Reporting

65. A complaint of domestic violence may be reported by:

- a. The victim;
- b. Any person acting in the best interest of the victim;
- c. Any person having care or custody of a victim who is a minor;
- d. Relative of the victim;
- e. Representative of the victim;
- f. Employer or fellow employee of the victim;
- g. The Protection Officer or the Social Welfare Officer of the Service Provider caring for the victims; or
- h. Educational Institutions.

66. For the purpose of Rule 81 of this Rules and Regulations, the recipient shall duly fill up the Form No.1 of this Rule.

67. A complaint shall be accepted if:

- a. There exist a reasonable ground;
- b. Contains brief details of the Complainant; and
- c. It is made in writing or reduced to writing if in oral.

68. The identity of the Complainant shall be protected and shall not be disclosed except by the order of the Court.

Notice

69. The Protection Officer/Social Welfare Officer upon receiving the complaint shall:

- a. Notify the concerned parties to present themselves at the place notified at the earliest but not exceeding seven days after serving the notice;
- b. The notice may be served to the defendant's present address.
- c. Seek assistance from the local government or other relevant agencies in locating the defendant, in case of failure to locate. If the particular Local Government Administration fails to locate the defendant, it shall notify the Competent Authority officially; and
- d. Seek assistance from the Police in locating the defendant if not being able to locate by any means.

Scrutinization and Disposal

70. The Protection Officer/Social Welfare Officer shall;

- a. Scrutinize the case;
- b. Obtain assistance from the relevant agencies if required;
- c. Prepare report on the findings of the case;
- d. Interview any witness; and
- e. Seek the production of any relevant documents.

71. The Protection Officer/ Social Welfare Officer upon scrutinization of the complaint may:

- a. Dismiss the complaint for want of prima facie case;
- b. Resolve the issue by obtaining the assurance from the defendant not to repeat the offence again if;
 - i. The case is within its capacity as defined in their respective Terms of Reference; and
 - ii. The cases do not warrant to be forwarded to the Police for investigation.
- c. Forward the case to the Police subject to section 12 of the Act;
- d. File the petition before the court; and/or
- e. Refer or render other services such as shelter, counseling, medical and legal service based on the needs.

72. If the matter has been mutually settled, then an undertaking shall be signed by the defendant. Irrespective of allowing the matter to be settled, the Competent Authority shall have the authority to intervene and monitor.

73. Notwithstanding Rule 86, 87 and 88 of this Rules and Regulations , the Protection Officer and Social welfare Officer shall forward the case to the police station if the defendant:

- a. Is a recidivist;
- b. Poses or likely to pose a grave risk of death or serious bodily injury to the victim;
- c. Impairs or likely to impair the health or development of the victim;

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- d. Causes or likely to cause bodily injury to the victim with a weapon;
- e. Conducted sexual offence that humiliates, degrades or otherwise violates the dignity of the victim; or
- f. Committed domestic violence as a result of intoxication.

Case Report

74. The Protection Officer or the Social Welfare Officer shall prepare a detailed case report based on the inquiry and maintain a proper record.

75. A report of the case by the Protection Officer/Social Welfare Officer shall be prepared as per Form. No. 2 of this Rules and Regulations.

Chapter 9 - MISCELLANEOUS

Compensation

76. As prescribed under section 84 and 85 of the Act, the Court may order the defendant who is sentenced for an offence of domestic violence to pay appropriate compensation or damages in addition to the sentence as per the existing legislations.

77. For the purpose of section 86 of the Act, ancillary and incidental expenses may comprise of any of the following:

- a. Transportation Fare;
- b. Court fee;
- c. Legal fee;
- d. Basic necessity; or
- e. Any other expenses which the court deems necessary.

Services

78. For the Purpose of section 30 of the Act and Rule 64 of this Rules and Regulations, the Service Provider may provide the following services:

- a. Helpline service;
- b. Shelter service;
- c. Counseling Service;
- d. Legal service;
- e. Health service; or
- f. Any other service which the Competent Authority deems necessary.

Shelter Homes

79. A shelter home shall have the following requirement:

- a. Have adequate space and physical structure;
- b. Managed by qualified shelter staff including a shelter in-charge, trained Counselors, Case Manager
- c. Provide 24-hour residential care;
- d. Provide basic needs;
- e. Maintain confidentiality;
- f. Provide safety;
- g. Provide reintegration and rehabilitation program;
- h. Provide or make referral to legal, medical and other services;
- i. Provide child care services;
- j. Provide follow-up services to the ex-residents;
- k. Have standard operational manual/guidelines in place; and
- l. Any other provision that the Competent Authority deems fit.

Counseling Service

80. In addition to section 50 of the Act, the Competent Authority or the Service Provider may direct the defendant and the victim either singly or jointly to undergo counseling program.

81. The Service Provider providing Counseling Service shall have the following requirement:

- a. Have minimum of two certified Counselors;
- b. Have minimum of two years experience in relevant field;
- c. Have minimum of two counseling rooms conducive for counseling sessions;
- d. Have systematic supervision and referral system in place; and
- e. Any other services which the Competent Authority deems necessary.

Health Service

82. The health service provider shall have the following requirement:

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- a. Provide medical assistance and treatment;
- b. Maintain records and evidence of the cases;
- c. Provide 24 hours services;
- d. Equipped with adequate human resources;
- e. Have separate examination room; and
- f. Any other services which the Competent Authority deems necessary.

Helpline Service

83. The helpline service provider shall have the following requirement:

- a. Have trained professional;
- b. Maintain confidentiality;
- c. Maintain data base of all other services available;
- d. Be accessible to all;
- e. Provide 24 hour services;
- f. Provide online counseling services;
- g. Provide accurate and appropriate referral services; and
- h. Provide any other information that the victim require.

Legal Service

84. The legal service provider shall have the following requirement:

- a. Provide free legal advice or aid during all stages of legal proceeding;
- b. Provide pro-bono legal services to assist victims of domestic violence, when ever required;
- c. Have adequately qualified and trained staff; and
- d. Maintain confidentiality in all matters concerning the victim.

85. For the purpose of this Rule:

Chapter 10 - DEFINITION

- a. Act means the Domestic Violence Prevention Act of Bhutan.
- b. Accreditation means the act of granting recognition b y the Competent Authority to Civil Society Organization for rendering services as per the Act.
- c. Case record means a record maintained where all the details of the parties and the case is recorded.
- d. Civil Society Organization means an organization registered under the Civil Soci- ety Organization Act of Bhutan.
- e. Complainant means a person who reports domestic violence in good faith and may include a relative, neighbor, representative, employer or fellow employee of the victim, a person acting on behalf of a Civil Society Organization concerned with the welfare of victims of domestic violence, or any person who has witnessed an act of domestic violence
- f. Competent Authority means the National Commission for Women and Children or any other agency as may be designated by the Royal Government of Bhutan.
- g. Court means the Royal Court of Justice in Bhutan.
- h. Defendant means alleged perpetrator of an act of domestic violence.
- i. Domestic relationship means Spousal relationship; or a family relationship; or an intimate personal relationship; or ordinarily shares a household with a defendant.
- j. Medico-legal means a medical case with legal implications for the attending doc- tor where the attending doctor, after eliciting history and examining the patient, thinks that some investigation by law enforcement agencies is essential, some- thing that involves both medical and legal aspects.
- k. Notice of Hearing means when a party to a case has been directed to attend the hearing scheduled on a particular date.
- l. Police means the Royal Bhutan Police.
- m. Protection Order means an order issued by the Royal Court of Justice that helps protect the victim or the complainant from domestic violence or threats to commit domestic violence from someone they have a domestic relationship with.
- n. Relevant Agencies mean the agencies identified by the Competent Authority for the effective implementation of the Act.
- o. Recidivist means a habitual offender including a defendant who had signed under- taking as per Rule 38 of this Rule.

[Penal Code, 2004](#) ⁵⁰

199. Marital rape

A defendant shall be guilty of marital rape, if the defendant engages in sexual intercourse with one own's spouse without consent or against the will of the other spouse.

⁵⁰ Penal Code (11 August 2004), available at <http://www.judiciary.gov.bt/forms/PENAL%20CODE.pdf> (last visited December 30, 2018).

200. Grading of marital rape

The offence of marital rape shall be petty misdemeanor.

20. **BOLÍVIA**

[Comprehensive Law to Guarantee Women a Life Free of Violence, 2013](#) ⁵¹

[...]

TITLE I
GENERAL PROVISION
ONLY CHAPTER

CONSTITUTIONAL FRAMEWORK, OBJECT, PURPOSE, SCOPE AND APPLICATION

Article 1 – Constitutional Framework

This Law is based on the constitutional mandate and on the Instruments, Treaties and International Human Rights Agreements ratified by Bolivia, that guarantee to all people, in particular women, the right to not suffer physical, sexual and/or psychological violence, both in the family and in the society.

Article 2 – Object and Purpose

The object of this Law is to establish comprehensive mechanisms, measures and policies for prevention, care, protection and reparation to women in situations of violence, as well as the persecution and punishment of aggressors, in order to guarantee women a dignified life and the full exercise of their rights to live well.

Article 3 – National Priority

- I. The Plurinational State of Bolivia prioritizes the eradication of violence against women, as it is one of the most extreme forms of gender-based discrimination.
- II. The State Bodies and all public institutions shall adopt the necessary measures and policies, assigning the sufficient economic and human resources required.
- III. The Autonomous Territorial Entities, within the framework of their powers and constitutional responsibilities, shall assign the human and economic resources for the implementation of policies, programs and projects aimed at eradicating all forms of violence against women.

Article 4 – Principles and Values

This Law is governed by the following principles and values:

1. Live Well. It is the condition and development of a fulfilling material, spiritual and physical life, in harmony the family, social and natural environment.
2. Equality. The State guarantees real and effective equality between women and men, the respect and protection of rights, especially for women, within the framework of diversity as a value, eliminating any form of distinction or discrimination by differences in sex, cultural, economic, physical, social or of any other kind.
3. Inclusion. Take into consideration the culture and origin of women, to adopt, implement and apply the appropriate mechanisms to safeguard their rights, assure them respect and ensure the provision of effective means for their protection.
4. Decent Treatment. Women in situations of violence shall receive a priority treatment, worthy and preferential, with respect, quality and kindness
5. Complementarity. The communion between women and men of equal, similar or different ways of life and cultural identities, who coexist in a friendly and peaceful way.
6. Harmony. Peaceful coexistence between women and men, and with Mother Earth.
7. Equality of Opportunities. Women, regardless of their personal circumstances, social or economic, of their age, marital status, belonging to an original indigenous peasant people, sexual orientation, rural or urban origin, belief or religion, political opinion or any other; will have access to the protection and actions that this Law establishes, throughout the national territory.
8. Social Equity. It is the common welfare of women and men, with full and effective participation in all areas, to achieve a fair distribution and redistribution of products and social goods.
9. Gender Equity. Eliminate inequality gaps for the full exercise of freedoms and rights of both women and men.

⁵¹ Comprehensive Law to Guarantee Women a Life Free of Violence (Ley Integral Para Garantizar a Las Mujeres una Vida Libre de Violencia), Law No. 348 (9 March 2013), available at <https://www.migracion.gob.bo/upload/l348.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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10. Culture of Peace. Women and men shall reject violence against women and resolve conflicts through dialogue and respect between people.

11. Informality. At all levels of public administration destined to prevent, attend, detect, process and sanction any form of violence against women it will not be required compliance with formal requirements or materials that hinder the process of restoration of rights violated and the sanction to those responsible.

12. Depatriarchalizing. For the purposes of this Law, depatriarchalizing is the development of public policies to promote the visibility, denunciation and eradication of patriarchy, through transformation of structures, relationships, traditions, unequal customs and behaviors of power, dominion, exclusion, oppression and exploitation of women by men.

13. Special Attention. Women should receive the attention that their needs and specific circumstances demand, with differentiated criteria that ensure the full exercise of their rights.

14. Specialty. At all levels of the public administration and especially those of attention, protection and sanction in cases of violence against women, public servants, both women and men, must have the necessary knowledge to guarantee respectful, worthy and effective treatment to women.

Article 5 – Scope of Application

- I. This Law applies throughout the territory of the Plurinational State of Bolivia and in places subject to its jurisdiction.
- II. The authorities and public servants of all the Organs, Public Institutions, Autonomous Territorial Entities and the civil society, have an obligation to enforce it, under criminal, civil and administrative responsibility.
- III. It does not recognize privilege of any kind; its application is preferred over any other norm for crimes established in this Law.
- IV. The provisions of this Law shall be applicable to all persons who, due to their situation of vulnerability, suffer from any the forms of violence that this Law sanctions, regardless of gender.

Article 6 - Definitions

For purposes of the application and interpretation of this Law, the following definitions are adopted:

1. Violence. Constitutes any action or omission, open or covert, which causes death, suffering or physical, sexual or psychological harm to a woman or another person, that damages their assets, their economy, their source labor or any other field, for the mere fact of being woman.
2. Situation of Violence. It is the set of circumstances and conditions of aggression in which a woman finds herself in a specific moment of her life.
3. Non-Sexist Language. It is the use of written, visual, symbolic and verbal words and messages that do not discriminate based on gender.
4. Gender Sensitive Budgets. They are those who prioritize allocation and redistribution of resources towards public policies and take into account the different needs and interests of women and men, in order to close gaps, promote social and economic inclusion of women, especially those in situations of violence and those that are more discriminated against because of origin, nationality, group, social position, sexual orientation, economic condition, disability, marital status, pregnancy, language and political position.
5. Cultural Identity. It is the set of values, visions, traditions, uses and customs, symbols, beliefs and behaviors that gives people a sense of belonging.
6. Aggressors (Men or Women). Those who commit an action or omission that imply any form of violence towards women or other person.
7. Sexual Integrity. It is the right to security and sexual control of one's own body in the concept of sexual self-determination.

Article 7 – Types of Violence Against Women

Within the framework of forms of physical, psychological, sexual and economic violence, in an enunciatively, non-restrictive manner, are considered forms of violence:

1. Physical Violence. It is any action that causes injuries and/or bodily harm, internal, external or both, temporary or permanent, that is manifested immediately or in the long term, with the use or not of physical force, weapons or any other means.
2. Femicide Violence. It is the action of extreme violence that violates the fundamental right to life and causes the death of women because of their gender.
3. Psychological Violence. It is the set of actions of systematic devaluation, intimidation and control of behavior and decisions of women, which have as consequence the decrease of their self-esteem, depression, psychological instability, disorientation and even suicide.
4. Media Violence. Is the violence produced by the mass media through publications, dissemination of messages and stereotyped images that promote the submission and/or exploitation of women, who insult, defame, discriminate, dishonor, humiliate or undermine their dignity, their name and their image.

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5. Symbolic and/or Covert Violence. Messages, values, symbols, icons, signs, and social, economic, political, cultural and religious beliefs impositions that transmit, reproduce and consolidate relations of domination, exclusion, inequality and discrimination, normalizing the subordination of women.
6. Violence Against Dignity, Honor and Name. It is any verbal or written expression of offense, insult, defamation, slander, threat or other, biased or public, that discredits, disqualifies, devalues, degrades or affects the name, dignity, honor and reputation of the woman.
7. Sexual Violence. All conducts that put at risk to sexual self-determination, both in the sexual act and in any form of carnal contact, genital or non-genital, that threatens, violates or restricts the right to exercise a free, safe, effective and full sexual life, with autonomy and sexual freedom for women.
8. Violence Against Reproductive Rights. Is the action or omission that prevents, limits or violates the right of women to information, guidance, comprehensive care and treatment during pregnancy or during loss, delivery, puerperium and lactation; to decide freely and responsibly the number of daughters and sons and the spacing between each child; to exercise safe motherhood, and to choose safe contraceptive methods.
9. Violence in Health Services. [...]
10. Patrimonial and Economic Violence. It is all action or omission that affects the property women, causes damage or impairment to their assets, values or means; controls or limits their income or its disposal, or deprives them of the means indispensable to live.
11. Workplace Violence. [...]
12. Violence in the Plurinational Educational System. [...]
13. Violence in the Political and Leadership Exercise of Women. [...]
14. Institutional Violence. It is any act or omission of public servants or staff of private institutions (men or women), which implies a discriminatory, prejudicial, humiliating and dehumanized action that retards, hinders, diminishes or denies women the access and attention to the required service.
15. Violence in the Family. Any physical, psychological or sexual assault committed against the woman by the spouse or ex-spouse, partner or ex-partner, or their family, ascendants, descendants, sisters, siblings, civil or related relatives in direct and collateral line, guardians or the ones responsible for their custody or care.
16. Violence Against Rights and Sexual Freedom. It is any action or omission that prevents or restricts the exercise of women's rights to enjoy a free, safe, affective and full sexual life or that violates their freedom of sexual choices.
17. Any other form of violence that harms the dignity, integrity, freedom or that violates the rights of women.

TITLE II PUBLIC POLICIES AND INSTITUTIONALITY

CHAPTER I PUBLIC POLICIES

Article 8 – Public Policies

It is the responsibility of the State, with an intersectoral nature and chaired by the Governing Body, to adopt and coordinate the execution of the mandates of this Law in any public policy and National Plan that involves the prevention, attention and protection of women against violence.

Article 9 - Application

For the application of this Law, the State Bodies, the Autonomous Territorial Entities and Public Institutions, within the framework of their competences and respective responsibilities, shall:

1. Adopt, implement and monitor specialized care protocols, in the different instances of attention, for the restoration of the rights of women in situations of violence.
2. Create, strengthen and sustain care and protection services for women in situations of violence.
3. Create and sustain comprehensive care and specialized reeducation services for aggressors, as well as other measures intended to change their behavior.
4. Adopt concrete measures of action and clear and specific responsibilities, with the level of attention and priority that it requires for the preservation of women's lives, safety and integrity.
5. Articulate the instruments, policies, services and inter-institutional linked actions, for prevention, attention, sanction and eradication of violence against women.

Article 10 - Planning

The State Bodies, the Public Institutions and Autonomous Territorial Entities, within the framework of their respective competences, attributions, functions and capacities, will incorporate into their strategies, annual operational planning and budget, the actions and the sufficient and necessary resources for the application of this Law, and shall have the appropriate

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personnel for their implementation. They shall focus their actions and resources to provide special attention to women in situations of violence and to those in conditions of vulnerability, primarily in rural areas.

Article 11 – Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence (SIPPASE)

- I. The Governing Body will be in charge of the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE, which reorganizes the entire system of integral attention to women in situations of violence and the information on public and private services, which will be registered in a unique record on gender-based violence. The information generated by the system will be confidential.
- II. The entity responsible for the registration may issue certifications on the background of the aggressors, complaints, action of public servants, and about all information that can serve for the prevention, care, protection and sanction of individual cases, only upon prosecutor's request or court order.
- III. All the information registered in this system will be derived to National Institute of Statistics for its processing and dissemination, according to indicators developed jointly, with a focus on human and women's rights, disaggregated at least by sex, age and municipality.

Article 12 – Training

The State Bodies, the Public Prosecutor's Office and Forensic Investigation Institute, the Bolivian Police, the Ombudsman's Office, the Armed Forces, the State's General Prosecutor's Office, the School of Plurinational Public Management, the School of State Judges, Autonomous Territorial Entities and all other public entity that provides public services, within the scope of its respective competences, will adopt and develop programs of specific training related to culture against violence, equality and non-discrimination based on sex and, and on gender equity, among others, which must be permanently updated and will be applied to all the staff, regardless of their hierarchy, without exception and on a mandatory basis.

Article 13 – Access to Public Job Positions

- I. To access a public job position in any body of the State or level of administration, whether that is done by election, appointment, designation or hiring, in addition to those provision by the Law, it will be considered as a mandatory requirement that the candidate does not have a history of violence against women or any other member of his/her family, with a final judgment res judicata. The Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE will certify the background to which this article refers to.
- II. To be designated to a public job position related to the attention, protection, investigation and sanction of cases regarding women in situation of violence, it is required a training or proven experience in terms of gender and/or women's rights.

Article 14 – Sectoral Policies

The Governing Body of the central level of the State and the Autonomous Territorial Entities, in accordance to their respective competencies, will adopt specific measures aimed at eradicating all forms of violence against women and at establishing a new social framework to guarantee a respectful and dignified life free of violence, for which purpose the following programs are established, not excluding others that can be adopted:

1. Prevention in the structural, individual and collective areas that consolidates a new culture of respect for women, their dignity and rights.
2. Training, specialization, and awareness of all those people who care for women in a situation of violence.
3. Orientation and information to women so they can see themselves as subjects of rights, and to have access to instances of attention and protection.
4. Care and protection for women in situations of violence, and to members of their families that may be at risk.
5. Communication to deconstruct sexist stereotypes and socially-assigned roles to women, promoting the self-regulation of the media regarding advertising and the disrespectful and commercial use of women's image.
6. Orientation, attention and rehabilitation of aggressors, to promote the values adopted by this Law and achieve changes in behavior for the effective respect of the rights of women and avoid recidivism.

Article 15 – Participation and Social Control

The civil society organizations and women's organizations will exercise the participation and social control within the framework of the corresponding Law, participating in the design, evaluation and management of public policies of prevention, care and protection of women and the quality of services specialized, public and private companies that provide basic services or that administer fiscal resources at all levels of the State.

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INSTITUTIONALITY

Article 16 – Governing Body

The Ministry of Justice, in accordance with its powers and attributions, is the Governing Body responsible for coordination, articulation and monitoring of effective application and compliance with this Law. The Governing Body will be in charge of the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE; the Governing Body will coordinate the creation and application of comprehensive policies on prevention, care, sanction and eradication of violence against women, both at the central level and at the Autonomous Territorial Entities. The necessary resources, both human and economic, will be allocated to fulfill its attributions, within the framework of this Law. All the bodies of the Executive Branch, with powers related to the rights of women, the problem of violence and services of prevention, attention and punishment of violence against women, shall coordinate their actions with the Ministry of Justice, through the most appropriate mechanism and with sufficient hierarchy defined by the Body Executive. The Ministry of Justice will render an annual report to the Plurinational Legislative Assembly, on the progress and compliance of this Law.

TITLE III

PREVENTION, ATTENTION AND PROTECTION

CHAPTER I

PREVENTION OF VIOLENCE TOWARDS WOMEN

Article 17 – Prevention Criteria

- I. For the purposes of application of this Law, the central level of the State and the Autonomous Territorial Entities will create and adopt preventive measures that are necessary to modify the violent individual and social behaviors and those that tolerate, naturalize and reproduce violence, under three criteria of action:
 1. Structural Prevention. It includes all those measures of an integral nature aimed at modifying attitudes, practices, reactions, actions and omissions that have as their effect and consequence the violence against women, as well as its replacement by attitudes in the behavior of individual, couples, families, the community, society and state, through raising awareness and educating within the family, at school and other academic levels, at work, health care centers, indigenous communities (campesinas and Afro-Bolivian), political organizations and trade unions, social organizations, and any other scope of social interaction.
 2. Individual Prevention. It refers to measures aimed at strengthening and empowering every woman and promoting her skills to identify any possible manifestation of violence or aggression towards her, facing the violence assertively, with the purpose of anticipating its expression or concretion and preventing it from occurring or continuing.
 3. Collective Prevention. Measures designed to prevent violence and protect women through their organizations, institutions or any community to which they belong by affinity (neighborhood committees, unions, communities, nations, native indigenous people (campesinos), intercultural and Afro-Bolivian).
- II. Priority should be given to prevention in family settings, community, educational, health, labor and communication.
- III. The Autonomous Territorial Entities, within the framework of their respective competences and the exercise of their legislative, regulatory and executive powers in the matter, shall incorporate mechanisms for the prevention of violence, as well as attention and protection for women in situations of violence.

Article 18 – Community Prevention

The native indigenous authorities campesinas and Afro-Bolivians, shall adopt in communities in which they exercise their functions, preventive measures that they consider more appropriate under the three criteria of action established to prevent any act of violence against women, with the participation of the communities in the planning, execution and follow-up, respecting their rights. No norms or procedures of the indigenous peoples or nations may violate the rights recognized in the Political Constitution of the State and the constitutionality.

Article 19 – Measures in the Educational Field

- I. The Ministry of Education has the obligation and responsibility to adopt the following measures:
 1. Incorporate in public education policies strategies and programs focused on prevention and integral intervention against violence towards women.
 2. Incorporate the gender approach, principles and values established in this Law, the complete respect for human rights, and training in the peaceful conflict resolution in educational curricula at all levels, including teacher training in colleges and universities, to contribute to a culture of respect in the family, community, school, work and society, as a daily practice.

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3. Create within educational units, a center for psychological attention, with a mandatory specialty focused on violence, in agreement with public or private universities, for the psychological care of students whose families are in situations of violence.
 4. Guarantee the immediate transfer to educational units, of the daughters and sons of women in situation of violence, if there is a change of address.
 5. Formulate and implement a policy of prevention of sexual harassment in the education system.
 6. Develop regulations and a unique protocol for the treatment of complaints about all forms of school violence and sexual harassment, protection mechanisms and specialized attention to girls, boys and adolescent victims.
 7. Prohibit as educational texts, educational materials with sexist content, violent and discriminatory messages towards women, and promote the development and dissemination of educational material with a gender equity approach, in particular of equality of rights between women and men.
 8. Other actions necessary for the eradication of violence and the encouragement of mutual respect.
- II. The policies adopted by the Ministry of Education in matters of prevention, protection and treatment of violence in the educational system, will be coordinated with the Governing Body.
- III. The teaching, administrative or professional support staff who, having detected a situation of violence, did not report it, shall be subject to the corresponding legal sanctions.

Article 20 – Measures in the Health Field

- I. The Ministry of Health and Sports has the responsibility to adopt the following measures, aimed at guaranteeing women in situations of risk or violence, access to health services, their treatment and protection, as a public health problem:
 1. Incorporate strategies and programs for promotion, prevention and comprehensive intervention within the framework of the Intercultural Community Family Health Policy, with the purpose of guaranteeing the fight against violence against women in Public Health Policies.
2. Include and implement the National Standard of Clinical Care, the unique protocol of detection, attention and reference of violence and its effects, including all forms of physical violence, violence in health, psychological and sexual services contemplated in this Law, with intercultural and gender approach.
3. Design and execute training, information and awareness plans on the promotion, prevention and comprehensive treatment for women who suffer violence, to the professional, auxiliary and administrative staff of the public health services, of the entities managing the short-term social security and of private services, to guarantee their timely and adequate action in the detection, prevention, care and protection of women.
4. Guarantee that the Public Health System, short-term and private social insurance, respond with emergency medical and psychological attention, immediate treatment for the restoration of physical and emotional health of women who are in a situation of risk and/or violence; in the provision of free health care for women victims of violence at the time of the implementation of the Universal Health Insurance, being prohibited the denial of attention.
5. Develop and implement mechanisms for the detection and reporting of potential cases of violence that may occur to women who resort to public health services, short-term social insurance and private services.
6. Refer women in situations of violence or imminent risk to specialized medical, psychological and protection services.
7. Respect the decisions that women in situations of violence take in the exercise of their sexual rights and their reproductive rights, within the framework of current regulations.
8. Generate and disseminate permanent and updated information on sexual rights and reproductive rights, prevention and treatment of sexually transmitted infections, HIV / AIDS, hemorrhages during the first trimester of pregnancy, unplanned pregnancies and all forms of sexual violence.
9. The medical staff of the Public Health System, short-term social insurance and private services, must officially provide, on a mandatory basis, free and in plain paper, a medical certificate to women who require attention for physical or sexual damage arising from acts of violence, and the respective assessment of psychological damage should be submitted to the competent authorities. The forensic doctor, as a priority, must approve the extended medical certificates in cases of violence against women and establish the degree of impairment.
10. Adopt norms, policies and programs aimed at preventing and punishing violence in health services and any other form of violence against women in health services, exercised by any public health services, short-term social insurance and private services staff.
11. Promote scientific research for the adoption of less invasive, painful or aggressive medical examinations and treatments.
12. Promote active community participation of women and men in all public health facilities, short-term social insurance and private companies that provide basic services or administer fiscal resources at all levels of the State, to exercise social control in compliance with measures indicated in this Law.
13. Expansion of assistance to victims of physical or sexual violence against women as a benefit of the short-term social security system.

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14. Other necessary actions in the field of health care, which contribute to the eradication of all forms of violence against women.

II. Health services at all levels, public, social security and private services, are obliged provide care, under responsibility, to any woman who requests medical and psychological attention, as well as to report probable or proven cases of violence against attended women, sending a signed copy of the case record to the Governing Body, for inclusion in the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE, within 48 hours of the facts being known.

Article 21 – Measures in the Labor Field

I. The Ministry of Labor, Employment and Social Security must adopt the following measures designed to guarantee respect for women:
[...]

1. Regulation and sanction of unjustified dismissal of women due to marital status, pregnancy, situation of violence, age, physical conditions, number of daughters or children, or any other form that implies labor discrimination; must guarantee job stability according to current regulations.
2. Protection against all forms of sexual harassment or workplace harassment, and adoption of internal and administrative procedures for reporting, investigation, attention, prosecution and punishment.
3. Adoption of a policy of ongoing training, awareness-raising, strengthening and training for labor conciliation and inspection personnel, to adequately address complaints filed by women, especially if they are in a situation of violence.

In coordination with the Ministry of Health and Sports, a policy for specialized medical and psychological care, timely and free in the social security system for all women who have been subjected to any form of violence in the workplace.

In coordination with the care and protection services to prioritize the access, permanence and promotion of women in situations of violence, to decent employment, including specific mechanisms in the national employment policy, special employment programs and the job market, training programs, training and specific updating, guaranteeing a remuneration without discrimination gaps.

4. Adoption of a system of flexibility and tolerance in the work centers for women who are in a situation of violence, guaranteeing their labor rights, to only presenting the resolution of some measure of protection within the framework of Article 35 of the present Law.
5. Adoption of norms that make compatible work and family life of people who work, in order to allow a better balance between women and men in both areas.
6. All the necessary actions for the eradication of violence against women.
 - II. In case of violation of these rights, women in situations of labor violence may appeal to the appropriate administrative or judicial bodies to have their rights restored, the damage repaired, sanctions applied to the aggressor, and if appropriate, to the responsible for the care and protection that failed to fulfill their duties.

Article 22 – Measures in the Field of Communication

The Ministry of Communication, within the scope of its competences, shall adopt the following measure:

Design and implementation of a national communication strategy, including campaigns in mass media, aimed at informing and raising awareness about the causes, forms and consequences of violence against women, as well as to deconstruct patriarchal stereotypes of subordination and devaluation of women, considering cultural diversity and allocating for this purpose the same resources assigned to advertising on strategic issues for national development.

Article 23 – Obligation of Media

The media will adopt the following measures:

1. Adopt the Codes of Ethics and other measures of self-regulation, in relation to the dissemination of discriminatory content linked to violence against women or that reinforce or justify tolerance, or that violate the rights of women.
2. To allocate, within the framework of social responsibility, a minimum free space for the dissemination of messages that promote the values established in this Law.
3. Disseminate information regarding violence against women objectively, protecting the defense of their autonomy, freedom, dignity, privacy and rights, of their children, restricting any graphic exhibition that constitutes humiliation, public exposure and / or degrading.

CHAPTER II
ATTENTION TO WOMEN IN SITUATION OF VIOLENCE

Article 24 – Integrated Attention Services

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- I. Universities and public higher education centers will create free programs and services aimed at the prevention of violence against women, the care and rehabilitation of women in situations of violence, specialized and comprehensive professional advice. The universities and training centers will include adequate academic programs to achieve these purposes.
- II. The programs and services of attention will be organized, coordinated and strengthened in each municipality with charge to its annual budget, as instances of permanent support to the Integral Municipal Legal Services and the Shelters and Temporary Refuge. The attention provided by these services must be a prioritized, permanent, specialized and multidisciplinary. They will act in a coordinated manner with all the State guarantees, especially with the Bolivian Police, the Judicial Body and health institutions.
- III. All care services must be extended to the daughters and sons of the woman in a situation of violence and to other dependents in risky conditions.
- IV. The Integral Attention Services should promote, advise and support the permanent training and updating of its personnel, with the aim of ensuring that in their area and specialty, they work together around the vision, approach and language that the Law establishes with respect to violence.
- V. The Comprehensive Care Services will adopt the necessary measures in terms of infrastructure, equipment and human resources, which guarantee that women in situations of violence will not be subjected to revictimization.

Article 25 – Shelters and Temporary Refuge

The Autonomous Territorial Entities, within the framework of their competences and financial sustainability, have the responsibility of creating, equipping, maintaining and serving Shelters and Temporary Refuges for women in situations of violence in the urban and rural areas. They must have a multidisciplinary staff duly trained and specialized in assisting women in situations of violence; The administration must design and implement a sustainability strategy. In order to comply with the provisions of this Article, intergovernmental and inter-institutional agreements may be established.

Article 26 – Services

- I. Shelters and Temporary Refuges will provide women with the following services according to their needs and permanent evaluation:
 1. To welcome, protect and provide free of charge services to women in situations of violence, their children and any family member who is dependent on them and who may be at risk.
 2. Encourage and promote the empowerment of women in situations of violence, facilitating their access to education, job training and work.
 3. Coordinate with the care services and public and private health centers, the medical care of women and their families in situations of violence.
 4. Apply the national policy and local policy adopted by the corresponding autonomous territorial entity, in coordination with the Governing Body and women's organizations and institutions.
 5. Provide women with the necessary interdisciplinary care for their physical and psychological recovery, which allows them to participate, gradually, in public, social and private life.
 6. Give information to women about the legal procedures, the institutions that provide free interdisciplinary services they require for their recovery and any topic of interest, linked to their situation.
- II. In addition, these shelters and temporary refuges will provide the following specialized and free services to women and, where appropriate, to their daughters and sons:
 1. Lodging and food.
 2. Comprehensive reeducation programs to promote changes in attitudes and values for their gradual integration and full participation in social and private life, which allows them independence from the aggressor.
 3. Training in the development of skills, techniques and knowledge for the performance of work or productive activity.
 4. Priority access to the job placement system, if requested.
- III. The authority in charge of each house may coordinate the private attention of any of the aforementioned services.

Article 27 – Privacy

Shelters and temporary refuges are a safe haven for women in situations of violence, so their location cannot be disclosed, except to persons authorized to attend them. The anonymity and privacy of the women received will be guaranteed.

Article 28 – Permanence

Women who resort to Shelters and Temporary Refuges may not stay in them for more than three months, unless due to the severity of the violence suffered or due to special conditions that justify it for persisting their physical or psychological instability

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or situation of risk, it is required to prolong this time. In this exceptional case, after a joint evaluation of the interdisciplinary staff conformed by at least the medical, psychological and legal personnel assigned by the care services to the Shelter, the permanence of the woman, until her complete recovery, can be determined.

Article 29 – Community Promoters

Women who have overcome their situation of violence, or those who wish to assume this commitment, may voluntarily set up support networks for women who are still in such situation, generating solidarity and protection groups articulated to public health services. The Autonomous Territorial Entity will provide the promoters with training in peaceful conflict resolution, notions of psychology, counseling and any other topic of interest for this purpose.

Article 30 – Community Houses for Women

In rural areas, organized women can define the creation of Community Houses for Women, for which the Autonomous Municipal Government will provide the necessary infrastructure. Those that are articulated to the network of community promoters in the different communities that will attend and perform the tasks of orientation, prevention and detection of cases of violence, may sign agreements with public authorities and private institutions.

Article 31 – Rehabilitation of Aggressors

- I. The rehabilitation of the aggressors, by order of the competent jurisdictional authority, will be set by express order, in order to promote changes in their aggressive behavior. Therapy will not replace the sanction imposed by the acts of violence.
- II. Rehabilitation services may be organized through intergovernmental agreements, both in the urban and rural areas, in existing centers or in the place where the aggressor complies with a penal sanction. In no case, the therapy will be provided next to the assaulted woman.
- III. Those responsible for these services must report the start, compliance or non-compliance of the program or therapy by the aggressor with the competent jurisdictional authority and the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender-Based Violence - SIPPASE.

CHAPTER III PROTECTIVE MEASURES

Article 32 - Purpose

- I. The protective measures are intended to interrupt and prevent an act of violence against women, or guarantee, in the event that it has been consummated, that the corresponding investigation, prosecution and punishment be carried out.
- II. The protective measures are of immediate application, imposed by the competent authority to safeguard the life, physical, psychological, sexual, property, economic and labor rights of women in situations of violence and those of their dependents.

Article 33 – Revictimization

The judicial or administrative procedures for the protection of women in situations of violence must apply the principle of dignified treatment contained in this Law, under responsibility in cases of non-compliance.

Article 34 – Denunciation in Judicial Process

If during the course of litigation, the judge was aware of acts of violence against a woman, he/she is obliged, under responsibility, to send the antecedents of the fact to the Public Prosecutor's Office for processing under criminal law. Judges in family matters will adopt the protective measures that they consider appropriate to guarantee the life and integrity of women, and their children who are at risk.

Article 35 – Protective Measures

The protective measures that the competent authority may dictate are the following:

1. Order the departure, removal, restriction of the aggressor to the conjugal domicile or where the woman in a situation of violence lives, regardless of the accreditation or possession of the property, and order the aggressor to undergo a psychological therapy in a rehabilitation center.
2. Prohibit the aggressor from alienating, mortgaging, pledging, disposing of or changing the ownership of the right owner of movable property or common property.
3. Provide family assistance in favor of daughters, sons and the woman.

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4. Prohibit the aggressor from approaching, attending or entering the home, place of work or studies of the ascendants or descendants, or any other space that the woman who is in a situation of violence frequently visits.
5. Return the woman to the home from which she would have been violently removed, when she requested it, with sufficient guarantees to protect her life and integrity.
6. Prohibit the aggressor from communicating, intimidating or disturbing by any means or through third parties, the woman who is in a situation of violence, as well as any member of her family.
7. Prohibit acts of intimidation, threats or coercion to witness of acts of violence.
8. Temporarily suspend the aggressor from visiting and cohabitating with his/her daughters and sons.
9. To carry out the inventory of movable and immovable property of common property or of legitimate possession.
10. Arrange immediate delivery of objects and personal documents of the woman and of her children and dependents.
11. Retain the documents of ownership of movable or immovable property, while the repair of the damage is decided.
12. Provide tolerance or reduction of working hours for women who are in a situation of violence, without affecting their labor and salary rights.
13. Order the preventive annotation of the assets subject to the aggressor's registration, as well as the freezing of bank accounts to guarantee the obligations of family assistance.
14. Ensure the right of succession of women.
15. Provide for the removal of the aggressor that committed sexual harassment in the workplace.
16. Provision of measures to avoid discrimination in the selection, qualification, permanence and promotion of women at their work place.
17. Restrict, in case of sexual harassment, all contact between the aggressor and the woman, without affecting the labor rights of the woman.
18. Provide any precautionary measure for the protection of women who are in situations of violence indicated in the Code of Criminal Procedure and the Code of Civil Procedure.
19. All those that guarantee the integrity of women who are in a situation of violence.

Article 36 – Protection for Girls and Boys

If, as a result of a crime of femicide committed by the spouse or partner, there remain orphan minor sons and daughters, they will be immediately placed in the custody of the grandparents or another close relative by their mother's line, with the support of the Office for the Defense of Childhood and Adolescence, until the legal guardianship is established. The entire family must have access to the system of protection of victims and witnesses of the Public Prosecutor's Office and to the system of care provided by this Law.

Article 37 – Alert Against Violence Towards Women

- I. The Executive Body, through the Governing Body, will declare an alert against violence in a specific area or sector at the national level, as the case may be, in relation to specific areas in which an alarming rate of violence towards women takes place, expressed in any of its forms. In this case, all instances with responsibility and competence should activate measures, actions and emergency resources to face the problem efficiently and resolve it, preserving the rights of women.
- II. The declaration of warning against violence towards women will be issued when:
 1. A high rate of crimes against the life, liberty and physical, psychological or sexual integrity of women in a given territory is recorded.
 2. A special area in which cases of violence against women are reported and that as a consequence prevents the full exercise of their human rights.
- III. The Autonomous Territorial Entities may also declare violence alert in all or part of their respective jurisdictions.

Article 38 – Measures in Case of Alert

When the alert against violence towards women is declared, the Governing Body will adopt the following immediate and obligatory measures:

1. Establish a commission formed by a specialized inter-institutional and multidisciplinary technical team that carries out the respective follow-up, chaired and financed by the responsible entity.
2. Implement intensive actions of prevention, care and protection, to address and reduce cases of violence in the area targeted by the alert. The highest executive authorities of entities and public institutions and Autonomous Territorial Entities shall reallocate the economic resources that are required to execute actions that demand the attention of the alert, applying for that purpose the same procedure as those determined for the declaration of emergency situations.
3. Prepare special reports on the progress made, through permanent monitoring to determine the conditions of women with respect to violence and to evaluate the care and protection mechanisms, as well as women's access to them, including recommendations for their strengthening.

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4. Disseminate to public knowledge the reason for the warning against violence towards women and the territorial area or scope that encompass the measures to be implemented.

Article 39 – Duration

The alert against violence towards women will subsist for as long as the causes that gave rise to its existence persevere but may not be extended for more than one (1) year.

Article 40 – Responsibility

In the event that, after the alert period, the risk conditions for women have not changed, the actions of the entities responsible for the application of the emergency measures shall be evaluated. The emergency measures shall establish responsibilities for omission and breach of duties in the framework of current regulations, which determine administrative, civil and criminal responsibilities.

Article 41 – Attention in Indigenous Communities

- I. The authorities of the original indigenous peasant and Afro-Bolivian communities will adopt attention and protection measures for women in situations of violence, within the framework of their competences and their own rules and procedures, with the participation of women in positions of authority, and with participation and social control by the community.
- II. All cases of sexual violence, femicide and analogous crimes will be referred to the ordinary jurisdiction, in accordance with the Law of Jurisdictional Demarcation.
- III. The indigenous authorities will be able to refer the known cases to the Community Houses of Women, so that the woman in a situation of violence receives the appropriate attention.
- IV. The cases that are attended and resolved will be reported to the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE, for its corresponding registration.

TITLE IV
PROSECUTION AND PENAL SANCTION

CHAPTER I
COMPLAINT

Article 42 - Complaint

- I. Any act of violence against women may be reported by the victim or any other person who knows of a crime, before the following instances:
 1. Bolivian Police.
 2. Public Ministry.
- II. In order to register the complaint, one can go to the following institutions:
 1. Integral Municipal Legal Services.
 2. Defenders of Children and Adolescents, when the aggrieved person is under 18 years of age.
 3. Integrated Plurinational Justice Services.
 4. Plurinational Victim's Defense Service.
 5. Native indigenous authorities, when appropriate.
- III. If the complaint is known, it must be immediately forwarded to the Public Prosecutor's Office when it constitutes an offense, except in the case of paragraph II, numeral 5, and consequently, reported to the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE.

Article 43 - Obligations

The instances of receipt, investigation and processing of complaints, should provide women with support and a dignified and respectful treatment, according to their situation, facilitating as much as possible the steps they must take. Consequently, in addition to the obligations conferred by Law, they must:

1. Advise them on the importance and the way to preserve the evidence.
2. Provide information about the rights they have, and the special rights recognized by the Law, and about the governmental and non-governmental services available for their care and treatment.
3. Request the attention that the woman requires, to the Integral Care Services.
4. Prepare a report that contains all the elements that are known, detected or determined, that serve to clarify the facts, and attach it to the complaint.

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5. Resolve any query, doubt or requirement of information that the woman or her relatives need or demand, as well as provide the one that additionally considers necessary to guarantee her protection.

Article 44 – Specialized Interdisciplinary Staff

The staff responsible for the reception, investigation and processing of complaints must be specialized or have work experience in human rights, women's rights or in attention to situations of gender violence.

Article 45 - Guarantees

To ensure the exercise of all their rights and their effective protection, the State will guarantee every woman in a situation of violence:

1. Access to free justice in real, timely and effective manner, through due process in which the woman is heard with due guarantees and within a reasonable time.
2. The adoption of impartial and independent judicial decisions, without gender biases or subjective criteria that affect or hinder the evaluation of evidence and the consequent sanctioning of the aggressor.
3. Access to immediate, timely and specialized protection services, from the moment in which the constitutive act of violence is brought to the attention of the ordinary authorities or native indigenous and Afro-Bolivian people.
4. Orientation and immediate, free and specialized legal assistance.
5. Attention with quality and warmth, support and welcome to achieve its integral recovery through multidisciplinary and specialized services.
6. Access to clear, accurate and timely information on judicial, police and other actions that are carried out in relation to their case, as well as on the mechanisms and procedures contemplated in this Law and other similar norms.
7. The protection of their dignity and integrity, avoiding revictimization and mistreatment that could be received from any person responsible for their care, treatment or investigation of the fact.
8. The ascertainment of the truth, the repair of the damage and prevention of the reiteration of acts of violence.
9. Access to the care they require for their physical and psychological recovery, in public services, short-term social insurance and private services, especially prophylactic treatment to prevent sexually transmitted infections, HIV / AIDS and emergency contraception, immediately and timely.
10. Access to immediate, timely and specialized attention and protection services by judicial authorities, police, Public Prosecutor's Office, administrative authorities, native indigenous authorities, and health personnel.

Article 46 – Prohibition of Conciliation

- I. Conciliation is prohibited in any act of violence against women, which compromises their life and sexual integrity. No institution receiving complaints, or its staff may promote conciliation or subscription of any type of agreement between the woman and her aggressor, under responsibility.
- II. In the cases not foreseen in the previous paragraph, the Public Ministry shall impose security measures that are necessary in order to preserve the physical, psychological and sexual integrity of women.
- III. Reconciliation is not recognized under pressure to the victim or to avoid procedural burden, under official responsibility.
- IV. Exceptionally, the conciliation may be promoted only by the victim, only once, not being possible in cases of recidivism.

Article 47 – Preferred Application of the Law

In case of conflict or tension between individual and collective rights, it will be given preference to the rights for the dignity of women, recognized in international human rights treaties, in the Political Constitution of the State and in this Law.

Article 48 – Integrated Services of Plurinational Justice

- I. The Integrated Plurinational Justice Services, under the Ministry of Justice, shall receive complaints and provide free legal advice and sponsorship. They must apply a human rights approach to women in situations of violence.
- II. The Ministry of Justice must create and progressively implement these services throughout the country.

Article 49 – Plurinational Victim's Defense Service

The Plurinational Victim's Defense Service, as a decentralized institution under the tuition of the Ministry of Justice, will support women in a situation of violence lacking economic resources, through free legal sponsorship and psychological support to guarantee their access to the administration of justice and sanctions to the aggressors. For the fulfillment of this purpose, this service will exercise its functions in order to achieve the most favorable solution for the victim.

Article 50 – Integral Municipal Legal Services

- I. The Autonomous Municipal Governments have the obligation to organize these services or strengthen them if they already exist, with a permanent and free, for the protection and psychological, social and legal defense of

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women in situations of violence, to guarantee the validity and full exercise of their rights. For their operation, they will assign the budget, infrastructure and personnel necessary and sufficient to provide adequate, effective and specialized attention to the entire population, especially those living in the rural area of their respective jurisdiction.

- II. Within the framework of its competences, the Autonomous Municipal Governments, through the Integral Municipal Legal Services, will have the following responsibilities with respect to women in situations of violence:
1. Organize, coordinate and strengthen Integral Care Services, charged to the annual budget, as permanent support instances.
 2. Provide psychological, social and legal support services.
 3. Provide specialized psychological therapy for individuals and groups with a gender focus.
 4. Guidance regarding the procedures to file an administrative, police or judicial instance in criminal matters, family, labor, civil or any other in which their rights are impaired as a result of acts of violence.
 5. It will intervene immediately in the event of a report of violence against a woman.
 6. Provide free legal sponsorship in administrative, police and judicial instances for the prosecution of the proceedings until a final judgment is obtained.
 7. Promote the dissemination, defense and exercise of women's rights with the active participation of citizens.
 8. Develop prevention actions, in coordination with public and private institutions and women's organizations.
 9. Request, through the competent authority, the judicial adoption of provisional measures, precautionary measures and immediate protection measures, coordinating their compliance with the Shelters, support institutions and health care.
 10. Carry out home visits of support and monitoring and social reports.
 11. Refer to the Public Ministry, immediately, the cases that constitute a crime, with the corresponding reports.
 12. Promote the signing of family assistance agreements and their approval by competent authority.
 13. Prepare medical, psychological, social and legal reports ex officio or at the request of the interested party, the Public Prosecutor's Office or the judicial authority that is aware of the act of violence.
 14. Report all complaints received, the procedure applied and the final outcome of the case, before the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE.
 15. As much action as necessary for the defense and protection of women in situations of violence.

Article 51 – Training

The Autonomous Municipal Governments will adopt a permanent training system for their personnel on Human Rights, especially women, gender focus and positive action measures and, for those who are directly responsible for their attention, will also include basic training in psychology of the battered woman.

Article 52 – Indigenous Authorities

- I. For the purposes of this Law, the areas of validity established in the Law of Jurisdictional Demarcation shall apply. In cases of conflicts of interest, the case shall be referred to the ordinary jurisdiction.
- II. In the event of a conflict of jurisdiction between the indigenous jurisdiction and the ordinary jurisdiction, the latter shall be resolved in accordance with the provisions of the Constitutional Procedural Code.
- III. The conciliation may be carried out within the framework of what is established in Article 46 of this Law.

CHAPTER II

INVESTIGATION

Article 53 – Special Force to Fight Violence

- I. The Special Force to Fight Violence is created, as a specialized agency of the Bolivian Police responsible for the prevention, assistance and investigation, identification and apprehension of the alleged perpetrators of acts of violence against women and the family, under the functional direction of the Public Ministry, in coordination with public and private entities. Its structure, organization and procedures will be established according to regulations and will have four levels of action.
- II. The permanence of the special investigators is guaranteed, according to Article 80 of the Law of the Public Ministry.

Article 54 – Platform of Attention and Reception of Complaints

The Special Force to Fight Violence, in its level of attention and receipt of complaints, will have the following functions:

1. Receive complaints from women in situations of violence or from third parties who know the facts.

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2. Carry out the procedures for the identification of the perpetrators and participants, ensure their appearance, apprehend them immediately in case of flagrante delicto and make them available to the Public Ministry, within a maximum period of eight (8) hours.
3. In case of flagrante delicto, help the aggrieved persons and their children or other dependents, even when they are inside a home, without the need of a warrant or limitation of time and day, with the sole purpose of providing protection and avoiding that they suffer greater aggressions.
4. Record minutes about the events that have taken place, for which purpose they must collect information from relatives, neighbors or other persons present.
5. Collect and secure all evidence.
6. Seize the weapons and objects used to threaten and attack, making them available to the Public Prosecutor's Office.
7. Inform the victims about the resources that the Law offers them and the existing care and protection services at their disposal.
8. Take the attacked person to the health services, promoting their immediate attention.
9. Prepare inventory and inform the Judge or Public Ministry.
10. If the woman in a situation of violence requests it, accompany her and assist her while removing her personal belongings from her home or other place, avoiding the retention of any object or personal documents, and taking her to where she indicates, or to a shelter or temporary refuge.
11. Follow up on women for seventy-two (72) hours, in order to guarantee the effectiveness of the protection provided to women in situations of violence and other people who are at risk.

Article 55 – Mobile Units Against Violence

The Special Force to Fight Violence, in its mobile service, will have specialized personnel and equipment for the reception of complaints and immediate assistance, in coordination with the Prosecutors of Matter, in the place where the incident is raised, prioritizing its action in the rural area.

Article 56 – Decentralized Services

- I. The Special Force to Fight Violence, in the Comprehensive Police Stations or places where the Bolivian Police provide services, will have specialized personnel to deal with reports of violence, investigative measures and others under the direction of the Public Ministry.
- II. All the procedures carried out by these services will be sent to the research level and will have proof value.

Article 57 – Division of Crimes of Violence

In addition to the general functions that the current regulations and the Bolivian Police assign to it for the investigation of crimes, this division has the following specific functions:

1. Coordinate and execute legal operational procedures in force, and the investigation of crimes against life, against bodily integrity and health, against sexual freedom, economic and patrimonial violence, and others that constitute violence against women.
2. Receive the diligences carried out in the preventive police intervention and complaints, through the platform of attention and receipt of complaints, which will have proof value.

Article 58 – Action Measures

- I. The Special Force to Fight Violence will adapt its actions to the protocols adopted for the reception of complaints, immediate attention and remission of cases of violence against women. It is mandatory that it adopts the following action measures:
 1. Assist, guide and evaluate the care and protection that should be provided to women in situations of violence through a multidisciplinary team.
 2. Respect and protect the dignity, privacy and rights of women in situations of violence.
 3. Avoid contact, confrontation or any kind of proximity of the woman with her aggressor.
 4. Carry out coordination actions with all instances of the integral system of attention to women in situations of violence.
 5. Avoid any action that implies revictimization, under responsibility.
 6. Organize and design prevention and orientation campaigns for citizens, through civil society organizations, in order to reduce the rates of violence against women.
- II. No official or police officer will deny the help and support to women in situations of violence, alleging lack of competence, even if they are not part of the Special Force to Fight Violence.

Article 59 – Investigation ex officio

- I. The investigation will be pursued ex officio, regardless of the initiative of the complainant. Any complaint must be submitted to the Public Prosecutor's Office and reported to the Plurinational Integral System of Prevention,

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Attention, Sanction and Eradication of Gender-Based Violence - SIPPASE, indicating the course of action that has been followed.

- II. When there is imminent danger to the physical integrity of the people protected by the Law, compliance with formalities will not become an impediment to the timely intervention of the police.

Article 60 – Infrastructure and Equipment

The Special Force to Fight Violence, in all its levels of action, will be provided, with priority, with specialized and multidisciplinary personnel, infrastructure and adequate equipment, within the framework of the Citizen Security Law "For a Safe Life" (Para una Vida Segura).

CHAPTER III CRIMINAL PROSECUTION

Article 61 – Public Ministry

In addition to the common attributions established by the Organic Law of the Public Prosecutor's Office, the Special Prosecutors in cases of violence against women must adopt the following measures in the exercise of their functions:

1. Adoption of the protection measures that are necessary, in order to guarantee to the woman in a situation of violence the maximum protection and security, as well as to her children, to ask the jurisdictional authority for their homologation and the precautionary measures provided by Law, when the act constitutes a crime.
2. Collection of the necessary evidence, as the authority responsible for the investigation of crimes of gender-based violence, without subjecting women to medical tests, interrogations, reconstructions or expert examinations that are not essential, having recourse to alternative scientific research methods and with the support of technology, in order to find out the truth.
3. If technical expertise is required, its cost should not be charged on the woman. In case of flagrante delicto, the accused shall be responsible for paying for these, as well as for the medical and psychological treatment that the woman requires; If it is proven insolvent, the services of the Integral Attention System of its jurisdiction will be used.
4. Direct the investigation of the police authorities responsible for the investigation of crimes linked to violence against women, defining protocols and common criteria for action, in order to standardize procedures, preserve evidence, document records and follow up of cases up to its conclusion, generating statistics at the municipal, departmental and national levels.
5. Coordination of the action criteria of the various instances to receive complaints in cases of violence against women, for which the State Attorney General will issue the corresponding instructions.
6. Preparation and biannual presentation to the State Attorney General, for its consolidation at the departmental and national levels, of a report on the procedures applied and the actions taken by the Public Ministry in matters of violence against women and cases that compromise their rights.
7. Require the allocation of state legal aid to women in situations of violence lacking economic resources.
8. Require interpretation or translation when necessary and provide specialized assistance, avoiding any form of revictimization.
9. When appropriate, arrange the entry of direct and indirect victims of crimes that threaten their life, bodily integrity or sexual freedom to the Unit for Attention and Protection of Victims and Witnesses of Crimes.
10. Send a copy of the rejection decisions and the final requirements to the Departmental Prosecutor in ex officio investigations and submit its biannual reports to the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE, with details of all the cases attended, disaggregated at least by sex, age and type of crime.

Article 62 – Mobile Specialized Inspectors

In the rural area the Special Prosecutor on violence against women must move on a regular and permanent basis.

Article 63 – Specialized Assistance

The Special Prosecutors on violence against women will have specialized support staff to provide every woman in a situation of violence with effective and adequate care. In each Department, the Public Prosecutor's Office will have at least one team of specialized advisers and professional advisers to investigate cases of violence against women, for which they may also request the collaboration of human rights and women's organizations and institutions.

Article 64 – Forensic Physicians

Forensic doctors specialized in gender violence will be appointed and must attend to women in situations of violence with the utmost respect, care, warmth and understanding. The reports issued by the doctors, under their responsibility, must be prompt and timely, and should avoid repeated and unnecessary medical examinations as much as possible.

Article 65 – Medical Certificates

To establish the physical status of the woman who has suffered a physical or sexual aggression, any health professional who provides services in public or private accredited institutions must issue a medical certificate, according to the health protocol

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integrated into the established form. For judicial purposes, this medical certificate will serve as indication regarding the offenses established in this Law, once approved, will have proof value. The certificate must be approved by an expert or a forensic expert, who must interview in the first instance the professional who issued the certificate, and only in case there is a well-founded and unavoidable need, he may subject the woman to another medical examination.

Article 66 – Access to Documentation

Any aggrieved woman may request simple or certified copies of all the actions contained in the investigation, from the moment of the denunciation, which must be granted in an expeditious manner, without prior notification and without additional cost for the photocopies.

Article 67 – Specialized Forensic Office

The Attorney General of the State, within the framework of its powers, will create and regulate within the Institute of Forensic Investigations, a specialized office for cases of violence against women, with the necessary personnel to guarantee its effective functioning.

CHAPTER IV
ORDINARY JURISDICTION

Article 68 – Special Courts on Violence Against Women

Articles 57, 58, 68 and 72 of Law No. 025, Law of the Judicial Body, are modified with the following text:

"Article 57. (ATTRIBUTIONS OF THE CHAMBERS IN MATTERS OF FAMILY, CHILDHOOD AND ADOLESCENCE). The attributions of the chambers regarding family, childhood and adolescence are:

1. To know in degree of appeal, the resolutions dictated by the judges and judges in matters of family, childhood and adolescence;
2. Resolve in consultation or review, the resolutions when the Law so determines;
3. Resolve the excuses presented by their members and secretaries or room secretaries;
4. Resolve the challenges formulated against its members;
5. Resolve excuses and challenges against judges in matters of family, childhood and adolescence and;
6. Others established by law.

Article 58 – Attributions of the Chambers in Criminal Matters

The powers of the chambers in criminal matters are:

1. Substantiate and resolve, in accordance with the law, appeals for motions and judgments of courts in criminal matters and against violence against women;
2. Resolve the excuses presented by their members and secretaries or room secretaries;
3. Resolve the challenges formulated against their members and;
4. Others established by law.

Article 68 – Substitutes

In the cases of excuse and recusal or any other impediment of the judge, the process will be attributed the next judge within the same subject and, by impediment of all those corresponding to the same subject, the order of substitutions will be the next:

1. Civil and commercial, will pass to family and criminal, in that order;
2. As a family, it will pass to those of civil and commercial matters, and against violence against women, in that order;
3. From childhood and adolescence, will pass to family matters and violence against women, in that order;
4. Violence against women, will go to criminal and family matters, in that order;
5. Labor and social security, will go to those of civil and commercial, and criminal, in that order;
6. Of administrative, tax and tax coercive, will pass to the labor and criminal matters, in that order;
7. From criminal, will go to the matter against violence against women and civil and commercial, in that order;
8. Anti-corruption, will pass to criminal matters;
9. Criminal execution, will pass to criminal matters;
10. Others established by law.

Article 72. (COMPETENCE OF THE SPECIAL INVESTIGATIVE JUDGES ON VIOLENCE AGAINST WOMEN).

Judges of Instruction in the matter of violence against women are competent to:

1. The control of the investigation, according to the faculties and duties foreseen in the Law;

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2. Issue the jurisdictional and protection resolutions that correspond during the preparatory stage and the application of opportunity criteria;
3. The substantiation and resolution of the abbreviated process;
4. Resolve the application of the immediate process for flagrant crimes;
5. Direct the trial preparation hearing and decide on the issues and incidents raised therein;
6. Decide the suspension of the trial process;
7. Decide on requests for international judicial cooperation;
8. Know and resolve about the seizure of assets and their incidents; and
9. Others established by law.

Article 72 bis (COMPETENCE OF SPECIAL SENTENCING JUDGES ON VIOLENCE AGAINST WOMEN).

The sentencing judges in the matter of violence against women, have competence to:

1. Know and resolve the trials for crimes of public action that constitute violence against women, sanctioned with custodial sentence whose legal maximum is four or less years;
2. Apply restraining and provisional measures to the aggressor, and assistance and protection to women in situations of violence, when the act does not constitute a crime;
3. The procedure for repairing the damage, when a conviction has been handed down;
4. Impose ex officio the application of protection measures, which allow women in situations of violence their access to shelters, temporary separation of spouses and / or cohabitants and prevention of new attacks and any other aimed at safeguarding their rights;
5. To sanction the breach of the orders or judicial resolutions issued by its court;
6. Punish the judicial support servers that incur abuse or revictimization to women in situations of violence and;
7. Others established by law.

Article 72 ter. (COMPETENCE OF SPECIAL SENTENCING COURTS ON VIOLENCE AGAINST WOMEN).

The Sentencing Courts on violence against women are competent to:

1. Know the substantiation and resolution of the criminal trial in all crimes of public action that constitute violence against women, sanctioned with imprisonment of more than four (4) years, with the exceptions established in the Law and;
2. Others established by law. "

ARTICLE 69. (APPOINTMENT).

To be a judge and auxiliary officials of these courts, in addition to the requirements indicated by law, will be required:

1. Specialization in criminal matters and knowledge of gender issues or, alternatively, of human rights; progressively, the requirement must reach an academic level that denotes specialty in these subjects.
2. Sufficiency certificate issued by the Council of the Magistracy, of psycho-technical aptitude for the performance of the position, which allows to measure personality traits, interests and personal values.

ARTICLE 70. (SPECIALIZED TRAINING). The national School of Magistrates will sign agreements with universities that can organize post-graduate courses in the specialties required for the exercise of the judicial function, to demand that those who aspire to be judges of the matter of violence against women have access to a specialization in criminal matters with a focus on gender and human rights.

ARTICLE 71. (INTERDISCIPLINARY TEAM). The Public Specialized Courts on Violence against Women will have an interdisciplinary team of social and psychological areas specialized in human rights and women's rights, or with work experience in the care of violence issuing comprehensive technical reports. These services may be provided, with equal legal value, by professionals, assigned by the Integral Care Services.

ARTICLE 72. (FUNCTIONS). The functions of the interdisciplinary team are:

1. Intervene as independent and impartial specialists in judicial processes, making comprehensive technical reports.
2. Implement the protocol of attention for testimonies and statements of children and adolescents according to their age and degree of maturity, of young women and adults in a situation of violence, in order to avoid altering their recovery process through the repetition of interrogations and avoiding revictimization.
3. Control the compliance of therapies to victims, aggressors and / or relatives arranged by the judicial authority, informing the progress, abandonment or compliance with them.

ARTICLE 73. (AUXILIARY SERVICES). When the case so requires, the judge or the court may order expert reports and other technical assistance services in other matters or professions that may contribute to their work.

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ARTICLE 74. (REPORT OF CASES). The Council of Magistrates must report to the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE, the movement of cases for violence against women, on a quarterly basis, breaking down all the information, in addition of the regular indicators, by gender and age of the parties, crime, and status of the process.

ARTICLE 75. (ACTION OF DEFENSE). Constitutional defense actions may be filed by women, or other persons on their behalf, when appropriate, in order to guarantee the full exercise of their rights.

TITLE V
CRIMINAL LEGISLATION

CHAPTER I
ALTERNATIVE SANCTIONS

ARTICLE 76. (APPLICATION OF ALTERNATIVE SANCTIONS).

- I. In crimes of violence against women, provided that the perpetrator is not a repeat offender, alternative sanctions may be applied to the deprivation of liberty, when:
 1. The penalty imposed is not greater than three years, in which case it will be replaced by an alternative sanction different from those indicated in this Law.
 2. At the request of the person sentenced to imprisonment for more than three years who has served at least half of the sentence, alternative sanctions may not exceed the time of the main penalty imposed.
- II. The judicial authority will apply an alternative sanction together with others, when necessary, to protect the woman, children and the family in a situation of violence.

ARTICLE 77. (FINE). The imposition of a fine as an alternative or accessory sanction does not replace the reparation to the woman for the damage caused as a result of the violence; it may not be greater than three hundred and sixty-five days or, for calculation purposes, be more than fifty percent (50%) of the salary of the sanctioned; when the salary is undetermined, it will be calculated on fifty percent (50%) of the national minimum wage. A day of deprivation is equivalent to a day of fine and is revocable in the event of non-compliance.

The fines will be destined to the Integral Attention Services by the Autonomous Municipal Governments, who will constitute a fund and will open an exclusive fiscal account for this purpose, having to allocate the resources with preferential character to the Shelters and Temporary Refuge and cost for health services. The funds cannot be used for another purpose.

ARTICLE 78. (DETENTION OF WEEKEND). It is a limitation of freedom that is applied from Friday at 7:00 p.m. until Monday at 6:00 p.m. For purposes of equivalence, the day of deprivation of liberty corresponds to one day of weekend detention. It may also be applied to holidays, under the same conditions.

ARTICLE 79. (COMMUNITY WORK). Community work consists on the provision of work in favor of the Autonomous Municipal Government, which will be held on weekends, holidays and working days at different times than usual. This sanction will be applied for a minimum of one (1) year that is equivalent to the work of fifty-two (52) weeks, with their respective holidays and working days, and a maximum of up to one hundred and four (104) weeks. The Municipal Autonomous Government must supervise and report the fulfillment of the sanction to the competent court and to the Plurinational Integral System of Prevention, Attention, Sanction and Eradication of Gender Based Violence - SIPPASE.

ARTICLE 80. (SECURITY MEASURES). The judicial authority in charge of the execution of sentence, when alternative sanctions have been established, will apply the necessary security measures to protect the woman who is in a situation of violence, as well as her children and her family.

ARTICLE 81. (INHABILITATION). The disqualification sanction may be applied when a person who is sanctioned for crimes of violence against women exercises a profession or occupation related to the education, care and attention of persons, regardless of their age or situation, medical, psychological, counseling or advisory services, administrative position in universities or educational units, sports institutions, military, police; temporary suspension of parental authority for the duration of the sanction, the closure of premises and the loss of licenses. It has a time limit of twelve years and all the restrictions of those rights cannot be imposed in a single sentence. After half of the period imposed, or a minimum of five years, rehabilitation may take place.

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ARTICLE 82. (COMPLIANCE OF INSTRUCTIONS). The judicial authority may apply a behavior plan to the convicted person when alternative sanctions that imply his/her total or partial freedom are applied, by which he must comply with instructions that may not be vexatious or susceptible to offending the dignity or self-esteem. These can be modified during the execution of the sentence and cannot be extended beyond the duration of the main penalty. The instructions that can be imposed will be:

1. Prohibition to carry any type of weapon, especially firearms;
2. Refrain from attending public places where alcoholic beverages are sold, and prostitution is available (lenocinio);
3. Refrain from using drugs or alcohol;
4. Join groups or programs to modify behaviors that have influenced his/her actions;
5. Attend an educational center or learn a trade.

CHAPTER II
OFFENSES OF VIOLENCE AGAINST WOMEN

ARTICLE 83. (MODIFICATIONS TO THE CRIMINAL CODE). Articles 246, 254, 256, 267 bis, 270, 271, 272, 308, 308 bis, 310, 312 and 313 of the Penal Code are modified, which will be drafted with the following text:

"Article 246. (KIDNAPPING A MINOR OR INCAPABLE). Anyone who takes a child under sixteen (16) or incapable, from the power of his/her parents, adopters, guardians or curators, and who retains the child against his/her will, will be punished with deprivation of liberty from one (1) to three (3) years. The same penalty shall be applied if the minor is more than sixteen (16) years old and is taken without his/her consent. The penalty will be aggravated by double if the crime is committed by one of the parents in order to exercise any type of coercion against the other.

Article 254. (HOMICIDE DUE TO VIOLENT EMOTION). Whoever kills another in a state of excitable violent emotion, will be sanctioned with imprisonment of two (2) to eight (8) years.
This criminal type will not proceed in case of femicide.

Article 256. (HOMICIDE-SUICIDE). The person who instigates another to commit suicide or help to commit it, if the death has been attempted or consummated, will incur in imprisonment of two (2) to six (6) years.
If, due to the attempt, injuries occur, the penalty of imprisonment shall be one (1) to five (5) years.
Even if there was consent of the victim in the double suicide, the survivor will be sentenced to two (2) to six (6) years imprisonment.
When a person commits suicide as a result of a violent situation, the aggressor will be punished with deprivation of liberty for ten (10) years.
If the victim of the crime in any of the cases of this Article, turns out to be a girl, boy or adolescent, the penalty will be aggravated by two thirds.

Article 267 bis. (FORCED ABORTION). Anyone who, through physical, psychological or sexual violence against a woman, causes an abortion will be punished with imprisonment from four (4) to eight (8) years.

Article 270. (SERIOUS INJURIES). A penalty of five (5) to twelve (12) years of deprivation of liberty shall be imposed on anyone who, in any way, causes another person an injury resulting in any of the following consequences:

1. Illness or mental, intellectual, physical, sensory or multiple disability.
2. Permanent psychological or psychiatric damage.
3. Permanent impairment of health or the total or partial loss of a sense, of a member, of an organ or of a function.
4. Permanent inability to work that exceeds ninety days.
5. Indelible mark or permanent training in any part of the body.
6. Imminent danger of losing one's life.

When the victim is a girl, boy or adolescent the penalty will be aggravated by two thirds in both the minimum and the maximum.

Article 271. (SERIOUS OR LIGHT INJURIES). It will be sanctioned with deprivation of liberty of three (3) to six (6) years, who in any way causes another person physical or psychological damage, not included in the cases of the previous Article, from which derives incapacity for work of fifteen (15) up to ninety (90) days.
If the incapacity is up to fourteen (14) days, the author will be sanctioned for community work of one (1) to three (3) years and compliance with instructions that the judge determines.
When the victim is a girl, boy or adolescent the penalty will be aggravated by two thirds in both the minimum and the maximum.

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Article 272. (AGGRAVATION). In the cases of Articles 267 bis, 270 and 271, the penalty shall be aggravated by one third of the maximum or minimum, when the circumstances listed in Article 252 are met, except as provided in numeral 1.

Article 308. (VIOLATION). Will be sanctioned with deprivation of liberty from fifteen (15) to twenty (20) years whoever, through intimidation, physical or psychological violence, perform non-consensual sexual acts, with a person of either sex, who import carnal access, through the penetration of the virile member, or any other part of the body, or any object, vaginally, anally or orally, for libidinous purposes; and whoever, under the same circumstances, even if there is no physical violence or intimidation, taking advantage of the serious mental illness or insufficiency of the victim's intelligence or incapacitated by any other cause to resist.

Article 308 bis (VIOLATION OF INFANT, GIRL, CHILD OR ADOLESCENT). If the offense of rape was committed against a person of either sex less than fourteen (14) years old, the perpetrator shall be punished with deprivation of liberty of twenty (20) to twenty-five (25) years, so there is no use of force or intimidation and consent claimed. In the event that any of the aggravating circumstances set forth in Article 310 of the Penal Code are evident, and the sentence reaches thirty (30) years, the penalty shall be without the right to a pardon.

The consensual relationships between adolescents older than twelve (12) years are exempt from this sanction, as long as there is no difference of age greater than three (3) years between them and no violence or intimidation has been committed.

Article 310. (AGGRAVATION). The penalty will be aggravated in the cases of the previous offenses, with five (5) years when:

- a) Product of the violation would occur any of the circumstances provided in Articles 270 and 271 of this Code;
 - b) The act occurs in front of girls, boys or adolescents;
 - c) Two or more people attended the act;
 - d) The fact occurs while the victim is in a state of unconsciousness;
 - e) In the commission of the act, weapons or other dangerous means capable of causing the death of the victim are used;
 - f) The author was a spouse, cohabitant, or with whom the victim maintains or has maintained a similar relationship of intimacy;
 - g) The author is in charge of the education of the victim, or if the latter is in a situation of dependence with respect to it;
 - h) The perpetrator subjected the victim to degrading or humiliating conditions.
 - i) The victim has some degree of disability;
 - j) If the victim is over 60 years old;
 - k) If the victim is pregnant or if pregnancy occurs as a consequence of the act;
- If, as a consequence of the event, the death of the victim occurs, the penalty corresponding to femicide or murder will be applied.

Article 312. (SEXUAL ABUSE). When in the same circumstances and through the means indicated in Articles 308 and 308 bis sexual acts not constituting penetration or carnal access, the penalty shall be six (6) to ten (10) years of deprivation of liberty. The aggravations provided for in Article 310 will apply, and if the victim is a girl, child or adolescent, the penalty of deprivation of liberty will be ten (10) to fifteen (15) years.

Article 313. (RAPTO). Who for lewd purposes and through violence, serious threats or deception, subjugate or retain a person, will be punished with deprivation of liberty of four (4) to eight (8) years. The penalty will be aggravated by a third, both in the minimum and in the maximum, when the victim is a girl, boy or adolescent. "

ARTICLE 84. (NEW CRIMINAL TYPES). Articles 154 bis, 252 bis, 271 bis, 272 bis, 312 bis, 312 ter, 312 quater are incorporated into the Criminal Code, under the following text:

"Article 154 bis. (BREACH OF DUTIES OF PROTECTION TO WOMEN IN SITUATION OF VIOLENCE).

The public servant who through action or omission in the exercise of a public function leads to impunity or hinders the investigation of the crime of violence against women, will receive alternative sanction of community work from ninety (90) days to one hundred twenty (120) days and disqualification from one (1) to four (4) years from the exercise of public office. "

"Article 252 bis. (FEMICIDE. It will be sanctioned with the penalty of imprisonment of thirty (30) years without the right to pardon, whoever kills a woman, in any of the following circumstances:

1. The author is or has been a spouse or partner of the victim, is or has been linked to it by a similar relationship of affection or intimacy, even without cohabitation;
2. Because the victim has refused to establish with the author a relationship of couple, infatuation, affection or intimacy;
3. Because the victim is pregnant;
4. The victim who is in a situation or relationship of subordination or dependence with the author, or has a relationship of friendship, work or companionship with him;

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5. The victim is in a situation of vulnerability;
6. When, prior to the fact of death, the woman has been the victim of physical, psychological, sexual or economic violence committed by the same aggressor;
7. When the act has been preceded by a crime against individual liberty or sexual freedom;
8. When the death is related to the crime of trafficking or human trafficking;
9. When death is the result of rites, group challenges or cultural practices. "

"Article 271 bis. (FORCED STERILIZATION). A person who deprives another of his/her reproductive function temporarily or permanently without his/her express, voluntary, free and informed consent, or of his/her legal representative in case of a person with severe intellectual disability, will be punished by a penalty of five (5) to twelve (12) years.

The penalty will be aggravated by a third when the offense is committed against a woman who is a minor or taking advantage of her disability status, or when the circumstances set forth in Article 252 occur.

[...]

"Article 272 bis. (FAMILY OR DOMESTIC VIOLENCE).

Whoever physically, psychologically or sexually assaults the cases included in numeral 1 to 4 of this Article shall incur a penalty of imprisonment of two (2) to four (4) years, provided that it does not constitute another crime.

1. The spouse or partner, or by the person who maintains or has maintained with the victim an analogous relationship of affectivity or intimacy, even without cohabitation.
2. The person who has procreated sons or daughters with the victim, even without cohabitation.
3. The ancestors or descendants, brothers, sisters, blood relatives or related in direct line and collateral up to the fourth grade.
4. The person who is in charge of the care or custody of the victim, or if the victim is in the home, under a dependency or authority situation.

In other cases, the party may assert its claim through the corresponding channel. "

"Article 312 bis. (ABUSIVE SEXUAL ACTS). The deprivation of liberty of four (4) to six (6) years shall be applied is punishment to the person who, during the consensual sexual relationship, forces his/her partner or spouse to endure acts of physical violence and humiliation.

The penalty will be aggravated by a third when the author forces his/her spouse, partner or sexual partner to have sexual relations with third parties. "

[...]

"Article 312 fourth. (SEXUAL HARASSMENT).

I. The person who using a hierarchical position or power of any kind harass, pursue, demand, urge, threaten to produce any damage or injury, condition the obtaining of a benefit or force by any means another person to maintain a relationship or perform acts or conduct of sexual content that otherwise would not be consented, for their benefit or for the benefit of a third person, shall be punished with deprivation of liberty of four (4) to eight (8) years.

II. If the requirement, request or imposition is exercised by a public servant within the scope of the hierarchical relationship he/she holds, he/she will be dismissed from his/her position and the penalty will be aggravated by one third. "

ARTICLE 85. (CRIMES AGAINST THE FAMILY). Title VII of the Criminal Code "Crimes against the family" is modified, incorporating Chapter III called "Crimes of economic and patrimonial violence".

"Article 250 bis. (ECONOMIC VIOLENCE). The person who commits any of the following conducts will be sanctioned with imprisonment of two (2) to four (4) years:

- a) Diminish, limit or restrict the free disposition of the economic income of women.
- b) Destroy or conceal documents justifying domain, personal identification, professional titles or assets, personal objects, instruments of work of women that are essential to perform their usual activities.
- c) Restrict or eliminate compliance with family financial obligations that put at risk the welfare of their spouse, children, as a means to submit the will of the woman.
- d) Control the income or flow of monetary resources that enter the home through psychological, sexual or physical violence.
- e) Prevent women from carrying out an employment or productive activity that generates income.

Article 250 ter. (PATRIMONIAL VIOLENCE). Who by any means prevents, limits or prohibits the use, enjoyment, administration, transformation, or disposition of one or more property of the woman with whom they maintain a relationship of marriage or de facto union, will be punished with a fine of one hundred (100) up to three hundred sixty-five (365) days.

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Article 250 fourth. (SUBTRACTION OF UTILITIES OF FAMILY ECONOMIC ACTIVITIES). The person who unilaterally disposes of the profits derived from a family economic activity or disposes of them for their exclusive personal benefit, to the detriment of the rights of their spouse or partner, will be sanctioned with a penalty of deprivation of liberty of six (6) months a one (1) year plus a fine of up to fifty percent (50%) of the sanctioned salary up to three hundred sixty-five (365) days. "

CHAPTER III
SIMPLIFICATION OF THE CRIMINAL PROCEDURE FOR OFFENSES OF VIOLENCE AGAINST WOMEN

ARTICLE 86. (PROCEDURAL PRINCIPLES). In cases of acts of violence against women, judges in all matters, prosecutors, police and other justice operators, in addition to the principles established in the Criminal Code shall be governed by the following procedural principles and guarantees:

1. Free of Cost. Women in situations of violence will be exempt from the payment of securities, legalization, notifications, forms, testimonies, certifications, orders, remission costs, rogatory letters, orders, expert opinions and others, in all public departments.
2. Celerity. All the operators of the administration of justice, under responsibility, must strictly comply with the procedural deadlines provided, without any delay under penalty.
3. Orality. All the processes about acts of violence against women must be oral.
4. Legitimacy of the test. All the means of proof and elements of conviction legally obtained that can lead to the knowledge of the truth will be legitimate.
5. Publicity. All processes related to violence against women will be public knowledge, safeguarding the victim's identity, address and other data.
6. Immediateness and continuity. Once the hearing begins, it must conclude on the same day. If this is not possible, it will continue for the shortest number of consecutive days.
7. Protection. As soon as the case is known, the judge will dictate protective measures to safeguard the life, physical integrity, psychological, sexual, economic, and labor rights of women in situations of violence.
8. Procedural economy. The judge may carry out one or more actions in a judicial proceeding and will not request evidence, statements or expert opinions that could constitute revictimization.
9. Accessibility. The lack of formal or material requirements in the procedure should not delay, hinder or prevent the restitution of violated rights and the punishment of those responsible.
10. Recusation. The recusation of a judge, member or magistrate with a history of violence may be requested, and the case must be referred immediately to the competent court or tribunal.
11. Material truth. The administrative or judicial decisions that are adopted regarding cases of violence against women must consider the truth of the proven facts, above the pure and simple formality.
12. Burden of proof. In all criminal proceedings for acts that attempt against the life, safety or physical, psychological and / or sexual integrity of women, the burden of proof shall correspond to the Public Ministry.
13. Imposition of precautionary measures. Once the complaint is filed, the judicial authority will immediately issue the precautionary measures provided for in the Criminal Procedure Code, privileging the protection and safety of the woman during the investigation, until the formal indictment is made. In this stage, it will ratify or extend the adopted measures.
14. Confidentiality. The organs receiving the complaint, the officials of the care and treatment units, the competent courts and others shall keep the confidentiality of the matters submitted to their consideration, unless the woman herself requests the total or partial publicity. The woman should be informed in advance and in a timely manner about the possibility of using this right.
15. Repair. It is the compensation for the material and immaterial damage caused, to which every woman who has suffered violence is entitled.

ARTICLE 87 (PROCEDURAL GUIDELINES). In all the administrative, judicial and native indigenous campesino procedures, the following guidelines will apply:

1. Conciliation procedures, which will be subject to the provisions of Article 46 of this Law.
2. Application of a single protocol for the reception, registration and processing of the complaint.
3. Provision of protection measures to safeguard women in situations of violence.
4. Obligation to investigate and prosecute until all acts that constitute violence against women are sanctioned.
5. Disposition of rehabilitation therapies for the aggressor, which in no case will substitute the sanction.
6. Disposition of strengthening therapies for women who are coming out of the cycle of violence.
7. Monitoring and verification of compliance with sanctions and therapies ordered by the competent authority.

ARTICLE 88. (PERMANENT ATTENTION). The Investigative Judges on violence against women, in turn, must be available twenty-four (24) hours to adopt the necessary protection and restriction measures.

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ARTICLE 89. (CONFIDENTIALITY). The process for acts of violence is confidential, unless the woman herself, through free and timely prior information, request the total or partial publicity. In all cases the name of the victim will be kept strictly confidential.

ARTICLE 90. (OFFENSES OF PUBLIC ORDER). All the crimes contemplated in the present Law are crimes of public action.

ARTICLE 91. (DECLARATION OF REBELLION). In the cases of crimes provided for in this Law, the accused shall be declared a rebel when he does not appear at the first hearing indicated by the jurisdictional authority, after having been legally notified.

ARTICLE 92. (PROOF). All the elements of conviction obtained that may lead to the knowledge of the facts denounced will be admitted as evidence. The evidence will be appreciated by the judge, setting forth the reasoning on which his/her legal assessment is based.

ARTICLE 93. (ALTERNATIVE MEDIA). For the presentation of the test, the woman in a situation of violence may decide whether to accept the regular procedure or the following optional means:

1. Give a statement or present evidence by any means alternative, without appearing before the court.
2. Produce evidence in judicial instances without being forced to meet with the aggressor.

ARTICLE 94. (RESPONSIBILITY OF THE PUBLIC PROSECUTOR). No woman should have the responsibility to demonstrate judicially those actions, acts, situations or facts related to her situation of violence; it will be the Public Prosecutor's Office who, as the person responsible for the investigation of the crimes, will gather the necessary evidence, within a maximum period of eight (8) days, under responsibility, taking care not to subject the assaulted woman to medical tests, interrogations, reconstructions or expert opinions, confrontations that constitute revictimization.

If technical expertise is required, it should not be required of the woman. If it were a flagrant crime, the accused will be responsible for paying for them; If it is proven insolvent, the free services of the Comprehensive Care Services will be used.

The Prosecutor must shorten all the terms of the preparatory stage until the accusation in cases of violence against women due to their risk situation.

ARTICLE 95. (DOCUMENTARY EVIDENCE). In addition to others established by law, any of the following will be admitted as documentary evidence:

1. Medical certificate issued by any public or private health institution, certified by a forensic doctor.
2. Psychological and / or social work report, issued by professionals who work in public or private institutions specialized in the subject and legally recognized.
3. Documents of ownership of movable or immovable property in originals or photocopies.
4. Minutes or private documents.
5. Letters, text messages, emails or other obtained lawfully.
6. Any other document that leads to knowledge of the truth.

ARTICLE 96. (ASSESSMENT OF BACKGROUND OF DECEASED PERSONS). The background of victims or witnesses who cannot appear at the oral hearing due to their death, as long as they are recorded in written records and received according to the procedure, will be valued as evidence by the judicial authority.

ARTICLE 97. (EVALUATION OF THE PROOF). The evidence may be presented together with the complaint, answer, hearing or before the resolution is issued; the lack of proof in time to raise the complaint or demand will not prevent the admission of the same.

ARTICLE 98. (CIVIL LIABILITY). Once the sentence has been finalized, the judicial authority will proceed to the qualification and repair of the civil damage.

ARTICLE 99. (THIRD PARTY).

I. In any case of violence against women, a natural or legal person may intervene, unrelated to the parties, who have recognized experience or competence on the matter under discussion, in order to offer specialized arguments of importance for the decision of the matter. Their participation may be raised ex officio, by the prosecutor, by the woman in a situation of violence or requested by an expert.

II. The expert opinions are limited to an opinion that will guide the comprehension of the fact, they may be presented at any moment of the process, before the sentence is handed down and they will not have the quality of a part or the right to charge fees.

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ARTICLE 100. (COMPLAINT OR FALSE ACCUSATION). Whoever has been falsely accused as an author and / or participant in the commission of an offense contemplated in this Law, may initiate the corresponding action, with the fiscal resolution of rejection of the complaint or dismissal, or concluded the process with absolute executory sentence.

TRANSITORY PROVISIONS

FIRST. For the implementation of this Law, all public institutions involved must:

I. Make the necessary adjustments in their institutional budgets of the 2013 management; Additionally, the General Treasury of the Nation will assign resources to the entities of the central level, according to financial availability and according to the established deadlines.

II. For subsequent actions, the General Treasury of the Nation will allocate necessary and sufficient resources to the entities of the central level, according to financial availability for the integral application of this Law.

III. The Autonomous Territorial Entities must assign the necessary and sufficient resources in their respective institutional budgets.

SECOND. Public and private institutions, when appropriate, responsible for the care, protection and punishment in cases of violence against women, should integrate their respective specific protocols in a single form for detection and health care, receipt of complaints, registration, processing and monitoring, which each will use the part that corresponds to it and will constitute a valid legal document during the judicial process. This instrument must be implemented within a period not exceeding three (3) months.

THIRD. The Council of the Magistracy will create and implement the public courts of matter of violence against women, according to an order of priorities and defined needs according to the procedural burden.

FOURTH.

I. For the gradual and progressive implementation of the courts of matter on violence against women, the Council of the Magistracy must, within a period not exceeding ninety (90) days:

1. Design, organize and initiate, in the School of State Judges, the implementation of specialization courses in gender, Human Rights and violence, in order to have trained judicial personnel, for the implementation of the courts on violence against women, for which purpose it will immediately allocate sufficient economic resources. Additionally, it can make agreements with public or private universities, national or foreign, to implement a master's degree for judges in this specialization.

2. Prepare the necessary instruments for the qualification, appointment and evaluation of judges and judicial officials, in order to ensure the appointment of those who meet the requirements necessary for compliance with this Act.

II. Until the Third Transitory Provision of the Law of the Judicial Organ becomes effective, through the gradual and progressive implementation of the courts on violence against women, as of the promulgation of this Law, the judges of criminal matters and of rural area the mixed courts will know and process with priority the processes for crimes of violence, applying the dispositions of the present Law.

FIFTH. The Attorney General of the State will adopt the necessary measures for the creation of specialized Prosecutor's Offices on violence against women and the Specialized Forensic Directorate, to function within three (3) months from the promulgation of this Law, within which all instruments and protocols must be approved for the fulfillment of their functions.

SIXTH. The Bolivian Police will modify its function manuals and will implement the Special Force to Fight Violence, within a period of three (3) months, designating the necessary personnel for its operation throughout the country. All the human, economic and infrastructure resources of the Family Protection Brigades will be part of the Special Force to Combat Violence, in accordance with the provisions of Article 53 of this Law.

SEVENTH. The central level of the State shall adopt the necessary measures for the creation, adaptation and operation of the institutions provided by this Law, within three (3) months of its promulgation. The Autonomous Territorial Entities may adopt intergovernmental agreements to comply with the provisions of this Law. The Type A Municipalities may gradually apply the obligations assigned to them by the Law.

EIGHTH. All the provisions that correspond to the Criminal Code and the Code of Criminal Procedure, will be included without modifications in both norms when they are modified.

ABROGATORY AND REPEALING PROVISIONS

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FIRST. Articles 308 Ter (Violation in the State of Unconsciousness), 314 (Unimproved Rapture), 315 (With Matrimonial Mira), 316 (Attenuation), and 317 (Common Disposition), of the Penal Code are repealed.

SECOND. All provisions contrary to this Law are repealed. Refer to the Executive Organ for Constitutional purposes.

It is given in the Chamber of the Plurinational Legislative Assembly, on the twenty-seventh day of February two thousand thirteen years.

[Law Against Family or Domestic Violence, 1995](#) ⁵²

CHAPTER I
GENERAL PROVISION

ARTICLE 1º. (SCOPE).

The present law establishes the policy of the State against domestic violence or in the family, the facts that constitute violence in the family, the sanctions that correspond to the perpetrator and the measures of prevention and immediate protection to the victim.

ARTICLE 2º. (PROTECTED GOODS).

The assets legally protected by this law are the physical, psychological, moral and sexual integrity of each member of the family.

ARTICLE 3º. (PREVENTION).

The eradication of violence in the family is a national strategy.

The State through its specialized institutions and in coordination with civil associations and private institutions related to the matter:

- a) Promote the incorporation into curricular and extra-curricular teaching processes, orientations and values of respect, solidarity and self-esteem of children, young people and adults of both sexes, promoting access, use and enjoyment of citizen rights without discrimination of sex, age, culture and religion.
- b) Promote a process of modification of the socio-cultural patterns of behavior of men and women, including the design of formal and non-formal education programs appropriate to all levels of the educational process, to counteract prejudices, customs and all other types of practices based on in the supposed inferiority or superiority of any of the genders or in stereotyped roles for men and women that legitimize or exacerbate violence.
- c) Disseminate the rights and protection of women within the family as well as access to health, avoiding discrimination or acts of violence that harm or alter their health.
- d) Sensitize the community through mass campaigns about the care that should be given to the pregnant woman, avoiding all types of violence that may affect her or affect her during pregnancy.
- e) Instruct the staff of the health services to provide good treatment and comprehensive care to victims of violence in the family, considering their intimacy and privacy, and avoiding the repetition of clinical examinations that affect their psychological integrity.
- f) Coordinate joint actions of health services with comprehensive legal services to provide adequate care to victims of violence in the family.
- g) Train and create awareness in the justice administration personnel, police and other officials in charge of the application of this law, on the measures of prevention, punishment and elimination of violence in the family.
- h) Conduct awareness campaigns through interactive mass media and mass communication to the community as a whole, to strengthen the rejection of violence in the family.
- i) Carry out communication campaigns targeting regions, ages and socio-economic situation, through traditional and alternative means of communication to spread the rights of women and the conviction that family violence is an attack against human rights.
- j) Incorporate into the language and discourse of the mass media the permanent dissemination of the rejection of family violence and the full exercise of rights, through special programs, participation in interviews and regular news streams.
- k) Disseminate the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and the Inter-American Convention of the Organization of American States for the Prevention, Punishment and Eradication of Violence against Women.

⁵² Law Against Family or Domestic Violence (Ley Contra la Violencia en la Familia o Domestica), Law n. 1674 (13 December 1995), available at <http://scm.oas.org/pdfs/2010/CIM02724T-B.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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- l) Disseminate the text of this law to specialized audiences, levels of political decision-making, union leaders and supporters, and opinion leaders.
- m) Promote the study and investigation of the causes and consequences of violence in the family and adopt measures to promote its eradication.
- n) The National Police will highlight mobile control patrols to the centers with the highest incidence of domestic violence.
- o) Promote the establishment of temporary shelters for victims of violence and the creation of institutions for the treatment of aggressors.
- p) Promote and support the dissemination of the Law against Family or Domestic Violence through the National Education System.
- q) Insert as a curricular subject of training in the Military Institutes and the National Academy of Police the Law against Family or Domestic Violence.
- r) Encourage the formation of psychological offices for the diagnosis and therapy of victims of violence.

CHAPTER II
DOMESTIC VIOLENCE OR FAMILY VIOLENCE

ARTICLE 4º. (FAMILY VIOLENCE).

Family or domestic violence is understood as physical, psychological or sexual aggression committed by:

- 1) The spouse or partner;
- 2) The ancestors, descendants, siblings, civil or related relatives in direct and collateral line;
- 3) Tutors, curators or guardians.

ARTICLE 5º. (DOMESTIC VIOLENCE).

The acts of domestic violence are considered as aggressions committed between ex-spouses, ex-cohabitants or persons who have procreated legally recognized children or not, although they may not have lived together.

ARTICLE 6º. (FORMS OF VIOLENCE).

Is considered:

- a) Physical violence behaviors that cause internal or external injury or any other abuse that affects the physical integrity of people;
- b) Psychological violence, behaviors that emotionally disturb the victim, harming their psychic and emotional development, and;
- c) Sexual violence, behaviors, threats or intimidation that affect the sexual integrity or sexual self-determination of the victim.
- d) Likewise, acts of violence in the family are considered when the parents, guardians or custodians endanger the physical or psychological integrity of the minors, for the abuse of corrective or disciplinary means or for the imposition of excessive and inadequate work for the age or physical condition of the minor.

Likewise, acts of violence in the family are considered those carried out against the incapacitated elders.

CHAPTER III
PENALTIES AND ALTERNATIVE MEASURES

ARTICLE 7º. (SANCTIONS)

The acts of domestic violence or in the family, included in the present law, and that do not constitute offenses typified in the Penal Code, will be sanctioned with the penalties of fine or arrest.

ARTICLE 8º. (PENALTY FEE).

The penalty of fine in favor of the State will be set by the judge up to a maximum of 20% of the national minimum wage and up to ten times more than the sum, according to the seriousness of the facts and the economic capacity of the author.

The fine will be canceled within three days.

Failure to comply will result in the conversion of the fine into arrest, which may not exceed the maximum time set by the following article.

ARTICLE 9º. (ARREST).

The penalty of arrest consists of the deprivation of liberty for a period that will be set by the judge and that may not exceed four days and may be deferred to the weekends.

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The arrest will be carried out in police precincts.

ARTICLE 10 (AGGRAVATING FACTORS).

The sanctions will be aggravated up to twice the expected maximum, in the following cases:

- 1) When the victim is disabled, over sixty years old or is pregnant.
- 2) When several actions constituting violence in the family were committed.
- 3) When the sanction is completed, the person responsible commits another act or acts constituting violence in the family.

ARTICLE 11º. (ALTERNATIVE MEASURES TO THE EXECUTION OF THE PENALTY).

The judge may suspend the execution of the sanction, arranging according to the nature of the act and the personality of the author, as an alternative measure, psychological therapy or the provision of community work.

These measures can only be effective if the consent of the person in charge is mediated. If consent is not given, the sanction imposed will be executed.

Accredited compliance with the measure, the judge will declare the penalty imposed extinct. Otherwise, the sanction will be executed, whose compliance was suspended.

ARTICLE 12º. (PSYCHOLOGICAL THERAPY).

The psychological therapy will be carried out in private offices of qualified professionals, with charge to the author. People of limited resources will be referred to the Secretariat of Ethnic, Generational and Generational Affairs, ONAMFA or any accredited and non-profit social service.

The specialist will determine the duration and the modality of the psychological therapy and will inform the judge about these circumstances.

ARTICLE 13º. (COMMUNITY WORKS).

Community work will consist of the provision of work in favor of the community or the State, which will be carried out outside the usual working hours and according to the profession, job or occupation of the author.

The duration of the work may not exceed the time equivalent to four days.

The work must be supervised by the person or authority designated by the judge, who will report about its compliance.

CHAPTER IV COMPETENCY

ARTICLE 14º. (COMPETENCY).

The knowledge of the acts of domestic or family violence included in this law will be the responsibility of the family instruction judges.

The judges of instruction will be competent in places where there are no family instruction judges.

ARTICLE 15º. (CRIMINAL ACTS).

The acts of violence that constitute offenses established in the Criminal Code are the exclusive competence of criminal judges.

ARTICLE 16º. (COMMUNITY AUTHORITIES).

In the indigenous and peasant communities, it will be the community and natural authorities who resolve the controversies of violence in the family, according to their customs and uses, as long as they do not oppose the Political Constitution of the State and the spirit of this law.

CHAPTER V PRECAUTIONARY AND PROVISIONAL MEASURES

ARTICLE 17º. (PRECAUTIONARY MEASURES).

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The judge ex officio, or at the request of a party or the Public Ministry, may order the appropriate precautionary measures, designed to guarantee the safety and physical or psychological integrity of the victim. He may also order the help of the public force for compliance.

At any time during the proceedings, the judge, ex officio or at the request of a party, by resolution, may extend, modify, substitute or vacate the precautionary measures.

ARTICLE 18º. (LESSONS).

Are precautionary measures:

- 1) Prohibit or temporarily restrict the presence of the accused in the conjugal home.
- 2) Order the restitution of the victim to the home from which she has been violently removed.
- 3) Authorize the victim to leave the common home and arrange immediate delivery of personal effects.
- 4) Arrange the inventory of movable and immovable property owned by the dower community.
- 5) Prohibit or limit the concurrence of the defendant to the workplace of the victim.

ARTICLE 19º. (TEMPORARITY OF MEASURES).

The precautionary measures listed in the previous article are essentially temporary and may not exceed the duration of the process.

ARTICLE 20º. (PROVISIONAL MEASURES). The judge hearing the case may issue provisional measures of family assistance and custody of children, as appropriate. These measures will be valid only until the conclusion of the process.

CHAPTER VI PROCEDURE

ARTICLE 21º. (COMPLAINT).

The complaint may be presented orally or in writing, with the assistance of a sponsor or without it, before the competent judge, the Public Ministry or the National Police.

ARTICLE 22º. (LEGITIMATION TO DENOUNCE).

Are entitled to request protection in favor of the victim, reporting acts of physical or psychological violence, blood relatives, relatives or civilians, or anyone who knows these facts.

The acts of sexual violence can only be reported by the victim, unless she is less than eighteen years of age or incapable, in which case those indicated in the previous paragraphs are entitled to register the complaint.

ARTICLE 23º. (LEGITIMATION TO INTERVENE IN THE PROCESS). In cases of physical violence or when the victim of sexual or psychological violence is a child under eighteen years of age, or an incapacitated person, the victim and the Public Prosecutor's Office are entitled to take action.

In other cases of sexual violence only the victim is entitled to take the action.

ARTICLE 24º. (OBLIGATION OF DENOUNCING). Health workers in public or private establishments that receive or provide care to victims of violence are obliged to report these facts for their respective prosecution.

ARTICLE 25º. (COMPLAINT BEFORE THE POLICE). When the complaint is presented to the Police, it will send the information to the competent judge, within 24 hours of receiving the complaint, at no cost.

ARTICLE 26º. (FAMILY PROTECTION BRIGADES). The Family Protection Brigades will be responsible for practicing the procedures aimed at the identification of the actors and participants, gathering or securing the elements of evidence and providing the necessary and immediate assistance to the victim.

Where there are no Family Protection Brigades, the existing police authorities will fulfill these functions.

ARTICLE 27º. (FLAGRANCE). In case of flagrancy the author may be apprehended even without a warrant by any person, with the sole purpose of being immediately brought before the competent authority.

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ARTICLE 28º. (COMPLAINT BEFORE THE PUBLIC MINISTRY). When the complaint is filed with the Public Ministry, the family prosecutor or fiscal agent will immediately subpoena the accused and the victim to a conciliation hearing, which will be held within 24 hours of receiving the complaint.

In the event that the aforementioned parties do not appear, or the conciliation does not occur, the prosecutor will refer the case to the competent judge.

In time to remit the case, the prosecutor may request the judge the appropriate precautionary measures.

ARTICLE 29º. (ADMISSION OF THE COMPLAINT). Once the complaint has been received, the judge, upon admitting it, will indicate a date and time for the hearing that will take place within a period of no more than 48 hours, will decide on the origin of the precautionary measures, and will order the subpoena of the accused and of whoever is entitled to exercise the action.

ARTICLE 30º. (SUBPOENA). The subpoena of the accused can be executed at any day, any hour and any place where it could be carried out.

The subpoena will contain the reason for the complaint and the precautionary measures ordered by the judge for immediate compliance.

ARTICLE 31º. (ABSENCE OF THE ACCUSED). When, without a justified reason, the accused does not appear, having been legally subpoenaed, the judge will arrange for his/her presence with the help of the public force.

ARTICLE 32º. (WITHDRAWAL). If the person entitled to exercise the action does not appear, the action will be considered abandoned, unless legal impediment is proven, in which case a new day and time of hearing will be set within the same period established in article 29 of this law.

ARTICLE 33º. (HEARING). On the day of the hearing, the judge will arrange the reading of the complaint, hear the parties, receive the evidence offered by the parties and propose the bases for a possible conciliation.

The defendant may be assisted by a defense lawyer.

If one of the parties is assisted in a hearing by a sponsor attorney, for equity, the Judge will appoint one defender for the other.

ARTICLE 34º. (EVIDENCE). All the elements of conviction, legally obtained, that may lead to the knowledge of the facts denounced, will be admitted as evidence.

The evidence will be appreciated by the judge, setting forth the reasoning on which his/her legal assessment is based.

ARTICLE 35º. (WITNESSES). The relatives or dependents of the complainant or the accused may also be witnesses, as long as their declaration is voluntary.

ARTICLE 36º. (RESOLUTION). The judge, in the same hearing, will pronounce a resolution expressing the reasons on which it is based.

The resolution, as appropriate, may:

- 1) Approve the agreements reached by the parties in the conciliation;
- 2) Declare the complaint proven when the defendant has been proven guilty.
- 3) Declare the complaint unfounded.

If the complaint is proven, the judge will impose the corresponding penalty and order the payment of all expenses incurred by the victim as a consequence of the fact and the processing of the process. In the same decision, the judge may order that the sanction be suspended, according to what is established in articles 11, 12 and 13 of this law.

ARTICLE 37º. (MEDICAL CERTIFICATES). Any medical certificate issued by a professional working in public health institutions will be admitted as documentary evidence.

ARTICLE 38º. (MEASURES TO BETTER PROVIDE). According to the circumstances of the case, the judge may order psychological expertise of the accused and of the members of the family involved in the acts of violence.

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The expert report must be presented to the judge within a period not exceeding seven business days. After this period, with or without the expert report, the judge will pronounce a resolution.

ARTICLE 39°. (APPEAL). The parties may file an appeal in verbal form at the same hearing, or in writing within 24 hours, before the same judge who pronounced the decision.

Once the appeal is filed, the judge will subpoena the other party to answer the appeal within the same period. Then, without further formality, within the next 24 hours the proceedings must be sent to the judge of second instance, under the responsibility of the actuary.

The appeal will be granted in suspensive effect before the judge of the family party on duty or before the party judge in the provinces.

ARTICLE 40°. (RESOLUTION OF THE APPEAL). Once the proceedings have been received, the judge of the second instance will rule within three days, without further recourse.

ARTICLE 41°. (RESERVE OF THE PROCESS). The process for acts of domestic or family violence is absolutely reserved. The file can only be exhibited or given testimonials or certificates of the parts inserted in it at the request of a legitimated party with a court order.

CHAPTER VII
FINAL PROVISIONS

ARTICLE 42°. (INCIDENT). If, during the process of divorce, separation or unilateral separation of a union, acts of family or domestic violence occur, the judge of the case will know and decide in the incidental way these accusations in accordance with the procedure established in this law.

ARTICLE 43°. (OFFENSES OF PUBLIC ORDER AT REQUEST OF A PARTY). Modify Article 7 of the Code of Criminal Procedure, excluding from it the crimes of statutory rape, rape of persons of puberty age, dishonest abuse, outrage to modesty and corruption of elders; those that will be considered crimes of public action at the request of a party.

In the cases of this article, no cause shall be heard except by accusation or denunciation of the victim, its guardian or its legal representatives. However, the request of a party shall not be required when the offense is committed against a minor who has no parents, guardian or legal representatives, or is committed by one of the parents, guardian, legal representative or custodian.

Once the action has been promoted by a party, the Public Ministry will continue with the procedure ex officio.

ARTICLE 44°. (REPEAL). Article 276 of the Criminal Code is repealed.

ARTICLE 45°. (SUPPLEMENTARY RULES). The provisions of the Code of Criminal Procedure are applicable, insofar as they do not contradict the provisions of this law.

[...]

21. BOSNIA HERZEGOVINA

21.1. FEDERATION OF BOSNIA AND HERZEGOVINA

[Law on Protection from Domestic Violence, 2013](#)⁵³

[...]

I. GENERAL PROVISIONS

⁵³ Law on Protection from Domestic Violence, Law No. 20/13 (13 March 2013), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95374/112252/F-35737902/ZN.pdf> (last visited December 30, 2018). Unofficial translation by OSCE.

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Article 1

Scope of the Law

This Law regulates protection against domestic violence, notion of family and domestic violence, types and purposes of protective measures against the abusers, manner and procedure of pronouncing protective measures, protection of the victim against domestic violence, interrelation of all entities in function of protection against domestic violence, and other matters of relevance to protection against domestic violence.

Article 2

Definitions

An abuser, in terms of this Law, is a family member who commits acts of violence referred to in Article 7 of this Law.

A victim of violence, in terms of this Law, is any family member exposed to acts of domestic violence referred to in Article 7 of this Law.

A child, in terms of this Law, is any family member under the age of 18. Grammatical expressions used in this Law in reference to male or female sex shall imply both sexes.

Article 3

General Principles of Providing Protection and Exemption from Law

Principles of protection against domestic violence, regulated by this Law and relevant international standards accepted by Bosnia and Herzegovina, shall be applied in all cases to ensure the most effective protection of victims of domestic violence.

Enforcement of this Law, in line with their jurisdictions, shall be ensured by the municipal court/misdemeanour department (hereinafter: relevant court), police, agency in charge of custody and relevant social and health institutions, with an obligation of joint and co-ordinated action.

Institutions referred to in Paragraph 2 herein shall ensure that victims of violence and abusers are handled by trained and professional staff. The child referred to in Paragraph 3, Article 2 of this Law, who commits any act referred to in Article 7 of this Law shall not be subject to Articles 9 through 30 of this Law.

Protection to victims of domestic violence may also be provided by non-governmental organisations registered to provide this kind of services.

Article 4

Urgency of Ruling

In terms of domestic violence cases, entities referred to in Paragraph 2, Article 3 of this Law shall provide for the urgency of ruling.

Article 5

Access to Relevant Court

This Law shall ensure unhindered access to relevant court and without any expenses for victims of domestic violence.

II. THE NOTION OF FAMILY AND DOMESTIC VIOLENCE

Article 6

The Notion of Family and Family Relations

In terms of this Law, the family shall constitute:

- 1) Married and common-law spouses and their children (their own or from previous relations),
- 2) kins: blood relatives and relatives joined by full adoption in direct kinship (*linea recta*) regardless of the degree of

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- kinship and in the *linea colateralis* up to the fourth degree of kinship; adoptive parent and adopted child in the case of partial adoption; in-laws up to the second degree of kinship,
- 3) guardian and protégé; foster parent and foster child,
 - 4) former married and common-law spouses and their children (their own or from previous relations) and their parents, including adoptive parents.

Relationships between family members shall be based on humane principles which include mutual respect, support and devotion, maintaining harmonious relationships while developing and demonstrating their best traits with particular emphasis on child protection, gender equality and voluntary entry into marriage or common-law marriage. In their relationships, family members shall respect the rights, freedoms and safety/security of other family members in a manner that shall not be restrictive, set limits or prevent the exercise of the rights and freedoms guaranteed to family members in accordance with the existing laws. Family members shall refrain from harming the physical or psychological integrity of another family member; injury and discrimination on the basis of one's gender or age; and subordination on any basis.

Article 7

Definition of domestic violence

In terms of this Law, domestic violence shall be deemed to exist if there is a reasonable doubt of commitment of an act or threat by a family member involving physical, psychological, sexual or economic harm or suffering against another family member. Acts of domestic violence, referred to in Paragraph 1 herein, shall include:

- 1) use of physical force against physical or psychological integrity of a family member,
- 2) any act by a family member which may cause or threaten to cause physical or psychological pain or suffering,
- 3) intimidation, threats or violation of the dignity of a family member by blackmail or another form of coercion,
- 4) physical attack by a family member against another family member, irrespective of the fact of whether there was physical injury or not,
- 5) verbal attack, insult, profanity, name calling, or other forms of violent harassment by one family member against another,
- 6) sexual harassment, stalking and all other similar forms of harassment against another family member,
- 7) damage or destruction of shared property or property owned by a family member,
- 8) use of physical violence or intimidation aimed at denying the right to socioeconomic independence by preventing a family member from working or keeping the family member in the state of dependence or submission,
- 9) use of physical and psychological violence against children and child neglect,
- 10) use of physical and psychological violence against elderly and bedridden persons and neglect in providing them with healthcare and medical treatment,
- 11) violent isolation and restriction of movement of a family member, and
- 12) lack of due care or failure to assist or protect a family member in contravention of law.

Article 8

Reporting Domestic Violence

Healthcare providers and social workers, educators, medical institutions, educational institutions, other institutions and bodies, as well as nongovernmental organizations that, during the course of carrying out their duties, learn of occurrences of domestic violence referred to in Paragraph 2, Article 7 of this Law, shall have the responsibility to immediately report such cases to the relevant police administration.

Any family member or any citizen who learn of occurrences of domestic violence shall have the same responsibility to report it to the relevant police administration, as set forth in Paragraph 1 herein.

The report may also be filed by the victim of domestic violence.

Any family member or any citizen who learn of occurrences of domestic violence referred to in Paragraph 1 herein shall have responsibility to report as set forth in Paragraph 2, Article 7 of this Law, particularly if a minor is a victim of domestic violence.

A person who fails to report an act of domestic violence referred to in Paragraph 2, Article 7 of this Law, shall be deemed committing a criminal offence, except in case in which that person is the victim of domestic violence.

III. TYPES AND PURPOSES OF PROTECTIVE MEASURES

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Article 9

Types of Protective Measures

The following protective measures shall be taken against an abuser:

- 1) removal from the apartment, house or other housing unit and prohibition from returning to the apartment, house or other housing unit,
- 2) restraining order,
- 3) prohibition from harassing and stalking the person exposed to violence,
- 4) mandatory psychosocial treatment,
- 5) mandatory rehabilitation,
- 6) temporary confinement and detention.

Article 10

Purpose of Protective Measures

The purpose of protective measures shall be ensure protection of health and safety of persons exposed violence, prevent and domestic violence, and to undertake efficient measures to reform and rehabilitate abusers.

Article 11

Removal from Apartment, House or Other Housing Unit

The protective measure of removing from the apartment, house or other housing unit and barring a person from returning to that apartment, house or housing unit may be ordered for a person who has abused a family member with whom he/she resides in an apartment, house or other housing unit, if the relevant court finds that there is a risk that the abusive person might repeat an act of violence if this measure is not enforced.

A person for whom the measure referred to in Paragraph 1 herein has been prescribed shall immediately vacate the apartment, house or other housing unit, in presence of a police officer, when necessary.

The measure referred to in Paragraph 1 herein shall be prescribed for a period of time of at least one month and not longer than two years.

Regulation on the manner of enforcement of the measure referred to in Paragraph 1 herein shall be passed by the FBiH Minister of Interior.

Article 12

Restraining Order

A restraining order may be imposed on a person who committed an act of domestic violence against a victim of domestic violence.

In its ruling on the restraining order, the relevant court shall define places or areas and the amount of distance between the abuser and the victim of domestic violence.

The measure referred to in Paragraph 1 herein shall be prescribed for a period of time of at least one month and not longer than two years, unless the relevant court decides that a longer period of time is in the interest of the victim of domestic violence.

Regulation on the manner of enforcement of the measure referred to in Paragraph 1 herein shall be passed by the FBiH Minister of Interior.

Article 13

Prohibition from Harassing and Stalking the Person Exposed to Violence

A protective measure of prohibition from harassing and stalking may be imposed on a person who harasses or stalks a family member, under the risk that such behaviour might be repeated.

The measure referred to in Paragraph 1 herein shall be prescribed for a period of time of at least one month and not longer than two years, unless the relevant court decides that a longer period of time is in the interest of the victim of domestic violence.

Regulation on the manner of enforcement of the measure referred to in Paragraph 1 herein shall be passed by the FBiH Minister of Interior.

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Article 14

Mandatory Psychosocial Treatment

A protective measure of mandatory psychosocial treatment may be pronounced to a violent person to remove causes to his or her violent behaviour or if there is a risk that the violent person might repeat the act of violence.

The measure referred to in Paragraph 1 herein shall be prescribed for a period of time of at least six months in continuation and not longer than two years.

Regulation on the manner of enforcement of the measure referred to in Paragraph 1 herein shall be passed by the FBiH Minister of Labour and Social Policy, with the consent of the FBiH Minister of Health.

Article 15

Mandatory Rehabilitation

The relevant court shall impose mandatory rehabilitation, as a protective measure, to the abuser who has committed the act of domestic violence under the influence of alcohol or drugs or other psychotropic substances, if there is risk that the abusive person might repeat that act if violence.

The measure referred to in Paragraph 1 herein shall be prescribed for a period of time of at least one month and not longer than two years.

Regulation on the manner of enforcement of the measure referred to in Paragraph 1 herein shall be passed by the FBiH Minister of Health.

Article 16

Apprehension and Detention

Police administration shall inspect on site each case of domestic violence immediately upon receiving a request thereto.

Police administration shall apprehend and detain each person suspected of committing an act of domestic violence if there is reasonable doubt, in line with Article 153 of the Criminal Procedure Code of the Federation of BiH (Official Gazette of FBiH, Nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10).

IV. IMPOSITION OF PROTECTIVE MEASURES

Article 17

Filing a Request for a Protective Measure

Police administration shall file a request for a protective measure with the relevant court. As an exception, the request referred to in Paragraph 1 herein may be filed by the prosecutor's office, if there are justifiable reasons thereto.

Article 18

Deadlines for Filing and Mandatory Elements of Requests

Police administration shall file a request for a protective measure with the relevant court in each and every reported case of domestic violence within 12 hours of learning about an act of violence defined in Article 7 of this Law.

The request referred to in Paragraph 1 herein shall be accompanied by collected evidence and official record excerpts, in case the reported abuser has a previous record of domestic violence.

The request for a protective measure shall be filed with the relevant court competent for the place of temporary or permanent residence of the victim of domestic violence.

Mandatory elements of a request for a protective measure include: full name of the filing authority; protocol number; place and date; name of the relevant court; grounds for filing the request; details on the abuser; type(s) of the requested protective measure(s); act of violence referred to in Article 7 for which there is reasonable doubt that the abuser has committed; name of the victim(s) and relationship with the abuser; rationale; signature of the authorised official person; and enclosed documentation.

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Article 19

Deadlines for and Manner of Imposing Protective Measures and legal Remedies

The relevant court shall act upon a request and pass a ruling on imposing a protective measure referred to in Items 1, 2 and 3, Article 9 of this Law, within 12 hours of the receipt of the request.

The relevant court shall ensure expert witness opinion, if necessary, within seven days of the receipt of the request for a protective measure referred to in Items 4 and 5, Article 9 of this Law, and shall act upon the request and pass a ruling.

If the relevant court requires that the abuser be brought before the court, it may summon the abuser through the relevant police administration.

In terms of imposing a protective measure, the relevant court shall not be limited by special formal evidence presentation rules in order to establish facts about the committed acts of violence referred to in Article 7 of this Law as well as about consequences that may arise therefrom.

The ruling on imposition of a protective measure shall define the length of the protective measure imposed on the abuser and shall become effective on the date of adjudication.

Article 20

Imposition of a Protective Measure and Altering a Protective Measure

The relevant court may impose multiple protective measures on the abuser, if deemed justified.

The relevant court may alter the imposed measure, revoke the adjudication or impose a monetary fine for failure to act upon the imposed protective measure referred to in Article 45 of this Law, upon receiving a report on action upon the imposed protective measure submitted by the relevant authority.

Article 21

Mandatory Elements of a Ruling on Imposition of a Protective Measure

Mandatory elements of the ruling referred to in Paragraph 1, Article 19 of this Law include:

- 1) Name of the court;
- 2) Number and date;
- 3) Introduction containing:
 - a) name of the court to pass the ruling,
 - b) number and date of adjudication,
 - c) legal grounds for jurisdiction and adjudication,
 - d) name of the authority that filed the request and brief summary of the request;
- 4) Dispositive containing:
 - a) personal details of the person on whom the measure is imposed,
 - b) acts of violence referred to in Article 7 of this Law for which the protective measure is imposed, with description of facts established and personal details of the victim(s) of domestic violence,
 - c) type of the protective measure,
 - d) length of the protective measure,
 - e) name of the authority in charge of enforcing the protective measure,
 - f) statement that a complaint shall not delay the enforcement of the ruling;
- 5) Rationale including:
 - a) brief description of reasons for imposing the protective measure,
 - b) collected evidence and facts established,
 - c) reasons which prevailed while assessing evidence,
 - d) reasons which, having in mind the facts established, justify the type and length of the protective measure,
 - e) legal grounds for imposing the protective measure and grounds on the basis of this Law which indicate that a complaint shall not delay the enforcement of the ruling;
- 6) Legal remedy including:
 - a) name of the court through which a complaint is filed, name of the court with which the complaint is filed and deadlines thereof, and
- 7) Signature of the judge.

Article 22

Delivery of the Ruling

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The competent court shall deliver the ruling on imposing the protective measure to the person on whom it is imposed, the complainant, the authority in charge of enforcing the protective measure and to the victim of domestic violence. The court shall deliver the ruling on imposing the protective measure to the agency in charge of custody, within whose jurisdiction the abuser temporarily or permanently resides, within three days of the date of adjudication.

Article 22a

Authorities in charge of enforcement of the imposed protective measure contained in the court ruling shall monitor the enforcement on a regular basis, compile and deliver report thereof to the relevant court and suggest suspension or alteration of the protective measure, if deemed necessary. The mentioned authorities shall notify the relevant court of any failure to enforce the measure or any violation thereof.

Article 23

Suspension of the Procedure

The court shall reject a request for imposition of a protective measure and suspend the procedure, if it establishes the following:

- 1) Acts described in the request do not reflect acts set forth in Article 7 of this Law,
- 2) The court has no jurisdiction over imposing a protective measure,
- 3) The request is not submitted by an authorised body.

Article 24

Statement of Complaint

A complaint against the ruling on imposition of a protective measure may be stated by a person on whom the protective measure is imposed and the authorities referred to in Article 17 of this Law.

Article 25

Deadlines for Submission of a Complaint and Contents of a Complaint

A complaint may be filed against the ruling referred to in Paragraph 1, Article 19 of this Law within three days of the date of the receipt of the ruling. The complaint shall not delay the enforcement of the ruling.

A complaint may be filed against the ruling referred to in Paragraph 2, Article 19 of this Law within five days of the date of the receipt of the ruling. The complaint shall not delay the enforcement of the ruling.

Complaints referred to in Paragraphs 1 and 2 herein shall contain numbers and dates of rulings respectively against which the complaints are stated as well as complainants' signatures and reasons of complaining.

Article 26

Grounds for a Complaint

A ruling on a protective measure may be refuted on the following grounds:

- 1) Major breach of a procedure prescribed by this Law,
- 2) Breach of substantive provisions of this Law,
- 3) Decision on imposing the protective measure.

Article 27

Major breaches of the procedure of imposing a protective measure exist if:

- 1) The decision on imposing the protective measure was passed by a judge who had to be exempt from the procedure,
- 2) The court had no real jurisdiction over imposing the protective measure,
- 3) The request for the protective measure was filed by an unauthorised body,
- 4) The court failed to apply or applied incorrectly the provisions of this Law, which inflicted damage on the complainant.

Article 28

Delivery of a Complaint

A complaint shall be delivered in two copies to the court which passed the ruling on imposing the protective measure.

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Article 29

Consideration of a Complaint

Any untimely or incomplete complaint shall be rejected by the second-instance court, should the first-instance court fail to do so.

The second-instance court shall consider the complaint on the basis of the casefile and complaint without a hearing, and shall pass a ruling within three days of the date of receipt of the complaint.

Article 30

Deciding a Complaint

A complaint shall be decided by an individual judge.

The second-instance court may decide to either confirm or reject the complaint.

The second-instance court shall deliver the copies of the decision to the parties by mail and shall refer the casefile back to the first-instance court.

V. OTHER FORMS OF PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

Article 31

Ensuring Basic Living Conditions

A victim of domestic violence shall have a right to basic living conditions including the necessary health, social and financial care and a right to free legal aid in terms of ensuring social, economic or any other status.

Protection of the victim of domestic violence referred to in Paragraph 1 herein shall be provided in line with current legislation in the area of health and social care and right to free legal aid.

Article 32

Funding Basic Forms of Protection and Temporary Assistance to Victims

Funds for basic forms of protection of victims of domestic violence, who cannot be accommodated immediately in terms of Article 31 of this Law within the existing systems of health and social care, shall be provided within temporary assistance.

In order to ensure temporary assistance referred to in Paragraph 1 herein, cantonal governments shall endorse a regulation within six months of the effective date of this Law, to define the manner of temporary assistance, including free legal aid for victims of domestic violence.

Article 33

Manner of Accommodation of Victims

In order to ensure physical protection and exercise of rights and interests of a victim of domestic violence free from fear and threat to life, the police and authorities in charge of custody shall accommodate the victim of domestic violence in a safe house/shelter (hereinafter: safe house), appropriate institution or another family on a temporary basis and upon a previous consent by the victim.

A victim of domestic violence shall be accommodated in a safe house on a temporary basis and not longer than six months upon a request by police or the authority in charge of custody.

The deadline referred to in Paragraph 2 herein may be extended at the request of the safe house and upon written consent by the relevant authority in charge of custody.

Article 34

Accommodation of Victims in Appropriate Institutions or Other Families

A victim of domestic violence shall be accommodated in another appropriate institution or family upon the request by the

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authority in charge of custody if the authority in charge of custody deems it more favourable for the victim and upon the consent of the victim.

Article 35

Founding and Funding Safe Houses

A safe house may be founded by a legal or natural person in line with the law.

Funds for temporary accommodation of a victim of domestic violence in a safe house, another appropriate institution or another family shall be ensured in line with the regulations of the Federation of Bosnia and Herzegovina and its cantons in the following percentages:

- 1) Cantonal budget in the amount of 30%,
- 2) FBiH budget in the amount 70%.

Criteria and standards for founding, operating and funding safe houses shall be prescribed by the FBiH Minister of Labour and Social Policy within six months of the effective date of this Law.

Article 36

Strategy for Prevention of Domestic Violence

The Government of the Federation of BiH shall adopt a strategy to prevent domestic violence, which shall define strategic goals of prevention of and combating domestic violence and the manner of funding the implementation of strategic goals.

Article 37

Programme of Prevention, Protection and Combating Domestic Violence

Cantonal governments shall each develop a two-year programme of activities on preventing and combating domestic violence and protecting victims of domestic violence.

The programme referred to in Paragraph 1 herein shall include:

- 1) Responsibilities of cantonal and municipal authorities aimed at preventing and combating all forms of domestic violence and protection of victim of domestic violence;
- 2) Measures necessary for the work with abusers, including counselling for all family members;
- 3) Activities on promotion of non-violent behaviour;
- 4) Activities on training police officers, judges, authorities in charge of custody, health workers, teachers, foster agencies and all other stakeholders in the area of domestic violence;
- 5) Maintaining a database of all violent persons/abusers, taking into account confidentiality of personal details;
- 6) Programme funding sources;
- 7) Establishment of a co-ordination body that shall co-ordinate the work of all relevant institutions involved in the programme implementation, and
- 8) All necessary measures to ensure protection and safety of victims in safe houses.

The Programme referred to in Paragraph 1 herein shall be adopted by each cantonal government within six months of the effective date of this Law.

Article 38

Programme/Project Funding

Funds for programmes/projects aimed at creating conditions for preventive activities and improving the protection of victims of domestic violence shall be allocated from the budget of the Federation of Bosnia and Herzegovina, provided that such programmes/projects are of interest to the Federation of Bosnia and Herzegovina.

VI. MULTIDISCIPLINARY APPROACH TO THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE AND TO ENFORCEMENT
OF IMPOSED PROTECTIVE MEASURES

Article 39

Protocol on Co-operation

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Relevant institutions referred to in Paragraph 1, Article 8 of this Law and relevant judicial authorities shall undertake to sign the Protocol on Co-operation for the area of one or more municipalities, which shall define their mutual rights and responsibilities in the process of reporting cases of domestic violence, providing protection to victims and working with abusers.

Article 40

Recordkeeping

Police administration shall keep record of reported cases of domestic violence and of enforcement of imposed protective measures referred to in Articles 11 through 13 of this Law.

Regulation on the manner of enforcement of measures referred to in Articles 11 through 13 of this Law shall include the necessary record and template for recordkeeping referred to in Paragraph 1 herein.

The relevant court shall keep record of the submitted requests for imposition of protective measures and of imposed protective measures.

Contents and forms of recordkeeping referred to in Paragraph 3 herein shall be prescribed by the Minister of Justice of the Federation of BiH within 60 days of the effective date of this Law.

The authority in charge of custody shall keep record of protective measures in terms of persons who are protected by protective measures and abusers on whom protective measures are imposed.

Contents and forms of recordkeeping referred to in Paragraph 5 herein shall be prescribed by the Minister of Labour and Social Policy within 60 days of the effective date of this Law.

Regulation on the manner of enforcement of the measure referred to in Article 15 of this Law shall include the necessary record of imposed measures and template for keeping that record.

All records referred to herein shall be kept in line with Article 18 of the Law on Gender Equality of Bosnia and Herzegovina (Official Gazette of BiH, No. 16/03 and 102/09). Records referred to herein shall be delivered to the Gender Centre of the Federation of BiH not later than January 10 for each preceding year.

Article 41

Responsibilities of Police Administration

Police administration shall notify the authority in charge of custody without any delay of a case of domestic violence and shall deliver official record that it keeps about cases of domestic violence for the purpose of track-keeping and prevention.

Police administration shall notify the relevant court without any delay and shall propose a fine to be imposed in line with Article 45 of this Law in case that it learns about any failure of a person on whom the protective measure is imposed to act upon the imposed protective measure.

Article 42

Responsibilities of the Authority in Charge of Custody

The authority in charge of custody shall monitor the enforcement of the imposed protective measure, notify the relevant court of progress thereof and propose suspension, extension or alteration of the imposed protective measure.

The authority in charge of custody shall deliver to the court a report on the enforcement of the protective measure within six months at the latest or earlier, if necessary and upon the court's request.

VII. SUPERVISION OF IMPLEMENTATION OF THIS LAW

Article 43

Supervision of Implementation

The supervision of the implementation of this Law shall be conducted by the FBiH Ministry of Justice.

The Government of the Federation of BiH shall submit to the Parliament of the Federation of Bosnia and Herzegovina a report on the implementation of the Law on Protection against Domestic Violence on an annual basis.

VIII. PENAL PROVISIONS

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Article 44

Misdemeanour Sanctions

An official who fails to act in accordance with Paragraph 1, Article 8 of this Law shall be fined for misdemeanour with an amount ranging between BAM 500.00 and BAM 1,500.00.

Persons who fail to act in accordance with Paragraph 2, Article 8 of this Law shall be fined for misdemeanour with an amount ranging between BAM 100.00 and BAM 500.00.

An official who fails to act in accordance with Paragraph 1, Article 8 of this Law shall be fined for misdemeanour with an amount ranging between BAM 500.00 and BAM 3,000.00, if a child is a victim of an act of violence referred to in Paragraph 2, Article 7 of this Law.

Persons who fail to act in accordance with Paragraph 2, Article 8 of this Law shall be fined for misdemeanour with an amount ranging between BAM 100.00 and BAM 3,000.00, if a child is a victim of an act of violence referred to in Paragraph 2, Article 7 of this Law.

Article 45

Inaction in Regard to Protective Measures

A person who fails to act in accordance with the prescribed protective measure shall be fined for misdemeanour with an amount ranging between BAM 1,000.00 and BAM 1,500.00.

IX. TRANSITIONAL AND FINAL PROVISIONS

Article 46

Applicability of Regulations

The following regulations – the Rulebook on the Manner of Implementation of Protective Measures by Police (Official Gazette of the Federation of BiH, No. 9/06), Rulebook on the Manner and Location of Implementation of the Protective Measure of Mandatory Psychosocial Treatment of Abusers (Official Gazette of the Federation of BiH, No. 60/06) and Rulebook on the Manner and Location of Implementation of the Protective Measure of Mandatory Treatment of Abusers Addicted to Alcohol, Narcotics or Other Psychotropic Substances (Official Gazette of the Federation of BiH, No. 23/08) – which were adopted on the basis of the Law referred to in Article 47 of this Law, shall remain in force and shall be harmonised with the provisions of this Law not later than three months from the effective date of this Law.

Article 47

Termination of Application

The Law on Protection against Domestic Violence (Official Gazette of the Federation of BiH, Nos. 22/05 and 51/06) shall cease to be in effect on the day this Law enters into force.

Article 48

Entry into Force

This Law shall enter into force eight days following its publication in the Official Gazette of the Federation of BiH.

[...]

[Criminal Code of the Federation of Bosnia and Herzegovina, 2003 \(As Amended\)](#) ⁵⁴

Article 222 Domestic Violence

⁵⁴ Criminal Code of the Federation of Bosnia and Herzegovina (2003, as amended up to 2015), available at <http://www.legislationline.org/documents/section/criminal-codes/country/40> (last visited, October 26, 2018).

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(1) Whosoever, by use of violence, threatening behavior or mental cruelty violates the peace, life, physical or mental health of any member of his family, shall be punished by a fine or imprisonment for a maximum term of one year.

(2) Whosoever commits an offence under paragraph 1 above against a member of his household, shall be punished by a fine or imprisonment for a maximum term of three years. (3) If during the commission of any offence under paragraphs 1 and 2 above, any weapons, dangerous implements or other instruments capable of inflicting grave bodily injury or harm are used, the offender shall be punished by imprisonment for a term of between three months and three years.

(4) If the commission of any offence under paragraphs 1 to 3 above results in grievous bodily harm to, or impairment of health of any member of his family, or if any offence under paragraphs 1 to 3 above is committed against a child or juvenile, the offender shall be punished by imprisonment for a term of between one and five years.

(5) If the commission of any offence under paragraphs 1 to 4 above results in the death of any member of his family, the offender shall be punished by imprisonment for a term of between two and fifteen years.

(6) Whosoever causes the death of any member of his family whom he has previously mistreated shall be punished by imprisonment for a minimum term of ten years or to long-term imprisonment.

Article 221 Breach of Family Obligations

(1) Whosoever, in gross violation of his legal family obligations, leaves a member of his family, incapable of taking care of himself, in a position of physical or mental hardship, shall be punished by imprisonment for a term of between three months and three years. (2) Should a member of the family lose his life or should his health be severely damaged as a result of an offence under paragraph 1 above, the offender shall be punished by imprisonment for a term of between one and eight years.

(3) Where a suspended sentence under paragraphs 1 and 2 above is passed, the court may additionally impose a condition upon the offender to fulfill his obligations of care, education and support.

Article 223 Avoiding Payment of Maintenance

(1) Whosoever fails to provide support for another whom he is obliged to support pursuant to a decision of the court, or pursuant to any agreement entered into before another competent body, shall be punished by imprisonment for a maximum term of three years. (2) Where a suspended sentence under paragraph 1 above is passed, the court may additionally impose a condition upon the offender to regularly pay maintenance and any due liabilities.

(3) If any person committing an offence under paragraph 1 above fulfils his obligations before the end of trial, he may be released from punishment.

21.2. REPUBLIKA SRPSKA

[Law on Protection from Domestic Violence, 2012](#)⁵⁵

[...]

I - GENERAL PROVISIONS

Article 1

This Law regulates protection from the violence in a family or family unit (hereinafter: domestic violence), individuals who are considered as members of family or family unit in terms of this Law, subjects of protection, and procedure for protection of victims of domestic violence, establishing the Council for fighting against domestic violence, and misdemeanour sanctions against perpetrators of violent actions.

Article 2

The main objective of this Law is to protect victims of domestic violence by preventing and fighting against domestic violence,

⁵⁵ Law on Protection from Domestic Violence, 5 November 2012, available at [http://www.mup.vladars.net/zakoni/rs_lat/ZAKON%20O%20ZASTITI%20OD%20NASILJA%20U%20PORODICI%20\(Sluzbeni%20glasnik%20RS,%20broj:%20102.12\).pdf](http://www.mup.vladars.net/zakoni/rs_lat/ZAKON%20O%20ZASTITI%20OD%20NASILJA%20U%20PORODICI%20(Sluzbeni%20glasnik%20RS,%20broj:%20102.12).pdf) (last visited December 30, 2018). Unofficial translation by OSCE.

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which violates basic human rights and freedoms guaranteed by the Constitution and laws.

Article 3

Protection from domestic violence shall be achieved by applying this Law and the laws which define the administrative, misdemeanour, and criminal procedure, or protection of children and minors in criminal proceedings and the procedure of implementing criminal sanctions.

Article 4

(1) For the purpose of protection from domestic violence, the National Assembly of the Republic of Srpska shall adopt the Republic of Srpska Strategy for Combating Domestic Violence (hereinafter: the Strategy), at the proposal of the Government of the Republic of Srpska (hereinafter: the Government).

(2) Annual action plans are adopted by the Government at the proposal of the Ministry of Family, Youth and Sport (hereinafter: the Ministry).

(3) Strategy shall be adopted for the period of at least five years.

Article 5

Grammatical terms used in this law to indicate male or female shall imply both genders.

II- ACTS OF DOMESTIC VIOLENCE, VICTIMS OF DOMESTIC VIOLENCE, AND SUBJECTS OF PROTECTION

Article 6

(1). In terms of this Law, domestic violence shall represent any act of violence of a member of family or family unit, which endangers tranquility, mental, physical, sexual or economic integrity of another member of family or family unit.

(2). In terms of paragraph 1 of this Article, any act of violence which does not contain elements of a criminal offence is a minor offence, and especially the following actions:

- a) a threat of bodily harm to a family member or person close to him,
- b) a threat of taking children or throwing a family member out of apartment,
- c) exhaustion with labour, starvation, deprivation of sleep or rest necessary to a family member,
- d) upbringing children by treating them in a degrading manner,
- e) cutting of funds necessary for the existence of a family member,
- f) denial of the right to economic independence by prohibiting work or by keeping a family member in the subordinate position, or by threatening them or not providing them with, or by other forms of economic domination,
- g) verbal attack, profanity, calling names, or insulting a family member in other way,
- h) limiting the freedom of communication of a family member with his family members or third persons,
- i) damage, destruction or selling of joint property or property in the possession, as well as damaging or destroying of property owned by another family member, i.e. attempts thereof,
- j) stalking a family member,
- k) causing fear, humiliation, and feeling of inferiority, as well as other actions that do not contain the elements of criminal offence of violence in family or family unit.

(3) It is considered that the minor offence is committed if the offensive act is performed one time or more, and the action is defined by a continuous verb form.

Article 7

In terms of this Law, a family member or member of unit is defined as:

- a) married or former spouses and their children (mutual and from previous units),
- b) common-law and former common-law spouses and their children (mutual and from other previous units),
- c) in-laws up to the second degree of kinship, regardless of the fact that the marriage ceased to exist,
- d) parents of current and former spouses and common-law partners,
- e) relatives joined by full adoption in direct kinship (linea recta), regardless of the degree of kinship, and in the linea collateralis up to fourth degree of kinship, as well as relatives by incomplete adoption,
- f) persons linked by the same relation of guardians,
- g) persons who live or have lived in the same household, regardless of their relationship,

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- h) persons who have a child or whose child is conceived, but who have never lived in the same household.

Article 8

(1) A victim of domestic violence is entitled to psychosocial support, and social and medical care, in accordance with the laws relating to health and social care. In accordance with the law, the special aid and protection shall be provided to victim who is:

- a) a child,
- b) elderly person,
- c) disabled person,
- d) a person under guardianship.

(2) A child is a victim if he was present during a violent act against another family member, although the violent act itself was not committed against him.

Article 9

(1) Members of the Ministry of Interior (hereinafter: police), prosecution, centers for social work, i.e. service for social protection, medical and educational institution, and competent court (hereinafter: subject of protection), shall provide protection, aid and support to the victims of domestic violence.

(2) Subjects of protection shall comply with the provisions of this law and provide protection, support and aid to the victims of domestic violence and prevent repeating of crimes, regardless of whether there is a criminal or minor offence procedure against the perpetrator.

Article 10

(1) Victims of domestic violence are entitled to access to all subjects of protection and are exempt from all costs of the procedures.

(2) Victims are entitled to free legal aid in the proceedings of exercising their rights and protection, in accordance with the regulations governing the field of free legal aid.

III –THE PROCESS OF ACHIEVING THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

Article 11

(1) Subjects of protection shall promptly provide immediate solving of issue of domestic violence, taking into account that interest and welfare of victims are priority in these proceedings, especially if the victim is a child, elderly person, disabled person or a person under guardianship.

(2) In cases of domestic violence, subjects of protection shall cooperate and share necessary data and information.

Article 12

(1) The members of the family, subjects of protection, employees in educational, social and health institutions, as well as any other citizens, who learn of occurrences of domestic violence or have reasons to suspect that domestic violence was committed shall have a responsibility to immediately report these incidents to the police.

(2) Upon receipt of a report on the occurrences of domestic violence, the police shall immediately inform the centre for social work, which shall immediately provide direct social protection and psychosocial help to victims, take other measure within its jurisdiction, and make an official report.

(3) The medical institution shall provide the victim with a free medical examination to determine the existence of violations of physical or psychological integrity.

(4) The police shall immediately inform the competent prosecutor about committed domestic violence and, along with the report, submit the collected evidence and information about it.

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(5) If the competent prosecutor finds that there are no elements of criminal case in the act of domestic violence, the case shall be returned to the submitter of the report from paragraph 4 of this Law for further proceedings, in accordance with the law which defines the rule of criminal procedure.

(6) A request for initiating of misdemeanour proceedings for acts of domestic violence regulated by this Law may be submitted by:

- a) the police,
- b) other authorized bodies in accordance with the law which defines the minor offence, and,
- c) the injured party.

1. Emergency protective measures

Article 13

(1) Before starting the procedure or during the proceedings, emergency protective measures may be imposed on the perpetrator of domestic violence in order to avoid imminent danger to physical and mental integrity, to prevent recurrence of violence, and to guarantee the safety of victim.

(2) A misdemeanour department of the competent municipal court shall impose emergency protective measures.

(3) The police, authorized body, or injured party shall submit a proposal for imposing emergency protective measures, and these shall be imposed no later than 24 hours from the receipt of the proposal, i.e. from bringing the perpetrator of domestic violence to trial.

(4) Emergency protective measures shall be: (a) Removal of perpetrator of domestic violence from the apartment, house or other

residential dwellings and/or (b) Issuing a restraining order and prohibiting the perpetrator from contacting the victim of domestic violence.

Article 14

(1) Emergency protective measures shall be imposed within a period that shall not be longer than 30 days.

(2) The judge of the Misdemeanour Department of the competent municipal court shall impose emergency protective measures from paragraph 1 of this Article by decision that may be appealed within three days from imposition.

(3) An appeal against the court decision on imposed emergency protective measure shall not delay its implementation.

(4) The council of the competent municipal court that issued decision shall decide about an appeal within 48 hours from the receipt of appeal.

(5) When leaving the apartment, house or other residential dwelling, the perpetrator of domestic violence shall have rights to take his belongings necessary for everyday life and shall hand over the keys to the apartment, house or other residential dwellings.

(6) The court that imposed the measure shall submit the decision for its imposing to the competent organizational unit of the Ministry of Interior on implementation and shall examine its implementation and justification within the period for which it is imposed.

(7) The way of implementation of emergency protective measure shall be defined by the Rulebook from Article 26, paragraph 3 of this Law.

2. Ensuring protection for victims of domestic violence

Article 15

(1) For ensuring physical protection and exercising rights and interests of a victim, the centre for social work or social care service, with assistance from the police, may issue a decision on temporary shelter of the victim in a safe house.

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(2) Due to suffering violence, fear and anxiety, and in order to ensure physical protection and exercise of his rights, as well as to prevent recurrence of violence, a victim of domestic violence shall have rights to submit a request for using a special support measure-temporary shelter in a safe house to the competent social work centre or social care service.

(3) The safe house is a special support measure which provides safe accommodation and help to victims of domestic violence, which may be realized by legal entity.

(4) For the protection and safety of the victim, the police shall escort the victim into the house, apartment or other dwellings to take his personal belongings and belongings of other persons who left the living space with him, and which are necessary for satisfying daily needs.

(5) The measure referred to in paragraph 1 of this Article may be ordered for a period

which is necessary to achieve the objective of the measure, but it may not last longer than six months.

(6) In justified cases, the duration of measure from paragraph 1 of this Article may be extended for another six months, i.e. until the termination and execution of the decision by which security measures are imposed on the perpetrator.

Article 16

(1) The safe house from Article 15 of this Law shall meet set standards in terms of space, equipment and staff.

(2) Compliance with the standards from paragraph 1 of this Article shall be determined by a committee appointed by the Minister of Family, Youth and Sport (hereinafter: the Minister).

(3) Based at the proposal of the committee, the Minister shall issue a decision on the fulfillment of standards from paragraph 1 of this Article.

(4) The decision from paragraph 3 of this Article shall be the subject of revision after the expiry of two years from the date of receipt of the decision.

(5) In performance of its official duties, Ministry shall take care about expiry of the period from paragraph 4 of this Article.

(6) The decision from paragraph 3 of this Article is final and no complaint may be issued, but an administrative dispute may be initiated before the competent court.

(7) The Minister shall regulate the standards for the implementation of safe houses.

Article 17

(1) Based on decision from Article 16, paragraph 3 safe houses shall enter the Register of safe houses, run by the Ministry.

(2) The Minister shall regulate the Rulebook on the Content and Manner of Keeping the Register of Safe Houses.

Article 18

The funds for temporary care and accommodation of victims of domestic violence shall be provided from the budget of the Republic of Srpska (hereinafter: the Republic budget) in the amount of 70%, and from the budget of local governments in the amount of 30% of the established price for accommodation of the victim.

Article 19

(1) The reimbursement of costs for taking care on a temporary basis of victims of domestic violence in a safe house, which is provided from the budget of the Republic, shall be made by the Ministry, and the reimbursement of costs for taking care of the victims of domestic violence in a safe house, which is provided from the budget of local governments, shall be issued in accordance with the acts of local government units.

(2) The Ministry shall announce a competition for the exercise of right to reimbursements of costs for taking care of the victims of the domestic violence, which are provided from the budget of the Republic.

(3) The competition shall define: a) a deadline for submission of applications, b) the period referred to in the competition, c) the documentation submitted with the application for the competition, d) the financial report for the previous year, e) a work

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plan, f) the financial plan for the period referred to in the competition, and g) other issues of importance for the competition.

(4) Safe houses entered in the Register from Article 17, paragraph 1 shall compete under the same conditions for exercising the right to reimbursements of costs for taking care of victims of domestic violence, which are provided from the budget of the Republic.

(5) The Minister shall regulate the manner of allotment of funds to safe houses.

(6) The Minister shall issue a decision on the cost of taking care for victims of domestic violence in a safe house.

(7) The decision from paragraph 6 of this Article shall be published in the "Official

Gazette of the Republic of Srpska". Article 20

(1) Upon completion of the competition, the legal entity to whom the reimbursement of costs for taking care on a temporary basis of victims of domestic violence in a safe house from the budget of the Republic was approved shall conclude a contract with the Ministry.

(2) The contract shall regulate the mutual rights and obligations between the Ministry and the legal entity from paragraph 1 of this Article.

(3) The Ministry shall supervise the proper use of funds.

(4) Upon the request of Ministry, the legal entity to whom taking care on a temporary basis of victims of domestic violence in a safe house was approved shall submit all information regarding the number of victims and documentation related to the manner of using funds from the budget of the Republic within 30 days. Article 21

(1) The Centre for social work shall set up an expert team of representatives of this institution, bodies and services of units of local government, police, non-

governmental organizations and experts dealing with the issues of family and domestic violence in order to establish a victim assistance plan and coordination of activities in the process of helping the victim, in accordance with his needs and choices.

(2) A victim assistance plan shall contain specific measures to be taken in accordance with the law regulating social, health and child care.

(3) If the victim is a child, victim assistance plan shall also contain measures to protect the child in accordance with the law defining family relations and regulations governing the protection of children's rights.

Article 22

The information of a victim or a perpetrator of domestic violence, on the basis of which one may identify the victim or a family member of the victim, may not be released unless the adult victim has expressly agreed.

IV-SANCTIONS

Article 23

(1) Misdemeanour sanctions for protection from domestic violence are:

- a) penalties,
- b) measures of warning,
- c) protective measures and
- d) educational measures.

(2) Misdemeanour penalties are prison sentence and a fine.

(3) The warning measures are a reprimand and a warning probation.

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(4) Protective measures are:

- a) removal from the apartment, house or other residential dwellings,
- b) a restraining order prohibiting contact with the victim of violence in family or family unit (hereinafter: restraining order prohibiting contact),
- c) prohibition from harassment or stalking victims of violence in a family or family unit (hereinafter: the prohibition from harassment or stalking victims) d) mandatory psychosocial treatment and e) mandatory rehabilitation.

(5) Corrective measures are judicial admonition and corrective measures of intensified supervision.

(6) The court shall impose sanctions in misdemeanour procedure which is initiated and implemented in accordance with the provisions of the law that prescribes minor offences.

(7) The purpose of misdemeanour sanctions from paragraph 1 of this Article shall be to influence the perpetrator and others that they do not commit the offence of domestic violence, to ensure the necessary protection of the health and safety of victims, and to eliminate the circumstances that favour and encourage acts of domestic violence.

Article 23a

Protective measures from Article 23, paragraph 4 of this Law may be imposed independently and without any penalties or other sanctions, and they shall be subject of direct enforcement of bodies which are authorized for their implementation, in accordance with the provisions of this Law.

Article 23b

The misdemeanour proceeding against juvenile perpetrators of domestic violence and imposition of corrective measure shall be implemented in accordance with the provisions of the law that prescribes minor offences.

Article 24

(1) Removal from the apartment, house or other dwellings as a protective measure shall be imposed on the perpetrator of domestic violence if he committed violence against a family member with whom he lives in an apartment, house or other dwelling, and if the competent court finds that there is a possibility that without the implementation of this measure the perpetrator may again commit violence.

(2) Without delay, the person to whom the measure from paragraph 1 of this Article was imposed shall leave the apartment, house or other dwelling in the presence of a police officer.

(3) The measure from paragraph 1 of this Article shall be prescribed for a period of time that may not be less than 30 days and not longer than six months.

Article 25

(1) Restraining order, as a protective measure, shall be imposed on the perpetrator of domestic violence if there is a risk that he might repeat the violence, or if the presence of the perpetrator of domestic violence near the victim may create a high degree of emotional suffering of the victim which prevents his normal mental activity.

(2) In its decision of imposing the protective measure-restraining order, the court shall define places and areas and the distances of at least 200 meters in which the perpetrator of domestic violence may not approach the victim.

(3) The measure from paragraph 1 of this Article shall be prescribed for a period of time that may not be less than 30 days and not longer than six months.

Article 26

(1) The protective measure-prohibition of harassment or stalking victims may be imposed on the perpetrator of domestic violence if the violence is committed by harassing or stalking, and there is a risk that he might repeat harassment or stalking victims.

(2) The measure from paragraph 1 of this Article shall be imposed for a period of time that may not be less than 30 days and

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not longer than six months.

(3) The Minister of the Interior shall issue regulation on the implementation of emergency protective measures that are the competence of the Ministry of the Interior and that are regulated in Articles 13, 24, 25, and 26 of this Law.

Article 27

(1) Mandatory psychosocial treatment, as a protective measure, shall be imposed on the perpetrator of domestic violence in order to remove abusive behavior, i.e. to reduce and remove danger of repeating violence.

(2) The measure from paragraph 1 of this Article may last until there no longer exists a reason for which it was assigned in the first place, but it shall not be longer than one year.

(3) The Minister of Health and Social Welfare shall issue a regulation on the manner for the implementation of the protective measure - mandatory psychosocial treatment.

Article 28

(1) The mandatory rehabilitation, as a protective measure, shall be imposed on the perpetrator who has committed an act of domestic violence under the influence of alcohol or drugs or other psychotropic substances, if there is a risk that the perpetrator might repeat the act of violence.

(2) The measure from paragraph 1 of this Article shall be imposed for a period which is necessary for treatment, based on the opinion of competent specialized experts for treatment, but it may not last longer than a year.

(3) The Minister of Health and Social Welfare shall issue regulation on implementation of the mandatory rehabilitation from addiction as a protective measure.

Article 29

(1) The competent court may impose on the perpetrator one or more protective measure when there are conditions for their imposing by this Law.

(2) The competent court may ask the centre for social work:

a) to provide assistance in obtaining the necessary evidence, and b) to deliver its opinion on purpose of the requested protective measure.

Article 30

(1) An appeal against a decision imposing the protective measure may be submitted to the competent court within three days from the day of receipt of the decision.

(2) The competent district court shall decide about the appeal within three days from the day of receipt of the appeal.

(3) The appeal shall not stop the execution of decision on determining the protective measure.

Article 31

(1) The perpetrator of domestic violence shall act in accordance with the prescribed protective measure.

(2) The subject of protection, who within the scope of his work learns that the perpetrator does not comply with the imposed protective measure, shall inform the competent court and centre for social work.

Article 32

(1) The competent court shall submit the decision on the imposed protective measure to the competent authority or institution competent for the implementation of decision within three days from the day of imposing decision.

(2) The decision on the imposed protective measures from Articles 24, 25, and 26 of this Law shall be submitted to the police for its implementation.

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(3) The decision on the imposed protective measure from Articles 27 and 28 of this Law shall be submitted to the centre for social work and the body or institution that performs a protective measure in accordance with the law regulating the treatment and rehabilitation of persons addicted to alcohol, narcotic drugs and psychotropic substances.

Article 33

(1) When imposing protective measures from this Law, the purpose, weight, duration of the imposed measure, and its effectiveness shall be taken into account.

(2) The authorities responsible for the implementation of protective measures shall supervise their implementation and report to the court about it, and shall propose their termination, extension or replacement by another measure.

(3) The authority responsible for the implementation of protective measure shall submit to the court a report on the execution of protective measures no later than six months from the date of imposition of protective measures, or sooner if necessary.

V-RECORDS AND TRAINING

Article 34

(1) Subjects of protection and other bodies authorized to act under this Law shall keep records of actions taken under this Law and data on the number of initiated and completed procedures and other undertaken measures, and submit to the Ministry reports about it.

(2) The Ministry shall gather, process, and record the information on domestic violence.

(3) The Minister shall regulate the content of the records and reports of domestic violence from paragraph 1 of this Article.

Article 35

The Centre for Education of Judges and Prosecutors of the Republic of Srpska shall take care of the acquisition of special skills and continuous professional training and development of judges and prosecutors in the area of domestic violence.

VI- COUNCIL FOR PREVENTION OF DOMESTIC VIOLENCE

Article 36

The Government shall establish the Council for the Prevention of Violence in Family and Family Unit (hereinafter: the Council) for the purpose of supervision and assessment of the implementation of policies and measures to prevent and fight against domestic violence and improving a coordinated and effective action in the field of domestic violence.

Article 37

(1) At the proposal from the Ministry, members of the Council are appointed and dismissed by the Government.

(2) The Council has nine members, consisting of representatives of competent ministries and other central government bodies, public institutions and professional services.

(3) Where it is appropriate, the Council may include in its work representatives of institutions and non-governmental organizations and experts from the academic and research unit in the areas of importance for the improvement of policy in the field of domestic violence.

Article 38

(1) The mandate of the Council members shall last for four years.

(2) The Council shall elect the Chairman among its members.

(3) The work of the Council members shall be voluntary and not paid.

(4) The procedure of selection and appointment of new members of the Council, due to the resignation or dismissal of former members, shall be identical to the procedure and the manner of election and appointment of members who are to be replaced.

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Article 39

Within its jurisdiction, the Council shall perform the following tasks:

- a) supervising and evaluating the implementation of policies and measures to prevent and combat domestic violence and, in this regard, providing recommendations and reviews,
- b) making recommendations and opinions to the Ministry in the process of proposing and adopting legislation related to domestic violence,
- c) creating of and participating in scientific, technical, research, and other projects in the field of domestic violence,
- d) participating in the activities of the social partners on preventing and fighting against domestic violence, and
- e) considering the issues of importance for the prevention and suppression of domestic violence.

Article 40

- (1) Administrative and technical affairs for the Council shall be carried out by the Ministry.
- (2) Operation and functioning of the Council shall be regulated by the Rule of Procedure of the Council.
- (3) The Rule from paragraph 2 of this Article shall be adopted by a majority vote of the total number of votes.

VII-SUPERVISION AND PENALTY PROVISIONS

Article 41

- (1) Supervision over the implementation of this Law shall be performed by the Ministry.
- (2) The Gender Centre shall monitor the implementation of this Law from the aspect of fulfillment of obligations from domestic and international standards for fighting and preventing violence against women and gender-based violence, and standards for gender equality.

Article 42

- (1) A fine in the amount of BAM 300 to BAM 900 shall be imposed on the perpetrator of domestic violence who commits any act of violence from Article 6 of this Law.
 - (2) The perpetrator of domestic violence who repeats any act of violence from Article 6 of this Law shall be sentenced to a fine in the amount of BAM 1,000 to BAM 3,000, or a prison term of no less than 30 days.
 - (3) An adult family member who commits any act of violence from Article 6 of this Law in the presence of a child shall be sentenced to a fine of BAM 1,500 to BAM 4,500.
 - (4) An adult family member who repeats any act of violence from Article 6 of this Law in the presence of a child shall be sentenced to a fine of BAM 2,000 to BAM 6,000 or a prison term of no less than 40 days.
 - (5) The perpetrator of domestic violence from Article 6 of this Law shall be sentenced to a fine of BAM 2,500 to BAM 7,500 or a prison term of no less than 60 days if he performs an act of violence against a child.
 - (6) Employees in the educational, social and health institutions who do not report domestic violence from Article 6 of this Law shall be sentenced to a fine of BAM 1,000 to BAM 3,000.
 - (7) A fine of BAM 300 to BAM 900 shall be imposed on a family member who does not report domestic violence from Article 6 of this Law when the victim is a child.
- Article 43 Anyone who violates the emergency protective measures and protective measures ordered by regulating this Law shall be punished in accordance with the provisions of the law that prescribes offences.
- Article 43a A fine of BAM 3,000 to BAM 7,000 shall be imposed on a legal entity who implements a special support measure, but who does not comply with Article 2, paragraph 4 of this Law.

VIII- TRANSITIONAL AND FINAL PROVISIONS

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Article 44 Legal entities who realize a safe house shall meet the standards from Article 16 of this Law within six months from the date of entry into force of the Regulation on standards for the realization of safe houses.

Article 45

(1) Within six months from the date of entry into force of this Law, the Minister shall adopt:

- a) The Rulebook on Standards for Realization of Safe House (Article 6, paragraph 7),
 - b) The Rulebook on Content and Manner of Keeping the Register of Safe Houses (Article 17, paragraph 2),
 - c) The Rulebook on the Manner of Allocation of Funds to Safe Houses (Article 19, paragraph 5) and
 - d) The Rulebook on the Content of Records and Reports on Domestic Violence (Article 34, paragraph 2).
- 2) Within six months from the date of entry into the force of this Law, the Minister of the Interior shall adopt the Rulebook on the Implementation of Protective Measures that are under the jurisdiction of the Ministry of the Interior (Article 26, paragraph 3).
- 3) Within six months from the date of entry into force of this Law, the Minister of Health and Social Welfare shall adopt: a) Rules on the manner and place of implementation of the protective measures-mandatory psychosocial treatment (Article 27, paragraph 3), and
- b) Rules on the manner and place of implementation of the protective measures-mandatory rehabilitation from addiction (Article 28, paragraph 3).

Article 46

Until the regulations from Article 45 of this Law, regulations adopted under the Law on Protection from Domestic Violence ("Official Gazette of the Republic of Srpska", no.118/05 and 17/08) shall be implemented if they are not inconsistent with the provisions of the Law.

Article 47

With the entry into force of this Law, the Law on Protection from Domestic Violence ("Official Gazette of the Republic of Srpska", no.118/05 and 17/08) shall cease to have effect.

[...]

[Criminal Code of the Republika Srpska, 2003 \(As amended\)](#)⁵⁶

Art. 208. Domestic violence

- (1) Whoever by violence, insolent or arrogant behaviour violates peace, life and health or mental health of a member of his family or family household, and by that brings about the physical or psychological integrity of a passive subject, shall be punished by a fine or imprisonment for a term between three months and three years.
- (2) If during the commission of the criminal offence referred to in paragraph 1 of this Article, weapons, dangerous implements or other instruments suitable to inflict grave bodily injuries or harm person's health have been used, the perpetrator shall be punished by imprisonment for a term between six months and five years.
- (3) If the commission of the criminal offence referred to in paragraphs 1 and 2 of this Article has resulted in grievous bodily injury of the family member or impaired his health or if the criminal offence referred to in paragraphs 1 and 2 of this Article has been committed against a minor or in minor's presence, the perpetrator shall be punished by imprisonment for a term between two and ten years.
- (4) If the commission of the criminal offence referred to in paragraphs 1, 2 and 3 of this Article has resulted in the death of the family member, the perpetrator shall be punished by imprisonment for a term between three and fifteen years.
- (5) Whoever kills a member of family or member of household, whom he has abused previously, shall be punished by imprisonment for a term not less than ten years.
- (6) Whoever violates the protective measures against the domestic violence ordered by the court on the basis of the law shall be punished by imprisonment for a term between three months and three years.

⁵⁶ Criminal Code of the Republika Srpska of Bosnia and Herzegovina 2003 (as amended up to 2017), available at <http://www.legislationline.org/documents/section/criminal-codes/country/40> (last visited, October 26, 2018)

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(7) For the purpose of this Chapter, family members or members of household shall be also understood to mean spouses or ex-spouses, their children and children of each of them, unwed partners or former unwed partners, their children and children of each of them, in laws up to the second degree of kinship regardless of the fact that the marriage union has ended, parents of current and former wed or unwed partners, relatives from full adoption in direct line without limitation, and in indirect line up to the fourth degree of kinship, as well as the relatives from partial adoption, persons linked by relation of guardianship, persons who live or lived in the same family household regardless of kinship, and persons who together have a child or have conceived a child, even though they had never lived in the same household.

21.3. BRČKO DISTRICT

[Law on Protection Against Domestic Violence in the Brčko District of Bosnia and Herzegovina, 2018](#)⁵⁷

[...]

PART ONE - GENERAL PROVISIONS

Article 1

(Subject)

This law shall prescribe protection against violence occurring in a family or in a family unit (hereinafter: domestic violence), individuals who shall be considered members of the family or of the family unit in terms of this law, protection authorities, the procedure for protection of victims of domestic violence, misdemeanour sanctions against abusers, and other issues of importance for the protection against domestic violence in the Brčko District of Bosnia and Herzegovina (hereinafter: District).

Article 2

(Definitions)

Certain terms utilised in this law shall have the following meaning:

- a) "Family" shall mean a community of persons, consisting of parents, children and other relatives;
- b) "A member of a family or of a family unit" shall mean:
 - 1. Spouses or former spouses and their children (mutual and from previous family units),
 - 2. Common-law and former common-law spouses and their children (mutual or from previous family units),
 - 3. In-laws up to the second degree of kinship, regardless of whether the marriage ceased to exist, parents of current and former spouses and common-law partners,
 - 4. Relatives joined by full adoption in direct kinship (*tinea recta*), regardless of the degree of kinship, and in the *tinea colateratis* up to fourth degree of kinship, as well as relatives by incomplete adoption,
 - 5. Persons linked by the same relation of guardians, persons who live or have lived in the same household, regardless of their relationship,
 - 6. Persons who have a child or whose child is conceived, although they have never lived in the same household.
- c) "Domestic violence" shall represent any act of violence committed by a member of a family or of a family unit, which endangers tranquillity, mental, physical, sexual or economic integrity of another member of the family or of the family unit.
- d) "Child" shall mean a minor below the age of 18 years.

Article 3

(Goal)

The fundamental goal of this law shall be the protection of victims of domestic violence through preventing and countering domestic violence which violates basic human rights and freedoms guaranteed by the Constitution of Bosnia and Herzegovina, the Statute of the Brčko District of Bosnia and Herzegovina and by laws.

Article 4

(Provision of Protection)

Protection against domestic violence shall be provided through the implementation of both this law and of laws which regulate the administrative, misdemeanour and criminal offence procedures, the protection of children and of minors during the criminal

⁵⁷ Law on Protection Against Domestic Violence (28 February 2018), available at <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20zas--titi%20od%20nasilja/001%2007-18%20Zakon%20o%20zas+titi%20od%20nasilja%20u%20porodici%20u%20Brc+ko%20distriktu%20Bosne%20i%20Hercegovine.pdf> (last visited, October 26, 2018). Unofficial translation by OSCE.

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procedure, and the criminal sanctions enforcement procedure.

PART TWO—DOMESTIC VIOLENCE

CHAPTER I. MISDEMEANOUR, ASSISTANCE TO A VICTIM OF DOMESTIC VIOLENCE, DUTIES OF PROTECTION AUTHORITIES

Article 5
(Misdemeanour)

- (1) An act of violence which does not contain elements of a criminal offence shall be a misdemeanour act, if it is one of the following:
 - a) A threat of bodily harm to a family member or to a person close to him/her,
 - b) A threat of taking children away or throwing a family member out of an apartment,
 - c) Exhaustion with labour, starvation, deprivation of sleep or rest necessary to a family member,
 - d) Upbringing of children by treating them in a degrading manner,
 - e) Deprivation of funds necessary for the life of a family member,
 - f) Denial of the right to economic independence by prohibiting work or by keeping a family member in a subordinate position, or by threatening them or not providing them with resources or by other forms of economic domination,
 - g) Verbal attack, profanity, calling names, or insulting a family member in another way,
 - h) Limiting the freedom of communication of a family member with his/her family members or with third persons,
 - i) Damage, destruction or sale of joint property or property in the possession of, as well as damage or destruction of property owned by another family member, i.e. attempts thereof,
 - j) Stalking a family member,
 - k) Causing fear, humiliation, and feeling of inferiority,
 - l) As well as other actions which do not contain the elements of criminal offence of violence in the family or in the family unit.
- (2) It shall be considered that the misdemeanour is committed if the offensive act is performed once or multiple times and the action is defined by a continuous verb form.

Article 6
(Assistance to a Victim of Domestic Violence)

- (1) A victim of domestic violence shall be entitled to psychosocial support, to social protection and medical care, in accordance with the laws relating to healthcare and social protection.
- (2) In accordance with this law, special assistance and protection shall be provided to a victim who is:
 - a) A child,
 - b) A person of the age of 65 and older,
 - c) A disabled person,
 - d) A person under guardianship.

Article 7
(Protection Authorities)

- (1) Protection authorities shall be obliged to provide protection, assistance and support to victims of domestic violence.
- (2) Protection authorities shall be the following:
 - a) Police of the Brčko District of Bosnia and Herzegovina (hereinafter: Police),
 - b) Office of the Prosecutor of the Brčko District of Bosnia and Herzegovina,
 - c) Legal Aid Office of the Brčko District of Bosnia and Herzegovina,
 - d) Department of Health and Other Services, Section for Social Protection (hereinafter: Section for Social Protection),
 - e) Healthcare institutions, and
 - f) Other specialised organisations (such as women's NGOs, gender equality organisations, etc.).
- (3) Protection authorities shall comply with the provisions of this law and provide protection, support and assistance to the victims of domestic violence and prevent the repetition of crimes, regardless of whether there is a criminal procedure or misdemeanour procedure initiated against the abuser.

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Article 8
(Legal Assistance to Victims of Domestic Violence)

Victims of domestic violence are entitled to free legal aid in the proceedings concerning the exercise of their rights and protection, in accordance with regulations governing the field of free legal aid.

CHAPTER II. DOMESTIC VIOLENCE VICTIMS PROTECTION PROCEDURE

Section A. Reporting Domestic Violence

Article 9
(Urgency of Procedure)

- (1) Protection authorities shall promptly provide immediate resolution of domestic violence cases, taking into account that interests and welfare of victims have priority in these proceedings, especially if a victim is a person referred to in Article 6, Paragraph 2 of this law.
- (2) In cases of domestic violence, protection authorities shall cooperate with each other and share necessary data and information.

Article 10
(Reporting Domestic Violence)

- (1) The members of the family, protection authorities, employees in educational, social protection and healthcare institutions, as well as any other citizens, who learn of occurrences of domestic violence or have reasons to suspect that domestic violence was committed, shall have a responsibility to immediately report these incidents to the Police.
- (2) Upon receipt of a report on the occurrences of domestic violence, the Police shall immediately inform the Section for Social Protection, which shall immediately provide social protection measures to the victim, take other measures within its jurisdiction, and write an official report.
- (3) A medical institution shall provide the victim with a free medical examination to determine the existence of violations of physical or psychological integrity.
- (4) The Police shall immediately inform the relevant prosecutor about the committed domestic violence and shall submit the collected evidence and information alongside the report.
- (5) If the relevant prosecutor finds that there are no elements of a criminal case in the act of domestic violence, the case shall be returned to the reporting authority from Paragraph 4 of this Article for further proceedings, in accordance with the law which defines the rules of criminal procedure.
- (6) A request to initiate misdemeanour proceedings for acts of domestic violence regulated by this law may be submitted by:
 - a) the Police,
 - b) Other authorised bodies in accordance with the law which defines misdemeanours.

Section B. Urgent Protective Measures

Article 11
(Urgent Measures)

- (1) In order to avoid imminent danger to physical and mental integrity, to prevent recurrence of violence, and to guarantee the safety of the victim, emergency protective measures may be imposed on the abuser before the start of or during the proceedings.
- (2) The Basic Court of the Brčko District of Bosnia and Herzegovina (hereinafter: Basic Court) shall impose emergency protective measures.
- (3) The Police or an authorised body shall submit a proposal for the imposition of emergency protective measures, and these shall be imposed no later than 24 hours following the receipt of the proposal, i.e. no later than 24 hours after the abuser is brought before the Basic Court.
- (4) Emergency protective measures shall be:
 - (a) Removal of the abuser from the apartment, house or other residential dwellings, or
 - (b) Issuance of a restraining order and prohibition of contact between the abuser and the victim of domestic violence.

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Article 12
(Imposition of Urgent Measures)

- (1) Emergency protective measures shall be imposed within a period that shall not be longer than 30 days.
- (2) A judge of the Basic Court shall impose emergency protective measures prescribed in Paragraph 1 of this Article, through a decision against which an appeal may be lodged no later than three days following the imposition.
- (3) An appeal against the Court decision on an imposed emergency protective measure shall not delay its implementation.
- (4) The Appellate Court of the Brčko District of Bosnia and Herzegovina shall make a decision about the appeal within 72 hours following the receipt of the appeal.
- (5) When leaving the apartment, house or other residential dwelling, the abuser shall have the right to take his/her belongings necessary for everyday life.
- (6) The abuser shall be obliged to hand over the keys to the apartment, house or other residential dwellings.
- (7) The Basic Court that imposed the urgent measure prescribed in Article 11, Paragraph 4 of this law shall submit the imposition decision to the relevant organisational unit of the Police for the purpose of implementation and shall examine its implementation and justification within the period of time for which it is imposed.
- (8) The manner of implementation of emergency protective measures shall be defined in the Rulebook prescribed in Article 22, Paragraph 3 of this law.

Section C. Sheltering Victims of Domestic Violence

Article 13
(Housing Victims of Domestic Violence in a Safe House)

- (1) The Section for Social Protection, assisted by the Police, may temporarily shelter a victim of domestic violence in a safe house, with the prior agreement of the victim of domestic violence, for the purpose of ensuring physical protection and exercise of the rights and interests of the victim of domestic violence.
- (2) The decision to accommodate the person referred to in Paragraph 1 of this Article shall be made by the Head of Department of Health and Other Services.
- (3) Due to the violence, fear and anxiety suffered, and in order to ensure physical protection and exercise of his/her rights, as well as to prevent recurrence of violence, a victim of domestic violence shall have the right to submit a request to the Section for Social Protection to use a special support measure – a temporary shelter in a safe house.
- (4) The safe house shall represent a special support measure, which may be implemented by a legal entity, and which shall provide safe accommodation and assistance to victims of domestic violence.
- (5) For the purpose of protection and safety of the victim, the Police shall have the duty to escort the victim into the house, apartment or other dwellings for the victim to take his/her personal belongings and belongings of other persons who left the living space with him/her, and which are necessary for their daily lives.
- (6) The measure referred to in Paragraph 1 of this Article may be ordered for a period of time which is necessary to achieve the objective of the measure, but it may not last longer than six months.
- (7) In justified cases, the duration of the measure referred to in Paragraph 1 of this Article may be extended for another six months, i.e. until the termination of proceedings and the implementation of the decision by which protective measures are imposed against the abuser.

Article 14
(Accommodation Expenses)

The funds for the temporary shelter and accommodation of victims of domestic violence in safe houses shall be provided from the budget of the District.

Article 15
(Formation of an Expert Team)

- (1) The Government of the Brčko District of Bosnia and Herzegovina shall form an expert team consisting of representatives of the Section for Social Protection, the Police, and health workers dealing with the issues of family and protection against domestic violence, in order to establish an individual domestic violence victim protection plan.
- (2) The plan referred to in Paragraph 1 of this Article shall contain specific measures to be taken in accordance with the law regulating social protection, healthcare and child care.
- (3) If the victim of domestic violence is a child, the plan referred to in Paragraph 1 of this Article shall also contain measures to protect the child in accordance with the law defining family relations and with regulations governing the protection

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of children's rights.

Article 16
(Publication of Information)

The information about the victim of domestic violence or about the abuser, on the basis of which one may identify the victim of domestic violence or a family member of the victim of domestic violence, must not be released unless the adult victim of domestic violence has expressly agreed to that.

CHAPTER III. DOMESTIC VIOLENCE SANCTIONS

Article 17
(Domestic Violence Sanctions)

- (1) The following sanctions may be imposed for a committed misdemeanour:
 - a) Fine;
 - b) Suspended sentence;
 - c) Reprimand;
 - d) Protective measures.
- (2) The protective measures shall be the following:
 - a) Removal of the abuser from the apartment, house or other residential dwellings,
 - b) Restraining order prohibiting contact with the victim of domestic violence,
 - c) Prohibition of harassment, stalking or following of the victims of domestic violence which occurred in a family or a family unit
 - d) Mandatory psychosocial treatment of the abuser, and
 - e) Mandatory addiction-related medical treatment of the abuser.
- (3) The court shall impose misdemeanour sanctions in misdemeanour proceedings which are initiated and implemented in accordance with the provisions of the law that prescribes misdemeanours.
- (4) The purpose of protective measures shall be to ensure necessary protection of health and safety of persons exposed to domestic violence, prevention of domestic violence, and conduct of efficient measures of re-education and medical treatment of violent persons.
- (5) The purpose of misdemeanour sanctions referred to in Paragraph 1 of this Article shall be to influence the abuser so that he/she does not commit the offence of domestic violence, to ensure the necessary protection of the health and safety of victims, and to eliminate the circumstances that favour and encourage acts of domestic violence.

Article 18
(Protective Measures)

Protective measures referred to in Article 17, Paragraph 3 of this law may be imposed independently.

Article 19
(Procedure in Case of an Underage Abuser)

The misdemeanour proceedings against a juvenile perpetrator of domestic violence and imposition of corrective measures shall be implemented in accordance with the provisions of the law that prescribes misdemeanours and with the Law on Protection and Handling of Children and Juveniles in Criminal Proceedings of the Brčko District of BiH.

Article 20
(Removal from Apartment, House or Other Dwellings)

- (1) The protective measure of removal from an apartment, house or other dwellings shall be imposed on the abuser if he/she committed violence against a family member with whom he/she lives in an apartment, house or other dwelling, and if the court finds that there is a possibility that without the implementation of this protective measure the abuser may again commit violence.
- (2) The person against whom the measure referred to in Paragraph 1 of this Article was imposed shall leave the apartment, house or other dwelling in the presence of the Police without any delay.
- (3) The measure referred to in Paragraph 1 of this Article shall be prescribed for a period of time that may not be shorter than 30 days or longer than six months.

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Article 21
(Restraining Order)

- (1) The protective measure of a restraining order shall be imposed on the abuser if there is a risk that he/she may repeat the violence, or if the presence of the abuser near the victim may lead to a high degree of emotional suffering on the part of the victim of domestic violence, which would prevent his/her normal mental activity.
- (2) In its decision imposing this protective measure, the Basic Court shall define places and areas and the smallest distance at which the abuser may approach the victim of domestic violence.
- (3) The measure referred to in Paragraph 1 of this Article shall be prescribed for a period of time that may not be shorter than 30 days or longer than one year.

Article 22
(Prohibition of Harassment, Stalking or Following of Victims of Domestic Violence)

- (1) The protective measure of prohibition of harassment, stalking or following of the victims of domestic violence shall be imposed on the abuser if the violence is committed by harassment, stalking or following, and there is a risk that he/she might repeat the harassment, stalking or following of the victims of domestic violence.
- (2) The measure referred to in Paragraph 1 of this Article shall be prescribed for a period of time that may not be shorter than 30 days or longer than one year.
- (3) The Chief of Police shall adopt the Rulebook on the Implementation of Emergency and Protective Measures that are within the scope of authority of the Police and that are regulated in Articles 13, 20, 21, and 22 of this law.

Article 23
(Mandatory Psychosocial Treatment)

- (1) The protective measure of mandatory psychosocial treatment shall be imposed on the abuser in order to remove abusive behaviour and re-educate, i.e. to reduce and remove danger of repeating violence.
- (2) The measure referred to in Paragraph 1 of this Article shall last until a reason no longer exists for which it was initially imposed, but it shall not last longer than one year.
- (3) The Head of Department of Health and Other Services shall adopt the Rulebook on the Manner of Implementation of the Protective Measure of Mandatory Psychosocial Treatment.

Article 24
(Mandatory Addiction-Related Medical Treatment of Abusers)

- (1) The protective measure of mandatory addiction-related medical treatment of abusers shall be imposed on the abuser who has committed an act of domestic violence under the influence of alcohol, narcotics or other psychotropic substances, if there is a risk that the abuser might repeat the act of violence due to the addiction.
- (2) The measure referred to in Paragraph 1 of this Article shall be imposed for a period which is necessary for treatment, based on the opinion of specialized experts for treatment, but it may not last longer than one year.
- (3) The Head of Department of Health and Other Services shall adopt the Rulebook on the Manner of Implementation of the Protective Measure of Mandatory Addiction-Related Medical Treatment.

Article 25
(Imposition of Protective Measures)

- (1) The Basic Court may impose on the abuser one or more protective measures when the conditions for their imposition, prescribed by this law, are fulfilled.
- (2) The Basic Court may request the Section for Social Protection:
 - a) To provide assistance in obtaining the necessary evidence, and
 - b) To deliver its opinion on the purposefulness of the requested protective measure.
- (3) At the time of the imposition of protective measures prescribed by this law, the purpose, gravity, duration of the imposed measure, as well as its efficiency, shall be taken into account.
- (4) Authorities in charge of implementation of protective measures shall have the duty to monitor their implementation, to report to the Basic Court, and to propose any suspension, extension or replacement with another measure.
- (5) Authorities in charge of implementation of protective measures shall have the duty to deliver a report to the Basic Court on the implementation of protective measures no later than six months following the imposition of the

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protective measure, as well as earlier if necessary.

Article 26
(Appeal against Protective Measures Imposition Decision)

- (1) An appeal against a decision imposing the protective measure may be lodged with the Appellate Court no later than three days following the day of receipt of the decision.
- (2) The Appellate Court shall decide on the appeal no later than three days following the day of receipt of the appeal.
- (3) The appeal shall not delay the execution of the decision on the imposition of the protective measure.

Article 27
(Reporting Obligation)

- (1) The abuser shall have a duty to act in accordance with the imposed protective measure.
- (2) Protection authority which learns, within the scope of its work, that the abuser does not comply with the imposed protective measure, shall inform the Basic Court and the Section for Social Protection.

Article 28
(Delivery of Protective Measures Pronouncement Decision)

- (1) The Basic Court shall submit the decision on the imposed protective measure to the authority or institution in charge of the implementation of the decision no later than three days from the day of the adoption of the decision.
- (2) The decision on the imposed protective measures referred to in Articles 20, 21 and 22 of this law shall be submitted to the Police for implementation.
- (3) The decision on the imposed protective measure referred to in Articles 23 and 24 of this law shall be submitted to the Section for Social Protection and to the body or institution that implements the protective measure in accordance with the law regulating the treatment and rehabilitation of persons addicted to alcohol, narcotics and psychotropic substances.

CHAPTER IV. RECORDS AND TRAININGS

Article 29
(Records)

- (1) Protection authorities and other bodies authorised to act under this law shall keep records of actions taken and data on the number of initiated and completed procedures and other measures, and submit reports about them to the Department of Health and Other Services.
- (2) The Department of Health and Other Services shall gather, process, and record the information on domestic violence.
- (3) The Head of Department of Health and Other Services shall adopt the Rulebook on the Content of Records and of Reports on Domestic Violence referred to in Paragraph 1 of this Article.

Article 30
(Professional Trainings)

The Judicial Commission of the Brčko District of BiH shall be in charge of provision of special skills and continuous professional training and development of judges and prosecutors in the area of domestic violence.

CHAPTER V. SUPERVISION AND PENAL PROVISIONS

Article 31
(Supervision)

Supervision of the implementation of this law shall be conducted by the Department of Health and Other Services.

Article 32
(Fines)

- (1) An abuser who commits an act of violence referred to in Article 5 of this law shall be fined for misdemeanour with an

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- amount of between BAM 300.00 and BAM 900.00.
- (2) An abuser who repeats an act of violence referred to in Article 5 of this law shall be fined for misdemeanour with an amount of between BAM 1,000.00 and BAM 1,500.00.
 - (3) An employee of an educational, social protection or healthcare institution who fails to report an act of domestic violence referred to in Article 5 of this law shall be fined for misdemeanour with an amount of between BAM 500.00 and BAM 1,000.00,
 - (4) A member of the family who fails to report an act of domestic violence referred to in Article 5 of this law shall be fined for misdemeanour with an amount of between BAM 300.00 and BAM 900.00, if a child is a victim.

PART THREE – TRANSITIONAL AND FINAL PROVISIONS

Article 33
(Deadline to Adopt Rulebooks)

- (1) The Head of Department of Health and Other Services shall adopt, no later than six months following the entry into force of this law, the following documents:
 - a) Rulebook on the Manner of Implementation of the Protective Measure of Mandatory Psychosocial Treatment (Article 23, Paragraph 3 of this law),
 - b) Rulebook on the Manner of Implementation of the Protective Measure of Mandatory Addiction-Related Medical Treatment (Article 24, Paragraph 3 of this law),
 - c) Rulebook on the Content of Records and of Reports on Domestic Violence (Article 29, Paragraph 3 of this law).
- (2) The Chief of Police shall adopt, no later than six months following the entry into force of this law, the Rulebook on the Implementation of Emergency and Protective Measures (Article 22, Paragraph 3 of this law).

Article 34
(Entry into Force)

This law shall enter into force eight days following its publication in the “Official Gazette of the Brčko District of BiH”.
[...]

22. BOTSWANA

[Domestic Violence Act, 2008](#) ⁵⁸

PART I - Preliminary (ss 1-6)

1.Short title

This Act may be cited as the Domestic Violence Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"applicant" means any person who alleges to have been subjected to an act of domestic violence;

"child" includes biological, adopted, step or any child in the care or custody of the applicant or respondent;

"court" means a magistrates court of any rank, and includes a customary court which has been authorised, by statutory instrument, to hear a matter under this Act;

"domestic relationship" means a relationship between an applicant and the respondent in any of the following ways-

- (a) they are or were married to each other;
- (b) they are or were cohabiting;
- (c) they are a child of the applicant or respondent;
- (d) they are family members;
- (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or could be married to each other;
- (f) they share or shared the same residence; or
- (g) they are or were in an engagement, dating including an actual or perceived romantic,

⁵⁸ Domestic Violence Act, Act No. 10 (30 April 2008), available at <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/dv%20act%202008.pdf> (last visited, October 26, 2018).

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intimate or sexual relationship;

"domestic violence" means any controlling or abusive behavior that harms the health or safety of the applicant and includes-

- (a) physical abuse or threat thereof;
- (b) sexual abuse or threat thereof;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) damage to property;
- (h) where the applicant and the respondent do not stay in the same home, entry into the applicant's home without his or her consent;
- (i) unlawful detainment; or
- (j) stalking;

"economic abuse" means-

- (a) the deprivation or threat thereof of economic resources to which the applicant is entitled under the law, or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments or rental payments of the residence; or
- (b) the disposal, alienation or threat thereof of household effects or other property in which the applicant has an interest;

"emotional, verbal or psychological abuse" means the systematic and deliberate breaking down or destroying of an applicant or child's mental well-being by using verbal or physical forms of communication such as but not limited to-

- (a) insults, ridicule or name calling;
- (b) threats to cause emotional pain; or
- (c) the exhibition of obsessive possessiveness or jealousy which is such as to constitute a serious invasion of the applicant's privacy, liberty, integrity or security;

"harassment" means engaging in a pattern of conduct that constitutes fear of harm including-

- (a) loitering outside of or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) making telephone calls or inducing another person to make telephone calls to the applicant, whether or not a conversation ensues; or
- (c) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant's home or work;

"intimidation" means uttering, conveying or causing any person to receive a threat, which induces fear;

"Minister" means the Minister on whose portfolio the Act falls under;

"order" means an interim order, restraining order, occupation order or tenancy order;

"residence" means the premises where the applicant and the respondent have been living together in a domestic relationship;

"respondent" means any person who is or has been in a domestic relationship with the applicant and against whom the applicant seeks to obtain or has obtained an order under this Act;

"sexual abuse" means but is not limited to any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

"stalking" means conduct which is intended to create apprehension of imminent or future bodily harm or death to the applicant or a member of the family of the applicant, or an intimate partner of the applicant; and

"unlawful detainment" means confining a person without the person's consent.

3. Jurisdiction of courts

(1) A court shall have jurisdiction to grant an order under this Act within the area in which-

- (a) the applicant resides, carries on business or is employed;
- (b) the respondent resides, carries on business or is employed; or
- (c) the cause of action arose.

(2) The court shall not require a minimum period in relation to an action lodged under subsection (1) (a) or (b).

4. Lodging and hearing of application

(1) An application for an order under this Act-

- (a) may be brought outside ordinary court hours or on a day which is not an ordinary court day; and
- (b) shall be heard within seven days from the date it was lodged.

(2) Without prejudice to the generality of subsection (1) (b), an application for an interim order under this Act shall be heard on the same day it is made.

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5. Service of documents

Service of any documents of the court under this Act, shall be-

- (a) effected by the clerk of the court, member of the Botswana Police Service, member of the Local Police or a Deputy Sheriff who shall deliver a certified copy of the documents to the respondent; and
- (b) at the expense of the State.

6. Nature of proceedings

(1) Proceedings under this Act shall be heard-

- (a) as a civil case between the parties and each party shall be free to call witnesses; and
- (b) in camera.

(2) Without prejudice to the generality of subsection (1) (b), a party to the proceedings may request the presence of any specified person during the proceedings.

PART II - Orders (ss 7-13)

7. Application for an order

An applicant may make an application to the court in such form as may be prescribed, for-

- (a) an interim order;
- (b) a restraining order;
- (c) a tenancy order; or
- (d) an occupancy order.

(2) An application in terms of subsection (1) shall be accompanied by an affidavit of the applicant in which shall be stated-

- (a) the nature of the relationship between the applicant and the respondent;
- (b) the facts on which the application is based;
- (c) the existence of an immediate threat of danger to the applicant or property;
- (d) the nature of the order applied for; and
- (e) the name of the police station at which the applicant is likely to report any breach of an order made under this Act.

(3) Where the clerk of the court is satisfied that the application meets the requirements of subsection (1), he or she shall forward the application to a presiding officer.

(4) An application made under subsection (1) may be supported by an affidavit sworn by a person who has knowledge of the matter or any material aspect thereof.

(5) An application under this section shall be brought by the applicant, except in circumstances where the applicant is-

- (a) a minor;
- (b) mentally challenged;
- (c) unconscious; or
- (d) under the influence of an intoxicating substance.

(6) Notwithstanding the provisions of subsection (1) and (5), the application may be brought on behalf of the applicant by a counsellor, health service provider, member of the Botswana Police Service, Local Police, social worker, teacher, District Commissioner or any other person, with leave of the court.

(7) An application under this section shall be served personally on the respondent at least three days prior to the hearing.

8. Consideration of application

In considering an application for an order under this Part, the court may require oral evidence which shall be recorded.

9. Interim order

(1) The court shall issue an interim order ex parte where it is satisfied that- (a) domestic violence has occurred; (b) there is a serious risk of harm being caused to the applicant or child; or (c) the order will ensure immediate protection of the applicant.

(2) An interim order may-

(a) direct a member of the Botswana Police Service, Local Police or Deputy Sheriff to-

- (i) remove, immediately or within a specified time, the applicant, a child or the respondent from the residence; or
- (ii) accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings of the applicant, child or the respondent;

(b) prohibit the respondent from-

- (i) committing an act of domestic violence;
- (ii) entering specific parts of the residence;
- (iii) entering the applicant's residence, work place or any other place of safety or refuge; or
- (iv) communicating with or contacting the applicant or other specified persons; or

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(c) make any other provision that the court considers necessary to provide for the immediate protection of the applicant or child.

(3) Without prejudice to the generality of subsection (2), the court may authorise the issue of a warrant of arrest of the respondent where it is satisfied that the applicant or child is under imminent danger from the respondent.

(4) An interim order shall be served personally upon the respondent and shall provide for a return date upon which the respondent may be heard.

10. Occupation order

An occupation order shall grant the applicant or child the exclusive or non-exclusive right to live in the residence occupied or belonging to the applicant, the respondent or to the applicant and the respondent, for a specified or indefinite period.

11. Tenancy order

A tenancy order shall grant the applicant or child the exclusive or non-exclusive tenancy of the residence occupied by the applicant, the respondent or by both the applicant and the respondent, with such order as to payment of rental or mortgage as shall be just.

12. Validity of order

An order issued under this Act shall remain in force unless it expires or is revoked under section 13.

13. Variation and revocation of order

(1) An applicant or respondent may make an application in such form as may be prescribed, to vary or set aside an order made under this Act.

(2) An application made in accordance with subsection (1) shall be served on the respondent.

(3) The court shall, where it is satisfied by oral evidence that the application-

- (a) is made freely and voluntarily; and
- (b) in the best interest of the parties and children, vary or revoke an order made under this Act.

PART IV - General (ss 14-21)

14. Third party interest in property subject to order

Where a person has an interest in the property which is subject to an order under this Act, the person shall be given notice of the application and shall be entitled to appear and be heard in the matter as if he or she were a party to the application.

15. Effect of order on interest in property

(1) An order made under this Act shall not affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a lease agreement to a residence is in the name of the respondent, and the applicant, who is not party to the agreement is granted an occupation or tenancy order, the

16. Use of furniture, household effects, etc.

(1) The court may when granting an order under this Act, grant to the applicant for such period and on such terms and conditions as the court deems fit, the use of any-

- (a) furniture, household appliances or household effects;
- (b) vehicle;
- (c) joint cheque book;
- (d) bank cards;
- (e) medical insurance cards;
- (f) identification documents; or
- (g) other personal effects in the residence to which the order relates.

(2) An order under this section may be varied or revoked in accordance with section 13.

17. Rights not diminished by Act

An order under this Act shall not diminish any other action against the respondent.

18. Appeals

The provision in respect of appeals contained in the High Court Act and the Customary Courts Act shall apply to proceedings in terms of this Act.

19. Offence and penalty

A person who contravenes an order issued under this Act shall be guilty of an offence and is liable to a fine not exceeding P5,000 or to imprisonment for a term not exceeding two years or to both.

20. Register of applications, etc.

The registrar of the court shall maintain, in such form as may be prescribed, a register of all applications filed under this Act and all orders made thereunder.

21. Regulations

The Minister may make regulations for any matter which is required to be prescribed or for the better carrying out of the provisions of this Act.

23. BRAZIL

[Maria da Penha Law, 2006](#) ⁵⁹

[...]

TITLE I - PRELIMINARY PROVISIONS

Article 1. This Law creates mechanisms to restrain and prevent domestic and family violence against women, in compliance with paragraph 8 of article 226 of the Federal Constitution, the Convention on Elimination of All Forms of Discrimination against Women, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women and other international treaties ratified by the Federative Republic of Brazil; it provides for the creation of the Courts of Domestic and Family Violence against Women; and establishes measures for assistance and protection of women in a situation of domestic and family violence.

Article 2. 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 3. Women are ensured the conditions for the effective exercise of the rights to life, security, health, food, education, culture, housing, access justice, sport, leisure, work, citizenship, freedom, dignity, respect and family and community living.

Paragraph 1. The public power shall develop policies aimed at guaranteeing the human rights of women in the scope of the domestic and family relations, with a view to protecting them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

Paragraph 2. It belongs to the family, society and the public power to create the necessary conditions for the effective exercise of the rights listed in the heading.

Article 4. In the interpretation of this Law, its social purpose and, especially, the peculiar conditions of the woman in a situation of domestic and family violence shall be taken into account.

TITLE II - DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN CHAPTER I - GENERAL PROVISIONS

Article 5. For the effect of this Law, domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage:

- I - in the scope of the domestic unit, understood as the permanent space shared by people, with or without family ties, including people sporadically aggregated;
- II - in the scope of the family, understood as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will;
- III - in any intimate relationship of affection, in which the aggressor lives or has lived with the abused woman,

⁵⁹ Law Maria da Penha, Law No. 11.340 (7 August 2006, as amended by laws 13.505 of 2017 and 13.641 of 2018), available in Portuguese at http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm; in English (unofficial translation by Compromisso e Atitude) at <http://www.compromissoeatitude.org.br/wp-content/uploads/2012/08/SPMlawmariapenha2006.pdf> (last visited, December 30, 2018).

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regardless of cohabitation.
The personal relations listed in this article are independent of sexual orientation.

Article 6. Domestic and family violence against women constitutes one of the forms of human rights violation.

CHAPTER II - FORMS OF DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN

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.

TITLE III - ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY VIOLENCE
CHAPTER I - INTEGRATED PREVENTION MEASURES

Article 8. 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;
- II - promotion of studies and research, statistics and other relevant information, with a gender and race or ethnicity perspective, on the causes, consequences and frequency of domestic and family violence against women, for the systematization of data, to be unified nationally, and the regular evaluation of the results of the adopted measures;
- III - respect, in the social communication media, for the ethical and social values of the person and the family, avoiding stereotyped roles that legitimize or encourage domestic and family violence, in compliance with item III of article 1, item IV of article 3 and item IV of article 221 of the Federal Constitution;
- 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 II - ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY VIOLENCE

Article 9. Assistance to the woman in a situation of domestic and family violence will be provided in an integrated manner and in compliance with the principles and guidelines provided for in the Organic Law of Social Assistance, in the Unified Health System, the Unified Public Security System, among others protection norms and public policies, and on an emergency basis

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when necessary.

Paragraph 1. The judge shall determine, for a defined period of time, the inclusion of the woman in a situation of domestic and family violence in the registry of assistance programs of the federal, state and municipal government.

Paragraph 2. The judge shall ensure to the woman in a situation of domestic and family violence, to preserve her physical and psychological integrity:

- I - priority access to transfer, when the woman is a civil servant in the direct or indirect administration;
- II - maintenance of the working links, when it is necessary to remove her from her place of work, for up to six months.

Paragraph 3. 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 III - ASSISTANCE BY THE POLICE AUTHORITY

Article 10. In case of imminent or actual domestic and family violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

Sole paragraph. The provision in the heading of this article applies to failure to comply with urgent protective measure that has been determined.

Art. 10-A. It is the right of the woman in a situation of domestic and family violence to be assisted by specialized, uninterrupted police and expert services, provided by personnel - preferably of female sex- previously trained. [Introduced by Law 13.505 of 2017](#)

The examination of a woman in a situations of domestic and family violence, or of a witness to domestic violence, when dealing with a crime against women, shall follow these guidelines:

- I - safeguard the physical, psychological and emotional integrity of the women who testifies, having specific regard to her peculiar circumstances as a person in a situation of domestic and family violence;
- II - guarantee that, in no case, women in situations of domestic and family violence, relatives and witnesses will have direct contact with persons who are investigated or suspects and persons related to them;
- III – non revictimization of the woman who testifies, avoiding repeated inquiries about the same fact in the criminal, civil and administrative proceedings, as well as questions about her private life.

Paragraph 2. In the examination of a woman in situations of domestic and family violence or a witnesses to the offenses referred to in this law, the following procedure shall be adopted, preferentially:

- I - the interrogation will be carried out in a location specially designed for this purpose, which shall contain the proper equipment and be appropriate to the age of the woman in situation of domestic and family violence or of the witness, and to the type and severity of the violence suffered;
- II - when applicable, the interview shall be moderated by a professional specialized in domestic and family violence designated by the judicial or police authority;

III - the testimony will be recorded by using electronic or magnetic media, and the transcript must become part of the investigation.”

Article 11. In assisting the woman in a situation of domestic and family violence, the police authority shall, among others measures:

- I - guarantee police protection, when necessary, communicating the occurrence immediately to the Prosecutor’s Office and the Judiciary Branch;
- II - direct the victim to the hospital or health center and to the Legal Medical Institute;
- III - provide transport to the victim and her dependents to a shelter or safe place, in case of risk of life;
- IV – if necessary, to accompany the victim to assure removal of her belongings from the site of the occurrence or from the family home;
- V - inform the victim of the rights conferred to her in this Law and the available services.

Article 12. In all cases of domestic and family violence against women, after registering the occurrence, the police authority shall immediately adopt the following procedures, without loss to those provided for under the Penal Procedure Code:

- I - hear the victim, register the police report and take the representation to term, if presented;
- II – collect all the evidence that can serve to clarify the fact and its circumstances; III - send, within 48 (forty-eight) hours, separate communication to the judge with the victim’s request, for the concession of urgent protective measures;
- IV - determine the victim’s examination of body of the offense and request other necessary expert examinations;

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V - hear the aggressor and the witnesses;

VI – 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;

VII - send, within the legal period of time, the judicial proceedings of the police inquiry to the judge and the Prosecutor’s Office.

Paragraph 1. The victim’s request shall be taken to term by the police authority and shall contain:

I - qualification of the victim and the aggressor;

II - name and age of the dependents;

III – brief description of the fact and the protective measures requested by the victim.

Paragraph 2. The police authority shall attach to the document referred to in paragraph 1 the police report and copy of all the available documents of the victim.

Paragraph 3. The medical findings or records provided by hospitals and health centers shall be accepted as evidence.

Art. 12-A. The States and the Federal District, in the formulation of their policies and plans for the care of women in situations of domestic and family violence, will give priority, within the scope of the Civil Police, to the creation of Specialized Police Offices for Women (Deams), Investigative Femicide Units and specialized teams to assist with, and investigate serious violence against women.

[...]

§ 3 The police authorities may request the public services necessary for the protection of women in situations of domestic and family violence and their dependents. [\(Introduced by Law nº 13.505 of 2017\)](#)

TITLE IV PROCEDURES

CHAPTER I - GENERAL PROVISIONS

Article 13. The norms of the Codes of Penal Procedure and Civil Procedure and of specific legislation on children, adolescents and elderly people that are not in conflict with the provisions of this Law shall apply to the process, the judgment and the execution of the civil and criminal causes derived from the practice of domestic and family violence against women.

Article 14. The Courts of Domestic and Family Violence against Women, Ordinary Justice bodies with civil and criminal competence, may be created by the Federal Union, in the Federal District and the Territories, and by the States, for the process, judgment and execution of causes derived from the practice of domestic and family violence against women.

Sole paragraph. The procedural acts may be carried out at night, as provided for in the norms of judiciary organization.

Article 15. By the victim’s choice, for the civil processes ruled by this Law, the following courts are competent:

I – of her domicile or residence;

II - of the place where the fact that generated the claim occurred;

III - of the domicile of the aggressor.

Article 16. In the public penal lawsuits conditional to the representation of the victim provided for in this Law, the renunciation of the representation shall only be admitted before the judge, in a hearing especially assigned for such purpose, before receiving the denunciation and after hearing the Prosecutor’s Office.

Article 17. In the cases of domestic and family violence against women, it is forbidden to sentence payment of basic food basket or other pecuniary penalty, as well as substitution of sentence that implies in isolated payment of a fine.

CHAPTER II - URGENT PROTECTIVE MEASURES

SECTION I - GENERAL PROVISIONS

Article 18. Having received the communication with the victim’s request, the judge, within the period of 48 (forty-eight) hours, shall:

I - know the communication and the request and decide upon the urgent protective measures;

II - determine that the victim be directed to the judiciary assistance body, when appropriate;

III - communicate to the Prosecutor’s Office so that it adopts the appropriate measures.

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Article 19. The urgent protective measures may be granted by the judge, upon request by the Prosecutor's Office or by the victim.

Paragraph 1. The urgent protective measures may be granted immediately, regardless of hearing with the parties and of manifestation of the Prosecutor's Office, the latter being communicated as soon as possible.

Paragraph 2. The urgent protective measures shall be applied isolated or cumulatively, and may be replaced any time by others of greater effectiveness, whenever the rights acknowledged in this Law are threatened or violated.

Paragraph 3. The judge may, upon request by the Prosecutor's Office or by the victim, grant new urgent protective measures or review those already granted, if deemed necessary for the protection of the victim, her family and her property, after hearing the Prosecutor's Office.

Article 20. In any phase of the police inquiry or the criminal instruction, the preventive custody of the aggressor may be decreed by the judge, ex-officio, upon request by the Prosecutor's Office or by means of representation of the police authority.

Sole paragraph. The judge may revoke the preventive custody if, in the course of the process, he or she verifies lack of reason to maintain it, as well as decree it again, if reasons that justify it arise.

Article 21. The victim shall be informed of the procedural acts related to the aggressor, especially those related to entry and exit from prison, without loss to the summon of the constituted lawyer or public defender.

Sole paragraph. The victim may not deliver the summons or notification to the aggressor.

SECTION II - URGENT PROTECTIVE MEASURES THAT COMPEL THE AGGRESSOR

Article 22. Having established the practice of domestic and family violence against a woman, in the terms of this Law, the judge may immediately apply on the aggressor, together or separately, the following urgent protective measures, among others:

I - suspension of ownership of weapon or restriction of weapon carrying license, with communication to the competent agency, in the terms of Law n. 10.826, of December 22, 2003;

II - removal from the home, domicile or place of relationship with the victim;

III – prohibit certain behaviors, among which:

a) approaching the victim, members of her family and the witnesses, establishing a minimum distance between them and the aggressor;

b) contact with the victim, members of her family and witnesses through any means of communication;

c) going to certain places in order to preserve the physical and psychological integrity of the victim;

IV - restriction or suspension of visits to dependent minors, after hearing the multidisciplinary assistance team or similar service;

V – provision of provisional or temporary alimony

Paragraph 1. The measures referred to in this article do not rule out the application of others provided for under the legislation in force, whenever the safety of the victim or circumstances require so, the measure having to be communicated to the Prosecutor's Office

Paragraph 2. In the event of application of item I, the aggressor being in the conditions mentioned in the heading and items of Article 6 of Law n. 10.826, of December 22, 2003, the judge shall communicate to the respective agency, corporation or institution the urgent protective measures granted and shall determine the restriction of the weapon-carrying license, the immediate superior of the aggressor being responsible for the fulfillment of the judicial order, otherwise incurring in the crimes of disobedience or prevarication, as the case may be.

Paragraph 3. In order to guarantee the effectiveness of the urgent protective measures, the judge may request, at any time, the aid of the police force

Paragraph 4. The provisions in the heading and in paragraphs 5 and 6 of Article 461 of Law in. 5.869, of January 11, 1973 (Code of Civil Procedure) apply to the hypotheses foreseen in this article.

SECTION III - URGENT PROTECTIVE MEASURES FOR THE VICTIM

Article 23. The judge may, when necessary, without loss to other measures:

I – direct the victim and her dependents to an official or community program of protection or assistance;

II - determine the return of the victim and her dependents to the respective domicile, after removal of the aggressor;

III - determine the removal of the victim from the home, without loss of rights related to property, custody of the children and alimony;

IV - determine separation from bed and board.

Article 24. For the patrimonial protection of the property of the conjugal society or of the private property of the woman, the

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judge may determine, through preliminary order, the following measures, among others:

I - restitution of property unduly subtracted from the victim by the aggressor;

II - temporary prohibition to enter acts and contracts of purchase, sale and rent of common property, except in case of express judicial authorization;

III - suspension of power of attorney conferred by the victim to the aggressor;

IV – provision of temporary bond, by means of judicial deposit, for material loss and damage resulting from the practice of domestic and family violence against the victim.

Sole paragraph. The judge shall officiate to the competent notary's office for the purposes foreseen in item II and III of this article.

SECTION IV
OF THE CRIME OF NON-COMPLIANCE WITH PROTECTIVE MEASURES OF URGENCY
NON-COMPLIANCE WITH EMERGENCY PROTECTIVE MEASURES
[\(Introduced by Law No. 13.641 of 2018\)](#)

Art. 24-A. Failure to comply with a judicial decision granting urgent protective measures provided for in this Law:

Penalty - detention, from 3 (three) months to 2 (two) years.

Paragraph 1. The configuration of the crime does not depend on the civil or criminal jurisdiction of the judge who granted the measures.

Paragraph 2. In the event of a flagrant arrest, only the judicial authority may grant bail.

Paragraph 3. The provisions of this article do not exclude the application of other applicable sanctions.

CHAPTER III - ACTION OF THE PROSECUTOR'S OFFICE

Article 25. The Prosecutor's Office shall intervene, when not a party, in the civil and criminal causes resulting from domestic and family violence against women.

Article 26. It shall belong to the Prosecutor's Office, without loss of other attributions, in the cases of domestic and family violence against women, when necessary:

I - to request police force and public services of health, education, social assistance and security, among others;

II - to inspect the public and private establishments that provide assistance to women in a situation of domestic and family violence, and to adopt, immediately, the appropriate administrative or judicial measures with regard to any irregularities detected;

III - to register in a registry the cases of domestic and family violence against women.

CHAPTER IV - JUDICIARY ASSISTANCE

Article 27. In all procedural acts, civil and criminal, the woman in a situation of domestic and family violence shall be accompanied by a lawyer, except as provided for in Article 19 of this Law.

Article 28. Every woman in a situation of domestic and family violence is assured access to the services of Public Defense or Free Judiciary Assistance, in the terms of the law, at police and judicial headquarters, through specific and humanized assistance.

TITLE V - MULTIDISCIPLINARY ASSISTANCE TEAM

Article 29. The Courts of Domestic and Family Violence against Women that are created may rely on a multidisciplinary assistance team made up of professionals specialized in the psychosocial, legal and health areas.

Article 30. It belongs to the multidisciplinary assistance team, among other attributions reserved to it by the local legislation, to provide inputs in writing to the judge, the Prosecutor's Office and the Public Defense, by means of expert written opinions or verbally in hearing, and to develop guidance, forwarding, prevention activities and other measures directed to the victim, the aggressor and the family members, with special attention to the children and the adolescents.

Article 31. When the complexity of the case requires more in-depth evaluation, the judge may determine the manifestation of

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a specialized professional, upon indication by the multidisciplinary assistance team.

Article 32. The Judiciary Branch, in the elaboration of its budget proposal, may provide for resources for the creation and maintenance of the multidisciplinary assistance team, in the terms of the Law of Budgetary Guidelines.

TITLE VI - TRANSIENT PROVISIONS

Article 33. While the Courts of Domestic and Family Violence against Women are not structured, the criminal courts shall accumulate the civil and criminal competences of knowing and judging the causes resulting from the practice of domestic and family violence against women, observing the provisions of Title IV of this Law, with inputs from the pertinent procedural legislation.

Sole paragraph. The right of preference shall be guaranteed, in the criminal courts, for the process and judgment of the causes related in the heading.

TITLE VII - FINAL PROVISIONS

Article 34. The Courts of Domestic and Family Violence against Women may be instituted together with the establishment of the necessary curatorship and judiciary assistance service.

Article 35. The Federal Union, the Federal District, the States and the Municipalities may create and promote, within the limits of their respective competences:

- I - centers of comprehensive and multidisciplinary assistance to women and their dependents in a situation of domestic and family violence;
- II - home-shelters for women and respective minor dependents in a situation of domestic and family violence;
- III - police offices, public defense offices, health services and medical-legal examination centers specialized in assistance to women in a situation of domestic and family violence;
- IV - programs and campaigns to fight domestic and family violence; V - education and rehabilitation centers for the aggressors.

Article 36. The Federal Union, the States, the Federal District and the Municipalities shall promote the adaptation of their agencies and programs to the guidelines and principles of this Law.

Article 37. The defense of the trans-individual interests and rights foreseen in this Law may be exercised, concurrently, by the Prosecutor's Office and by association active in the area, regularly constituted for at least one year, in the terms of the civil legislation.

Sole paragraph. The requirement of pre-constitution may be waived by the judge if it is found that there is no other entity with appropriate representation to file the collective demand.

Article 38. The statistics on domestic and family violence against women shall be included in the databases of the official agencies of the Justice and Security System in order to provide inputs to the national system of data and information on women.

Sole paragraph. The Public Security Secretariats of the States and the Federal District may send their criminal information to the database of the Ministry of Justice.

Article 39. The Federal Union, the States, the Federal District and the Municipalities, within the limits of their competences and in the terms of their respective laws of budgetary guidelines, may establish specific budgetary allocations, in each fiscal year, for the implementation of the measures established in this Law.

Article 40. The obligations provided for in this Law do not exclude others derived from the principles adopted by it.

Article 41. Law n. 9.099, of September 26, 1995, does not apply to crimes practiced with domestic and family violence against women, regardless of the penalty provided.

Article 42. Article 313 of Decree n. 3.689, of October 3, 1941 (Code of Penal Procedure), enters into force with the addition of the following item IV:

"Article 313

IV – if the crime involves domestic and family violence against women, in the terms of the specific law, to guarantee the execution of the urgent protective measures." (New Language)

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Article 43. Line f of item II of Article 61 of Decree n. 2.848, of December 7, 1940 (Criminal Code), enters into force with the following language:

"Article 61[...]

II – [...]

f) with abuse of authority or taking advantage of domestic relations, cohabitation or hospitality, or with violence against the woman in the form of the specific law; [...]" (New Language)

Article 44. Article 129 of Decree n. 2.848, of December 7, 1940 (Criminal Code), enters into force with the following alterations:

" Article 129 [...] Paragraph 9. If the injury is practiced against ascendant, descendant, sibling, spouse or partner, or someone with whom the agent has or had a relationship, or if the agent has taken advantage of domestic relations, cohabitation or hospitality: Sentence - detention, 3 (three) months to 3 (three) years [...]

Paragraph 11. In the event of paragraph 9 of this article, the sentence shall be increased by one third if the crime is committed against a person with special needs." (New Language)

Article 45. Article 152 of Law n. 7.210, of July 11, 1984 (Law of Penal Execution), enters into force with the following language:

"Article 152 [...]

Sole paragraph. In the cases of domestic violence against women, the judge may determine the obligatory attendance of the aggressor in recovery and re-education programs." (New Language)

Article 46. This Law shall enter into force 45 (forty-five five) days after its publication.

[Criminal Code, 1940 \(As amended\)](#) ⁶⁰

Aggravating circumstances

Art. 61 - These circumstances always aggravate the penalty, when they do not constitute or qualify the crime:

(Amended by Law No. 7.209 of 11 July 1984)

[...]

II. When the perpetrator has committed the crime:

[...]

f) with abuse of authority or by taking advantage of a domestic, cohabitation or hospitality relationship, or with violence against women in the form specified by law; (Amended by Law No. 11,340 of 2006)

Bodily injury

Art. 129. Offending the bodily integrity or health of others:

Penalty - detention, from three months to one year.

[...]

§ 9. Domestic Violence (Introduced by Law No. 10.886 of 2004)

9. If the injury was committed against the ascendant, descendant, sibling, spouse or partner, or other with whom he/she lives or has lived or by taking advantage of a domestic, cohabitating or hospitality relationship: (Amended by Law No. 11,340, of 2006)

Rape

Art. 213. To force someone, through violence or serious threat, to have sexual intercourse or to practice, or allow another to perform on the same, other acts of a libidinous nature:

Penalty - imprisonment, from six (6) to ten (10) years. (Amended by Law No. 12,015 of 2009)

[...]

Art. 226. The penalty is increased:

[...]

II - by half, if the agent is an ascendant, stepfather or stepmother, uncle, brother, spouse, partner, tutor, curator, preceptor or employer of the victim or otherwise exercises authority over the same by any other title; (Amended by Law No. 11,106, of 2005)

⁶⁰ Criminal Code, Law Decree No. 2.848 (7 December 1940, as amended), available at http://www.planalto.gov.br/ccivil_03/Decreto-Lei/De12848.htm#art129%C2%A79 (last visited December 30, 2018).

24. BRUNEI DARUSSALAM

[Married Women Act, 1999 \(As amended\)](#)⁶¹

PART II A - PROTECTION OF FAMILY [S 63/2010]

Interpretation of this Part.

18A. (1) In this Part, unless the context otherwise requires —

“court” means a Court of a Magistrate;

“domestic violence” means the commission of any of the following acts —

- (a) wilfully or knowingly causing, or attempting to cause, a family member in fear of hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) compelling the family member by force or threat to engage in any conduct or act from which he has a right to abstain;
- (d) wrongfully confining or restraining a family member against his will;
- (e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or
- (f) causing destruction, damage or loss to property of a family member or causing financial loss to a family member;

“expedited order” means an order made under section 18C(1);

“family member”, in relation to a person, means —

- (a) a spouse or former spouse of that person;
- (b) a child of that person and their descendants, including an adopted child and a step-child;
- (c) the father or mother of that person;
- (d) a father-in-law or mother-in-law of that person;
- (e) a brother or sister of that person;
- (f) a grandfather or grandmother of that person or any of their ascendants whether on the side of the father or mother of that person; or
- (g) any relative or other person who in the opinion of the court should, in the circumstances, be regarded as a member of the family of that person;

“incapacitated adult” means an adult who is wholly or partially incapacitated or infirm, by reason of physical or mental disability, ill-health or old age;

“place of protection” means any place or institution —

- (a) declared as such under section 18K(1);
- (b) maintained or managed by any agency or voluntary organisation approved by the Minister of Culture, Youth and Sports for the purposes of this Part; or
- (c) suitable whereby the owner, occupier or manager is willing to receive the victim; “protected person” means a person who is protected under a protection order or an expedited order; “protection order” means an order made under section 18B(1);

“relative” means a person who is related through the full-blood or half-blood, or through marriage, fostering or adoption, including de facto adoption;

“shared residence” means the premises at which the parties are, or have been, living together as members of the same household;

“victim” means a victim of domestic violence.

(2) Nothing in this Part shall derogate from the provisions of the Penal Code (Chapter 22) or of any other written law.

Protection order.

18B. (1) The court may, upon being satisfied that domestic violence has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of that family member, make a protection order restraining that person from committing domestic violence against that family member.

(2) An application under this Part may be made by —

- (a) the family member concerned;
- (b) an enforcement officer; or
- (c) in the case of a child or an incapacitated adult, a guardian, a relative or the person responsible for the care of that child or incapacitated adult, or by any person appointed by the Director of Community Development.

⁶¹ Married Women Act, Ch. 190 (S 30/1999 as amended by S 63/2010, revised edition 2014), available at http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap190.pdf (last visited December 30, 2018).

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(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such period as may be specified therein.

(4) The court, in making a protection order, may include a provision that the person against whom the order is made shall not incite or assist any other person to commit domestic violence against the protected person.

(5) A protection order may, where the court is satisfied that it is necessary for the protection of the protected person, provide for such orders as it thinks fit, having regard to all the circumstances of the case, including any one or more of the following orders —

(a) granting the right of exclusive occupation to the protected person of the shared residence or any specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b) prohibiting or restraining the person against whom the order is made from —

(i) entering the protected person's place of residence, shared residence or alternative residence;

(ii) entering the protected person's place of employment, school or other institution; or

(iii) making personal contact with the protected person other than in the presence of an enforcement officer or such other person as may be specified or described in the order;

(c) requiring the person against whom the order is made to permit the protected person to enter —

(i) the shared residence; or

(ii) the residence of the person against whom the order is made, accompanied by any enforcement officer for the purpose of collecting the protected person's personal belongings;

(d) specifying the circumstances in which the person against whom the order is made may be permitted to communicate with the protected person;

(e) requiring the person against whom the order is made to permit the protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person; (f) requiring the person against whom the order is made, the protected person, both of them or their children to attend counselling provided by such person as the Director of Community Development may approve or as the court may direct;

(g) requiring the person against whom the order is made to pay compensation under section 18E to the protected person in respect of any injuries, destruction, damage or loss as it considers just and reasonable;

(h) placing the protected person in any suitable place of protection for the safety of the protected person, and giving such directions as are necessary for or incidental to the proper carrying into effect of any such orders.

(6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended, restricted, prohibited or restrained by virtue of an order made under subsection (5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in that residence.

(7) Except so far as the exercise by the person against whom a protection order is made under subsection (5), such order shall not affect a right to maintenance or any other right to which the protected person is entitled under the Act.

Expedited order.

18C. (1) Where, upon an application for a protection order under section 18B, the court is satisfied that domestic violence has been or is being committed that requires an expedited protection, the court may make an expedited order notwithstanding that —

(a) the summons has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or

(b) the summons requires the respondent to appear at some time or place. (2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent or, if the court has specified a later date as the date on which the order is to take effect, that later date.

(3) An expedited date shall cease to have effect on whichever of the following dates occurs first —

(a) the date of the expiration of a period of 28 days beginning with the date of the making of the order; or

(b) the date of commencement of the hearing of the application for an order under this section. (4) Notwithstanding subsection (3), the court may extend the duration of the expedited order.

Provisions with respect to protection orders and expedited orders.

18D. (1) Where the court is satisfied that the person against whom a protection order or expedited order is made is likely to commit domestic violence to the protected person, the court may attach a power of arrest to such protection order or expedited order.

(2) If a power of arrest is attached by virtue of subsection (1), a police officer may arrest without warrant the person against whom the order is made when he has reasonable cause to believe that he is in breach of a protection order, an expedited order or an order made under sections 18B(5)(a) or (b), by reason of that person's use of violence or of his entry into any place prohibited under the order.

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(3) Where a power of arrest is attached to a protection order or an expedited order and the person against whom such order is made is arrested under subsection (2) —

(a) he shall be brought to court within 48 hours of his arrest; and

(b) he shall not be released within that period except on the direction of the court, but nothing in this subsection shall authorise his continued detention under this paragraph after the expiry of that period.

(4) Where a person against whom a protection order or an expedited order has been made contravenes such order, the court may, in addition to any penalty provided under subsection (5), make any one or more of the orders under section 18B(5), to commence from such date as is specified in such latter order or orders.

(5) Any person who wilfully contravenes a protection order, an expedited order or an order made under section 18B(5) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent offence, to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(6) The court shall, on application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke any such order.

(7) The expiry by virtue of section 18C(3) of an expedited order shall not prejudice the making of a further expedited order under that section.

Compensation.

18E. (1) Where a victim of domestic violence suffers personal injuries, destruction or damage to property, loss of property or financial loss as a result of the domestic violence, the court may award such compensation in respect of such injuries, destruction, damage or loss as it considers just and reasonable.

(2) The court 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 any such injury;

(c) any loss of earnings arising from any such injury;

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

(e) necessary and reasonable expenses incurred by or on behalf of the victim when he 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 place of protection;

(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, for such period as the court considers appropriate.

(3) In considering any expenses that may be taken into account under subsection (2)(e)(iii), the court may also take into account —

(a) the financial position of the victim as well as that of the defendant;

(b) maintenance to be paid or any other obligatory expenses to be made or contributed by the defendant that arises from the relationship that exists between the parties;

(c) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under other provisions of the Act or any other written law relating to the financial provision of spouses or former spouses and other dependants.

Jurisdiction of High Court.

18F. The High Court shall have the jurisdiction and powers which belong to and are exercisable by a Court of a Magistrate under this Part and Part III.

Procedure.

18G. (1) All applications to a Court of a Magistrate under this Part and Part III shall be made and heard in the same manner and in accordance with the same procedure as applications for summonses are made and heard by the Court of a Magistrate under the provisions of the Criminal Procedure Code (Chapter 7) and shall be deemed to be complaints for the purposes of that Code.

(2) The Chief Justice may make rules for the purpose of giving effect to sections 18B and 18C and any such rules may in particular, but without prejudice to the generality of this subsection, make provision for the hearing without delay of any application for an order under section 18B(5)(a).

(3) A court before which any application is heard may make such order as to costs as it thinks just and reasonable.

Power of arrest.

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18H. (1) Where a police officer believes on reasonable grounds that domestic violence has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the officer may without warrant, arrest such person and every person so arrested shall be taken to a police station.

(2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

Information on offences involving domestic violence.

18I. (1) Any person who has reason to believe that an offence involving domestic violence is being or has been committed may give information in respect thereof to an enforcement officer. (2) No person who gives any such information in good faith shall incur any liability for defamation or otherwise in respect of the giving of such information.

Duties of enforcement officer.

18J. (1) The duties of an enforcement officer include —

- (a) assisting a victim to file a complaint regarding the domestic violence;
- (b) providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required;
- (c) providing or arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries if such treatment is needed;
- (d) explaining to the victim his rights to protection against domestic violence;
- (e) accompanying the victim to his residence or previous residence to collect his personal belongings;
- (f) such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part.

(2) An enforcement officer who is also police officer has the following additional duties —

- (a) exercising the powers of arrest under this Part or under any other written law;
- (b) removing or supervising the removal of a person excluded from a shared residence where the court has issued an order under section 18B(5)(a).

Place of protection.

18K. (1) The Minister of Culture, Youth and Sports may, by notification published in the Gazette, declare any place or institution to be a place of protection for the purposes of this Part. (2) The Permanent Secretary to the Ministry of Culture, Youth and Sports may order the transfer of protected persons from one place of protection to another as and when the need arises.

Power of Director to place victim in place of protection.

18L. The Director of Community Development may, upon being satisfied that domestic violence has been or is being committed against a family member and that it is necessary for the protection of that family member, place that family member in a place of protection until application for a protection order or an expedited order can be made.

Duties of Director.

18M. The Director of Community Development shall be responsible for the reception, care, welfare and safety of any victim sent to a place of protection under this Part for the period for which the victim is in that place of protection.

[Islamic Family Law Act, 2000 \(As amended\)](#)⁶²

PART V A - PROTECTION OF FAMILY [S 62/2010]

Interpretation of this Part.

60A. In this Part, unless the context otherwise requires — “child” means an unmarried person who has not attained the age of 18 years qamariah; “dharar Syar’ie” means the commission of any of the following acts —

- (a) wilfully or knowingly causing, or attempting to cause, a family member in fear of hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) compelling the family member by force or threat to engage in any conduct or act from which he has a right to abstain;
- (d) wrongfully confining or restraining a family member against his will;

⁶² Islamic Family Law Act, Ch. 217 (S 12/2000, as amended up to S 62/2010, revised ed. 2012), available at https://www.ftcam.de/ft_files/Scheidung_BruneiDarussalam1.pdf (last visited December 30, 2018).

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(e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or

(f) causing destruction, damage or loss of property of a family member, or causing financial loss to a family member;

“enforcement officer” means a police officer or any person appointed in writing by the Director of Community

Development or the Director of Syariah Affairs;

“expedited order” means an order made under section 60C(1);

“family member”, in relation to a person, means —

(a) a spouse or former spouse of that person;

(b) a child of that person and their descendants, including an adopted child and a step-child;

(c) the father or mother of that person;

(d) a father-in-law or mother-in-law of that person;

(e) a grandfather or grandmother of that person or any of their ascendants, whether on the side of the father or mother of that person; or

(f) any relative or other person who in the opinion of the Court should, in the circumstances, be regarded as a member of the family of that person;

“incapacitated adult” means an adult who is wholly or partially incapacitated or infirm, by reason of physical or mental disability, ill-health or old age.

“place of protection” means any place or institution —

(a) declared as such under section 60I(1);

(b) maintained or managed by any agency or voluntary organisation approved by the Minister of Culture, Youth and Sports for the purposes of this Part; or

(c) suitable whereby the owner, occupier or manager is willing to receive the victim; “protected person” means a person who is protected under a protection order or an expedited order; “protection order” means an order made under section 60B(1); “relative” means a person who is related through nasab or marriage, or through fostering or adoption, including de facto adoption;

“shared residence” means the premises at which the parties are, or have been, living together as members of the same household;

“victim” means a victim of dharar Syar’ie.

Protection order.

60B. (1) The Court may, upon being satisfied that dharar Syar’ie has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of that family member, make a protection order restraining that person from committing dharar Syar’ie against that family member.

(2) An application under this Part may be made by —

(a) the family member concerned;

(b) an enforcement officer; or

(c) in the case of a child or an incapacitated adult, a guardian, a relative or the person responsible for the care of that child or incapacitated adult, or by any person appointed by the Director of Community Development.

(3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such period as may be specified therein.

(4) The Court, in making a protection order, may include a provision that the person against whom the order is made shall not incite or assist any other person to commit dharar Syar’ie against the protected person.

(5) A protection order may, where the Court is satisfied that it is necessary for the protection of the protected person, provide for such orders as it thinks fit, having regard to all the circumstances of the case, including any one or more of the following orders —

(a) granting the right of exclusive occupation to the protected person of the shared residence or any specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;

(b) prohibiting or restraining the person against whom the order is made from entering the protected person’s place of residence, shared residence or alternative residence, or from entering the protected person’s place of employment, school or other institution or from making personal contact with the protected person other than in the presence of an enforcement officer or such other person as may be specified or described in the order;

(c) requiring the person against whom the order is made to permit the protected person to enter the shared residence, or to enter the residence of the person against whom the order is made, accompanied by an enforcement officer for the purpose of collecting the protected person’s personal belongings;

(d) specifying the circumstances in which the person against whom the order is made may be permitted to communicate with the protected person;

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- (e) requiring the person against whom the order is made to permit the protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person;
 - (f) requiring the person against whom the order is made, the protected person, both of them or their children to attend counselling provided by such person as the Director of Community Development may approve or as the Court may direct;
 - (g) requiring the person against whom the order is made to pay compensation under section 60E to the protected person in respect of any injuries, destruction, damage or loss as it considers just and reasonable;
 - (h) placing the protected person in any suitable place of protection for the *maslahah* of the protected person, and giving such directions as are necessary for or incidental to the proper carrying into effect of any such orders.
- (6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended, restricted, prohibited or restrained by virtue of an order made under subsection (5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in that residence.
- (7) Except so far as the exercise by the person against whom a protection order is made under subsection (5), such order shall not affect a right to maintenance or any other right to which the protected person is entitled under this Act.

Expedited order.

60C. (1) Where, upon an application for a protection order under section 60B, the Court is satisfied that *dharar Syar'ie* has been or is being committed that requires an expedited protection, the Court may make an expedited order notwithstanding that —

- (a) the notice of application has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application; or
 - (b) the notice of application requires the respondent to appear at some time or place.
- (2) An expedited order shall not take effect until the date on which notice of the making of the order is served on the respondent or, if the Court has specified a later date as the date on which the order is to take effect, that later date.
- (3) An expedited order shall cease to have effect on whichever of the following dates occurs first —
- (a) the date of the expiration of a period of 28 days beginning with the date of the making of the order; or
 - (b) the date of commencement of the hearing of the application for an order under this section.
- (4) Notwithstanding subsection (3), the Court may extend the duration of the expedited order.

Provisions with respect to protection orders and expedited orders.

60D. (1) Where the Court is satisfied that the person against whom a protection order or expedited order is made is likely to commit *dharar Syar'ie* to the protected person, the Court may attach a power of arrest to such protection order or expedited order.

- (2) If a power of arrest is attached by virtue of subsection (1), a police officer may arrest without warrant the person against whom the order is made when he has reasonable cause to believe that he is in breach of a protection order, an expedited order or an order made under section 60B(5)(a) or (b), by reason of that person's use of *dharar Syar'ie* or of his entry into any place prohibited under that order.
- (3) Where a power of arrest is attached to a protection order or an expedited order and the person against whom such order is made is arrested under subsection (2) —
- (a) he shall be brought to Court within 48 hours of his arrest; and
 - (b) he shall not be released within that period except on the direction of the Court, but nothing in this subsection shall authorise his continued detention under this paragraph after the expiry of that period.
- (4) Where a person against whom a protection order or an expedited order has been made contravenes such order, the Court may, in addition to any penalty provided under subsection (5), make any one or more of the orders under section 60B(5) to commence from such date as is specified in such latter order or orders.
- (5) Any person who wilfully contravenes a protection order, an expedited order or an order made under section 60B(5) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent offence, to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.
- (6) The Court shall, on application made by the applicant or the person against whom a protection order or an expedited order is made, have power by order to vary, suspend or revoke any such order.
- (7) The expiry by virtue of section 60C(3) of an expedited order shall not prejudice the making of a further expedited order under that section.

Compensation.

60E. (1) Where a victim of *dharar Syar'ie* suffers personal injuries, destruction or damage to property, loss of property or financial loss as a result of the *dharar Syar'ie*, the Court may award such compensation in respect of such injuries, destruction, damage or loss as it considers just and reasonable.

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(2) The Court 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 any such injury;
- (c) any loss of earnings arising from any such injury;
- (d) the amount or value of the property destroyed, damaged or lost;
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when he is compelled to separate or be separated from the defendant due to the dharar Syar'ie, such as —
 - (i) lodging expenses to be contributed to a place of protection;
 - (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, for such period as the Court considers appropriate.
- (3) In considering any expenses that may be taken into account under subsection (2)(e)(iii), the Court may also take into account —
 - (a) the financial position of the victim as well as that of the defendant;
 - (b) maintenance to be paid or any other obligatory expenses to be made or contributed by the defendant that arise from the relationship that exists between the parties;
 - (c) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under other provisions of this Act or of any other written law relating to the financial provision of spouses or former spouses and other dependants.

Power of arrest. 60F. (1) Where a police officer believes on reasonable grounds that dharar Syar'ie has been committed or is likely to be committed by any person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station.

(2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

Information on offences involving dharar Syar'ie.

60G. (1) Any person who has reason to believe that an offence involving dharar Syar'ie is being or has been committed may give information in respect thereof to an enforcement officer.

(2) No person who gives any such information in good faith shall incur any liability for defamation or otherwise in respect of the giving of such information.

Duties of enforcement officer.

60H. (1) The duties of an enforcement officer include —

- (a) assisting a victim to file a complaint regarding the dharar Syar'ie;
- (b) providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required;
- (c) providing or arranging transportation for the victim to the nearest hospital or medical facility for treatment of injuries if such treatment is needed;
- (d) explaining to the victim his rights to protection against dharar Syar'ie;
- (e) accompanying the victim to his residence or previous residence to collect his personal belongings;
- (f) such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part.

(2) An enforcement officer who is also a police officer has the following additional duties —

- (a) exercising the powers of arrest under this Part or under any other written law;
- (b) removing or supervising the removal of a person excluded from a shared residence where the Court has issued an order under section 60B(5)(a).

Place of protection.

60I. (1) The Minister of Culture, Youth and Sports may, by notification published in the Gazette, declare any place or institution to be a place of protection for the purposes of this Part.

(2) The Permanent Secretary of the Ministry of Culture, Youth and Sports may order the transfer of protected person from one place of protection to another as and when the need arises.

Power of Director to place victim in place of protection.

60J. The Director of Community Development may, upon being satisfied that dharar Syar'ie has been or is being committed against a family member and that it is necessary for the protection of that family member, place that family member in a place of protection until application for a protection order or an expedited order can be made. Duties of Director.

60K. The Director of Community Development shall be responsible for the reception, care, welfare and safety of any victim sent to a place of protection under this Part for the period for which the victim is in that place of protection.

25. BULGARIA

[Protection Against Domestic Violence Act, 2009](#)⁶³

Chapter One ***GENERAL DISPOSITIONS***

Article 1.

(1) This Act shall regulate the rights of individuals, victims of domestic violence, the measures for protection and the procedure for enforcement thereof.

(2) (Supplemented, SG No. 102/2009, effective 22.12.2009) Liability under this Act shall not preclude civil, administrative penal or penal liability of the perpetrator.

Article 2. (Amended, SG No. 102/2009, effective 22.12.2009)

(1) Domestic violence shall denote any act of physical, sexual, mental, emotional or economic violence, as well as attempts of such violence, coercive restriction of personal life, personal liberty and personal rights committed against individuals, who are related, who are or have been in a family relationship or in de-facto conjugal co-habitation.

(2) Any domestic violence committed in the presence of a child shall be considered mental and emotional violence against said child.

Article 3. Protection under this Act may be sought by any person, who has become victim of domestic violence, perpetrated by:

1. spouse of former spouse;
2. person, with whom he/she is or has been in a de-facto conjugal co-habitation;
3. person, who has fathered her child;
4. ascendant;
5. descendant;
6. (amended, SG No. 102/2009, effective 22.12.2009) person with whom he/she is in a collateral relationship up to the fourth degree included;
7. (amended, SG No. 102/2009, effective 22.12.2009) person with whom he/she is or was related by marriage up to the third degree included;
8. guardian, custodian or foster parent;
9. (new, SG No. 102/2009, effective 22.12.2009) ascendant or descendant of the person with whom he/she is in de-facto conjugal co-habitation;
10. (new, SG No. 102/2009, effective 22.12.2009) person, with whom the parent is or was in de-facto conjugal co-habitation.

Article 4.

(1) In case of domestic violence the victim shall be entitled to turn to court for protection.

(2) (Amended, SG No. 82/2006, 102/2009, effective 22.12.2009) In cases where there is data of a threat for the life or health of the victim, it may file also a request to the bodies of the Ministry of the Interior to undertake measures under the Ministry of the Interior Act.

(3) Each doctor shall be obliged to issue, upon request from the victim, a document, certifying in writing the injuries or traces of violence, established by the former.

Article 5. (1) (Amended, SG No. 102/2009, effective 22.12.2009) The measures for protection against domestic violence shall be:

1. obligating the perpetrator to refrain from committing domestic violence;
2. removing the perpetrator from the jointly occupied dwelling for a term, specified by court;
3. (supplemented, SG No. 102/2009, effective 22.12.2009) prohibiting the perpetrator to come close to the victim, the dwelling, place of work and the locations of social contacts and recreation of the victim under conditions and for a term, specified by the court;

⁶³ Protection against Domestic Violence Act, S.G. No. 27 (29 March 2005), As Amended by S.G. No. 102/2009 (22 December 2009), available at https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/Protection_Against_Domestic_Violence_Act_Title_amended_SG_No_1022009_effective_22122009.pdf (last visited December 30, 2018).

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4. provisional designation of the place of residence of the child with the victim parent or the parent, who did not perpetrate violence, under conditions and for a term, specified by the court if this would not be against the child's interests;
 5. obligating the perpetrator of violence to attend specialized programs;
 6. directing the victims into rehabilitation programs.
- (2) (Amended, SG No. 102/2009, effective 22.12.2009) The measures under paragraph (1), items 2, 3 and 4 shall be imposed for a term from three to 18 months.
- (3) (New, SG No. 102/2009, effective 22.12.2009) The measure under paragraph (1), item 4 shall not be imposed in case of a pending court dispute between the parents concerning custody of the child, the residence of the child or the personal relations regime.
- (4) (Renumbered from Paragraph 3, SG No. 102/2009, effective 22.12.2009) In any case, by its decision under Article 15(1), the court shall also impose on the perpetrator a fine from BGN 200 to BGN 1 000.

Article 6.

- (1) The state shall create conditions for the implementation of programs for prevention and protection against domestic violence and programs providing support to victims.
- (2) Bodies of the executive branch shall conduct selection and training of the individuals, responsible for the protection under this Act.
- (3) (Amended, SG No. 102/2009, effective 22.12.2009) Bodies of the executive branch and/or legal entities, registered under the procedure of Article 18(2) and (3) of the Social Assistance Act and under the procedure of Article 45 of the Non-profit Legal Persons Act shall work for providing protection to persons, who have become victims of domestic violence.
- (4) Persons under paragraph (3) shall prepare, organize the implementation and implement the programs under Article 5(1), items 5 and 6.
- (5) (New, SG No. 102/2009, effective 1.01.2010) Annually until March 31 the Council of Ministers shall adopt a National Program for Prevention and Protection against Domestic Violence. (6) (New, SG No. 102/2009, effective 1.01.2010) The funds to finance the performance of the commitments under the National Program under paragraph (5) shall be determined annually by the State Budget Act of the Republic of Bulgaria for the respective year in the budgets of the respective ministries specified in the program. (7) (New, SG No. 102/2009, effective 1.01.2010) Annually by the State Budget Act of the Republic of Bulgaria for the respective year funds shall be foreseen in the budget of the Ministry of Justice to finance projects of non-profit legal entities, which are in line with the requirements of paragraph (3) and under the condition that they carry out activities as per this act to elaborate and implement:
1. programs for prevention and protection against domestic violence pertaining to:
 - (a) preparing and approval of programs at the education establishments;
 - (b) programs to work with the judiciary bodies and the bodies of the Ministry of the Interior;
 - (c) monitoring of law enforcement;
 - (d) holding seminars and conferences;
 - (e) books and publications;
 2. programs to assist persons who are victims of domestic violence, which include:
 - (a) social, psychological and legal consultations and expert assistance;
 - (b) referral to other necessary specialists and inter-disciplinary consultations and to crisis centres for persons who are victims of domestic violence;
 3. training of the persons who carry out the protection under the law;
 4. specialized programs attended by persons who committed domestic violence and which include social and psychological consultations.
- (8) (New, SG No. 102/2009, effective 1.01.2010, repealed, SG No. 99/17.12.2010, effective 1.01.2011).

Chapter Two

PROCEEDINGS FOR ENFORCEMENT OF MEASURES FOR PROTECTION AGAINST DOMESTIC VIOLENCE

(Title amended, SG No. 102/2009, effective 22.12.2009)

Section I - General dispositions

Article 7. (1) (Amended, SG No. 102/2009, effective 22.12.2009). The competence to impose a protection measure shall belong to the regional court, serving the area of the permanent or current address of the victim.

Article 8. (Amended, SG No. 102/2009, effective 22.12.2009) Proceedings on issuance of the order may be initiated on the basis of a petition filed by:

1. the victim, if it is above 14 years of age or has been partially incapacitated;
2. a brother, sister or person, which is directly of kin to the victim;

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3. the guardian or custodian of the victim;
4. the Director of the Social Assistance Directorate if the victim is under age, incapacitated or disabled.

Article 9. (1) (Amended, SG No. 102/2009, effective 22.12.2009) The petition shall be in writing and shall contain:

1. (amended, SG No. 102/2009, effective 22.12.2009) the full name, address and personal identification number of the petitioner, the address of the Social Assistance Directorate; if the victim is unable or does not wish to reveal its permanent or current address, it may specify another address;
2. names and the current address of the perpetrator or another address, at which he/she can be subpoenaed, including telephone and fax numbers;
3. data on the family, kin or de-facto relationship between the victim and the perpetrator;
4. (amended, SG No. 102/2009, effective 22.12.2009) the date, place, manner and other facts and circumstances pertaining to the committed domestic violence;
5. signature.

(2) (Amended, SG No. 102/2009, effective 22.12.2009) In the cases under Article 8, items 2 and 4, the court shall establish ex-officio the victim as a party.

(3) A declaration by the petitioner regarding the act of violence committed shall be attached to the petition under Article 8, item 1.

(4) Upon request by the petitioner, the court shall request ex-officio in regard to the perpetrator a certificate of criminal record, a summary of measures imposed under this Act and a certificate of whether the latter was registered at a psychiatric establishment.

Article 10. (1) (Amended, SG No. 102/2009, effective 22.12.2009) The petition shall be submitted within a period of one month of the act of domestic violence.

(2) (Amended and supplemented, SG No. 102/2009, effective 22.12.2009) The petition shall be filed in a special register under a separate consecutive numbering (index) of the case-files and is assigned on the day of receipt.

(3) (Repealed, SG No. 102/2009, effective 22.12.2009).

Article 11. (1) (Amended, SG No. 102/2009, effective 22.12.2009) In case of submission of a petition under Article 8 no stamp fee shall be paid.

(2) When issuing the order, the court shall assign that the stamp tax and expenses of the case are paid by the perpetrator of domestic violence.

(3) (Amended, SG No. 102/2009, effective 22.12.2009) In the event of rejection to issue an order or reversal of an order, the stamp duty and the expenses of the case shall be paid by the petitioner unless the petition is for protection of persons under the age of 18 and for incapacitated persons and disabled persons.

Section II - Examination of the case

Article 12. (1) (Amended, SG No. 102/2009, effective 22.12.2009) On the day of receipt of the petition the court shall schedule an open court session not later than one month and shall notify the defendant, in addition to the subpoena and a copy of the petition with the enclosures, of his/her duty to provide evidence.

(2) (Amended, SG No. 102/2009, effective 22.12.2009) In the cases under Article 8, items 2 and 4, the victim shall also be subpoenaed.

(3) As required, the subpoena shall be served with the help of police bodies or of the mayor.

Article 13. (1) The means of evidence under the Code of Civil Procedure shall be admissible in the proceedings for issuance of a protective order.

(2) Means of evidence in the proceedings under paragraph (1) may also be: 1. protocols, reports and other acts, issued by the Social Assistance Directorates, by doctors, as well as by psychologists, having consulted the victim; 2. documents, issued by legal persons, performing social services and recorded in a register of the Social Assistance Agency; 3. the declaration under Article 9(3).

(3) Where no other evidence is available, the court shall issue a protective order only on the grounds of the declaration attached under Article 9(3).

Article 14. (1) (Amended, SG No. 102/2009, effective 22.12.2009) Where evident from the data in the petition that the bodies of the Ministry of Interior and other state bodies hold written evidence of domestic violence committed, they shall issue certified copies thereof forthwith upon request by the victim, its representative or attorney, or at the request of the court.

(2) In the event of failure to issue a document or a transcript thereof under paragraph (1) the person, which was obliged to issue it, shall be subject to a fine of BGN 100 following the procedure of the Code of Civil Procedure.

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Article 15. (1) The court shall deliver a ruling at a closed session.

(2) (Amended, SG No. 102/2009, effective 22.12.2009) In case of upholding the petition, the court shall issue a protective order.

Article 16. (1) By means of the protective order, the court shall impose one or more measures of protection.

(2) (Amended, SG No. 102/2009, effective 22.12.2009) The order must contain a warning of the consequences of the failure to comply with it, as described in Article 21(3).

(3) (Amended, SG No. 102/2009, effective 22.12.2009) The ruling and the order shall be served to the parties and in the cases when a measure was imposed pursuant to Article 5(1) items 1, 2 and 3 - also to the regional directorate of the Ministry of the Interior serving the current address of the perpetrator and the victim.

Article 17. (1) (Amended, SG No. 102/2009, effective 22.12.2009) The ruling shall be subject to appeal before the district court within 7 days of handing it in. The petition shall be submitted through the court, having delivered the ruling, with a copy to the other party.

(2) (New, SG No. 102/2009, effective 22.12.2009) Stamp fee shall not be paid upon filing of the appeal.

(3) (Renumbered from Paragraph 2, SG No. 102/2009, effective 22.12.2009) Appeal shall not suspend enforcement of the order. (4) (Renumbered from Paragraph 3, SG No. 102/2009, effective 22.12.2009) The regional court shall forward a copy of the petition with the annexes thereto to the other party, which may make objections and invoke new evidence within three days of receipt thereof. Upon expiry of the said term, the petition, together with the annexes and objections thereto, shall be forwarded to the district court.

(5) (Renumbered from Paragraph 4, SG No. 102/2009, effective 22.12.2009) Within 14 days the district court shall review the petition at an open session with summoning the parties under the procedure of Article 12 and shall deliver a ruling on the merits of the case, whereby it shall leave in effect, repeal or amend the ruling appealed. If the ruling is amended, the court shall issue a new order.

(6) (Renumbered from Paragraph 5, SG No. 102/2009, effective 22.12.2009) The ruling of the district court shall be final.

Article

18. (1) (Amended, SG No. 102/2009, effective 22.12.2009) Where the petition contains data of a direct, immediate or subsequent threat for the victim's life or health, the district court shall issue, at a closed session without summoning the parties, an order for immediate protection within 24 hours of receipt of the petition or of the request.

(2) (Amended, SG No. 102/2009, effective 22.12.2009) The order under paragraph (1) shall be served to the parties and sent ex-officio to the regional directorate of the Ministry of the Interior.

(3) If data of the case show that measures must be taken under the Child Protection Act, the court shall notify the director of the Social Assistance Directorate.

(4) (Amended, SG No. 102/2009, effective 22.12.2009) The court shall schedule an open court session not later than one month and shall notify the defendant, in addition to the subpoena and a copy of the petition with the annexes, of his/her duty to provide evidence.

(5) (Amended, SG No. 102/2009, effective 22.12.2009) In the cases under Article 8, items 2 and 4, the victim shall also be subpoenaed.

(6) As required, the subpoena shall be served with the help of police bodies or of the mayor.

Article 19. (Supplemented, SG No. 102/2009, effective 22.12.2009) The order for immediate protection shall not be subject to appeal and shall be valid until the issuance of a protective order or of the rejection by court to do so.

Section III - Enforcement of the protective order Article

20. The protective order shall be subject to immediate enforcement.

Article 21. Police bodies shall monitor enforcement of the order, in cases when a measure is imposed by it under Article 5(1), items 1, 2 and 3.

(2) (New, SG No. 102/2009, effective 22.12.2009) When a measure under Article 5 (1) item 2 has been imposed, and the perpetrator refuses voluntary fulfillment, he shall be removed from the jointly inhabited dwelling with the assistance of the police bodies from the regional directorate of the Ministry of the Interior serving the area of the dwelling.

(3) (Renumbered from Paragraph 2, SG No. 102/2009, effective 22.12.2009) In the event of failure to enforce the court order the police body, which has established the violation, shall detain the perpetrator and advise forthwith the services of the prosecutor's office.

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Article 22. The court shall issue ex-officio a writ of execution in regard to the fines imposed and stamp taxes and costs adjudged.

Chapter Three (New, SG No. 50/2015)

MEASURES FOR ENSURING PROTECTION ON THE GROUNDS OF REGULATION (EU) NO. 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 JUNE 2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS

Article 23. (New, SG No. 50/2015) Any protected person having obtained a protection measure ordered in one European Union Member State may apply for issuance of a national protection order to the Sofia City Court.

Article 24. (New, SG No. 50/2015) (1) The court shall review the application at a closed session. It shall rule within two weeks on the basis only of a certified copy of the protection order and of the certificate issued in compliance with Article 5 of Regulation (EU) No. 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ, L 181/4 of 29 September 2013), hereinafter referred to as "Regulation (EU) No. 606/2013". The documents shall be accompanied by a translation into Bulgarian language.

(2) The court shall also verify whether the measure may be enforced by the methods of Bulgarian law. Where this is impossible it shall order a substituting protection measure under Bulgarian law. The court shall inform the person causing the risk of the substitution of the protection measure.

(3) The substituting protection measure shall be subject to appeal by the protected person or by the person causing the risk before the Sofia Appellate Court.

Article 25. (New, SG No. 50/2015) A refusal of recognition or enforcement of the protection measure may be ordered by the Sofia City Court at the request of the person causing the risk.

Article 26. (New, SG No. 50/2015) (1) The court of first instance reviewing the case, shall issue upon written request by the protected person the certificate under Article 5 of Regulation (EU) No. 606/2013.

(2) The court shall inform the person causing the risk of the issuance of the certificate and of the consequences of its issuance.

Article 27. (New, SG No. 50/2015) The act of amendment or withdrawal of the certificate under Article 5 of Regulation (EU) No. 606/2013 may be appealed against before the respective district court within two weeks, counting from the moment of notification that an act of amendment or withdrawal of the certificate had been issued.

FINAL PROVISIONS

§ 1. The provisions of the Code of Civil Procedure shall respectively apply in regard to any issues, not regulated in this Act.

§ 2. The Minister of the Interior, the Minister of Justice, the Minister of Labour and Social Policy, the Minister of Health, the Minister of Education and Science and the Minister of Finance shall be obliged to prepare, within 6 months of entry of this Act into force, a Prevention and Protection Against Domestic Violence Program.

§ 3. The State shall assist municipalities and not-for-profit legal persons in the establishment and support of services and centers for implementation of the measures under Article 5(1), items 5 and 6.

§ 4. (Supplemented, SG No. 102/2009, effective 22.12.2009) Persons, registered under the procedure of Article 18(2) and (3) of the Social Assistance Act and under Article 45 of the Non-profit Legal Persons Act, which offer social services and rehabilitation programs for victims of domestic violence or specialized programs for perpetrators of violence, shall be obliged to submit to the court a list of the services and programs.

§ 5. A new sentence three shall be added to Article 63(3) of the Ministry of Interior Act (promulgated in SG No. 122/1997, 29/1998 - Ruling No. 3 of the Constitutional Court of 1998; as amended in No. No. 70, 73 and 153/1998, 30 & 110/1999, 1 & 29/2000, 28/2001, 45 & 119/2002, 17, 26, 95, 103, 112 & 114/2003, 15, 70 & 89/2004, 11 & 19/2005): "In cases of domestic violence a copy of the protocol of warning shall be made available to the victim upon request".

§ 5a. (New, SG No. 102/2009, effective 22.12.2009) The Council of Ministers shall be assigned with the implementation of the act.

26. BURUNDI

[Law on the Prevention, Protection of Victims and Punishment of Gender-based Violence, 2016](#) ⁶⁴

[...]

CHAPTER I - GENERAL PROVISIONS

SECTION I: SCOPE

Article 1. Without prejudice to the relevant provisions of the Penal Code and the Code of Criminal Procedure, the purpose of this law is the prevention, protection and punishment of gender-based violence.

SECTION II - DEFINITIONS

Article 2: For the purposes of this law, except where criminal law otherwise defines, the following definitions shall apply:

a) Gender-based violence: any act of violence directed against a person by reason of his or her sex by causing or being able of causing physical, sexual, economic, psychological or emotional harm or suffering, including the threat of such acts, forced or arbitrary deprivation of liberty, whether in public or private life;

b) Gender: a sociocultural concept that refers to the roles, behaviors, attitudes, rights and duties associated with men and women, assigned by society and culture;

[...]

e) Violence against women: any act of violence directed against the female sex causing or likely to cause physical, sexual or psychological harm or suffering to the woman including the threat of such acts, coercion or arbitrary deprivation of freedom, whether in public or private life;

f) Sexual violence: an act, attempt, comment or a sexual advance with or without physical contact, committed by an individual without the consent of the person concerned or, in some cases, particularly those of children, emotional manipulation or blackmail. It is an act aiming to subjugate a person to a particular desire by an abuse of power, the use of force or coercion or under the implicit or explicit threat;

[...]

i) Conjugal rape: marital rape occurs when sexual intercourse is imposed by the aggressor on his/her victim, if they are bound by the bonds of marriage;

[...]

s) Economic violence: the denial of access to family resources or employment to one's spouse;

t) Psychological and emotional abuse: intimidation, threats, insults, derogatory remarks about the spouse;

u) Forced pregnancy: impregnating a girl and/or woman by force;

[...]

(w) Traditional practices that are harmful to gender: acts derived from practices and customs that undermine gender, including:

- Levirate: a custom of forcing a widow to marry her brother-in-law or father-in-law;

- "Gukanda (umuvyeyi)": a culture-tolerated form of rape in which a man forces his wife to have intimate relations with him after childbirth before she has recovered;

[...]

- "Guteka ibuye rigasha": cultural practice that involves a man forcing his wife or daughter to have sex with a traditional healer so that the prescribed remedy has its intended effects;

- "Gukazanura": a customary practice that recognizes the right of a man to have sexual intercourse with his daughter-in-law on the day of his son's marriage;

x) Domestic violence: all acts of physical, sexual, psychological or economic violence that occur within the family or household;

[...]

aa) Forced marriage: marriage entered into without the consent of the spouses or one of them;

bb) Early marriage: marrying a person who is under the legal age of marriage or who does not have the biological, physical and psychological capacity;

cc) Rapt: a form of forced marriage in which a girl is abducted to marry her by force;

[...]

⁶⁴ Law on the Prevention, Protection of Victims and Punishment of Gender-Based Violence (Loi portant repression, protection des victimes, et repression des violences basees sur le genre), No. 1/13 (22 September 2016), available at <http://www.assemblee.bi/IMG/pdf/loi%20du%2022%20sept%202016.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
DOMESTIC VIOLENCE

CHAPTER II - PREVENTION OF GENDER-BASED VIOLENCE

Article 3: The Government formulates and implements a national gender policy.

Article 4: The Government presents to the National Assembly, during its first ordinary session, a report that describes the implementation of its national policy, especially with regard to the fight against gender-based violence.

Article 5: The Government shall take all necessary measures to raise awareness to change the patterns and models of sociocultural behavior of men and women, with the aim to eliminate practices, whether customary or not, which are based on the idea of the inferiority or superiority of one or the other sex or of a stereotyped role of the man or the woman.

Article 6: It is forbidden to threaten a person, to deprive him or her of any rights with a view to exerting on this person any act of violence based on gender.

Article 7: Spouses enjoy equal rights, especially in matters of reproductive health, family planning and the property of the household.

[...]

Article 9: Ministries having education in their attributions adopt necessary measures and strategies to include specific training on gender in training programs.

They make all the necessary arrangements to allow equal access to education for girls and boys and ensure that sexist or discriminatory stereotypes are eliminated in educational materials.

Article 10: The Government and local authorities must provide a comprehensive and continuous training program for professionals working on gender equality and in the fight against gender-based violence.

Article 11: A specialized unit or focal point of Gender-Based Violence is created within each police station, with the technical support of a psychologist and/or social worker subject to the approval from the Ministry of Public Security.

Article 12: The National Communication Council shall ensure that media programs do not contain any incitement to discrimination and gender-based violence, in particular by avoiding spurious and vexatious representations of gender relations.

CHAPTER III - PROTECTION OF VICTIMS OF GENDER-BASED VIOLENCE

Article 13: The Government promotes, through social, health, legal and educational structures, the early detection of cases of Gender-Based Violence and the integrated care of victims.

In all cases of gender-based violence, the courts are required to request medical expertise, tests for HIV/AIDS and other sexually transmitted diseases from the relevant health structures for the victim and perpetrator to be able to accurately assess the extent of the harm suffered.

Nevertheless, all expenses incurred by the State will be reimbursed by the guilty once the ruling is rendered.

Article 14: An employee who is the victim of gender-based violence in or outside the company is entitled to a temporary reduction or reorganization of his/her working time, to a geographical transfer, upon request and after obtaining the physician's consent, to the assignment to another establishment, the suspension of his employment contract and his resignation without notice.

At the end of the suspension of his employment contract, the employee returns to his previous job.

Article 15: leave of absence or non-observance of work schedules related to Gender Based Violence can only be justified by a medical decision.

The employer must be informed within seventy-two hours.

The employee benefits from a guarantee of remuneration during these leaves of absence.

Article 16: The public or private school shall provide for the immediate schooling, in similar or related sections, of students who are victims of gender-based violence and who are obliged to change their residence or school.

This is also the case for children affected by a change of residence caused by acts of gender-based violence against one of their parents.

[...]

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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Article 19: The State creates reception centers and shelters that take care of the victim from the first moments after the facts and protect him/her against the aggressor while waiting for the implementation of the adequate solution to the problem by the competent authority.

Article 20: As soon as they arrive at reception centers, victims of gender-based violence benefit from emergency social services. These structures are organized to respond to urgent needs and to provide lasting and multidisciplinary support through holistic responses to victims including medical, psychosocial, legal, judicial and social reintegration.

Article 21: The direct neighbors of a victim of gender-based violence and the administrative officials have the obligation to intervene as soon as they have the information and to take all the necessary measures to help and protect against the continuation of the act under penalty of being punished in accordance with the Criminal Code.

Article 22: Subject to other legal provisions relating thereto, evidence or testimony relating to gender-based violence shall be provided to the courts by any interested person who has the information.
The testimony of the children, other persons living with the family and neighbors, is taken into consideration.

Article 23: The amicable settlement of cases of gender-based violence is equal to complicity in the act of violence. It is punished by the same penalty as the one prescribed for that specific offense or fact.
Anyone who attempts to obstruct investigations for the prosecution of such offenses, acts or deeds shall be punished by the same penalty as that provided for that offense, act or fact.
If the author of this obstruction is an administrative agent, an administrative, judicial or police authority, the penalty is doubled.
For the facts, offenses or gender-based violence described in this Act, a second offense is punishable by twice the penalty for that offense.

CHAPTER IV - REPRESSION OF GENDER-BASED VIOLENCE

[...]

Article 25: In the absence of any denunciation or complaint by the victim or any other person, as soon as the Prosecutor becomes aware of a gender-based offense, the principle of automatic referral is applicable and the Prosecutor can act on his own initiative.

When the Prosecutor files a case concerning gender-based violence, he shall notify the complainant, the victim and the accused in writing within two weeks.

Article 26: For any offense relating to gender-based violence, the fact that the victim and the offender enjoy a domestic relationship is considered an aggravating circumstance.

Article 27: Anyone guilty of marital rape as defined in article 2 lit. i) shall be punished by deprivation of liberty for fifteen days to thirty days and a fine of ten thousand to fifty thousand Burundian francs or one of these penalties only.

Article 28: The prosecutor's offices of the Republic must integrate Magistrates specialized in gender-based violence.

A specialized chamber on gender-based violence is created within each district court.

As part of proceedings related to gender-based violence, the privacy of victims and witnesses is protected, in particular their personal data, that of their descendants and any other person who would be in their custody. The Public Ministry is required to take special measures for their physical protection.

Article 29: Any association regularly declared for two years at the date of the facts, that includes in its statutes the fight against Gender-Based Violence or any other deliberate attack on the life and integrity of the person or destruction, degradation repressed by the relevant provisions of the Code relating thereto, may join the victim of the crime or file a complaint in lieu of the latter.

Nevertheless, the association will be admitted to file a complaint only if it justifies having received the agreement of the victim or, if this one is minor or someone forbidden to participate in legal proceedings, that of the tutor or its curator.

Article 30: The State shall ensure that victims have the right to legal assistance and legal aid.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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Article 31: Anyone guilty of an amicable settlement is punished by deprivation of liberty for five to ten years and a fine of fifty thousand to one hundred thousand Burundian francs.

[...]

Article 33: is punished in accordance with articles 554 to 562 of the Criminal Code relating to rape:

- The fact that the father-in-law forces his daughter-in-law to first have sex with him the very day of his son's marriage
- The fact that the father-in-law forces his daughter-in-law to have sex with him;
- Forcing a person to have sex with a traditional healer so that the prescribed remedy has the desired effects.

[...]

Article 36: Forced sterilization of a spouse as defined in Article 2 is punishable by deprivation of liberty for two to ten years.

[...]

Article 38: is punishable with deprivation of liberty for three months to five years and a fine of fifty thousand to one hundred thousand francs any person who kidnaps a girl to marry her or marry her with another person.

The regularization of the marital status does not exonerate the alleged perpetrator and his accomplice from criminal liability.

Article 39: is punished by deprivation of liberty for three months to two years and a fine of fifty thousand to one hundred thousand Burundian francs any person who is guilty of a forced union as defined in Article 2.

Such a union is void in accordance with the relevant provisions of the Code of Persons and the Family for lack of consent of the victim.

The prosecution of the offense of forced marriage can only be carried out on the complaint of the victim or any other interested person.

Are punished with the same penalties:

- Imposing on a widow to marry her brother-in-law or father-in-law;
- Forcing a girl to marry the husband of her deceased sister.

[...]

Article 47: Any act of intimidation aimed at the abandonment of legal proceedings concerning gender-based violence is punishable by deprivation of liberty for ten-year and a fine of fifty thousand to one hundred thousand Burundian francs.

[...]

Article 49: Any person guilty of psychological and emotional violence as defined in Article 2 is punished with deprivation of liberty for one month to two years and a fine of fifty thousand to one hundred thousand Burundian francs.

Article 50: Anyone guilty of economic violence as defined in Article 2 is punished with a fine of twenty to one hundred thousand francs, without prejudice to civil compensation.

[...]

Article 56: Anyone found guilty of falsely accusing another person of committing a gender-based violence offense under this law shall be punished in accordance with the criminal law provisions in force.

Article 57: All other acts of gender-based violence not specifically provided for in this law shall be punished in accordance with the legislation in force.

Article 58: The victim of gender-based violence and any other affected person has the right to apply to the competent courts for damages.

[...]

CHAPTER V - FINAL PROVISIONS

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
DOMESTIC VIOLENCE

Article 61: The offenses provided for by this law are unamendable and imprescriptible with regard to both public prosecution and punishment. It is also incompressible and cannot be pardoned.

Article 62: All previous provisions contrary to this law are abrogated.

[...]

27. BURKINA FASO

[Law Preventing, Punishing and Repairing Violence Against Women and Girls and Caring For Victims, 2016](#) ⁶⁵

[...]

CHAPTER 1: THE OBJECT AND SCOPE

Article 1:

The purpose of this Act is to prevent, punish and remedy violence against women and girls, to protect and take care of victims.

Article 2:

This law applies to all forms of violence against women and girls, including physical, moral, psychological, sexual, economic, patrimonial and cultural violence.

No tradition, culture or religion can be invoked to justify these forms of violence against women and girls or to exonerate any perpetrator of such violence.

Article 3:

This law provides for special procedures, the creation of specific structures and the specialization of judges to take, if necessary, urgent measures of protection, both in criminal and civil matters.

Article 4:

This Act protects all females without discrimination on the basis of race, color, language, religion, political opinion, national origin, marital status or social status.

CHAPTER 2: DEFINITIONS OF TERMS

Article 5:

For the purposes of this Law, the following terms mean:

- violence against women and girls: any act of violence against women, which causes or may cause physical, sexual, psychological, moral, economic and cultural harm or suffering to women and girls including the threat of such acts, whether in public life or in private life;

- cultural violence: any harmful and degrading practice against women and girls in their customs, traditions and religions;

- economic violence: the use of economic means to slow down or prevent the economic or financial development of any person or to prevent anyone from enjoying his socio-economic rights;

- moral and psychological violence: any behavior, purpose and attitude that affects the personality of the woman or the girl, in her image, self-esteem and inner balance;

⁶⁵ Law Preventing, Punishing and Repairing Violence Against Women and Girls and Caring For Victims, Law No. 061-2015 /CNT (6 September 2015), available at http://www.apprendre-plus.shost.ca/documents/lois/loi_061.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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- patrimonial violence: any act or negligence affecting the victim's survival and consisting of transforming, subtracting, destroying, withholding or diverting objects, documents, property and values, economic rights or economic resources intended to cover needs, and which may extend damage to the commons or the property of the victim;

- physical violence: any act or behavior that affects the physical integrity of the woman or the girl;

- sexual violence: any sexual assault committed with violence, coercion, threat, on a woman or a girl.

CHAPTER 3: PREVENTING VIOLENCE AGAINST WOMEN AND GIRLS

Article 6:

The State ensures that measures are taken to ensure that:

- specific training on gender equality and combating violence against women and girls;

- an education that incorporates respect for fundamental rights and freedoms and the principle of equality between men and women;

- means of early detection of violence against women and girls in family, school, university and professional settings.

Article 7: [...]

CHAPTER 4: REPRESSION OF VIOLENCE AGAINST WOMEN AND GIRLS

Section 1: Offenses

Article 8:

An abduction or kidnapping takes place when a person forcibly removes a woman or a girl to impose on her a marriage or a union without her consent.

Any person guilty of abduction or kidnapping is punished by imprisonment from six months to five years and a fine of five hundred thousand (500,000) to one million (1,000,000) CFA francs or one of these two penalties.

The accomplice is punished with the same penalties.

When the perpetrator of abduction or kidnapping has sexually assaulted or raped the victim, the penalty is an imprisonment of five to ten years.

Article 9:

Is guilty of the offense of sexual abuse or torture and punished by imprisonment from two years to five years and a fine of five hundred thousand (500,000) to one million (1,000,000) CFA francs, whoever introduces a substance into the genitals of a woman or a girl, or applies an object or substance to the breasts of a woman or girl for the purpose of inflicting burns, injury or suffering.

Article 10:

Is guilty of the offense of sexual slavery and punished by imprisonment from two years to five years and a fine of one million (1,000,000) to two million (2,000,000) CFA francs, whoever forces by compelling a woman or a girl to submit or to engage in various sexual practices.

Article 11:

Is guilty of sexual harassment, whoever repeatedly imposes on a woman or a girl sexually oriented words or actions that are offensive to her dignity because of their degrading or humiliating nature or creates a daunting situation, hostile or offensive.

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Is assimilated to sexual harassment, the act of using any form of serious pressure, for the real or apparent purpose of obtaining a favor of a sexual nature that is sought for the benefit of the perpetrator or for the benefit of a third party.

Sexual harassment is punishable by imprisonment from three months to one year and a fine of three hundred thousand (300,000) to five hundred thousand (500,000) CFA francs or one of these two penalties. The penalty is maximized when:

- the perpetrator has influence or authority over the victim;
- the perpetrator is an ascendant;
- the victim is in a vulnerable situation.

Article 12:

Is guilty of moral and psychological violence against a girl or a woman, whoever expels, returns, rejects or abuses a girl or a woman accused of witchcraft.

These facts are punishable by imprisonment from one to five years and a fine of six hundred thousand (600,000) to one million five hundred thousand (1,500,000) CFA francs or only one of these two punishments.

Article 13:

Is guilty of moral and psychological violence towards a girl or a woman whoever carries out the following:

- any act, intention or attitude, accompanied or not by physical aggression, whose aim is to undermine the woman's or girl's self-esteem, to denigrate her, and to reduce the victim to a state of impotence or submission;
- gestures, words, writings, by which one shows an indecent or malicious intention or a clear desire to cause material damage, to wound or to kill the woman or the girl;
- the violation of the sexual and reproductive health rights of the woman or the girl, the limitation of the enjoyment of these rights, by means of coercion, blackmail, corruption or manipulation, including the prohibition of the use of contraceptive methods;
- the repudiation or mistreatment of a woman who gives birth to a child of an unwanted gender/sex by her husband;
- the ill-treatment of infertile women;
- the moral and material abandonment of the household;
- prohibition without reasonable grounds based on the interest or stability of the household, to visit relatives/parents or to receive their visits;
- the prohibition without good reason to practice a profession, to practice an activity generating income, an associative and political activity;
- the unequal treatment of wives in a polygamous marriage.

These facts are punishable by a fine of fifty thousand (50,000) to five hundred thousand (500,000) CFA francs.

Article 14:

Any person who commits by violence, coercion or surprise any act of sexual penetration of any kind on a woman or a girl is guilty of rape and punishable by imprisonment from five to ten years.

When the rape is repeatedly committed against an intimate and habitual partner with whom the perpetrator has stable and continuous sexual relations, or where the partner is in any physical disability to perform a sexual relationship, the penalty is a fine from one hundred thousand (100,000) to five hundred thousand (500,000) CFA francs.

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Section 2: Criminal and civil proceedings

Article 15:

The intervention of the special units of the civil or military police forces referred to in Article 39 of this law shall be carried out expeditiously within a time frame that ensures the respect and effective protection of the fundamental rights of women and girls.

Article 16:

Anyone who is aware that violence is being committed or has been committed against a woman or a girl must inform the police, the prosecutors of Burkina Faso, or any competent services or institutions.

Article 17:

Any woman or girl who is a victim of violence as defined in this law may seize by complaint or by any other means the competent authorities including the judicial or administrative authorities.

Any natural or legal person with knowledge of the same offenses may refer to the same authorities through a detailed report or by way of report or denunciation.

The respective authorities alerted through these means are obliged to follow up on the said referrals.

Article 18:

Any person who, during the performance of his/her duties, is aware of a case of violence against a woman or a girl is required to report it to the competent authorities.

Article 19:

Anyone who, by threats of retaliation, obstructs a denunciation by the aforementioned persons is liable to sanctions in accordance with the provisions of the Criminal Code relating to threats and the failure to provide assistance.

Article 20:

For the referral to the competent court, the victim may choose either the court having jurisdiction based on his/her residence, the court having jurisdiction based on the place where the facts occurred, or the court having jurisdiction based on the residence or the place of arrest of the victim's alleged perpetrator.

Article 21:

Before the competent courts, the victim, if he/she cannot afford a lawyer, is assisted by a public defender.

The victim may also be represented by a person of his/her choice or by a recognized non-governmental organization defending human rights, in case of incapacity or in case of extreme vulnerability certified by medical professionals.

Article 22:

When a police officer from a special unit is informed of acts of violence against a woman or a girl, he/she must proceed in accordance with the provisions of the Code of Criminal Procedure applicable to crimes caught in the act ("flagrante delicto").

He/she must also:

- guarantee, from the moment he/she is informed, the protection of the victim and of his minor children, if any;
- immediately inform the competent prosecutor of Burkina Faso;

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- ascertain whether the victim should be subjected to an immediate physical examination by a licensed health worker and, if necessary, by other specialized physicians or at the request of the victim, direct the victim to the nearest hospital, health center or medical-legal institute by special request as referred to in Article 25 below;
- help the victim whose life is in danger to find shelter;
- accompany the victim, where necessary, to the place where violence took place to remove his/ her belongings;
- inform the victim of his/her rights under this Act and of available services at his/her disposal;
- gather all the evidence to get more information about the nature of the violence and the related circumstances;
- send within 48 hours to the Prosecutor of Burkina Faso a preliminary investigation report on the facts and any potential request by the victim to obtain urgent protective orders/measures;
- identify the perpetrator and verify his criminal record;
- hear him as well as witnesses and place him in custody if necessary.

Article 23:

The medical conclusions produced by the health professionals who examined the victim as formalized through a medical certificate constitute a means of proof of the violence exerted on the victim and can serve as a basis for assessing the harm suffered by the victim.

They must contain details that provide sufficient information on the bodily and psychological injuries resulting from the violence suffered and the potential incapacity resulting therefrom.

They must be established within a maximum time frame of seven days.

Article 24:

In case of need, counter-appraisals are established by experts approved by the courts of appeal and the first-level courts.

Article 25:

Upon receipt of the preliminary investigation report from the judicial police officer, the Prosecutor of Burkina Faso or his substitute designated for that purpose must, within forty-eight hours:

- take cognizance of said investigation report and take all necessary measures for the purpose of urgent protection orders in favor of the victim, either “ex officio” or at the request of the victim. These urgent measures are extended as necessary to the minor children of the victim and extend also to his/her property;
- assess the desirability of initiating criminal proceedings or not.

Article 26:

At all stages of the preliminary investigation, the Prosecutor of Burkina Faso or the substitute in charge of the proceedings may decide, in accordance with the provisions of the Code of Criminal Procedure, to extend or lift the police custody measure “ex officio”.

Article 27:

The Prosecutor of Burkina Faso may require reports from anyone whose expertise is likely to contribute to the manifestation of the truth including doctors, psychologists, social services professionals, experts in communication and computer.

These reports are paid on criminal court fees.

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The refusal to prepare said expert reports on such a request is punishable by the penalties provided for the offense of obstruction of justice.

Article 28:

Urgent measures are taken by the Prosecutor of Burkina Faso or his substitute and applied immediately. They may be reinforced or readjusted as the procedure or the consequences of the acts of violence over the physical or psychological health of the victim progresses.

They are enforceable notwithstanding all other remedies.

Article 29:

Once the materiality of the violence has been established, the Prosecutor of Burkina Faso immediately takes urgent protective orders to remove the perpetrator from the victim.

He may also prohibit the perpetrator from approaching the victim or members of his family, from visiting common minor children or not, based on the reports of social services to the courts or any institution in charge of these issues or based on conclusions transmitted to the prosecutor's office by a shelter and assistance center that has received the victim.

Article 30:

As soon as urgent measures are taken, and if he considers that the facts before him cannot under the circumstances be classified as criminal, the Prosecutor of Burkina Faso will dismiss the case and notify the victim and his/her lawyer to whom he sends a copy of the file.

Article 31:

It is established in each district court, a chamber in charge of the repression of violence against women and girls.

This chamber has exclusive jurisdiction over violence against women and girls and over protective orders to protect victims.

It is presided by a judge designated by order of the president of the “tribunal de grande instance”.

Article 32:

The chamber responsible for violence against women and girls is responsible for investigating and judging the offenses referred to and punished by the Criminal Code and all the specific laws to which it refers, which relate to deliberate attacks on moral, physical and sexual integrity of women and girls as defined in this Act, including where such offenses constitute an aggravated offense, or a crime.

Article 33:

The judge in charge of knowing violence against women and girls can only investigate or judge after being so requested either:

- by requisition of the Prosecutor of Burkina Faso or by complaint by a civil party;
- following the issuance of a protective order; or
- by the dismissal of a judge or a court of common law for the benefit of a criminal court.

Article 34:

If the judge responsible for the punishment of the violence considers that the acts or facts brought to his knowledge do not constitute a crime or a crime of violence against women and girls, he shall dismiss the case and transfer the file to the civil law judge.

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Article 35:

For all proceedings not provided for by this law, the judge responsible for violence against women and girls shall investigate and judge the case in accordance with the provisions of the Code of Criminal Procedure applicable in criminal matters.

Article 36:

All physical, sexual, moral and psychological, economic, patrimonial, or cultural violence, as defined in Article 5 of this Law, and all other forms of violence against women and girls which cannot receive an adequate qualification, still imply civil liability of their authors and victims are entitled to remedies by the civil courts and to the payment of damages whose amounts are fixed according to the damages caused.

Article 37:

Decisions on violence against women and girls may be subject to opposition, appeal, or cassation before the competent ordinary courts in accordance with the civil and criminal provisions applicable in cases of violence against women and girls.

Article 38:

The competent courts after having taken urgent measures for the protection of the victim of violence, are obliged to follow the diligent execution of these measures. They can use social services and other institutions to protect the rights of women and girls.

CHAPTER 5: CREATING SPECIAL STRUCTURES

Article 39:

Each special unit of the civil and military police creates special structures responsible for:

- welcoming and listening to women and girls who are victims of violence or threatened with violence;
- considering expeditiously the urgent measures required by the circumstances;
- summoning and hearing the perpetrators;
- traveling to the scene, making findings and, if necessary, intervening to put an end to on-going violence;
- proceeding with the arrest of the perpetrators if necessary.

The organization and operation of these special units are established by regulation.

Article 40:

A center for the care and protection of women and girls who are victims of violence is created within each municipality.

Article 41:

A support fund for the care of women and girls who are victims of violence is created to ensure the financial sustainability of measures and structures for taking care of women and girls who are victims of violence.

Article 42:

Funding of the support fund is provided by the State budget.

The modalities for implementing the support fund and its operation are defined by decree issued by the Council of Ministers on the proposal of the Minister for the Promotion of Women.

Article 43:

A legal aid fund for women and girls who are victims of violence is created to assist victims in court proceedings.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON DOMESTIC VIOLENCE

CHAPTER 6: STRUCTURES FOR THE PROTECTION AND ASSISTANCE TO VICTIMS OF VIOLENCE

Article 44:

The State ensures the creation of integrated care centers and guarantees their free access to women and girls who are victims of violence.

These centers provide the victims with emergency care, security, and comprehensive support services, including medical care enabling them to benefit from free and comprehensive health care, psycho-social support and, when necessary, referrals. the courts.

Article 45:

Integrated care centers also carry out, within the limits of their powers and competences, the urgent protective measures adopted by competent courts.

Article 46:

The State sets up listening and support units for women and girls exposed to violence.

Article 47:

The State facilitates and strengthens access to these centers, units and clubs as well as all other social services and decentralized structures involved in the fight against gender-based violence and the care of victims of violence.

Article 48:

The structures provided for in Articles 44 to 46 are organized in such a way as to meet the urgent needs of the victims and to provide them with lasting multidisciplinary support.

The multidisciplinary services provided for in this framework include the following elements:

- the information of the victims;
- psychological and psychiatric support;
- social support;
- health support;
- the service of judicial police officers;
- follow-up of legal and administrative requests;
- the ease of access to shelter centers.

Article 49:

Women who are victims of violence, especially girls threatened with forced or arranged marriage, girls who are domestic workers and are sexually abused, are given priority in shelter centers.

Article 50:

Minor children who are under the care and supervision of the person being abused are also entitled to comprehensive social assistance through these social services.

Article 51:

Human rights organizations, customary and religious authorities can also create childcare facilities similar to those created by the State.

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These structures can benefit from the support of the State.

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Article 52:

In order to monitor and evaluate violence against women and girls, a national observatory has been set up to draw up a national plan to combat violence against women and girls.

The national observatory is under the supervision of the Ministry for the Promotion of Women.

The organization and functioning of the observatory are defined by decree of the Council of Ministers.

Article 53:

The observatory produces an annual report in accordance with the action plan.

CHAPTER 7: TRANSITIONAL AND FINAL PROVISIONS

Article 54:

Pending the creation of the chamber referred to in Article 31 of this law, the correctional chamber of the high court is competent to hear cases of violence against women and girls.

The president of the “tribunal de grande instance” may, failing that, appoint by order, a judge charged with investigating and judging cases of violence against women and girls.

Article 55:

Where the procedures provided for by this Act so require, all the compatible provisions of the Criminal Code, the Code of Criminal Procedure, the Code of Personal Status and Family, the Code of Civil Procedure and all other specific laws in force relating to violations of the rights of women and girls are applicable.

Article 56:

This law shall be implemented as the law of the State.

[...]

28. CAPE VERDE

[Special Law Against Gender-Based Violence, 2011](#) ⁶⁶

[...]

TITLE I
General provisions

Article 1
Object

1. The present law establishes measures for achieving the principle of gender equality.
2. This Act establishes, in particular, measures to prevent and suppress the crime of gender-based violence, hereinafter referred to as GBV.

Article 2
Scope

1. This law shall apply to all situations of violence that endanger the effective gender equality.
2. This law shall apply, in particular, to situations arising from the use of power between persons, by which gender-based violence is practiced, in isolation or repeatedly, by any means provided for by this law.

⁶⁶ Special Law Against Gender-Based Violence (Lei especial contra a violência baseada no género), No. 84/VII/2011 (10 January 2011), available in Portuguese at <https://portondinosilhas.gov.cv/images/igrp-portal/img/documentos/1D1F38270D312D9FE053E600040AE293.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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3. This law is especially applicable when, at the time of the aggression or in the past, there is a relationship of intimacy, affectivity, marriage or situation similar to marriage, including:

- a) The domestic environment, understood as a space of permanent contact between persons, with or without family ties, including those that belong to the family unit;
- b) The family environment, understood as the community formed by individuals who are or are considered related, united by natural bonds, affinity or by will;
- c) Any intimate relationship of affection, in which the aggressor lives or has lived with the victim, regardless of cohabitation.

4. The present law also applies to any situation of violence practiced by those who, having authority or influence over another person, sexually harass him/her.

Article 3
Definitions

For the purposes of this law:

- a) "Gender" means the social representation of the biological sex, determined by the idea of tasks, roles and responsibilities attributed to women and men by society, in public and private life, as well as the relationship between them;
- b) "Gender equality": equality, in the constitutional sense, between men and women, means recognizing equal rights and duties, inferring equal visibility, empowerment and participation of both sexes in all spheres of public and private life;
- c) "Gender-based violence" means any manifestation of physical or psychological violence, whether resulting in physical offenses, offenses to sexual freedom, coercion, threat, deprivation of liberty or harassment, based on the construction of unequal power relations, in particular, by reasons of economic, social, cultural or any other, of the aggressor in relation to the victim, considering for this purpose:
 - (i) Physical violence: any conduct that offends the body or the health of the victim;
 - (ii) Psychological violence: any conduct that causes emotional harm, diminishes self-esteem, harms and disrupts the full development of the victim, which seeks to degrade or control their actions, beliefs and decisions through threat, embarrassment, humiliation, manipulation, constant vigilance, persecution, insult, blackmail, ridicule, exploitation, dishonor, disrepute, disregard of personal worth and dignity, as well as the limitation of the right of circulation;
 - (iii) Sexual violence: any conduct committed for liberation or satisfaction of the sexual instinct, involving threat, intimidation, coercion, fraud, deliberately putting the victim in a situation of unconsciousness or inability to resist, physical aggression, blackmail, including, not only the sexual act of penetration, but also any other forms of sexual contact, limiting or annulling the exercise of their sexual and reproductive rights;
 - (iv) Patrimonial violence: any conduct that entails the retention, subtraction, partial or total destruction of the victim's objects, work tools, personal documents, assets, values and economic resources, including those intended to meet his or her needs;
- d) "Sexual harassment" means any conduct committed by any person who, having authority or influence over another, makes hiring, permanence in work, renewal of the contract, promotion or acquisition of any other privileges, as well as scholarship grants, subsidies or other relevant benefits for the person or their dependents, dependent on obtaining sexual favors for themselves or a third party.

Article 4
Fundamental objectives

The present law has as fundamental objectives:

- a) Ensure the exercise of special rights for victims of GBV, particularly in the social, labor and criminal spheres;
- b) Promote special obligations for the State and other public authorities in the adoption of public policies for the prevention, assistance and repression of gender-based violence;
- c) Create or strengthen the capacity of institutional structures to combat gender-based violence;
- d) Create conditions to ensure timely, specialized and effective responses to victims, both at the police and judicial assistance and social protection levels;
- e) Recognize that all the rights contained in this law are also guaranteed to foreigners who are in national territory, regardless of the situation in which they are.

TITLE II
Measures to raise awareness, assistance and protection

CHAPTER I
Awareness and assistance measures

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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Section I
Awareness-raising measures

Article 5
Awareness and prevention plans

Government is responsible for the elaboration of the National Plan for awareness and prevention of GBV, with the aim of:

- a) Promote effective gender equality;
- b) Socialize the principles and guiding values to safeguard gender equality;
- c) Establish the bases of articulation with other public entities and non-governmental organizations, as well as private entities for the consolidation of the interventions in the prevention and sensitization against GBV;
- d) Design community and public training programs for the promotion of gender equality;
- e) Define the scope of intervention under a partnership between public and private entities the progressive improvement of interpersonal gender relations.

Article 6
Educational background

1. The State shall ensure:

- a) the adoption of educational measures that promote gender equality and eliminate sexist or discriminatory stereotypes while safeguarding respect for fundamental rights and freedoms and tolerance;
- b) The promotion of studies, statistical surveys and periodic evaluation of the results referred to in the previous paragraph;
- c) The provision of a special status for students living in a family environment in which the GBV is manifested, particularly with regard to the prescription of attendance rights in public schools.

2. The State shall also ensure the promotion of studies, statistical surveys and periodic evaluation of the referred by in point c) of the previous number.

Article 7
Training of professionals

The State promotes and encourages the specialization of all professionals involved in the process of information, care and protection of the victims of GBV.

Article 8
Mechanisms of coordination and action

Public entities, such as health, police and civil society must establish mechanisms of articulation and action that guarantee uniformity and adequacy in the actions and procedures of prevention and assistance, notably allowing the standardization of the reports, reports or other documents provided for in this law, within the scope of each entity's competencies.

Article 9
Social Media

- 1. The State shall adopt incentive measures for the promotion of gender equality in the media.
- 2. Legislation shall establish measures that limit advertising which violates the principles and rules for promotion of gender equality, defined and established under the terms of this law.

Article 10
Early Detection

The State shall approve incentive measures for the training and action of professionals in the health, education, legal or any other area that deals directly with alleged victims for the pre-detection of GBV.

Section II
Assistance measures

Article 11
Victim assistance policy

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1. The policy of assistance to victims under the terms of this law is defined by the Government, subsequently to the proposal of the public bodies responsible for public policies on gender equality.
2. Public entities, such as health, police, civil society and media, shall provide assistance to victims of GBV, including information on their rights, their protection and security, social assistance, support of victims, state of proceedings, among others.
3. In addition to the others provided for in this law, victims of GBV are guaranteed, in particular, the right to:
 - (a) legal aid where they prove that they do not have sufficient financial means to cover all or part of the normal costs of proceedings or fees payable to the lawyer;
 - b) Financial support to be provided by the Support Fund to victims of GBV, in accordance with Article 21.

Article 12
Labor rights

1. The labor rights in all situations of gender-based violence are especially protected.
2. Victims, under the terms of this law, are guaranteed the right to:
 - a) Non-dismissal, on grounds of impossibility of working due to situations of gender-based violence;
 - b) Flexibility in working hours, regardless of the functions performed;
 - c) Facilitating mobility within the possibilities of the employer;
 - d) Granting of short, medium or long-term leave, without loss of work place, regardless of the duration of service already delivered;
 - e) Termination of the employment contract unilaterally and with justification

Article 13
Access to justice

1. The right to access to justice, with urgency, is guaranteed in all cases directly or indirectly cause of GBV.
2. Legal aid, right to representation or assistance by a lawyer must be ensured with priority and urgency to victims who demonstrate that they cannot afford legal support.

Article 14
Social work, counseling and social reintegration

1. Victims of GBV, as well as minors who are under their care, are entitled to immediate social assistance, including in shelters.
2. Assistance to the victims of GBV with regard to career guidance and social reintegration is ensured, directly through the Victim Support Centers and shelters, or through other existing programs that must be encouraged by the State.

Article 15
Social Security

1. Victims of GBV, as well as minors under their care, shall be guaranteed full social protection, in accordance with the law.
2. Absences or delays caused by the situation arising from GBV shall be considered as justified and related rules should be established.
3. Workers who are unable to perform work due to GBV which results in incapacity for work, within a maximum period of six months, cannot be dismissed.
4. Employees who, because of GBV, are prevented from providing services for more than two months, may benefit from social services and financial support.
5. Workers who, because of GBV, are unable to work, are guaranteed a subsidy of not less than 80% of their salary, by the social security service, and the procedure must be carried out within a maximum period of 30 days.
6. The transfer of the amount of family allowance may be requested by the victim of GBV, as a precautionary measure or at the end of criminal and civil proceedings, which will be directly transferred to the victim.

Article 16
Health

1. The public health services shall ensure that VGB employees receive adequate, urgent and cost-free services.
2. The medical treatment guides must be completed in compliance with the requirements of this law, especially considering its purpose.

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3. When a medical report is requested by the judicial authorities, it must be prepared by a GBV-trained professional and must be sent in urgently.
4. Health professionals will have the resources that will enable early detection of gender-based violence and adequate assistance to victims will be provided, urgently and free of charge.
5. The State shall develop programs for training and capacity building of health personnel on gender equality and GBV.

Article 17
Recovery of the aggressor

The State shall create the necessary conditions for the recovery of the aggressor, including the implementation of programs of psychological or psychiatric support, education and prevention of GBV.

Section III
Protective measures

Article 18
Support Structures

The following structures should be created in favor of the victims of GBV:

- a) Victim Support Centers;
- b) Shelter Houses;
- c) Victim Support Fund.

Article 19
Victim support centers

1. The Government, in articulation with the City Councils and other entities with responsibilities in the matter, will create the Victim Support Centers, as multidisciplinary structures for support, especially in the areas of information delivery, psychological and legal support, social support, educational support to the family unit, orientation and labor insertion.
2. The public body responsible for the promotion of public policies on gender equality shall be responsible for the implementation and supervision of victim support centers and for encouraging the development of networks to combat GBV.
3. Victim support centers are structures with administrative and financial autonomy, which are located on, at least, all the islands.
4. The Victim Support Centers work in liaison with health services, legal aid agencies, police, legal entities, shelters, the public body responsible for the implementation of public policies relating to children and adolescents, as well as non-governmental organizations dedicated to the promotion of gender equality and family.

Article 20
Shelter Houses

1. The Government, in articulation with the City Councils and non-governmental entities with responsibilities in the matter, will create Shelter Houses for the victims and minors under their care, for their temporary shelter with confidentiality, in cases where permanence in their residence causes an imminent threat against their physical integrity or life.
2. Shelters Houses should be implemented throughout the national territory, at least one on each island, and must have qualified personnel to assist the victims of GBV and their minor children, if they have children.
3. The public body responsible for promoting public policies on gender equality shall be responsible for by the implementation and supervision of shelters.
4. The organization and operation of shelters are subject to regulation.

Article 21
Victim Support Fund

1. An autonomous GBV victim support fund, called the Victim Support Fund, shall be set up by the Government.
2. 50% of the legal costs/fees in judicial proceedings under this law revert to the Support Fund.
3. The Support Fund is used so that, in the shortest possible time, it can guarantee funds that will allow the victim to pay urgent expenses as a result of the aggression, according to the terms of the regulation. The Fund is also financed through the annual inclusion of own funds in the State Budget.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
DOMESTIC VIOLENCE

4. The earnings on the Support Fund shall also be destined to maintenance of the Cabinets and Shelters and destined to development of recovery programs, psychological and psychiatric support, education and prevention of gender-based violence for perpetrators.

Article 22

Other measures

Without prejudice of the rights provided for in other legal provisions, victims of GBV are especially ensured:

- a) Partial or integral police protection for the necessary time to preserve their physical integrity;
- b) Food to minors and / or to the victim;
- c) Regulation of the exercise of parental authority;
- d) Psychological monitoring and treatment.

TITLE III

Crimes and Special Procedures

CHAPTER I

Criminal custody

Section I

Gender-based violence

Article 23

Gender-based violence

1. Whoever, by reason of gender, in the circumstances and under the conditions referred to in paragraphs 2, 3 and 4 of article 2, commits, against others, acts of violence referred to in article 3 (c), in any form therein, shall be punished by sentence of imprisonment of 1 to 5 years.
2. If the conduct of the agent results in damage described by articles 122, 129 of the Penal Code, the penalties provided for in articles 123 and 124 of that Code shall apply.
3. If the perpetrator performs the acts described therein against the spouse, ex-spouse or person with a disability or a person who they cohabite with or are bound by affective relationship, whether or not there is cohabitation, he/she shall be subject to the penalties provided for in articles 142 and 144 of the Penal Code.
4. The provisions of article 8 of the Penal Code apply to this crime.

Article 24

The record

The penalty referred to in number 1 of the preceding article shall be increased by one third in its minimum and maximum limits, when:

- a) Minors are involved, who are, or have been, dependent on the victim or the agent;
- b) Violence is practiced in public places or in a particularly difficult way for the victim;
- c) The agent has, for the practice of the crime, resorted to any of the means provided for in a) and b) of article 123 of the Penal Code;
- d) The victim is any of the persons indicated in the paragraphs and article 124 of the Penal Code;
- e) The crime is committed during the period in which precautionary measures were duly imposed;
- f) The crime results in a serious contagious disease for the victim.

Article 25

Harassment

[...]

Article 26

Suspension of sentence

1. The penalty applicable for the commission of crimes under this law may only be suspended when it does not exceed two years' imprisonment, and the agent, at the discussion and trial hearing:
 - (a) Agrees to a follow-up and reinstallation program;
 - (b) Carries out service in favor of the community, as established in the Penal Code.
2. The obligation set forth in paragraph a) of the preceding paragraph may also be imposed on the agent, in the case of a crime under this law, regardless of the actual penalty applied.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
DOMESTIC VIOLENCE

Section II
Other crimes

Article 27
Reduction of penalties

In addition to the cases provided for in article 84 of the Penal Code, the court may further reduce the penalties provided for by articles 122 and 129 in half, if there is sufficient evidence that the agent was a victim of the crimes provided for by this law, with the purpose of reacting to a continuous and permanent threat to his life, physical integrity or freedom, even if outside the circumstances that exclude the unlawfulness of the act.

Article 29
Subsidiary regulations

In everything that is not specially established in this chapter, the norms of the Penal Code are applicable in a subsidiary manner.

CHAPTER II
Related searches

Section I
Procedural provisions

Article 29
Nature of procedure

1. The crime established by article 23 is a public crime, which means that criminal procedures take place regardless of complaint, which can be made by any person.
2. A special duty to proceed with reporting the offense, even if the agent is unknown to him falls upon:
 - a) Police entities and criminal police agencies;
 - b) Officials as per article 362 of the Penal Code;
 - c) Doctors or health technicians who, in the performance of their duties or because of them, have become aware of the commission of the crime.
3. The statement by the victim that she/he intends to withdraw from the complaint can only be considered when determining the actual sentence and when the conditions required for the suspension of the sentence are fulfilled, in accordance with article 26.

Article 30
Urgency

1. The criminal procedure instituted under the terms of this law is urgent, for all its intent and purposes.
2. Police entities, criminal police agencies and other professionals referred to in number 2 of the preceding article are required to communicate to the Public Prosecutor all criminal acts of GBV that they become aware of, as soon as possible, not exceeding 48 hours.

Section II
Proceedings

Article 31
Previous proceedings

1. In cases that imply GBV, when assisting the victim or participating in any operation involving violence, police authorities shall ensure adequate information and support for the victim and that the minors under their care have their privacy protected.
2. Where circumstances so dictate, the competent police officer shall direct the victim to the nearest health facility or directly to the Shelter House or other safe place, especially in case of danger of life or offense to the physical integrity, always protecting their dignity and intimacy.
3. If necessary, police authorities must accompany the victim, in order to retrieve their personal and professional belongings from the house where they live, as well as of the belongings of their dependents.
4. The police authorities must return the victim to the family residence and ensure the removal of the aggressor, after judicial decision that determines it.

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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Article 32

Police and sanitary procedures

1. The health and police services which have taken care of any GBV victim are required to take steps to prepare the initial report, which shall include:
 - a) the description of the immediate consequences of the offense, in particular the injuries, the instruments used and the treatment to which the victim has been subjected;
 - b) the degree of incapacity for work and the convalescence period;
 - c) The probable identification of the aggressor, as well as information regarding previous complaints formulated against him, by similar behavior or with respect to the same victim, whether or not registered in the respective service.
2. It is incumbent upon the police authorities to send the report referred to in the preceding paragraph 2 to the Public Prosecutor within the period established in article 30.

Article 33

Special assignments of the Public Prosecutor

1. The Public Prosecutor's Office must, within 48 hours after receiving the evidence of the crime of GBV, order the first measures, which must be carried out at the maximum 48 hours later, without prejudice to the possibility of delegation of powers under the law.
2. The measures to be ordered by the Public Prosecutor must include:
 - a) Presentation of the aggressor to the Judge, for first interrogation and application of coercive measure;
 - b) Determination of follow-up for the victim, through the support services referred to in this law, for the purposes of providing her/him with information, protection, social, legal and psychological assistance and judicial support, and delivery of a final report on the victim's situation when there is prosecution;
3. When the conditions for the alimony are established, the Public Prosecutor shall request provisional alimony, during the same period referred to by number 1, within the competent court, in particular when the victim has minor children or when the victim has particular needs.
4. The Public Prosecutor's Office further decides whether it is necessary to apply any of the other assistance measures provided by in this law.

Article 34

Coercive measures

1. All coercive measures provided by in the Code of Criminal Procedure, are admissible with the specificities set out in the following paragraphs.
2. Regardless of other applicable measures, when the offender and victim live in the same residence, as spouses or in similar conditions, it is necessary to apply the measure of prohibition of residence in the same house.
3. The judge may dismiss the application of the measures referred by in the preceding paragraph, with a justified decision.

Section III

Form of the process and other procedural rules

Article 35

Form of proceedings

1. The trial of the crimes referred to by this law observes the proceedings of the simplified/short process, even if the conditions set forth by paragraph 1 of article 430 of the Code of Criminal Procedure are not fulfilled, with the specificities established in the following paragraphs.
2. The accusation is always preceded by instruction.
3. The decision of the judge shall be issued within 48 hours after the corresponding court proceedings have been filed.
4. When cases are referred to ordinary procedure, which is admissible only in the situations provided for in paragraphs 2 and 3 of article 23, the time limit for the hearing may not exceed 90 days.

Article 36

Provisional suspension of proceedings

Provisional suspension of proceedings may be determined by injunctions, with correspondence to conditions for the suspension of the sentence of imprisonment provided by in this law, in accordance to article 318 of the Code of Criminal Procedure.

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Article 37

Deadlines

1. When the Public Prosecution knows that, for reasons related to the physical or mental state of the victim, or by others that make submission of all the necessary evidence for the progress of the proceedings difficult, the public prosecutor may, using a justified decision, file an indictment within a maximum period of seventy-five days, without prejudice to the provisions of article 35, paragraph 1.
2. The trial shall take place within a maximum period of twenty days following the notification of the accused that the prosecution has been deducted.

Article 38

Statements by victims and witnesses

1. In order to preserve the victim from further discomfort relating to their presence in trial and their emotional situation, his/her statements may be made:
 - a) Through video conferencing;
 - b) Beforehand, upon request of the Public Prosecutor or of the victim, the statement will be made not in the presence of the accused, without prejudice of the defendant's rights of defense.
2. If the victim is debilitated to the point that it will possibly affect the presentation of their statements or their appearance at a due process hearing, the statement may be delivered at their domicile, pursuant to article 346 of the Code of Criminal Procedure.
3. In cases of threats, pressures or intimidation to the victim or witnesses, the authorities shall insure the application of witness protection mechanisms, in accordance with the law.

Article 39

Programs at penitentiary

1. The penitentiary administration, together with the public body responsible for promoting public policies on gender equality, should carry out specific programs for prisoners, convicted of crimes of GBV, through qualified personnel and specialized.
2. The inmate's participation in the programs will be considered for the purpose of granting permits and probation.

Article 40

Subsidiary regulations

In everything that is not specially established in this chapter, the norms of the Code of Criminal Procedure are applicable in a subsidiary manner.

TITLE IV

Civil protection

Article 41

Related searches

1. Civil proceedings that are directly or indirectly related to the cases of violence envisaged in this law are urgent and must be completed within a maximum of 180 days, depending on their complexity.
2. The appeals lodged in the cases mentioned in the previous article are likewise urgent and must be decided within a maximum period of 90 days.
3. The victim shall enjoy the right of preference when conceding the right to live in the family house, regardless of ownership of the property or the grantor in the lease.

Article 42

Non-compliance

1. Officials or other professionals to whom this law imposes special obligations of complaint shall be subject to disciplinary sanction:
 - a) In case of non-fulfillment of their duty to complain or in compliance with the established deadlines;
 - b) When they treat the victims offensively.
2. The conduct referred by in the previous number shall be considered a serious offense for the purposes of disciplinary proceedings.

TITLE V

Transitional and final provisions

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
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Article 43

Implementation and regulation of measures

1. Within a maximum period of one year, the Government shall create the conditions for the implementation of awareness-raising or assistance measures, the application of which depends on the development of this law and the allocation of corresponding financial resources.
2. All regulations of this law must be approved within a maximum of one year.
3. The Cape Verdean Institute for Gender Equality and Equity (ICIEG) is the public body responsible for promoting the implementation of structures created under this law.

Article 44

Implementation

This law shall enter into force sixty days after its publication.

[...]

[Penal Code, 2003](#) ⁶⁷

Article 134

(Maltreatment of spouse)

Anyone who inflicts serious physical or mental abuse or cruel treatment to his or her spouse, or to the person with whom he or she is in a domestic union with, shall be punished by sentence of imprisonment of one to four years, except if a more severe penalty is applicable under another legal provision.

29. CAMBODIA

[Law on the Prevention of Domestic Violence and the Protection of Victims, 2005](#) ⁶⁸

[...]

CHAPTER - 1 General Provision

This law has the objective to prevent domestic violence, protect the victims and strengthen the culture of non-violence and the harmony within the households in society in the Kingdom of Cambodia.

This law is in the purpose to establish a legal mechanism to prevent domestic violence, protect the victims and preserve the harmony within the households in line with the Nation's good custom and tradition and in accordance with Article 45 of the Constitution of the Kingdom of Cambodia, in addition to the regulations in effect.

CHAPTER 2 - Scope of the Implementation

Article 2._

Domestic violence is referred to the violence that happens and could happen towards:

- 1- Husband or wife
- 2- Dependent children
- 3- Persons living under the roof of the house and who are dependent of the households.

Article 3._

Domestic violence is required to be prevented in time effectively and efficiently and that it is required to take the most appropriate measures in order to protect the victims or the persons who could be vulnerable.

Violence includes:

- Acts affecting life
- Acts affecting physical integrity
- Tortures or cruel acts

⁶⁷ Penal Code, Legislative Decree No. 4/2003 (18 November 2003), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=206287 (last visited December 30, 2018). Unofficial translation by Compendium team.

⁶⁸ Law on The Prevention of Domestic Violence and The Protection of Victims, Royal Decree No. 1005/031 (24 October 2005), available at https://www.wcwonline.org/pdf/lawcompilation/Cambodia_dv_victims2005.pdf (last visited December 30, 2018).

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON
DOMESTIC VIOLENCE

- Sexual aggression.

Article 4._

Acts affecting life include:

- Premeditated homicide
- Intentional homicide
- Unintentional homicide resulted from intentional acts of perpetrators
- Unintentional homicide.

Article 5._

Acts affecting physical integrity include:

- Physical abuses with or without using weapons, with getting or not getting wounded
- Tortures or Cruel acts.

Article 6._

Tortures or cruel acts include:

- Harassment causing mental/psychological, emotional, intellectual harms to physical persons within the households
- Mental/psychological and physical harms exceeding morality and the boundaries of the law.

Article 7._

Sexual aggression includes:

- Violent sex
- Sexual harassment
- Indecent exposures.

Article 8._

It is also required to prevent threats aiming at frightening, shocking the victims and acts affecting individuality and properties of the persons living under the roof of the house and who are dependent of the same households.

Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation's good custom and tradition, if the disciplining and teaching are conducted with the noble nature (*consisting of compassion, pity, joy at other's happiness, and sincerity*) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.

CHAPTER 3 Authorities and Procedures

Article 9._

The nearest authorities in charge have the duty to urgently intervene in case domestic violence occurs or is likely to occur in order to prevent and protect the victims.

During the intervention, the authorities in charge shall make a clear record about the incident and then report it immediately to the prosecutors in charge.

Article 10._

In the purpose to prevent domestic violence and protect the victims, the officials of the Ministry of Women's Affairs who work in the fields regulated under this law shall obtain the legal qualification as the judiciary police and can act as the complaining party instead of the victims in accordance with the penal procedures in effect.

Article 11._

In case of the absence of the officials who have already earned the legal qualification as the judiciary police, other officials in charge including police officials, police agents, Royal Gendarmerie, local authorities in commune/*Sangkat*, officials of the Ministry of Women's Affairs as well as village chiefs who have intervened to prevent domestic violence and protect the victims shall be empowered under this law to make a record to the court.

This record has also the same value as the record made by judiciary police officials.

Article 12._

In performing their duty, the authorities in charge as stated under the above mentioned Article 9, Article 10 and Article 11

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shall comply with the procedures defined in the provisions of this law and the procedures of the penal code in effect.

CHAPTER 4 - Prevention and Protection of Victims

Article 13._

In order to prevent domestic violence which is occurring or is believed to occur, the authorities in charge shall intervene urgently by:

- Seizing the weapons or concrete objects that have been used or could use by the perpetrators
- Moving the perpetrators from the scene or moving the victims if there is a request from the victims. In any special case the victim can be removed without a request if there is a necessary reason to do so.
- Offering the appropriate assistance to the victims in accordance with their circumstances, especially providing the temporary shelter in which safety can be guaranteed and urgent medical assistance
- Explaining, educating and mediating both parties to stop violence and informing the victims about their rights to prevent violence as stated in Article 20 and Article 26 of this law.

The perpetrators in this law are referred to the persons who have committed, are committing and prepare to commit domestic violence.

Article 14._

In order to protect the victims' security, the authorities in charge can issue the administrative decisions in line with Article 43, Article 48 and Article 49 of the law on the Management of Commune Administration and take temporary measures in accordance with the existing laws as follows:

- Prohibiting from committing domestic violence by themselves or by others
- Prohibiting from destroying the properties or instructing not to put on sale the victims', the victims' relatives' or joint properties.
- Prohibiting from approaching or entering the house shared together or the places where the victims stay or work without the permissions from the victims and the authorities in charge
- Taking other legitimate measures that are necessary to protect the safety of the victims and the household members or the persons involved.

Article 15._

If there is a request for intervention and the occurrence of the *Flagrante delicto*, the authorities in charge have the rights to have access to the scene, despite there is no warrant authorized by the court. In any cases that the officials and agents in charge believe with the reasonable ground that domestic violence has occurred during the past period of 48 hours, or could occur during the upcoming period of 24 hours.

During the intervention, the authorities in charge shall make a clear record about the incident and report it immediately to the prosecutor in charge.

Article 16._

Along with the intervention made by the authorities in charge, the victims can file a complaint to provincial/municipal courts asking for issuing a protection order.

The assigned judges shall issue the protection order with the presence or without the presence of the perpetrators.

Article 17._

To participate in the implementation of the penal procedures in effect, the authorities in charge cannot intervene to reconcile or mediate the criminal offences that are characterized as felonies or severe misdemeanors.

Article 18._

The authorities in charge can arrest the perpetrators who is committing the *Flagrante delicto* or any perpetrators who is violating the courts' protection orders as stated in Article 24 and Article 25 of this law without a necessarily authorized warrant from the courts. But beside the two cases, any arrests made by the authorities in charge without the authorized warrant from the courts shall be prohibited.

In case of complying with the provisions of the above mentioned section 1, the authorities in charge shall make a clear record, file the case and bring the arrested perpetrators to the courts immediately during the minimum period defined in the penal procedure code in order to take additional legitimate measures.

Article 19._

Any domestic violence which the criminal offences are characterized as felonies or severe misdemeanors shall be subjected to a criminal suit, despite the violence is already over.

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The criminal complaint shall be made in the form as stated in this law and in accordance with the law on penal procedures in effect.

CHAPTER 5 - Authorities of the Courts

Article 20._

The protection order has the power to impose orders on the perpetrators, authorities in charge and the persons involved in the case. The protection order is the civil measures.

The protection order can point at all subjects, status, activities or behaviors, as imposing to do something or prohibiting from doing something related to the requirement to protect the victims or any individuals who receive the threats of domestic violence.

The protection order can be:

- 1- Influential for a while
- 2- Temporarily influential in accordance with the provisions as stated in Article 23 of this law.

The judges in charge have the rights to issue a new protection order in accordance with the concrete situation or any order in an appropriate manner.

Article 21._

Only the provincial/municipal courts have the authority to issue the protection order in favor of the victims of domestic violence in all cases, despite domestic violence occurs repeatedly, as in the civil, administrative or criminal cases.

Article 22._

The complaint to ask for the protection order from the courts can be made by:

- 1- The victims or representatives of the victims or the authorities in charge within the victims' residential areas or officials, agents who fulfill their work at the scene
- 2- Any person who has learned about the incident of domestic violence if the victims are children, mentally retarded persons, or the persons whom the courts believe to be unable to file the complaint themselves.

Article 23._

The protection order consists of two stages:

- 1- **Stage 1:** It is called the temporary protection order which is effective within a period of 2 (Two) months, issued during the emergency period during which domestic violence occurs immediately.
- 2- **Stage 2:** It is called the protection order which is effective within a period of 6 (Six) months, issued during the period during which the courts are investigating the case, the trial is not yet conducted, or before a final verdict is declared.

Article 24._

The courts can issue the temporary protection order when receiving the complaint for protection without necessarily questioning the perpetrators, if the temporary measure is necessary to protect the safety and welfare of the victims or to preserve the properties of the victims temporarily before a final verdict is handed down.

Article 25._

In issuing the protection order, the courts have the rights to define, impose an order on the activities of the perpetrators in order to protect the victims as follows:

- Prohibiting from committing domestic violence by themselves or by others
- Prohibiting from approaching or entering the house shared together or the places where the victims stay or work without the permissions from the victims and the authorities in charge
- Prohibiting the perpetrators from contacting the victims through any means
- Prohibiting from destroying the properties or arranging to put on sale the victims' or the victims' relatives' properties
- Separating the perpetrators or the victims, if there is a request, from the house shared together. In any special case the victim can be removed without a request if there is a necessary reason to do so.

The following additional measures can be taken if the courts know that it is necessary to protect or provide the safety, health and welfare to the victims:

- Ordering any police or Royal Gendarmerie to preserve personal properties of the victims
- Making a decision on the custody of the children and the rights to visit the children by paying the highest attention to the rights and interests of the children
- Halting the victims' duty of financial support towards the perpetrators
- Imposing the perpetrators to provide the financial assistance to the victims, based on

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the perpetrators' financial resources.

Article 26._

For the offences that are the mental/psychological or economic affected violent acts and minor misdemeanors, or petty crimes, reconciliation or mediation can be conducted with the agreement from both parties. The household members can choose any way by requesting parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors to act as the arbitrators to solve the problems in order to preserve the harmony within the household in line with the nation's good custom and tradition in accordance with Article 45 of the Constitution of the Kingdom of Cambodia.

Article 27._

In accordance with the content of the above mentioned Article 25, the courts shall try to reconcile the violence disputed parties under the condition that it is in response to the wishes of the household members. While reconciling and mediating, the courts shall avoid putting pressures on the party who refuses to go along with each other or forcing any party to reconcile, or forcing to come into an agreement without the agreement from the two parties.

Article 28._

In case the violence is related to children, the authorities in charge who have the role to serve the interests and protect welfare of the children shall do the follow up of this issue. In severe cases, the authorities in charge shall file a case to the courts.

Any responsible person assigned by the courts including the prosecutors shall take charge of doing the follow up of the situation of the children and make a report about this situation to the courts.

The courts can grant a mandate to the institutions in charge to seek assistance and support for the victims of domestic violence as well as to protect the safety and welfare of the victims when the courts are handling the proceedings.

Article 29._

Except in emergency cases as stated in Article 23, the courts shall inform the perpetrators about the request for the protection order in a period of not exceeding 5 (Five) days before looking into this issue. If the perpetrators do not show up at the courts to clarify about the reasons, the courts can examine this issue without the presence of the perpetrators or if it is necessary, the courts can take measures in accordance with the procedures in effect against the perpetrators who ignore the courts' decisions.

In case that the perpetrators are absent or ignore the court's decisions, the related authorities in charge shall request the courts to take actions in accordance with the penal procedures in effect.

Article 30._

If there is a request from any party, the courts can amend, erase or add up the weight in the protection order after informing the other party in the period of 5 (Five) days before making decisions.

The parties can protest to ask the courts to review its decisions in the period of 2 (Two) months at the longest, starting from the day the courts issue the protection order.

Article 31._

The victims and the perpetrators have the rights to have legal representation or have the rights to choose a representative whom they have faith in at all stages of the proceedings.

Article 32._

After issuing the protection order, the prosecutors or the officials in charge regulated by laws shall take all actions to enforce the protection order in accordance with the defined procedures.

Article 33._

CHAPTER 6 - Education, Dissemination and Training

The State shall pay attention to educating and disseminating this law to make citizens throughout the country aware of the provisions of this law, especially on the responsibilities within the households and respecting the rights of each other in order to promote the value of Khmer families, morality, good manners, ways of living, ways of preserving and educating the households, ways to solve conflicts through non-violent and peaceful means, as well as to instruct them to aware of the measures to prevent domestic violence and protect the victims.

The State urges the parties facing the crisis of domestic violence to attend counseling sessions to learn about problem solving methods and education without using violence.

Article 34._

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Ministries and institutions of the state shall strengthen cooperation with the authorities in charge, local authorities, organizations and private sectors in promoting dissemination and education programs for the citizens about the law on the prevention of domestic violence and the protection of victims.
Relevant officials and agents of organizations shall receive training sessions on the issues of domestic violence and the measures as stated in this law to make them aware of the major reasons causing domestic violence and other offences related to this issue.

CHAPTER 7 - Penalties

Article 35._

Any acts of domestic violence that are considered as criminal offences shall be punished under the penal law in effect.

Article 36._

Criminal prosecution shall not be possible if there is a request from a victim who is an adult due to the offences are minor misdemeanors or petty crimes.

In case domestic violence has been repeated again in violation of the penal law, the courts shall charge the perpetrators in accordance with the penal procedures, even if there is a request from the victims again.

Article 37._

This law shall be declared in urgency.

[Criminal Code, 2009](#)⁶⁹

SECTION 2 VIOLENCE

Article 217: Intentional Violence

The acts of violence committing on another person is punishable by an imprisonment from between 1(one) and 3 (three) years and a fine of between 2,000,000 (two million) Riels and 6,000,000 (six million) Riels.

[...]

Article 222: Violence Committed by Spouse or Concubine

The intentional violence is punishable by an imprisonment of between 2 (two) and 5 (five) years and a fine of between 4,000,000 (four million) Riels and 10,000,000 (ten million) Riels when it is committed by spouse or by concubine of the victim.

30. CANADA

30.1. FEDERAL

[Criminal Code, 1985 \(As amended\)](#)⁷⁰

PART VIII Offences Against the Person and Reputation

Spouse may be charged

278 A husband or wife may be charged with an offence under section 271, 272 or 273 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred. 1980-81-82-83, c. 125, s. 19.

Sexual assault

271 Everyone who commits a sexual assault is guilty of

⁶⁹ Criminal Code of the Kingdom of Cambodia (30 November 2009), available at https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf (last visited December 30, 2018).

⁷⁰ Criminal Code, R.S.C., 1985, c. C-46 (last amended on October 1, 2018; current to October 3, 2018), available at <http://laws-lois.justice.gc.ca/PDF/C-46.pdf> (last visited December 30, 2018).

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(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

R.S., 1985, c. C-46, s. 271; R.S., 1985, c. 19 (3rd Supp.), s. 10; 1994, c. 44, s. 19; 2012, c. 1, s. 25; 2015, c. 23, s. 14.

Sexual assault with a weapon, threats to a third party or causing bodily harm

272 (1) Every person commits an offence who, in committing a sexual assault,

(a) carries, uses or threatens to use a weapon or an imitation of a weapon;

(b) threatens to cause bodily harm to a person other than the complainant;

(c) causes bodily harm to the complainant; or

(d) is a party to the offence with any other person

[...]

Aggravated sexual assault

273 (1) Everyone commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

[...]

PART XXIII Sentencing

Purpose and Principles of Sentencing

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles: (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

[...]

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common law partner, [...]

30.2. NATIONAL PROVINCES AND TERRITORIES

30.2.1. ALBERTA

[Protection Against Family Violence Act, 2000 \(As amended\)](#)⁷¹

[...]

Definitions

1(1) In this Act,

(a) "claimant" means a family member for whom a protection order is sought or granted;

(a.1) "Committee" means the Family Violence Death Review Committee established under section 15;

(a.2) "custodian" means a custodian as defined in the Health Information Act;

(a.3) "Department" means the department of the Government of Alberta that is administered by the Minister;

⁷¹ Protection Against Family Violence Act, RSA 2000 c P-27 (as amended up to 30 March 2018), available at <https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-p-27/latest/rsa-2000-c-p-27.html> (last visited December 30, 2018).

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(b) repealed 2011 c4 s2;

(c) “emergency protection order” means an order granted under section 2;

(d) “family members” means

(i) persons who are or have been married to one another, who are or have been adult interdependent partners of one another or who are residing or have resided together in an intimate relationship,

(ii) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time,

(iii) persons who are related to each other by blood, marriage or adoption or by virtue of an adult interdependent relationship,

(iv) any children in the care and custody of a person referred to in subclauses (i) to (iii), or

(v) persons who reside together where one of the persons has care and custody over the other pursuant to an order of the court;

(e) “family violence” includes

(i) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member,

(ii) any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member,

(iii) forced confinement,

(iv) sexual abuse, and

(v) stalking,

but is not to be construed so as to limit a parent or a person standing in the place of a parent from using force by way of correction toward a child who is under the care of the parent or person if the force does not exceed what is reasonable under the circumstances;

(f) “judge” means a justice of the Court of Queen’s Bench, a judge of the Provincial Court or a justice of the peace;

(f.1) “health information” means health information as defined in the Health Information Act;

(f.2) “Minister” means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;

(f.3) “personal information” means personal information as defined in the Freedom of Information and Protection of Privacy Act;

(g) “protection order” means an emergency protection order and a Queen’s Bench protection order;

(g.1) “public body” means a public body as defined in the Freedom of Information and Protection of Privacy Act;

(h) “Queen’s Bench protection order” means an order granted under section 4;

(h.1) “record” means

(i) a record as defined in the Freedom of Information and Protection of Privacy Act, and

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(ii) a record as defined in the Health Information Act;

(i) “residence” means a place where a claimant normally or temporarily resides, and includes a place that a claimant has vacated due to family violence;

(j) “respondent” means a family member against whom a protection order is sought or granted;

(j.1) “review” means a review under section 16(a);

(k) “sexual abuse” means sexual contact of any kind that is coerced by force or threat of force;

(k.1) “stalking” means repeated conduct by a person, without lawful excuse or authority, that the person knows or reasonably ought to know constitutes harassment of a family member and causes a family member to fear for a family member’s personal safety;

(l) “weapon” means a weapon as defined in the Criminal Code (Canada).

(2) For the purposes of subsection (1)(k.1), “conduct” includes

(a) following a family member or anyone known to the family member from place to place,

(b) communicating directly or indirectly with or contacting a family member or anyone known to the family member,

(c) being present at or watching any place where a family member, or anyone known to the family member, resides, works, carries on business or is present or likely to be present,

(d) engaging in threatening conduct directed at a family member or anyone known to the family member, and

(e) any other behaviour that a judge considers to be stalking.

RSA 2000 cP-27 s1;2002 cA-4.5 s65;2006 c8 s4;

2011 c4 s2;2013 cC-12.5 s19

Emergency protection order

2(1) An order under this section may be granted by a judge of the Provincial Court or a justice of the peace, on application without notice to the respondent, if the judge or justice of the peace determines

(a) that family violence has occurred,

(a.1) that the claimant has reason to believe that the respondent will continue or resume carrying out family violence, and

(b) that, by reason of seriousness or urgency, the order should be granted to provide for the immediate protection of the claimant and other family members who reside with the claimant.

(2) In determining whether an order should be granted, the judge of the Provincial Court or justice of the peace must consider, but is not limited to considering, the following:

(a) repealed 2006 c8 s5;

(b) the history of family violence by the respondent toward the claimant and other family members;

(b.1) whether there is or has been controlling behaviour by the respondent towards the claimant or other family members;

(b.2) whether the family violence is repetitive or escalating;

(c) the existence of any immediate danger to persons or property;

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(c.1) the vulnerability of elderly claimants;

(c.2) the effect of exposure to family violence on any child of the claimant or on any child who is in the care and custody of the claimant;

(d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant;

(e) the claimant's need for a safe environment to arrange for longer-term protection from family violence.

(2.1) Without excluding any other circumstance, in determining whether an order under this section should be granted, by a judge of the Provincial Court or a justice of the peace, the following circumstances should not preclude the granting of an order:

(a) that an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant has been granted previously;

(b) that the respondent has previously complied with an emergency protection order, Queen's Bench protection order, restraining order or order of any Court ordering the respondent not to contact or communicate with the claimant;

(c) that the respondent is temporarily absent from the residence at the time of application for an order;

(d) that the claimant is temporarily residing in an emergency shelter or other safe place;

(e) that criminal charges have been or may be laid against the respondent;

(f) that the claimant has a history of returning to the residence and of residing with the respondent after occurrences of family violence.

(3) An order under this section may include any or all of the following:

(a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;

(b) a provision restraining the respondent from communicating with or contacting the claimant and other specified persons;

(c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

(d) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;

(e) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;

(f) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;

(g) any other provision that the judge of the Provincial Court or justice of the peace considers necessary to provide for the immediate protection of the claimant.

(3.1) A provision of an order referred to in subsection (3)(b) is to be interpreted as prohibiting communication and contact by any means, including through a third party, unless the order expressly provides otherwise.

(4) An order under this section may be subject to any terms and conditions that the judge of the Provincial Court or justice of the peace considers appropriate.

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(5) Subject to section 5(1), an order under this section takes effect immediately on the granting of the order.

(6) An order under this section must indicate the date, time and place at which the order is scheduled for review at a hearing by a justice of the Court of Queen's Bench, which may not be later than 9 working days after the granting of the order. RSA 2000 cP-27 s2;2006 c8 s5;2008 c 32 s24; 2011 c4 s3

Confirmation of emergency protection order

3(1) If a judge of the Provincial Court or a justice of the peace grants an emergency protection order, the judge or justice of the peace must, immediately after granting the order, forward to the Court of Queen's Bench a copy of the order and all supporting documentation, including any notes.

(2) Repealed 2011 c4 s4.

(3) At a hearing referred to in section 2(6), the justice of the Court of Queen's Bench

(a) must consider all the evidence that was before the judge of the Provincial Court or justice of the peace who made the order under section 2, and

(b) may allow additional evidence to be presented.

(4) At the hearing, the justice of the Court of Queen's Bench may, whether or not the claimant or the respondent is in attendance,

(a) revoke the order,

(b) direct that an oral hearing be held,

(c) confirm the order, in which case the order becomes an order of the Court of Queen's Bench, or

(d) revoke the order and grant an order under section 4.

RSA 2000 cP-27 s3;2008 c 32 s24;2011 c4 s4

Queen's Bench protection order

4(1) An order under this section may be granted by a justice of the Court of Queen's Bench on application if the justice determines that the claimant has been the subject of family violence.

(2) An order under this section may include any or all of the following:

(a) a provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members;

(b) a provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence;

(c) a provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties;

(d) a provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any child of the claimant or any child who is in the care and custody of the claimant as a direct result of the family violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act;

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(e) a provision granting either party temporary possession of specified personal property, including a vehicle, cheque-book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;

(f) a provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in;

(g) a provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons;

(h) a provision directing a peace officer to remove the respondent from the residence within a specified time;

(i) a provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;

(j) a provision requiring the respondent to post any bond that the Court considers appropriate for securing the respondent's compliance with the terms of the order;

(k) a provision requiring the respondent to receive counselling;

(k.1) a provision authorizing counselling for a child referred to in section 1(1)(d)(iv) without the consent of the respondent;

(l) a provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;

(m) any other provision that the Court considers appropriate.

(3) A provision of an order referred to in subsection (2)(b) is to be interpreted as prohibiting contact by any means, including through a third party, unless the order expressly provides otherwise. RSA 2000 cP-27 s4;2006 c8 s6;2011 c4 s5

Notice of order

5(1) A provision of a protection order is not effective in relation to a person unless the person has actual notice of the provision.

(2) Notice of the provisions

(a) of an emergency protection order must be given in accordance with the regulations, and

(b) of a Queen's Bench protection order must be given in accordance with the Alberta Rules of Court.

(3) A copy of an order, or of any variation of an order, must be served,

(a) in the case of an emergency protection order, in accordance with the regulations, and

(b) in the case of a Queen's Bench protection order, in accordance with the Alberta Rules of Court. 1998 cP-19.2 s5

Application for order

6(1) An application for a protection order may be made

(a) by a person who claims to have been the subject of family violence by a family member,

(b) on behalf of a person referred to in clause (a), with that person's consent, by a person or a member of a category of persons designated in the regulations, or

(c) by any person on behalf of a person referred to in clause (a), with leave of the judge.

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(2) An application for an emergency protection order must be made in accordance with the regulations, and may be made by telecommunication.

(3) Unless this Act otherwise provides, notice of an application under this Act must be given to the respondent or claimant, as the case may be.

(4) An application to the Court of Queen's Bench under this Act must be made in accordance with the Alberta Rules of Court. RSA 2000 cP-27 s6;2006 c8 s7;2009 c53 s143

Duration of order

7(1) Subject to subsection (2), a protection order must be granted for such specified duration as the judge considers appropriate in the circumstances.

(2) A protection order under this Act may not exceed one year unless it is extended by a further order under subsection (3).

(3) The Court of Queen's Bench may, on application, extend the term of a protection order for periods not exceeding one year each. 1998 cP-19.2 s7

Confidentiality

8(1) The clerks of the Court of Queen's Bench and of the Provincial Court must keep confidential any information relating to the location of a claimant unless the claimant or a person acting on the claimant's behalf consents to the giving of the information.

(1.1) Despite subsection (1), if a judge orders that the respondent be restrained from attending at or entering the residence of the claimant or another family member, the address of the residence may be disclosed by the clerk of the court as part of the order or in the transcript of the proceedings that resulted in the order being granted.

(2) The judge may order that all or any member of the public, other than the parties, may be excluded from any hearing under this Act.

(3) On the request of the claimant or the respondent or on the initiative of the judge, the judge may make an order prohibiting the publication of a report of a hearing or any part of a hearing if the judge believes that the publication of the report would have an adverse effect on or cause undue hardship to the claimant or respondent or any child of the claimant or respondent or any child who is in the care or custody of the claimant or respondent. RSA 2000 cP-27 s8;2006 c8 s8

Effect of order on property and leasehold interest

9(1) A protection order does not in any manner affect the title to or an ownership interest in any real or personal property held jointly by the parties or held solely by one of the parties.

(2) Where a residence is leased by a respondent under an oral, written or implied agreement and a claimant who is not a party to the lease is granted exclusive occupation of that residence, no landlord may evict the claimant solely on the basis that the claimant is not a party to the lease.

(3) On the request of a claimant mentioned in subsection (2), the landlord must advise the claimant of the status of the lease and serve the claimant with notice of any claim against the respondent arising from the lease, and the claimant, at the claimant's option, may assume the responsibilities of the respondent under the lease. 1998 cP-19.2 s9

Warrant permitting entry

10(1) A judge may issue a warrant, on application by a person designated in the regulations and without notice to the respondent, if the judge is satisfied by information on oath that there are reasonable and probable grounds to believe that

(a) the person who provided the information on oath has been refused access to a family member, and

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(b) the family member may have been the subject of family violence and will be found at the place to be searched.

(2) A warrant issued by a judge authorizes the person named in the warrant

(a) to enter the place named in the warrant and any other structure or building used in connection with the place,

(b) to search for, assist or examine the family member, and

(c) with the family member's consent, to remove the family member from the premises for the purpose of assisting or examining the family member. 1998 cP-19.2 s10

Rights not diminished by Act

11 An application for a protection order is in addition to and does not diminish any existing right of action of a person who has been the subject of family violence by a family member.

1998 cP-19.2 s11

Immunity

12 No action lies against a peace officer, a clerk of a court or any other person by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith

(a) pursuant to or in the exercise or purported exercise of any power conferred by this Act or the regulations, or

(b) in the carrying out or purported carrying out of any decision or order made under this Act or the regulations or any duty imposed by this Act or the regulations. 1998 cP-19.2 s12

Prohibition

13 No person shall, with malicious intent, make a frivolous or vexatious complaint under this Act. 1998 cP-19.2 s13

Offences and penalties

13.1(1) A person who

(a) contravenes or fails to comply with a provision of a protection order, other than a provision referred to in section 4(2)(d), or

(b) obstructs or interferes with any person who is exercising a right or power or carrying out a duty or function under a provision of a protection order,

and who has actual notice of the provision under section 5, is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1)(a) or (b) is liable

(a) for a first offence, to a fine of not more than \$5000 or to imprisonment for a term of not more than 90 days, or both,

(b) for a 2nd offence, to imprisonment for a term of not less than 14 days and not more than 18 months, and

(c) for a 3rd or subsequent offence, to imprisonment for a term of not less than 30 days and not more than 24 months. 2011 c4 s6

Arrest without a warrant

13.2 A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds has committed an offence under section 13.1(1). 2011 cC-11.5 s32

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Regulations

14 The Lieutenant Governor in Council may make regulations

- (a) defining any word or phrase used in this Act but not defined in this Act;
- (b) respecting the procedures to be followed for applications and other proceedings under this Act;
- (c) designating persons or categories of persons who may apply for protection orders on behalf of persons referred to in section 6(1)(a);
- (d) designating persons or categories of persons who may apply for a warrant under section 10;
- (e) respecting the giving of notices and the service of documents under this Act in respect of emergency protection orders;
- (f) respecting the retention, disposition or sealing of records resulting from court proceedings under this Act;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act. 1998 cP-19.2 s14

Part 2

Family Violence Death Reviews

Family Violence Death Review Committee

15(1) The Minister may establish a Family Violence Death Review Committee.

(2) The Minister may, with respect to the Committee,

- (a) appoint or provide for the manner of the appointment of its members,
- (b) prescribe the term of office of any member,
- (c) designate a chair, and
- (d) authorize or provide for the payment of remuneration and expenses of its members.

(3) In appointing members to the Committee the Minister shall ensure the Committee includes persons with knowledge and expertise in the area of family violence.

(4) A member of the Committee continues to hold office after the expiry of that member's term of office until the member is reappointed, a successor is appointed or a period of 3 months has expired, whichever occurs first.

(5) Subject to this Part, the Committee may determine its own procedures. 2013 cC-12.5 s19

Role of Committee

16 The role of the Committee is

- (a) to review incidents of family violence resulting in deaths;
- (b) to provide advice and recommendations to the Minister respecting the prevention and reduction of family violence. 2013 cC-12.5 s19

Right to information

17(1) The Committee is entitled to any information, including personal information and health information, that

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(a) is in the custody or under the control of a public body or custodian, and

(b) is necessary to enable the Committee to carry out a review.

(2) A public body or a custodian that is a public body shall, on request of the Committee, disclose to the Committee the information to which the Committee is entitled under subsection (1).

(3) A custodian that is not a public body may, on request of the Committee, disclose to the Committee the information to which the Committee is entitled under subsection (1).

(4) Nothing in this section compels the disclosure of any information or records that are subject to any type of privilege, including solicitor-client privilege and parliamentary privilege.

2013 cC-12.5 s19

Report respecting a review

18(1) On completing a review, the Committee shall prepare a written report containing

(a) its findings respecting the incident that is the subject of the review, and

(b) its advice and recommendations to the Minister.

(1.1) In providing the advice and recommendations referred to in subsection (1)(b), the Committee shall consider any recommendations made by the Child and Youth Advocate in a report made available by the Advocate under section 15.4 of the Child and Youth Advocate Act respecting a death arising from the same incident in respect of which a report is prepared under subsection (1).

(2) The findings of the Committee must not include any findings of legal responsibility or any conclusion of law.

(3) The Committee shall

(a) provide the report prepared under subsection (1) to the Minister but shall not disclose it to any other person or body, and

(b) prepare and provide to the Minister a publicly releasable version of the report.

(4) For the purposes of subsection (3)(b), a publicly releasable version of a report must not disclose the name of, or any identifying information about, the individual whose death is the subject of the review or any other individual involved in the death.

(5) The Minister shall make the publicly releasable version of the report public at a time and in a form and manner the Minister considers appropriate. 2013 cC-12.5 s19;2017 c8 s3

Annual report

19(1) As soon as possible after the end of each year, the Committee shall prepare and provide to the Minister a report summarizing the activities of the Committee in that year.

(2) On receiving a report under subsection (1), the Minister shall table the report in the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting. 2013 cC-12.5 s19

Members not compellable as witnesses

20 A member of the Committee shall not give or be compelled to give evidence in an action in respect of any matter coming to his or her knowledge in the course of a review, except in a prosecution for perjury. 2013 cC-12.5 s19

Communications privileged

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21 The following information, records and reports are privileged and not admissible in evidence in an action, except in a prosecution for perjury:

- (a) anything said, any information supplied and any record produced during a review;
- (b) a report prepared under section 18(1) and provided to the Minister under section 18(3)(a). 2013 cC-12.5 s19

Protection of Committee and its members

22(1) Subject to subsection (2), no action lies or may be commenced or maintained against

- (a) the Committee, or
- (b) a member of the Committee

in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Part or in the performance or intended performance of any duty or function under this Part.

(2) Subsection (1) does not apply in respect of anything done, or omitted to be done, in bad faith. 2013 cC-12.5 s19

Regulations

23 The Lieutenant Governor in Council may make regulations

- (a) defining any word or expression used in this Part but not defined in this Part;
- (c) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part. 2013 cC-12.5 s19

30.2.2. BRITISH COLUMBIA

[Family Law Act, 2011 \(As Amended\)](#)⁷²

CHAPTER 25

Part 9 — Protection from Family Violence

Definitions

182 In this Part and the regulations made under section 248 (1) (d) [*general regulation-making powers*]:

"at-risk family member" means a person whose safety and security is or is likely at risk from family violence carried out by a family member;

"firearm" has the same meaning as in the *Criminal Code*;

"residence" means a place where an at-risk family member normally or temporarily resides, including a place that was vacated because of family violence;

"weapon" has the same meaning as in the *Criminal Code*.

Orders respecting protection

183 (1) An order under this section

- (a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and
 - (b) need not be made in conjunction with any other proceeding or claim for relief under this Act.
- (2) A court may make an order against a family member for the protection of another family member if the court determines that
- (a) family violence is likely to occur, and
 - (b) the other family member is an at-risk family member.

⁷² Family Law Act, SBC 2011 c 25, Part 9 - Protection from Family Violence, (24 November 2011, as amended up to 4 May 2016), available at <https://www.canlii.org/en/bc/laws/stat/sbc-2011-c-25/latest/sbc-2011-c-25.html> (last visited December 30, 2018).

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- (3) An order under subsection (2) may include one or more of the following:
- (a) a provision restraining the family member from
 - (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - (iii) following the at-risk family member,
 - (iv) possessing a weapon, a firearm or a specified object, or
 - (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
 - (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
 - (c) directions to a police officer to
 - (i) remove the family member from the residence immediately or within a specified period of time,
 - (ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - (iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);
 - (d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
 - (e) any terms or conditions the court considers necessary to
 - (i) protect the safety and security of the at-risk family member, or
 - (ii) implement the order.
- (4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.
- (5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 [*Orders Respecting Conduct*] of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

- 184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:
- (a) any history of family violence by the family member against whom the order is to be made;
 - (b) whether any family violence is repetitive or escalating;
 - (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
 - (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
 - (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
 - (f) the at-risk family member's perception of risks to his or her own safety and security;
 - (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.
- (2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account
- (a) the history of, and potential for, family violence,
 - (b) the extent of any injuries or harm suffered, and
 - (c) the respective vulnerability of the applicants.
- (3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.
- (4) The court may make an order under this Part regardless of whether any of the following circumstances exist:
- (a) an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;
 - (b) the family member against whom the order is to be made is temporarily absent from the residence;
 - (c) the at-risk family member is temporarily residing in an emergency shelter or other safe place;
 - (d) criminal charges have been or may be laid against the family member against whom the order is to be made;
 - (e) the at-risk family member has a history of returning to the residence and of living with the family member against whom the order is to be made after family violence has occurred;
 - (f) an order under section 225 [*orders restricting communications*] has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

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If child a family member

185 If a child is a family member, the court must consider, in addition to the factors set out in section 184 [*whether to make protection order*],

- (a) whether the child may be exposed to family violence if an order under this Part is not made, and
- (b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Orders without notice

186 (1) An application for an order under this Part may be made without notice.

(2) If an order is made under this Part without notice, the court, on application by the party against whom the order is made, may

- (a) set aside the order, or
- (b) make an order under section 187 [*changing or terminating orders respecting protection*].

Changing or terminating orders respecting protection

187 (1) On application by a party, a court may do one or more of the following respecting an order made under this Part:

- (a) shorten the term of the order;
- (b) extend the term of the order;
- (c) otherwise change the order;
- (d) terminate the order.

(2) An application under this section must be made before the expiry of the order that is the subject of the application.

(3) Nothing in subsection (2) of this section prohibits a person from making a subsequent application for an order under section 183 [*orders respecting protection*].

Enforcing orders respecting protection

188 (1) An order made under this Part may not be enforced

- (a) by means of any order that may be made under this Act, or
- (b) under the *Offence Act*.

(2) A police officer having reasonable and probable grounds to believe that a person has contravened a term of an order made under this Part may

- (a) take action to enforce the order, whether or not there is proof that the order has been served on the person, and
- (b) if necessary for the purpose of paragraph (a), use reasonable force.

Conflict between orders

189 (1) In this section, "protection order" means any of the following orders:

- (a) an order made under this Part;
- (b) an order, made under the Criminal Code, that restricts a person from contacting or communicating with another person;
- (c) an order, made by a court in British Columbia or another jurisdiction in Canada, that is similar in nature to an order made under this Part.

(2) If there is a conflict or an inconsistency between a protection order and an order made under a Part of this Act other than this Part, the other order is suspended, to the extent of the conflict or inconsistency, until

- (a) either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or
- (b) the protection order is terminated.

Rights not affected by Act

190 The making of an order under this Part does not affect any existing right of action of a person who has been the subject of family violence.

Extrajurisdictional orders

191 The Enforcement of *Canadian Judgments and Decrees Act* applies to an order, made by a court in another jurisdiction of Canada, that is similar to an order made under this Part.

30.2.3. NEWFOUNDLAND AND LABRADOR

[Family Violence Protection Act, 2005 \(As amended\)](#)⁷³

[...]

Short title

1. This Act may be cited as the Family Violence Protection Act.

2005 cF-3.1 s1

Definitions

2. In this Act

(a) "applicant" means a person referred to in subsection 4(1)

(i) who applies for an emergency protection order,

(ii) on whose behalf an application is made for an emergency protection order, or

(iii) who is granted an emergency protection order;

(b) "child" means a child born within or outside marriage who ordinarily or periodically resides with the applicant and is under the age of 19 years and unmarried and includes

(i) a child adopted under the Adoption Act, 2013 ,

(ii) a child whom the applicant has demonstrated a settled intention to treat as a child of his or her family, and

(iii) a child in the actual care and custody of the applicant;

(c) "clerk" includes a clerk acting under the Criminal Code and the Youth Criminal Justice Act (Canada) and a person who performs the duties of a clerk of the court;

(d) "court", except as otherwise provided, means the Provincial Court of Newfoundland and Labrador ;

(e) "emergency protection order" means an order granted under section 5;

(f) "family violence" means an act or omission described in subsection 3(1);

(g) "judge", except as otherwise provided, means a Provincial Court judge appointed under the Provincial Court Act, 1991 and includes the chief judge;

(h) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(i) "police officer" means

(i) a member of the Royal Newfoundland Constabulary, and

(ii) a member of the Royal Canadian Mounted Police Force stationed in the province;

⁷³ Family Violence Protection Act, (13 December 2005, as amended up to 26 March 2018), available at <https://www.canlii.org/en/nl/laws/stat/snl-2005-c-f-3.1/latest/snl-2005-c-f-3.1.html> (last visited December 30, 2018).

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(j) "property" means an interest, present or future, vested or contingent, in real or personal property, including companion animals, and includes property that

(i) a person owns, or

(ii) a person does not own but

(A) uses or enjoys,

(B) is available for the person's use or enjoyment,

(C) is in the person's care or custody, or

(D) is at the person's residence;

(k) "residence" means a place where the applicant normally resides and includes a residence that the applicant has vacated due to family violence;

(l) "respondent" means a person against whom an emergency protection order is sought or granted under this Act;

(m) "rules of court" means the rules made under section 29.1 of the Provincial Court Act, 1991 ; and

(n) "weapon" has the meaning assigned to it under section 2 of the Criminal Code and includes an explosive substance. 2005 cF-3.1 s2; 2012 c9 s1; 2013 cA-3.1 s86

Authority of judge

2.1 Notwithstanding sections 43.7 and 43.9 of the Judicature Act , an application under this Act shall be made to and heard and determined by a judge in accordance with this Act and the regulations. 2009 c16 s9

Family violence defined

3. (1) For the purpose of this Act, "family violence" means one or more of the following acts or omissions committed against an applicant or a child by a respondent:

(a) an assault that consists of the intentional application of force that causes the applicant to fear for his or her safety but does not include an act committed in self-defence;

(b) an intentional, reckless or threatened act or omission that causes bodily harm or damage to property;

(c) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;

(d) forcible physical confinement without lawful authority;

(e) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;

(f) conduct that causes the applicant to reasonably fear for his or her safety, including following, contacting, communicating with, observing or recording a person;

(f.1) conduct that causes psychological or emotional harm or a reasonable fear of that harm, including a pattern of behaviour the purpose of which is to undermine the psychological or emotional well-being of the applicant or a child;

(f.2) conduct that controls, exploits or limits the applicant's access to financial resources for the purpose of ensuring the applicant's financial dependency; and

(g) the deprivation of food, clothing, medical attention, shelter, transportation or other necessities of life.

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(2) Family violence may be found to have occurred for the purpose of this Act whether or not, in respect of an act or omission described in subsection (1), a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained.

(3) For the purpose of this Act, a respondent who encourages or solicits another person to do an act which, if done by the respondent, would constitute family violence against the applicant, is considered to have done that act personally. 2005 cF-3.1 s3; 2018 c8 s1

Application process

4. (1) An application for an emergency protection order may be made by

(a) a person who resides with or has resided with the respondent in a conjugal relationship, whether within or outside marriage; or

(b) a person who is, together with the respondent, a parent of one or more children, regardless of their marital status or whether they have lived together.

(2) The following persons may apply on behalf of an applicant referred to in subsection (1) for an emergency protection order:

(a) a police officer or lawyer, on behalf of a person referred to in subsection (1) and with that person's consent; or

(b) a member of a class of persons designated in the regulations under paragraph 20(b).

(3) An application for an emergency protection order shall be in the form and made in the manner prescribed by the rules of court.

(4) Evidence adduced in support of an application for an emergency protection order shall be given under oath.

(5) An application for an emergency protection order shall contain a summary of all previous and current proceedings and orders affecting the applicant and the respondent, including all previous applications and orders made under this Act. 2005 cF-3.1 s4

Granting of emergency protection order without notice to another person

5. (1) A judge, on the application of a person referred to in subsection 4(1) made in the prescribed form and manner, may make an emergency protection order without notice to another person where the judge determines on a balance of probabilities that

(a) family violence has occurred; and

(b) by reason of seriousness or urgency the emergency protection order should be made without delay to ensure the immediate protection of the applicant who is at risk of harm or the property that is at risk of damage.

(2) In determining whether an emergency protection order should be made, the judge shall consider, but is not limited to considering, the following factors:

(a) the nature of the family violence;

(b) the history of family violence by the respondent towards the applicant and whether it is more likely than not that the respondent will continue the family violence;

(c) the existence of immediate danger to persons or property; and

(d) the best interests of the applicant and an affected child.

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(3) For the purpose of paragraph (2)(c), immediate danger to persons or property may be found to exist notwithstanding that the applicant has been forced to vacate his or her residence as a result of the family violence of the respondent and has found temporary shelter elsewhere.

2005 cF-3.1 s5

Contents of emergency protection order

6. An emergency protection order may contain one or more of the following provisions that the judge considers necessary and advisable in the circumstances for the immediate protection of the applicant who is at risk of harm or the property that is at risk of damage:

- (a) a provision granting the applicant exclusive occupation of the residence for a defined period, regardless of ownership;
- (b) a provision directing a police officer to remove the respondent from the residence immediately or within a specified time;
- (c) a provision directing a police officer to accompany a specified person, within a specified time, to the residence to supervise the removal of personal belongings in order to ensure the protection of the applicant;
- (d) a provision restraining the respondent from directly or indirectly communicating with the applicant or another specified person;
- (e) a provision restraining the respondent from attending at or near, or entering, a place that is attended regularly by the applicant, a relative of the applicant, a child or other specified person, including a residence, property, business, school or place of employment;
- (f) a provision granting the applicant temporary possession of or control over specified personal property, including a motor vehicle, cheque book, bank card, health services card or supplementary medical insurance card, identification documents, keys, utility or household accounts or other personal effects;
- (g) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property in which the applicant has an interest;
- (h) a provision restraining the respondent from committing further acts of family violence;
- (i) a provision prohibiting the publication of the name and address of the applicant or a child or other information that may identify the applicant or a child;
- (j) a provision directing the respondent to deliver up to a police officer, until a further order is made under the Criminal Code , the Firearms Act (Canada) or another Act,
 - (i) a weapon that the respondent owns, possesses or controls, and
 - (ii) a document that authorizes the respondent to own, possess or control a weapon referred to in subparagraph (i);
- (k) where an order includes a provision under paragraph (j), a provision that if the respondent does not deliver up the items referred to in the order, a police officer may, for the purpose of seizing the items, enter and search a place where the police officer has reason to believe the items are located with the assistance and force that are reasonable in the circumstances;
- (l) a provision requiring the respondent to make the rent or mortgage payments arising in respect of the residence;
- (m) a provision restraining the respondent from terminating the basic services of utilities servicing the residence;
- (n) a provision awarding temporary care and custody of a child to the applicant or some other person; and
- (o) another provision that the court considers necessary to ensure the immediate protection of the applicant or another person or property that is at risk of harm or damage.

2005 cF-3.1 s6

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Duration of emergency protection order

7. (1) A provision of an emergency protection order referred to in section 6 may be subject to the terms and conditions that the judge considers necessary and appropriate to ensure the protection from family violence of the applicant or a child, including a term that specifies the period of time for which the emergency protection order or a provision of the emergency protection order shall be in effect.

(2) Notwithstanding subsection (1) or another provision of this Act, the duration of an emergency protection order shall not exceed 90 days.

(3) Notwithstanding subsection (1), a provision of an emergency protection order made under paragraph 6(j) shall cease to be in force in respect of a firearm or other weapon that is the subject of the provision, if an order or final determination with respect to the respondent's ownership, possession or control of the firearm or other weapon is made under the Criminal Code or the Firearms Act (Canada) in respect of the events on which the emergency protection order is based.

(4) An emergency protection order may not be renewed or extended.

2005 cF-3.1 s7

Respondent to have notice

8. (1) An emergency protection order is effective upon its being made, but the respondent is not bound by the emergency protection order or by a provision of the emergency protection order until he or she has notice of the emergency protection order.

(2) Notice of an emergency protection order shall be served on the respondent in the form and in the manner prescribed by the rules of court.

(3) Where, on application to a judge, it appears that

(a) attempts at service or substituted service of the notice on the respondent have failed; and

(b) the respondent is evading service,

the judge may by order dispense with service of the notice and the respondent is considered to have notice of the emergency protection order. 2005 cF-3.1 s8

Right to review

9. (1) Every emergency protection order shall contain provisions that

(a) advise the respondent of his or her right under subsection 10(1) to apply to a judge to have the emergency protection order set aside;

(b) advise the applicant and the respondent that each has the right to apply to a judge after the emergency protection order is made for a variation or termination of the emergency protection order or a part of it; and

(c) set out the procedures to be followed in making an application under paragraph (a) or (b).

(2) Every emergency protection order shall contain a provision that advises the applicant and the respondent that each has the right to make an application under section 12.1.

2005 cF-3.1 s9; 2012 c9 s2

Application to set aside

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10. (1) A respondent against whom an emergency protection order is made under subsection 5(1) may apply to a judge within 10 days after being served with, or receiving notice of, the emergency protection order, or a further time that the judge may allow, to have the emergency protection order set aside.

(2) An emergency protection order made under subsection 5(1) is not stayed by an application under subsection (1).

(3) An application under subsection (1) shall be in the form and in the manner prescribed by the rules of court.

(4) On an application under subsection (1)

(a) the hearing shall be considered to be a new hearing and, in addition to new evidence brought before the judge, evidence adduced in support of the application for an emergency protection order shall be considered as evidence; and

(b) the respondent has the right to be heard and the right to examine and cross-examine witnesses.

2005 cF-3.1 s10

Powers of judge on hearing to set aside

11. (1) The judge hearing an application under subsection 10(1) may

(a) set aside the emergency protection order if the respondent demonstrates on the balance of probabilities that the order should be set aside;

(b) set aside the emergency protection order if both the applicant and the respondent agree that the order should be set aside;

(c) dismiss the application to set aside the emergency protection order; or

(d) vary the emergency protection order if satisfied that a material change in circumstances has occurred.

(2) Notwithstanding paragraph (1)(b), where the judge hearing the application to set aside the emergency protection order is not satisfied that both the applicant and the respondent have freely and voluntarily agreed to set aside the order, the judge may adjourn the proceeding to allow legal advice to be obtained. 2005 cF-3.1 s11

Application to vary or terminate

12. (1) Notwithstanding section 10 and at any time after the respondent has been served with notice of an emergency protection order, a judge, on application by either the applicant or the respondent named in the emergency protection order, may, if satisfied on the balance of probabilities that there has been a material change in circumstances since the emergency protection order was made,

(a) vary the emergency protection order, or a provision of the emergency protection order, including the duration of the emergency protection order or provision of the emergency protection order;

(b) add provisions from section 6 to the emergency protection order;

(c) terminate a provision of the emergency protection order; or

(d) terminate the emergency protection order in its entirety.

(2) An application under subsection (1) shall be in the form and in the manner prescribed by the rules of court.

(3) On an application under subsection (1),

(a) the hearing shall be considered to be a new hearing and, in addition to other evidence that may be adduced, the court may consider the evidence that was before the court on previous applications in respect of the emergency protection order; and

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(b) the respondent has the right to be heard and the right to examine and cross-examine witnesses.

(4) The termination or variation of one or more provisions of an emergency protection order does not affect the other provisions of the emergency protection order.

(5) Unless otherwise ordered by the court, an emergency protection order continues in effect and is not stayed by an application under subsection (1).

(6) On an application under subsection (1), the judge shall consider an outstanding order made under the Children's Law Act or the Family Law Act against or affecting the applicant or respondent or a child and may, where he or she considers it appropriate and where the judge is authorized under the Act under which the order is made, vary, amend or rescind that order in accordance with the Act under which the order is made to the extent necessary in order to provide protection under the emergency protection order.

(7) Notice of the variation or termination of an emergency protection order, in whole or in part, shall be served in the form and manner prescribed by the rules of court. 2005 cF-3.1 s12

Appeal

12.1 (1) With leave of a judge of the Court of Appeal, an appeal from an order made under this Act may be made to the Court of Appeal on a question of law or jurisdiction.

(2) Unless a judge of the Court of Appeal orders otherwise, an appeal does not operate as a stay of the order. 2012 c9 s3

Effect of emergency protection order

13. (1) An emergency protection order prevails over

(a) a prior, subsisting order respecting custody of or access to a child, including an order made under the Divorce Act (Canada) or Part III of the Children's Law Act ; and

(b) a provision of a subsisting agreement made under Part IV of the Family Law Act respecting the custody of or access to a child.

(1.1) An emergency protection order does not prevail over

(a) a prior, subsisting order under the Children and Youth Care and Protection Act that places a child in the care or custody of a manager appointed under that Act or a person other than the parent from whom the child was removed; or

(b) a prior, subsisting order under the Adult Protection Act that places an adult in the care and custody of the provincial director appointed under that Act or another person.

(2) A provision in an emergency protection order is subject to and may be varied by a provision in a subsequent order respecting the same matter that is made under another Act or an Act of the Parliament of Canada made on the application of the same party.

(3) An application for, or the granting of, an emergency protection order under this Act is in addition to and does not diminish an existing right of action or remedy of the applicant or of another person who is the subject of family violence. 2005 cF-3.1 s13; 2018 c8 s2

Effect on property and leasehold interest

14. (1) Except as provided by paragraph 6(g) or (j), an emergency protection order does not affect the title to or an ownership interest in real property or personal property jointly held by the applicant and respondent or solely held by one of them.

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(2) Where a residence is leased by a respondent under an oral, written or implied agreement and an applicant who is not a party to the lease is granted exclusive occupation of that residence, a landlord may not evict the applicant solely on the basis that the applicant is not a party to the lease.

(3) At the request of the applicant, the landlord shall advise the applicant of the status of the lease and serve the applicant with notice of a claim against the respondent arising from the lease and the applicant at his or her option may assume the responsibilities of the respondent under the lease for the duration of the emergency protection order. 2005 cF-3.1 s14

Order directs police officer

15. An emergency protection order made under this Act is a direction binding on a police officer to

(a) give notice of the order to the respondent in accordance with this Act and the rules of court; and

(b) take necessary steps, which may include the arrest of the respondent and the seizure of property, to enforce compliance with the emergency protection order. 2005 cF-3.1 s15

Confidentiality

16. (1) A person shall not disclose to another person information in a court document or record relating to a proceeding under this Act that identifies or is liable to identify the home or business address of the applicant or a child of the applicant unless the applicant or a person applying on behalf of the applicant consents to the disclosure of the information or if the disclosure is necessary to enforce the emergency protection order.

(2) The court may exclude the public from a hearing, or a part of a hearing under this Act, where, in the opinion of the judge, the possibility of an injustice, harm, hardship or adverse effect to or upon a person outweighs the interest in a public proceeding.

(3) The court, by order,

(a) shall prohibit the public disclosure of a matter connected with an emergency protection order where the disclosure or publication of the matter is prohibited by another Act or an Act of the Parliament of Canada or by a common law rule of confidentiality; and

(b) may, at the request of the applicant or the respondent, prohibit the public disclosure of a report of a hearing or a part of a hearing or prohibit publication of a matter connected with an emergency protection order where, in the opinion of the court, that disclosure or publication would

(i) not be in the best interests of the child, or

(ii) be likely to identify, have an adverse effect on or cause hardship to, a person or child.

(4) An order under subsection (3) does not prohibit access to court files with the consent of the court for research or statistical purposes where there is no public disclosure of the name or other information that could identify a person named in a report or hearing, or other matter prohibited from being disclosed by an order made under this section.

(5) A person who contravenes an order under subsection (3) is guilty of an offence and is liable on summary conviction to the penalties set out in section 18. 2005 cF-3.1 s16

Protection from personal liability

17. An action does not lie against a police officer, clerk or another person for loss or damage suffered by a person because of anything, in good faith, done, authorized to be done or authorized to be omitted by either of them

(a) under or in the exercise of a power conferred by this Act, the regulations or the rules of court; or

(b) in the carrying out of a decision or order made under this Act, the regulations or the rules of court, or a duty imposed by this Act, the regulations or the rules of court.

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2005 cF-3.1 s17

Penalties

18. (1) A person who

- (a) fails to comply with the provisions of an order made under this Act;
- (b) knowingly makes a false statement in an application or a hearing under this Act; or
- (c) obstructs a person performing a function authorized by this Act or by an order under this Act

is guilty of an offence and upon summary conviction is liable, in the case of a first offence, to a fine of not more than \$2,000 or to imprisonment for a term of not more than 6 months, or to both, and in the case of a second or subsequent offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than 12 months or to both.

(2) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened a term of an emergency protection order.

2005 cF-3.1 s18

Duty to report continued

19. Nothing in this Act affects a duty set out in section 11 of the Children and Youth Care and Protection Act or section 12 of the Adult Protection Act. 2005 cF-3.1 s19; 2018 c8 s3

Regulations

20. The minister may make regulations

- (a) defining, enlarging or restricting the meaning of a word or phrase used in this Act but not defined in this Act;
- (b) designating persons or classes of persons who may make an application for an emergency protection order;
- (c) respecting the seizure, retention, return or disposal of items required to be seized under a provision in an emergency protection order;
- (d) respecting the collection of statistical data; and
- (e) generally to give effect to the purpose of this Act.

2005 cF-3.1 s20

30.2.4. NOVA SCOTIA

[Domestic Violence Intervention Act, 2001 \(As amended\)](#)⁷⁴

Short Title

1 This Act may be cited as the Domestic Violence Intervention Act. 2001, c. 29, s. 1.

Interpretation

2 In this Act,

- (a) "court" means the Supreme Court of Nova Scotia;
- (b) repealed 2015, c. 6, s. 6.

⁷⁴ Domestic Violence Intervention Act, Chapter 29 of the acts of 2001 (as amended by 2002, c. 30, s. 2; 2015, c. 6, ss. 6-14; 2015, c. 44, s. 45), available at <https://www.canlii.org/en/ns/laws/stat/sns-2001-c-29/latest/part-1/sns-2001-c-29-part-1.pdf> (last visited December 30, 2018).

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- (c) “domestic violence” means any of the acts or omissions described in subsection 5(1);
- (ca) “justice” means a justice of the peace who has been designated for the purpose of this Act, a judge of the Family Court or a judge of the Provincial Court; 2 domestic violence intervention
- (d) “Minister” means the Minister of Justice;
- (e) “residence” includes a residence that a victim shares with a respondent or has vacated due to domestic violence;
- (f) “respondent” means any person against whom an emergency protection order is sought or made;
- (g) “victim” means a person who is at least sixteen years of age and has been subjected to domestic violence by another person who
- (i) has cohabited or is cohabiting with the victim in a conjugal relationship, or
 - (ii) is, with the victim, the parent of one or more children, regardless of their marital status with respect to each other or whether they have lived together at any time;
- (h) “weapon” means a weapon as defined in the Criminal Code (Canada). 2001, c. 29, s. 2; 2015, c. 6, s. 6.

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. 2001, c. 29, s. 3.

Designation of justices of the peace

4 The Chief Judge of the Provincial Court of Nova Scotia shall designate justices of the peace for the purpose of this Act. 2001, c. 29, s. 4.

Occurrence of domestic violence

5 (1) For the purpose of this Act, domestic violence has occurred when any of the following acts or omissions has been committed against a victim:

- (a) an assault that consists of the intentional application of force that causes the victim to fear for his or her safety, but does not include any act committed in self-defence;
- (b) an act or omission or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;
- (c) forced physical confinement;
- (d) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;
- (e) a series of acts that collectively causes the victim to fear for his or her safety, including domestic violence intervention section (1), a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained. 2001, c. 29, s. 5.

Emergency intervention order

6 (1) Upon application to a justice, the justice may make an emergency protection order to ensure the immediate protection of a victim of domestic violence if the justice determines that

- (a) domestic violence has occurred; and
- (b) the order should be made forthwith.

(2) In determining whether to make an order pursuant to this Section, the justice shall consider, but is not limited to considering,

- (a) the nature of the domestic violence;
- (b) the history of domestic violence by the respondent towards the victim;
- (c) the existence of immediate danger to persons or property; and
- (d) the best interests of the victim and any child of, or in the care and custody of, the victim.

(3) In determining whether to make an order pursuant to this Section, the standard of proof is to be on a balance of probabilities. 2001, c. 29, s. 6; 2015, c. 6, s. 7.

Applicants

7 (1) An application for an emergency protection order may be made by

- (a) a victim;
- (b) a member of a class of persons designated in the regulations on behalf of the victim and with the victim’s consent; or
- (c) any other person on behalf of the victim and with leave of the justice.

(2) An application for an emergency protection order is to be in the form and to be made in the manner prescribed by the regulations. 2001, c. 29, s. 7; 2015, c. 6, s. 8.

Scope of emergency protection order

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8 (1) An emergency protection order may do any or all of the following:

- (a) grant the victim or other family members exclusive occupation of the victim's residence for a defined period regardless of any legal rights of possession or ownership;
- (b) direct a peace officer to remove the respondent from the victim's residence immediately or within a specified time;
- (c) direct a peace officer to accompany a specified person, within a specified time, to the victim's residence to supervise the removal of personal belongings; (d) restrain the respondent from directly or indirectly communicating with the victim or any other specified person;
- (e) require the respondent to stay away from any place identified specifically or generally in the order;
- (f) grant temporary possession of or control over specified personal property, including an automobile, cheque book, bank card, health services card or supplementary medical insurance cards, identification documents, keys, utility or household accounts or other personal effects;
- (g) restrain the respondent from taking, converting, damaging or otherwise dealing with property;
- (h) restrain the respondent from committing any further acts of domestic violence against the victim;
- (i) prohibit the publication of the name and address of the victim or any other information that may identify the victim;
- (j) require a peace officer to seize
 - (i) any weapons, and
 - (ii) any documents that authorize the respondent to own, possess or control a weapon referred to in subclause (i);
- (k) award temporary care and custody of a child of the victim to the victim or to another person;
- (l) do any other thing that the justice considers necessary to ensure the immediate protection of the victim or any child.

(2) A justice may make an emergency protection order for a period not exceeding thirty days.

(3) A provision of an emergency protection order made pursuant to clause (1)(j) ceases to be in force upon an order or final determination with respect to the respondent's ownership, possession or control of weapons being made under the Criminal Code (Canada) or the Firearms Act (Canada).

(4) An emergency protection order prevails over any order respecting custody of or access to a child including an order made under the Divorce Act (Canada) or the Parenting and Support Act but does not prevail over any order made under the Children and Family Services Act respecting custody of or access to a child. 2001, c. 29, s. 8; 2015, c. 6, s. 9; 2015, c. 44, s. 45.

Notice to respondent needed for order to bind

9 An emergency protection order is effective upon being made but does not bind a respondent until the respondent has notice of the order. 2001, c. 29, s. 9.

Notice of emergency protection order

10 (1) Notice of an emergency protection order shall be given in the prescribed form and manner.

(2) Where, on application to a justice, it appears that

- (a) attempts at service or substituted service of the notice on the respondent have failed; and
- (b) the respondent is evading service, the justice may by order dispense with service of the notice and the respondent is thereby deemed to have notice of the emergency protection order. 2001, c. 29, s. 10; 2015, c. 6, s. 10.

Copy to court for confirmation, variance or hearing

11 (1) As soon as practicable after making an emergency protection order and in any event within two working days, the justice shall forward a copy of the order and all supporting documentation, including a transcript or tape recording of the proceedings, to the court in the prescribed manner.

(2) Within such period of time, as the regulations prescribe, of the receipt of the emergency protection order and all supporting documentation by the court, a judge shall review the order and, where the judge is satisfied that there was sufficient evidence before the justice to support the making of the order, the judge shall

- (a) confirm the order; or
- (b) vary the order and the order as confirmed or varied shall be deemed to be an order of the court.

(3) Where, on reviewing the emergency protection order, the judge is not satisfied that there was sufficient evidence before the justice to support the making of the order, the judge shall direct a hearing of the matter in whole or in part before a judge.

(4) Where a judge directs that a matter be heard,

- (a) the clerk of the court shall issue a summons in the prescribed form requiring the respondent to appear before the court; and
- (b) the clerk of the court shall give notice of the hearing to the victim and the victim is entitled to attend and may fully participate in the hearing personally or by counsel.

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(c) repealed 2002, c. 30, s. 2.

(5) The evidence that was before the justice shall be considered as evidence at the hearing.

(6) Where the respondent fails to attend the hearing, the emergency protection order may be confirmed in the respondent's absence.

(7) At the hearing, the judge may confirm, terminate or vary the emergency protection order. 2001, c. 29, s. 11; 2002, c. 30, s. 2; 2015, c. 6, s. 11.

Application to court

12 (1) Notwithstanding subsection 11(2) and at any time after a respondent has been served with an emergency protection order, the court, on application by a victim or respondent named in the order, may

(a) make changes to, or terminate, any provision of the order;

(b) decrease or extend the period for which any provision in the order is to remain in force; or

(c) revoke the order.

(2) On an application pursuant to subsection (1), the evidence before a justice on previous applications pursuant to this Act shall be considered evidence.

(3) Unless otherwise ordered by the court, an emergency protection order continues in effect and is not stayed by a direction for a hearing pursuant to subsection 11(3) or an application pursuant to subsection (1).

(4) On an application pursuant to clause (1)(b) the judge may extend the emergency protection order for a period not to exceed thirty days from the expiration date of the original order. 2001, c. 29, s. 12; 2015, c. 6, s. 12.

Confidentiality

13 (1) The clerk of the court and the justice shall keep the victim's address confidential.

(2) The court may order that the hearing or any part of the hearing be held in private.

(3) At the request of the victim, the court may order that the court file only be accessible to the victim and respondent, and their counsel, if the court believes that the public access to the file

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim.

(4) At the request of the victim, the court may make an order prohibiting the publication of any report of a hearing or any part of a hearing if the court believes that the publication of the report

(a) would not be in the best interests of the victim or any child of the victim or any child who is in the care and custody of the victim; or

(b) would be likely to identify, have an adverse effect on or cause hardship to the victim or any child of the victim or any child who is in the care and custody of the victim. 2001, c. 29, s. 13; 2015, c. 6, s. 13.

Property ownership not affected by order

14 (1) An emergency protection order does not in any manner affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and a victim who is not a party to the lease is granted exclusive occupation of that residence, no landlord shall evict the victim solely on the basis that the victim is not a party to the lease.

(3) On the request of a victim referred to in subsection (2), the landlord shall advise the victim of the status of the lease and serve the victim with notice of a claim against the respondent arising from the lease and the victim, at the victim's option, may assume the responsibilities of the respondent pursuant to the lease. 2001, c. 29, s. 14.

Existing right of action not diminished

15 An application for an emergency protection order under this Act is in addition to and does not diminish any existing right of action for the applicant or for any other victim of domestic violence. 2001, c. 29, s. 15.

Duties under Children and Family Services Act not affected

16 Nothing in this Act affects a duty set out in Section 23 or 24 of the Children and Family Services Act. 2001, c. 29, s. 16.

Limitation of liability

17 No action or other proceeding shall be instituted against a peace officer or clerk of the court or any other person for any act done in good faith or for any alleged neglect or default in good faith, in the execution or intended execution of

(a) the person's duty under this Act; or

(b) the person's duty to carry out the provisions of an order made under this Act. 2001, c. 29, s. 17.

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Offences and penalties

18 Any person who

- (a) fails to comply with the provisions of an order made pursuant to this Act;
- (b) falsely and maliciously makes an application under this Act;
- (c) obstructs any person who is performing any function authorized by an order; or
- (d) publishes any information in contravention of an order, is guilty of an offence and upon summary conviction is liable, in the case of a first offence, to a fine of not more than five thousand dollars or to imprisonment for a term of not more than three months, or to both, and, in the case of a second or subsequent offence, to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than two years, or to both. 2001, c. 29, s. 18.

Arrest without warrant

19 A peace officer may arrest without warrant a person the peace officer believes on reasonable and probable grounds to have contravened any terms of an emergency protection order. 2001, c. 29, s. 19.

Contempt of or resistance to court

- 20 (1) In addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed five thousand dollars nor shall the term of imprisonment exceed ninety days.
- (2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order. 2001, c. 29, s. 20.

Regulations

21 (1) The Governor in Council may make regulations

- (a) prescribing classes of persons who may apply for an emergency protection order on behalf of a victim with the victim's consent;
- (b) prescribing the form and manner of an application for an emergency protection order;
- (c) prescribing the form and manner of providing any notice or summons required to be provided pursuant to this Act, including prescribing substituted service and a rebuttable presumption of service;
- (d) prescribing the manner in which a justice is to forward a copy of an emergency protection order and all supporting documentation to the court;
- (e) prescribing the period of time within which a judge must review an emergency protection order and confirm or vary the order;
- (f) prescribing forms for the purposes of this Act;
- (g) prescribing the procedures to be followed for applications and hearings pursuant to this Act;
- (h) defining any word or expression used in this Act but not defined in this Act;
- (i) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations with the meaning of the Regulations Act. 2001, c. 29, s. 21; 2015, c. 6, s. 14.

Proclamation

22 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2001, c. 29, s. 22.
Proclaimed - March 28, 2003 In force - April 1, 2003

30.2.5. ONTARIO

[Family Law Act, 1990 \(As amended\)](#) ⁷⁵

[...]

Restraining order

46 (1) On application, the court may make an interim or final restraining order against a person described in subsection (2) if the applicant has reasonable grounds to fear for his or her own safety or for the safety of any child in his or her lawful custody. 2009, c. 11, s. 35.

Same

(2) A restraining order under subsection (1) may be made against,

- (a) a spouse or former spouse of the applicant; or
- (b) a person other than a spouse or former spouse of the applicant, if the person is cohabiting with the applicant or has cohabited with the applicant for any period of time. 2009, c. 11, s. 35.

Provisions of order

(3) A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:

- 1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant's lawful custody.
- 2. Restraining the respondent from coming within a specified distance of one or more locations.
- 3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.
- 4. Any other provision that the court considers appropriate. 2009, c. 11, s. 35.

Transition

(4) This section, as it read on October 14, 2009, continues to apply to,

- (a) any prosecution or other proceeding begun under this section before October 15, 2009; and
- (b) any order made under this section that was in force on October 14, 2009. 2009, c. 11, s. 35; 2014, c. 7, Sched. 9, s. 8.

30.2.6. SASKATCHEWAN

[Victims of Interpersonal Violence Act, 1994\(As amended\)](#)

30.2.7. YUCON

[Family Violence Prevention Act, 2002 \(As amended\)](#)

⁷⁵ Family Law Act, R.S.C. 1990, c. F. 3 (current as of December 14, 2017), available at <https://www.ontario.ca/laws/statute/90f03> (last visited December 30, 2018).

31. CENTRAL AFRICAN REPUBLIC

[Protecting Women Against Violence in the Central African Republic Law, 2006](#) ⁷⁶

[...]

TITLE I - GENERAL PROVISIONS

CHAPTER I: DEFINITIONS

Art. 1: Violence specifically directed against women refers to all acts of violence directed against the female sex, and causing or potentially causing women physical, sexual or psychological harm or suffering, including the threat of such acts, arbitrary deprivation of freedom, whether in public life or in private life.

Art. 2: The term rape means an act of sexual penetration of any kind, committed on the person of others by violence, threat, constraint or surprise.

Art. 3: Pedophilia means any erotic attraction of an adult to children.

Art. 4: Incest means any sexual relationship perpetrated on a person with family ties, either close or distant.

Art. 5: Harassment is the action of constantly attacking and tormenting with insistence another person

6: Pimping is the activity of whoever promotes the debauchery of others by acting as an intermediary.

Art. 7: The excitement of a minor to debauchery means the act of engaging them in the path of corruption and debauchery.

Art. 8: Pornography is a complacent representation of subjects in a literary, artistic or cinematographic work that offends good morals.

CHAPTER II: DIFFERENT CATEGORIES OF VIOLENCE

Art. 9: Are considered as violence against women and punished in accordance with the provisions of this law, in addition to the above definitions, the following behaviors or acts:

- willful bodily injuries;
- ill-treatment;
- public insults;
- female genital excisions, including all procedures including the partial or total removal of female genital organs for cultural or religious reasons or for any other non-therapeutic genital reason.

Art. 10: Also constitute a form of violence against women.

- mistreatment during widowhood;
- the confiscation of the personal property of the woman during widowhood;
- levirate and sororate.

TITLE II - PROTECTION OF WOMEN

CHAPTER I: SOCIAL PROTECTION

Art. 11: Social workers are responsible for providing assistance and relief to women in danger.

Art.12: For this purpose, their mission is to intervene in case the physical or moral integrity of the woman is threatened or affected as a result of the violence referred to above.

Anyone is entitled to report to the social workers, the Public Prosecutor, the civil or military police all cases of abuse [on] a woman.

Art. 13: In general, the social worker is responsible for taking all the administrative measures to safeguard the woman victim of violence and informing the officers of the Judicial Police and the Public Prosecutor when necessary.

CHAPTER II: JUDICIAL PROTECTION

Art. 14: The judge may initiate a case through:

- the victim;
- a social worker;
- a public prosecutor;
- public administrations working in the field of the protection of women;
- non-governmental organizations and other associations concerned with the protection of women;

⁷⁶ Protecting Women Against Violence in the Central African Republic Law, No. 06.032 (27 December 2006), available at <http://www.refworld.org/pdfid/54f821684.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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- the competent judicial police officers.

The judge may initiate proceedings at his own initiative in the case of this law.

Art. 15: The judge may, before ruling, take an interim measure on the report of the social worker regarding the need to remove the woman from the place of [violence] if the circumstances so require it.

For this purpose, he may order the perpetrator to contribute to the costs necessary for the execution of the protective measure.

Art. 16: The judge may pronounce one of the following measures:

- move the woman with her consent and put her in foster care;

- maintain the woman with her consent in the host family and instruct the social worker to follow up.

In all cases, the judge is obliged to submit the woman to a medical or psychological check-up. The decisions of the judge are implemented immediately and may be appealed within 10 days.

Art. 17: The judge, if he notes an improvement in the situation of the woman, can reconsider the measures that he has taken.

The request may be submitted by one of the spouses, parents or guardian.

TITLE III - CRIMINAL PROVISIONS

Art. 18: is liable to a fine of 100,000 to 500,000 CFA francs, any person who obstructs the work of the social worker or the competent judicial police officers in the exercise of their duties or on the occasion of the exercise of their duties or who prevents the smooth carrying out of investigations and surveys by making false declarations, intentionally concealing the real situation of the woman, notwithstanding the application of the provisions of the Criminal Code which punishes insults to officials in the exercise of their functions.

Art. 19: Anyone who, by traditional or modern methods, has practiced or attempted to practice, or favored excision or any other method of female genital mutilation shall be punished by imprisonment of 2 to 5 years and a fine of 100,000 to 1,000,000 CFA francs.

The penalty will be doubled in case of recidivism.

Art. 20: If the mutilations resulted in the death of the victim, the perpetrator (s) will be sentenced to hard labor for life.

Art. 21: Is punishable by imprisonment from 6 months to 1 year and a fine of 50,000 to 500,000 CFA francs, whoever, having knowledge of an excision already planned or practiced, will not have warned the public authorities.

Art. 22: Rape will be punished with hard work for a limited period.

Art. 23: Will also be punished for hard work for a limited period, whoever committed the crime of rape on a woman particularly vulnerable due to her pregnancy, illness, infirmity or physical or mental disability, or on a minor under the age of fourteen or under the threat of a weapon, or by two or more perpetrators or accomplices, either by a legitimate, natural or adoptive ascendant of the victim or by a person who has abused the authority conferred upon him by his functions. The attempted rape will be punished as the rape itself.

[...]

Art. 26: Will be considered pimp punished with imprisonment of 1 to 5 years and a fine of 500,000 to 3,000,000 CFA francs, the one:

- who habitually aids, assists or knowingly protects the prostitution of others or the soliciting for the purpose of prostitution;

- who, in any form, shares the proceeds of the prostitution of others or receives subsidies from a person habitually engaged in prostitution;

- who, knowingly lives with a person who habitually engages in prostitution and cannot justify the resources corresponding to his lifestyle;

- who hires, trains, or maintains someone, even of full age, for the purpose of prostitution or debauchery;

- who acts as

an intermediary, in whatever capacity, between persons engaged in prostitution or debauchery and persons who exploit or pay for the prostitution or debauchery of others.

Art. 27: The penalty will be imprisonment from 3 to 5 years and a fine of 500,000 to 3,000,000 CFA francs, in case:

- the offense was committed against a minor;

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- the offense has been accompanied by coercion, abuse of authority or fraud;
- the perpetrator was carrying an apparent or hidden weapon;
- the offender is a spouse, ascendant, guardian, teacher, hired servant of the victim or hired servant of the above-mentioned persons, official or minister of a cult;
- the offender is required to participate in the fight against prostitution, the protection of health or the maintenance of public order;
- anyone who, by threat, pressure, maneuver or by any other means, impedes the prevention, control, assistance or rehabilitation action undertaken by the qualified organizations in favor of persons engaged in prostitution or in danger of prostitution.

Art. 28: Will be punished by a prison sentence of 1 to 3 years and a fine of 500,000 to 1,000,000 CFA francs, whoever has attacked morals by inciting debauchery or by promoting the corruption of minors.

The same penalty will be applied against those who tolerate the practice of debauchery by persons engaged in prostitution in their premises or in locations they control in any capacity whatsoever.

The occupier and the person committing the debauchery are jointly and severally liable for the payment of damages that may be awarded for neighborhood disturbance.

In case of usual practice of the facts referred to above, the cancellation of the lease and the eviction of the tenant, sub-tenant, or occupant who engage in or tolerate prostitution is pronounced by the judge according to the procedure of urgency at the request of the owner, main tenant, occupant or neighbor of the building.

The attempt of the offense provided for in this article shall be punishable by the same penalties as the offense itself.

Art. 29: Anyone who has voluntarily struck, wounded, used violence or assaulted a woman shall be punished with imprisonment of 1 month and 1 day to 2 years and a fine of 100,002 to 400,000 CFA francs or one of these two penalties only.

If the beatings and the violence resulted in sickness or personal work incapacity of more than 20 days, the penalty will be 1 to 3 years imprisonment and a fine of 100,002 to 1,000,000 CFA francs.

When such beatings, injuries and violence are carried out on a woman who is pregnant or nursing and have caused a disease or a work incapacity of more than 20 days, the penalty will be 1 to 3 years of imprisonment and a fine of 500,000 to 1,000,000 CFA francs.

If the beatings, injuries and violence on a pregnant or nursing woman have caused a disease or a work disability of more than 20 days, the penalty will be 2 to 5 years and a fine of 1,000,000 to 3,000,000 CFA francs.

If beatings, injuries or violence against a woman have been followed by mutilation, amputation or deprivation of a body part, blindness, loss of an eye or other permanent disability, the perpetrator shall be punished with forced labor for limited time.

Art. 30: Anyone who willfully wounds, assaults, uses violence against, or deprives of food a surviving woman on the death of her spouse, on the occasion of the mourning and widowhood will be punished by a prison sentence of 3 to 5 years and a fine of 1,000,000 to 2,000,000 CFA francs.

Art. 31: Except in the case of a polygamous marriage, the spouse who has maintained a concubine in the matrimonial home will be punished by a prison sentence of 3 to 6 months and a fine of 100,002 to 400,000 CFA francs or one of these two punishments.

TITLE IV - FINAL PROVISIONS

Art. 32: Heads of public and private health facilities are responsible for ensuring that victims of violence receive emergency first aid in their respective centers or institutions.

Public authorities must be informed without delay in order to consider the necessary measures.

Art. 33: The means of intervention of the social worker will be determined by a regulation.

Art. 34: The present law will be registered and published in the Official Gazette.

[...]

32. CHAD

[Penal Code, 2017](#) ⁷⁷

⁷⁷ Penal Code, Law No. 001/PR/2017 (8 May 2017), available at <https://www.droit-afrique.com/uploads/Tchad-Code-penal-2017.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article. 342 (a-b)

Art.342. - Is punished with imprisonment from six months to three years and a fine of 20,000 to 200,000 CFA FRANCS, or one of these two penalties, whoever:

- (a) without harming the physical integrity of his spouse or another person, submits his spouse, or that person, to degrading, humiliating or inhuman treatments of such nature as to cause a psychological disorder, a trauma or mental illness;
- (b) exercises the same type of violence on his spouse, her partner, a parent or an ally.

The same punishments are applicable when the acts of violence are committed against persons other than those referred to in paragraph 1 above, to reach those who are affected psychologically. The penalties referred to in paragraph 1 are doubled when the facts are:

- (a) committed on a pregnant woman;
- (b) committed in the rituals for widowhood, on a widower or widow;
- (c) accompanied by deprivation of food, destruction or confiscation of the victim's personal belongings;
- (d) accompanied by deprivation of any right or any prerogative, related to the status of the victim.

33. CHILE

[Law on Intrafamily Violence, 2005](#) ⁷⁸

Paragraph 1º. On intrafamily violence

Article 1º - Object of the law. The purpose of this law is to prevent, punish and eradicate intrafamily violence and grant protection to the victims of violence.

Article 2º - Obligation of protection. It is the duty of the State to adopt the necessary measures to guarantee the life, personal integrity and security of the family members.

Article 3º - Prevention and Assistance. The State will adopt policies aimed at preventing intrafamily violence, especially against women, the elderly and children, and to provide assistance to victims.

Among other measures, it will implement the following:

- a) Incorporate contents in the plans and programs of study aimed at modifying the conducts that favor, stimulate or perpetuate intrafamily violence;
- b) Develop training plans for public officials involved in the enforcement of this law;
- c) Develop public security policies and programs to prevent and eradicate intrafamily violence;
- d) Encourage civil society initiatives to achieve the objectives of this law;
- e) Adopt the necessary measures to comply with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Convention on the Rights of the Child and other international instruments signed by the State of Chile, and
- f) Create and maintain information systems and statistical records related to intrafamily violence.

Article 4º - The Ministry of Women and Gender Equity is responsible to propose to the President of the Republic public policies for the fulfillment of the objectives of this law.

In coordination and collaboration with the relevant public and private agencies, it will formulate a national plan of action annually.

For the purposes of the preceding paragraphs, the Ministry of Women and Gender Equity will have the following functions:

- a) Promote, coordinate and evaluate government policies against intrafamily violence;
- b) Recommend the adoption of legal, regulatory or other measures to prevent, punish and eradicate intrafamily violence;
- c) Promote the contribution of the media to eradicate violence against women and enhance respect for their dignity.

The National Service for Women and Gender Equity will provide technical assistance to the agencies involved in the application of this law that require it.

⁷⁸ Law on Intrafamily Violence (Ley de Violencia Intrafamiliar), No. 20.066 (7 October 2005), available at <https://www.leychile.cl/Navegar?idNorma=242648&r=1> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article 5º - Intrafamily violence. Any violence that affects the life or physical or mental integrity of anyone who has or has had the status of spouse of the offender or a relationship of coexistence with him or her will be constitutive of intrafamily violence; whether relative by consanguinity or by affinity in the whole straight line or in the collateral up to the third degree inclusive, of the offender or of his spouse or of his current partner.

There will also be intrafamily violence when the conduct referred to in the preceding paragraph occurs between the parents of a common child, or falls on a minor, elderly or disabled person who is under the care or dependence of any member of the family group.

Paragraph 2º. On intrafamily violence cases taken to Family Courts

Article 6º - Acts of intrafamily violence that do not constitute a crime shall be taken to the knowledge of family courts and shall be subject to the procedure established in Law No. 19.968.

Article 7º - Risk situation. When there is a situation of imminent risk, for one or more persons, of suffering mistreatment which constitutes intrafamily violence, even when this has not been carried out, the court, based on the sole merit of the complaint, must adopt the correspondent protective or precautionary measures.

It will be presumed that there is an imminent risk situation as described in the previous paragraph when it was preceded by intimidation to cause harm by the offender or when, in addition, it is accompanied by circumstances or antecedents such as: drug addiction, alcoholism, one or more complaints for intrafamily violence, prior conviction for intrafamily violence, pending proceedings or previous convictions for crimes or simple crimes against persons or for any of the offenses established in paragraphs 5 and 6 of Title VII, Book Two of the Criminal Code or for violation of Law No. 17.798, or psychiatric or psychological background that denote violent personality characteristics. Likewise, it will be presumed that there is an imminent risk situation, when the defendant violently opposes his refusal to accept the termination of an affectionate relationship he has recently had with the victim.

In addition, the court will especially protect cases in which the victim is pregnant, is a person with a disability or has a condition that makes her vulnerable. It will be considered, especially, as imminent risk situation that in which an older adult, owner or possessor, in any capacity, of a real estate where s/he resides, is expelled from it, relegated to secondary sectors or has her/his space restricted to the interior of that real estate, by some of the relatives indicated in article 5º.

Article 8º - Sanctions. The maltreatment constituting intrafamily violence will be punished, given its seriousness, with a fine of fifteen monthly tax units for the benefit of the regional government of the domicile of the complainant. The revenue with the fine will be sent to the centers of attention for victims of intrafamily violence existing in the respective region, public or private.

The convicted person must prove the payment of the fine within five days following the date of notification of the sentence, unless the judge, for well-founded reasons, extends the term for up to fifteen days.

In case of non-compliance, the court will send the information to the Public Ministry, in accordance with the provisions of article 240 of the Code of Civil Procedure.

Article 9º - Accessory measures. In addition to what provided in the preceding article, the judge shall apply in the sentence one or more of the following accessory measures:

- a) Obligation for the perpetrator to leave the home that he shares with the victim.
- b) Prohibition of approaching the victim or the victim's home, place of work or study, as well as any other place to which she attends or visits habitually. If both [the victim and perpetrator] work or study in the same place, the employer or director of the establishment will be requested to adopt the necessary precautionary measures.
- c) Prohibition to carry and possess and, where appropriate, confiscation of firearms. It will be reported, as appropriate, to the General Directorate of Mobilization, to the Garrison Command or to the Director of the respective Services, for legal purposes and corresponding regulations.
- d) Compulsory attendance to therapeutic programs or family counseling. The institutions that develop such programs will give account to the respective court of the treatment that the aggressor should follow, its beginning and end.
- e) Obligation to appear regularly before the police unit determined by the judge.

The judge will prudently determine the term of these measures, which may not be less than six months nor more than two years, considering the circumstances that justify them. They may be extended, at the request of the victim, if the facts that justified them persist. In the case of letter d), the duration of the measure will be fixed, and may be extended, taking into consideration the background provided by the respective institution.

Notwithstanding the foregoing, in the definitive sentence, the judge will fix definitive alimonies, the regime of personal care and the direct and regular relationship of the children, if any, as well as any other family issue submitted to his knowledge by the parts.

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Article 10 - Sanctions. In case of non-compliance with the precautionary or accessory measures decreed, except for that provided for in letter d) of Article 9, the judge will inform the Public Ministry about the background for the purposes of the provisions of the second paragraph of Article 240 of the Code of Civil Procedure, without prejudice to impose on the offender, as a measure of urgency, arrest for up to fifteen days.

The police must arrest anyone caught in flagrant violation of the measures mentioned in the preceding paragraph.

Article 11 - Disbursements and patrimonial damages. The sentence will establish the obligation of the convicted person to pay the victim the disbursements and damages of patrimonial character that have been caused by the execution of the acts or constitutive acts of intrafamily violence object of the judgment, including the payment by money or in kind of damaged, destroyed or lost goods. These damages will be determined prudentially by the judge.

Article 12 - Register of sanctions and accessory measures. The Civil Registry and Identification Service must keep a Special Registry of persons who have been convicted, by an executed sentence, as authors of intrafamily violence, as well as other resolutions that the law requires to register.

Once the sentence has been enforced, the court must notify the Civil Registry, by identifying the convicted person and the main and the accessory sanctions applied for the act of intrafamily violence, except for the one envisaged in letter d) of article 9. The Identification Service will state these circumstances in the respective certificate of background. This Special Registry will be brought to the attention of the court at the request of the latter, in cases regulated by law.

Paragraph 3º. On intrafamily violence constituting a crime

Article 13 - Special Rules. Investigations and criminal proceedings on intrafamily violence shall also apply the provisions of this Paragraph.

Article 14 - Crime of habitual abuse. The habitual exercise of physical or mental violence with respect to any of the persons referred to in article 5 of this law shall be sanctioned with the penalty of minor prison in its minimum to medium degree, unless the act constitutes a more serious crime, case in which only the penalty assigned by law will be applied.

Habitual abuse will be assessed by the number of acts perpetrated by the abuser, as well as the temporary proximity of each act, regardless of whether violence has been perpetrated toward the same or different victims. For these purposes, the previous events in respect of which there has been an acquittal or conviction will not be considered.

Section removed.

Article 14 bis – For the offenses constituting intrafamily violence, the judge, for the purpose of evaluating the background of the accused, must consider the annotations that appear in the registry referred to in article 12 of this law.

Article 15 - Precautionary measures. At any stage of the investigation or proceeding on crimes constituting intrafamily violence, and even before formalization, the court with criminal jurisdiction may order the precautionary measures necessary to protect the victim in an effective and timely manner, such as those established in article 92 of Law Nº 19.968 and those referred to in article 7 of this law.

Article 16 - Accessory measures. The accessory measures established in article 9 will be applied by the courts with jurisdiction in criminal matters, when the crime constitutes an act of intrafamily violence, without prejudice to the principal and accessory sanctions that correspond to the mentioned crime.

The court will set prudentially the term of these measures, which cannot be less than six months or more than two years, provided the circumstances justify them. These measures may be extended, at the request of the victim, if the facts that justified them are maintained. In the case of letter d) of article 9, the duration of the measure shall be fixed, and may be extended, taking into consideration the information provided by the respective institution.

Article 17 - Conditions for the suspension of the procedure. To order the suspension of the procedure, the judge will impose as a condition one or more of the accessory measures established in article 9, without prejudice to the others authorized by article 238 of the Code of Criminal Procedure.

Article 18 - Sanctions. In case of non-compliance with the measures referred to in Articles 15, 16 and 17, the provisions of Article 10 shall apply.

Article 19 - Inadmissibility of reparatory agreements. In proceedings for crimes constituting intrafamily violence, article 241 of the Code of Criminal Procedure will not apply.

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Article 20 - Judicial representation of the victim. In cases identified by the National Service for Women, the latter may assume the representation of the woman victim of crimes constituting intrafamily violence that is of legal age, if she so requests, for the purposes of the provisions of article 109 of the Criminal Procedure Code.

To comply with the provisions of the preceding paragraph, the Service may enter into agreements with public or private entities.

Paragraph 4º. Other provisions

Article 21 - The following Modifications to the Criminal Code are introduced:

- a) In the circumstance 4th of the Article 11, the words "or your partner," followed by a comma (,) should be added right after the expression "to its spouse,"
- b) In Article 390, delete the phrase "be legitimate or illegitimate," as well as the comma (,) that follows, and the word "legitimate" that follows the term "descendants," and interlace, after the word "spouse," the expression "or cohabiting."
- c) Substitute article 400, by the following: "Article 400. If the facts referred to by the previous articles of this paragraph are executed against any of the people mentioned in the Article 5 of the Law on Intrafamily Violence, or with any of the circumstances Second, Third or Fourth of the number 1 of article 391 of this Code, the penalties will be increased by one degree."
- d) Add the following sentence at the end of Nº 5 Article 494: "In no case may the court qualify as minor injuries committed against the persons mentioned in article 5 of the Law on Intrafamily Violence. "

Article 22 - Introduce the following modifications in Law Nº 19,968:

- a) Substitute the second paragraph of Article 90, by the following: "If from the circumstances examined in the preparatory hearing or in the trial it appears that the accused or defendant has exercised violence under the terms established in Article 14 of the Law on Intrafamily Violence, the court will refer them to the Public Ministry."
- b) Replace the first sentence of number 1 of article 92, by the following: "Prohibit the offender from approaching the victim and prohibiting or restricting the presence of the victim in the common home and in the home, place of study or work of the victim."
- c) Substituted article 94, by the following: "Article 94. Failure to comply with precautionary measures. In case of non-compliance with precautionary measures, the judge will inform the Public Ministry of the offender's background for the purposes of the provisions of the second paragraph of Article 240 of the Code of Civil Procedure. Thereafter, the judge will impose the offender, as a measure of urgency, arrest for up to fifteen days."

Article 23 - In the first paragraph of Article 30 of Law Nº 18.216, following the expression "Criminal Code", insert the following sentence, preceded by a comma (,): "or of crimes against persons which are constitutive of intrafamily violence."

Article 24 - For the purposes of the provisions of this law, those who hold the status of adopters or adopters in accordance with the provisions of laws Nº 7.613 and Nº 18.703, shall be considered ascendants or descendants, as appropriate.

Article 25 - Validity. This law shall take effect on October 1, 2005.

Article 26 - Repeal. Law Nº 19,325 is repealed, without prejudice to the provisions of the second transitory article of Law No. 19,968. All legal or regulatory reference to the law No. 19.325, must be understood as made to this law. "

[...]

[Penal Code, 1874 \(As amended\)](#) ⁷⁹

Art. 361

Whomever commits carnal acts against a person over the age of fourteen, by vaginal, anal, or oral means, in any of the following cases:

1º By using force or intimidation

2º When the victim is unconscious, or by taking advantage of her inability to resist

3º By taking advantage of the victim's state of confusion or mental disorder

⁷⁹ Penal Code (12 November 1874, with amendments up to 20 November 2018), available at <https://www.leychile.cl/Navegar?idNorma=1984> (last visited December 30, 2018). Unofficial translation by Compendium team.

Will be punished with the penalty of presidio mayor in its minimum to medium degree.

[...]

Art. 369

It cannot be proceeded for offences set out in articles 361 to 366-quarter, unless the fact has been reported to the judge, the public prosecutor, or the police by the offended person, or his/her legal representative.

[...]

Where any of the offenses established in paragraphs 5 and 6 of this Title are committed by a spouse, or by a cohabitant partner against the one with whom he / she cohabits, the procedure may be terminated at the request of the offended party unless the judge, for well-founded reasons, does not accept.

[...]

34. CHINA

[Anti- Domestic Violence Law of the People's Republic of China, 2015](#) ⁸⁰

The National Anti-Domestic Violence Law

[...]

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of preventing and suppressing domestic violence, protecting the legitimate rights and interests of family members, maintaining equality, harmonious and civilized family relations, and promoting family harmony and social stability.

Article 2 The term "domestic violence" as used in this Law refers to physical and mental violations committed by family members by means of beatings, bundling, mutilation, restrictions on personal freedom, and frequent embarrassment and intimidation.

Article 3 Family members shall help each other, love each other, live in harmony, and fulfill family obligations. Anti-domestic violence is a shared responsibility of the state, society and every family. The state prohibits any form of domestic violence.

Article 4 The institutions responsible for the work of women and children of the people's governments at or above the county level shall be responsible for organizing, coordinating, guiding, and urging the relevant departments to do a good job in combating domestic violence.

Relevant departments of the people's governments at or above the county level, judicial organs, people's organizations, social organizations, residents' committees, villagers' committees, enterprises and institutions shall, in accordance with this Law and relevant laws and regulations, do a good job in combating domestic violence.

The people's governments at all levels shall provide necessary financial support for the work against domestic violence.

Article 5 The work against domestic violence follows the principle of prevention, education, correction and punishment. Anti-domestic violence work should respect the true will of the victim and protect the privacy of the client. Minors, the elderly, the

⁸⁰ Anti-Domestic Violence Law of the People's Republic of China, Presidential order of the people No. 37, (27 December 2015), available in Chinese at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103955/126611/F903227434/CHN103955%20Chn.pdf> (last visited December 30, 2018).

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disabled, women who are pregnant and breast-feeding, and seriously ill patients who suffer from domestic violence should be given special protection.

Chapter II Prevention of Domestic Violence

Article 6 The State conducts publicity and education on family virtues, popularizes anti-domestic violence knowledge, and enhances citizens' awareness of domestic violence. Trade unions, communist youth leagues, women's federations, and disabled people's federations should organize publicity and education on family virtues and anti-domestic violence within their respective work areas. Radio, television, newspapers, and the Internet should carry out family virtues and anti-domestic violence propaganda. Schools and kindergartens should carry out family virtues and anti-domestic violence education.

Article 7 The relevant departments of the people's governments at or above the county level, the judicial organs, and the women's federations shall incorporate prevention and suppression of domestic violence into their business training and statistics. Medical institutions should make records of the diagnosis and treatment of victims of domestic violence.

Article 8 The township people's government and sub-district offices shall organize the prevention of domestic violence, and the residents' committees, villagers' committees, and social work service agencies shall cooperate and assist.

Article 9 The people's governments at all levels shall support social work service organizations and other social organizations to carry out services such as mental health consultation, family relationship guidance, and domestic violence prevention knowledge education.

Article 10 The people's mediation organization shall mediate family disputes according to law to prevent and reduce the occurrence of domestic violence.

Article 11 If an employer discovers that there is domestic violence in its unit, it shall give criticism and education, and do a good job in mediating and resolving family conflicts.

Article 12 The guardian of a minor shall conduct family education in a civilized manner, perform guardianship and education duties in accordance with the law, and shall not engage in domestic violence.

Chapter III Disposal of Domestic Violence

Article 13 Victims of domestic violence, their legal representatives and close relatives may complain, reflect or seek help from the injurer or the unit where the victim is located, the residents' committee, the villagers' committee, the women's federation and other units. After receiving complaints, reflections or assistance from domestic violence, the relevant units shall provide assistance and handling. Victims of domestic violence, their legal representatives and close relatives may also report to the public security organ or bring a suit in a people's court according to law. Units and individuals find that domestic violence is taking place and has the right to dissuade them in time.

Article 14: Schools, kindergartens, medical institutions, residents' committees, villagers' committees, social work service agencies, rescue management agencies, welfare agencies and their staff members are found to have suffered or suspected of having no capacity for civil conduct or persons with limited capacity for civil conduct at work. Those who suffer from domestic violence shall report the case to the public security organ in a timely manner. The public security organ shall keep the information of the informant confidential.

Article 15: After receiving a report of domestic violence, the public security organ shall promptly issue a police to stop domestic violence, investigate and collect evidence in accordance with relevant regulations, and assist the victim to seek medical treatment and identify the injured. If a person without civil capacity or a person with limited capacity for civil conduct is seriously injured by domestic violence, threatened with personal safety or is in danger of being unattended, the public security organ shall notify and assist the civil affairs department to reset it to a temporary shelter and rescue. Management agency or welfare agency.

Article 16 If the circumstances of domestic violence are relatively minor and the public security administration is not punished according to law, the public security organ shall give criticism or education to the perpetrators or issue a warning. The warning should include the identity information of the perpetrator, the factual statement of domestic violence, and the prohibition of the perpetrator's implementation of domestic violence.

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Article 17 The public security organ shall send the warning to the injurer or victim and notify the residents committee and the village committee. Residents' committees, villagers' committees, and public security police stations shall conduct visits to the perpetrators and victims who receive the warnings, and supervise the perpetrators to stop implementing domestic violence.

Article 18 The municipal-level people's governments at or at the county level may, on their own or relying on the rescue management agencies, to establish temporary shelters to provide temporary life assistance to victims of domestic violence.

Article 19 Legal aid agencies shall provide legal aid to victims of domestic violence in accordance with the law. The people's court shall, according to law, slow down, reduce or waive the costs of litigation for victims of domestic violence.

Article 20 When a people's court hears a case involving domestic violence, it may determine the facts of domestic violence according to the evidence of the public security organ's police records, warnings, and injury identification opinions.

Article 21 Where a guardian commits a domestic violence that seriously infringes upon the lawful rights and interests of the ward, the people's court may revoke the Guardian's close relatives, residents' committees, villagers' committees, county-level people's governments, civil affairs departments, and other relevant personnel or units. Guardian qualification, separate guardian. The perpetrators who have been disqualified from guardianship shall continue to bear the corresponding support, maintenance and support expenses.

Article 22 Trade unions, communist youth leagues, women's federations, disabled people's federations, residents' committees, villagers' committees, etc. shall conduct education on the rule of law for the perpetrators of domestic violence and, if necessary, psychology of the perpetrators and victims. Counseling.

Chapter IV Personal Safety Protection Order

Article 23 If a party has applied for a security protection order to a people's court because of the actual danger of domestic violence or domestic violence, the people's court shall accept it. The parties are persons with no capacity for civil conduct, persons with limited capacity for civil conduct, or who are unable to apply for a security protection order due to compulsory or intimidation. Their close relatives, public security organs, women's federations, residents' committees, villagers' committees, and rescue management agencies You can apply on your behalf.

Article 24 The applicant's body safety protection order shall be submitted in writing; if the written application is indeed difficult, it may be applied orally and recorded by the people's court.

Article 25 The case of personal safety protection order shall be under the jurisdiction of the basic people's court where the applicant or the respondent resides or where the domestic violence occurs.

Article 26 The personal safety protection order shall be made by the people's court in the form of a ruling.

Article 27: To make a personal safety protection order, the following conditions shall be met:

- (1) having a clear respondent;
- (2) having a specific request;
- (3) Situations in which there is a real risk of domestic violence or domestic violence.

Article 28 After accepting an application, the people's court shall make a personal safety protection order or reject the application within 72 hours; if the situation is urgent, it shall be made within 24 hours.

Article 29 The personal safety protection order may include the following measures:

- (1) prohibiting the respondent from committing domestic violence;
- (2) prohibiting the respondent from harassing, tracking, and contacting the applicant and its related close relatives;
- (3) ordering the respondent to move out of the applicant's residence;
- (4) Other measures to protect the personal safety of the applicant.

Article 30 The personal safety protection order shall not be valid for more than six months and shall take effect from the date of its making. Before the personal safety protection order expires, the people's court may revoke, change or extend the application according to the applicant's application.

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Article 31 If the applicant is dissatisfied with the rejected application or the respondent is dissatisfied with the personal safety protection order, he may apply to the people's court that has made the ruling for reconsideration within five days from the date of the ruling. Where the people's court makes a personal safety protection order in accordance with the law, the execution of the personal safety protection order shall not be suspended during the reconsideration.

Article 32 After the people's court has made a personal safety protection order, it shall be served on the applicant, the respondent, the public security organ, the residents' committee, the villagers' committee, and other relevant organizations. The personal safety protection order shall be enforced by the people's court, and the public security organ, the residents' committee, and the village committee shall assist in the execution.

Chapter V Legal Liability

Article 33 If an injurer commits domestic violence and constitutes a violation of public security management, he shall be given a public security management punishment according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 34 If the respondent violates the personal safety protection order and constitutes a crime, it shall be investigated for criminal responsibility according to law; if it does not constitute a crime, the people's court shall give instructions, and may impose a fine of less than 1,000 yuan and 15 days or less according to the seriousness of the case. detention.

Article 35 Schools, kindergartens, medical institutions, residents' committees, villagers' committees, social work service agencies, rescue management agencies, welfare agencies and their staff members fail to report to the public security organs in accordance with the provisions of Article 14 of this Law, causing serious consequences. The supervisors and other directly responsible personnel directly responsible for the above-mentioned departments or their own units shall be given disciplinary sanctions according to law.

Article 36 If a state functionary who is responsible for domestic violence is negligent in duty, abuses power, or engages in malpractices for personal gains, it shall be punished according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Chapter VI Supplementary Provisions

Article 37 The acts of violence committed between persons living outside the family members shall be carried out in accordance with the provisions of this Law.

Article 38 This Law shall come into force on March 1, 2016.

[China's Revised Law on the Protection of Women's Rights and Interest, 1992 \(As amended\)](#)⁸¹

Article 46 (VERY IMPORTANT NEW PROVISION). Domestic violence against woman is prohibited. The state shall take measures to prevent and stop domestic violence. The public security organs, civil affairs, judicial and executive organs, autonomous organizations, social organizations at the grass-root in the township and rural areas should take measures to prevent and stop domestic violence within their responsibilities, provide the women victims with remedies.

[Marriage Law of the People's Republic of China, 1980 \(As amended\)](#)⁸²

Article 43 Where a person indulges in family violence or maltreats a family member, the victim shall have the right to advance a request; the neighborhood committee, villagers committee or the unit where they belong to, shall persuade the person to stop doing it and conduct mediation.

Where a person is committing family violence, the victim shall have the right to advance a request; the neighborhood committee or the villagers committee shall persuade the person to stop doing it; the public security organ shall stop such violence.

⁸¹ China's Revised Law on the Protection of Women's Rights and Interests (3 April 1992, with amendments up to 28 August 2005), available at <http://www.wcwonline.org/pdf/lawcompilation/TheRevisedLawProtection.pdf> (last visited December 30, 2018).

⁸² Marriage Law of People's Republic of China (10 September 1980, with amendments up to 28 April 2001), available at http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384064.htm (last visited December 30, 2018).

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Where the victim advances a request, the public security organ shall, in accordance with the legal provisions on administrative penalties for public security, impose an administrative penalty on the person who commits family violence or maltreatment of a family member.

Article 45 The person who commits bigamy, family violence, maltreatment or abandonment of a family member, if it constitutes a crime, shall be investigated for criminal responsibility in accordance with law. The victim may, in accordance with relevant provisions of the Criminal Procedure Law, lodge a private prosecution with the People's Court; the public security organ shall investigate the case in accordance with law, and the People's Procuratorate shall institute public prosecution in accordance with law.

[Criminal Law of the People's Republic of China, 1979 \(As amended\)](#) ⁸³

Article 260. Those mistreating their family members, if the case is serious, are to be sentenced to two years or less in prison, or put under criminal detention or surveillance.

Those committing crimes stipulated in the above paragraph and causing the victims to severe injuries or death are to be sentenced to two to seven years in prison.

Those committing crime stipulated in the first paragraph of this article are to be investigated only if they are sued.

35. COLOMBIA

[Law 294 \(to Prevent, Prosecute and Punish Intra-Family Violence\), 1996](#) ⁸⁴

TITLE I - OBJECT, DEFINITION AND GENERAL PRINCIPLES

Article 1. The purpose of this Law is to develop article 42, clause 5, of the Political Charter, by means of an integral approach of the different types of family violence, in order to ensure its harmony and unity.

Article 2. The family is established by natural or legal ties, by the free decision of a man and a woman to marry or by the free will to integrate it.

For the purposes of this Law, those who integrate the family are:

- a) The spouses or permanent partners; **The underlined text was declared constitutional by the Constitutional Court by means of the ruling C-029 of 2009, in the understanding that, for the effects of the administrative measures of protection foreseen in this law, the law also applies, in equal conditions, to the partners of same-sex couples.**
- b) The father and the mother of the family, even if they do not live in the same household;
- c) The ancestors or descendants of the previous ones and their adopted children;
- d) All other persons who are permanently integrated into the household.

Article 3. For the interpretation and application of this Law, the following principles shall be considered:

- a) Primacy of fundamental rights and recognition of the family as the fundamental institution of society;
- b) Any form of violence in the family is considered destructive of its harmony and unity, and therefore, it will be prevented, remedied, and sanctioned by the public authorities;
- c) Timely and effective special protection for those persons who in the context of a family are or may become victims, in any form, of physical or psychological harm, threat, mistreatment, injury, offense, torture or affront, for cause of the behavior of another member of the family unit;
- d) Equality of rights and opportunities for men and women;
- e) The fundamental rights of children are: life, physical integrity, health, social security, a balanced diet, their name and nationality, having a family and not being separated from it, care and love, education, culture, recreation and the free expression of their opinions;
- f) The rights of children prevail over those of others;

⁸³ Criminal Law of the People's Republic of China (1 July 1979, with amendments up to 14 March 1997), available at <http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> (last visited December 30, 2018).

⁸⁴ Law 294 by which Article 42 of the Constitution is Developed and Rules are Issued to Prevent, Prosecute and Punish intra-Family Violence, (Ley 294 de 1996 por la cual se desarrolla el artículo 42 de la Constitución Política y se dictan normas para prevenir, remediar y sancionar la violencia intrafamiliar), (16 July 1996), available at <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5387> (last visited December 30, 2018). Unofficial translation by Compendium team.

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- g) The preservation of unity and harmony among the members of the family, resorting to legal conciliation tools when appropriate;
- h) The effectiveness, speed, summary treatment, and orality in the enforcement of the procedures foreseen in this Law;
- i) Respect for privacy and reputation in the processing and resolution of intrafamily conflicts.

TITLE II - PROTECTION ORDERS

Article 4. Modified by Art. 1 of Law 575 of 2000 , Amended by art. 16, Law 1257 of 2008.

Any person who, within their family, is victim of physical or psychological harm, threat, injury, offense or any other form of aggression by another member of the family, may request, without prejudice to the criminal charges that may arise, the Family Commissary of the place where the events occurred or if applicable, the Municipal Civil Judge or the comprehensive judge, to declare a measure of immediate protection that puts an end to the violence, mistreatment or aggression or prevents violence from being carried out if it is imminent.

When at the residence of the aggrieved person there is more than one judicial officer competent to hear the action, the request shall be submitted for immediate referral.

Paragraph 1. Notwithstanding the former's jurisdiction, the Justice of Peace and the Conciliator in Equity may be resorted to in order to obtain, through their mediation, the cessation of violence, abuse or aggression or the avoidance of it if imminent. In this case, the offender will be summoned immediately to a conciliation hearing, which must be held in the shortest possible time. At the hearing, the provisions contained in article 14 of this law must be complied with.

The Justice of Peace or the Conciliator in Equity may, if the parties agree, request institutions or professionals or qualified persons, to assist the offender, the parties or the family.

If the alleged offender does not appear in court or if no agreement is reached between the parties, the victim will be guided to the authority competent to impose protection measures, to whom the action will be transferred in writing.

Paragraph 2. In cases of intrafamily violence in Indigenous communities, the competent authority to hear these cases is the respective indigenous authority, in expansion of the special jurisdiction provided by article 246 of the National Constitution.

Article 4. Any person who, in the context of a family, is victim of physical or psychological harm, suffers from injury, offense or any other form of aggression from another family member, may request, without prejudice to the criminal charges that may arise, the family judge or the ordinary municipal court competent in family matters, or the municipal civil judge or the ordinary municipal court in the absence of a family court, a measure of immediate protection that puts an end to the violence, abuse or aggression or prevents it from being carried out when it is imminent.

In divorce proceedings or legal separation due to abuse, the judge may decree any of the protection measures enshrined in this law.

Paragraph. When at the residence of the aggrieved person there is more than one judicial officer competent to hear this action, the petition will be submitted for immediate referral within the hour following its introduction.

Article 5. Modified by Art. 2 of Law 575 of 2000. If the Family Curator or the presiding judge determines that the petitioner or a member of a family group has been victim of violence or mistreatment, he will issue in a motivated ruling a definitive measure of protection, in which he will order the offender to refrain from adopting the behavior that is the subject of the complaint, or any other similar behavior against the offended person or another member of the family. The judge may also impose, as the case may be, the following measures:

- a) Order the offender's eviction from the family residence that he shares with the victim, provided that his presence has been proven to constitute a threat to the life, physical integrity or health of a member of the family;
- b) Order the offender to refrain from entering any place where the victim is, when, at the discretion of the officer, such limitation is necessary to prevent the victim from bothering, intimidating, threatening or in any other way interfering with the victim or minors, whose provisional custody has been awarded;
- c) Prohibit the offender from hiding or transferring from the residence the children and disabled persons in a situation of defenselessness who are members of the family group, without prejudice to the criminal charges that may arise;
- d) Obligation to seek re-educational and therapeutic treatment in a public or private institution that offers such services, at the offender's expense when the latter already had a record of domestic violence;
- e) If necessary, the offender will be ordered to pay the medical, psychiatric, and psychological expenses required by the victim;
- f) When the violence or abuse is serious and its repetition is feared, the Commissioner will order a special temporary protection of the victim by the police authorities, both at his residence and at his place of work, if he has one;
- g) Any other measure necessary for the fulfillment of the purposes of this law.

Paragraph 1. In case of divorce or legal separation proceedings due to abuse, the judge may decree any of the protection measures enshrined in this article.

Paragraph 2. These same measures may be issued provisionally and immediately by the prosecutor who knows of crimes that may have originated in acts of intrafamily violence. The prosecutor will refer the case as pertinent for the Domestic Violence Action, to the competent Family Commissioner, or in its absence of the latter, to the Municipal civil court or ordinary municipal court, so that he may continue his inquiry.

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Article 5. If the Judge determines that the petitioner or a member of the family has been the victim of violence or mistreatment, he will issue a definitive measure of protection, in which he will order the offender to abstain from adopting the behavior that is the subject of the complaint, or any similar conduct against the offended person. The Judge may also impose, as the case may be, the following measures:

- a) Order the offender's eviction of the house that he shares with the victim, provided it has been proven that his presence constitutes a threat to the life, physical integrity or health of any member of the family.
In the same ruling, the provisional custody, visitation rights, and child support will be resolved in favor of the minors and the spouse if there is a legal obligation to do so;
- b) Obligation to resort to a re-educational and therapeutic treatment in a public or private institution that offers such services, at the offender's expense, when the latter already had antecedents in the matter of domestic violence;
- c) In all cases of violence, the Judge will order the offender to pay, with their own resources, for the damages caused by their behavior, which will include medical, psychological and psychiatric expenses; those who demand the repair or replacement of damaged furniture or buildings, and those caused by the displacement and accommodation of the victim if she/he had to leave the home to protect herself/himself from the violence;
- d) When the violence or abuse is serious and its repetition is feared, the Judge will order a special protection of the victim by the police authorities, both at their residence and at their place of work, if any.

Article 6. Modified by Art. 3 of Law 575 of 2000. When the facts that are the subject of the complaint constitute a crime or a misdemeanor, the presiding officer shall communicate the measures taken to the competent authority, without prejudice to the protection measures enshrined in this law.

Article 7 Modified by Art. 4 of Law 575 of 2000. Failure to comply with the protection measures will result in the following sanctions:

- a) For the first failure to comply, a fine between two (2) and ten (10) monthly legal minimum wages, convertible into an arrest, which must be collected within five (5) days after its imposition. The conversion in arrest will be adopted immediately by means of a procedure that will only have remedies of appeal for reversal, at a rate of three (3) days for each minimum wage;
- b) If the breach of the protection measures is repeated within two (2) years, the sanction will be an arrest between thirty (30) and forty-five (45) days.

In the case of noncompliance with protection measures imposed after acts of violence or mistreatment that constitute a crime or a misdemeanor, the offender will lose the sentence-related benefits or the incarceration substitutes that he is enjoying.

Article 8. Any behavior of retaliation, revenge or nonfulfillment of duties of support by the offender, will be assimilated to a breach of the protection measures that were imposed.

TITLE III - PROCEDURE

Article 9. Modified by Art. 5 of Law 575 of 2000. Bringing information about acts of domestic violence to the competent authorities is the responsibility of the community, of the neighbors and must be done immediately after a case is identified. The request for a measure of protection may be presented personally by the victim, by any other person acting on their behalf, or by the family ombudsman when the victim finds it impossible to do so on his or her own.

The request for a protection measure may be introduced in writing, orally or by any other suitable means to inform the competent official of the acts of domestic violence, and must be submitted no later than thirty (30) days after the date of the occurrence of the facts.

Article 10. The request for protection measure must clearly contain the following information:

- a) Name of the person presenting it and its identification, if possible;
- b) Name of the person or persons victims of intrafamily violence;
- c) Name and address of the offender;
- d) Description of the facts denounced, and
- e) Request for the tests that the petitioner deems necessary.

Article 11. Modified by Art. 6 of Law 575 of 2000. The Commissioner or the Judge, as the case may be, will immediately receive and review the request, and if it is based on at least slight indications, he or she may issue, within the following four (4) working hours, provisional protective measures to avoid the continuation of any act of violence, aggression, mistreatment, threat or offense against the victim, under penalty of imposing on the offender the sanctions foreseen in this law for the breach of the protection orders.

No appeal can be made against the provisional protection order.

Likewise, the judge may request expert, technical or scientific evidence from official experts, who will render their opinion in accordance with the procedures established by the Institute of Legal Medicine and Forensic Sciences.

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Article 12. Modified by Art. 7 of Law 575 of 2000. Once the petition is filed, the Commissioner or the Judge, depending on the case, will summon the accused to appear at a hearing that will take place between five (5) and ten (10) days following the introduction of the petition. The victim must attend this hearing.

The notice of summons to the hearing shall be made in person or by notice posted at the residence of the offender.

Paragraph. If the victims are disabled persons in a situation of defenselessness, the Public defender must be notified. The Public defender or his delegate must be present at the hearings. His absence does not prevent the completion of the procedure, but constitutes a serious disciplinary offense.

Article 13. The offender may present his defense arguments before the hearing, and propose compromises with the victim, and also request evidence, which shall be conducted during the hearing.

Article 14. Modified by Art. 8 of Law 575 of 2000. Before and during the hearing, the Commissioner or the Judge, as the case may be, shall seek by all legal means available to him, solutions to the intrafamilial conflict between the offender and the victim, in order to guarantee the unity and harmony of the family, and especially to ensure that the offender changes his or her behavior. In all cases, he or she will favor the reconciliation and direct dialogue between the parties in order to reach an agreement for the peace and family coexistence. At the same hearing he will decree and practice the tests requested by the parties and those that he considers to be necessary.

Article 15. Modified by Art. 9 of Law 575 of 2000. If the offender does not appear at the hearing, it will be understood that he accepts the charges brought against him.

However, the parties may excuse the absence only once before or during the hearing, provided there is a just cause. The official will evaluate the excuse and, if he deems it appropriate, will set a date to hold the new hearing within the following five (5) days.

Partially unconstitutional: Judgment C-273-98

Article 16. Modified by Art. 10 of Law 575 of 2000. The resolution or ruling will be issued at the end of the hearing and will be notified to the parties from the bench. The effects of the notification will begin immediately after the pronouncement. If any of the parties is absent, the decision will be communicated by means of a notice, telegram or by any other suitable means.

The performance will be recorded in the minutes, a copy of which will be given to each of the parties.

Paragraph. At all stages of the process, the Commissioner will be assisted by the interdisciplinary team of the Institution.

Article 17. Modified by Art. 11 of Law 575 of 2000. The officer who issued the protection order will maintain the competence for the execution and compliance with the protection orders.

Sanctions for non-compliance with protective orders will be imposed in a hearing that must be held within ten (10) days following the request, after the relevant tests have been carried out and the defendants have been heard.

However, when in the opinion of the Commissioner it is necessary to order the arrest, after performing the tests and hearing the defense, he will ask the Family court or the ordinary municipal court competent in family matters, or if need be, the Municipal Civil court or the ordinary municipal court, to issue the relevant order, on which he will decide within 48 hours.

The Order that imposes the sanctions for breach of the protection order, provisional or definitive, will be motivated and notified personally at the hearing or by means of a notice.

Article 18. Amended by Art. 12 of Law 575 of 2000. At any time, the interested parties, the Public Ministry, the Family Ombudsman, fully demonstrating that the circumstances that gave rise to the protection orders have changed, may request the officer who issued the orders to terminate the effects of the statements made and the termination of the ordered measures.

An appeal, with devolutive effect, may be filed before the Family judge or ordinary municipal court competent in family matters against the final decision on a protection order taken by the Family Commissioners or the Municipal Civil court or ordinary municipal court.

The procedural norms contained in Decree number 2591 of 1991, when appropriate, will be applicable to the procedure provided for in this law.

TITLE IV - ASSISTANCE TO VICTIMS OF ABUSE

Article 20. The police authorities will provide the victim of intrafamily abuse with all the necessary help to prevent the repetition of these acts, remedy the physical and psychological consequences that may have been caused and avoid retaliation for such acts. In particular, they will take the following measures:

- a) Immediately drive the victim to the nearest medical center, even if the injuries were not visible;
- b) Accompany the victim to a safe place or to his residence for the removal of personal belongings, if considered necessary for the safety of that person;
- c) Advise the victim in the preservation of evidence of acts of violence and;

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d) Provide the victim with relevant information about their rights and about the governmental and private services available to victims of intrafamily abuse.

Paragraph. The police authorities will record the facts in report, a copy of which will be given to the person who claims to be victim of abuse. Failure to comply with this duty shall be considered a misconduct punishable with dismissal.

Article 21. In the provisional order of protection and in the definitive one it will be possible to request to the temporary shelters, youth hostels, senior homes, or similar institutions that exist in the municipality, to take in the victim, according to the conditions that the respective institution stipulates.

TITLE V - OF THE CRIMES AGAINST THE HARMONY AND THE UNITY OF THE FAMILY

Article 22. Declared constitutional by the Constitutional Court Decision 285 of 1997. Intrafamily Violence. Anyone who physically, psychologically or sexually abuses any member of their nuclear family will incur a prison term of one (1) to two (2) years.

Article 23. Abuse constituting personal injury. Whoever, through physical or psychological violence, cruel or intimidating or degrading treatment, causes damage to the body or psychological health of a member of his family group, shall incur the penalty of deprivation of liberty foreseen for the respective crime, increased by one third to one half.

Paragraph. For the purposes of this article, obliging or inducing the consumption of psychotropic substances to another person or consuming them in the presence of minors, is considered degrading treatment.

Article 24. Abuse through restriction of physical freedom. Anyone who by force and without reasonable cause restricts the freedom of movement of another person of legal age belonging to his family group, will incur arrest from one (1) to six (6) months and a fine of one (1) to sixteen (16) monthly minimum wages, as long as this does not constitute an offense punishable by a greater penalty.

Article 25. Declared unconstitutional by the Constitutional Court Decision 285 of 1997. Sexual violence between spouses. Anyone who by means of violence has sexual intercourse or any sexual act with his spouse, or who cohabits or has cohabited, or with the person who has procreated a child, shall incur a prison term of six (6) months to two (2) years. The criminal action for this crime will only proceed through the victim's complaint.

Article 26. The benefit of early release or parole will not take place when any of the crimes contemplated in this law is committed in violation of a protection order.

In the ruling that declares a person liable for a punishable act committed against a member of his family, the obligation to carry out reeducation or retraining activities will be imposed.

Article 27. The penalties for the offenses provided for in articles 276, 277, 279, 311 and 312 of the Penal Code shall be increased by one third to one half when the person responsible is a member of the victim's family.

TITLE VI - FAMILY PROTECTION POLICY

Article 28. The Colombian Welfare Institute will design policies, plans and programs to prevent and eradicate intrafamily violence.

Likewise, the departmental and municipal authorities may form Family Protection Councils to carry out studies and activities of prevention, education, assistance and treatment of intrafamily violence problems within their jurisdiction.

Article 29. The Colombian Family Welfare Institute shall integrate a Data Bank on intrafamily violence, for which all the authorities in charge of receiving complaints and processing them, shall update every six months the information necessary to carry out investigations that contribute to the prevention and eradication of intrafamily violence.

Article 30. Amended by Art. 13 of Law 575 of 2000. The municipalities that have not complied with the provisions of article 295 of the Juvenile Code, will have one year, counted from the effective date of this law, to create and operate at least one Family Commissioner assisted by the interdisciplinary team mentioned in article 295, paragraph 2, of the Minors Code.

Paragraph. As of the validity of this law, the Family Commissioners will be Administrative Career officers.

[...]

Law 1257 (on the Awareness, Prevention and Sanctioning of Discrimination and Violence Against Women), 2008 ⁸⁵

⁸⁵ Law 1257 on the Awareness, Prevention and Sanctioning of Forms of Discrimination and Violence Against Women (Ley 1257 de 2008 por la cual se dictan normas de sensibilización, prevención y sanción de formas de violencia y discriminación contra las mujeres), (4 December 2008), available at http://www.secretariassenado.gov.co/senado/basedoc/ley_1257_2008.html (last visited December 30, 2018). Unofficial translation by Compendium team.

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CHAPTER I - GENERAL DISPOSITIONS

Article 1. Object of the law. The purpose of this law is to adopt norms that allow guaranteeing for all women a life free of violence, both in the public and private spheres, the exercise of the rights recognized in the domestic and international legal order, access to the administrative and judicial procedures for their protection and attention, and the adoption of the public policies necessary for their realization.

Article 2. Definition of violence against women. Violence against women means any act or omission, which causes death, physical, sexual, psychological, economic or patrimonial damage or suffering due to their condition of women, as well as threats of such acts, coercion or arbitrary deprivation of freedom, whether it occurs in the public or private sphere. For the purposes of this law, and in accordance with the provisions of the Action Plans of the Vienna, Cairo and Beijing Conferences, any action or omission aimed at economic abuse, abusive control of finances, rewards or monetary punishments to women because of their social, economic or political condition are understood as economic violence. This form of violence can exist within a couple, a family and within work or economic relationships.

Article 3. Concept of damage against women. To interpret this law, the following definitions of damage are established:

- a) Psychological damage: Consequence coming from the action or omission destined to degrade or control the actions, behaviors, beliefs and decisions of other people, through intimidation, manipulation, threat, direct or indirect, humiliation, isolation or any other conduct that implies a damage to psychological health, self-determination or personal development.
- b) Physical damage or suffering: Risk or decrease in the bodily integrity of a person.
- c) Damage or sexual suffering: Consequences that come from the action consisting of forcing a person to maintain sexualized, physical or verbal contact, or to participate in other sexual interactions through the use of force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other mechanism that cancels or limits the personal will. Likewise, it will be considered sexual damage or suffering the fact that the offender obliges the victim to perform some of these acts with third parties.
- d) Patrimonial damage: Loss, transformation, subtraction, destruction, retention or distraction of objects, work tools, personal documents, goods, values, rights or finances destined to satisfy the needs of a woman.

Article 4. Interpretation criteria. The principles contained in the Political Constitution, and in the International Treaties or Agreements on human rights ratified by Colombia, especially the convention on the elimination of all forms of discrimination against women and the inter-American convention to prevent, punish and eradicate violence against the woman, the other laws, the jurisprudence concerning the matter, will serve as a guide for its interpretation and application.

Article 5. Minimum guarantees. The enunciation of rights and guarantees contained in the legal order, should not be understood as a denial of others that, being inherent to women, are not expressly included in it.

CHAPTER II - PRINCIPLES

Article 6. Principles. The interpretation and application of this law will be done in accordance with the following principles:

1. Real and effective equality. It is up to the State to design, implement and evaluate public policies to achieve women's access to services and the real fulfillment of their rights.
2. Human rights. The rights of women are Human Rights.
3. Principle of Stewardship. Society and the family are responsible for respecting the rights of women and for contributing to the elimination of violence against them. The State is responsible for preventing, investigating, and punishing all forms of violence against women.
4. Integrality. Attention to women victims of violence will include information, prevention, orientation, protection, punishment, reparation, and stabilization.
5. Autonomy. The State recognizes and protects the independence of women to make their own decisions without undue interference.
6. Coordination. All the entities that have within their functions the care for women who are victims of violence will have to carry out coordinated and articulated actions with the purpose of offering them a comprehensive attention.
7. No Discrimination. All women regardless of their personal, social or economic circumstances such as age, ethnicity, sexual orientation, rural or urban origin, religion among others, will have the rights established in this law guaranteed through an array of minimum standards throughout the National territory.
8. Differentiated attention. The State will guarantee attention to the needs and specific circumstances of groups of women especially vulnerable or at risk, in such a way that their effective access to the rights enshrined in this law is ensured.

CHAPTER III - RIGHTS

Article 7. Women rights. In addition to other rights recognized in the law or in duly ratified international treaties and agreements, women have the right to a dignified life, to physical, sexual and psychological integrity, to privacy, not to be

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subjected to torture or cruel and degrading treatment, to real and effective equality, not to be subjected to any form of discrimination, to freedom and autonomy, to the free development of personality, to health, to sexual and reproductive health and to personal security.

Article 8. Rights of victims of violence. Any victim of any of the forms of violence provided for in this law, in addition to those contemplated in article 11 of Law 906 of 2004 and article 15 of Law 360 of 1997, has the right to:

- a) Receive comprehensive care through services with sufficient, accessible and quality coverage.
- b) Receive guidance, legal advice, and legal technical assistance of a free, immediate and specialized nature from the moment in which the act constitutive of violence is brought to the knowledge of the authorities. The offender may be ordered to assume the costs of this care and assistance. It is the responsibility of the State to guarantee this right by carrying out the corresponding actions against the offender and in any case guarantee the provision of this service through the public defender's office;
- c) Receive clear, complete, truthful and timely information in relation to their rights and the mechanisms and procedures contemplated in this law and other concordant norms;
- d) Give informed consent for medical-legal examinations in cases of sexual violence and choose the sex of the physician for the practice of them within the possibilities offered by the service. The entities that promote and provide health services will promote the existence of doctors of both sexes for the care of victims of violence;
- e) Receive clear, complete, truthful and timely information in relation to sexual and reproductive health;
- f) Be treated with the protection of one's identity when receiving medical, legal, or social assistance regarding their personal data, those of their descendants or those of any other person under their guardianship or custody;
- g) Receive specialized and comprehensive medical, psychological, psychiatric and forensic assistance under the terms and conditions established in the legal system for them and their children;
- h) Access the mechanisms of protection and care for them, their sons and daughters;
- i) The truth, justice, reparation and guarantees of non-repetition in the face of acts constituting violence;
- j) The stabilization of their situation in accordance with the terms provided in this law.
- k) To decide voluntarily if it can be confronted with the offender in any of the attention spaces and in administrative, judicial or other procedures.

CHAPTER IV - SENSITIZATION AND PREVENTION MEASURES

Article 9. Sensitization and prevention measures. All the authorities responsible for formulating and implementing public policies must recognize the social and biological differences and inequalities in the relationships between people according to sex, age, ethnicity and the role they play in the family and in the social group.

The National Government:

1. Formulates, applies, and updates comprehensive national strategies, plans, and programs for the prevention and eradication of all forms of violence against women.
2. Executes training programs for public servants that guarantee adequate prevention, protection and attention to women victims of violence, with special emphasis on justice operators, health personnel and police authorities.
3. Implement in the aforementioned areas the recommendations of international organizations, in the field of women's human rights.
4. Develop plans for prevention, detection and attention to situations of harassment, sexual assault or any other form of violence against women.
5. Implement measures to promote social sanctions and denounce discriminatory practices and violence against women.
6. Strengthen the presence of the institutions responsible for the prevention, protection and care of women victims of violence in the geographical areas where their life and integrity are particularly at risk in situations of conflict due to violent actions by armed actors.
7. Develop prevention, protection and care programs for women in situations of displacement in the face of acts of violence against them.
8. Adopt measures to investigate or punish members of the police, armed forces, security forces and other forces that carry out acts of violence against girls and women, who are in situations of conflict, due to the presence of armed actors.
9. The entities responsible in the framework of this law will provide information regarding gender-based violence to the information system determined by the Ministry of Social Protection and the Presidential Council for Women's Equality, through the Observatory on Gender Issues, for the tasks of information, monitoring and follow-up.

Departments and Municipalities:

1. The issue of violence against women will be included in the agenda of the Councils for Social Policy.
2. The municipal and departmental development plans will include a chapter on prevention and care for women victims of violence.

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Article 10. Communications. The Ministry of Communications will develop dissemination programs that contribute to eradicating violence against women in all its forms, to guarantee respect for the dignity of women and to promote equality between men and women, avoiding any discrimination against them.

Article 11. Educational measures. The Ministry of Education, in addition to those indicated in other laws, will have the following functions:

1. Ensure that educational institutions incorporate training in the respect of rights, freedoms, autonomy and equality between men and women as part of the Chair in Human Rights.
2. Develop policies and programs that contribute to sensitize, educate, and train the educational community, especially teachers, students and parents, on the subject of violence against women.
3. Design and implement prevention and protection orders to ensure that women victims of any form of violence stay in school.
4. Promote the participation of women in vocational training programs and non-traditional professional training for them, especially in basic sciences and applied sciences.

[...]

Article 13. Measures in the field of health. The Ministry of Social Protection, in addition to those indicated in other laws, will have the following functions:

1. Prepare or update the protocols and guidelines for action of health institutions and their staff in cases of violence against women. Within the framework of this law, for the preparation of protocols, the Ministry will take special care in the care and protection of victims.
2. Regulate the Obligatory Health Plan so that it includes the activities of attention to the victims that correspond in application of the present law, and in particular those defined in the literals a), b) and c) of article 19 of the same.
3. Integrate in the national and territorial health plans a section on prevention and comprehensive intervention in violence against women.
4. Promote respect for the decisions of women on the exercise of their sexual and reproductive rights.

Paragraph. The National Health Plan will define actions and allocate resources to prevent violence against women as a component of public health actions. All public health plans and programs at the territorial level will contemplate actions in the same sense

Article 14. Duties of the family. The family will have the duty to promote the rights of women in all their recognized life stages, enshrined in this law and likewise the elimination of all forms of violence and inequality against women.

These are family duties for these purposes:

1. Prevent any act that threatens or violates the rights of women indicated in this law.
2. Refrain from carrying out any act or conduct that involves physical, sexual, psychological or patrimonial mistreatment against women.
3. Refrain from carrying out any act or conduct that implies discrimination against women.
4. Participate in the democratic spaces for discussion, design, formulation and execution of policies, plans, programs and projects of interest for the elimination of discrimination and violence against women.
5. Promote participation and respect for women in decisions related to the family environment.
6. Respect and promote the exercise of women's autonomy.
7. Respect and promote the exercise of women's sexual and reproductive rights.
8. Respect the cultural, religious, political and sexual manifestations of women.
9. Provide disabled women with dignified and equal treatment with all members of the family and create conditions of equity, opportunities and autonomy so that they can exercise their rights. Enable adequate spaces and guarantee their participation in matters related to their family and social environment.
10. Carry out all necessary actions to ensure the exercise of women's rights and eliminate violence and discrimination against them in the family environment.

Paragraph. For Indigenous Peoples, Afro-descendant communities and other ethnic groups, the obligations of the family shall be established in accordance with their traditions and cultures, provided they are not contrary to the Constitution and international human rights instruments.

Article 15. Obligations of the company. In compliance with the principle of co-responsibility, civil society organizations, associations, businesses, organized trade, economic associations and other legal and natural persons have the responsibility to take an active part in achieving the elimination of violence and discrimination against women. For these purposes they should:

[...]

4. Report violations of women's rights and violence and discrimination against them.
5. Participate actively in the formulation, management, compliance, evaluation and control of public policies related to women's rights and the elimination of violence and discrimination against them.

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6. Collaborate with the authorities in the application of the provisions of this law and in the execution of policies that promote the rights of women and the elimination of violence and discrimination against them.
7. Carry out all the necessary actions to ensure the exercise of women's rights and eliminate violence and discrimination against them.

CHAPTER V - PROTECTION ORDERS

Article 16. Article 4 of Law 294 of 1996, modified by Article 1 of Law 575 of 2000, shall read as follows:

"Article 4. Any person who, within their family context, is a victim of physical or psychological damage or damage to their sexual integrity, threat, injury, offense or any other form of aggression by another member of the family group, may request, without prejudice to the criminal complaints that may arise, to the family commissioner of the place where the events occurred and in the absence of this to the Municipal Civil Judge or the ordinary municipal court, an order of immediate protection that puts an end to the violence, abuse or aggression or prevents it from being carried out when it is imminent. When at the residence of the aggrieved person there is more than one judicial office competent to hear this action, the petition shall be submitted immediately for distribution.

Paragraph. In cases of intrafamily violence in indigenous communities, the competent authority to hear these cases is the respective indigenous authority, developing the special jurisdiction provided for by the National Constitution in Article 246. "

Article 17. Article 5 of Law 294 of 1996, modified by Article 2 of Law 575 of 2000, shall read as follows:

"Article 5. Protection orders in cases of intrafamily violence. If the competent authority determines that the applicant or a member of a family group has been a victim of violence, it will issue a reasoned decision on a definitive order of protection, in which it will order the offender to refrain from carrying out the conduct that is the subject of the complaint, or any other similar against the offended person or another member of the family group. The official may also impose, as the case may be, the following measures, without prejudice to those established in article 18 of this law:

- a) Order the offender the eviction from the residence that he shares with the victim, when his presence constitutes a threat to the life, physical integrity or health of any member of the family;
- b) Order the offender to refrain from entering any place where the victim is, when in the opinion of the official said limitation is necessary to prevent the victim from disturbing, intimidating, threatening or in any other way interfering with the victim or minors, whose provisional custody has been awarded;
- c) Prohibit the offender from hiding or transferring from the residence the children and disabled persons in a situation of defenselessness members of the family group, without prejudice to the criminal actions that may take place;
- d) Obligation to seek re-educational and therapeutic treatment in a public or private institution that offers such services, at the offender's expense.
- e) If necessary, the offender will be ordered to pay the legal, medical, psychological and psychological guidance and counseling expenses required by the victim;
- f) When the violence or abuse is serious and its repetition is the competent authority will order a special temporary protection of the victim by the police authorities, both at home and at their place of work if they have it;
- g) Order the police authority, upon request of the victim, the accompaniment of the victim for re-entry to the place of domicile when she has been forced to leave to protect her safety;
- h) Decide provisionally the regime of visits, custody and custody of the sons and daughters, if any, without prejudice to the competence in civil matters of other authorities, who may ratify this measure or modify it;
- i) Suspend the offender possession, carrying and use of weapons, if these are essential for the exercise of their profession or trade, the suspension must be reasoned;
- j) Decide provisionally who will be responsible for maintenance payments, without prejudice to the competence in civil matters of other authorities who may ratify or modify this measure;
- k) Decide provisionally the use and enjoyment of the family home, without prejudice to the competence in civil matters of other authorities who may ratify this order or modify it;
- l) Prohibit, the offender the realization of any act of alienation or encumbrance of assets of his property subject to registration, if he had conjugal or current patrimonial society. For this purpose, it will officiate the competent authorities. This order will be decreed by the Judicial Authority;
- m) Order the offender the immediate return of objects for personal use, identity documents and any other document or object of ownership or custody of the victim;
- n) Any other measure necessary for the fulfillment of the objectives of this law.

Paragraph 1. In case of divorce or legal separation due to abuse, the judge may decree any of the protection measures enshrined in this article.

Paragraph 2. These same measures may be issued provisionally and immediately by the judicial authority that is aware of the offenses that have their origin in acts of domestic violence.

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Paragraph 3. The competent authority shall remit all cases of intrafamily violence to the Office of the Attorney General of the Nation for the purpose of investigating the crime of domestic violence and possible related crimes.
[...]

CHAPTER VI - MEASURES OF CARE

Article 19. The measures of care foreseen in this law and those implemented by the National Government and the territorial entities, will seek to prevent that the care received by the victim and the offender be provided by the same person and in the same place. Women in special risk situations will be particularly taken into account when ordering care measures.

a) Guarantee the boarding and feeding of the victim through the General System of Social Security in Health. The Health Promoting Companies and the Subsidized Regime Administrators will provide room and board services in the institutions providing health services, or contract hotel services for such purposes; In all cases, the transportation service for the victims of their children will be included. Additionally, they will have reference and counter-referral systems for the care of victims, always guaranteeing their life, dignity and integrity.

b) When the victim decides not to stay in the hotel services available, or they have not been hired, a monthly monetary subsidy will be assigned for the room and food of the victim, the victim's children, provided it is verified that it will be used to cover these expenses in a different place than the one occupied by the offender. Likewise, this subsidy will be conditioned to the attendance to medical, psychological or psychiatric appointments that the victim requires.

In the contributory regime, this subsidy will be equivalent to the amount of the contribution made by the victim to the General System of Health Social Security, and for the subsidized regime it will be equivalent to a current monthly minimum wage.

c) The Health Care Companies and the Administrators of the Subsidies Regime will be in charge of the provision of medical, psychological and psychiatric assistance services to women victims of violence and to their children.

Paragraph 1. The application of the measures defined in subparagraphs a) and b) will be for up to six months, extendable for up to six more months as long as the situation warrants it.

Paragraph 2. The application of these measures will be made under the General System of Health Social Security.

Paragraph 3. The location of the victims will be reserved to guarantee their protection and safety, and those of their sons and daughters.

Article 20. Information. The municipalities and districts will provide information and advice to women victims of violence appropriate to their personal situation, on the services available, the entities in charge of providing said services, the relevant legal procedures and the existing reparation measures.

The existing lines of care in the municipalities and districts will immediately, accurately and completely inform the community and the victim of any form of violence, the mechanisms of protection and attention to it.

It will be guaranteed through the necessary means that women victims of violence with disabilities, who cannot read or write, or those who speak a language other than Spanish, have full and adequate access to information about existing rights and resources.

Article 21. Certification of situations of violence. The situations of violence that give rise to the care of women, their children, will be certified by the protection order issued by the competent authority, without the need for additional requirements.

Article 22. Stabilization of victims. For the stabilization of victims, the competent authority may:

a) Request the preferential access of the victim to technical or higher education courses, including food subsidy programs, tuition, lodging, transportation, among others.

b) Order the parents of the victim to re-enter the educational system, if this is a minor.

c) Order the victim's access to extracurricular activities, or use of free time, if this is a minor.

d) Order the access of the victim to ambulatory, semi-residential or residential support interventions, if the victim is a minor.

Article 23. Employers who occupy female workers who are victims of proven violence, and who are required to file an income tax and complementary benefits, have the right to deduct from the income tax 200% of the value of the salaries and social benefits paid during the year or taxable period, since the employment relationship exists, and for a period of up to three years.

CHAPTER VII - SANCTIONS

Article 24. Add to article 43 of Law 599 of 2000⁸⁶ the following numbers:

10. The prohibition to approach the victim and /or members of their family group.

11. The prohibition to communicate with the victim and /or with members of their family group.

Paragraph. For the purposes of this article, are considered members of the family group:

⁸⁶ See Law 599 amending the Criminal Code (24 July 24 2000), available at <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6388> (last visited December 30, 2018).

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1. The spouses or permanent companions.
 2. The father and the mother of the family, even if they do not live in the same place.
 3. The ancestors or descendants of the previous and their adopted children.
 4. All other persons who are permanently integrated into the household.
- For the purposes provided in this article, the affinity will be derived from any form of marriage and free union.

Article 25. Addition to article 51 of Law 599 of 2000, the following subsection:

The prohibition to approach the victim and /or members of their family group and to communicate with them, in the case of crimes related to intrafamily violence, will be in force during the time of the main penalty and up to twelve (12) months more.

Article 26. Amends number 1 and add number 11 to article 104 of Law 599 of 2000, as follows:

1. <Except underlined conditionally constitutional> In spouses or permanent partners; in the father and the mother of the family, although they do not live in the same home, in the ancestors or descendants of the previous and their adopted children; and in all other persons who are permanently integrated into the domestic unit.
11. If committed against a woman because she is a woman.

Article 27. Addition to article 135 of Law 599 of 2000, the following subsection:

The penalty foreseen in this article will be increased from one third to one half when committed against a woman because she is a woman.

Article 28. Number 4 of article 170 of Law 599 of 2000 will remain as follows:

"4. <number conditionally constitutional> If the behavior is carried out with respect to a relative up to the fourth degree of consanguinity, affinity or to the first degree of civil relationship, on spouse or partner or permanent companion, or against any person who is permanently integrated into the household, or by taking advantage of the trust held by the victim in the author or in one or several participants. For the purposes foreseen in this article, the affinity will be derived from any form of marriage or free union".

Article 29. Addition to the Second Chapter of Title IV of Book Two of Law 599 of 2000, the following article:

"Article 210 A. Sexual harassment. Who for their benefit or that of a third party and using their manifest superiority or relationships of authority or power, age, sex, employment, social, family or economic position, harasses, persecutes, provokes or physically or verbally assault, for sexual purposes not consented, another person, will be imprisoned for one (1) to three (3) years. "

Article 30. Amend number 5 and add numbers 7 and 8 to the article 211 of the Law 599 of 2000 like this:

"5. The conduct will be carried out on relative up to fourth degree of consanguinity, affinity or to the first degree of civil relationship, on spouse or partner or permanent companion, or against any person who is permanently integrated into the household, or by taking advantage of the trust held by the victim in the author or in one or several participants. For the purposes provided in this article, affinity will be derived from any form of marriage or free union.

7. If committed on people in situations of vulnerability because of their age, ethnicity, physical, mental or sensory disability, occupation or trade.

8. If the act is committed with the intention of generating social control, fear or obedience in the community. "

Article 31. Amend numeral 3 and add numeral 4 to article 216 of Law 599 of 2000 as follows:

"3. The conduct will be carried out on relative up to fourth degree of consanguinity, affinity or to the first degree of civil relationship, on spouse or partner or permanent companion, or against any person who is permanently integrated into the household, or by taking advantage of the trust held by the victim in the author or in one or several participants. For the purposes provided in this article, affinity will be derived from any form of marriage or free union.

4. It is committed on people in situations of vulnerability because of their age, ethnicity, physical, mental or sensory disability, occupation or trade. "

Article 32. Add a paragraph to article 230 of Law 599 of 2000, as follows:

"Paragraph. For the purposes of the provisions of this article, it will be understood that the family group includes the spouses or permanent partners; the father and the mother of family, although they do not live in the same place; the ascendants or descendants of the previous ones and the adopted children; all other persons who are permanently integrated into the domestic unit. The affinity will be derived from any form of marriage, free union. "

Article 33. The following paragraph is added to article 149 of Law 906 of 2004:

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"Paragraph. In the procedural proceedings related to crimes against freedom and sexual violence, the judge may, at the request of any of the parties involved in the proceedings, order the holding of closed hearings to the public. The denial of this request will be made by motivated ruling. When any of the parties to the proceedings so requests, the competent authority may determine the protection of identity with respect to their personal data, those of their descendants and those of any other person under their custody or care. "

Article 34. The protection measures provided for in this law and the aggravating circumstances of criminal conduct shall also apply to those who cohabit or have cohabited.

CHAPTER VIII - FINAL PROVISIONS

Article 35. Follow up. The Counselor for the Equity of Women in coordination with the Attorney General's Office and the Ombudsman's Office will create a committee to follow up on the implementation and enforcement of this law, which must include the participation of women's organizations.

The Ministry will present an annual report to the Congress of the Republic on the situation of violence against women, its manifestations, magnitude, advances and setbacks, consequences and impact.

Article 36. The later norm that restricts the scope of protection of this law or limits the rights and protection measures or, in general, implies deterioration or regression in the protection of the rights of women or in the elimination of violence and discrimination against him, must explicitly state the reasons why the restriction, limitation, deterioration or regression is justified. This will be done in the explanatory statement.

Article 37. For the purposes of exceptions or derogations, it shall not be accepted that this law is contradicted by subsequent regulations on the matter, unless they identify precisely identify the reason for the exception, modification or repeal of part of this law.

Article 38. The National, departmental, district and municipal governments shall have the obligation to disseminate widely and in a didactic manner at all levels of the Colombian population, and in detail, the provisions contained in this law.

Article 39. The present law governs from its promulgation and repeals all the dispositions that are contrary to it.

[Penal Code, 2000](#) ⁸⁷

TITLE VI
CRIMES AGAINST THE FAMILY
FIRST CHAPTER
Of intrafamily violence

Article 229. Intrafamily violence. Modified by art. 1, Law 882 of 2004, Amended by art. 33, Law 1142 of 2007, Amended by art. 3, Law 1850 of 2017.

Anyone who physically, psychologically or sexually abuses any member of their family will incur a prison sentence of one to three years, provided that the conduct does not constitute a crime punishable by a greater penalty.

The penalty will be increased from half to three quarters when the abuse involves on a minor.

[...]

Article 104. Aggravating circumstances. The penalty shall be twenty-five (25) to forty (40) years of imprisonment, if the conduct described in the previous article is committed [homicide]:

1. Modified by art. 26, Law 1257 of 2008. against the ascendant or descendant, spouse, permanent companion, sibling, adopter or adoptive, or relative up to the second degree of affinity. Declared constitutional by the Constitutional Court by means of Sentence C-029 of 2009, in the understanding that this provision includes, all else being equal, the members of a same sex couple.

[...]

⁸⁷ Penal Code, Law No. 599 (24 July 2000), available at http://www.hchr.org.co/documentoseinformes/documentos/carceles/4_Nacionales/1_Normas_basicas/2_Regimen_penal_ejec_penas/Ley_599_2000_Codigo%20penal.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article 119. Aggravating circumstances. Modified by art. 200, Law 1098 of 2006. When with the behaviors described in the previous articles [bodily injuries], any of the circumstances indicated in article 104 concur, the respective penalties shall be increased by one third to one half.

36. COMOROS

Law on the Prevention and Repression of Violence Against Women in the Union of Comoros, 2014 ⁸⁸

[...]

ARTICLE 1: Is publicized Act No. 14-036/AU, supporting prevention and punishment of violence against women in the Union of the Comoros, adopted on December 22, 2014, by the Assembly of the Union of the Comoros and whose content follows:

"Title I: General provisions

Chapter I: the purpose and definition of concepts

Article 1: This Act is intended to fight all forms of violence against women and girls in the Union of the Comoros. Through its criminal, civil, and social components, it aims to give a multidisciplinary response to violence against women and girls.

Article 2: Violence against women are defined under the terms of this Act, as all acts of violence directed against women and causing or that could cause harm to women or physical pains, sexual or psychological suffering as well as the threat of such acts, coercion or arbitrary deprivation of liberty, whether in public or in private life, harms through physical or moral, sexual and psychological violence committed within the family such as beating, assault and sexual violence, such as provided for by law No. 07-014/AU of August 30, 2007, replacing some provisions of the penal code. Physical or moral, sexual and psychological violence exercised against women, such as rape, sexual assault, sexual harassment and intimidation at work, in the schools and other places, the pimping, trafficking, prostitution. Under the present law, are also considered to be violence against women, the fact that a medical officer, paramedical, do not give the required care to a woman during childbirth, or refrain to do his professional duty.

[...]

Article 6: The Ministries in charge of National Education, in collaboration with the Ministry of Family and the Ministry of justice adopt the necessary measures to ensure that the professional training programs include specific training in the fight against violence against women, in order to ensure that they acquire the knowledge and techniques needed to ensure:

- training in the rights and fundamental freedoms and in the use of tolerance and freedom in accordance with the democratic principles of communal life;
- training in the prevention of conflicts and the peaceful resolutions in all settings of the personal, family and social life;
- early detection of violence within the family, especially against women.

Article 7: The public or private school must provide immediate schooling, in similar or related cases, of young girls victims of violence are forced to change residence. Must also be taken into account children affected by a change of residence due to violence against women.

Article 8: The State and/or private facilities must provide a comprehensive and ongoing adapted training program for professionals involved in the fight against violence against women.

Article 9: Any publicity that uses demeaning, degrading, dehumanizing and upsetting representations of women and men and their relations is considered to be illegal.

Article 10: The Audiovisual and the Press Authorities must ensure fair representation of women and men by the media, in particular by avoiding degrading and upsetting representations as far as possible, by fighting against sexist stereotypes, avoiding an uneven presence of people of both sexes in their broadcast. The provisions for the broadcasters will essentially include these principles. [The authorities] must exercise their sanctioning power over the media in question.

⁸⁸ Law on the Prevention and punishment of violence against women (Loi portant prévention et répression des violences faites aux femmes en Union des Comores), Act No. 14-036/AU (22 December 2014). Provided by Women Business and the Law, see Annex I. Unofficial translation by Compendium team.

[...]

Chapter III: Health and Social Field

Article 12: The State has an obligation to promote through the public health structures early detection of cases of violence against women. For this purpose, it must develop health awareness programs, initial and continuous training of staff and health officials, in order to improve the responsibility of the clinical, psychological, and help in the rehabilitation of women victims.

In all cases of rape, justice requires the competent health facilities for compulsory testing for HIV/AIDS and other sexually transmitted diseases for the victim and the perpetrator to assess the possibility of contamination that would cause more harm to the victim. The charges are handled by the State.

Article 13: The initial and continuous in-service training of all health professionals, as well as professionals in the medical-social sector, includes specific training dedicated to violence against women and to their consequences in terms of public health.

This teaching to be held throughout the years of training in a multidisciplinary way and which will be evaluated is aimed to promote the prevention, early detection, assistance and rehabilitation of women victims of violence. University administrations and competent schools should ensure that in the program of training of medical, paramedical and social professionals are included these training content.

Chapter IV: The Judiciary and Paralegal domain

Article 14: The State has an obligation to promote the legal and paralegal institutions for support in cases of violence against women. For this purpose, it must develop programs of awareness, initial and ongoing training for legal and paralegal staffs to improve effective management and rehabilitation of women victims.

Given that most rape and domestic violence are held in private places, hidden from the eyes of potential witnesses, the Comorian justice should expand the categories of evidence and take into account the oral testimony of victims. The testimony of a victim alone can support an intimate conviction.

Article 15: The initial and continuous training of all judicial and paralegal professionals includes specific compulsory education dedicated to domestic and sexual violence and their consequences in terms of public health. This multidisciplinary education aims to promote the prevention, assistance, and rehabilitation of women victims of violence and will be the subject of an annual evaluation by the ministries concerned.

Each prosecutor's office must designate at least one of its trained members to represent the Public Prosecutor's Office in all cases of domestic and sexual violence.

Each court must, first of all, appoint at least one investigating judge who will be responsible for investigating all cases of domestic and sexual violence. The State must reinforce the capacity of judicial police officers so that in each police station or police force, domestic and/or sexual violence cases are handled.

University administrations and competent schools must ensure that these training programs are included in the education of judicial professionals, paralegals, armed forces, public security and others.

Title III: Rights of Women Victims of Violence

Chapter I: The right to information, to social assistance and free legal aid

Article 16: The State must make effective the enjoyment by women of their rights to physical and moral integrity, liberty, security, as well as to equality and nondiscrimination for gender reasons.

Article 17: In each Department, social promotion centers must support women victims of violence so they can benefit from the emergency social services, welcome centers (centre d'accueil) and assistance. These services are organized to meet the urgent needs and bring sustainable multidisciplinary support. The multidisciplinary services provided for in this framework include specifically:

- information of the victims

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- psychological and psychiatric support
- social support
- medical support
- support of the judicial police officers
- follow-up of the legal and administrative requests
- support to training and professional integration
- ease of access to calling centers

Article 18: The minors who are in custody and surveillance of the assaulted person are also entitled to comprehensive social assistance through these social services.

Article 19: The women victims of violence, including the sexually abused girls, have prioritized access to calling centers. In the case of conjugal or domestic violence where the two parties occupy the same dwelling, the abused party will be entitled to continue to temporarily occupy the unit.

Chapter II: Work-related Rights

Article 20: The employee victim of violence, in or outside the company, will be entitled, at his request and after approval of the doctor, to temporary reduction or reorganization of its work, a geographical mutation, to an assignment in another institution, to the suspension of his contract of employment and to resign without notice. At the expiration of the suspension of the employment contract, the employee resumes her previous job.

Article 21: Absences or no respect for work schedules justified by the physical or psychological of the employee situation related to violence against women may lead to a sanction only by decision of the social services, support services or health services. The employer must be notified within a period of seventy-two (72) hours. The employee receives a guarantee of compensation for these absences

Article 22: The business manager must take all necessary steps to prevent, terminate and/or punish every act or behavior, verbal or non-verbal sexual comments, sexist inferences or any other conduct based on sex or taking into account real or supposed sexuality, with the purpose or result to infringe on the rights and dignity of the woman or girl, or create an environment intimidating, hostile, degrading, humiliating or offensive, especially through workers' information, the implementation of procedures of investigation and provisional measures.

Article 23: The doctor is entitled to propose individual measures, such as changes or transformations of justified jobs by considering age, physical resistance, the violence suffered by women within or outside the company or the physical and mental health of workers.

Article 24: The woman, a public service officer, victim of violence, who would be forced to give up his job in the town where she was on duty in order to ensure the effectiveness of her protection, will enjoy a preferential right to occupy another workplace, according to her current job and rank with similar characteristics, which would be vacant and need to be occupied.

The competent public administration will be required to inform the woman, victim of violence, of vacancies to be filled in the same community or in communities that the applicant would ask promptly.

Article 25: Women, the public officials, victims of violence, benefit from the same conditions provided for in articles 20, 21, 22, 23 and 24 of this Act.

Title IV: Institutional Framework

Special Chapter: Creation of the appropriate structures

Article 26: The Government formulates and implements policies in the fight against violence against women.

Article 27: The present Government present, during the first regular session of the National Assembly, a report which gives an account of the implementation of its policy in the fight against violence against women.

Title V: Civil and Criminal Provisions

Chapter I: The civil provisions

Article 28: In pursuant to this Act, when a woman seizes a court for violations of her physical or psychological integrity, or her children, the residence of the child is determined automatically by the competent judge in favor of the female victim. The decision can be changed by the judge or the court of law according to verdict. Tribunal

Chapter II: Penal provisions

Article 29: Any criminal offence which punishes physical or sexual, the fact that the victim and the offender have a domestic relationship, as defined in article 1 of this Act, will be retained as aggravating circumstance under Act No. 007-014/AU of August 30, 2007.

Article 30: Psychological violence as defined in Article 1 of this Act are punishable by a fine of one million francs (1,000,000).

Article 31: Economic violence as defined in section 1 of this Act is punishable by a fine from five hundred thousand (500,000) to two million (2,000,000) francs, without prejudice to civil compensation equal to the reparation provided for by the Code of persons and the family.

Article 32: Forced sterilization as defined in Article 1 of this Act is punishable by a prison term of one (01) year to five (05) years and a fine of one million (1,000,000) to ten million francs (10,000 000).

Article 33: All traditional practices harmful to women are suppressed by the communal criminal offences. All the other facts of violence, not provided specifically by the present law, are punishable in accordance with the legislation in force.

Title VI: Final Provisions

Article 34 finals: Any previous provisions to this law are repealed.

Article 35: This Act will be enforced as law of the State.

[...]

37. COSTA RICA

[Law against Domestic Violence, 1996 \(As amended\)](#)⁸⁹

CHAPTER I

General disposition

Article 1.- Purposes

This Law shall regulate the application of the necessary protection measures to guarantee the rights to life, integrity and dignity of the victims of domestic violence, whose guiding principle is Article 51 of the Political Constitution. The competent authority shall ensure that the aggressors do not use the present Law against the victims. The authorities that intervene in the application of this Law will provide special protection to mothers, minors, elderly people and persons with any condition of disability, considering the specific situations of each one. Likewise, this Law will protect, in particular, victims of violence in intimate relationships or intrafamily sexual abuse.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 2.- Definitions

To interpret this law, the following definitions are established:

a) Domestic violence: Action or omission, direct or indirect, exercised against a relative by consanguinity, affinity or adoption up to the third degree inclusive, by legal or de facto bond or by a relationship of guardianship, guardianship or curatorship and that produces as a consequence, the impairment of their physical, sexual, psychological or patrimonial integrity. The affinity bond will subsist even when the relationship that originated it has ended.

⁸⁹ Law against Domestic Violence (Ley contra la violencia domestica), Law No. 7586 (10 April 1996, last amended March 2011). Available at <https://www.wpanet.org/uploads/News-Zonal-Representatives/wpa-policy-papers-from-zone3/Zone%203-Costa%20Rica.ley%20contra%20la%20violencia%20dimestica.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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b) Psychological violence: Action or omission intended to degrade or control the actions, behaviors, beliefs and decisions of other people, through intimidation, manipulation, threat, direct or indirect, humiliation, isolation or any other conduct that implies a loss in psychological health, self-determination or personal development.

c) Physical violence: Action or omission that risks or harms the bodily integrity of a person.

d) Sexual violence: Action that forces a person to maintain sexualized, physical or verbal contact, or to participate in other sexual interactions through the use of force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other mechanism that annuls or limit the personal will.

Likewise, sexual violence will be considered the fact that the aggressor obliges the victim to perform some of these acts with third parties.

e) Patrimonial violence: Action or omission that implies damage, loss, transformation, subtraction, destruction, retention or distraction of objects, work instruments, personal documents, goods, values, rights or economic resources destined to satisfy the needs of any of the persons mentioned in a) above.

f) Relationship: Adoption relationship, affinity or consanguinity up to third degree inclusive, ascending, descending or collateral, originating in a legal, biological or de facto union. The affinity bond will subsist even when the relationship that originated it has ended.

The definitions included in subparagraphs b), c), d), e) and f) shall not be restrictive.

CHAPTER II

Protection measures

Article 3.- Protection measures

When dealing with situations of domestic violence, the competent authority will order any of the following protection measures:

a) Order the alleged aggressor to leave the common domicile immediately and, in accordance with the particularities of the situation of violence, limit it to an area distant from the alleged victim. Within twenty-four hours, the alleged aggressor must inform the judicial authority of the exact address of his new residence. The same obligation will have each time you change residence. If the order is resisted or breached, it will be forced by the Public Force, and pieces will be witnessed for the crime of non-compliance with a protection measure.

b) Authorize the alleged aggressed person an address different from the common one, at his request, to protect her from future aggressions.

c) Order the search of the home, being able to proceed at any time when, due to domestic violence, the physical, sexual, patrimonial or psychological integrity of any of its inhabitants is seriously jeopardized. This measure will be carried out in accordance with the provisions of the Criminal Procedure Code.

d) Prohibit the alleged aggressor from possessing or carrying puncturing or punctured firearms. Also, prohibit the introduction or maintenance of weapons in the dwelling house when they are used to intimidate, threaten or cause harm to any of the persons mentioned in subsection a) of article 2 of this Act.

e) Seize weapons and objects that are used to intimidate, in possession of the alleged aggressor and order the cancellation of the carrying of weapons.

f) If necessary and according to the particularities of the case, the alleged aggressor may temporarily suspend the exercise of the custody, upbringing and education of their minor children, as well as the representation and administration of the assets of these and the protection of elderly people and people with disabilities.

g) Order the alleged aggressor to abstain from interfering, in any way, in the exercise of the custody, upbringing and education of his sons and daughters, as well as in the representation and administration of their assets. The same measure can be ordered in the protection and representation of older adults and people who have some disability condition. The foregoing, in cases in which the competent authority ordered to apply subsection f) of this article.

h) Temporarily suspect the alleged aggressor of the right to visit minor children, in cases in which it exercises some type of aggression.

i) To entrust the protective guard to whom the judicial authority considers suitable for that function, if such custody has been entrusted to the presumed aggressor, when the victim is a minor, a senior citizen who cannot support himself or herself that presents some degree of disability, in cases in which the competent authority ordered to apply subsection f) of this article.

j) Prohibit the alleged aggressor from assaulting, disturbing or intimidating any member of the family group of the alleged victim of domestic violence.

k) Prohibit access to the alleged aggressor to the address, permanent or temporary, of the aggrieved person and to his place of work or study. In the same way, approaching said places at a reasonable distance at the discretion of the judge or judge.

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l) Establish a provisional food obligation in favor of the alleged victim and the other dependents that correspond, in accordance with the Food Pension Act, No. 7654, even though there is no suitable document attesting the degree of kinship. Once fixed, ex officio, pieces will be witnessed and sent to the corresponding judicial authority.

(The Constitutional Chamber by resolution No. 2896 of June 14, 1996, established that the previous paragraph is not unconstitutional, in relation to Article 10 of this law, insofar as it is understood that: "against the decision of the family judge imposing provisional maintenance according to them, an appeal shall be filed in a single effect, which must be processed and resolved by the competent authority according to the special legislation that regulates the alimentary matter, before which this one must make arrive immediately the testimony of pieces that the present Law orders").

m) Arrange the freezing order, for a maximum period of three months, counted from the date on which the resolution ordering it is executed, on the family room house and on the assets of the alleged aggressor necessary to support the food obligation in favor of the aggrieved person and the corresponding dependents, in accordance with the law; said period may be extended by the judge or the judge when the circumstances reasonably merit it. To apply this measure, no guarantee deposit or payment of fees or other expenses will be necessary.

n) To create an inventory of the movable assets existing in the residential nucleus, in particular the household items or other items that serve as a means of work for the aggrieved person.

ñ) Grant the exclusive use of household goods to the aggrieved person. Housing and household covered by the family property regime should be safeguarded in particular.

o) Order the alleged aggressor to refrain from interfering in the use and enjoyment of the work tools of the aggrieved person. When this is an elderly person or present any condition of disability, the alleged aggressor must not interfere in the use and enjoyment of indispensable instruments so that the victim can fend for himself or integrate into society.

p) Order the alleged aggressor to repair in cash the damages caused to the aggrieved person or to the assets that are essential to continue his normal life. Transportation expenses, property repairs, lodging and medical expenses are included. The amount will be paid in the same process through the seizure and auction of the goods necessary to cover the damages caused, in the judgment of the competent judicial authority.

q) Issue an order of protection and police assistance directed to the public safety authority of your neighborhood. The victim will carry a copy of this order so that he can go to the nearest authority, in case of threat of aggression outside his home.

To apply any of the measures listed in this article or others that, according to the particularities of the intrafamily violence situation, must be adopted, the judicial authority may request the collaboration of the administrative police and the judicial police.

Failure to comply with one or more of these measures in contravention of an order issued by the competent authority, must testify pieces to the Public Prosecutor to continue the trial for the crime of breach of a protective measure.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 4.- Duration

The protection measures will be maintained for one year, as long as they are not lifted or modified beforehand by a final judicial decision.

It will be the obligation of the Judicial Power to create a registry with the names and information of the persons to whom protection measures have been imposed; for this, the offices that know the matter will be obliged to send to the registry a copy of the resolutions that order, modify or cease the protection measures.

The registration must be consulted, necessarily, by the judge or judge who must resolve a matter brought to their attention and which is related to the facts recorded.

The information contained in this registry will be confidential and of exclusive use of the Judicial Power. The entries contained in this record will be definitively canceled within a period of five years, counted from the last resolution communicated. In the case of alleged underage aggressors, the record may not contain photographs of them; all the registered information must be used with respect to the regulations that protect the rights of minors.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 5.- Cessation

The person attacked or who has requested the measures, in accordance with article 7 of this Law, may request the early lifting of the measure. The judicial authority may order this action if it considers it appropriate, after evaluating the reports referred to in article 17 below.

When the victim is a minor, the cessation of the measure, which is not requested by a representative of the National Children's Trust, will only proceed when recommended by that institution, which will be obliged to pronounce itself. The lifting may also be ordered ex officio or at the request of a party, when it evidences that the law is being used against its purposes.

(Thus, reformed the article 1 of the law N ° 8925 of February 3, 2011)

CHAPTER III Process

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Article 6.- Competition

Where there are no courts specialized in domestic or family violence, they will be competent to know and order the protection measures referred to in Article 3 of this Law, the mixed or contraventional courts. These measures must also be granted by the criminal courts, in cases where the aforementioned offices are unable to provide the service. In this last case, they must immediately send the file to the corresponding authority. If the facts described constitute a crime, you must send testimony of pieces to the Public Ministry.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 7. - Legitimate applicants

They will be entitled to request the protection measures described in the previous chapter:

- a) Those over twelve years of age affected by a situation of domestic violence. In the case of children under twelve years of age or persons with physical or mental disabilities, the measure must be requested by their legal representative, the National Children's Board, a police authority or an adult.
- b) Public or private institutions that carry out programs for the protection of human rights and the family, when the aggrieved person requests it, is found to be serious or present a disability that prevents him or her from requesting protection or being aware of the aggression that is inflicted it
- c) Those of legal age, when the aggrieved person is unable to request them because they are serious as a result of a situation of domestic violence.

Article 8.- Processing

The measures may be requested in writing or orally, regardless of any other process, whether criminal or family. The written request will only require authentication when the person making the request does not present it personally. The courts will be empowered to conduct the processing by applying the procedural impetus ex officio.

When there is imminent danger to the physical integrity of the persons protected by this law, immediately the judge will dictate the pertinent protection measures, in order to avoid that the damage occurs or continues to occur. In these cases, compliance with formalities will not become an impediment to timely intervention.

The request for protection measures may be presented in a form that will be drawn up by the institutions mentioned in subsection b) of article 7 of this law.

Article 9.- Requirements of the application

The applicant of any of the protection measures indicated in article 3 of this law, must indicate:

- a) The name, surnames, qualities and neighborhood of the aggrieved person and the aggressor, if known.
- b) The facts on which it is based.
- c) The evidence, if any, on which the facts stated in the application are based. The lack of indication of evidence will not prevent the judicial authority from proceeding with the request.
- d) The protection measures requested.
- e) The signaling of the house or place to receive notifications.

Article 10.- Application of measures

Once the request has been made, the competent authority will order, immediately, to apply any of the protection measures requested. This resolution must be notified in accordance with article 177 of the Civil Procedure Code and no appeal against it will be admissible.

However, without prejudice to the provisions of the previous paragraph, the court may order, ex officio, the application of other measures than those requested.

(The Constitutional Chamber by resolution No. 2896 of June 14, 1996, established that this article is not unconstitutional, in relation to article 3, subsection I of this law, as long as it is understood that ". of the family judge who imposes a provisional alimony according to them, an appeal is made in a single effect, which must be processed and resolved by the competent authority according to the special legislation that regulates the food matter, before which it must be sent. immediately the testimony of pieces ordered by this Law ").

Article 11.- Legal medical examination

When deemed necessary, the aggrieved person or the requestor of the measure, in accordance with the provisions of article 7 of this law, may request the competent authority to perform a medical and psychological examination to assess the physical damage and psychological suffered.

Professionals of the Department of Legal Medicine of the Judiciary or those of the Costa Rican Social Security Fund and the Ministry of Health may practice this examination.

Article 12.- Appearance

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In the event that the alleged aggressor requests it in writing or orally, within five days of the notification of the initial order, or that the alleged victim has a history as an aggressor, the court will summon the parties to an oral hearing, where they will evacuate the corresponding tests.

In any of these cases, the judicial authority shall immediately establish the date and time of the hearing. That notification must be notified to the applicant personally, except that he has indicated means to hear notifications. Between that notification and the holding of the hearing, there must be a period of five days.

When the victim cannot appear due to a disability or illness, prior to resolving, the judicial authority will perform a judicial recognition, in which act the interview will be conducted.

In the same case, if the aggrieved person is not in a position to attend to their own interests, the judicial authority must summon the witnesses and consider their criteria to be resolved.

In justified cases, the victim may request, or the judicial authority may order ex officio that his appearance be made without the presence of the alleged aggressor, who will be informed of what happened once the declaration is completed and will be given the opportunity to refer to is.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 13.- Appreciation of the evidence

To interpret this law, in case of doubt in the assessment of the evidence, it will be to the most favorable for the alleged assaulted.

Article 14.- Resolution

Once the test has been evacuated, the hearing will be considered closed and the court will immediately decide whether the measures applied are still in execution or not.

The judicial authority will resolve based on the rules of sound rational criticism and, ex officio, will govern the procedural impulse; for that he will order the tests that he considers necessary in order to establish the truth.

The application and interpretation of this law will be governed by the fundamental principles of family law and the provisions contained in Article 10 of the Civil Code.

Article 15.- Appeal

The resolution of the court may be appealed within three business days.

However, admitting the appeal will not suspend the execution of the decreed measures.

Article 16.- Resolution of the appeal

The superior authority must resolve the appeal within the fifteen days following the date on which it completed its processing.

Article 17.- Execution of the measures

The judicial authority must review the results of the execution of the measures, either by the appearance of the parties to the corresponding office, with the frequency that is ordered, or with the intervention of the Department of Social Work and Psychology of the Judicial Branch or from any other state entity required for this purpose, which will provide periodic reports on the effectiveness of the measures.

The administrative police have the obligation to monitor the effective compliance with the protection measures, by all means necessary.

It is the responsibility of the public bodies that are part of the national system for the care and prevention of intrafamily violence, in accordance with their competencies, provide comprehensive accompaniment to victims of violence that allows them to improve their situation, as well as recovery and the construction of a new life project.

The National Institute for Women (Inamu) will provide the advice to fulfill that purpose and, in addition, will offer the victims the accompaniment, legal advice and legal representation necessary to carry out the procedures contemplated in this Law.

With this last purpose, The Inamu may intervene in the procedure, in order to guarantee the rights of the victims and represent them legally with the same powers and powers granted to the Public Defender in criminal matters

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

Article 18.- Complaint

If the facts that gave rise to the protection measures constitute a crime, the judicial authority will take the provisions it deems appropriate and will give testimony to the respective fiscal agency.

Article 19.- Supplementation

The Civil Procedure Code will be applied additionally in what is kept silent, is compatible and does not contradict the provisions of this law.

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CHAPTER IV

Obligations of the administrative police

Article 20.- Delimitation of competences

The police authorities have the duty to intervene in situations of domestic violence, ex officio or when they are required by the victims or by third parties. In these cases, they should:

- a) Help the people attacked even when they are inside their home.
- b) Stop the presumed aggressors and place them at the order of the competent authority. In any case, the detained person must be placed at the order of the competent authority, within a period of twenty-four hours, as established in article 37 of the Political Constitution.
- c) Prepare a record of the events that occurred; To do so, they must collect information from family members, neighbors or other people present and record their names, qualities and place where they can be located to request them in a possible judicial process.
- d) Seize the weapons and objects used to threaten or assault and place them at the order of the respective judicial authority.
- e) Declare as witnesses in a possible judicial process.

(As amended by Article 1 of Law No. 8925 of February 3, 2011)

CHAPTER V

Duties of the State

Article 21.- Governing body

It will be up to the National Center for the Development of Women and the Family (*) to monitor compliance with the Inter-American Convention to prevent, punish and eradicate violence against women. To this end, it will be empowered to be the governing entity of public policies in the detection, care, prevention and labor insertion programs of aggrieved persons. In order to comply with the obligations entrusted, the Center (*) will carry out the functions established in the aforementioned Convention, specifically in subparagraphs a) and e) of article 7 and in subparagraphs a), b), c), e), g), h), i) of article 8, in the following terms:

- 1.- Ensure that the authorities, their officials, staff and agents of institutions behave in accordance with the obligations stipulated in that Convention.
- 2.- Take the appropriate measures to encourage the modification of practices, legal or customary, that support the persistence or tolerance of violence against people.
- 3.- Strengthen the knowledge and observance of the right of women to a life free of violence and to be respected and protect their rights.
- 4.- Promote the modification of sociocultural patterns of behavior of men and women, including the design of educational, formal and informal programs appropriate for all levels of the educational process, in order to counteract prejudices, customs and all kinds of practices that are based on the premise of the inferiority of any of the genders or stereotypes for men and women, which legitimize or exacerbate violence against people.
- 5.- Promote education and training of personnel in the administration of justice, police and other officials responsible for the application of the law, as well as the personnel in charge of applying the policies to prevent, punish and eliminate domestic violence.
- 6.- It will stimulate educational, governmental and private sector programs, aimed at raising public awareness of the problems related to domestic violence, legal remedies and corresponding reparation.
- 7.- Encourage the media to develop appropriate guidelines for dissemination and thus contribute to eradicating domestic violence in all its forms and, especially, to enhance respect for the dignity of women.
- 8.- It will guarantee the investigation and compilation of statistics and pertinent information on the causes, consequences and frequency of domestic violence, in order to evaluate the state measures.
- 9.- Promote international cooperation to exchange ideas and experiences and implement programs aimed at protecting the right to a life without violence.

The State will seek to offer alternative treatment and rehabilitation to aggressors, taking into account, among others, their double condition as victims and aggressors.

(*) (Note: In accordance with article 26, subsection b), of the Law of the National Institute for Women No. 7801 of April 30, 1998, any reference to the National Center for the Development of Women and the Family it will be understood referred to the National Institute of Women)

Article 22.- National plan

The National Center for the Development of Women and the Family (*) should develop a national plan that coordinates, as a unified system, the institutions that can offer special services to people assaulted by gender violence or work to prevent it.

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(*) (Note: In accordance with article 26, subsection b), of the Law of the National Institute for Women No. 7801 of April 30, 1998, any reference to the National Center for the Development of Women and the Family it will be understood referred to the National Institute of Women)

Article 23.- Obligation of the institutions

The public institutions that can collaborate in the detection, attention, prevention and labor insertion of the aggrieved persons, are obliged to guide their work to fulfill this purpose.

Article 24.- Policy coordination

It will be up to the governing bodies in matters of disability and the elderly, to formulate and coordinate public policies to prevent and deal with cases of intrafamily violence against persons with disabilities or persons aged 60 or over.

CHAPTER VI

Final provisions

Article 25.- Derogations

Section ch) of article 81 and subsection c) of article 81 bis of the Penal Code are repealed.

Article 26.- Validity

It applies as of its publication.

[...]

38. CROATIA

[The Law on Protection from Domestic Violence, 2018](#) ⁹⁰

CHAPTER I GENERAL PROVISIONS

Article 1.

This Law prescribes the rights of victims of domestic violence, the circle of persons to whom the law relates, defining forms of domestic violence, misdemeanor sanctions for protection against domestic violence, collection of data on the implementation of the law, establishment of the Commission for monitoring and improving the work of criminal and misdemeanor proceedings and enforcement of sanctions related to protection against domestic violence and misdemeanor offenses.

[5. Protocol on the Treatment of Sexual Violence](#)

Article 2.

This Law of the Republic of Croatia is adopted in accordance with Directive 2006/29 / EU of the European Parliament and of the Council of 25 October 2012 on the establishment of minimum standards for the rights, support and protection of criminal offenses and the replacement of Council Framework Decision 2001/220 /PUP (SL L 315 of 14 November 2012).

Article 3

The provisions of the law governing offenses and criminal procedure shall apply accordingly, unless otherwise provided in this Act.

Article 4

All bodies dealing with domestic violence are obliged to act urgently and all proceedings instituted under this Act are urgent.

Article 5

(1) All bodies dealing with domestic violence shall be particularly concerned with the victim of domestic violence and shall take due care of the victim's rights when taking action.

(2) All bodies dealing with domestic violence are obliged to treat a child victim of domestic violence, especially taking into account their age, personality and personal and family circumstances, in order to avoid adverse consequences for the child's upbringing and development. When dealing with a child victim of family violence, the competent authorities will primarily be guided by the best interest of the child.

(3) Bodies dealing with domestic violence are obliged to respect the dignity of the disabled person and the elderly as a victim of violence and respect the special situations that arise from their disability or age.

Article 6

⁹⁰ Law on Protection Against Domestic Violence (Zakon o zaštiti od nasilja u obitelji), No. 70/17 (1 January 2018), available at <https://www.zakon.hr/z/81/Zakon-o-za%C5%A1titi-od-nasilja-u-obitelji> (last visited December 30, 2018). Unofficial translation by Compendium team.

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(1) A victim of domestic violence has the following rights:

1. the right to access services to support victims of domestic violence
2. the right to effective psychological and other professional assistance and support of bodies, organizations or institutions for the assistance of victims of domestic violence
3. the right to protection from intimidation and retaliation
4. the right to protection of dignity during the examination of the victim as a witness
5. the right to be accompanied by a person of trust in taking all the actions in which he or she participates
6. the right to be informed, without unnecessary delay, of the retention or escape of the defendant and of the decision to impose protective measures and of the removal of precautionary measures imposed for the purpose of protecting or releasing the prisoner from imprisonment
7. the right to confidentiality of data whose disclosure could jeopardize their security or the security of the persons referred to in Article 8, paragraphs 1 and 2 of this Act, and the right to request exclusion of the public in proceedings before the court
8. the right to an assignee in the proceedings
9. the right to be informed, at his / her own request, of the action taken on the application and of the outcome of the proceedings
10. the right to be examined without unjustified delay after filing the application, the right to request it to be examined in the proceedings before the court and the right to conduct further investigations only to the extent necessary for the purposes of the misdemeanor procedure
11. the right to be examined by police of the same sex
12. the right to avoid contact with the perpetrator before and during the proceedings, unless the misdemeanor procedure requires such contact
13. the right to temporary accommodation in an appropriate institution in accordance with a special law
14. the right to police protection and security, upon a court order, for the purpose of unharmed personal use when leaving the common household
15. other rights prescribed by the law governing the criminal proceedings, other than those rights which, by their nature, may only apply to the victim of a criminal offense.

(2) Bodies dealing with domestic violence shall be obliged to inform the victim in an intelligible manner about the rights that he or she has in accordance with the provisions of this Law and the law regulating the criminal proceedings when taking the first action in which the victim participates.

(3) The bodies referred to in paragraph 2 of this Article shall be satisfied that the victim is informed of the rights notice.

(4) In the case of a child victim of domestic violence, the bodies referred to in paragraph 2 of this Article shall be obliged to examine the child by applying the provisions of the law governing the criminal procedure for special examination of children.

(5) If a child is a victim of domestic violence and the interests of the child are in conflict with the parent's interests, the competent authority shall invite the competent social welfare body to appoint a special guardian. A special guardian is authorized to make all statements and to undertake all the activities that the victim is entitled to. Exceptionally, a child victim of domestic violence who has reached the age of 16 can independently make statements and take action in the proceedings.

(6) If the victim of domestic violence is a child, the notifications referred to in paragraph 1, items 6 and 9 of this Article shall be given ex officio.

Article 7

(1) Health workers, employees in social welfare institutions, persons employed in educational institutions, skilled workers employed in religious institutions, humanitarian organizations or civil society organizations and all other professionals who come into contact with victims of family violence are obliged to report to the police or the state attorney of the perpetration of domestic violence which they have learned of in the performance of their duties.

(2) Bodies dealing with domestic violence shall without delay notify the competent social welfare center of the facts and circumstances that have contributed or favored the perpetration of domestic violence to take measures under the competence of the social welfare center.

Article 8

(1) Persons to whom this Act applies are: spouse, extramarital partner, life partner, informal life partner, their common children and children of each of them, direct in line relatives, second in line relatives by consanguinity up to the third degree, relatives by marriage in marital and de facto unions up to the second degree, adoptive parents and adoptee.

(2) The provisions of this Law shall also apply to a former spouse, former partner, former life partner, former informal life partner, persons having a common child, and persons living in a common household.

(3) Persons with disabilities and the elderly referred to in paragraphs 1 and 2 of this Article as victims of domestic violence enjoy special protection under this Law.

(4) An extramarital partner is a person living in a common-law union with a lasting nature or shorter time if a common child is born.

(5) An informal life partner within the meaning of this Act is a person living in a same-sex union that has a lasting nature.

(6) A child is a person who has not turned eighteen years of age.

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(7) A victim of domestic violence is a person who, by committing domestic violence, is suffering physical or psychological consequences, property damage or substantial violation of fundamental rights and freedoms.

(8) A person of trust is a legal representative or other adult person by the choice of a victim of domestic violence, unless he/she is proposed or called as a witness.

(9) A person with disability is a person who has long-lasting physical, mental, intellectual or sensory impairments that, in facing various obstacles, may be prevented from participating in society on a fair and equal basis with others.

(10) An elderly person is a person aged 65 and over.

Article 9

The terms used in this law that may have a gender form are used neutrally and apply equally to male and female sex.

Article 10

Violence in the family is:

1. physical violence
2. bodily punishment or other forms of humiliating treatment for children
3. Psychological violence to the victim causing injury to dignity or anxiety
4. Sexual harassment
5. Economic violence includes the prohibition or limitation on the use of joint or personal property, disposing of personal income or property acquired through personal or inheritance, preventing employment, or deprivation of resources for maintaining a common household and child care
6. neglecting the needs of a person with a disability or an elderly person which causes anxiety or insults their dignity and thereby causes physical or mental suffering.

CHAPTER II. MISDEMEANOR SANCTIONS

Types and Purposes of Misdemeanor Sanctions for Protection from Domestic Violence

Article 11

(1) Misdemeanor sanctions for protection against domestic violence include protection measures, fines, imprisonment and other misdemeanor sanctions prescribed by law governing offenses.

(2) The purpose of misdemeanor sanctions is to protect family members exposed to violence, respect for the legal system, and to prevent re-perpetration of domestic violence by appropriate sanctioning of the offender.

Protection measures

Article 12

(1) The purpose of protection measures is to prevent domestic violence, to ensure the protection of the health and safety of victims of domestic violence and to remedy the circumstances which favor or encourage the perpetration of a new offense, and are intended to remedy the vulnerability of the victim of domestic violence.

(2) Protection measures may be imposed independently and without the imposition of penalties or other misdemeanor sanctions.

(3) Protective measures may be imposed ex officio on the proposal of an authorized prosecutor, victim or social welfare center.

(4) At the proposal of the victim or another authorized prosecutor, the court may, before the expiration of the time for which the protective measure is pronounced, review the justification of the further course of the imposed protective measure and, if necessary, the said protective measure may be replaced by another or terminated.

Types of protective measures

Article 13

The court may impose the following protective measures on the perpetrator of domestic violence, other than the protective measures prescribed by the Misdemeanor Act:

1. Compulsory psychosocial treatment
2. Prohibition of approaching, harassing or contacting the victim of domestic violence
3. Relocation from a common household
4. Compulsory treatment of addiction.

Article 14

(1) The protective measures referred to in Article 13, items 2 and 3 of this Act may be imposed by the court before the initiation of the misdemeanor proceedings at the victim's request or that of another authorized prosecutor if there is a direct threat to the victim's safety or that of family members or a member of the common household.

(2) The court shall render a decision referred to in paragraph 1 of this Article without delay and at the latest within twenty-four hours of the submission of the proposal. The court will decide upon the hearing of the victim and the person against whom the protection measure is sought. The appeal does not delay the execution of the decision.

(3) The court shall without delay send the decision referred to in paragraph 1 of this Article to the competent police station for the purpose of implementing the imposed protective measure.

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(4) The court shall terminate the decision referred to in paragraph 1 of this Article if the victim or another authorized prosecutor fails to file an indictment within eight days from the date of the decision, which is obliged to warn the victim. The court shall without delay notify the police of the lifting of the protective measure.

Mandatory psychosocial treatment

Article 15

(1) A protective measure of compulsory psychosocial treatment may be imposed on a perpetrator of family violence in order to eliminate his or her violent behavior or if there is a risk that he may be able to repeat domestic violence.

(2) The measure referred to in paragraph 1 of this Article may be determined for at least six months.

(3) The minister responsible for judicial affairs shall, by ordinance, prescribe the manner and place of implementation of the measure referred to in paragraph 1 of this Article.

Prohibition of rapprochement, harassment or contacting the victim

Article 16

(1) A protective measure on the prohibition of the rapprochement, harassment or contacting of a victim may be imposed on a perpetrator of domestic violence if there is risk that the perpetrator could repeat domestic violence against that person.

(2) A decision by which a court shall pronounce a measure referred to in paragraph 1 of this Article shall determine the places or areas and the distance below which the perpetrator may not approach a victim of domestic violence or prohibit the harassment or contacting of a victim.

(3) The measure referred to in paragraph 1 of this Article may not be shorter than one month or longer than two years.

(4) A decision by which a court shall pronounce the measure referred to in paragraph 1 of this Article shall without delay send the competent court to the competent police station for the purpose of monitoring the implementation of the imposed protective measure.

(5) The Minister responsible for internal affairs shall prescribe the manner of implementing the measure referred to in paragraph 1 of this Article.

Removal from the common household

Article 17

(1) A protective measure to abandon the common household may be imposed on a perpetrator of domestic violence committed by a member of the family with whom he or she lives in an apartment, home or other housing which is a common household if there is a risk of repeated domestic violence.

(2) The measure referred to in paragraph 1 of this Article may not be shorter than one month or longer than two years.

(3) A decision by which a court shall pronounce the measure referred to in paragraph 1 of this Article shall without delay send the competent court to the competent police station for the purpose of monitoring the implementation of the imposed protective measure.

(4) The Minister responsible for internal affairs shall prescribe the manner of implementing the measure referred to in paragraph 1 of this Article.

Mandatory treatment of addiction⁹¹

Article 18

(1) A protective measure of compulsory treatment of addiction may be imposed on a perpetrator of domestic violence who has been subjected to alcohol, drug or other addiction if there is a risk that this addiction will cause repeated violence in the family.

(2) The measure referred to in paragraph 1 of this Article shall be determined for a period of not more than one year.

(3) The Minister responsible for health affairs shall prescribe the manner of implementing the measure referred to in paragraph 1 of this Article by the ordinance.

Protective measures

Article 19

(1) The perpetrator of domestic violence shall be obliged to act in accordance with the said protective measure.

(2) The persons referred to in Article 7, paragraph 1 of this Act who, in the performance of their duties, find out that a perpetrator of a domestic violence does not act in accordance with the protective measures imposed shall notify the police thereof.

CHAPTER III. DATA COLLECTION⁹²

Article 20

(1) The ministry responsible for justice, the ministry competent for social affairs, the ministry responsible for internal affairs, the ministry responsible for health affairs and the ministry competent for education shall collect the data on the application of this law and on the basis of the collected data compile annual reports from its and submit them to the Commission referred to in Article 21 of this Act by the end of March of the current year for the previous year.

⁹¹ [Ordinance on the manner of implementing a protective measure of compulsory addiction treatment.](#)

⁹² [Ordinance on the manner of collection, processing and transmission of statistical data and reports from the field of application of the Law on Protection from Domestic Violence.](#)

(2) The Minister responsible for judicial affairs shall prescribe the manner of collection, processing and transmission of statistical data and reports drawn up on the basis of the data collected.

CHAPTER IV. COMMISSION FOR MONITORING AND IMPROVING THE EFFECTIVENESS OF CRIMINAL AND MISDEMEANOR PROCEDURE AND ENFORCEMENT OF SANCTIONS RELATED TO PROTECTION FROM DOMESTIC VIOLENCE⁹³

Article 21

(1) The Commission for monitoring and improving the effectiveness of criminal and misdemeanor offense procedures and the enforcement of sanctions related to protection against domestic violence (hereinafter: the Commission) shall be established at the Ministry responsible for justice.

(2) The Commission shall have 11 members elected from among judges, state attorneys, attorneys, civil servants of the ministry responsible for internal affairs, civil servants of the ministry responsible for judicial affairs, civil servants of the ministry responsible for social affairs, civil servants of the ministry responsible for affairs health care, civil servants of the ministry responsible for education and civil society representatives.

(3) The Commission shall collect reports from the competent authorities, in accordance with Article 20, paragraph 1 of this Act, review the submitted reports and monitor the status of the reports. Based on the collected reports and other necessary information, the Commission shall draw up an annual report on the application of this Law.

(4) The annual report shall be submitted by the Commission to the ministry responsible for judicial affairs and then published on the web pages of the ministry responsible for judicial affairs by the end of June of the current year for the previous year.

(5) The President of the Commission and the members of the Commission shall be appointed by a Minister responsible for Justice Affairs for a period of four years.

(6) The Minister responsible for Justice Affairs shall adopt the Rules of Procedure of the Commission.

(7) The work of the Commission for Coordination and Administrative Affairs for the Commission shall be carried out by the Ministry responsible for Justice Affairs.

CHAPTER V. MISCELLANEOUS PROVISIONS

Article 22

(1) Whoever commits a violation of Article 10 of this Law shall be punished for a minor offense in the amount of at least 1000,00 kuna or imprisonment up to 90 days.

(2) Whoever repeats the violence referred to in paragraph 1 of this Article shall be fined for a minor offense in the amount of at least 5000,00 kuna or imprisonment for a period of at least 15 days.

(3) Whoever commits a violation of Article 10 of this Law in the presence of a child or a person with a disability or an adult is punishable by a fine of at least HRK 6,000.00 or imprisonment for at least 30 days.

(4) Whoever reiterates the domestic violence referred to in paragraph 3 of this Article shall be punished for a minor offense in the amount of at least HRK 7,000.00 or imprisonment for at least 45 days.

(5) If the violation referred to in paragraph 1 of this Article is committed to the detriment of a child or a person with a disability or an adult, the perpetrator shall be punished for a misdemeanor in the amount of at least HRK 10,000.00 or imprisonment for a term of at least 45 days.

(6) Whoever repeats domestic violence referred to in paragraph 5 of this Article shall be punished for a minor offense in the amount of at least HRK 15,000.00 or imprisonment for at least 60 days.

Article 23

Persons referred to in Article 7, paragraph 1 of this Act who fail to report to the police or the State Attorney the commission of family violence for which they have learned in the performance of their duties shall be punished by a fine of at least HRK 1,000 to HRK 10,000.00.

Article 24

The perpetrator of domestic violence who fails to comply with the imposed protective measure shall be punished for a minor offense in the amount of at least 3000,00 kuna or imprisonment for at least ten days.

Article 25

Administrative oversight over the implementation of this Act shall be carried out by the ministry responsible for judicial affairs.

CHAPTER VI. TRANSITIONAL AND FINAL PROVISIONS

Article 26

Procedures to be initiated before the entry into force of this Act shall be completed in accordance with the provisions of this Act.

⁹³ [Rules of Procedure of the Commission for Monitoring and Enforcement of the Work of Criminal and Misdemeanor Bodies and Execution of Domestic Violence Sanctions.](#)

[- Ordinance on the manner and place of implementation of psychosocial treatment \(Official Gazette 29/05 and 78/06\).](#)

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Article 27⁹⁴

(1) The Minister responsible for judicial affairs shall issue the ordinances referred to in Article 15, paragraph 3 and Article 20, paragraph 2 of this Act within 30 days from the date of entry into force of this Act.

(2) The Minister responsible for internal affairs shall, within 30 days from the day this Law enters into force, issue the ordinances referred to in Article 16, paragraph 5, and Article 17, paragraph 4 of this Act.

(3) The Minister responsible for health affairs shall issue the ordinance referred to in Article 18, paragraph 3 of this Act within 30 days from the date of entry into force of this Act.

(4) The Minister responsible for Justice Affairs shall appoint the Commission and issue the Rules of Procedure referred to in Article 21, paragraph 6 of this Act within 30 days from the day this Law enters into force.

Article 28

The Commission for monitoring and enhancing the work of criminal and misdemeanor bodies and the enforcement of sanctions related to the protection of domestic violence based on the provisions of the Law on Protection from Domestic Violence (Official Gazette 137/09, 14/20 and 60 / 10.) Shall continue to work until the Commission is established in accordance with the provisions of this Law.

Article 29

Until the entry into force of the implementing regulations referred to in Article 27, paragraphs 1, 2 and 3 of this Law, implementing regulations remain in force pursuant to the Law on Protection from Domestic Violence (Official Gazette 116/03) and the Law on protection from domestic violence (Official Gazette 137/09, 14/10 and 60/10):

[- Ordinance on the Implementation of Protection Measures Under the Law on Protection from Domestic Violence \(Official Gazette 27/04\)](#)

[- Ordinance on the content of compulsory records and reports, the manner of collection, processing and storage of statistical data in the area of application of the Law on Protection from Domestic Violence \(Official Gazette 105/11\).](#)

Article 30

With the entry into force of this Law, the [Law on Protection against Domestic Violence](#) (Official Gazette 137/09, 14/10 and 60/10) shall cease to be in force.

[...]

[Criminal Code of Croatia, 2017](#) ⁹⁵

Art. 179a

Domestic violence

Article 179a (OG [56/15](#))

Whoever is in violation of regulations on protection against domestic violence and causes a member of the family or a close person harm or to fear for their safety or that of their family or close relatives, or puts them in a humiliating position, but without committing a more serious offense, shall be punished by imprisonment for a term not exceeding three years.

39. CZECH REPUBLIC

[Criminal Code Act, 2009](#) ⁹⁶

CHAPTER IV

CRIMES AGAINST FAMILY AND CHILDREN

[...]

Section 198 Maltreatment of Entrusted Person

(1) Whoever maltreats a person who is in his/her care or custody, shall be sentenced to imprisonment for one year to five years.

(2) An offender shall be sentenced to imprisonment for two to eight years, if he/she

⁹⁴ [Ordinance on the manner of collection, processing and transmission of statistical data and reports from the field of application of the Law on Protection from Domestic Violence.](#)

⁹⁵ Criminal Code of Croatia (Kazneni zakon pročišćeni tekst zakona), NN 125/11 , 144/12 , 56/15 , 61/15 , 101/17 (20 October 2017), available at <https://www.zakon.hr/z/98/Kazneni-zakon> (last visited December 30, 2018). Unofficial translation by Compendium team.

⁹⁶ Criminal Code Act, No. 40/2009 Coll. (8 January 2009, as amended up to 330/2011 Coll.), available at <http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf> (last visited December 30, 2018).

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- a) commits the crime referred to in Sub-section (1) in an especially cruel or agonising manner,
 - b) causes grievous bodily harm by such an act,
 - c) commits such an act on two or more persons, or
 - d) commits such an act for over an extended period of time.
- (3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she causes by the act referred to in Sub-section (1)
- a) grievous bodily harm to at least two persons, or
 - b) death.

Section 199

Maltreatment of a Person Living in Common Residence

- (1) Whoever maltreats a close person or another person living with him/her in a common place of residence, shall be sentenced to imprisonment for six months to four years.
- (2) An offender shall be sentenced to imprisonment for two to eight years, if he/she
- a) commits the act referred to in Sub-section (1) in an especially cruel or agonising manner,
 - b) causes grievous bodily harm by such an act,
 - c) commits such an act on at least two persons, or
 - d) commits such an act over an extended period of time.
- (3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she causes by the act referred to in Sub-section (1)
- a) grievous bodily harm to at least two persons, or
 - b) death.

[Protection against Domestic Violence Act, 2006](#) ⁹⁷

[Civil Code Act, 2012](#) ⁹⁸

Special Provisions Against Domestic Violence

[§§ 751, 752 and 753](#)

[Special Court Proceedings Act, 2013](#) ⁹⁹

Section 2- Preliminary Proceedings on Protection against Domestic Violence
Subsection 1 - Provisional measures

40. DENMARK

[Law on Restriction Order, Ban to be Present in Certain Places, and Ban to be Present At Home, 2012](#) ¹⁰⁰

CHAPTER I - RESTRICTION ORDER AND BAN TO BE PRESENT IN CERTAIN PLACES

Section 1. Through a restriction order (PO-Com), a person may be prohibited from seeking another person by personal, oral or written approach, including by electronic communication, or otherwise contact or follow another person.

Section 2. A restriction order can be given if

- 1) There is reasonable suspicion that a person
 - a) has violated another's peace by stalking or harassing the other by approaches stated in section 1 or
 - b) has committed a criminal offense against another person, comparable to such a violation of peace, and
- 2) there are specific reasons for believing that he or she will continue to violate the other's peace as stated in point 1.

⁹⁷ Protection against Domestic Violence Act, Law No. 46/2006 (14 April 2006), available at <https://www.zakonyprolidi.cz/cs/2006-135> (last visited December 30, 2018).

⁹⁸ Civil Code Act, Act No. 89/2012 Coll., available at <https://zakony.kurzy.cz/89-2012-obcansky-zakonik/cast-2-hlava-1-dil-4-oddil-2/> (last visited December 30, 2018).

⁹⁹ Special Court Proceedings Act, Act No. 292/2013 (27 September 2013), available at <https://www.zakonyprolidi.cz/cs/2013-292> (last visited December 30, 2018).

¹⁰⁰ Law on Restriction Order, Ban to be Present in Certain Places, and Ban to be Present at Home, Law No. 112 (3 February 2012), available at: <https://www.retsinformation.dk/Forms/r0710.aspx?id=140188> (last visited December 30, 2018). Unofficial translation by Compendium team.

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Paragraph 2. A PO-Com may also be given if

- 1) there is reasonable suspicion that a person has violated the Criminal Code's provisions on homicide, robbery, deprivation of freedom [confinement, detention, restraint], violence, arson, rape or another moral crime or attempted one of the abovementioned crimes; and
- 2) the gravity of the offense requires that the victim does not need to endure contact, etc. with the perpetrator as stated in section 1.

Section 3. Through a ban to be present in certain places (PO-Visit), a person may be prohibited from staying or moving in a defined area near another person's residence or work, education or residence or other area where the other person may often be present.

Section 4. A PO-Visit may be granted if the conditions for restriction order pursuant to section 2 are met when

- 1) There are suspicions about repeat infringements pursuant to section 2, paragraph 1, point 1, deliberate violation of an accusation pursuant to section 1 or an offense covered by section 2, paragraph 2, or section 8, no. 1, and
- 2) A restriction order pursuant to section 1 cannot be considered sufficient to protect the other person.

Section 5. A PO-Com is granted for a specific period of up to 5 years. A PO-Visit is given for a specific period of up to 1 year.

Section 6. A PO-Com and a PO-Visit may be extended to include other members of the family of the injured party if it is necessary for the purpose of the restriction order or the ban to be present in certain places.

CHAPTER II - BAN TO BE PRESENT AT HOME

Section 7. Through the ban to be present at home (BO), a person over 18 years may be prohibited from staying in his or her home.

Section 8. A person may be banned from his or her home when

- 1) There are reasonable suspicions that the person in question has violated section 210, 213 or 266 of the Criminal Code against a member of his household, or an offense covered by Chapter 24-26 of the Criminal Code [including threats, sexual offenses, crimes against life and body] which may result in an imprisonment of 6 months or 1 year, or that the person has acted in a way that otherwise implies a threat of violence against a member of the household, and
- 2) There are certain reasons for believing that the person in question will commit continued violations referred to in paragraph 1 if he or she remains at home.

Section 9. When handling a case of BO, the police may detain a person who is reasonably believed to have acted in a manner that implies a threat of violence against a member of the household of the person in connection.

Paragraph 2. For detention, the rules concerning arrest in section 755-759 and section 760 paragraph 2 of the Code of Civil Procedure are also applicable. Detention cannot be extended beyond 24 hours.

Section 10. The BO must be given for a specified period of up to 4 weeks.

Section 11. When a BO is given, the police shall inform the local municipality of the matter.

Paragraph 2. When informing the municipality, all information and documents of the case, including electronically stored data, are required for processing the case by the social authorities.

CHAPTER III - COMMON PROVISIONS

Section 12. The PO-Com, the PO-Visit, and the BO must not be disproportionate to the resulting disturbance of the relationship of the affected person with the person or persons to be protected by the measure and the nature of the conduct which has been demonstrated by the person subject to the restriction order.

Section 13. The PO-Com, the PO-Visit and the BO do not include contact, stay or movement, which may be deemed to be authorized on special grounds.

Section 14. The PO-Com, the PO-Visit and the BO may be decided when a person requests such a measure in order to be protected or when it is in the public interest.

Section 15. In cases of the PO-Com, the PO-Visit and the BO, the police shall advise the parties on the rules of this law when there is reason to do so.

Paragraph 2. The Chief of Police shall decide on the PO-Com, the PO-Visit and the BO.

Paragraph 3. The Attorney General is competent for handling complaints about the PO-Com, the PO-Visit and the BO. The Attorney General's decision cannot be appealed.

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Section 16. Decisions concerning the PO-Com, the PO-Visit and the BO must be served. When serving a ban to be present in certain places and the ban to be present at home, the affected person must be advised of the right to demand that the decision be brought before the court.

CHAPTER 4 - JUDICIAL REVIEW

Section 17. The person who is given a PO-Visit or a BO, may, within 14 days after the decision is served on him, require the police to bring the decision to the district Court.

Paragraph 2. The person who requests a decision on a ban lodged with the court (the complainant) shall inform the police of an address and a telephone number on which a call for a possible hearing may be announced. The service of summons to a hearing is not necessary.

Paragraph 3. The case shall be brought to the district court as soon as possible and no later than 1 week after receipt of the request at the place where information on the case is most likely to be provided. In cases of ban to be present at home, referral must be made within 24 hours.

Paragraph 4. Request for referral to the court does not have suspensory effect.

Section 18. A lawyer is appointed for the person who requires a decision on a BO brought before the court. A lawyer may be appointed for the person who requires a decision on a PO-Visit brought before the court if the court considers it appropriate, by the nature of the case, the nature of the action, the complainant's person and the circumstances. The appointed lawyer has the same powers as a defender in a criminal case. The fees and allowances for the attachment to an appointed lawyer shall be subject to the same rules as those of the appointed advocates. Section 741 of the Code of Civil Procedure applies.

Paragraph 2. A lawyer may be appointed for a wronged person who shall make a declaration in court. The provisions of sections 741c and 741d of the Public Prosecutor Act shall apply *mutatis mutandis*. In the case of fees and indemnities of the appointed lawyer, the same rules apply as in cases where legal aid has been granted in accordance with Article 5, Chapter 31 of the Code of Civil Procedure.

Section 19. The case shall be dealt with in writing or orally according to the court's decision.

Paragraph 2. If the case is discussed orally, the hearing shall be held as soon as possible. If the request for the action is brought before the court in the case of a first-time decision on a BO, the hearing shall be held within 5 days.

Paragraph 3. The complainant shall have the right to attend hearings and to speak unless the court finds that this is useless or harmful to the person concerned on specific grounds. The case can be dealt with even if the person is absent. In case a lawyer was appointed pursuant to section 18 1, however, the case can only be processed if the appointed attorney is present.

Paragraph 4. The Court shall decide on the basis of the documents of the case and any explanation given during the procedure. In exceptional circumstances, the court may require further evidence.

Paragraph 5. The decision of the Court shall proclaim the order. If the decision grants the request for a protection order, the order shall state the specific circumstances of the case, which demonstrate the fulfillment of the legal requirements.

Paragraph 6. If the complainant is ordered to pay the costs in a criminal case relating to circumstances which gave rise to the restriction order, it shall be ordered by judgment in the criminal proceedings to pay the costs of the case related to the restriction order. However, the court may exceptionally decide that these costs must be paid in whole or in part by the treasury if special circumstances so warrant.

Section 20. In addition, the Code of Criminal Procedure is applicable.

Paragraph 2. With regard to claims for damages, section 1018h of the Code of Civil Procedure applies. However, in the case of detention under section 9, section 1018a of the Code of Civil Procedure shall apply when the protection order is not carried out or approved.

CHAPTER 5 - PENALTIES

Section 21. Anyone who deliberately violates a restriction order under section 1, a ban to be present in certain places under section 3 or a ban to be present at home under section 7 shall be fined or imprisoned for up to 2 years.

Paragraph 2. In determining the penalty pursuant to subsection 1, it must be included as an aggravating circumstance that the relationship has been a part of a systematic and sustained persecution or harassment.

Paragraph 3. Infringement of paragraph 1 shall be confined to the injured person's request, unless the public interest so requires.

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[Criminal Code, 2005](#)¹⁰¹

§ 123 Any person, who, under threat of violence, by violence, unlawful coercion of the kind described in Section 260 of this Act, or threats of the kind described in Section 266 of this Act or in any other way commits a criminal offence against a person or this person's closest relatives or friends or others connected to this person, in conjunction with this person's anticipated or already given explanation to the police or in court, shall be liable to a fine or to imprisonment for any term not exceeding eight years.

§ 213 Any person who, by neglect or degrading treatment, insults his spouse, his child or any of his dependents under the age of 18 or any person to whom he is related by blood or marriage in lineal descent, or who by deliberately evading his duties to maintain or contribute to the maintenance of any such persons, exposes them to distress, shall be liable to imprisonment for any term not exceeding two years.

CHAPTER 24 - SEXUAL OFFENCES

§ 216 (1) Any person, who enforces sexual intercourse by violence or under threat of violence, shall be guilty of rape and liable to imprisonment for any term not exceeding eight years. The placing of a person in such a position that that person is unable to resist the act shall be equivalent to violence.

(2) If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding 12 years.

§ 217 Any person who by other unlawful coercion (according to Section 260 of this Act) than violence or threat of violence, procures for himself sexual intercourse, shall be liable to imprisonment for any term not exceeding four years.
[...]

§ 223 (1) Any person who has sexual intercourse with a person under the age of 18 who is his adopted child, step-child or foster child, or who has been entrusted to him for instruction or education, shall be liable to imprisonment for any term not exceeding four years. (2) The same penalty shall apply to any person who, by gravely abusing superior age or experience, induces any person under the age of 18 to sexual intercourse.
[...]

§ 227 The punishment pursuant to Sections 216-226 of this Act may be reduced or remitted if the persons, between whom the sexual relations have taken place, have since married each other or registered their partnership.

41. DJIBOUTI

[Criminal Code, 1962 \(As amended\)](#)¹⁰²

Article 325 –

The offense defined in section 324 [torture or acts of barbarity] shall be punishable by twenty (20) years of criminal imprisonment when it is committed:

1 ° on a minor of fifteen years;

2 ° a person whose particular vulnerability, due to age, illness, infirmity, physical or mental disability, or pregnancy, is apparent or known to the author;

[...]

4 ° by the spouse or the cohabitant of the victim;

[...]

Article 328 –

Violence resulting in death without intent to give it shall be punishable by fifteen (15) years' imprisonment.

Article 329 –

¹⁰¹ Criminal Code (27 September 2005), available at <https://www.legislationline.org/documents/section/criminal-codes>, (last visited December 30, 2018).

¹⁰² Criminal Code 1962 (as amended up to 31 March 2005), available at <http://madagascar-droits-homme.e-monsite.com/medias/files/code-penal.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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The offense defined in section 328 shall be punishable by twenty (20) years of criminal imprisonment when it is committed in one of the circumstances provided for in sections 325 and 326.

Article 331 –

Violence resulting in permanent mutilation or disability shall be punishable by ten (10) years' imprisonment and a fine of 2,000,000 F.

Article 332 –

The offense defined in section 331 shall be punishable by twenty (20) years of criminal imprisonment where it is committed in one of the circumstances provided for in sections 325 and 326.

Article 334 –

Violence resulting in illness or total inability to work for more than eight days shall be punishable by three (3) years' imprisonment and a fine of 500,000 francs.

Article 335 –

The offence defined in article 334 shall be punishable by five (5) years' imprisonment and a fine of 1,000,000 francs when committed in one of the circumstances provided for in articles 325 and 326.

Article 336 –

Violence that has not resulted in illness or total incapacity for work for more than eight days shall be punishable by three (3) years' imprisonment and a fine of 500,000 francs when committed in one of the circumstances provided for in Articles 325 and 326.

42. DOMINICA

See Annex II: 2001 Protection Against Domestic Violence Act

[Sexual Offences \(Amendment\) Act, 2016](#)¹⁰³

3. Section 3 of the Act is repealed and replaced as follows:

[...]

(3) A husband is guilty of the offence of rape where he has sexual intercourse with his wife without her consent by force, fear or the use of a drug or thing with intent to stupefy or overpower her.

(4) The provisions of subsection (3) apply mutatis mutandis to a wife who is guilty of the offence of rape.

(5) A husband or wife who is guilty of the offence of rape is liable on conviction to imprisonment for fourteen years.

[...]

43. DOMINICAN REPUBLIC

[Law introducing amendments to the Penal Code and to the Code for the Protection of Children, Adolescents and Children, 1997](#)

¹⁰⁴

[...]

Article 303-4.- Torture or acts of barbarism are punishable by thirty years of imprisonment, when they meet one or more of the circumstances listed below:

¹⁰³ Commonwealth of Dominica Sexual Offences (Amendment) Act, Act, No. 9 (23 November 2016), available at [http://www.dominica.gov.dm/laws/2016/Sexual%20Offences%20\(Amendment\)%20Act%202016.pdf](http://www.dominica.gov.dm/laws/2016/Sexual%20Offences%20(Amendment)%20Act%202016.pdf) (last visited December 30, 2018).

¹⁰⁴ Law introducing amendments to the Penal Code and to the Code for the Protection of Children, Adolescents and Children (Ley No. 24-97 que introduce modificaciones al Código Penal y al Código para la Protección de Niños, Niñas y Adolescentes), Law No. 24-97 (24 January 1997), available at <https://www.oas.org/dil/esp/Ley%2024-97,%20sobre%20Violencia%20Intrafamiliar%20Republica%20Dominicana.pdf> (last visited December 30, 2018).

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[...]

2.- When they are committed against a person (man or woman) whose particular vulnerability, due to their age, to an illness, to a disability, to a deficiency or physical or mental disability, or to a state of pregnancy, is apparent or known to the author.

3.- When they precede, accompany or follow a rape.

4.- When they are committed against a legitimate, natural or adoptive ascendant.

[...]

7.- By the spouse, former spouse, partner, former partner or consensual partner of the victim, without prejudice to other civil and criminal penalties provided in the Civil Code or in this Code.

[...]

Article 2.- The Second Section of Title II of the Third Book of the Penal Code is modified in the following manner as follows:

[...]

Art. 309-1.- Violence against women is any act or conduct, public or private, on account of gender, which causes physical, sexual or psychological harm or suffering to women, through the use of physical force or psychological violence, verbal, intimidation or persecution.

Art. 309-2.- Domestic or intrafamilial violence constitutes any pattern of conduct through the use of physical force, or psychological, verbal violence, intimidation or persecution, against one or several members of the family or against any person who maintains a relationship of cohabitation, against the spouse, ex-spouse, partner or ex-partner or consensual partner, or against the person with whom he or she has procreated a son or daughter, that causes physical or psychological damage to his / her person or damage to his / her property, made by the father, mother, guardian, guardian, spouse, ex-spouse, partner, ex-partner or consensual partner or person under whose authority, protection or care the family is.

Those guilty of the offenses set forth in the two preceding articles shall be punished with one year's imprisonment, at least, and at most five years, and a fine of five hundred to five thousand pesos and the restitution of the destroyed, damaged property. and hidden, if that were the case.

Art. 309-3.- Those who are guilty of violence, when one or more of the following events occur, shall be punished with five to ten years of imprisonment:

a) Penetration in the house or in the place where the spouse, ex-spouse, partner or ex-partner, or consensual partner, is lodged, to commit the acts constituting violence there, when they are separated or if a warrant has been issued, a protection order or an order providing for the eviction of the spouse's residence, ex-spouse, cohabiting partner, ex-partner or consensual partner.

b) When the person is seriously injured.

c) When the aggressor carries a weapon in circumstances that do not involve the intention to kill or mutilate.

d) When the violence is carried out in the presence of children, girls and adolescents, all independently of the provisions of Articles 126 to 129, 187 to 191 of the Code for the Protection of Boys, Girls and Adolescents (Law No. 14-94).

e) When accompanied by threats of death or destruction of property.

f) When the freedom is restricted for any reason whatsoever.

g) When rape is committed after a protection order has been issued in favor of the victim.

h) If a person, male or female, was induced, encouraged or obliged to get intoxicated with alcoholic or intoxicating beverages, or get drugged with controlled substances or with any means or substance that alter the will of persons.

Art. 309-4.- In all the cases foreseen in the preceding articles, the court shall issue an order of protection in favor of the victim of violence, and may not, in any case, avail himself of mitigating circumstances for the benefit of the aggressor. The court will also condemn, in these cases, the aggressor to the restitution of the destroyed, damaged or hidden property.

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Art. 309-5.- In all the cases foreseen in this title, the court shall impose incidentally to the offenders, compulsory attendance to therapeutic or family orientation programs for a period of not less than six (6) months in a public or private institution. The fulfillment of this penalty and its results will be controlled by the court.

Art. 309-6.- The protection order established in Article 309-4 is a provision prior to the instruction and trial ordered by the court of first instance, which contains one or all of the following provisions:

- a) Order to abstain from disturbing, intimidating or threatening the spouse, ex-spouse, partner, former partner or consensual partner or to interfere in the custody or provisional or definite custody agreed by virtue of the law or a court order.
- b) Order of eviction of the aggressor from the residence of the spouse, ex-spouse, partner, former partner or consensual partner.
- c) Interdiction. of access to the residence of the spouse, ex-spouse, partner, former partner or consensual partner.
- d) Interdiction of approach to the places frequented by the spouse, ex-spouse, partner, former partner or consensual partner.
- e) Prohibition to the victim to transfer or hide common children.
- f) Order of placement of the victim in places of reception or refuge by public or private organizations.
- g) Order to provide services, health care and orientation for the whole family by public or private organizations.
- h) Order to present financial reports on the management of the common assets of the company, business, commerce or common income-generating activity.
- i) Interdiction to sell, dispose of, hide or transfer property belonging to the victim or common property.
- j) Order to replace the destroyed or hidden goods.
- k) Order of conservatory measures regarding the possession of the common goods and the assets of the house where the family is staying.
- l) Order to compensate the victim of violence, without prejudice to any civil actions that may arise, for legal expenses, medical treatment, psychiatric advice and professional orientation, accommodation and other similar expenses.

Art. 309-7.- The court that knows and judges the infraction shall ratify the protection order, diminishing or increasing, as the case may be, its content, as an accessory penalty. The enforcement of the protection order will be controlled by the court.

[...]

Article 7.- The heading of the 4th Section is modified for Title II of Book III of the Penal Code, as follows:

Section 4. - The attacks to the physical or physical integrity of persons.

PARAGRAPH 1.- SEXUAL AGGRESSIONS

Article 8.- Articles 330,331,332,333 and 334 of the Penal Code are modified as follows:

Art. 330.- Sexual aggression is any sexual action committed with violence, constraint, threat, surprise, or deceit.

Art. 331.- Any act of sexual penetration, of any nature whatsoever, committed against a person by violence, constraint, threat or surprise constitutes a rape.

Rape shall be punished with the penalty of ten to fifteen years of imprisonment and a fine of one hundred thousand to two hundred thousand pesos.

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However, rape will be punished with imprisonment of ten to twenty years and a fine of one hundred thousand to two hundred thousand pesos when it has been committed on a person in a state of particular vulnerability because of his / her state of pregnancy, or physical or mental disability.

It shall also be punished with imprisonment for a term of one to twenty years and a fine of one hundred thousand to two hundred thousand pesos when committed against a boy, girl or adolescent, either with the threat of a weapon, or by two or more authors or accomplices, either by legal, natural or adoptive ascendancy of the victim, either by a person having authority over them, or by a person who has abused the authority conferred by his functions, all independently of the provisions of Articles 121, 126 a 129, 187 a 191 of the Code for the Protection of Boys, Girls and Adolescents (Law 14-94).

Art. 332.- With the same penalty, the person who engages in a non-consensual sexual activity while in a relationship of a couple will be punished, in any of the following cases: a) if there is use of force, violence, intimidation or threat; b) if the resistance of the victim has been suppressed by any means; c) when due to illness or mental disability, temporary or permanent, the victim is unable to understand the nature of the act at the time it is carried out; d) when one of the partners is forced or induced by physical or psychological violence to participate in or engage in an unwanted sexual relationship with third parties.

Art. 332-1.- Incest is committed when any act of a sexual nature is carried out by an adult through deception, violence, threat, surprise or control on a boy, girl or adolescent with whom the perpetrator is bound by ties of natural/legitimate/adoptive kinship, until the fourth degree or by ties of affinity up to the third degree.

Art. 332-2.- The offense defined in the previous article is punishable with the maximum imprisonment, without any mitigating circumstances in favor of the perpetrator.

Art. 332-3.- The attempted offense defined in Article 332-1 is punishable as the offense itself.

Art. 332-4.- Alleged perpetrators defined in Article 332-1 are excluded from the benefit of Provisional Freedom under Bail.

Art. 333.- Any sexual aggression that does not constitute a rape is punishable by five years' imprisonment and a fine of fifty thousand pesos.

However, the sexual aggression defined in the previous paragraph is punishable by imprisonment of ten years and a fine of one hundred thousand pesos, when it is committed or attempted against a person particularly vulnerable because of: a) an illness, a physical or mental disability or a state of pregnancy; b) with threat of use of weapon; c) by a natural or adoptive ascendant of the victim; d) by a person who has authority over the victim; e) by two or more authors or accomplices; f) by a person who has abused the authority conferred by his functions; g) when it has caused injuries or wounds.

PARAGRAPH II.- OTHER SEXUAL AGGRESSIONS

[...]

Art. 334.- A person will be considered a pimp:

[...]

4. when he consents to the prostitution of his partner and obtains benefits from it.

[...]

Pimping is punishable by a term of six months to three years and a fine of fifty thousand to five hundred thousand pesos.

The attempt of the infractions foreseen in the present article will be punished with the same punishment as the offense itself.

Art. 334-1.- The penalty shall be an imprisonment for two to ten years and a fine of one hundred thousand to one million, in the following cases:

[...]

4. When the offender is a husband, wife, partner, father or mother of the victim or belongs to one of the categories established in Article 303-4.

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[...]

PARRAGRAPH II.- ABANDONMENT AND MALTREATMENT OF BOYS, GIRLS AND ADOLESCENTS

[...]

Art. 351-2.- Shall be considered guilty of abandonment and mistreatment of boys, girls and adolescents, and shall be punished by imprisonment for one to five years and a fine of five hundred to five thousand pesos, the father or mother or persons who are in charge any boy, girl or adolescent who does not pay enough attention, affection, vigilance or discipline, or allows or incites them to perform acts detrimental to their psychological or moral health.

The father, mother or the persons who are in charge of any boy, girl or adolescent who, by act or omission and intentionally, cause children and adolescents physical, mental or emotional harm or allows others to commit sexual abuse; allow girls or adolescents to be used or allowed to be used in the practice of begging, pornography or prostitution; allow boys, girls and adolescents to be employed in work that is prohibited or contrary to morality or that endangers their life, health or physical integrity; permit that they not be provided with food, clothes, room, education or health care; when there are economic means to do so or when due to negligence the appropriate means are not available.

Art. 352. - When the abandonment referred to in the previous articles is verified in places that are not remote or deserted, the guilty parties shall be punished with penalties of correctional prison from two to six months and a fine of five hundred two thousand pesos.

[...]

PARAGRAPH III.- KIDNAPPING, TRANSFER AND HIDING OF BOYS, GIRLS AND ADOLESCENTS

[...]

Art. 355.- Any individual who takes away from the house of family, guardians or caregivers, a boy or a girl under the age of eighteen, by any means other than those enunciated in the previous article, will incur the penalty of one to five years of imprisonment and a fine of five hundred to five thousand pesos.

The individual who, without exercising violence, bears the grace of a young woman under eighteen years of age shall incur the same penalties previously expressed.

The penalty shall always be the maximum of the prison and the fine when the guilty party and the abducted or seduced young woman are bound by affinity in the second degree or by kinship in third degree and reclusion when the same are bound by less than second degree of kinship.

The sentence of condemnation shall always state that, in the case of insolvency, both the fine and the indemnities to which the offender has been convicted shall be compensated with imprisonment by a day for every one hundred pesos.

Art. 356. - In the event that the seducer marries the aggrieved party, the latter may only be prosecuted on the complaint of the persons who have the quality to demand the annulment of the marriage, and be convicted only after this annulment has been pronounced.

[...]

PARRAGRAPH V - FAMILY ABANDONMENT

Art. 357-3.- Will be punished with a prison sentence of three months to one year and a fine of five hundred to fifteen thousand pesos:

I.- The father or the mother of a family that abandons without a serious reason, for more than two months, the family residence, and that is removed from all or part of the obligations of moral order or of material order resulting from the authority of the father and the mother or legal guardianship. The term of two months cannot be interrupted except through a return to the home that implies the will to permanently reintegrate family life.

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2. The spouse or partner who, for no serious reason, leaves voluntarily, for more than two months, the spouse or partner, knowing their pregnancy status.

3. The father and mother who, neglecting the authority, whether or not pronounced on him or her, commits grave mistreatment, harmful examples, habitual drunkenness, or notorious misconduct, lack of attention or lack of necessary direction, be it health, be it security, be it the morality of children, or one or more of the latter.

With respect to the infractions foreseen in Paragraphs 1. and 2. of the present article, the prosecution will initially involve a notice confirmed in the record, of the offender, by an officer of the Judicial Police, agreeing a term of eight days to execute his obligations. If the offender escapes or has no known residence, the notice will be replaced by the sending of a certified letter to the last known address, or by using the procedure established in the Civil Procedural Code, Article 69, Paragraph 7th

In the same cases, during the marriage, the prosecution may only be exercised by the complaint of the spouse who has remained in the place.

Art. 357-4.- A person (male or female) who, disobeys a decision issued against him under Paragraph 4 of Article 214 of the Civil Code shall be punished with imprisonment for three months to one year and a fine of five hundred to fifteen thousand pesos, be it an ordinance or a judgment that condemns him to pay a pension to his spouse, his ascendants, or his descendants, or a sentence having condemned him to pay benefits or pensions to a son or daughter, if he has remained, intentionally or voluntarily, more than two months without providing all the benefits determined by the judge or has not paid the full amount of the pension.

The same penalties are applicable to any person (male or female) who, after divorce, separation or annulment of marriage, has remained, intentionally or voluntarily, for more than two months without paying his spouse or his children entirely, benefits and pensions of any nature that are owed to them, by virtue of a judgement or a judicially approved contract, or to the concubine or to the partner who for more than two months has stopped paying the pensions and benefits to their children owed by virtue of a judgment.

Failure to pay will be presumed voluntary, unless proven otherwise. The insolvency resulting from habitual misconduct, neglect or drunkenness, will in no case be a valid excuse for the debtor.

Any person (male or female) convicted for one of the offenses set forth in this article and in the preceding article may, in addition, be deprived for at least five years up to ten years of the rights mentioned in Article 42 of the Penal Code.

The competent court to judge the offenses foreseen in the present article, will be the one of the domicile or the residence of the person that must receive the pension or benefits or economic resources.

[...]

44. ECUADOR

[Law to Prevent and Eradicate Violence Against Women, 2018](#)¹⁰⁵

[...]

CHAPTER I

THE OBJECTIVE, PURPOSE AND SCOPE OF THE LAW

Article 1 - Objective

The purpose of this Law is to prevent and eradicate all types of violence against women: girls, adolescents, youths, adults and the elderly, in all their diversity, in the public and private spheres, especially when they find themselves in multiple situations of vulnerability or risk, through comprehensive policies and actions for the prevention, care, protection and rehabilitation of victims. As well as through reeducation of the aggressor and work on masculinities. Priority and specialized attention will be

¹⁰⁵ Law to Prevent and Eradicate Violence Against Women (Ley para Prevenir y Erradicar la Violencia Contra las Mujeres), Law No. 0 (5 February 2018), available at <http://www.cordicom.gob.ec/wp-content/uploads/downloads/2018/06/Ley%20para%20prevenir%20y%20erradicar%20la%20violencia%20contra%20la%20Mujer.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

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given to girls and adolescents, within the framework of the provisions of the Constitution of the Republic and international instruments ratified by the Ecuadorian State.

Article 2 – Purpose

The purpose of this Law is to prevent and eradicate violence against women, through the transformation of sociocultural patterns and stereotypes that naturalize, reproduce, perpetuate and sustain inequality between men and women, as well as attend to, protect and rehabilitate victims of violence.

Article 3 – Scope

This law shall be applicable and observed by all natural and legal persons who are or act in the Ecuadorian territory. Ecuadorian women in a situation of mobility who are abroad will be subject to protection and assistance from diplomatic missions or consular offices of Ecuador, whatever their immigration status.

Article 4 - Definitions

For purposes of applying this Law, the following terms are defined below:

1. Gender-based violence against women: any action or conduct based on gender that causes or does not cause death, damage and / or physical, sexual, psychological, economic or patrimonial, gynecological and obstetric pain to women, both in public as well as in the private sphere.
2. Damage: the damage caused to a person as a result of a certain event. In this case the damage implies an injury, impairment, diminution, burden on a right of the victim.
3. Gender stereotypes: preconception of attributes and characteristics possessed, or roles that are or should be executed by men and women, respectively.
4. Victims: the woman and / or other members of the family that suffer violence at the hands of a family member or are affected by the same.
5. Aggressor: anyone who commits an act or omission that involves any form of violence against women.
6. Public sphere: space in which the political, productive tasks of society and remunerated services are carried out, linked to the management of the public.
7. Private sphere: space in which reproductive tasks are developed; of the economy of care, paid or not, linked to the family and the domestic.
8. Power relationships: actions, omissions and social, political, economic, cultural or symbolic practices that determine the imposition of the will of one person or group over that of another, from a relationship of domination or subordination, which implies the asymmetric distribution of power and access and control of material and immaterial resources between men and women.
9. Discrimination against women: denotes any distinction, exclusion or restriction based on their status as such that has the purpose or result of diminishing or nullifying the recognition of women, violating human rights and fundamental freedoms in the political sphere, economic, social, cultural, or any other.
10. Revictimization: these are new attacks, intentional or not, that the victim suffers during the various phases of care and protection, as well as during the judicial or extrajudicial process, such as: unwarranted delay in the proceedings, lack of protection, denial and / or unjustified lack of effective attention, among others, delayed, inadequate or nonexistent responses by the competent state institutions.
11. Unified register of violence against women: a geo-referenced record of violence against women that will include data on sex, age, ethnic self-identification, sex-generic status, level of education, migratory status, marital status of the victim and of the aggressor, the type of violence, the existence of previous denunciations, sentence and other additional data that respond to international human rights standards.
12. Expenditure Guidance Classifier: a technological tool developed by the governing body of public finance which seeks to link the activities and budgets of institutional programs, with components of equality policies (gender, disabilities,

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interculturality, human and generational mobility). This tool verifies to what extent these components are being incorporated into the budget of public institutions and facilitates the monitoring of budget execution by each entity.

13. Masculinities: a sociocultural construction of roles and values associated with the behavior of men. It is advocated that they be exercised without machismo, supremacy or violence against women.

Article 5 - State Obligations

The State, through all levels of government, has the inescapable obligations to promote, protect, guarantee and respect the human rights of women, girls, adolescents, adults and the elderly, through the adoption of all political measures, legislative, judicial, administrative, control and any other means that are necessary, timely and adequate to ensure compliance with this law and to avoid revictimization and impunity. These state obligations will be included in the National Development Plan and in the Development Plans: regional, provincial, metropolitan, cantonal and parochial districts; and, they will be guaranteed through a specific action plan included in the General State Budget.

Article 6 - Joint responsibility

The State is responsible for guaranteeing the right of women: girls, adolescents, adult women and elderly women, to a life free of violence. The society, the family and the community are responsible for participating in the actions, plans and programs for the eradication of violence against women, undertaken by the State at all levels and engage in the formulation, evaluation, and social control of public policies that are created for that purpose.

Article 7 - Approaches

In the application of this Law, the following approaches will be considered:

- a) Gender focus: understand the social and cultural construction of roles between men and women, which historically have been a source of inequity, violence and violation of rights and that should be modified in favor of social roles and practices that guarantee full equality of opportunities between diverse people and a life free of violence.
- b) Approach of human rights: determine as an objective and outcome the recognition, the unrestricted respect, and the full realization of the human rights of all people, including the right to integrity and a life free of violence.
- c) Intercultural approach: recognize the existence of different communities, peoples and nationalities that make up the State, respecting all those expressions in different cultural contexts. Under this approach, discriminatory practices that favor violence are not accepted.
- d) Intergenerational approach: recognize the existence of specific needs and rights in each stage of life, childhood, adolescence, maturity and adulthood; and, establish the priority of identifying and treating vulnerabilities in these stages of life.
- e) Comprehensive Approach: consider that violence against women: girls, adolescents, young people, adults and older adults is structural and multi-faceted and is present in all areas of life. Therefore, interventions must be carried out in all the spaces in which women develop.
- f) Intersectional approach: identify and value the social, economic, political, cultural, religious, ethnic, geographic, physical and other conditions that are a simultaneous part of the individual and community identity of women, and adapt actions to these realities, services and public policies aimed at the prevention and eradication of violence against women and the care, protection and restitution of the rights of the victim.

Article 8 - Guiding principles

For purposes of the application of this law, in addition to the principles contemplated in the Constitution of the Republic, in the international human rights instruments ratified by Ecuador, and other regulations in force, the following shall apply:

- a) Equality and non-discrimination: equality is guaranteed and all forms of discrimination are prohibited. No woman can be discriminated against, nor can her rights be impaired, in accordance with the Constitution of the Republic, international instruments and other regulations in force.
- b) Diversity: the diversity of women is recognized, regardless of their age and condition, in accordance with the provisions of the Constitution of the Republic, the Organic Law on Identity and Civil Information Management and current penal regulations.

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- c) Empowerment: empowerment is recognized as the set of actions and tools that are granted to women to guarantee the full exercise of their rights. It also refers to the process by which women regain control over their lives, which implies, among other aspects, the increase of self-confidence, the expansion of opportunities, greater access to resources, control of them and decision-making.
- d) Transversality: the different approaches established in this law are respected at all levels and throughout the cycle of public and private management, and society, in general, and guarantee a comprehensive treatment of the subject of violence.
- e) Pro-person: the most favorable interpretation will be applied for the effective validity and protection of their rights for the protection and guarantee of rights of women victims or in potential situations of violence.
- f) Progressive realization: applied to the positive obligations that the State has to satisfy to progressively protect the rights considered in this law.
- g) Autonomy: recognizes that a woman has the freedom to make her own decisions in the different areas of her life.

Article 9 - Rights of women

Women: girls, adolescents, young people, adults and older adults, in all their diversity, have the right to recognition, enjoyment, exercise and protection of all human rights and freedoms contemplated in the Constitution of the Republic, international instruments ratified by the State and in the current regulations, which include, among others, the following:

1. To a life free of violence in the public and private spheres, which favors their development and well-being;
2. To respect their dignity, integrity, privacy, autonomy and not to be subjected to any form of discrimination or torture;
3. To receive in a context of interculturality, an education based on principles of equality and equity;
4. To receive clear, accessible, complete, truthful, timely information, in Spanish or in their own language, appropriate to their age and socio-cultural context, in relation to their rights, including their sexual and reproductive health; to know the protection mechanisms; the place of provision of care, emergency, support and comprehensive recovery services; and other procedures contemplated in this law and other concordant regulations;
5. To have interpretation, language adaptation and augmentative communication, as well as additional support tailored to their needs, to guarantee their rights, when they have a disability;
6. To be guaranteed the confidentiality and privacy of personal data, those of their descendants or of any other person under their responsibility or care;
7. To receive protection and comprehensive care through adequate and effective services, immediately and free of charge for the victim and her dependents with sufficient, accessible and quality coverage;
8. To receive guidance, advice, legal sponsorship or consular assistance, free, immediate, specialized and comprehensive on the various subjects and processes required by their situation;
9. To give informed consent for the medical-legal examinations practiced in cases of sexual violence and, as far as possible, to choose the sex of the professional that practices them;
10. To be heard in all cases personally by the competent administrative or judicial authority, and to have their opinion considered at the time of making a decision that affects it. Special attention will be paid to the age of the victims, to the context of violence and intimidation in which they may find themselves.
11. To receive sensitized treatment, avoiding revictimization, taking into account their age, their situation of disability or other conditions or circumstances that require special attention;
12. Not to be confronted, neither they nor their family with the aggressors. The imposition of alternative methods of conflict resolution in the care, protection or criminal processes is forbidden;

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13. To the truth, to justice, to integral rehabilitation and guarantees of non-repetition in the face of acts constituting violence, before the competent administrative and judicial authorities;
14. To have their labor rights recognized, guarantee equality of pay between men and women, without any discrimination and to avoid having to abandon their work space due to violence.
15. To the immediate assistance of the public force at the moment that the victims request it;
16. [...]
17. To a communication and publicity without sexism, violence and discrimination;
18. To a safe and protected home. Women victims of violence based on their gender constitute a group with the right to preferential protection in access to housing;
19. [...]
20. To receive protection against situations of threat, intimidation or humiliation;
21. [...]
22. Not to be dismissed or to be subject to labor sanctions due to absence from work or incapacity, because of their condition of victim of violence; and,
23. Such other rights as established in the current legal system.

Article 10 – Types of violence

For the purposes of applying this Law and without prejudice to the provisions of international human rights instruments and the Criminal Code and the law, the following types of violence are considered:

- a) *Physical violence*: any act or omission that produces or could cause physical damage or suffering, pain or death, as well as any other form of abuse or aggression, corporal punishment, that affects the physical integrity, regardless of whether it causes injuries, whether internal, external or both, this as a result of the use of force or any object that is used with the intent to cause harm and its consequences, regardless of the time required for recovery.
- b) *Psychological violence*: any action, omission or pattern of behavior aimed at causing emotional harm, diminishing self-esteem, affecting honor, causing discredit, belittling personal dignity, disturbing, degrading cultural identity, expressions of youthful identity or controlling the behavior, beliefs or decisions of a woman, through humiliation, intimidation, confinement, isolation, forced treatment or any other act that affects their psychological and emotional stability.

Psychological violence includes emotional manipulation, control through surveillance mechanisms, harassment, all abusive behavior and especially behaviors, words, acts, gestures, writings or electronic messages aimed at persecuting, intimidating, blackmailing and monitoring women, regardless of their age or condition and that may affect their emotional stability, dignity, prestige, physical or mental integrity; or, that may have negative repercussions regarding their employment, in the continuation of school or university studies, in promotion, recognition in the workplace or outside it. It also includes threats, verbal announcements or acts that result in physical, psychological, sexual, labor or patrimonial damage, in order to intimidate the subject of protection of this law.

- c) *Sexual violence*: any action that implies the violation or restriction of the right to sexual integrity and to decide voluntarily about a woman's sexual and reproductive life, through threats, coercion, use of force and intimidation, including rape within marriage or of other relationships and kinship relationships, whether or not there is cohabitation, the intentional transmission of sexually transmitted infections (STIs), as well as forced prostitution, trafficking for the purpose of sexual exploitation, sexual abuse or harassment, forced sterilization and other similar practices.

Sexual violence is also the involvement of girls and adolescents in sexual activities with an adult or with any other person who is in an advantageous position, either because of their age, for reasons of their greater physical or mental

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development, because of the relationship of kinship, affective or of trust that connects it to the girl or adolescent, by its location of authority or power; early pregnancy in girls and adolescents, marriage at an early age, female genital mutilation and the use of the image of girls and adolescents in pornography.

d) *Economic and patrimonial violence*: any action or omission that is directed to cause a diminution in the economic and patrimonial resources of women, through:

1. The interference with the possession of their movable or immovable property;
2. The loss, theft, destruction, retention or misappropriation of objects, work instruments, personal documents, property, values and patrimonial rights;
3. The limitation of the economic resources destined to satisfy their needs or the deprivation of the indispensable means to live a dignified life; as well as the evasion of compliance with their food requirements;
4. Limiting control of their income; and
5. Perceive a lower salary for the same task, within the same place of work.

e) *Symbolic violence*: all behavior that, through the production or reproduction of messages, values, symbols, icons, signs and impositions of gender, social, economic, political, cultural and religious beliefs, transmit, reproduce and consolidate relations of domination, exclusion, inequality and discrimination, naturalizing the subordination of women.

[...]

Article 11 – Concurrence of violence

The different types of violence against women envisaged in this law may be perpetrated against the same person, simultaneously, in the same context and in one or several areas.

Article 12 - Areas where violence against women develops

These are the different spaces and contexts in which types of gender violence against women are developed: girls, adolescents, young people, adults and the elderly. They include, among others, the following:

1. *Intra-family or domestic violence*: includes the context in which violence is exercised within the family unit. The violence is committed by the spouse, the de facto spouse, cohabitant, the ascendants, the descendants, the sisters, the siblings, the blood relatives and the persons with whom the victim maintains or has maintained links family, whether intimate, affectionate, conjugal or through coexistence, courtship or cohabitation;

[...]

TITLE II

COMPREHENSIVE NATIONAL SYSTEM TO PREVENT AND ERADICATE VIOLENCE AGAINST WOMEN

CHAPTER I

GENERAL PROVISIONS OF THE SYSTEM

Article 13 - Definition of the comprehensive national system to prevent and eradicate violence against women

The Integral National System to Prevent and Eradicate Violence against Women is an organized and articulated set of institutions, norms, policies, plans, programs, mechanisms and activities aimed at preventing and eradicating violence against women through the prevention, care, protection and integral reparation of the rights of the victims.

The System will be organized in an articulated manner at a national level, within the framework of decentralization and decentralization processes for an adequate provision of services in the territory. Citizen participation will be guaranteed, as well as transparency and accountability mechanisms.

Article 14 - Objective of the System

The System aims to prevent and eradicate violence against women through the design, formulation, execution, supervision, monitoring and evaluation of norms, policies, programs, mechanisms and actions, in all instances and at all levels of government, in articulated and coordinated form.

Article 15 - Principles of the System

The Integral National System for the Prevention and Eradication of Violence against women - girls, adolescents, youth, adults and the elderly, is supported among others, by the following principles:

1. **Non-criminalization**

The authorities, in accordance with what is established in the legal system, will not treat the surviving victim as a suspect or responsible for the commission of the facts that they denounce.

2. **Non-revictimization**

No woman will be subjected to new aggressions, unintentional or not, during the various phases of care, protection and reparation, such as: unwarranted delay in the processes, denial or unjustified lack of effective attention, among other delayed responses, and inadequate by public and private institutions. Any person involved in the prevention, care, protection or rehabilitation process should not repeat the offence.

3. **Confidentiality.**

No one may publicly use the information, personal background or the judicial past of the victim to hold her responsible for the violation of her rights. Stigmatization, prejudice and considerations of a subjective nature are prohibited. Confidentiality must be kept about matters that are submitted to knowledge. Women, in consideration of their own interest, can make their case public. This principle will not prevent public servants from denouncing the acts of violence of which they become aware, nor will it prevent the generation of statistics and disaggregated information.

4. **Gratuity**

All actions, mechanisms, procedures and any other derivative procedure, carried out by public entities integral to the System and recognized by this Law, will be free.

5. **Opportunity and speed**

All actions, procedures and measures contemplated in this law must be immediate, agile and timely, by involving the elimination of unnecessary administrative procedures that make it impossible for the victims to receive timely attention.

6. **Territoriality of the System**

All the entities that comprise the System will have the duty to coordinate and articulate actions at a decentralized level. For the fulfillment of the aims and objectives of this law, actions aimed at preventing and eradicating the different forms of violence, as well as restoring violated rights, must be established at the territorial level.

Article 16 – GENERAL INFORMATION

1. **Register of Violence against Women**

The governing body in charge of the System in coordination with the governing body of Public Safety and Public Order and the Council of the Judiciary, will have the sources that allow for characterizing the problem of violence against women and standardize, process and update the information generated by the organizations that make up the Integral National System for the Prevention and Eradication of Violence against Women.

2. **National Observatory on Violence against Women**

Its objective will be the preparation of reports, studies and proposals for the effective implementation of this law, through the production, systematization and analysis of data and quantitative and qualitative information on violence against women, arising from both the Register of Violence against Women and other public or private sources of information. The National Observatory of Violence against Women will be in charge of the governing body of the Comprehensive National System for the Prevention and Eradication of Violence against Women.

Article 17 - System Support

The Institutions of the System, through the budget assigned by the governing body of the Public Finances, will prioritize the implementation of this law, which will be incorporated in the Guidance Classifier of the Expenditure in Policies of Gender Equality.

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Article 18 - Policy guidelines

The Comprehensive National System to Prevent and Eradicate Violence against Women, in order to guarantee the principles and rights recognized in this law, in the Constitution of the Republic and in the international instruments of the matter, will apply the following guidelines, without prejudice to those established in the present regulations:

1. For the prevention and eradication of violence against women, the diversity of women living in Ecuador and their specific needs should be considered. The Executive Branch shall endeavor to ensure that this diversity is present in the design of policies and plans intended to give effect to their rights, under this law;
2. To address the need for structural change in social, economic, cultural and political causes and conditions that violate the right to a life free of violence, in all the areas contemplated in this law;
3. Incorporate into its design the problems reflected in official statistics on the different manifestations of violence and discrimination against women;
4. For care and protection aimed at preserving, repairing and restoring the rights of women victims of violence, it must respond through special and expeditious services and mechanisms, appropriate to the contexts of the localities, with the appropriate budget for its fulfillment;
5. To guide the individual or collective reparation of the rights of women victims of violence, the reconstruction of a project of life and the assurance of guarantees of non-repetition should be guaranteed; and,
6. Generate dialogue respectful of the principles of multiculturalism and legal pluralism, with communities, peoples and nationalities for the prevention and eradication of violence against women and the protection of victims.

Article 19 - Public policy instruments

The public policy instruments that are part of the Comprehensive National System for the Prevention and Eradication of Violence against Women are the following:

1. National Development Plan;
2. National Agendas for Equality;
3. National Plan for the Prevention and Eradication of Violence against Women, Girls and Adolescents, formulated in a participatory manner by the governing body of the System; and,
4. Strategies for the Prevention and Eradication of Violence against Women, which will be formulated in a participatory manner and will be part of the Development and Territorial Planning Plans of all the Decentralized Autonomous Governments.

These public policy instruments must contemplate the coordinated action of all responsible entities, at the national and local levels to optimize the resources and efforts that are made.

CHAPTER II

DEAN OF JUSTICE, FUNCTIONS, MEMBERS AND THEIR RESPONSIBILITIES

Article 20 – Dean of Justice

The Dean of Justice is in charge of the governing body of Justice and Human Rights and Religions. The governing body of the System has the power to summon any other public, private or civil society entity to comply with the provisions of this Law.

Article 21 - Tasks of the governing body

The following will be the tasks of the governing body of the System:

1. Coordinate the implementation of the Comprehensive National System to Prevent and Eradicate Violence against Women, with the entities that comprise it;

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2. Prepare an annual report on the progress in the execution of public policy in the area of prevention and eradication of violence against women, which will serve to render accountability to the public on the results achieved to guarantee women a life free of violence;
3. Formulate and issue public policy on issues of prevention and eradication of violence against women;
4. Coordinate with the governing entities of public finances and national planning, the monitoring of the programming and budget of each of the institutions with competencies in this System, in relation to the prevention and eradication of violence against women;
5. Monitor and observe the inter-institutional mechanisms proposed in this Law;
6. Formulate the National Plan for the prevention and eradication of violence against women, in coordination with the members of the System;
7. Design and implement awareness and sensitization campaigns aimed at citizens for the prevention and eradication of violence against women;
8. Promote the active participation of the public and private sectors, international cooperation and organized civil society in programs for the prevention, care, protection and reparation of violence against women;
9. Promote and coordinate with the institutions of inter-institutional cooperation for the prevention and eradication of violence against women, the definition and application of local public policy;
10. Promote the creation of citizen committees to monitor compliance with this law as a mechanism of transparency, citizen participation and social control, which also allows the diagnosis of needs for reforms of laws, plans, programs or projects that are carried out in favor of victims of violence;
11. Monitor the application of administrative protection measures established in the law;
12. Coordinate the implementation of policies for the protection of women: girls, adolescents, adults and older adults to prevent and eradicate violence and promote equality and non-discrimination;
13. Integrate systems for the prevention and eradication of violence against women, with the System for the Promotion and Protection of Rights;
14. Design, in coordination with the respective entities of the System, specialized training programs, guidance, education, free comprehensive attention, aimed at aggressors and potential aggressors, through strategies that transform stereotypes, patterns and sexist behaviors that generate violence against women;
15. Request the institutions that make up the System to design and apply positive action mechanisms in order to guarantee the effectiveness of the implementation of the administrative protection measures granted; and,
16. Establish inter-institutional coordination mechanisms, both at the national and local levels for the implementation of public policies to eradicate violence against women.

Article 22 - Members of the System

The National Comprehensive System for Preventing and Eradicating Violence against Women consists of the following national and local entities:

1. Dean of Justice and Human Rights;
2. Governing body of Education;
3. Governing body of Higher Education;
4. Health Governing Body;

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5. Dean of Citizen Security and Public Order;
6. Governing Body of Work;
7. Governing Body for Economic and Social Inclusion;
8. National Councils for Equality;
9. Council for the Regulation and Development of Information and Communication;
10. National Institute of Statistics and Census;
11. Integrated Security Service ECU 911;
12. Council of the Judiciary;
13. State Attorney General's Office;
14. Public Defender;
15. Ombudsman's Office; and,
16. A representative elected by the assembly of each associative body of the Decentralized Autonomous Governments.

The different public entities and government levels have the obligation to articulate and coordinate among themselves and with the linked actors, actions of prevention, attention, protection and rehabilitation. In every activity, the principle of decentralization will be observed in the provision of services and in the execution of measures.

CHAPTER III

TASKS OF MEMBERS OF THE COMPREHENSIVE NATIONAL SYSTEM FOR THE PREVENTION AND ERADICATION OF VIOLENCE
AGAINST WOMEN

Article 23 - The governing body of Justice and Human Rights

Without prejudice to the powers granted to the respective regulations in force, it will have the following tasks:

- a) Coordinate with the institutions that are part of the System the preparation of the instruments and protocols to guarantee a comprehensive care and protection in cases of violence against women;
- b) Administer the Registry of Violence against Women in coordination with the Ministry of the Interior and the Council of the Judiciary;
- c) Establish the actions and measures that guarantee free comprehensive attention, aimed at aggressors and potential aggressors in order to reeducate and reintegrate them socially;
- d) Provide prison treatment through specialists in detention centers for persons sentenced for acts of violence against women;
- e) Develop sensitization and awareness-raising programs on violence against women, aimed specifically at adolescent offenders;
- f) Regulate and control the operation of the Shelters and Care Centers, in order to serve women: girls, adolescents, young people, adults and older adults who are victims of violence and in all their diversity;
- g) Follow up and promote the implementation of the recommendations of the Specialized Human Rights Committees of the United Nations System and the Inter-American System regarding this Law;
- h) Strengthen the Specialized Services of Special Protection, detection, attention and accompaniment to and of women victims of violence;

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- i) Monitor and guarantee compliance with current regulations related to the exercise of women's rights, within the scope of their competencies;
- j) Establish inter-institutional coordination mechanisms, both at the national and local levels, for the implementation of public policies for the eradication of violence against women;
- k) Establish the mechanisms, measures and comprehensive policies of prevention, care, protection and specialized reparation for girls and adolescents in order to promote changes in cultural patterns that maintain inequality between boys and girls and adolescents men and women; and,
- l) Such other tasks as established by current regulations.

Article 24 - The governing body of Education

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

- a) Mainstream gender into public education policy, with a focus on the prevention and eradication of violence against women, girls and adolescents;
- b) Design and implement awareness and sensitization campaigns, educational materials aimed at the educational community to prevent and eradicate violence against women, girls and adolescents;
- c) Guarantee the reinsertion into school, in any part of the national territory, through the relocation of children and adolescents, as a protection mechanism, at any time;
- d) Establish specialized routes and protocols to address cases of violence against women, girls and adolescents, sexual harassment and violence within the educational sphere; disseminate them in the educational community; and, evaluate them continuously in terms of compliance and effectiveness;
- e) Strengthen the teaching of women's human rights on all levels of education, eliminating the myths, habits and stereotypes that legitimize violence;
- f) Promote and strengthen school programs for mothers and fathers of families in order to strengthen their capacities and guide the integral development of their children, with a gender focus;
- g) Establish mechanisms for the detection of cases of violence against women, girls and adolescents in educational centers, multidisciplinary research and its referral to the institutions that make up the System;
- h) Develop training programs for teachers, staff of student counseling departments and administrative staff of educational institutions on women's human rights, gender focus, sexual and reproductive rights, among others, to deconstruct discourses and behaviors that promote the subordination of women;
- i) Implement in the curriculum, content about the gender approach with respect to women's rights; new sociocultural patterns and masculinities that deconstruct discourses and behaviors that promote the subordination of women; the prevention of sexual harassment and abuse; the prevention of teenage pregnancy; and sexual rights and reproductive rights, among others;
- j) Design and implement a system to collect information on cases of violence against girls, adolescents, dependents of victims of femicide, and women to education, with emphasis on sexual violence committed within the education system, allowing for permanent updating of the Registry of Violence against Women;
- k) Coordinate with the Department of Justice, processes of permanent training, on the crimes of violence against women, sexual harassment and violence within the educational field;
- l) Establish as a requirement of recruitment and permanence to all teaching staff not having a criminal record in cases of violence against women or sexual abuse;

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- m) Generate programs and projects such as scholarships and economic support to guarantee the right of girls, adolescents, adolescent mothers, dependents of victims of femicides, and women, to education, literacy and access, permanence and completion of their studies at all levels of education;
- n) Design and implement prevention and protection measures, with emphasis on rural areas, to prevent school dropouts of women victims of any type of violence and promote the continuity of their life trajectory,
- o) Report crimes of sexual violence against women, girls and adolescents to the justice system, as well as request the institutions that are part of the System, for the respective follow-up, in accordance with their competencies;
- p) Apply protection measures within the scope of their competencies, in favor of girls and adolescents victims of violence, without prejudice to the measures established in the framework of the judicial process;
- q) Implement a system to collect information on cases of violence against women, through technological means that are compatible and update the Register of Violence against Women;
- r) Implement instruments and protocols for detection and assessment of situations of vulnerability and risk;
- s) Strengthen the Departments of Student Counseling in terms of detection, attention and accompaniment to women, girls and adolescents victims of violence, creating spaces free of interference of power and asymmetric relationships that allow the generation of trust in students and in the educational personnel to report cases of violence;
- t) Guarantee the application of administrative protection measures, established in this Law, by the competent authority;
- u) Monitor and guarantee compliance with current regulations related to the exercise of women's rights, within the scope of their competencies;
- v) Integrate in the curricula of the different educational levels the necessary contents to educate in respect of equal opportunities for men and women; and,
- w) Such other tasks as established by current regulations.

Article 25 - Governing body of Higher Education

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

- a) Mainstream gender into higher education public policy, with a focus on prevention and eradication of violence against women;
- b) Design and implement awareness campaigns aimed at the educational community to prevent and eradicate violence against women;
- c) Guarantee university reintegration, in any part of the national territory, through the relocation of women, as a protection mechanism;
- d) Create and update specialized protocols to address cases of violence against women, sexual harassment and violence within the scope of higher education; and, disseminate prevention and response mechanisms in the educational community;
- e) Implement in all curricula the teaching of women's human rights, with elimination of myths, habits and stereotypes that legitimize violence;
- f) Establish mechanisms for the detection and referral to the institutions that make up the System of cases of violence against women, within the scope of their competencies;
- g) Develop training programs for teachers and administrative staff of higher education institutions, on women's human rights, gender focus, sexual and reproductive rights, among others, that deconstruct discourses and behaviors that promote the subordination of women;

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- h) Design and implement a system for collecting information on cases of violence against women, with emphasis on violence and sexual harassment committed within the higher education system, which allow for the permanent updating of the Register of Violence against Women;
- i) Coordinate with the Department of Justice ongoing training processes on the crimes of violence against women, sexual harassment and violence within the scope of higher education;
- j) Establish as a requirement for hiring all teaching staff, not having a criminal record with respect to violence against women and /or sexual abuse;
- k) Generate mechanisms such as scholarships, credits and other forms of economic support to guarantee the right of women to higher education and the permanence and completion of their studies;
- l) Report crimes of sexual violence against women to the justice system;
- m) Apply protection measures within the scope of their competencies, in favor of women victims of violence, without prejudice to the measures established in the framework of the judicial process;
- n) Implement a system to collect information on cases of violence against women through technological means that are compatible and update the Register of Violence against Women;
- o) Implement instruments and protocols to detect and assess the situation of vulnerability and risk of women;
- p) Monitor and guarantee compliance with current regulations, related to the exercise of the rights of women victims of violence, within the scope of their competencies;
- q) Develop processes of research and study of the problems of violence against women; and,
- r) Promote to public institutions and individuals in higher education the incorporation of studies on the behavior of people who have been sentenced for committing femicide in Ecuador in order to develop public policies to prevent violence against women, in coordination with the governing body of the system; and,
- s) Such other tasks as established by current regulations.

Article 26 - The governing body of Health

Without prejudice to the powers granted in the current regulations in force, it will have the following tasks:

- a) Mainstream gender into public health policy, with a focus on the prevention and eradication of violence against women in the framework of comprehensive health care, with a psychosocial approach, attention to bioethical principles, prevailing confidentiality and rights of the patient;
- b) To guarantee, as a priority, in all hospitals and health centers, free comprehensive care and recovery in terms of physical and mental health, in favor of women victims of violence, which includes examinations, hospitalization, medication, psychological or psychiatric treatment; and, any other activity necessary for the restoration of health;
- c) Guarantee areas of first reception for women victims of violence, with twenty-four hour operation within the national health system;
- d) Guarantee the protection of the integral health of pregnant victims of violence. As a priority, the integral health of pregnant girls and adolescents, victims of violence and access to all existing sexual and reproductive health services in the National Health System will be protected. Early pregnancy in girls and adolescents will be considered high risk;
- e) Develop and implement programs of awareness-raising and ongoing training on women's human rights with a gender focus on sexual and reproductive rights, among others, aimed at health professionals and administrative personnel, in order to improve and promote the adequate attention for women victims of violence;
- f) Promote campaigns on prevention and eradication of violence against women, adolescent girls, aimed at users and users of the Health System;

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- g) Design and implement a system to collect information on cases of violence against women that permanently update the Register of Violence against Women;
- h) Ensure that information regarding women victims of violence is duly entered in the Registry of Violence against Women;
- i) Coordinate with the Attorney General of the State the strengthening of all expert processes in the different types of violence and sexual crimes;
- j) Ensure, in the public network of integral health, comprehensive and emergency health care in situations of sexual violence;
- k) Guarantee free access, comprehensive, confidential and non-discriminatory care to women with abortion in progress;
- l) Guarantee free access without any discrimination to counseling and temporary, definitive, modern, quality, safe and effective methods of contraception;
- m) Prepare and update protocols and guidelines for action by health institutions and their staff in cases of violence against women;
- n) Strengthen the Primary Health Care Technicians and the staff of the Establishments of the Comprehensive Public Health Network, in the detection, care and accompaniment of women victims of violence;
- o) Apply the administrative protection measures established in this Law issued by the competent authority;
- p) Coordinate with the State Attorney General's Office the execution of training on expert processes in different types of violence and sexual crimes;
- q) Monitor and guarantee compliance with current regulations related to the exercise of women's rights within the scope of their competencies;
- r) Ensure specialized care for girls and adolescents, victims of sexual violence, guaranteeing examinations and treatments for the prevention of sexually transmitted infections, including HIV / AIDS and unplanned pregnancy due to violence, with consideration of specialized health protocols adolescent, examination and treatment for physical and emotional trauma, compilation of legal medical evidence that considers its specificity and needs;
- s) Strengthen the protocols of comprehensive care for women, girls and adolescents victims of violence, within the framework of the National Health System; Y,
- t) Such others as established by current regulations.

Article 27 - The governing body of Citizen Security and Public Order

Without prejudice to the powers established in the respective regulations in force, it will have the following attributions:

- a) Guarantee the application of the urgent protection measures established in the protocols, in favor of girls, adolescents, young people, adults and older adults;
- b) Mainstream gender into internal security public policy, which guarantees prevention as a means to eradicate violence against women, girls, adolescents, youth, adults and older adults;
- c) Develop and implement awareness and training programs in the field of human rights and gender aimed at the technical and administrative staff of the body of public security and public order, as well as the National Police;
- d) Ensure, prior to a risk analysis, police surveillance, guards and patrols near residences, care centers or shelters safeguarding victims of violence for as long as necessary;

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- e) Design and Implement the Register of Violence against Women through media technologies that allow interoperability with the computer systems of the institutions that make up the Comprehensive National System for the Prevention and Eradication of Violence against women and other public or private sector institutions that may be necessary;
- f) Design the process of standardization of instruments for the Registry of Violence against Women, in coordination with the institutions that are part of the System;
- g) Dictate the necessary regulations for the standardization of data on violence against women, including indicators disaggregated by ethnicity, age, gender, among other variants;
- h) Assign within the Community Police Units and Community Surveillance Units, at least one police officer specialized in proceedings against Violence Against Women;
- i) Articulate the process of homologation of instruments for the Registry of Violence against Women, in coordination with the institutions that are part of the System;
- j) Generate permanent links with the different forms of social and community organization, to coordinate joint activities in the prevention and eradication of violence against women, girls, adolescents, youth, adults and the elderly; and,
- k) Such other tasks as established by current regulations.

Article 28 - The governing body of Labor

Without prejudice to the powers established in the current regulations in force, it will have the following tasks:

- a) Mainstream gender into public work policy and include the prevention and eradication of violence against women;
- b) [...]
- c) [...]
- d) [...]
- e) Develop specific policies and programs for the incorporation of women victims of violence to full employment;
- f) Design and implement awareness and training programs on human rights and a gender approach aimed at the public and private sectors;
- g) Grant women victims of violence, permits and work permits with remuneration not attributable to vacations, motivated by the judicial procedures that have been initiated as well as by the consequences produced by the act of violence;
- h) [...]
- i) Train Labor Inspectors and Inspectors in the detection and remission of cases of violence against women;
- j) Apply the administrative measures of protection established in this Law, issued by the competent authority;
- k) Monitor and guarantee compliance with current regulations related to the exercise of women's rights within the scope of their competencies;
- l) [...]
- m) [...]
- n) Such other tasks as set out in current regulations.

Article 29 - The governing body of Economic and Social Inclusion

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

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- a) Mainstream gender into economic and social inclusion public policy and establish the prevention and eradication of violence against women, girls, adolescents, young people, adults and the elderly, within the governing body's framework;
- b) Implement protocols for the detection, risk assessment, information of women, girls, adolescents, young people, adults and the elderly, potential victims of violence, in accordance with the guidelines established by the Registry of Violence against Women;
- c) Implement a system to collect information on cases of violence against women and report to the entity responsible for public policies on justice and human rights, in order to periodically update the Register of Violence against Women;
- d) Develop and implement awareness and continuous training programs on women's human rights, violence prevention, among others, aimed at their technical and administrative staff, as well as the beneficiaries of their programs;
- e) Develop specific policies and programs for the incorporation of women victims of violence in the socioeconomic area in coordination with the private sector;
- f) Generate programs of socioeconomic development and entrepreneurship, aimed at women victims of violence and in a situation of vulnerability, that allow their reintegration;
- g) Strengthen its services for the prevention, detection and reference of violence cases of its users;
- h) Apply the administrative measures of protection established in this Law, issued by the competent authority;
- i) Monitor and guarantee the exercise of women's rights within the scope of its competence and current regulations; and,
- j) Such other tasks as established by current regulations.

Article 30 - National Council for Gender Equality

The following are the tasks of the National Council for Gender Equality, without prejudice to those established in the respective regulations in force:

- a) Carry out the monitoring and enforcement of the execution of public policies aimed at implementation of this Law;
- b) Provide technical advice to the different public entities on mainstreaming gender into secondary regulations and policies to prevent and eradicate gender-based violence against women, in accordance with their competencies and functions;
- c) Coordinate with the other Equality Councils, especially with the Council of Intergenerational Equality;
- d) Promote the participation and collaboration of civil society organizations that promote rights for equality and non-discrimination; as a mechanism of transparency, citizen participation and social control;
- e) Monitor the correct application of this Law and of the international human rights instruments of women, making recommendations and technical support to the functions of the State and the Decentralized Autonomous Governments;
- f) Contribute to the creation of citizen committees to monitor the compliance with this Law as a mechanism of transparency, citizen participation and social control, which allows diagnosing the needs of reforms of the laws, plans, programs or projects that are executed in favor of victims of violence;
- g) Contribute to the National Observatory of Gender Violence against Women;
- h) Provide technical assistance to all institutions of the System, in the formulation and mainstreaming of public policies, programs, projects, protocols and any other instrument required for the application of this Law; and,

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- i) Such other tasks as established by current regulations.

Article 31 - Governing body of Communication Regulation

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

- a) Establish mechanisms that guarantee communication contents with a gender focus that includes the prevention and eradication of violence against women, girls, adolescents, youth, adults and the elderly;
- b) Develop awareness campaigns to disseminate content that promotes the human rights of women and to prevent and eradicate violence against women;
- c) Guarantee educational contents that promote sociocultural changes and the eradication of gender stereotypes that promote violence against women, girls, adolescents, youth, adults and the elderly;
- d) Develop and implement awareness-raising and continuing education programs for media personnel, on women's human rights, gender approach; and,
- e) Ensure compliance with regulations that avoid discriminatory, sexist, or that promote violence against women, girls, adolescents, youth, adults, and the elderly in the public, private, and community media; and,
- f) Such others tasks as established by current regulations.

Article 32 - National Institute of Statistics and Censuses

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

- a) Raise and provide statistical information to the Registry of Violence against Women according to the guidelines and regulations issued by the governing body of the System;
- b) Conduct specialized surveys on violence at the national level that contribute to the Registry of Violence against Women, in accordance with the National Statistics Plan;
- c) Such other tasks as established by current regulations.

Article 33 - Integrated Security Service ECU 911

Without prejudice to the tasks established in the respective regulations in force, it will have the following tasks:

- a) Ensure the effectiveness of the emergency services and ensure a timely, immediate, efficient response to signs for help of women, girls, adolescents, young people, adults and the elderly who are victims of violence;
- b) Coordinate constantly within the scope of its competencies with the entities that make up the Integral National System of Prevention and Eradication of Violence against Women; and,
- c) Such other tasks as established by current regulations.

Article 34 - Council of the Judiciary

Without prejudice to the tasks established in the current regulations, the Council of the Judiciary will have the following tasks:

- a) Require the Public Prosecutor's Office, Public Defender's Office and National Police, to collect statistical information on all cases of violence against women, girls, adolescents, youth, adults and the elderly; including the status of the process, causes and circumstances, among others, in which the violence occurred, in order to systematize and unify any Judicial Registry maintained by the Institution with the Registration System of Violence Against Women.
- b) Guarantee access to justice in the language of each ethnic group in comprehensive care, compensation and restoration of the violated rights of victims of violence against women, that is, they must have the necessary translators for any immediate action, pre-process and during all stages of the judicial process;
- c) Guarantee access to victims of violence against women, girls, adolescents, youth, adults and the elderly to proper communication, comprehensive care and compensation and restitution of the violated right. Victims must have access

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to interpreters if so required in order to take immediate action, facilitate the pre-process and at all stages of the judicial process;

- d) To develop permanent training programs for judges, as well as for justice operators on human rights, gender mainstreaming, right to a life free of violence, specialized procedures, among other topics;
- e) Conduct ongoing evaluation processes for judicial personnel in order to measure the efficiency and effectiveness of their response to acts of violence against women, girls, adolescents, youth, adults and the elderly;
- f) Create plans, programs and projects to train judicial officials, including administrative officials, in the handling of victim protection measures and repeat offences in the judicial services;
- g) Strengthen technical assistance teams for women victims of violence by including professionals specialized in medicine, psychology and social work, as well as more judges and judges specialized in this matter;
- h) Initiate administrative proceedings against those judicial servants who have committed any of the offenses classified and sanctioned in the Organic Code of the Judicial Function, and violated the constitutional rights and guarantees of women victims of gender violence, without prejudice of the initiation of the corresponding civil and / or criminal actions;
- i) Monitoring receipt of complaints and granting of protection measures in the Judicial Units and by Criminal Judges;
- j) Such other tasks as established by current regulations.

Article 35 - State Attorney General's Office

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

- a) Ensure that the legal and technical management of criminal cases is carried out with a gender approach;
- b) Guarantee the implementation of awareness and training programs on human rights with a gender focus;
- c) Have specialized prosecutors in gender violence against women;
- d) Strengthen the technical teams for the care of women victims of violence, which will be made up of professionals specialized in medicine, psychology and social work;
- e) Ensure compliance with the rights to due process and procedural efficiency in cases of violence against women and their dependents;
- f) Provide the necessary information for the collection of statistics referring to the type of breach, without prejudicing the victim's confidentiality; and,
- g) Such other tasks as established by current regulations.

Article 36 – Office of Public Defense

The following are tasks assigned to the Public Defender's Office, without prejudice to the tasks established in the current regulations:

- a) Provide free legal advice and sponsorship service, with a focus on gender and diversity in care, to all women victims of gender violence;
- b) Ensure compliance with the rights to due process and procedural efficiency in cases of assistance to women victims of gender violence;
- c) As legal counsel to the victims, request comprehensive compensation in publicly funded cases and follow-up;
- d) Define processes and tools for legal service, which guarantee the exercise of a technical defense, efficient and timely, and respectful of human rights;

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- e) Design and implement awareness and training programs in the field of human rights, with a focus on gender, diversity and the right to a life free of violence;
- f) Have public defenders specialized in the care of women victims of gender violence;
- g) Create technical teams to care for women victims of gender violence, specifically composed of professionals in psychology, social work or others;
- h) Periodically monitor the level of satisfaction of the users in the specialized care services for women victims of gender violence;
- i) To provide the necessary information in order to collect statistics referring to the type of breach, without prejudicing confidentiality; and,
- j) Such other tasks as established by current regulations.

Article 37 - Ombudsman's Office

Without prejudice to the powers established in the respective regulations in force, the Ombudsman's Office will have the following tasks:

- a) Ensure that the defense actions and arguments have a correct handling of the case for both the protectionist interests of the State and those of the victim;
- b) Design and implement awareness and training programs for staff on human rights, gender focus and the right to a life free of violence for women, girls, adolescents, youth, adults and the elderly;
- c) Strengthen the formation of technical teams in order to care of women victims of violence by integrating professionals specialized in medicine, psychology and social work;
- d) Ensure compliance with the rights to due process and procedural efficiency in cases of violence against women, girls, adolescents, young people, adults and the elderly and their dependents;
- e) Periodically monitor the satisfaction of users in specialized care services for victims of gender violence;
- f) Share the necessary information for the collection of statistics referring to the type of breach, without breaching confidentiality;
- g) Respond as a priority to individual or collective requests related to threats or violation of the human rights of women, girls, adolescents, youth, adults and the elderly and offer free legal advice;
- h) Develop national sensitization and awareness campaigns on the prevention and eradication of violence against women, girls, adolescents, youth, adults and the elderly and the construction and transformation of cultural, patriarchal, discriminatory and violent patterns and culture of privilege, as well as the elimination of gender stereotypes in labor matters and the consolidation of parity democracy to achieve gender equality;
- i) Mandatory reporting to the Judiciary on complaints they receive on violence against women, girls, adolescents, young people, adults and the elderly;
- j) Perform a follow-up and evaluation of the process of granting administrative measures, including their compliance and application; and,
- k) Such other tasks as established by current regulations.

Article 38 - Decentralized Autonomous Governments

Without prejudice to the powers established in the respective regulations in force, it will have the following tasks:

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- a) Design, formulate and execute local regulations and policies for the prevention and eradication of violence against women, girls, adolescents, youth, adults and the elderly; in accordance with the general guidelines for the design and formulation of public policy granted by the governing body of the National System to Prevent and Eradicate Violence against Women;
- b) Formulate and execute ordinances, resolutions, plans and programs for the prevention and eradication of violence against women, girls, adolescents, youth, adults and the elderly;
- c) Create and strengthen Cantonal Boards of Rights Protection, as well as train personnel in care and issuance of measures;
- d) Promote the creation of Equity and Justice Centers for the Protection of Rights and provide assistance to women victims of gender violence, with technical and specialized teams;
- e) Guarantee to women victims of gender-based violence, the integral services of shelters with specialized personnel, both in the cantons and in the provinces, which can guarantee, establish themselves in a commonwealth or through public-private partnerships, duly articulated with the Shelter Network nationwide;
- f) Promote campaigns for the prevention and eradication of gender-based violence against women, directed at the community, according to their level of competence;
- g) Establish mechanisms for the detection and referral to the institutions of the System of cases of gender violence against women;
- h) Design and implement a system to collect information on cases of gender-based violence against women, girls, adolescents, young people, adults and the elderly, and continuously update the Violence against Women Registry;
- i) Implement detection protocols, risk assessment, information and reference of women victims of violence in accordance with the guidelines established in the Register of Gender Violence against Women;
- j) Evaluate periodically the level of satisfaction of the users in the services of specialized attention for victims;
- k) To send the necessary information for the construction of statistics referring to the type of breach, without prejudicing confidentiality;
- l) Develop community or neighborhood prevention mechanisms such as alarms, rounds of vigilantes and accompaniment, clearing of public spaces, together with the National Police and other institutions involved;
- m) Promote local initiatives such as an Intersectorial Table of Violence, Integrated Provincial System for the Prevention and Attention of Victims of Gender-based Violence, and services that address gender violence; Local, regional and provincial networks, public bodies and civil society organizations linked to the theme, among others;
- n) Define instruments in order to strictly control any public spectacle and prohibit, suspend or close those in which violence or discrimination is promoted; or the reproduction of stereotypes that reinforce inequality; and,
- o) Such other tasks as established by current regulations.

Article 39 - Obligatory general of the institutions that make up the System

All public entities that are part of the System are required to submit the required information on violence against women, girls, adolescents, young people, adults and the elderly to the Registry of Violence against Women.

CHAPTER III
FOCUS ON PREVENTION

Article 40 – Focus on prevention

Articulate policies, plans, programs, projects, mechanisms, measures and actions necessary for the prevention of violence against women, girls, adolescents, young people, adults and the elderly. Prevention through awareness and awareness

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mechanisms is aimed at progressively eliminating sociocultural patterns and stereotypes that are justified or naturalized in order to eradicate violence against women. In compliance with the principle of co-responsibility, civil society and the family unit in all its forms, may propose, promote and develop activities to prevent and eradicate violence against women: girls, adolescents, young people, adults and the elderly in their diversity, as well as being an active part of the plans and programs generated by the State for the same purpose.

Article 41 - Measures for prevention

The State, through the entities that make up the System, within the scope of its powers, will apply the following policies, plans, programs, projects, guidelines and actions, without prejudice to the functions established for each institution:

1. To implement, in the aforementioned areas, the recommendations regarding the international mechanisms, regarding Human Rights of women, both at Universal and Regional levels;
2. Design models, protocols and other regulations for inter-institutional coordination for the prevention of violence against women, which contemplate and define the articulation of specialized actions;
3. Implement a National Gender Mainstreaming Program in the curricular framework of all levels of the formal and non-formal, intercultural and bilingual education system. In addition to the incorporation of educational programs and subjects that address the transformation of sociocultural patterns as a mechanism to prevent violence against women;
4. Implement a permanent and obligatory National Training and Evaluation Program on the approach of gender, human rights and prevention of violence against women, girls, adolescents, young people, adults, the elderly, addressed to public servants;
5. Generate a coordination mechanism with civil society organizations to implement and strengthen policies to prevent violence against women, at the territorial level;
6. Prepare and implement a policy on detection, risk assessment, early warning of violence and referral to competent authorities in the public and private sectors, specifying the responsibility of the institutions that make up the subsystem;
7. Generate research lines of a scientific nature on gender violence for qualitative and quantitative studies, and analysis in connection with the academy;
8. Design and implement a communication strategy that promotes the rights of women, girls, adolescents, youth, adults and older adults and that transforms sociocultural patterns to prevent violence against women;
9. Regulate and prohibit the dissemination of communication and advertising content in audiovisual, radio, written and digital media that incite, produce and reproduce violence against women; They must also develop contents related to awareness, prevention, protection, punishment and reeducation for the eradication of violence against women and members of the family;
10. Implement plans, programs and projects for training in women's rights, empowerment and socio-economic autonomy;
11. Implement reeducation programs for aggressors, in the area of human rights, with emphasis on gender, masculinities and violence;
12. Create a comprehensive and specific strategy for the prevention of violence in communities, peoples and nationalities; and,
13. Formulate, apply and update in the different official and ancestral languages;

In compliance with the principle of co-responsibility, private institutions and social organizations will apply the corresponding according to their scope and competence, in accordance with the provisions and guiding principles contemplated in this regulation. Special emphasis will be placed on early prevention with girls and adolescents.

Article 42 - General Obligations of the Media and Publishing Sector

These relate to the public and private media, to ensure that the dissemination of information in all its forms and related to violence against women be treated with the corresponding informative objectivity in favor of the defense of human rights and dignity of women victims of violence and their children. They must also develop content related to awareness, prevention,

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protection, punishment and reeducation for the eradication of violence against women, girls, adolescents, youth, adults and the elderly and members of the family.

Publicity or information placed on public roads, shopping centers, spaces with significant foot traffic, should not spread sexist messages, be sexist or violate the rights of people. The governing body of Transportation and Public Works must withdraw the advertising placed.

CHAPTER IV FOCUS ON ATTENTION

Article 43 – Focus on attention

The authorities in the field of their respective competencies must provide immediate and free medical, psychological, socioeconomic and legal advice to women victims of violence, in a specialized, intersectional, interdisciplinary, comprehensive manner.

Women, girls, adolescents, young people, adults and the elderly who are victims of violence will receive special, priority and timely attention from any authority and in all public or private services necessary to guarantee a dignified treatment, with quality and warmth.

Article 44 - Measures of Comprehensive attention

The following guidelines and actions shall be implemented:

1. Design models, protocols and other regulations for inter-institutional coordination for comprehensive and specialized attention to victims of violence, which contemplate and define the articulation of services, considering the specificity of women's care;
2. Strengthen the network of specialized and free legal, psychological, medical and socioeconomic services for victims of violence;
3. Expand coverage, improve the quality of services and strengthen spaces for comprehensive care in violence, such as specialized care centers and shelters for women victims of violence, with an emphasis on rural areas.
4. Support networks will be created among victims of violence, with special emphasis on the formation of community promoters;
5. Create specialized and comprehensive care spaces for specific areas and types of violence, as set forth in this Law;
6. Create and strengthen exclusive, safe and confidential physical spaces for the care of victims of violence in all institutions responsible for their care;
7. Guarantee the specialization and permanent training of multidisciplinary teams with a focus on gender, human rights and violence against women, girls, adolescents, youth, adults and the elderly to strengthen the comprehensive care of victims;
8. Promote the implementation of socio-economic incentive policies in favor of women victims of violence and their families, through affirmative action policies that will be implemented by public and private institutions, according to their competencies.

CHAPTER V FOCUS ON PROTECTION

Article 45 – Focus on protection

The protection as part of the National Comprehensive Prevention System and Eradication of violence against women, girls, adolescents, youth, adults and the elderly, will seek to guarantee the integrity and safety of female victims of violence and indirect victims, as well as their dignity, autonomy, integrity and well-being, considering the vulnerability and risk factors and support to the measures dictated through the Justice Administration System or generation of necessary administrative measures in favor of victims of violence, whose cases are not prosecuted.

The protection measures imposed by the competent authority are of immediate application, to safeguard life, physical, psychological, sexual integrity; and, the patrimonial, economic and labor rights of women in situations of violence and their dependents.

Article 46 – Proportionality

The integral protection measures regulated by this Law shall be granted to the victims of violence in an appropriate manner and in proportion to the seriousness of the act that threatens or violates their rights, the damages suffered by the victim and their particular circumstances.

Article 47 – Immediate protection measures

The protection measures will be of an immediate and provisional nature; they shall aim to prevent or stop the threat or violation of life and integrity, in relation to acts of violence against women, girls, adolescents, youth, adults and the elderly, determined in this legal text.

The governing body of the System must provide for all public and private sector entities to determine administrative or internal measures for prevention and protection in the event of any act of violence established in this Law.

Article 48 - Urgent actions

The urgent actions are those that will be carried out by the National Police when there is an imminent violation or risk to the life and integrity of the victim, according to the established protocols in the following way:

- a) Immediately respond to an alert generated by: a panic button, a call to the 911 emergence services, video surveillance, patrol, police surveillance and other warning mechanisms;
- b) Activation of security protocols and protection for women victims of gender violence;
- c) Accompany the victim and help her to return to her home, when she so requests or to take her belongings, as the case may be;
- d) Accompany the victim to the competent authority to request the issuance of a relief ballot and a protection order against the alleged aggressor, in any public or private space; and
- e) Request specialized attention from the entities that make up the Comprehensive National System for the Prevention and Eradication of violence against women, in favor of the victim and the people who depend on her.

Article 49 - Competent bodies to grant immediate administrative measures of protection

The competent authorities to grant immediate administrative protection measures are:

- a) Cantonal Boards of Rights Protection; and,
- b) Community Government Offices.

In the places where there are no Cantonal Boards of Protection of Rights, it will be the National Police Commissariats, the competent entities to grant the immediate administrative measures of protection. These bodies can not deny the granting of immediate administrative protection measures, for reasons of territorial scope.

Article 50 - Functions of the Cantonal Boards of Protection of Rights

Without prejudice to those already established in other regulatory bodies, the following attributions are allocated to the Cantonal Boards of Rights Protection:

- a) Know ex officio, or at the request of a party, the cases of threat or violation of the rights of women: girls, adolescents, youth, adults and the elderly, within the framework of their jurisdiction; and, provide for administrative protection measures that are necessary to protect the threatened right or restore the violated right;
- b) Interpose the necessary actions before the competent judicial bodies in cases of non-compliance with their decisions;
- c) Request the information and documents required for the fulfillment of their functions from public officials of the central and sectional administration;
- d) Keep the registry of the persons who are under protection and provide the information to the unique Register of Violence against Women;

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- e) Report to the competent authorities, the commission of acts of violence of which they have knowledge; and
- f) Ensure that in the regulations and institutional practices, the care entities do not violate the rights of women, girls, adolescents, young people, adults and the elderly.

Article 51 - Immediate administrative measures of protection

The immediate administrative measures of protection will be implemented promptly, when there is a violation of the integrity of the victim of violence. They will be granted by the Political Lieutenants, at the parish level; and, at the cantonal level, the Cantonal Boards of Protection of Rights.

In addition to the administrative measures established through other regulations in force, the granting of one or more of the following immediate protection measures will be considered:

- a) Issue the restraining / protection order against the alleged aggressor, in any public or private space;
- b) Order the return of the victim to her home, when it has been taken away from the victim as a result of domestic violence, with sufficient guarantees to protect her life and integrity;
- c) At the request of the victim, the enrolment will be ordered, with his dependents, in a program of protection in order to safeguard their safety and integrity, in coordination with the governing body of public policies of Justice, the network of shelters, specialized care centers and spaces for inter-institutional coordination, at the territorial level;
- d) Prohibit the aggressor from hiding, moving, changing residence or place of domicile, to his / her daughters or children or dependents of the same, without prejudice to other actions that may be initiated;
- e) Prohibit the aggressor, by himself or by third parties, from engaging in acts of intimidation, threats or coercion against women who are in a situation of violence or against any member of their family;
- f) Order the aggressor to leave the home when his presence constitutes a threat to the physical, psychological or sexual integrity or life of the woman or any member of the family;
- g) Order the putting together of an inventory of movable and immovable property of common ownership or of legitimate possession of the victim of violence;
- h) Arrange the installation of alert devices, risk or electronic warning devices in the home of the victim of violence;
- i) Provide for the activation of the protection and assistance services provided in the Comprehensive National System to Prevent and Eradicate Violence against Women;
- j) Provide the enrolment of victims of violence and their dependents, in programs of social and economic inclusion, health, education, work and care directed to the priority attention groups in charge of the governing body of public policies of Social Inclusion and other local instances that provide this service;
- k) Provide follow-up to verify the rectification of violence against women by the respective technical units, the governing bodies of public policies of Social Inclusion, Health, and other local bodies that provide this service, through a motivated report;
- l) Prohibit the aggressor from concealing or retaining property or documents owned by the victim of violence; and if they have been concealed or withheld, order the aggressor to immediately return personal objects, identity documents and any other document or object of property or custody of the victim of violence or persons who depend on her;
- m) Provide, when necessary, the flexibility or reduction of working hours for victims of violence, without affecting their labor or salary rights;
- n) Order the temporary suspension of activities carried out by the alleged aggressor in sports, artistic, care or formal and informal education institutions; and

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- o) All those that guarantee the integrity of women in situations of violence.

Article 52 - Strengthening and specialty criteria of the Cantonal Boards of Rights Protection

The Cantonal Boards of Protection of Rights will have specialized personnel to protect rights and respective substitutes for the granting, application and follow-up of the immediate administrative measures of protection.

SECTION I

PROCEDURE AND GRANTING OF IMMEDIATE PROTECTION MEASURES

Article 53 – Procedure

The procedure for ordering administrative measures of immediate protection will be established in the regulations which for this purpose will be issued by the Governing Body of the Comprehensive National System for the Prevention and Eradication of Violence against Women. This will be agile in all its phases and will not require professional sponsorship. The authority within its powers shall have the obligation to adopt the corresponding measures to guarantee the life and integrity of victims of violence, including women, girls and adolescents.

Article 54 - Petition

Any person or group of persons who is aware of the commission of acts or acts of violence may request the granting of urgent actions and administrative measures of immediate protection, in favor of the victim, verbally or in writing, before the National Police, urgent actions; the Cantonal Boards of Protection of Rights and Community Boards: administrative measures.

Article 55 - Granting of administrative measures for immediate protection aimed at stopping the violation of women's rights.

The immediate administrative measures of protection will be granted by the Cantonal Boards of Protection of Rights and Community Boards when the right to personal integrity and dignified life of the woman is being violated or has been violated. In a maximum time of twenty-four hours, the body that granted the immediate administrative measure of protection will inform the judicial bodies of the fact and the latter may ratify, modify or revoke it.

Article 56 - Granting of administrative measures of immediate protection that have the purpose of preventing the violation of women's rights

Once the Cantonal Protection of Rights Board knows about the request for granting administrative measures of immediate protection, it will verify by the mere description of the facts, the risk of violating the right to personal integrity and the dignified life of the women and will grant or deny them immediately.

The Cantonal Protection of Rights Board that grants the administrative measures of immediate protection will specify and individualize the measure or measures, as well as the circumstances of time, manner and place in which they must be fulfilled according to the level of risk situation and vulnerability of the victims of violence. Within a maximum period of three days, the body that granted the measure of immediate protection will inform the judicial bodies of the fact and the latter may ratify, modify or revoke the measure.

Article 57 - Registration of the measures granted

The cases and measures granted must be registered in the Single Registry of Violence against Women.

Article 58 - Challenge principle

The immediate administrative protection measures will be granted to victims of gender violence, without prejudice to the fact that a process is active, either in the indigenous or ordinary justice system.

SECTION II

EARLY WARNING SYSTEM

Article 59 - Early Warning System

The Early Warning System is a mechanism that allows femicide to be avoided due to gender violence, through the analysis of the information contained in the Single Register of Violence against Women, through the identification of the risk of a possible victim and the activation of the protection and attention services determined in this Law.

Article 60 - Identification of a possible victim

The governing body for Citizen Security and Order will develop and execute the identification of women whose lives and integrity are at risk due to gender-based violence, based on the analysis of data from the Registry of Violence against Women. This analysis

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involves the specification or estimation of a quantitative or qualitative model for the identification of the risk of a possible victim, which must be categorized according to the levels of risk.

Article 61- Articulation

The governing body of Citizen Security and Public Order will articulate the Early Warning System in coordination with:

1. The governing body of Justice and Human Rights;
2. The governing body of Education;
3. The governing body of Health;
4. The governing body of Labor;
5. The governing body of Economic and Social Inclusion;
6. The Integrated Security Service (ECU 911); and,
7. Other institutions that the governing body of Citizen Security and Public Order, may consider.

CHAPTER VI

FOCUS ON REPAIR THROUGH AFFIRMATIVE ACTION MEASURES

Article 62 - Mechanisms for compensation

In the case of declaring by decision the commission of acts constituting violence against women - girls, adolescents, young people, adults, older adults - the competent judicial authority shall order comprehensive compensation for the material and immaterial damage caused.

The compensation may include, among other forms, the restitution of the right, economic or patrimonial compensation, rehabilitation, satisfaction, guarantees that the event is not repeated, the obligation to refer the competent authority to investigate and punish, the measures of recognition, public apologies, the provision of public services, health care, among others.

The compensation for pecuniary damages will also include compensation for the loss or detriment of the income of the victims of violence, the expenses incurred for reasons of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case.

Compensation for non-pecuniary or moral damage can include both the suffering or afflictions caused to direct and indirect victims and their relatives, the impairment of very significant values for individuals, as well as the non-pecuniary alterations, in the life circumstances of the victim.

Article 63 - Standards for compensation measures

For the process of request and determination of compensation measures, prosecutors, judges must take into account the following standards:

1. Know the expectations of women victims of violence, without attributing the burden of identification and testing;
2. Inform women victims of violence about the scope of compensation measures and means of execution;
3. The measures of compensation shall be based on the principle of proportionality and comprehensiveness;
4. Contain details of the institutions that execute the measure of compensation, the time in which the measure of reparation must be executed and the periodicity of compliance with said measures.

Article 64 - Affirmative action measures to guarantee compensation

Without prejudice to the provisions of the Comprehensive Criminal Organic Code, the competent authority may take into account all programs and projects implemented by public institutions.

Article 65 - General responsibility of the institutions that make up the System

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The state institutions, in the framework of their competencies and prior ruling or resolution of the competent authority, will comply and execute immediately, the mechanisms of compensation of the rights of the victims of violence, ordered by virtue of this Law.

CHAPTER VII
THE PARTICIPATION AND SOCIAL CONTROL FOR
THE COMPLIANCE OF THIS LAW

Article 66 - Promotion of participation and organizational strengthening

To ensure compliance with this Law, the participation of women, social organizations, community and other social actors at all levels of government and functions responsible for the formulation of public policies, within the framework of this Law will be promoted.

For this, without prejudice to other measures adopted for this purpose, the following tasks will be fulfilled:

- a) The agencies responsible for the promotion of social participation at each level of government will promote and strengthen the participation of women's, social, community and civil society organizations, as well as the creation of national and local committees of female members in order to observe and monitor compliance with the provisions of this Law.
- b) The networks, groups, movements, women's organizations will develop follow-up actions, oversight, social control or observance of the actions of the organizations that make up the system envisaged in this Law.

GENERAL DISPOSITIONS

FIRST Institutions that are part of the Comprehensive National System for the Prevention and Eradication of Violence against Women, must register the budget allocated to prevention and eradication of violence within the Guidance Classifier of Expenditure in Policies of Gender Equality.

SECOND The State, through the Ministry of Economy and Finance, shall guarantee the provision and timely delivery of the necessary resources for compliance with the obligations and responsibilities contained in this Law.

THIRD The entities that are part of the Integral National System for the Prevention and Eradication of Violence against Women, shall have specialized staff with expertise in violence against women and strengthen the technical teams by recruiting professionals specialized in medicine, psychology, social work and any other related and relevant areas.

FOUR The State entities will develop annual awareness campaigns for their public servants on issues related to prevention of violence against women.

FIFTH The National Councils for Equality, within the framework of their competencies, will implement processes of observance of the provisions contained in this Law.

SIXTH Public servants who fail to comply with the obligations included in this Law or contravene the provisions thereof, its regulations, protocols, as well as related laws and regulations, shall be sanctioned in accordance with the provisions of the regulations on labor matters, without prejudice to civil or criminal actions that sanction the same event. The authorities, established under Article 131 of the Constitution of the Republic, fail to comply with the responsibilities and functions listed in this Law, will be subject to political prosecution by the National Assembly.

SEVENTH The National Comprehensive System for the Prevention and Eradication of Violence against Women, through its governing body, will present an annual accountability report on the plans, programs and projects that each of the institutions have executed within the framework of this Law.

EIGHTH The Cantonal Decentralized Autonomous Governments through the Cantonal Boards of Protection of Rights have the obligation to assume the competence of granting administrative measures of immediate protection. The National Police and the Police Commissariats will have the power to grant administrative measures of immediate protection in the cantons where the Cantonal Boards of Protection of Rights have not assumed it.

[...]

REPEALING PROVISIONS:

FIRST.- The Law on Violence against Women and the Family, published in the Official Register No. 839, of December 11, 1995 and all its reforms, is hereby repealed.

[...]

[Criminal Code, 2014 \(As amended\)](#)¹⁰⁶

[...]

PARAGRAPH I

Crimes of violence against women or family members

Article 155 – Violence against women or family members

Violence is defined as any action that consists of physical, psychological or sexual mistreatment executed by a family member against the woman or other members of the family.

Members of the family include members of the family or spouse, cohabitantes, ascendants, descendants, sisters, siblings, relatives up to the second degree of affinity and persons for whom it is determined that the defendant or the defendant maintains or has maintained family, intimate, emotional, conjugal, coexistence, courtship or cohabitation ties.

Article 156 - Physical violence against women or members of the family

The person who, as a manifestation of violence against women or members of the family, causes injuries, will be sanctioned with the same penalties provided for the crime of increased injuries in one third.

Article 157 - Psychological violence against women or members of the family

The crime of psychological violence committed against the woman or members of the nucleus. family threats, manipulation, blackmail, humiliation, isolation, harassment, persecution, control of beliefs, decisions or actions, insults or any other conduct that causes psychological damage will be sanctioned with a custodial sentence of six months to one year. If, illness or mental disorder occurs as a result of psychological violence, the sanction shall be imprisonment of one to three years. If the infraction affects a person listed one of the priority attention groups, in situations of double vulnerability or with catastrophic or highly complex illnesses, the sanction will be the maximum penalty, increased by one third.

Article 158 – Sexual violence against women or members of the family

The person who is guilty of violence against a woman or a member of the family, and imposes himself and / or forces her to have sexual relations or other similar practices, will be sanctioned with the penalties provided for in crimes against sexual and reproductive integrity.

PARAGRAPH II

Violations of violence against women or members of the family

Article 159 - Violence against women or members of the family

Violations of violence against women or members of the family, shall be punished with imprisonment from ten to thirty days, the person who injures, injures or hits a woman or members of the family, causing damage or illness that limits or conditions their daily activities, shall be punished with imprisonment for a period not exceeding three days.

The person who physically assaults the woman or members of the family, by kicking, slapping, shoving or in any other way involving the use of physical force without causing her injury, will be punished with imprisonment of five to ten days or community work of sixty to one hundred and twenty hours in addition to comprehensive rehabilitation measures.

¹⁰⁶ Criminal Code (10 February 2014), available at <https://www.asambleanacional.gob.ec/es/system/files/document.pdf> (last visited December 30, 2018), as amended by Law to Prevent and Eradicate Violence Against Women, Law No. 0 (5 February 2018), available at <http://www.cordicom.gob.ec/wp-content/uploads/downloads/2018/06/Ley%20para%20prevenir%20y%20erradicar%20la%20violencia%20contra%20la%20Mujer.pdf> (last visited December 30, 2018.) Unofficial translation Compendium team.

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The person who performs acts of theft, destruction, retention of objects, work tools, personal documents or property, in cases where it does not constitute an autonomous offense typified in this Code, will be sanctioned with community work from forty to eighty hours and be ordered to return the goods or re-pay the monetary value thereof, in addition to comprehensive rehabilitation measures.

The person who, by any means, professes insults, expressions in discredit or dishonor against a woman or members of the family, in cases where it does not constitute an autonomous offense typified in this Code, will be sanctioned with fifty to one hundred hours of community work and psychological treatment will be available to the aggressor and victims, as well as comprehensive rehabilitation measures.

[...]

CHAPTER III

PROTECTION MEASURES

Article 558 - Modalities

The protection measures are:

1. Prohibit the defendant from attending certain places or meetings.
2. Prohibit the defendant to approach the victim, witnesses and certain persons, wherever they may be.
3. Prohibit the defendant from carrying out acts of persecution or intimidation against the victim or members of the family, either by himself or through third parties.
4. Extend support to the victim or members of the family in case of violence against women or members of the family.
5. Restraining order against the defendant from the dwelling or dwelling, if their living together involves a risk to the physical, mental or sexual safety of the victim or witness.
6. Ensure the return of the victim or witness to her home and facilitate the simultaneous exit of the defendant, in the case of a shared home and where it is deemed necessary to protect the personal integrity of the victim or witness.
7. Take away the defendant's custody of the victim, child or adolescent or person with a disability and, if necessary, appoint a suitable person as his guardian or representative, in accordance with the specialized rules in childhood and adolescence or civil law, as appropriate.
8. Suspend or withhold the defendant's arms possession permit.
9. Order the respective treatment to which the defendant or the victim and their children under the age of eighteen years must submit, if applicable.

[...]

12. When dealing with violence against women or members of the family, in addition to the precautionary measures and protection provided in this Code, the judge or judge shall at the same time set a pension that allows the maintenance of the people harmed by the violence in compliance with the regulations on the matter, unless the victim already has a pension.

In case of crimes related to violence against women or members of the family, crimes of sexual and reproductive integrity and personal integrity and liberty, trafficking in persons, the prosecutor, if there is merit, may urgently request the judge, to adopt one or several protection measures in favor of the victims, who in turn must immediately put them in place.

When it comes to contraventions of violence against women or members of the family, the judge, may immediately put one or more measures in place as listed in the preceding paragraphs.

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Members of the National Police must provide assistance by protecting victims of violence against women or members of the family by offering transport and preparing a case that must be sent to the competent authority within twenty-four hour.

Article 558.1 - Protection measures against violence against women

In addition to the measures established in the previous article, in cases of violence against women, the competent judges will grant the following:

1. Accompaniment of members of the National Police to the victim's home so they may collect their belongings. The victim's departure will be required, when, it is proven that staying in the home shared with the defendant threatens the victim's welfare and that of her dependants due to the presence of third parties close to the defendant; and
2. Order the defendant to immediately return personal items, identity documents and any other document or property to the victim and the persons who depend on it.
3. Before, during and after the criminal process, victims of gender violence may request their names, and those of witnesses and other participants, to be entered into the National System of Protection and Assistance of Victims, provided that the circumstances so require.

[...]

Article 570 - Special rules for the prosecution of the crime of violence against women or members of the family

In the judicial process and trials of crimes of femicide and violence against women or members of the family, the following rules shall apply:

1. Judges specialized in violence against women or members of the nuclear family are competent and in the case of territorial sections that do not have specialized units, the competence applies to criminal judges;
2. Special prosecutors, defenders and public defenders take part; and,
3. The victim or victims can benefit from the National System for the Protection and Assistance of Victims, Witnesses and Other Participants in the process, before, during or after the criminal process, provided that the conditions so require.

[...]

PARAGRAPH II

Expedited procedure for the contravention of violence against women or members of the family

Article 643 - Rules

The procedure for judging the criminal contravention of violence against women or members of the family shall be conducted in accordance with the following rules:

1. The judge or judge of violence against women or members of the family of the canton where the offense was committed or of the place of residence of the victim, shall be competent to hear and resolve the contraventions provided for in this paragraph, without prejudice to the general rules on this matter. In the cantons where these judges do not exist, they will be resolved in the first instance by the judge or a family judge according to the Code of the Judicial Procedure.
2. If the competent judge finds that the act of violence against women or members of the family to the best of their knowledge constitutes a crime, without prejudice to his power to implement the protection measures, he will follow due process and send the prosecutor or the prosecutor's file to initiate the investigation, without re-victimizing the victim. If protective measures have been issued, they will continue in force until they are revoked, modified or ratified by the competent criminal justice judge.
3. The Public Defender will be obliged to provide assistance, advice and procedural follow-up to the parties that do not have sufficient legal resources.
4. Those who have the obligation to do so by express mandate of this Code must denounce, without prejudice to the legitimacy of the victim or any natural or juridical person who knows the facts. The health professionals, who have direct

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knowledge of the facts, will send the judge a copy of the care record. The agents of the National Police who know of the facts will provide the police report and corresponding reports within twenty-four hours of the incident and will appear at a mandatory hearing. The agents of the National Police are obliged to execute the protection measures, provide assistance, protect and provide transport to the woman and other victims.

5. The competent judge or judge, when in any way comes to know of a contravention of violence against women and the family, will immediately proceed to impose one or more protective measures; receive the anticipated testimony of the victim or witnesses and order the practice of forensic examinations and any evidentiary proceedings that the case requires, in the event that the latter have not been carried out. The protection measures will stay in place until the competent judge or judge who knows the process, expressly modifies them or revokes them in a hearing.
6. The competent judge or judge shall establish, at the same time, the required maintenance for the victim; to be in force while protection measures are in place.
7. The competent judge or judge will monitor compliance of the protection measures, and indicate when the intervention of the National Police is required. In case of non-compliance with the protection measures and maintenance order issued by the competent judge or judge, the defendant will be criminally liable and prosecuted.
8. The information about the address, place of work or study of the victim or children under their care, which is part of the process, will remain confidential in order to protect the victim.
9. If a person is caught in a crime, he will be apprehended by the agents as authorised by law and other private persons indicated in this Code, and led before the competent judge or judge for trial at the hearing. If the offender is a private person, the competent judge or judge must immediately place the apprehended person under the orders of an agent.
10. The search or breaking of the doors or locks may be ordered in accordance with the rules set out in this Code.
11. When the judge becomes aware that one of the contraventions provided in this paragraph has been committed, he shall notify the defendant and ensure he attends the trial hearing, which will take place within a maximum period of ten days from the date of notification of hearing. The notification of hearing must warn the defendant that he has a right to defend himself. The hearing may not be deferred except for one single time at the express and joint request of both parties, indicating a new date and time: this date and time shall not exceed fifteen days from the date the first initial hearing was scheduled.
12. The hearing cannot be held without the presence of the defendant. In this case, the competent judge or judge will order the arrest of the defendant. The detention shall not exceed twenty-four hours, and its sole purpose shall be to appear before the court. The hearing shall be conducted in accordance with the provisions of this Code.
13. The judge must assess the certificates of good behavior or labor submitted by the defendant.
14. The professionals who work in the technical offices of the courts of violence against women and the family do not need to give testimony in front of the court. Their reports will be sent to the judge or judge in order to incorporate them into the process, and they will be assessed at the hearing.
15. The expert reports cannot be used in a different trial in case of repeat offences or infringement of rights.
16. No new medical examinations will be carried out if there are reports of health centers or hospitals where the victim was treated and the latter accepted the same, or those made by the technical offices of the courts of violence against women and the family.
17. The judge shall be motivated to resolve the matter before him at the hearing, orally.
18. The sentence will be put in writing with the formalities and requirements provided in this Code and the person subject to the judgment must be notified.
19. The deadlines for the challenges are after the notification and the judgment can be appealed before the competent judge of the respective Provincial Court.

[Code on the Judicial Function, 2009 \(As amended\)](#) ¹⁰⁷

Article 232 - Competence of judges in relation to violence against women or members of the family

In each canton, taking into account criteria population density, prevalence and severity of violence, there will be a number of judges and judges with knowledge of violence against women or family members established by the Council of the Judiciary, with the determination of the location of their residence and the territorial circumscription in which they are qualified. The Council of the Judicature will create technical offices, with professionals in medicine, psychology and social work; to guarantee integral intervention.

They will be trained to:

1. Know the facts and acts of violence and the contraventions of violence against women or members of the family;
2. When protection measures provided for in the relevant law are applied, simultaneously the judge may set corresponding maintenance allowance, which, while this measure lasts, must satisfy the aggressor, taking into account the needs of the persons harmed by violence. It will also be up to the judge to execute this provision in case of non-compliance; and,
3. Exercise other powers as established by law.

45. EL SALVADOR

[Law Against Intra-Family Violence, 1996](#) ¹⁰⁸

DECREE No. 902

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

CONSIDERING:

- I. That the Constitution of the Republic in its article 32 recognizes the family as the fundamental basis of society, and the State is obliged to dictate the necessary legislation for its protection and to create the appropriate bodies and services for its integration, welfare and development, social, cultural and economic;
- II. It is up to the State to adapt domestic legislation to international treaties and conventions relating to the family, women and children in order to comply with article 144 of the Constitution of the Republic;
- III. That the violence committed by or against any of the members of the family constitutes a constant aggression to the right to a life free of fear, to the physical, psychic, moral and sexual integrity of the human person and of his dignity and security;
- IV. That domestic violence is a complex social phenomenon that has remained hidden, which has made possible the impunity of the offender and the victim's lack of protection; and
- V. That in order to prevent, punish and eradicate domestic violence and confront it in all its magnitude, it is advisable to dictate necessary and appropriate legislation.

THEREFORE

[...]

DECREES the following:

**INTRA-FAMILY VIOLENCE ACT
CHAPTER I**

¹⁰⁷ Code of Criminal Procedure (9 March 2009), available at <http://www.funcionjudicial.gob.ec/index.php/es/normativa/codigo-organico-de-la-funcion-judicial.html> as amended by Law to Prevent and Eradicate Violence Against Women, Law No. 0 (5 February 2018), available at <http://www.cordicom.gob.ec/wp-content/uploads/downloads/2018/06/Ley%20para%20prevenir%20y%20erradicar%20la%20violencia%20contra%20la%20Mujer.pdf> (last visited December 30, 2018). Unofficial translation by Compendium team.

¹⁰⁸ Law Against Intra-Family Violence (Ley contra la violencia intrafamiliar), Decree No. 902 (28 November 1996), available at https://www.oas.org/dil/esp/Ley_contra_la_Violencia_Intrafamiliar_El_Salvador.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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FUNDAMENTAL PROVISIONS

Purposes

Art. 1.- This law has the following purposes:

- a) to establish appropriate mechanisms to prevent, punish and eradicate domestic violence, in the relationships of family members or in any other interpersonal relationship of such members, whether or not, they share the same dwelling;
- b) to implement the preventive, precautionary and protective measures necessary to guarantee the life, integrity and dignity of the victims of domestic violence;
- c) to regulate rehabilitation measures for offenders; and,
- d) to protect victims of violence in partner relations, children, adolescents, older adults and disabled persons in a special way. This special protection is necessary to reduce the inequality of power that exists between the people who make up a family and take into account the special situation of each one of them.

For the purposes of this law, relatives are understood as relationships between spouses, ex-spouses, cohabitants, former cohabitants, ascendants, descendants, collateral relatives by consanguinity, affinity, adoption, individuals subjected to guardianship or custody, as well as any other interpersonal relationship that may generate this type of violence.

Guiding Principles

Art. 2.- In the application and interpretation of this law, the following principles shall be taken into account:

- a) Respect for life, dignity and physical, psychological and sexual integrity of the person;
- b) The equal rights of men, women and sons and daughters;
- c) The right to a dignified life free of violence, in the public as well as in the private sphere;
- d) The protection of the family and each of the persons who constitute it; and,
- e) The other principles contained in the international conventions and treaties and the existing family legislation in force.

Concept and Forms of Intra-Family Violence

Art. 3.- It constitutes domestic violence any action or omission, direct or indirect, that causes harm, physical, sexual, psychological suffering, or death to the people of the family.

The followings are forms of intra-family violence:

- a) Psychological violence: direct or indirect action or omission whose purpose is to control or degrade other people's actions, behaviors, beliefs and decisions, by means of intimidation, manipulation, direct or indirect threat, humiliation, isolation or any other conduct or omission causing injury to psychological health, self-determination, integral development and personal possibilities;
- b) Physical violence: actions, behaviors or omissions that threaten or injure a person's physical integrity;
- c) Sexual violence: actions that oblige a person to maintain physical or verbal sexualized contacts, or to participate in them, by force, intimidation, coercion, blackmail, bribery, manipulation, threat or other mechanism that annul or limit personal will. Sexual violence is also considered to be the fact that the aggressor forces the person who has been attacked to perform any of these acts with third parties.
- d) Property violence: action or omission of those who affect or impede the appropriate attention to the needs of the family or any of the persons referred to in this law; damaging, losing, subtracting, destroying, retaining, distracting or appropriating objects, instruments or goods.

Scope of Law

Art. 4.- This law shall be applied preventively and shall penalize acts of intra-family violence, without prejudice to criminal liability.

Application

Art. 5.- For the implementation of this law are responsible the family courts and the peace courts, the Public Ministry, the Ministry of the Interior, the Salvadoran Institute for the Development of the woman and the governmental institutions that watch over the family, women, children, girls and adolescents, people with disabilities and older adults.

CHAPTER II
STATE POLICIES FOR THE PREVENTION OF INTRA-FAMILY VIOLENCE

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Policy Objectives

Art. 6.- The State has a duty to prevent, punish and eradicate intra-family violence, and for this purpose the following actions will be carried out:

- a) To incorporate in the academic formal and non-formal technical education, the teaching of the ethical, civic and social values; respect for the dignity of the human person, the rights and duties of family members, children, persons with disabilities; and older adults as established in current legislation and international instruments ratified by El Salvador;
- b) To carry out information campaigns with the purpose of sensitizing the society on the aforementioned social problems, divulgate the scopes of this law and to repudiate acts of domestic violence;
- c) To promote the study and investigation of the causes and consequences of domestic violence, its indicators, its dynamics and how to prevent it.
- d) To establish effective legal mechanisms for the care of victims of domestic violence by means of simple, agile and free of formalism procedures that enable the adoption of precautionary measures;
- e) To promote the active participation of public entities and civil society organizations engaged in the protection of children, families, women, disabled persons and older adults, for the development of work Preventive and supervisory measures in the implementation of the precautionary and protection actions for victims of domestic violence and the rehabilitation of offenders;
- f) To create within the National Civil Police a division specializing in the care and management of cases of intra-family violence and the defense of human rights;
- g) To promote the training of staff of institutions involved in the dynamics of domestic violence; as well as, specifically, the permanent training of officials and forensic experts to assume an effective role in the eradication of the same; (1)
- h) To sensitize the competent judicial officials to resolve the acts of intra-family domestic violence;
- i) To incorporate into the curricula of higher education careers, State and private universities and the National Academy of Public Safety, training in the dynamics of intra-family domestic violence, as well as legal regulations, the forms of foresight and their treatment.

Governing Body

Art. 6-A.- The Salvadoran Institute for the Development of Women will act as the governing body responsible for designing, directing, advising, coordinating and ensuring compliance with policies, programs, plans and projects related to prevention and care of domestic violence.

For the effective fulfillment of its duties, the Salvadoran Institute for the Development of women will promote the participation of governmental and organizational non-governmental institutions, local governments, private enterprise, churches, International organizations and others; having to establish the coordination mechanisms necessary to integrate the different institutions of the state and of the society to prevent, to attend, to protect and to contribute to solve the problematic of the domestic violence.

Protective Measures

Art. 7.- To prevent, punish and eradicate the various forms of domestic violence, the following measures are established:

- a) A court order refraining the aggressor from harassing, persecuting, intimidating, threatening or commit other forms of abuse against victims of violence or any other person in the family group who shares the same dwelling;
- b) A court order to persons involved in the acts of violence reported to refrain from carrying out acts of harassment, intimidation, provocation, threat or otherwise which may lead to, or encourage, domestic violence, and others indicated by the procedural family law;
- c) Prohibiting the aggressor from threatening the victim in both the private and public spheres;
- d) Prohibiting the aggressor from consuming alcoholic beverages, narcotic drugs, hallucinogens or substances which generate physical or psychic dependence on the judge's or judge's Prudential judgement;
- e) A court order to the aggressor to leave the common domicile immediately. In case of resistance, there will be assistance by the national Civil Police;
- f) If requested, to provide to the victim a domicile other than the common one to protect her from future aggression;
- g) A court order for breaking and entering, when the physical, sexual, psychological and patrimonial integrity of any of its inhabitants is seriously jeopardized by domestic violence;
- h) Suspending the aggressor's permit to carry arms, while the protective measures are in force, and order the confiscation of the weapons he possesses; (1)

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- i) Temporarily suspending the aggressor's personal care, custody, upbringing and education of his/her minor children and his right to visit them in the event of aggression; (1)
- j) Prohibiting the aggressor's access to the permanent or temporary domicile of the person being attacked and to his or her place of work or study;
- k) Establishing a provisional food quota; once fixed, it will be proceeded to its execution ex officio; (1)
- l) Granting the exclusive use of the house, for a given period, to the person attacked. Special protection should be extended to the home and the household items pertaining to the family assets;
- m) Issuing a court order for police protection and assistance, addressed to the local public safety authority. The victim shall carry a copy of this order so that she may go to the nearest authority in the event of a threat of aggression outside her domicile; and
- n) Any other measures provided for in the family order in force.

Non-attendance at a Judicial hearing

Art. 8.- The failure to assist to a judicial hearing shall be punished with the equivalent of three to ten days' wages; if it cannot be determined, the basis shall be the minimum wage in force in the place and at the time of the resolution. (1)

In order to enforce this penalty, the judge shall notify the relevant decision to the offender, who may present relevant exculpatory evidence within the term of ten working days. Whether the evidence is presented or not, it will be resolved within twenty-four hours.

Duration of the Measures.

Art. 9.- The duration of preventive, precautionary or protective measures imposed on the aggressors shall be established by the judge according to the circumstances, repetitions and in accordance with the regulations of the family procedural law. Where the measures have expired and do not extend informally, the victim shall have the right to apply for other or extend those already decreed.

The request shall be submitted to the competent court; when it is not possible to do so before the court that hears the case, it will be determined if the measures had already been issued before, and the court that issued them, in order to avoid duplication.

**CHAPTER III
PROCEDURE
FIRST SECTION
POLICE INTERVENTION**

Notice to the National Civil Police

Art. 10.- When the national civil police have knowledge, or have received notice that a person is a victim of domestic violence, they must take the necessary measures to prevent that person from being abused, and shall take the following steps:

- a) If the victim indicates that he or she has been beaten or injured, even if emotional damage is not visible, or when she is unconscious, or in any case requiring medical attention, they must assist her, making the necessary arrangements for her to receive treatment and providing transportation to a health care center or service where she can be served; (1)
- b) If the victim or family members are concerned about their personal safety, that of their children, daughters or any other member of the family, they must make arrangement to lead them to a suitable place where they can be cared for;
- c) Advise the victim of intra-family domestic violence on the importance of preserving evidence;
- d) Provide the victim with information on the rights that this law confers on her and on the government or private services available to victims of intra-family domestic violence; and,
- e) Stop the alleged aggressor if the existence of, and participation to, domestic violence conduct is observed, when the facts constitute other offences which are derived from it and in the case of the crime of domestic violence referred to in article 200 of the Penal Code. In any case, [the police] shall take the necessary measures to prevent the aggressor from continuing perpetration of violent acts and to protect the victim.
- f) In their duty to help victims, and in cases where domestic violence is not yet constituting a crime, but where a heated discussion and hostile environment are observable, or the peace order made by the police is not immediately complied with, the national civil police may dictate the special temporary protection measure by ordering the

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alleged aggressor to leave the place of the events for a maximum period of eight hours. Disobeying this order will entail criminal responsibility.

Police Report

Art. 11.- In accordance with the provisions of the preceding article, the national Civil Police shall immediately notify the competent court, by accompanying this with a report on the measures undertaken. This report will include in a concise manner any declaration of the victim in terms of the frequency and severity of incidents of domestic violence. Furthermore, it should inform on the adoption of special temporary protection measure in favor of the victim when they have been adopted. If a person has been detained in flagrante delicto, the criminal procedure shall be observed.

Testimonial Proof

Art. 12.- Agents of the national Civil Police may be accepted as witnesses, if the aggressor is captured in flagrante delicto.

SECOND SECTION
INTERVENTION OF THE PUBLIC MINISTRY

Complaint

Art. 13.- Any person who has knowledge of a fact constituting domestic violence may denounce it, or give notice to the national Civil police, the competent courts, and the attorney General of the Republic. The complaint may be made in writing or verbally, personally or through a proxy, and with the same may be requested the precautionary, preventive or protective measures that are deemed pertinent. In the case of a verbal complaint, this shall be recorded. The complaint shall contain, as far as possible, the circumstances of the fact, with the indication of the aggressor, the injured party, the witnesses and other elements that may lead to its verification.

Obligation to Give Notice to Competent Officials

Art. 14.- Acts constituting intra-family domestic violence must be reported by.

- a) Officials who have become aware of them in the exercise of their duties; and,
- b) Physicians, pharmacists, nurses, teachers and others engaged in health, education and social care professions, who have become aware of them in the exercise of their profession.

Complaint when the Victim is Minor, Unable or Disabled

Art. 15.- When the victim is a minor, unable or disable, the facts may be denounced by her legal representatives, by the victim, when not incapable or disabled, and by the welfare institutions, social and educational, as well as by any authority or person who has knowledge of the facts of domestic violence.

Performance of the Office of the General Prosecutor of the Republic

Art. 16.- The Office of the General Prosecutor of the Republic, when it has knowledge of acts constituting domestic violence, by notice or by complaint filed with it, shall summon the persons in conflict and seek conciliation, if requested by the victim or if otherwise appropriate. If the facts indicate an immediate need to protect the victim, the relevant protective measures will be requested. If no conciliation has been reached, or this was not requested, the procedure referred to in this act shall commence before the competent court.

Likewise, the Office of the Attorney-General of the Republic is obliged to provide evidence if the judicial procedure referred to in this law is initiated.

Performance of the Attorney-General of the Republic

Art. 17.-When the fact of domestic violence is a criminal offence, the Attorney-General's office is obliged to investigate and provide evidence in criminal proceedings to be initiated in the relevant courts.

Transfer of Procedure

Art. 18.- If the parties do not appear to the hearing for the second time, either through compulsion or voluntarily, and it is not possible to make them attend, the assistant attorneys to the General Prosecutor of the Republic must immediately send a report of the fact along with the relevant acts to the competent judicial officer for the initiation of the procedure referred to in the third section of this chapter.

Periodic Visits to Police Stations

Art. 19.- The Attorney General of the Republic, the Prosecutor General of the Republic, and the Procurator for the Defense of human rights, or the former assistant agents and solicitors, will visit the corresponding division of the national civil police on a

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monthly basis in order to be informed about the facts of domestic violence investigated with the aim of producing a public statistical report every three months and recommending appropriate measures to the corresponding bodies. In all cases, the privacy of the persons attacked and the aggressor will be respected, and no data shall be published that directly, or indirectly, make identification of the victim possible.

THIRD SECTION JUDICIAL INTERVENTION

Competition

Art. 20.- The family jurisdiction and the justices of the peace will be competent for the procedures that are initiated under this law.

Initiation of the Procedure

Art. 21.- The proceedings shall be initiated by the peace courts or family courts, where appropriate, in the case of a complaint or notice by the national Civil Police or the Office of the Attorney-General of the Republic.

Likewise, the victim, any natural or legal person, institutions or social organizations that are responsible for women, children, adolescents, the elderly, the legal representative of the incompetent, the Guardian of the incapacitated; In the cases referred to under this law, either verbally or in writing. (1)

They may also request the precautionary, preventive or protective measures that are considered relevant.

Procedural Principles

Art. 22.- In the procedures foreseen by this law, the judge must apply the principles of orality, mediation, concentration, celerity, equality, economy, probity and informality. In evaluating the evidence, the judges will apply the sane critic.¹⁰⁹

Measures

Art. 23.- Upon receiving the acts from the Office of the Attorney General of the Republic, or at the direct request of the victims, the judge must immediately decree, if the case so requires, the precautionary, preventive or protective measures deemed appropriate.

In spite of the start of criminal proceedings in the event of a crime, the protective measures shall remain in force, and the peace or family court shall conduct the appropriate follow-up.

Expert Examinations

Art 24.- When the case so requires, the judicial officer shall immediately order a forensic medical examination of the external and internal injuries, or the psychological damage, to the victim. To carry this out, he will be assisted by the Institute of Legal Medicine, any governmental, non-governmental body, or multidisciplinary team attached to the family court or the entities indicated in this article. When he deems it necessary, he may also order the psychosocial exam of the aggressor and of the children.

Expert Opinion

Art 25.-The expert opinion shall be issued in writing and shall be submitted no later than seventy-two hours from the request. If the opinion is required urgently, it may be given verbally and shall be recorded in the minutes.

If the opinion received indicates that the fact of domestic violence constitutes a crime, the family or peace judge will continue the procedure for the sole purpose of enforcing the measures imposed, and will transmit the acts to the office of the Attorney General of the Republic to initiate the relevant procedure.

Notice and Hearing Citation

Art 26.- Immediately upon receiving the expert opinion, and if the fact does not constitute a crime, the judge shall summon the victim and the accused to a preliminary hearing to be held within five working days, in order to know the facts, to which they may or may not be accompanied by a representative, or an assistant to the General Prosecutor of the Republic.

Preliminary Hearing

Art 27.- The hearing will be attended personally by the victim and accused, both of whom acn be accompanied by a lawyer. The judge shall personally preside over the hearing and give the victim an opportunity to confirm, expand or modify the complaint, and the accused to make his own assessments regarding the facts, or contradict them.

After the hearing, the judge will lead a discussion with the parties on the harmful effects of domestic violence and its repercussions on the family, and shall propose measures to avoid repetition of the same, without proceeding to conciliation.

¹⁰⁹ As in original text of the law.

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[The judge] shall also raise awareness about the criminal sanctions if the violent conduct is repeated, and the measures provided by this act for the punishment of domestic violence.

Resolution

Art. 28.- In the same hearing the judge, based on what is stated by the parties and where the facts do not need to be proven, and paying attention to commitments assumed by the defendant and accepted by the victim, will:

- a) Determine as established the facts constituting domestic violence reported;
- b) Attribute the violence to those who have generated it;
- c) Demand de defendant to comply with the commitments agreed upon by him or her during the hearing;
- d) Enact preventive, precautionary or protective measures that may be necessary if they have not previously been agreed upon;
- e) Impose on the aggressor the obligation to pay the victim the consequential damage of the conduct or violent behavior, such as health services, price of drugs, value of goods and other expenses arising from the violence exerted;
- f) Impose on the aggressor psychosocial, psychiatric or self-help groups specializing in domestic violence, through therapies on domestic violence, using the various programs developed by the family protection institutions. This measure can also be applied from the beginning of the procedure; in any case psychosocial follow-up will be provided.

In the decision, the aggressor shall be warned about criminal penalties in the event of non-observance or reiteration of acts of domestic violence.

Indication of the Public Hearing

Article 29.- If the accused does not agree with the facts introduced as evidence, he shall indicate a hearing to receive it, within a period not exceeding ten working days from the preliminary hearing, within which the psychosocial exam and investigation, or any other acts will be undertaken.

Public Hearing

Art. 30.- On the day established, the parties will be summoned to a public hearing at which the statements of the witnesses will be given, orally, and other evidence introduced by the parties and ordered by the judge will be introduced.

The reports of social workers and opinions of the experts will be evaluated. The parties and their lawyers may pose questions directly to the witnesses and experts.

Art. 31.- After introducing the evidence, the judge will pronounce judgment in the same hearing and order the measures provided for by this law, or acquit the defendant.

Resources

Art. 32.- The decisions pronounced by the judge that imposed precautionary or protective measures against the defendant, or which acquits him, may be appealed to the family Court, even where this is pronounced by a justice of the peace.

The Court of second instance shall resolve the appeal by reviewing the procedure only, within eight working days after receiving it. This decision may not be appealed.

The appeal may be presented orally or in writing in the act of notification, or within three working days of the following.

Control of the Execution of the Judgement

Art. 33.- During course of the process and thereafter, the judge shall control for as long as it deems appropriate the outcome of the measures and decisions adopted and imposed in the judgement, through the multidisciplinary team attached to the Family Court who will report with the periodicity indicated by the judge.

Failure to Comply with the Judgement

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Art.34.- Whenever it is possible to verify the failure to comply with the preventive, precautionary, or protective measures imposed by the judge, at any stage of the procedure, as well as with the agreed commitments, the General Prosecutor will be allowed, with certification of the relevant steps, to present request [to proceed] for the offence of disobedience. Without prejudice to the victim being able to report the facts personally to the same institution, or to ask for the assistance of the national Civil police, if necessary.

Mandatory Appearance of Victims and Accused

Art. 35.- In the judicial proceedings provided for in this section, the appearance of the victim and the accused to hearings to which they are summoned shall be mandatory, except for just impediment.

The non-appearance of the victims or the accused will incur a fine that will be imposed by the judge of the hearing without prejudice to his ability to compel their immediate appearance.

Fines shall be effective or shall be void in accordance with the requirements of article 8 of this law.

Art. 36.- REPEALED

**CHAPTER IV
GENERAL PROVISIONS AND VALIDITY**

Confidentiality of Procedures and Formalities

Art. 37.- The acts and procedures that preformed in application of this law, will be confidential except for the parties, lawyers, solicitors, prosecutors and specialized personnel that have intervened in the same.

Legal Aid

Art. 38.-In proceedings in accordance with this law, the parties may be assisted by an attorney or lawyer.

If both parties, or one of them, lack economic resources and request legal assistance to the judge, the State, through the office of the Attorney General of the Republic, will provide them with a solicitor to assist them.

Judge's Powers

Art. 39.- Judges shall recur to the use of public force to enforce their resolutions or orders.

Request for Assistance and accompaniment

Art. 40.- Judges may request the collaboration of all public or private entities and organizations engaged in the protection of children, adolescents, women, older adults and disabled persons, in order to provide free legal assistance and accompaniment to victims of reported acts of domestic violence, and to provide support in the application of protective measures imposed in accordance with this law, as well as with family, childhood and adolescence legislation.

The victim will also have the right to be assisted technically by the multidisciplinary team assigned to the Family Court for the period established by the latter.

Suspension of Criminal Proceedings

Art. 41.- Where, in the course of a criminal proceeding, the judge finds that the facts fall under application of this law, he shall suspend the procedure and initiate that provided for in the third section of chapter III of this law, if he/she is competent. If he is not, he/she shall forward the acts to the competent judge. In any case, the act of the judge will be valid.

Art. 42.- When dealing with acts of domestic violence submitted to the criminal jurisdiction and to persons subject to this law, the judge, in the course of the proceedings, must apply the preventive, protective and relevant protection measures regulated by this law.

The same [measures] shall be maintained or be decreed when issuing a corresponding judgement and, to ensure their effective implementation, the courts of both jurisdictions that have intervened in the case must exchange direct information on the state of the procedure so that this is considered in the judicial decision.

This decision may be followed-up with the support of the psychosocial care centers of the judicial body, the multidisciplinary teams attached to the family courts, public and private institutions, as well as non-governmental organizations that provide assistance to victims of domestic violence.

Prohibition of Forum

Art. 43.- Regarding intrafamily violence, no privileges of any kind will be allowed due to the position.¹¹⁰

¹¹⁰ As in the original law.

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CHAPTER V
FINAL PROVISIONS

Supplementary Provisions

Art. 44.- In everything not foreseen in this law concerning procedures and valuation of tests, the norms of the procedural law of family and the Code of civil procedures will apply.

Validity

Art. 45.- This law shall enter into force eight days after its publication in the Official Journal.

GIVEN IN THE BLUE HALL OF THE LEGISLATIVE PALACE: San Salvador, on the twenty-eight days in the month of November one thousand nine hundred and ninety-six

[...]

D.L. N° 902, of November 28, 1996, published in the D.O. N° 241, Volume 333, of December 20, 1996.

REFORMS:

(1) D. L. N° 892, of June 27, 2002, published in the D.O. N° 137, Volume 356, of July 24, 2002.

(2) D.L. No. 403, of August 12, 2004, published in the D.O No. 178, Volume 364, of September 27, 2004.

Special Integral Law for a Life Free of Violence for Women, 2010¹¹¹

Article 1 – The purpose of this Law is to establish, recognize and guarantee the right of women to a life free of violence, through public policies aimed at the detection, prevention, care, protection, reparation and punishment of violence against women; in order to protect their right to life, physical and moral integrity, freedom, non-discrimination, dignity, effective protection, personal security, real equality and fairness.

[...]

Article 8 – Definitions

For the purpose of this Law it shall be understood as:

[...]

(k) Violence Against Women: any action based in gender that causes death, damage or physical, sexual or psychological damage to the woman, in both public and private spheres.

[...]

Article 9 – Types of Violence

For the purpose of this Law it shall be understood as types of violence:

- (a) Economic Violence: Any act of omission of the aggressor, which affects the economic survival of the woman, and is manifested through acts aimed at limiting, controlling or preventing her economic earnings.
- (b) Femicide Violence: It is the extreme form of gender violence against women, product of the violation of their human rights, in the public or private spheres, comprised by the set of misogynistic conducts that lead to social or state impunity, culminating in femicide and other forms of violent death of women.
- (c) Physical Violence: Any conduct that, directly or indirectly, is aimed at causing physical harm or suffering to a woman, with the result or risk of causing physical injury or harm, exercised by whoever is or has been her spouse, or by whom she is or has been linked to by analogous relationship or affectivity, even without coexistence. Also, it shall be considered acts of physical violence against women those exercised by the aggressor in the family, social, or work environment.

¹¹¹ Special Integral Law for a Life Free of Violence for Women (Ley especial integral para una vida libre de violencia para las mujeres), Law n. 520/2011 (25 November 2010), available at https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_073006947_archivo_documento_legislativo.pdf (last visited, October 26, 2018). Unofficial translation by Compendium team.

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- (d) Psychological and Emotional Violence: All direct or indirect behavior that causes emotional damage, diminishes the self-esteem, harms or disturbs the healthy development of the woman; whether verbal or non-verbal, that this behavior produces in women devaluation or suffering, through threats, demands for obedience or submission, coercion, blame or limitations of their freedom, and any alteration in their health that is triggered in the distortion of the concept of self, of value as a person, of the world view or one's own affective capacities, exercised in any type of relationship.
- (e) Patrimonial Violence: Actions, omissions or behaviors that affect the free disposition of the patrimony of women; including damage to common or personal property through transformation, theft, destruction, distraction, damage, loss, limitation, retention of objects, personal documents, property, values and property rights. Consequently, it shall be considered null all acts of seizure or simulation of alienation of movable or immovable property, whatever the marital property regime, including that of non-marital union.
- (f) Sexual Violence: Any behavior that threatens or violates a woman's right to voluntarily decide their sexual life, including not only the sexual act but all forms of sexual, genital or non-genital contact or access, regardless of whether the aggressor has a conjugal, couple, social, labor, affective or kinship relationship with the woman victim.
- (g) Symbolic Violence: Messages, values, icons or signs that transmit and reproduce relations of domination, inequality and discrimination in the social relations that are established between people and naturalize the subordination of women in society.

[...]

Article 12.- Governing Institution and its Object

The Salvadoran Institute for the Development of Women is the governing institution of this Law. Its aim is to:

- a) Ensure, monitor and guarantee the compliance and integral execution of the Law.
- b) Coordinate the joint actions of public administration institutions to comply with the National Policy for Women's Access to a Life Free of Violence.
- c) Formulate public policies for the access of women to a life free of violence, to the State bodies, autonomous and municipal Institutions.
- d) Convene, in a consultative or coordinating capacity, civil society organizations, universities, international and cooperation organizations.

[...]

Article 46 – Aggravated Femicide

The crime of femicide will be punished with thirty to fifty years of prison, in the following cases:

- (a) If it is performed by a public or municipal official or employee, public authority or agent of authority.
- (b) If it is performed by two or more people.
- (c) If committed in front of any relative of the victim.
- (d) When the victim is under eighteen years of age, older adult or suffers from physical or mental disability.
- (e) If the author takes advantage of the superiority originated by the relationship of trust, friendship, domestic, educational or work.

[...]

Article 48.- Suicide - Femicide by Induction or Aid

Anyone who induces a woman to commit suicide, or assists her in committing it, by recurring any of the following circumstances, shall be sentenced to five to seven years' imprisonment, where:

- a) this was preceded by any of the types or forms of violence referred to in this law or any other law.
- b) the accused has taken advantage of any situation of risk or physical or psychic condition in which the victim is found, for having exerted against it, any of the types or modalities of violence contemplated in the present law or any other law.
- c) the inducer has taken advantage of the superiority generated by the existing relationships between him and the victim.

[...]

Article 53 – Property Subtraction

Whoever takes goods or valuables of the possession or patrimony of a woman with whom he maintains a relationship of kinship, marriage or coexistence without her consent, will be sanctioned with imprisonment of two to four years.

Article 54 – Subtraction of profits from family economic activities

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Whoever removes the earnings or income derived from a family economic activity, or disposes of them for their personal benefit and to the detriment of the rights of a woman with whom they maintain a relationship of kinship, marriage or coexistence declared or not, shall be punished with imprisonment of three to six years.

Article 55.- Expressions of Violence Against Women

Whoever commits any of the following acts shall be punished by a fine of two to twenty-five minimum wages for trade and service:

- a) Develops, publishes, disseminates or transmits by any means images or visual, audiovisual, multimedia, or computer platforms with content of hatred or contempt for women.
- b) Uses verbal or non-verbal expressions concerning the exercise of parental authority that are intended to intimidate women.
- c) Mocks, discredits, degrades or isolates women in the context of their job, education, community, spaces of political or civic participation, institutional or other analogous forms of expression of discrimination in accordance with this law.
- d) Prevents, limits, or hinders the participation of women in any process of academic training, political participation, employment insertion or health care.
- e) Exposes women to an imminent risk for their physical or emotional integrity.
- f) Shows or shares pornography of senior citizens in public, work and community spaces.

CHAPTER II
Special Procedural Provisions

Article 56 – Criminal Persecution Policy on Violence against Women

The Office of the Attorney General of the Republic must create a policy of criminal prosecution in the area of Violence against Women, in accordance with the principles established in this Law.

Article 56-A – Specialized jurisdiction and multidisciplinary teams (1)

FOR THE APPLICATION OF THE CRIMINAL TYPES CONTAINED IN THIS REGULATION, A SENSITIZED AND SPECIALIZED JURISDICTION IN GENDER MATTERS SHOULD BE CREATED, FOLLOWING THE SAME STRUCTURE, DEGREES OF KNOWLEDGE AND INSTANCES AS IN COMMON CRIMINAL PROCEDURES, BUT BY ADDRESSING THE PARTICULARITIES ORDERED IN THIS LAW AND THE INTERNATIONAL APPLICABLE AND RATIFIED HUMAN RIGHTS INSTRUMENTS, THIS JURISDICTION SHALL BE SUPPORTED BY EQUIVALENTLY SPECIALIZED MULTIDISCIPLINARY TEAMS. WHILE THIS JURISDICTION IS NOT CREATED AND COMPLETED, THE CRIMINAL TYPES CONTAINED IN THIS REGULATION SHALL CONTINUE TO BE RECOGNIZED BY THE COMPETENT COURTS IN CRIMINAL MATTERS. [REFORM : Law Decree No. 545, NOVEMBER 24, 2016, D. O. No. 232, T. 413, DECEMBER 13, 2016].

Article 57 – Procedural guarantees to women facing acts of violence

Women who face acts of violence will be guaranteed:

- a) That their privacy and intimacy be preserved at all times. Consequently, their sexual life cannot be exposed directly or indirectly, to justify, minimize or relativize the damage caused.
- b) That a copy of the investigation requirement, the administrative complaint, the legal medical examination and any other document of interest to the woman facing acts of violence be given to the woman; as well as, to be treated with dignity and respect, especially by the parties involved in the process.
- c) To be assisted, whenever possible, by people of the same sex who are expert and trained in the rights of victims, women's human rights, gender perspective and prevention of gender-based violence, in accessible places that guarantee privacy, safety and comfort.
- d) Not be discriminated against because of their sexual history or for any other reason.
- e) That their privacy be duly protected and that the total or partial confidentiality of the file be applied, in order to avoid the disclosure of information that may lead to their identification or that of their family members, maintaining the confidentiality of information about their residence, telephone, place of work or study, among other aspects. This protection includes their family and friends.
- f) TO BE INFORMED AND NOTIFIED IN A TIMELY AND SIMULTANEOUS MANNER, OF THE ACTIONS THAT HAVE BEEN PERFORMED DURING ALL THE JUDICIAL OR ADMINISTRATIVE PROCESS, AS WELL AS THE RELEVANT RESOURCES AND OF THE AID SERVICES. (1)
- g) To receive comprehensive, adequate and timely assistance, which may exceed the duration of the administrative or judicial process, regardless of the result.

- h) To receive medical attention, adequate and specialized treatment, when needed. As well as the use of the Protocol of attention in case of sexual violence, to prevent Sexually Transmitted Infections and the Technical Guide of Care in Family Planning.
- i) The appointment of a companion during the entire judicial or administrative process.
- j) Not to be coerced by statements made during the process.
- k) That the immediate, protective or precautionary measures established in this or in the rest of the laws in force be declared immediately.
- l) TO RECEIVE THE ASSISTANCE AND PROTECTION, TIMELY AND ADEQUATE, OF THE NATIONAL CIVIL POLICE. [REFORM :Law Decree No. 545, NOVEMBER 24, 2016; D. O. No. 232, T. 413, DECEMBER 13, 2016].
- m) To provide testimony under special conditions of protection and care; as well as, to use the form of advanced production of evidence.
- n) That their emotional state be taken into account when providing statements in court, and that this be done individually.
- o) To receive information about their rights and the process in a language or dialect that they understand, in a form accessible to their age and maturity.
- p) To request emergency measures, protection and precautionary measures in case of early release of the aggressor.

[...]

46. ESTONIA

[Penal Code, 2001\(As amended\)](#)¹¹²

§ 58. Aggravating circumstances

Aggravating circumstances are:

[...]

- 4) commission of the offence against a person who is in a service or financially dependent relationship with the offender, and against a former or current family member of the offender, against a person who lives with the offender or a person who is otherwise in a family relationship with the offender;

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 121. Physical abuse

(1) Causing damage to the health of another person and physical abuse which causes pain is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act if:

[...]

2) committed in a close relationship or relationship of subordination; or

3) committed repeatedly,

is punishable by a pecuniary punishment or up to five years' imprisonment.

[...]

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 141. Rape¹¹³

(1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by one to five years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

[...]

[Criminal Procedure Code, 2003](#)¹¹⁴

§ 141¹. Temporary restraining order

¹¹² Penal Code, RT I 2001, 61, 364 (6 June 2001, as amended up to 16 December 2014), available at <https://www.riigiteataja.ee/en/eli/522012015002/consolide> (last visited December 30, 2018).

¹¹³ Read in conjunction with Penal Code, art. 58 (4) (aggravating circumstances).

¹¹⁴ Criminal Procedure Code, RT I 2003, 27, 166 (12 February 2003, as amended up to 20 June 2013), available at <https://www.riigiteataja.ee/en/eli/530102013093/consolide> (last visited December 30, 2018).

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(1) For protection of private life or other personality rights of a victim, a person suspected or accused of a crime against the person or against a minor may be prohibited to stay in places determined by a court, to approach the persons determined by the court or communicate with such persons at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(2) A temporary restraining order is applied to a suspect or accused with the consent of the victim.

(3) In order to issue a ruling on application of a temporary restraining order, a preliminary investigation judge shall examine the criminal file and interrogate the suspect or accused and, if necessary, the victim with a view to ascertaining whether the request for temporary restraining order is justified. A prosecutor and, at the request of the suspect or accused, a counsel shall also be summoned before the court or the preliminary investigation judge and their opinions shall be heard.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(3¹) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (3) of this section in the adjudication of a request for application of a restraining order by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A ruling on temporary restraining order shall set out:

- 1) the reasons for the temporary restraining order;
- 2) the conditions of the temporary restraining order.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(5) A victim, Prosecutor's Office, suspect, accused or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against application of temporary restraining order or refusal to apply temporary restraining order.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(6) A copy of a ruling on establishment of temporary restraining order shall be submitted to a suspect or accused and victim and shall be sent to the Police and Border Guard Board. A preliminary investigation judge or court shall also immediately notify other persons whom the restraining order concerns of the application of temporary restraining order.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

§ 141². Verification of reasons for exclusion from office and temporary restraining order

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) A suspect or accused or his or her counsel may, upon expiry of four months from the exclusion from office or application of temporary restraining order, submit a request to a preliminary investigation judge or court to verify the reasons for the exclusion from office or application of temporary restraining order or to amend the conditions of application of temporary restraining order. A new request may be submitted four months after the review of the previous request.

(1¹) If a temporary restraining order restricts the right of a suspect or accused to use his or her dwelling, the suspect, accused or his or her counsel may submit the request described in subsection (1) of this section upon expiry of one month from the application of a temporary restraining order.

(2) A preliminary investigation judge or court shall review a request within five days as of the receipt thereof. The prosecutor, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court. The victim shall be also summoned to the review of an application for verification of the reasons for a temporary restraining order.

(2¹) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (2) of this section in the adjudication of a request by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A request shall be adjudicated by a court ruling. A ruling made in reviewing of a request is not subject to contestation, except in the case the conditions of the temporary restraining order are amended.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

§ 141³. Amendment and annulment of temporary restraining order at request of victim and Prosecutor's Office

(1) At the request of a victim or at the request of a Prosecutor's Office and with the consent of the victim, a preliminary investigation judge or court may amend the conditions of a temporary restraining order or annul the temporary restraining order.

(2) In order to issue a ruling on amendment of the conditions of or annulment of a temporary restraining order, a preliminary investigation judge or court shall examine the criminal file and interrogate the suspect or accused and the victim with a view to ascertaining whether the request is justified. The prosecutor, victim, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court.

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(3) A copy of a ruling on amendment of the conditions of or annulment of a temporary restraining order shall be submitted to the suspect or accused and victim and to other persons whom the restraining order concerns.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

[...]

§ 310¹. Decision concerning restraining order

(1) At the request of the victim, the court may apply, for protection of private life or other personality rights of the victim on the basis of § 1055 of the Law of Obligation Act, a restraining order with a term of up to three years to an offender convicted of a crime against the person or against a minor.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) A court shall adjudicate a request for restraining order pursuant to the procedure provided for in § 310 of this Code.

[Law of Obligations Act, 2001 \(As amended\)](#) ¹¹⁵

§ 1055. Prohibition on performance of damaging acts

If unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats with such behaviour be refrained from. In the case of bodily injury, damage to health, violation of inviolability of personal life or any other personality rights, it may be demanded, inter alia, that the tortfeasor be prohibited to approach other persons (restraining order), the use of housing or communication be regulated or other similar measures be applied.

[...]

47. ETHIOPIA

[Criminal Code, 2005](#) ¹¹⁶

Article 564.- Violence Against a Marriage Partner or a Person Cohabiting in an Irregular Union

The relevant provision of this Code (Arts. 555 - 560) shall apply to a person who, by doing violence to a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his /her physical or mental health.

Article 555.- Grave Intentional Injury

Whoever intentionally:

- a) wounds a so as to endanger his life or to permanently jeopardize his physical or mental health; or
- b) maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or
- c) in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances of the case and the gravity of the injury, with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.

Article 556. - Common Intentional Injury

7. Whoever causes another to suffer an injury to body or health other than those specified in Article 555 above, is punishable, upon complaint, with simple imprisonment not exceeding one year, or with fine.
8. The crime is punishable, upon accusation, with simple imprisonment from six months to three years where:
 - a) the criminal has used poison, a lethal weapon or any other instrument capable of inflicting injuries; or
 - b) the criminal has inflicted the injuries in breach of a duty, professional or other; or
 - c) the victim is weak, sick or incapable of defending himself.

Article 557. - Extenuating Circumstances

- (1) Whoever intentionally does injury to the person or health of another:
 - a) by exceeding the limits of necessity (Art. 75), or legitimate defence (Art. 78); or

¹¹⁵ Law of Obligations Act, RT I 2001, 81, 487 (26 September 2001, as amended up to 23 May 2013), available at <https://www.riigiteataja.ee/en/eli/506112013011/consolide> (last visited December 30, 2018).

¹¹⁶ Criminal Code, Proclamation No. 414/2004 (9 May 2005), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf> (last visited December 30, 2018).

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- b) following gross provocation, or under the shock or influence of a surprise, an emotion or a passion made understandable and in some degree excusable by the circumstances; or
 - d) at the request or with the consent of the victim who is capable of realizing his action and its consequences, where the injury is forbidden by law or offends public decency, is punishable with simple imprisonment not exceeding two years, or fine not exceeding four thousand Birr.
- (2) In the case provided for in sub-article (1)(c), simple imprisonment shall not exceed four years where the victim, due to age, mental or other conditions, was partially or completely incapable of realizing the consequences of his request or consent.

Article 558. - Consequences not Intended by the Criminal

Whoever has caused grave injury through criminal negligence, although his intention was to inflict common injury, is punishable with simple imprisonment from six months to three years.

Article 559. - Injuries Caused by Negligence

- (1) Whoever, by criminal negligence, causes another to suffer common injury to person or to health, is punishable with simple imprisonment not exceeding six months, or fine not exceeding one thousand Birr.
- (2) The punishment shall be simple imprisonment for not less than six months, and a fine of not less than one thousand Birr, where the injury inflicted is of the same kind as the one stated in Article 555, or where it was caused by a person like a doctor or driver, who had a special duty to safeguard the body or health of another.
- (3) The crime is punishable upon accusation, where the injury is grave, and upon complaint, where it is common. The extent of the injury shall be determined in accordance with Articles 555 and 556.

Article 560.- Assaults

- (1) Whoever assaults another or does him violence without causing bodily injury or impairment of health, is punishable, upon complaint, with a fine not exceeding three hundred Birr, or, in serious cases, with simple imprisonment not exceeding three months. Simple bruises, swellings or transient aches and pains are not held to be injuries to person or health.
- (2) Minor crimes that do not come under sub-article (1) of this Article are punishable in accordance with the provision of Article 840 of the Code of Petty Offences.
- (3) Where the victim has returned assault for assault, the Court may refrain from inflicting any punishment other than a reprimand or warning for the future on either of the two or both parties.

Article 587.- Abduction of a Woman

- (1) Whoever with intent to marry a woman abducts her by violence, or commits such an act after having obtained her consent by intimidation, threat, trickery or deceit, is punishable with rigorous imprisonment from three years to ten years.
- (2) Where the act of abduction is accompanied by rape, the perpetrator shall be liable to the punishment prescribed for rape in this Code.
- (3) The conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability.
- (4) Nothing shall affect the right of the victim to claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction.

48. FIJI

[Domestic Violence Decree, 2009](#)¹¹⁷

[...]

A DECREE TO PROVIDE GREATER PROTECTION FROM DOMESTIC VIOLENCE, TO CLARIFY THE DUTIES OF THE POLICE IN THAT REGARD, TO INTRODUCE DOMESTIC VIOLENCE RESTRAINING ORDERS AND OTHER MEASURES TO PROMOTE THE SAFETY AND

¹¹⁷Domestic Violence Decree, No. 33 (7 August 2009), available at http://www.pacilii.org/fj/promu/promu_dec/dvd2009191/ (last visited December 30, 2018).

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WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND TO PROMOTE REHABILITATION OF PERPETRATORS OF DOMESTIC VIOLENCE AND FOR RELATED MATTERS

IN exercise of the powers vested in me as Vice-President of the Republic of Fiji by virtue of the Office of the Vice-President and Succession Decree 2009 I hereby make the following Decree:

Part 1 - PRELIMINARY

Short title and commencement

1.-(1) This Decree may be cited as the Domestic Violence Decree 2009.

(2) This Decree commences on a date or dates to be appointed by the Minister by notice in the Gazette.

(3) The Minister may appoint different dates for the commencement of different provisions of this Decree.

Interpretation

2. In this Act, unless the context otherwise requires -

"adult" means a person who has reached the age of 18 years;

"applicant" means a person who applies for an order under this Decree on their own behalf or for the benefit of another person or persons;

"child" means a person who is under the age of 18 years;

"Clerk of the Court" includes the Registrar of a Court;

"Commissioner of Police" means the office of Commissioner of Police established under section 21 of the State Services Decree 2009 (Decree No. 6);

"compensation order" means an order for compensation made under section 39;

"Court" means a court set out in section 8;

"de facto relationship" means the relationship between a man and a woman who live or lived with each other as spouses on a genuine domestic basis although not legally married to each other;

"domestic violence" has the meaning set out in section 3;

"domestic violence offence" means a domestic violence offence as defined in section 4 of the [Penal Code](#);

"domestic violence restraining order" means -

(a) an order referred to in section 23 consisting of standard non-molestation conditions, referred to in sections 27 and 28, and any additional conditions that a Court applies, referred to in sections 29 to 38 inclusive; and

(b) includes an order that varies such an order;

"Family Law Act" means the [Family Law Act 2003](#);

"family or domestic relationship" means the relationship of -

(a) spouse;

(b) other family member;

(c) person who normally or regularly resides in the household or residential facility;

(d) boyfriend or girlfriend;

(e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care;

"final order" in relation to an order made under this Decree means an order that deals with a substantive matter in issue in proceedings on a final basis;

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"foreign domestic violence restraining order" means an order made by a Court in a prescribed foreign country, being -

(i) an order to protect a person from behaviour by the person against whom the order is made, where, if the behaviour occurred in Fiji it would be behaviour in respect of which a domestic violence restraining order could be made under this Decree; or

(ii) an order that varies, discharges, or is made in substitution for, such an order;

but does not include -

(i) an order made ex parte; or

(ii) an order of an interim nature; or

(iii) an order made by a Court in a prescribed foreign country that varies, discharges, or is made in substitution for, an order made by a Court in Fiji that is registered or is otherwise enforceable in that country;

"home" includes -

(a) any structure or vessel or part of a structure or vessel that can be used as a residence;

(b) any mobile home, caravan or other means of shelter placed upon any land that can be used as a residence;

"interim order" in relation to an order made under this Decree means an order that deals with a substantive matter in issue in proceedings on an interim basis pending further hearing of that particular matter;

"native land" has the meaning given to it by section 2 of the Native Lands Act (Cap. 133), and includes land administered or regulated under the Banaban Lands Act (Cap. 124) and the Rotuma Lands Act (Cap. 138);

"order" means an order by a Court that may be made or has been made under this Decree including an order -

(a) made in the absence of the respondent;

(b) made without notice to the respondent, and

(c) made on an interim or final basis;

"other family member" means any of the following -

(a) parent, grandparent, step-parent, father-in-law, mother-in-law;

(b) child, grandchild, step-child, son-in-law, daughter-in-law;

(c) sibling, half-brother, half-sister, brother-in-law, sister-in-law;

(d) uncle, aunt, uncle-in-law, aunt-in-law;

(e) nephew, niece, cousin;

(f) clan, kin or other person who in the particular circumstances should be regarded as a family member,

provided that, if a person was or is in a de facto relationship with another person the relationship of other family member includes a person who would be included if the persons in that de facto relationship were or had been married to each other;

"personal property" means clothing, furniture, household appliances, effects and other similar property in the possession or control of -

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(a) the respondent; or

(b) a person who is or will be protected by the domestic violence restraining order;

"perpetrator" means a person who perpetrates domestic violence as defined in section 3;

"police officer" means any member of the Fiji Police Force;

"police station" includes a police post;

"prescribed foreign country" means a country within the Commonwealth or which is a member of the Pacific Islands Forum, or any other country prescribed by regulations for this purpose;

"presiding judicial officer" means a resident Magistrate or Judge presiding in proceedings under this Decree,

"proceedings under this Decree" includes proceedings where a Court exercises jurisdiction under this Decree in the course of other proceedings before the Court;

"property of the protected person" means property that a person protected by a domestic violence restraining order owns or does not own, but where the person does not own the property, the property was -

(a) used or enjoyed by the person;

(b) available for the person's use or enjoyment;

(c) in the person's care or custody; or

(d) at the person's home or place or residence;

"property of a victim" means property that a victim owns or does not own, but where the person does not own the property, was -

(a) used or enjoyed by the person;

(b) available for the person's use or enjoyment;

(c) in the person's care or custody; or

(d) at the person's home or place or residence;

"protected person" means a person who is protected by a domestic violence restraining order made under this Decree and includes a person protected by an interim order or a final order;

"registered foreign domestic violence restraining order" means a foreign domestic violence restraining order that is registered in a Court pursuant to section 62;

"regulations" means regulations made under this Decree;

"respondent" means a person against whom an order is sought or made under this Decree;

"rules" means the rules made under this Decree unless the context otherwise requires;

"safety planning conference" means a conference referred to in section 58, conducted in accordance with that section, to attempt to resolve details about how the safety of a victim will be ensured and other matters relating to the objectives and principles in this Decree so far as the objectives and principles are relevant in a particular case.

"senior court officer" means a clerk of the Court or another senior administrative officer of the Court;

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"sexual abuse" means any act of a sexual nature by one person towards another which is or was violence as defined in subsections 3(2)(a), (d), (e), (f) or (g);

"spouse" includes a person who is or has been in a de facto relationship with the other person;

"tenancy order" means an order made under section 36;

"urgent monetary relief" means payment of, or contribution towards, any of the following expenses of a protected person, by the respondent -

(a) medical expenses;

(b) living expenses (for example food, necessities);

(c) accommodation expenses (for example rent, mortgage, loans, electricity, fuel bills);

(d) relocation expenses (for example telephone calls, transport, establishing a child at a new school);

(e) purchase of household necessities; and

(f) any other expenses of an urgent nature that the Court considers reasonably necessary;

"victim" means a victim of domestic violence as defined in section 3, including a child as set out in that section;

"weapon" means any article -

(a) used or threatened to be used by a person to cause injury to a person;

(b) made or adapted for use to cause injury to a person; or

(c) intended to be used, or which may be used, by a person who has possession of it, or access to it, to cause injury to a person;

"weapons licence" means a licence of a kind issued under the [Arms and Ammunition Act](#) (Cap 188).

Definition of domestic violence

3.-(1) "Domestic violence" in relation to any person means violence against that person ('the victim') committed, directed or undertaken by a person ('the perpetrator') with whom the victim is, or has been, in a family or domestic relationship.

(2) In relation to subsection (1), "violence" means any of the following -

(a) physical injury or threatening physical injury;

(b) sexual abuse or threatening sexual abuse;

(c) damaging or threatening to damage property of a victim;

(d) threatening, intimidating or harassing;

(e) persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner;

(f) causing the victim apprehension or fear by -

(i) following the victim; or

(ii) loitering outside a workplace or other place frequented by the victim, or

(iii) entering or interfering with a home or place occupied by the victim, or

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(iv) interfering with property of the victim, or

(v) keeping the victim under surveillance;

(g) causing or allowing a child to see or hear any of the violence referred to in paragraphs (a) to (f) inclusive;

(h) causing another person to do any of the acts referred to in paragraphs (a) to (g) inclusive towards the victim.

(3) Subject to subsection (4), causing or allowing a child to see or hear violence, as specified in paragraph (g) of subsection (2), includes putting the child, or allowing the child to be put, at real risk of seeing or hearing that violence.

(4) A person who suffers the violence is not to be regarded, for the purposes of paragraph (g) of subsection (2) or of subsection (3), as having caused or allowed or put the child at real risk of seeing or hearing the violence.

(5) A single act may amount to violence for the purpose of subsection (1) in addition a number of acts that form part of a pattern of behaviour may amount to violence even though some or all of those acts, when viewed in isolation, may appear minor or trivial.

Decree to bind State

4. This Decree binds the State.

Application of the Decree

5. This Decree applies to domestic violence committed in Fiji and overseas.

Objects

6. The objects of this Decree are -

(a) to eliminate, reduce and prevent domestic violence;

(b) to ensure the protection, safety and wellbeing of victims of domestic violence;

(c) to implement the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and related conventions; and

(d) to provide a legally workable framework for the achievement of (a), (b) and (c) above.

Principles

7.-(1) The following principles must be applied by a Court when exercising jurisdiction under this Decree and by any person who exercises a power, or performs a function, pursuant to this Decree -

(a) the need to promote the objects of this Decree;

(b) the need to ensure that proceedings under this Decree are as speedy, inexpensive and simple as possible;

(c) the need to ensure the safety and wellbeing of victims of domestic violence;

(d) the need to ensure that children are not exposed to domestic violence and to ensure the safety and wellbeing of children who have been, or are at risk of becoming, a direct or indirect victim of domestic violence;

(e) the need to ensure that victims of domestic violence can go about their life and usual routines free from the risk of domestic violence;

(f) the need to ensure as far as possible that victims of domestic violence are able to remain in their usual homes, and even if this does not or cannot occur, that their accommodation needs have highest priority;

(g) the need to address the adverse consequences of domestic violence for the victims and to rehabilitate the victims;

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(h) the need to ensure that victims of domestic violence are not further victimised by the perpetrator or others, in the course of the proceedings or otherwise, because the victim sought protection or other redress in relation to the violence; and

(i) the need to ensure that the perpetrator -

(i) is aware of the terms and effect of an order made under this Decree which imposes obligations upon them;

(ii) is aware of services that may be able to assist them to address their violence;

(iii) is encouraged to accept responsibility for their violence; and

(iv) contributes, where possible, to the rehabilitation of the victim.

Jurisdiction of Courts

8.-(1) The following Courts have jurisdiction to make orders under this Decree -

(a) the Magistrates' Court when constituted by a resident magistrate;

(b) the Family Division of the Magistrates' Court;

(c) the Family Division of the High Court;

(d) a Juvenile Court; and

(e) the High Court.

(2) An application under this Decree may be commenced in any of the Courts specified in subsection (1) and in addition those Courts may make an order under this Decree when exercising jurisdiction in other proceedings before the Court, including proceedings relating to a criminal charge.

Transfer of proceedings

9.-(1) Subject to subsection (2) and (3), where -

(a) proceedings under this Decree are pending before a Court, and

(b) it appears to the Court that it is in the interests of justice or of convenience to the parties that the proceedings be dealt with in another Court that has jurisdiction under this Decree,

the Court may, before making an order, or after making an interim order but before making a final order, transfer the proceedings to another Court that has jurisdiction under this Decree.

(2) When a Court is considering whether to transfer the proceedings to another Court, the Court must make an interim order under this Decree to ensure the safety and wellbeing of each person proposed to be protected unless -

(a) suitable orders are already current; or

(b) the Court determines that the safety and wellbeing of each relevant person is not at risk.

(3) Where a Court intends to order that proceedings under this Decree be transferred to another Court, the Court may -

(a) request that the Court to which the proceedings are being transferred list the matter within a specified time, and

(b) make orders about procedural matters that will enable the case to proceed as quickly as possible before the Court to which the proceedings are being transferred.

Courts to act in aid of each other

10. Courts having jurisdiction under this Decree must severally act in aid of and be auxiliary to each other in all matters under this Decree.

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Matters to be considered by the Court

11. Notwithstanding sections 28 and 29 of the Magistrates Court Act (Cap. 14), and any other law that would require a Court, when exercising jurisdiction under this Decree, to promote reconciliation between the parties, the Court must, in making any decisions or order under this Decree, regard the safety and wellbeing of the victim to be of the utmost and paramount importance in weighing factors that need to be taken into account.

PART 2 - DUTIES

Police to prevent domestic violence, detect and bring to justice

12. Each police officer has a duty to prevent the commission of domestic violence offences, to detect and bring offenders to justice and to apprehend all persons who the police officer is legally authorised to apprehend and for whose apprehension sufficient grounds exist.

Police to render assistance to victims of domestic violence

13.-(1) Each police officer must when an incident of domestic violence is reported, respond in a timely way, investigate and render such assistance as is reasonable in the circumstances to the victim.

(2) Each police officer must at the scene of an incident of domestic violence or as soon after as is reasonably possible, or when an incident of domestic violence is reported -

(a) render such assistance to the victim as may be required in the circumstances, including -

(i) assisting the victim or another person to obtain medical treatment;

(ii) subject to subsection (iii), assisting to ensure as far as possible that the victim is able to remain in their usual home in accordance with the priority that is placed on the victim's accommodation needs by section 7 of this Decree;

(iii) assisting the victim to find other suitable accommodation if it is not possible for the victim to remain in their usual home or the victim does not wish to do so; and

(iv) assisting the perpetrator to find suitable accommodation;

(b) if it is reasonably possible to do so, hand written information listed in subsection (c) to the victim, in the language of the victim's choice and explain the contents to the victim;

(c) the written information to be handed to the victim referred to in subsection (b) is information in the prescribed form regarding -

(i) services that are available to assist the victim;

(ii) the rights that the victim may have to seek protection and other orders under this Decree;

(iii) the duty that police may have to apply for an order for the protection of the victim under this Decree;

(iv) the responsibilities police may have in relation to charging the perpetrator, and

(v) information about the complaints process that applies to police work in relation to domestic violence;

(d) if it is reasonably possible to do so, hand prescribed written information listed in subsection (c) to the perpetrator in the language of the perpetrator's choice, and explain the contents to the perpetrator including -

(i) services that are available to assist the perpetrator; and

(ii) the matters in section 13(2)(c), subparagraphs (ii) to (v), regarding the rights that the victim may have to seek protection and other orders under this Decree.

Police to apply for a domestic violence restraining order

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14.-(1) Subject to subsection (2), a police officer must make an application for a domestic violence restraining order for the protection of a person who is, or may become, a victim of domestic violence in the following cases -

(a) where a person is charged with a domestic violence offence, or

(b) where the police officer suspects or believes that -

(i) a domestic violence offence has recently been committed, is being committed, is imminent, or is likely to be committed, and

(ii) the victim's safety or wellbeing is at risk.

(2) Where subsection (1) applies a police officer must make an application for a domestic violence restraining order against the relevant person or persons, being -

(a) the person charged with a domestic violence offence, or

(b) the person or persons who pose the risk.

(3) The obligation to apply for a domestic violence restraining order in subsection (1) and (2) does not apply if the police officer -

(a) is aware that an application for a domestic violence restraining order has already been commenced for the protection of the person against the person who would be bound if an order was sought by the police officer; or

(b) in the special circumstances of the case, having regard to the objects and principles in this Decree, a decision has been made by the officer in charge that there are good reasons why an application should not be made.

(4) Where a decision not to apply is made under subsection (3), then subject to subsection (5), the officer in charge must make a written record of the decision and the reason for the decision and immediately provide a copy of this with the prescribed complaints notice attached to each person for whose protection a domestic violence restraining order would otherwise have been sought.

(5) Where a person for whose protection a domestic violence restraining order would otherwise have been sought is a person under 16 years or a person who lacks the mental capacity to understand the effect of a domestic violence restraining order, the written copy of the decision and reasons referred to in subsection (4) with the complaints notice attached must instead be immediately provided to a person above the age of 18 years who -

(a) is a parent or guardian of the person; or

(b) is providing care to the person; or

(c) is supporting or assisting the person and is considered appropriate by the senior police officer in the particular circumstances.

(6) The complaints notice referred to in subsection (4) and (5) is a notice in the form prescribed by the regulations that explains the rights of the victim to make a complaint about delay by a police officer in applying for a domestic violence restraining order for the protection of the person or a decision by a police officer not to apply for such an order.

Police to assist with collection of personal property

15.-(1) Where a Court makes a request under this Decree that the officer in charge of a police station arrange for a police officer to accompany a person to a specified place to assist with arrangements regarding the collection of specified personal property it is the duty of the officer in charge of a police station to whom the request is directed to arrange for a suitable police officer to accompany the person as specified in the order.

(2) Where a person who is protected by a domestic violence restraining order, requests a police officer to be present at a place to supervise the transfer of personal property between a person who is bound by the order and a person who is protected by

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the order, it is the duty of the officer to make all reasonable arrangements to assist where the office believes that a breach of the peace or a breach of the domestic violence restraining order may otherwise occur.

Legal practitioners to provide information about services

16.-(1) In the circumstances referred to in subsection (3) a legal practitioner who receives instructions to act for a person must provide the person at the earliest reasonable opportunity with information in the prescribed form which explains the services and programs that may be available to assist.

(2) Subsection (1) applies unless the legal practitioner considers that providing the person with information in the prescribed form would not be useful or appropriate for the person in the circumstances.

(3) Subject to subsection (2), subsection (1) applies when a legal practitioner receives instructions from -

(a) a person who instructs that they have been a victim of domestic violence;

(b) a person who seeks to be, or is, protected by an order made under this Decree;

(c) a person who instructs that they have perpetrated domestic violence,

(d) a person who is the respondent to an application for an order under this Decree; and

(e) a person who has been charged with a domestic violence offence.

(4) Where subsection (3) applies but the legal practitioner is of the opinion that the person is unable to read or understand information in the prescribed form, the legal practitioner must take reasonable steps to explain the information to the person.

Court to provide information about services

17.-(1) Subject to this section a Court, when dealing with an application for an order under this Decree, must ensure that information in the prescribed form, which explains services and programs that may be available to provide assistance, is given as early as possible in the proceedings to -

(a) each person who would be protected by the order; and

(b) to the respondent.

(2) The requirement in subsection (1) is satisfied in relation to a person if the person confirms, or the Court has reason to believe, that the person has already received the information.

(3) Where a person who would be protected by an order is under 16 years or has a mental or other incapacity such that they are incapable of understanding the information required to be provided, the requirement in subsection (1) is satisfied -

(a) if the Court directs that the information be provided to the applicant or to another person who is caring for, or supporting, that protected person, or

(b) if the Court determines, in the special circumstances of the case, that it would not be useful or appropriate for the information to be provided to that protected person.

(4) Where a person to whom this section applies is not present before the Court, the Court may direct that the information be -

(a) posted to the person;

(b) served on the person; or

(c) provided to the person in another way specified by the Court.

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(5) In criminal proceedings relating to a charge for a domestic violence offence, the Court must ensure that information in the prescribed form, which explains services and programs that may be available to provide assistance, is given to the defendant at the earliest possible opportunity during the proceedings.

(6) The requirement in subsection (5) is satisfied if the defendant advises that they have already received a copy of the information.

Court to explain the effect of orders

18.-(1) Subject to subsection (2), a Court that makes a domestic violence restraining order under this Decree must explain to -

(a) the person bound by the order; and

(b) the person protected by the order,

who are in Court when the order is made -

(c) the purpose, terms and effects of the order;

(d) the consequences that may follow if the person bound by the order breaches the order;

(e) the consequences that may follow if the person protected by the order -

(i) encourages or invites the person who is bound by the order to breach the order; or

(ii) by their actions causes the person who is bound by the order to breach the order;

(f) that the order must be varied, suspended or discharged if the person who is bound by the order or the person protected by the order or both or all of them wish to do anything that would be contrary to, or in breach of, the order;

(g) how the order may be varied, suspended or discharged.

(2) If a person who would be protected by an order is under 16 years or has a mental or other incapacity such that they are incapable of understanding the information required to be provided, the requirement in subsection (1) is satisfied if the Court directs that the information be provided to the applicant or to another person who is caring for, or supporting, that person.

(3) If a person referred to in section 19(1) (a) or (b) is not present in Court when the order is made or it is not practical for the court to give the explanation at the time the restraining order is made, then the Court must direct the clerk of the court to cause a prescribed document containing the explanation -

(a) in the case of a person bound by the order, to be served on the person; and

(b) in the case of a person protected by the order, to be delivered to the person unless the Court directs that it should be delivered to another person on behalf of the protected person (for example, to their care giver).

(4) An order made under this Decree is not invalid merely because a person who should have been given the explanation referred to in subsection (1) was not given the explanation.

PART 3 - DOMESTIC VIOLENCE RESTRAINING ORDERS

Who can apply

19.-(1) An application for an order under this Decree may be made in respect of -

(a) an adult, by -

(i) the person themselves; or

(ii) another person who normally cares for, or is currently caring for, the person;

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(b) a child, by -

(i) a parent or guardian of the child;

(ii) an adult with whom the child resides (either usually or on a temporary basis);

(iii) a child themselves where the child has attained the age of 16 years and is a married person; and

(iv) a child themselves where the child has attained the age of 16 years and the court has granted leave to the child to make the application on their own behalf;

(c) an adult or a child, by -

(i) a police officer, where a person has been charged with a domestic violence offence or the police officer suspects or believes that a domestic violence offence has recently been committed, is being committed, is imminent, or is likely to be committed, and the victim's safety or wellbeing is at risk; or

(ii) the Director of Social Welfare or a welfare officer appointed under section 37(2) of the [Juveniles Act](#) (Cap. 56); or

(iii) the Public Trustee when undertaking management and care of the property of a person of unsound mind under section 17(1) of the [Public Trustee Act](#) (Cap. 64) or another person holding an appointment in respect of the affairs of a person of unsound mind under section 23 of that Act; or

(iv) the Public Trustee when holding an appointment under section 17(2) of the [Public Trustee Act](#) (Cap. 64) to undertake the management and care of the property of an incapable person; or

(v) any other person where it appears to the Court to be necessary for the safety or wellbeing of the victim.

(2) Where an application is made under section (1) for the protection of a person over 16 years and the applicant is not the person intended to be protected, the applicant must demonstrate to the satisfaction of the Court that -

(a) the applicant has the consent of the person to be protected to make the application; or

(b) the person to be protected lacks the capacity to understand the proceedings or the nature and extent of the risk and the proceedings are necessary for the victim's safety or wellbeing; or

(c) it is not reasonable in the circumstances for consent to be required.

Urgent proceedings without notice to the respondent

20.-(1) Where an application is filed seeking an order under this Decree and the applicant seeks to proceed urgently without notice to the respondent, section 42 applies in relation to listing the matter for urgent hearing by the court.

(2) A Court exercising jurisdiction under this Decree may make a domestic violence restraining order without notice to the respondent if the Court is satisfied that the delay that would be caused if notice to the respondent was required would or might entail -

(a) a risk of harm; or

(b) undue hardship

to a person who would be protected by the order.

(3) A domestic violence restraining order made without notice to the respondent is an interim order which continues until it is confirmed as a final order, or is earlier varied, suspended or discharged by a Court.

(4) At the time the order referred to in subsection (2) is made, the Court must -

(a) specify a further Court date when the respondent must be present at Court; and

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(b) give directions about urgent service on the respondent of -

(i) a sealed copy of the order of the Court;

(ii) a sealed copy of any application and supporting material filed by the applicant; and

(iii) the information the Court is required to be provide to the respondent pursuant to sections 17 and 18.

Application with notice to the respondent

21. Where an application is filed seeking an order under this Decree and the applicant does not seek to proceed urgently without notice to the respondent, section 42 applies in relation to listing the matter before the court and service of the application on the respondent.

Interim and final orders

22. Except as provided by this Decree -

(a) any order that a Court may make under this Decree may be made as an interim order or as a final order;

(b) where a Court makes an interim domestic violence restraining order that order continues until confirmed by a Court as a final order or earlier varied, suspended or discharged by a Court;

(c) where a Court makes a final domestic violence restraining order that order continues unless varied, suspended or discharged by a Court.

Grounds for making a domestic violence restraining order

23.-(1) A Court may make a domestic violence restraining order for the safety and wellbeing of a person if satisfied that the person is, or has been, in a family or domestic relationship with the respondent, and -

(a) the respondent has committed, is committing, or is likely to commit domestic violence against that person or against another person relevant to the application, and

(b) the making of the order is necessary for the safety and wellbeing of the person or another person relevant to the application, or both.

(2) In determining whether a domestic violence restraining order should be made for the safety and wellbeing of a person, the Court must consider -

(a) whether there is reason for concern that the respondent's behaviour or other behaviour that would be domestic violence may be repeated by the respondent;

(b) the perception of the applicant and of a person who would be protected by the order, about the nature and seriousness of the respondent's behaviour in respect of which the application is made; and

(c) the effect of the respondent's behaviour on each person who would be protected by the order including the effect of the respondent's behaviour on their ability to go about their normal life and normal routines.

Circumstances where orders must be made

24.-(1) Subject to subsection (3) but notwithstanding any other provision in this Decree -

(a) where a person stands charged before a Court with an offence which is a domestic violence offence, the Court must -

(i) make an interim domestic violence restraining order under this Decree against the defendant for the safety and wellbeing of the person against whom the offence appears to have been committed; and

(ii) make an order directing the defendant to appear at the further hearing of the matter on a date and at a location fixed by the Court;

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(b) where a person -

(i) pleads guilty to, or is found guilty of, an offence which is a domestic violence offence; or

(ii) the Court intends to stay or terminate the proceedings,

the Court must make a domestic violence restraining order under this Decree for the safety and wellbeing of the person against whom the offence or alleged offence was committed;

(2) here paragraph (a) or (b) of subsection (1) applies and there is a domestic violence restraining order made under this Decree in effect against the defendant for the safety and wellbeing of the person against whom the offence is alleged to have been committed, or was committed, the Court may vary the order if this appears desirable to provide greater protection for the safety and wellbeing of a protected person.

(3) Where subsection (1) applies the Court need not make an order under this section if satisfied that, having regard to the safety and wellbeing of the person for whose protection the order would be made, the order is not required.

Application by police by telephone

25.-(1) A prescribed police officer may apply to a magistrate or judge of a Court that has jurisdiction under this Decree (referred to in this section as the "presiding judicial officer") by telephone for an interim domestic violence restraining order under this section.

(2) Before applying for an order under this section the police officer must -

(a) complete the application part of the prescribed form by indicating the grounds on which the order is sought;

(b) if possible to do so, without causing any unreasonable delay in making the application, transmit a copy of the completed application to the presiding judicial officer by facsimile transmission;

(c) if the respondent is present at the location from which the police officer is intending to apply for the order by telephone -

(i) invite the respondent to be present during the telephone application; or

(ii) if the respondent is in custody, unless there are good reasons not to do so, arrange for the respondent to be present;

(d) at the commencement of the application by telephone advise the presiding judicial officer whether the respondent is present with the police officer and if present whether the respondent is able to hear all of the telephone call.

(3) Where a presiding judicial officer to whom the application under subsection (1) is made is of the opinion that it is not practical in the circumstances of the case for the police officer to appear before the Court to make the application, the application may proceed by telephone.

(4) Where an application proceeds by telephone under this section the proceedings are deemed to be interim proceedings in Court before the presiding judicial officer, and -

(a) the provisions of this Decree apply, and

(b) any order made by the presiding judicial has the same effect as an order made in Court under this Decree.

(5) A judicial officer who makes an order under this section must -

(a) complete the application part of the prescribed application form unless the judicial officer has before the conclusion of the hearing by telephone received a copy of the application from the police officer by facsimile transmission;

(b) reduce to writing and include with the prescribed application form any additional information provided by the police officer during the hearing by telephone;

(c) complete and sign the order on the prescribed form;

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(d) determine the time and place of the next Court date being a date

(i) within 30 days of the date that the order is made if the Court will be sitting during that time at a location sufficiently convenient to the person protected by the order, the police officer and the respondent; or

(ii) if it is not possible to specify a date within 30 days then the first suitable hearing day after the end of that period;

(e) record on the order the reasons for making the order and the time and place of the next Court date;

(f) inform the member of the police force, by telephone, of the terms of the order, the reasons for making it and the time at and place of the next Court date;

(g) if the respondent is present with the police officer, speak to the respondent and inform the respondent of the matters set out in subsection (5)(f) and also explain the effect of the orders to the respondent as required by this Decree;

(h) if reasonably possible to do so, immediately send by facsimile transmission to the police officer, a copy of the application, the written notes of any additional information provided by the police officer during the hearing by telephone, and the order so made; and

(i) as soon as practical, cause the completed and signed prescribed form, to be forwarded to the Clerk of the Court for the Court file.

(6) A police officer who proceeds with an application under this section must -

(a) reduce to writing on the prescribed application completed by the police officer any additional information provided by the police officer to the presiding judicial officer during the hearing by telephone;

(b) on being informed under subsection (5) of the making and terms of the order, complete the relevant order parts of the prescribed form as directed by the presiding judicial officer; and

(c) place a copy of the application and order if received from the presiding judicial officer by facsimile transmission with the application.

(7) As soon as possible after an order under this section is made, the police officer must -

(a) cause a copy of the application and the order received by facsimile transmission from the presiding judicial officer, or if not available, then the application completed under subsection (6)(a) and the order completed under subsection (6)(b), to be served on the defendant; and

(b) unless already explained to the respondent by the presiding judicial officer, cause the effect of the orders to be explained to the respondent having regard to section 18 of this Decree;

(c) cause a copy of the documents referred to in subsection 7(a) to be handed as soon as possible to the person protected by the order;

(d) forward a copy of the order served to the clerk of the court, for the Court file.

(8) An order made under this section is deemed to be a summons to the respondent requiring the respondent to appear before the Court at the time and place shown on the order.

Orders by the Court's own motion

26.-(1) Notwithstanding any other provision in this Decree, where the Court that has jurisdiction under this Decree is dealing with proceedings, other than proceedings under this Decree, the Court may on its own motion make a domestic violence restraining order under this Decree if the Court considers -

(a) there are sufficient grounds to consider making an order under this Decree;

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(b) that the order is required to ensure the safety and wellbeing of a victim of domestic violence;

(c) it is convenient and in the interests of justice that the order be made; and

(d) it is reasonable in all the circumstances that the order be made.

(2) An order made by the Court on its own motion under subsection (1) is an interim order and the Court must give directions in relation to -

(a) the date and place of the next hearing;

(b) who must be present at Court at the next hearing;

(c) service of the order;

(d) any documents that should be filed prior to the next hearing; and

(e) any other matter relating to the further hearing of the matter considered appropriate by the Court.

Standard non-molestation conditions

27.-(1) The standard non-molestation conditions that apply to every domestic violence restraining order are set out in subsection (2).

(2) The standard non-molestation conditions are that the respondent must not -

(a) physically assault or sexually abuse the protected person;

(b) threaten to physically assault or sexually abuse the protected person;

(c) damage or threaten to damage any property of the protected person;

(d) threaten, intimidate or harass the protected person;

(e) behave in an abusive, provocative or offensive manner towards the protected person;

(f) encourage any person to engage in behaviour against a protected person, where the behaviour if engaged in by the respondent would be prohibited by the order.

(3) In addition to the conditions set out in subsection (2), a Court may order other conditions having regard to sections 28 to 37.

Standard non-molestation conditions apply to a child

28.-(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person and the person has a child or children in their care -

(a) unless the Court orders otherwise, the standard non-molestation conditions also apply for the protection of that child or those children; and

(b) the Court may apply additional conditions under this Decree for the safety and wellbeing of the child or children.

(2) The powers in this section are in addition to the power of a Court, exercising jurisdiction under this Decree, to make a domestic violence restraining order for the protection of a child in the child's own right.

Additional conditions - contact

29.-(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may include, either absolutely or on conditions specified by the Court, any of the non-contact conditions specified in subsection (2).

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(2) The non-contact conditions referred to in subsection (1) are that the respondent must not -

- (a) watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or any other place that the protected person visits often; or
- (b) follow the protected person about or stop or accost the protected person in any place; or
- (c) enter or remain on any land or building occupied by the protected person; or
- (d) enter any land or building or remain there when the protected person is also on the land or in the building;
- (e) make any other contact with the protected person (whether by telephone, correspondence, or otherwise), except such contact -
 - (i) that is permitted in the domestic violence restraining order made by the Court; and
 - (ii) that is reasonably necessary in an emergency.

Additional conditions - spouse

30.-(1) Subject to subsection (2), where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may direct that the order, or specified parts of the order, also apply for the benefit of a person, not being the respondent, who is the spouse of the protected person.

(2) The Court may make a direction under subsection (1) when satisfied that -

- (a) the respondent is engaging in, or has engaged in, behaviour that, if the respondent and the person were or had been in a family or domestic relationship would amount to domestic violence against the person; and
- (b) the respondent's behaviour towards the person is wholly or partly due to the person's relationship with a protected person; and
- (c) the making of the direction is necessary for the safety of the person; and
- (d) where practical in the circumstances, the court is satisfied that the person consents to the direction being made.

Additional conditions - children

31.-(1) This section applies where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a child.

(2) In this section, "a specified order or agreement" means -

- (a) an interim or final custody, guardianship or access order made by a court in Fiji;
- (b) an order which is a residence order, a specific issues order or a contact order made under the [Family Law Act](#); or
- (c) a parenting plan registered under section 59 of the [Family Law Act](#).

(3) Where subsection (1) applies -

- (a) if there is no specified order or agreement in effect in relation to the child; and
- (b) the Court considers that the safety and wellbeing of the child, or of another person, or of the child and another person requires that an order be made immediately in relation to -
 - (i) where the child should live;
 - (ii) who should care for the child;

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(iii) a child being delivered to the person who should care for the child;

(iv) arrangements for contact in relation to the child; or

(v) other issues relating to the safety and wellbeing of the child,

then subject to subsection (4) and subsection (11), the Court may make an order in relation to a matter specified in subparagraphs (i) to (v) of paragraph (b) as a condition of a domestic violence restraining order.

(4) Before a Court makes an order of the kind specified in subsection (3) the Court -

(a) must consider whether each parent or guardian of the child has received notice of the application; and

(b) unless the Court considers that the safety and wellbeing of the child, or of a person protected by the domestic violence restraining order, or both, justifies the Court proceeding without notice, the Court must order that adequate notice be given to each parent or guardian of the child before making the order.

(5) When a Court makes an order under subsection (3) the order so made takes effect immediately and continues in effect unless and until it is varied, suspended or discharged by subsequent order under this Decree or by a Court exercising jurisdiction under the Family Law Act.

(6) Where subsection (1) applies and -

(a) a specified order or agreement is in effect in relation to that child; and

(b) the Court considers that one or more of the provisions of a specified order or agreement requires adjustment to ensure the safety and wellbeing of the child, or another person who is or will be protected by the domestic violence restraining order or both,

then subject to subsection (11), the Court may vary or suspend the specified order or agreement to the extent necessary to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order.

(7) The power in subsection (6) to vary or suspend a specified order or agreement applies notwithstanding the provisions of the Family Law Act.

(8) Before a Court makes an order to vary or suspend a specified order or agreement the Court -

(a) must consider whether each of the parties to the proceedings in which the existing orders were made have received notice of the application to vary or suspend; and

(b) unless the Court considers that the safety and wellbeing of the child or of a person protected by the domestic violence restraining order, or of both such child and person, warrants the Court proceeding without notice, the Court must order that adequate notice be given to the relevant party or to each of the relevant parties before proceeding to determine the matter.

(9) In determining, whether to vary or suspend a specified order or agreement, the Court must take the following matters into account -

(a) the nature and extent of the risk to the child and to any other person protected by the domestic violence restraining order that has been made or which the Court intends to make;

(b) whether the risk can be eliminated if the Court makes an order or varies an existing order -

(i) to provide that access or contact visits by the respondent in relation to the child may only take place if supervised by a suitable person specified by the Court; or

(ii) to provide that particular arrangements apply to ensure that the respondent does not come into contact with a specified person protected by this order when a child is being collected and returned in relation to access or contact visits; or

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(iii) in some other way concerning how the contact or access visits may take place.

(10) In addition to the matters specified in subsection (9), when determining whether to vary or suspend a specified order or agreement, the Court must take into account -

(a) whether the concerns raised in support of the application to vary or suspend the specified order or agreement, were considered by the Court that made the specified order or agreement; and

(b) whether proceedings in relation to the specified order or agreement are pending before another Court,

provided that neither of these matters may be treated as an impediment by the Court if the Court considers that the circumstances that now exist require variation or suspension of the specified order or agreement to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order.

(11) If the Court that is considering an application under subsection (3) or subsection (6) is a Court that also has jurisdiction under the [Family Law Act](#) and the Court considers that -

(a) it would be preferable to deal with the application under the [Family Law Act](#) rather than under this Decree; and

(b) there would be no disadvantage in relation to the need to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order,

the Court may decline to hear the application under this section and instead treat the application under this section as an application made under the [Family Law Act](#) to which the [Family Law Act](#) applies.

(12) When a Court makes an order under subsection (6) the order so made -

(a) takes effect immediately in substitution for the provisions of the specified order or agreement so varied or suspended; and

(b) continues in effect unless and until it is varied, suspended or discharged by subsequent order under this Decree or by a Court exercising jurisdiction under the [Family Law Act](#).

(13) When a court makes an order under subsection (6) the Court must ensure that a sealed copy of the order -

(a) forwarded as soon as possible to the Registrar of the Family Division of the Magistrates Court or the Family Division of the High Court, which ever may be appropriate; and

(b) served on each of the parties in the proceedings in which the specified order was made.

(14) A person specified in section 65 of the [Family Law Act](#) may apply to the Family Division of the Magistrates' Court or the Family Division of the High Court, as the case may be, to vary, suspend or discharge an order made under subsection (3) or subsection (6).

(15) If an application is made to the Family Division of the Magistrates' Court or the Family Division of the High Court, to vary, suspend or discharge an order made under subsection (3) or subsection (6) that Court is deemed to have power under the [Family Law Act](#) to vary or discharge the order made under subsection (3) or subsection (6) as if the order was an order made under the [Family Law Act](#).

Additional conditions - possessions

32.-(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may make any of the orders specified in subsection (2) concerning use of personal property.

(2) The orders referred to in subsection (1) are -

(a) that the respondent -

(i) must deliver specified personal property to the protected person or to another person or location specified in the order;

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(ii) must allow the protected person, or another person on their behalf, to collect specified personal property from the respondent or from a specified location;

(iii) must allow the protected person, or another person on their behalf, access to premises for the purpose of collecting specified personal property;

(iv) must leave specified personal property in the home, or at another specified location, for use by the protected person;

(v) must not remove or attempt to remove specified personal property from the protected person;

(vi) must comply with directions by the court regarding arrangements for transfer of specified personal property.

(b) that a person protected by the order must -

(i) make specified personal property available for use by the respondent;

(ii) comply with directions made by the court regarding arrangements for transfer of specified personal property.

(3) When considering whether to make an order under this section the Court must -

(a) give highest priority to the safety and wellbeing of the protected person and any child in their care or ordinarily in their care; and

(b) have regard to the needs of the respondent and to any other person who would be affected by the order.

(4) When a Court makes an order under this section, the Court may request that the officer in charge of a particular police station arrange for a police officer to accompany a person to a specified place to assist with arrangements regarding the collection of specified personal property.

Additional conditions - weapons

33.-(1) Where a Court makes or intends to make a domestic violence restraining order for the safety and wellbeing of a person, the Court may make orders in relation to any of the matters in subsection (2) if satisfied that the condition is necessary for the safety and wellbeing of the protected person.

(2) Where subsection (1) applies, the additional orders that the Court may make in relation to weapons are -

(a) that the respondent must not have any weapons or particular weapons specified by the Court in their possession, custody or control;

(b) that the respondent must not seek to acquire any weapons or particular weapons specified by the Court;

(c) that the respondent must surrender all weapons and weapons licences or those specified by the Court, to the police within the time specified in the order;

(d) that the respondent must surrender all or any weapons and weapons licences at any time on demand by a police officer;

(e) that all weapons licences or those specified by the Court held by the respondent is suspended or cancelled; and

(f) that the respondent is disqualified from holding or seeking to hold any weapons licence or a particular weapons licence specified by the Court.

(3) Where the Court makes an order under subsection (2) the order applies unless and until the order is discharged by the Court.

(4) Where the Court makes an order under subsection (2) the Court may additionally order that -

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(a) the Commissioner of Police be notified of the terms of these orders in relation to the Commissioner's functions under the Arms and Ammunition Act (Cap 188);

(b) police search locations specified by the Court for all or particular weapons or weapons licences, that the Court has reason to believe are in the respondent's possession, custody or control, to remove such weapons and retain them unless and until the Court directs that they be released to the respondent or be destroyed.

Additional conditions - urgent monetary relief

34.-(1) Where the Court makes or is intending to make a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may make an order that the respondent pay such urgent monetary relief to, or in respect of, a person protected by the order as the Court deems fair and reasonable.

(2) The following factors must be considered by the Court in determining an application for urgent monetary relief -

(a) the consequences of the domestic violence for the protected person;

(b) whether the protected person was wholly or partly financially reliant on the respondent;

(c) the financial circumstances of the protected person and whether there is a need for urgent monetary relief;

(d) whether the protected person would suffer hardship if an order for urgent monetary relief is not made;

(e) the financial circumstances of the respondent and whether the respondent has an ability to pay urgent monetary relief; and

(f) the desirability of ensuring wherever possible that the primary responsibility to provide urgent monetary relief is borne by the respondent rather than by the Department of Social Welfare.

(3) An order for urgent monetary relief may specify such lump sum, periodic or in-kind payments as the Court determines and in each case the Court must specify when and to whom the payment the payment must be made, but -

(a) where an order does not specify when a particular payment is to be made -

(i) if it is a lump sum or in-kind payment, the payment must be made by the respondent within 7 days of the date of the order; and

(ii) if it is a periodic payment, the first payment must be made within two days of the date of the order and on that same day in each subsequent week.

(b) where an order does not specify to whom a payment must be made -

(i) if it is a cash payment, it must be paid by the due date to the Clerk of the Court at the registry at which the order was made for payment out immediately to the protected person; and

(ii) if it is an in-kind payment, it must be paid by the due date to the victim by means that do not breach the terms of the domestic violence restraining order or any other order that binds the respondent.

(4) Subject to subsection (5) an order for urgent monetary relief may provide for payments that continue for such period specified by the Court up to a maximum of 3 months from the date that the order was made.

(5) Where, having regard to the matters referred to in subsection (2), the Court determines that there are exceptional circumstances, provided this determination is made -

(a) when making the order for urgent monetary relief ("the original order"); or

(b) within 3 months of that date,

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the order for urgent monetary relief may provide for payments that continue for such period specified by the Court up to a maximum of 6 months from the date that the original order was made.

(6) Nothing in this section precludes a protected person from applying for a new order for urgent monetary relief if a further incident of domestic violence occurs.

(7) If a person who has been ordered to pay urgent monetary relief under this section fails to comply with the order, in addition to other powers that the Court may have in the circumstances, Part 6 applies in relation to enforcement of the order.

Additional conditions - occupying a home

35.-(1) Subject to this section -

(a) a Court that makes, or intends to make, a domestic violence restraining order, may order that a protected person has the right to occupy a home and that access by the respondent to the home be restricted (an "occupation order"); and

(b) a Court which is considering whether to make a domestic violence restraining order under this Decree, must consider whether an occupation order is required to promote the safety and wellbeing of the person who would be protected by the order and the safety and wellbeing of any child in their care or who is ordinarily in their care.

(2) An occupation order -

(a) may be made in relation to a home -

(i) which the protected person or the respondent, or the protected person and the respondent, own or in which either has a legal or equitable interest (including, but not limited to a tenancy);

(ii) whether or not the protected person and the respondent have ever lived in the same home, the home to which the order relates, or any other home; and

(iii) whether or not the protected person or the respondent is living in the home at the time that the order is made, provided that

(b) nothing in this section or this Decree allows a court to make an order alienating native land or any legal or equitable interest in it.

(3) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an occupation order or both, and may, if it is satisfied that -

(a) it has jurisdiction to make a tenancy order;

(b) there are grounds to make a tenancy order; and

(c) the making of a tenancy order is appropriate,

make a tenancy order whether or not it makes an occupation order.

(4) Before an occupation order is made under this section -

(a) such notice as the Court directs must be given to any person having an interest in the home that would be affected by the order; and

(b) any person to whom notice is given pursuant to paragraph (a) of subsection is entitled to appear and to be heard in the matter as a party to the application.

(5) A Court that is considering whether to make an occupation order, must take the following into account -

(a) the principle in section 7(1)(f);

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(b) the effect on the safety and wellbeing of the protected person and on any child in their care, or who is ordinarily in their care, if an order under this section is made or is not made;

(c) any hardship that may be caused to the protected person and to any child in their care, or who is ordinarily in their care, if an order under this section is made or is not made; and

(d) the accommodation needs of the respondent, and any other relevant person, provided that unless there are exceptional circumstances, priority must still be given to the accommodation needs, safety and wellbeing of the protected person and any child in their care or who is ordinarily in their care.

(6) An occupation order may specify that a protected person has a right to occupy a specified home either from the time the order is made or from a time specified by the Court and that -

(a) the respondent is to vacate the home immediately or within a specified time; and

(b) the respondent may not enter the home, be in the home, or be within a specified distance of the home either from the time the order is made or from a time specified by the Court.

(7) An occupation order -

(a) applies for such period or periods specified by the Court in the order, or until the order is varied or discharged; and

(b) may be made on such terms and conditions relating to the occupation of the home as the court thinks fit.

Additional conditions - tenancy

36.-(1) If a Court makes, or is intending to make, a domestic violence restraining order for the safety and wellbeing of a person, an application may be made by, or for the benefit of, a person who is or will be protected by the order for an order that vests in the protected person the tenancy of any home of which, at the time the order is made, the respondent is -

(a) the sole tenant; or

(b) a tenant holding jointly, or in common, with the protected person.

(2) In this section "home" includes -

(a) any furniture or other household effects let with the home; and

(b) any land, outbuildings, or parts of buildings included in the tenancy.

(3) Before a tenancy order, or an order discharging a tenancy order, is made under this section -

(a) such notice as the Court directs must be given to any person having an interest in the property that would be affected by the order; and

(b) any person to whom notice is given pursuant to paragraph (a) is entitled to appear and to be heard in the matter as a party to the application.

(4) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both, and may, if it is satisfied that -

(a) it has jurisdiction to make an occupation order;

(b) there are grounds for making an occupation order; and

(c) the making of an occupation order is appropriate, make an occupation order whether or not it makes a tenancy order.

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(5) Subject to this section, on hearing an application for a tenancy order, the Court may make an order vesting the tenancy of a specified home in a specified protected person despite any other law to the contrary, provided that nothing in this section or this Decree allows a court to make an order alienating native land or any legal or equitable interest in it.

(6) The Court may make an order under subsection (5) of this section if it is satisfied that the order -

(a) is necessary for the safety and wellbeing of the protected person; or

(b) is necessary for the safety and wellbeing of a child who is in the care of the protected person or is ordinarily in the care of the protected person.

(7) In determining whether to make a tenancy order under this section, the Court must take the matters specified in section 35(5) into account.

(8) Where a tenancy order takes effect, then, until the tenancy ends under the terms and conditions of the tenancy agreement -

(a) the protected person specified by the Court becomes the tenant of the home subject to the terms and conditions of the tenancy in force at the time the order is made; and

(b) the respondent ceases to be a tenant.

(9) Subject to subsection (3) and subsection (10), where a tenancy order has been made under this section the specified protected person who has become the tenant or the respondent may apply for an order (a "revesting order") to discharge the tenancy order.

(10) Where an application is made under subsection (9) to discharge a tenancy order, the Court may discharge the tenancy order and re-vest the tenancy accordingly if satisfied that the discharge and re-vesting will not result in risk to the safety and wellbeing of -

(a) the protected person; or

(b) a child who is in the care of the protected person or is ordinarily in the care of the protected person.

(11) Where a revesting order made under subsection (9) takes effect, then, unless the tenancy has ended under the terms and conditions of the tenancy agreement, the person in whose favour it is made becomes the tenant of the home subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

Additional conditions-respondent to attend counselling or programme

37.-(1) Subject to subsection (2), when a Court makes, or is intending to make, a domestic violence restraining order against a respondent for the safety and wellbeing of a protected person, the Court may order the respondent to attend a prescribed counselling, education, rehabilitation or support programme specified by the Court.

(2) When considering whether to make an order that the respondent attend a prescribed counselling; education, rehabilitation or support programme the Court must take into account the availability of the counselling or other programmes being considered for the respondent having regard to -

(a) whether the respondent has been accepted for counselling or for the relevant programme by the intended provider;

(b) where and when the counselling or programme sessions would take place;

(c) the cost of the counselling or programme sessions;

(d) the desirability, in the circumstances, of the respondent attending to address their behaviour and to reduce the risk of repetition;

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(e) any consequences for the respondent, or for the victim, if the respondent is ordered to attend (for example, loss of income, particularly if the respondent is contributing to the support of the victim and any other person protected by the domestic violence restraining order).

(3) If the Court makes an order under subsection (1) the Court must -

(a) specify when the respondent must start the specified counselling or specified programme (for example, that the first attendance must be by a stated date);

(b) specify the frequency of attendance or that the respondent must attend as frequently as recommended to the respondent by the counselling or programme provider;

(c) specify when the attendance would cease (for example, after one session or upon completion of the programme);

(d) issue a request to the person in charge of the specified counselling or specified programme that the Court be notified if the respondent fails to attend the specified counselling or specified programme in accordance with the order of the Court; and

(e) direct that the Clerk of the Court provide a copy of the order to the person in charge of the specified counselling service or specified programme referred to in the order.

(4) If the Court makes an order under subsection (1) the Court may order that the respondent pay or contribute towards the cost of the counselling or programme specified by the Court, and the Court must take the following matters into account in making this decision -

(a) the cost of the specified counselling or programme;

(b) the respondent's financial position;

(c) the respondent's obligations, if any, to support the victim, any children and any other person.

(5) Nothing in this section or this Decree gives a Court power to order or require that a provider of a prescribed counselling or of a prescribed education, rehabilitation or support programme must accept the respondent for counselling or for a programme.

(6) For the avoidance of doubt -

(a) a Court exercising jurisdiction under this Decree may not make an order that a person, other than a person restrained by a domestic violence restraining order, attend counselling or an education, rehabilitation or support programme;

(b) a Court may recommend, but cannot require, that a person protected by a domestic violence restraining order to attend counselling;

(c) a Court may request, but cannot require, that counselling be made available by a particular service or agency for a person protected by a domestic violence restraining order, including a child protected by an order;

(d) if a person protected by an domestic violence restraining order wishes to attend counselling jointly with the person restrained the court may facilitate this, for example by adjourning the further hearing, if satisfied that the person protected -

(i) is not likely to be placed at risk; and

(ii) has freely given their consent.

(7) If a Court that has jurisdiction under this Decree becomes aware that the respondent has not complied with an order requiring the respondent to attend a counselling, education, rehabilitation or support programme the Court must inquire into the matter to determine if the respondent has, without reasonable excuse, failed to comply with the order.

(8) Where subsection (7) applies, the Court may, before proceeding to inquire into the matter -

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(a) allocate a date when the matter will be considered by the Court;

(b) unless the relevant person was before the Court when the date was allocated, cause a notice to be served on the person who applied for the order and on the respondent advising of the court date; and

(c) order the respondent to be present on the court date to explain the apparent failure to comply with the order.

(9) Where upon completing the inquiry referred to in subsection (7), the Court determines that the respondent has without reasonable excuse failed to comply with the order, in addition to any other powers the Court may have in the circumstances under this Decree, the Court may -

(a) note the respondent's failure to comply with the order on the court file;

(b) admonish the respondent;

(c) make a further order that the respondent attend a specified counselling, education, rehabilitation or support program; or

(d) vary or discharge the order.

(10) If the respondent is not present before the Court on the date referred to in paragraph (a) of subsection (8), the Court may issue a warrant for the respondent to be brought before the Court.

Varying, suspending or discharging order

38.-(1) A person who -

(a) applied for a domestic violence restraining order;

(b) is protected by a domestic violence restraining order; or

(c) is bound by a domestic violence restraining order,

may, subject to this section, apply to a Court to vary, suspend or discharge the order.

(2) Subject to subsection (6), the Court must, before hearing an application to vary, suspend or discharge a domestic violence restraining order, consider whether each person who in the opinion of the Court has a direct interest in the outcome, has received notice of the application and had adequate opportunity to be heard.

(3) If an application to vary, suspend or discharge a domestic violence restraining order is made by or for a protected person, in considering the application the Court must have regard to -

(a) the wishes of the protected person;

(b) any current contact between the protected person and the person bound by the order;

(c) whether any pressure has been applied, or threat made, to the protected person by the person bound by the order or by someone else; and

(d) the objects and principles of this Decree.

(4) In relation to an application to which subsection (3) applies -

(a) the Court may vary, suspend or discharge an order only if satisfied that the safety of each person protected by the order would not be compromised;

(b) if the Court refuses to vary the order in the way sought or refuses to suspend or discharge the order,

the Court may vary the order in a way that it considers does not compromise the safety of a protected person.

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(5) An application to vary, suspend or discharge a domestic violence restraining order may be made by or on behalf of the person bound by the order -

(a) only with the leave of the Court; and

(b) leave may be granted only if the Court is satisfied there has been a substantial change in relevant circumstances since the order was made or last varied.

(6) Where an application is made for leave under subsection (5), the Court may determine the application for leave without notice to the applicant, or to a person protected by the order, if the Court considers that -

(a) the application is or may be an attempt to harass the applicant or a protected person; and

(b) that there will be no prejudice to the applicant or to a protected person if the Court considers the application for leave without prior notice.

(7) For the avoidance of doubt, when a Court is considering an application for leave under subsection (5) and (6) the Court may not vary, suspend or discharge the existing order.

(8) If a Court grants leave to a respondent under subsection (5) to proceed with an application to vary, suspend or discharge a domestic violence restraining order the Court must make directions about -

(a) the date and place of the hearing;

(b) service of a sealed copy of the respondent's application, any supporting material and the order granting leave on the applicant and each person specified by the Court who is protected by the order; and

(c) any other matters that will assist with the determination of the matter.

(9) Where an order is made under this section varying, suspending or discharging a condition of a domestic violence restraining order made under section 33 in relation to a weapon, the Court must direct that the Commissioner of Police immediately be notified of the variation, suspension or discharge of that condition or of those conditions.

PART 4 - COMPENSATION

Compensation

39.-(1) Where a victim of domestic violence suffers personal injury or damage to property or financial loss as a result of the domestic violence, the Court hearing a claim for compensation under this Decree may -

(a) order that the respondent pays or provides such compensation in respect of the injury or damage or loss as it deems fair and reasonable;

(b) make orders about how, when and to whom the compensation payment or payments must be made; and

(c) make related orders, including orders for the establishment and operation of a trust fund for the victim.

(2) Where a victim of domestic violence is the parent of a child in their care and the child was affected as indicated in subsection (1), the claim may be made, or also be made, in respect of the injury or damage or loss to the child and for this purpose references in this section to "the victim" include a child victim where appropriate.

(3) In circumstances in addition to that dealt with in subsection (2) where compensation is sought by two or more people who were affected as indicated in subsection (1) -

(a) references in this section to "the victim" include each victim; and

(b) the Court may give directions about whether the claims may be made in one application or separately, and if separately, whether the claims should be heard together or separately.

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(4) Subject to subsection (8) a claim for compensation maybe made -

(a) where the domestic violence occurred before or after the commencement of this Decree;

(b) whether or not a domestic violence restraining order was sought or has been made under this Decree.

(5) The Court hearing a claim for compensation, referred to in subsection (1) must take the following into account -

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

(b) the cost of medical treatment, including the cost associated with obtaining medical treatment, incurred by or on behalf of the victim;

(c) the cost associated with the victim obtaining crisis support or counselling incurred by, on behalf of, or for the benefit of the victim;

(d) any loss of earnings by the victim;

(e) the amount or value of the property taken or destroyed or damaged by the respondent; and

(f) necessary and reasonable expenses incurred by or on behalf of the victim as a result of the domestic violence, including the expenses referred to in the definition of urgent monetary relief.

(6) In considering whether to make an order for compensation and in considering the terms of an order, the Court must also take into account -

(a) the reasons for, and consequences of, the time that has elapsed between the domestic violence occurring and the hearing of the application for compensation;

(b) the financial position of the victim and the financial position of the respondent;

(c) the consequences for the victim and for the respondent if the order sought is made or not made;

(d) the appropriateness of an order being made in relation to the compensation sought, and each part of the compensation sought, under this Decree compared to other options for seeking compensation from the respondent that are reasonably available to the victim;

(e) any payments and other allowances made by or on behalf of the respondent to, or for the benefit of, the victim in relation to the consequences of the domestic violence for the victim including the terms of -

(i) any other order made under this Decree including any order that the respondent pay or provide urgent monetary relief to or for the victim;

(ii) an order made in criminal proceedings for compensation for the victim in relation to the domestic violence; and

(iii) any other order the Court considers relevant to the issues to be determined in relation to the application for compensation.

(7) A Court that is considering an application for compensation under this section may make an interim order if satisfied in the circumstances of the case that it is appropriate to do so prior to a final order being made.

(8) A Court that makes or declines to grant an application for compensation must specify whether that order in an interim or final order in respect of compensation for the person in relation to the matter, but where the Court does not so specify -

(a) the order is not invalid, and

(b) the order is deemed to be an interim order.

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(9) An application for compensation under this Decree is deemed to be an action in tort to which section 40 of the Limitation Act (Cap 35) applies.

(10) If a person who has been ordered to pay compensation under this section fails to comply with the order in addition to other powers that the Court may have in the circumstances, Part 6 applies in relation to enforcement of the order.

PART 5 - PROCEDURE

Application of Part 5 and procedure generally

40.-(1) This Part applies to proceedings under this Decree excluding proceedings for a criminal charge brought under section 77.

(2) Except as provided in subsection (1) -

(a) proceedings under this Decree are governed by the procedure in this Decree and any rules and regulations made under this Decree; and

(b) in cases of difficulty or doubt the Court exercising jurisdiction in the proceedings may give direction about procedure.

Hearing in person or by telephone

41.-(1) Subject to this section, a Court may hear an application under this Decree in person or by telephone.

(2) This section does not affect the operation of section 25.

(3) An application, or part of an application, may be heard by telephone where this is technically possible, and -

(a) the presiding judicial officer gives a direction that a hearing by telephone may take place;

(b) during the hearing the presiding judicial officer is sitting in a court room or office in a court house;

(c) the telephone used by person appearing or giving evidence by telephone is in a court room or a court house.

(4) Where it is technically possible for an application or part of an application to be heard by telephone, the presiding judicial officer must take the following matters into account in determining whether to give a direction that a hearing by telephone may take place in a particular case -

(a) the urgency of the matter and the delay that would arise if the hearing does not take place by telephone;

(b) the consequences for the safety and wellbeing of a person for whose benefit the application is made if the hearing does not take place by telephone;

(c) the adequacy of a hearing by telephone having regard to justice and fairness in the matter if the hearing does or does not take place by telephone;

(d) any other matters considered relevant having regard to the objects and principles of this Decree.

(5) A presiding judicial officer who directs that a hearing or part of a hearing may take place by telephone may give directions concerning any details or protocols that will apply in relation to how the hearing by telephone will proceed.

Listing an application and service by police

42.-(1) Subject to subsection (2), each Court exercising jurisdiction under this Decree must make arrangements for applications under this Decree to be heard as soon as is reasonably possible after filing and in any event within 7 working days of the application being filed.

(2) Where an applicant is applying to proceed urgently the Clerk of the Court must -

(a) consider the urgency of the case having regard to the objects and principles of this Decree and the circumstances of the case, and

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(b) where the urgency of the matter requires it the Clerk of the Court must allocate a time for an interim hearing that, if possible, is on the day that the application is filed and in any event is within 2 working days of the application being filed.

(3) Subject to subsection (4), as soon as possible after an application is filed under this Decree, the Clerk of the Court in the registry in which the application is filed must provide, or transmit by facsimile transmission, to the senior officer of the police station closest to where the respondent is likely to be personally served, a sealed copy of the application and any supporting documents.

(4) Subsection (3) does not apply if -

(a) the applicant is applying to proceed urgently without notice to the respondent; or

(b) the Clerk of the Court considers that, having regard to the safety and wellbeing of each person who would be protected if the orders sought were made and to the objects and principles of this Decree, that service on the respondent by police may not be necessary.

(5) Where paragraph (a) of subsection (4) applies the Clerk of the Court must -

(a) schedule the application for an urgent interim hearing in accordance subsection (2); and

(b) if necessary arrange for and schedule the hearing to take place from the court house by telephone.

(6) Where paragraph (b) of subsection (4) applies -

(a) the Clerk of the Court must immediately put the matter before a judicial officer of the Court in chambers to determine if the police should be required to serve the application and any supporting material on the respondent;

(b) if the judicial officer does not consider that service by the police of the application and any supporting material is necessary having regard to the safety and wellbeing of the victim, and to the objects and principles of this Decree, the judicial officer may direct that the applicant arrange personal service on the respondent;

(c) where an applicant objects to a direction made pursuant to paragraph (b) and the applicant is entitled to be heard in relation to the matter in Court, the matter must be allocated a time for hearing before the judicial officer who made the direction, or if unavailable, then before another judicial officer of the Court -

(i) within one working day of the direction being made or on a later date if acceptable to the applicant; and

(ii) if necessary the hearing of the issue should be scheduled to take place from the court house by telephone.

(7) Upon receiving an application and any supporting documents referred to in subsection (3) the senior officer at the relevant police station must as soon as is reasonably possible -

(a) make an entry in a book or data base, maintained for this purpose at the police station, that the documents have been received and the time the documents were received;

(b) provide a copy of that entry to police headquarters in accordance with the police procedure established for this purpose;

(c) confirm receipt, the time of receipt and the name and contact details of the senior officer in writing to the Clerk of the Court who forwarded the documents;

(d) determine how the documents will be personally served on the respondent by police;

(e) if necessary, send, provide or transmit by facsimile transmission a copy of the documents to another police station closest to where the respondent is likely to be personally served;

(f) monitor police action to ensure that all reasonable steps are taken by the police to serve the respondent as soon as possible;

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(g) where service is completed ensure that an affidavit of service -

(i) is completed by the police officer who served the respondent; and

(ii) the affidavit is promptly delivered, posted or transmitted by facsimile transmission to the registry of the Court in which the application was filed in time for the hearing of the matter;

(h) where service is not completed prior to the time for the hearing of the matter, ensure that an affidavit of attempted service detailing attempts to serve and any evidence from which the Court may conclude that the respondent is aware of the application, is evading service, or how the respondent may be served -

(i) is completed by the police officer who attempted service or where several police officers attempted service, then by the senior officer concerned; and

(ii) promptly deliver, post or transmit the affidavit by facsimile transmission to the registry of the Court in which the application was filed in time for the hearing of the matter;

(i) respond to inquiries by the Clerk of the Court, the applicant and a person over the age of 16 years who would be protected by the order sought in the application, about progress in serving the respondent.

Service of orders

43.-(1) When an interim order or a final order is made under this Decree, including an order varying, suspending or discharging a previous order, a sealed copy of the order must be provided -

(a) to the applicant and must be personally served on the respondent;

(b) by the Clerk of the Court in the registry where the order was made, on request to a person over the age of 16 years who is protected by the order; and

(c) by the Clerk of the Court in the registry where the order was made to the Commissioner of Police in accordance with section 45.

(2) In relation to paragraph (a) of subsection (1) -

(a) if the relevant person is present at Court when the order was made personal service must, if possible, be completed by the Clerk of the Court or a Court officer; and

(b) the Court may give directions about waiting arrangements, or arrangements for one of both of the parties to return to the court house to collect a copy of the order provided that in making such directions the primary consideration must be the safety and wellbeing of each person protected by the order;

(c) where an applicant -

(i) was present at Court when the order was made, but leaves the court house before being served with the order; or

(ii) the applicant was not present when the order was made,

a copy of the order may be provided to the person by the Clerk of the Court posting a sealed copy of the order to the applicant at the address shown on the application;

(d) where a respondent -

(i) was present at Court when the order was made, but leaves the court house before being served with the order; or

(ii) was not present at Court when the order was made,

section 44 applies in relation to service of the order on the respondent.

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Service of order on the respondent by police

44.-(1) Where an order referred to in section 43(1) is made -

(a) in the absence of the respondent; or

(b) in the presence of the respondent but paragraph (d) of section 43(2) applies,

then, unless the Court makes an order for personal service of a sealed copy of the order on the respondent by different means, the Clerk of the Court in the registry where the order was made must as soon as possible provide, or transmit by facsimile transmission, a sealed copy of the order to the senior officer of the police station or police post closest to where the respondent is likely to be served.

(2) Upon receiving a sealed copy of an order made under this Decree from the Clerk of the Court in accordance with subsection (1), the senior officer at the relevant police station must as soon as is reasonably possible -

(a) make an entry in a book or data base maintained for this purpose at the police station that the order for service has been received and the time it was received;

(b) provide a copy of that entry to police headquarters in accordance with the police procedure established for this purpose;

(c) confirm receipt, the time of receipt and the name and contact details of the senior officer in writing to the Clerk of the Court who forwarded the order for service;

(d) determine how the order will be personally served on the respondent;

(e) if necessary, send or transmit by facsimile transmission a copy of the order to another police station or police post closest to where the respondent is likely to be served;

(f) monitor police action to ensure that all reasonable steps are taken by police to serve the respondent as soon as possible;

(g) where service is completed ensure that an affidavit of service -

(i) is completed by the police officer who served the respondent; and

(ii) the affidavit is promptly delivered, posted or transmitted by facsimile transmission to the registry of the Court where the order was made;

(h) where service is not completed within 1 month of the order being received for service by the police, ensure that an affidavit of attempted service detailing attempts to serve and any evidence from which the Court may conclude that the respondent is aware that the police are attempting to serve, is evading service and how the respondent may be served -

(i) is completed by the police officer who attempted service or where several police officers attempted service, then by the senior officer concerned; and

(ii) is delivered, posted or transmitted by facsimile transmission to the registry of the Court where the order was made;

(j) respond to inquiries by the Clerk of the Court, the applicant and a person over the age of 16 years who is protected by the order about progress in serving the respondent.

Clerk of the Court to forward a copy of the order to police

45.-(1) When an interim order or a final order is made under this Decree, including an order varying, suspending or discharging a previous order made under this Decree, the Clerk of the Court in which the order is made must ensure that a copy of the order is made available, without delay, to the Commissioner of Police for police records.

(2) Where a copy of an order is made available to the Commissioner of Police in accordance with subsection (1), the Commissioner must ensure that a copy of that order is made available, without delay, to the officer in charge of the police station nearest to where the protected person or, each protected person, resides.

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(3) For the purposes of this section, a copy of an order may be made available by the Commissioner of Police by -

(a) sending the copy by facsimile transmission;

(b) entering the copy on a database maintained in electronic form, where that database may be accessed by the person or persons to whom the copy is required to be made available; or

(c) making the copy available in such other manner as is appropriate in the circumstances.

Standard of proof

46.-(1) Subject to subsection (2), every question of fact arising in any proceedings under this Decree must be decided on the balance of probabilities.

(2) Subsection (1) does not apply to criminal proceedings for the offence under section 77 of breach of a domestic violence restraining order.

Competence and compellability

47.-(1) The parties to proceedings under this Decree are competent and compellable witnesses.

(2) In proceedings under this Decree the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3) Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Decree.

Rules of evidence

48.-(1) Subject to subsection (2), in any proceedings under this Decree the Court may receive any evidence that it thinks fit, whether or not it is otherwise admissible in a court of law.

(2) Subsection (1) does not apply to criminal proceedings for the offence under section 77 of breach of a domestic violence restraining order.

Evidence given orally or by affidavit

49. In proceedings under this Decree, subject to any directions by the Court in a particular case, evidence may be given orally or in an affidavit.

Proving injuries by evidence other than a medical report

50.-(1) Where the nature and extent of injuries suffered by a victim of domestic violence are relevant in proceedings, the Court may -

(a) receive evidence from that person and any other witness in relation to the nature and extent of the injuries;

(b) place such weight that the Court considers appropriate in the circumstances on this evidence,

and if the Court is satisfied that the nature and extent of the injuries are substantiated to the extent that is relevant in the proceedings, or to the extent that is relevant at that stage in the proceedings, the Court may proceed without requiring that a medical report be submitted in evidence.

(2) Nothing in subsection (1) prevents the Court from directing that a medical report in relation to the nature and extent of the injuries suffered by a victim of domestic violence is required by the Court in order to make a finding of the kind sought by the applicant.

Appearing and leave to appear

51.-(1) The following may appear in proceedings under this Decree in relation to a domestic violence restraining order or a compensation order -

(a) a legal practitioner representing a party, or other person, in the proceedings; or

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(b) a party to the proceedings who is representing themselves in the proceedings, whether or not that party is also seeking orders for the benefit of another person; or

(c) a police officer, the Director of Social Welfare, a welfare officer or the Public Trustee when permitted by section 19 or section 25 to apply for an order.

(2) Where a Court receives a request from a person for the leave of the Court to appear in proceedings under this Decree, the Court must consider the following in determining the request -

(a) the objects and principles of this Decree;

(b) the interests of justice;

(c) whether the person who would be so represented -

(i) objects, and if so, the reasons for the objection;

(ii) would have difficulty representing themselves in the proceedings if leave is not granted;

(d) whether the person seeking leave to appear-

(i) has any interest that is contrary to the person they wish to assist;

(ii) is likely to focus on issues that are relevant and avoid unnecessarily lengthening, complicating or inflaming the proceedings;

(e) whether the other party, or other parties, object and if so the reasons for the objection; and

(f) any other matters considered relevant by the Court.

(3) If a Court grants leave to a person to appear for a person in the proceedings, the Court may -

(a) impose conditions or give directions that the person granted leave must comply with; and

(b) withdraw leave at any time during the proceedings.

Examination of witness by the respondent

52. The Court may, on its own accord or on the request of the applicant, if it is of the opinion that it is desirable to do so, order that in the examination of witnesses including the applicant, that a respondent who is not represented by a legal representative -

(a) is not entitled to cross-examine a particular witness directly; and

(b) must put any question to that witness by stating the question to the Court or to another person as directed by the Court,

on the basis that the Court or the person directed will repeat the question accurately to the person being questioned by the respondent.

Orders by consent

53.-(1) Subject to subsections (2), (3) and (4), in proceedings before a Court under this Decree where the parties are present before the Court, the Court may make an order under this Decree by consent of the parties.

(2) Where the applicant is consenting to an order for the benefit of another person, the consent of that other person is required unless -

(a) that other person is a child;

(b) that other person lacks the capacity to understand the proceedings; or

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(c) the Court determines, having regard to the circumstances of the case and the objects and principles of this Decree, that the consent of that other person should not be required.

(3) Where an order sought to be made by consent is a domestic violence restraining order, the Court may make the order only if satisfied that -

(a) the person who would be bound by the order admits that there are grounds for the order;

(b) the order will not expose the victim or another person to risk of domestic violence; and

(c) the order is appropriate in all the circumstances of the case having regard to the objects and principles of this Decree.

(4) Where one or both parties are not present before the Court at the time that it is proposed that an order be made by consent, the Court may -

(a) proceed to deal with the application, if satisfied that the attendance of the parties or the relevant party should not be required; or

(b) adjourn the application and direct that -

(i) notice of the next Court date be given to those specified in the order; and

(ii) a specified person or persons be present at Court at that time.

Warrant to secure the attendance of the respondent

54. Where a respondent has been served with a summons or order to attend at a certain time, place and date in relation to proceedings under this Decree and the respondent has failed to do so, the Court may issue a warrant for the arrest of the respondent if it appears to the Court that -

(a) the personal safety of a person who would be protected by the order will be put at risk unless the respondent is arrested for the purpose of being brought before the Court; or

(b) the step is necessary to secure the respondent's attendance before the Court to give evidence, for the Court to explain the seriousness of the orders the Court may make to the respondent, or for other similar reasons.

Costs

55.-(1) Subject to subsections (2) and (3), parties to proceedings under this Decree bear their own legal costs and expenses in relation to the proceedings.

(2) A Court hearing an application under this Decree may order that a particular party to the proceedings bear part or all of the legal costs and expenses of the other if satisfied that the party acted frivolously, vexatiously or unreasonably in relation to the proceedings.

(3) An order for payment of costs or expenses may not be made against a police officer or other official who made an application for the protection of a person in their official capacity unless the Court finds that the police officer or official put material before the Court in the application, or otherwise during the proceedings, that they knew to be false or misleading.

Closed Court and arrangements for support people

56.-(1) Proceedings in a Court when exercising jurisdiction under this Decree are to be heard in closed court except proceedings referred to in subsection (2).

(2) The proceedings which are excepted from the application of subsection (1) are the hearing of a criminal charge, where -

(a) an application for a domestic violence order is made during those proceedings; or

(b) the court of its own volition is considering making a domestic violence restraining order.

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(3) Subsection (1) does not operate to exclude the following from the Court -

- (a) officers of the Court;
- (b) parties to the proceedings;
- (c) a person bringing or defending the proceedings on behalf of another person;
- (d) a lawyer representing any person in the proceedings;
- (e) witnesses;
- (f) a person or persons nominated by a person who would be protected by the order sought to provide support; and
- (g) a person or persons nominated by the respondent to provide support.

(4) The Court may exclude a person from the whole or part of the proceedings or impose conditions upon attendance.

Restrictions on publication

57.-(1) A person who publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means any account of any proceedings, or any part of any proceedings, under this Decree that identifies -

- (a) a person for whose benefit an order has been made or has been sought under this Decree or a person bound by an order or who would be bound by an order if an application made under this Decree is granted;
- (b) a person who is related to, or associated with a person specified in paragraph (a) or who is, or is alleged to be, in any other way concerned in the matter to which the application relates; and
- (c) a witness in the proceedings,

commits an offence and is liable upon conviction to a fine of \$10,000 and to a term of imprisonment not exceeding 12 months.

(2) Without limiting subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection is taken to identify a person if -

(a) it contains any particulars of -

- (i) the name, title, pseudonym or alias of the person;
- (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;
- (iii) the physical description or the style of dress of the person;
- (iv) any employment or occupation engaged in, profession practised, or calling pursued by the person, or any official or honorary position held by the person;
- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person;
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated,

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case may be.

(b) in the case of a written or televised account, it is accompanied by a picture of the person; or

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(c) in the case of a broadcast or televised account, it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case may be.

(3) An offence against this section is an indictable offence.

(4) Proceedings for an offence against this section must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(5) Notwithstanding the preceding provisions of this section, the following do not constitute an offence under subsection (1) -

(a) the communication, to persons concerned in the proceedings in any Court, of any order, any documents filed in the proceedings, transcript of evidence or other document for use in connection with those proceedings or other Court proceedings;

(b) the communication of any order, any documents filed in the proceedings, transcript of evidence or other document used in connection with the proceedings to-

(i) a person by a party to the proceedings or a person or persons for whose benefit an order has been sought or has been made;

(ii) a police officer in relation to the exercise of their functions;

(iii) the Legal Aid Commission for the purpose of facilitating the making of a decision about whether legal aid assistance should be granted, continued or provided in a particular case;

(iv) the Fiji Law Society or any other body or person responsible for dealing with complaints, disciplining members or particular members of the legal profession in Fiji for the purpose of performing such functions;

(c) the publishing of a notice, report or communication of information pursuant to the direction of a Court;

(d) the publishing of any publication bona fide intended primarily for use by members of any profession, being -

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(e) the publication or other dissemination of an account of the proceedings or of any part of proceedings -

(i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

(ii) to a person who is a researcher or student, in connection with the research or studies of that person.

(6) Despite this section, a court exercising jurisdiction under this Decree may order that specified information concerning particular proceedings may be disseminated in accordance with directions made by the Court where the Court determines that this is -

(a) required in the public interest;

(b) will promote compliance with an order made under this Decree; or

(c) is necessary or desirable for the proper operation of this Decree.

Safety planning conference

58.-(1) Subject to subsection (2) the Court may direct that on the first substantial Court date when the parties to the proceedings are present, or on a later date ordered by the Court, that a safety planning conference be conducted at the court

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house where the proceedings are listed.

(2) The Court may direct that a safety planning conference be conducted if the Court is satisfied that -

(a) such a conference would not put the safety and wellbeing of a person who is, or who seeks to be, protected by a domestic violence restraining order at risk;

(b) each of those who would participate in the conference -

(i) are over the age of 18 years;

(ii) have been informed of the purpose of the conference and the conference procedure; and

(iii) have agreed to participate in the conference;

(c) there are suitable facilities at the court house, including an area where parties can remain separate, for the conference procedure specified in subsection (3) to apply;

(d) conference convenors, as required by the procedure specified in subsection (3), are available to conduct the conference; and

(e) in all the circumstances and having regard to the objects and principles of this Decree, that a safety planning conference should be conducted.

(3) A safety planning conference must be conducted as follows -

(a) the conference must be jointly convened and conducted by -

(i) a Clerk of the Court; and

(ii) a domestic violence counsellor;

("the conference convenors") each of whom has successfully completed prescribed training in relation to the conference procedure;

(b) a person who is, or seeks to be, protected by a domestic violence restraining order must have a separate support person of their choice present with them during the conference at all times;

(c) subject to paragraph (d), the conference must be conducted by a shuttle discussion whereby the conference convenors move between the parties but the parties remain in separate locations and not in the presence of the other;

(d) a person who is, or who seeks to be, protected by a domestic violence restraining order must not be required to be in the presence of the respondent during the conference unless the person gives their free and informed consent and in the view of the conference convenors -

(i) the person is not likely to be at risk or be subjected to pressure by the respondent; and

(ii) the process is likely to be constructive having regard to the circumstances of the case, the matters to be resolved and the objects and principles of this Decree.

(4) An agreement reached by the parties as a result of a safety planning conference may be confirmed by order of the Court subject to the discretion of the Court to decline to make any order where the Court considers that the proposed order -

(a) does not accord with the objects and principles of this Decree as they apply in the particular case; or

(b) is contrary to another provision in this Decree including, but not limited to, considerations specified in section 53 regarding the making of orders by consent.

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(5) Additional details, consistent with this section, concerning arrangements for safety planning conferences may be prescribed by regulations.

PART 6 - ENFORCEMENT OF CERTAIN ORDERS

Enforcement of order for urgent monetary relief or compensation

59.-(1) This Part applies to enforcement of -

(a) an order made under section 34 in relation to payment of urgent monetary relief; and

(b) an order made under section 39 in relation to compensation.

(2) Subject to this Part, and to regulations and rules made under this Decree, the orders to which this Part applies may be enforced by any Court having jurisdiction under this Decree.

(3) Except as prescribed, a Court must not entertain a proceeding under this Decree for the enforcement of an order made by another Court under this Decree unless the order is registered in the first-mentioned Court in accordance with the rules.

(4) If a person bound by an order to which this Part applies has died, the order may, by leave of -

(a) the Court which made the order; or

(b) any Court in which the order has been registered in accordance with the rules (whether the order was registered before or after the death of the person),

and on such terms and conditions as the Court considers appropriate, be enforced, in respect of liabilities that arose under the order before the death of that person, against the estate of that person.

Methods of enforcement

60. The rules may make provision for and in relation to the enforcement of orders to which this Part applies, including provision -

(a) for an officer of a Court exercising jurisdiction under this Decree; or

(b) an authority or person specified in the rules,

at the direction of the Court in its discretion, to take proceedings on behalf of the person entitled to moneys payable under that order for the purpose of enforcing payment of those moneys.

PART 7 - ENFORCEMENT OF ORDERS OVERSEAS AND FOREIGN ORDERS

Enforcement overseas of orders made in Fiji

61.-(1) Subject to subsections (2) and (3), the Attorney-General may request the appropriate Court or authority in a foreign country to make arrangements for the enforcement in that country of a domestic violence restraining order made under this Decree.

(2) Where a person wishes a request to be transmitted to a foreign country pursuant to subsection (1), the person must make a request in writing in the first instance to the Clerk of the Court in which the domestic violence restraining order was made.

(3) Where, on receiving a request made under subsection (2), the Clerk of the Court is satisfied that -

(a) the request is made by or on behalf of a protected person;

(b) the request relates to a domestic violence restraining order made under this Decree by a Court in Fiji;

(c) orders of that nature may be enforced in the foreign country to which the request relates; and

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(d) there are reasonable grounds for believing that enforcement of the order in the foreign country is necessary for the protection of the protected person,

the Clerk of the Court must send the request to the Attorney-General for transmission to the foreign country in accordance with subsection (1).

(4) Where, pursuant to this section, a Clerk of the Court or the Attorney-General receives a request for the transmission of a domestic violence restraining order to a foreign country, the Clerk of the Court or, as the case requires, the Attorney-General, may require the person by or on whose behalf the request is made to supply such information or evidence as may be necessary -

(a) to enable a determination to be made whether or not the request satisfies the requirements of subsection (3); and

(b) to secure enforcement of the order in the foreign country.

(5) Where, in relation to a request made under subsection (2), a Clerk of the Court or the Attorney-General imposes a requirement pursuant to subsection (4), the Clerk of the Court or, as the case requires, the Attorney-General, may refuse to take any action, or further action, in relation to that request until that requirement is complied with.

(6) Nothing in this section prevents -

(a) a protected person from applying to a court or other appropriate authority in a foreign country for enforcement, in that country, of a domestic violence restraining order; or

(b) the variation or discharge, pursuant to this Decree, of a domestic violence restraining order that is enforced in a foreign country.

(7) In this section, the term "enforcement" includes registration and enforcement and "enforced" has a corresponding meaning.

Registration of foreign domestic violence restraining orders

62.-(1) A foreign domestic violence restraining order may be registered in a Court in accordance with this section.

(2) Where the Attorney-General receives -

(a) a certified copy of a foreign domestic violence restraining order;

(b) a certificate -

(i) that is signed by an officer of a court in the foreign country in which the order was made; and

(ii) that contains a statement that the order is, at the date of the certificate, enforceable in the foreign country; and

(c) written information tending to show that a person for whose protection the order was made -

(i) is present in Fiji; or

(ii) is proceeding to Fiji; or

(iii) is about to proceed to Fiji,

the Attorney-General must send the documents to a clerk of the Magistrates' Court for the purposes of registration.

(3) The clerk of the Magistrates' Court must register the foreign domestic violence restraining order by filing a certified copy of the order in the Court.

(4) Where the clerk of the Magistrates' Court receives the documents described in subsection (2) other than from the Attorney-General, the Registrar may register the order if satisfied that the nature of the documents is such that, if they had

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been transmitted to the Attorney-General, they would have been sent to the clerk of the Magistrates' Court by the Attorney-General.

Copy of registered foreign orders to be sent to police

63. Where a foreign domestic violence restraining order is registered pursuant to section 62, section 45 applies -

(a) in relation to that order; and

(b) in relation to any variation of that order pursuant to section 38,

as if the foreign domestic violence restraining order were a domestic violence restraining order made under this Decree.

Effect of registration

64. Subject to section 66, upon registration pursuant to section 62, a foreign domestic violence restraining order -

(a) has effect; and

(b) may be enforced; and

(c) the terms in which it has effect in Fiji, may be varied,

as if it were a domestic violence restraining order made under this Decree on the date of registration.

Variation of registered foreign domestic violence restraining order

65.-(1) Where, pursuant to paragraph (c) of section 64, a Court makes an order varying a foreign domestic violence restraining order, the Clerk of the Court -

(a) must, in the prescribed manner, notify the Court or the appropriate authority in the country in which the order was made of the variation; and

(b) must forward to the clerk of that court a copy of the order varying the foreign domestic violence restraining order.

(2) The Clerk of the Court in which the foreign domestic violence restraining order is registered, on receiving notice of the variation of that order, must note the Court records accordingly.

Registered foreign orders not to be enforced in certain circumstances

66.-(1) Where a Court is satisfied that a foreign domestic violence restraining order -

(a) was not, at the time of its registration in Fiji, enforceable in the country in which it was made; or

(b) has, since its registration in Fiji, ceased to be enforceable in the country in which it was made,

the Court must not enforce or vary the order under this Decree.

(2) Where the Clerk of the Court in which a foreign domestic violence restraining order is registered is satisfied -

(a) that a Court in Fiji has refused, pursuant to subsection (1), to enforce or vary the order under this Decree; or

(b) that the order is not enforceable in the country in which it was made; or

(c) that registration of the order in Fiji is no longer necessary,

the Clerk of the Court must cancel the registration of the order and must, in the prescribed manner, notify the court or the appropriate authority in the country in which the order was made of the cancellation.

(3) For the purposes of this section, a foreign domestic violence restraining order is not unenforceable in the country in which it was made solely by reason of the fact that the person to whom the order relates, or any other person affected by the order, is no longer in that country.

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Evidence taken overseas

67. Where, pursuant to section 64 of this Decree, an application is heard in a Court, the evidence of any person outside Fiji may be taken in accordance with the rules of the High Court covering the examination of witnesses outside Fiji, and those rules, as far as they are applicable and with all necessary modifications, apply.

Proof of documents

68.-(1) For the purposes of this Part -

(a) any document purporting to be signed by any judge or officer of a court in any prescribed foreign country is, in the absence of evidence to the contrary, deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and

(b) the officer of a court by whom a document purports to be signed is, in the absence of evidence to the contrary, deemed to have been the proper officer of the court to sign the document.

(2) Any document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) is admissible in evidence in proceedings under this Part if it appears to be relevant to those proceedings.

Depositions to be evidence

69. Depositions taken for the purposes of this Part in a court in any prescribed foreign country may be received in evidence in any proceedings under this Part.

Prescribed foreign countries

70.-(1) A country outside Fiji may be declared by regulations to be a prescribed foreign country for the purposes of this Decree.

(2) Regulations made for the purpose of subsection (1) may specify the courts of the foreign country in relation to which the order is to have effect, or may otherwise modify the application of that order to that other country.

Evidence of orders made in foreign country

71. Nothing in this Part precludes a Court from receiving evidence of an order made in a foreign country (whether or not that country is a prescribed foreign country) with respect to the protection of any person from domestic violence.

PART 8 - APPEALS

Jurisdiction in relation to appeals

72.-(1) This section applies to an order of a Court in proceedings under this Decree, other than proceedings in relation to the criminal offence under section 77 of breach of a domestic violence restraining order, to -

(a) make or refuse to make an order; or

(b) dismiss the proceedings.

(2) Subject to section 73(3), an appeal from an order to which this section applies where it was made -

(a) by the Magistrates' Court, the Family Division of the Magistrates' Court or a Juvenile Court, lies of right to the Family Division of the High Court;

(b) as an original decision of a judge of the Family Division of the High Court or the High Court, lies to the Court of Appeal;

(c) by judges of the Family Division of the High Court sitting on appeal from orders of the Magistrates' Court, the Family Division of the Magistrates' Court or a Juvenile Court, lies to the Court of Appeal with leave of the Court of Appeal.

Commencing an appeal

73.-(1) Subject to this section, an appeal against an order to which section 72 applies, maybe commenced by a person who was -

(a) an applicant in the proceedings; or

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(b) a person for whose protection or benefit an order under this Decree was sought; or

(c) the respondent to the proceedings.

(2) An appeal must be commenced within 28 days of the date on which the order or decision which is the subject of the appeal was made.

(3) Where an order was made with the consent of the respondent no appeal by the respondent lies in relation to that order without the leave of the Court which would hear the appeal if leave is granted.

Appeal does not act as a stay of the order under appeal

74. Unless the Court that made the order appealed from otherwise directs -

(a) the operation of an order made under this Decree is not suspended as a result of an appeal being filed; and

(b) every order made under this Decree may be enforced in the same manner in all respects as if no appeal were pending.

Nature of appeal

75. An appeal from a decision -

(a) referred to in paragraph (a) of section 72(2) may be on a matter of fact as well as on a matter of law;

(b) referred to in paragraphs (b) and (c) of section 72(2) may only be on a matter of law.

Power on appeal

76. A court that hears an appeal against an order to which section 72 applies may affirm, vary or discharge an order under appeal and may make such other order or decision as the court thinks fit having regard to the provisions of this Decree.

PART 9 - OFFENCE

Criminal offence to breach a domestic violence restraining order

77.-(1) Any person who, having notice of a domestic violence restraining order by which they were bound, without reasonable excuse contravenes the order or part of the order, is guilty of a criminal offence and is liable on conviction -

(a) subject to paragraph (b), to a fine of \$1,000 and a term of imprisonment of 12 months;

(b) if the person has previously been convicted of an offence of breach of a domestic violence restraining order, to a fine of \$2,000 and a term of imprisonment of 12 months.

(2) It is no defence to a charge under subsection (1) that when the contravention occurred -

(a) the person charged, or a person protected by the domestic violence restraining order, was in another country; or

(b) both were in another country or other countries.

(3) Subsection (1) does not apply to -

(a) a condition of a domestic violence restraining order made under section 34 or section 37;

(b) an order that a person pay compensation made under section 39; or

(c) a condition of a domestic violence restraining order directed to a person protected by an order made under paragraph (b) of section 32(2);

(4) For the purposes of subsection (1) a person will be taken to have had notice of a domestic violence restraining order if the person -

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(a) was present before the Court at the time the order was made, or

(b) was present when the order was made by telephone and the presiding judicial officer spoke to the person by telephone and explained the terms of the order, or

(c) was told of the existence of the order and the terms of the order orally, or in writing, by a police officer, or

(d) was personally served with the order, or

(e) was served with a copy of the order in such other manner as the Court directed, or

(f) was aware of the terms of the order.

(5) In proceedings under this section the Court must inquire whether the person charged was subject to an order under section 37 requiring the person to attend a counselling, education, rehabilitation or support program.

(6) Where the Court becomes aware during proceedings under this section that the person charged has not complied with an order made under section 37 requiring the person to attend a counselling, education, rehabilitation or support program, the Court must proceed in relation to that matter in accordance with section 37(7).

Police may arrest without warrant

78.-(1) Where a domestic violence restraining order is in force, any police officer may arrest, without warrant, and charge any person whom the police officer has good cause to suspect is about to commit or has committed an offence under section 77.

(2) In considering whether or not to arrest a person pursuant to subsection (1) of this section, the police officer must take the following matters into account -

(a) the risk to the safety and wellbeing of a person protected by the domestic violence restraining order if the arrest is not made;

(b) the seriousness of the anticipated or alleged offence; and

(c) the imminence of the commission of the anticipated offence or the length of time since the alleged offence occurred.

(3) Nothing in this section limits or impinges upon any other power of arrest that the police officer may have in the circumstances.

PART 10 - CONTEMPT

Contempt and referral for investigation or prosecution

79.-(1) Notwithstanding any other provision in this Decree a Court which has jurisdiction under this Decree may punish persons for -

(a) contempt in the face of the Court when exercising jurisdiction under this Decree;

(b) wilful disobedience of an order specified in paragraphs (a) and (b) of section 77(3).

(2) Rules may provide for the practice and procedure as to charging with contempt and the hearing of the charge.

(3) Where a natural person is in contempt the Court may punish the contempt by committal to imprisonment or a fine or both.

(4) Where a Court exercising jurisdiction under this Decree becomes aware, in the course of the proceedings, that a person who is bound by a domestic violence restraining order made under this Decree appears to have breached the order, the Court may direct that information in relation to the apparent breach be referred to the Commissioner of Police or the Director of Public Prosecutions or both.

PART 11 - MISCELLANEOUS

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Power to make rules

80.-(1) The Chief Justice may from time to time make rules not inconsistent with this Decree providing for and in relation to practice and procedure to be followed by Courts exercising jurisdiction under this Decree and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business of those Courts under this Decree including providing for and in relation to -

(a) forms, and the use of forms, as necessary for the purposes of the Decree;

(b) service of documents, substituted service and dispensing with service;

(c) applications and hearings by telephone including but not limited to geographic location, permissible hours and equipment requirements (e.g. location of telephone, availability of facsimile machine);

(d) who may be joined in proceedings and how they may be joined;

(e) intervention;

(f) consolidation of applications or of proceedings;

(g) discontinuance and withdrawal of proceedings;

(h) striking out and staying proceedings;

(i) amendment of documents;

(j) representatives, including (without limitation) -

(i) providing for the appointment, retirement and removal of representatives, and

(ii) providing for the conduct of proceedings brought on a person's behalf by a representative;

(k) attendance of witnesses;

(l) production of documents and other material to be used in evidence;

(m) trial management;

(n) giving judgment;

(o) institution of appeals;

(p) costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs;

(q) the enforcement and execution of orders;

(r) the attendance by parties and others, in relation to proceedings under this Decree, at Court and at safety planning conferences;

(s) information about proceedings under this Decree to be transferred between Courts exercising jurisdiction under this Decree or otherwise in relation to this Decree;

(2) The power of the Chief Justice to make rules under subsection (1) includes power to apply, with or without modification, provisions of the Family Law Rules 2005, the High Court Rules, or the rules of procedure of another Court of Fiji.

(3) Before making rules under this section the Chief Justice must consult with the Chief Magistrate.

Power to make regulations

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81. The Minister may make regulations, not inconsistent with this Decree, prescribing all matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree and, in particular-

- (a) prescribing a country to be a prescribed foreign country in accordance with section 70;
- (b) prescribing the information that the police must give to a victim of domestic violence and to a perpetrator of domestic violence as required by 13;
- (c) prescribing the information that the police must give to a victim of domestic violence in a "complaints notice" about how a person may complain if a police officer does not apply for a domestic violence restraining order, as required by section 14;
- (d) prescribing the information about services for victims of domestic violence and for perpetrators of domestic violence as required by sections 16 and 17;
- (e) prescribing the information to be supplied for the purpose of Part 3 about the effect of domestic violence restraining orders;
- (f) prescribing categories of police officers or individual officers for the purpose of section 25;
- (g) prescribing counselling, education, rehabilitation and support programs, referred to in section 37, including the means by which potential providers may be approved for this purpose and other requirements that may apply for quality assurance purposes;
- (h) in relation to safety planning conferences referred to in section 58 -
 - (i) prescribing training to be undertaken by those who would act as a conference convenor; and
 - (ii) prescribing additional details, consistent with section 58 concerning arrangements for safety planning conferences.
- (i) providing for the enforcement of overseas of orders made under this Decree; and
- (j) providing for enforcement in Fiji of foreign domestic violence restraining orders.

Consequential amendments

82. The following enactments are amended as set out in the Schedule, as a consequence of this Decree.

SCHEDULE

(Section 82)

CONSEQUENTIAL AMENDMENTS

PART 1 - AMENDMENTS TO THE [MARRIAGE ACT](#)

[...]

PART 2 - AMENDMENTS TO THE [BAIL ACT 2002](#)

2. The [Bail Act 2002](#) is amended -

(a) in section 2 by -

(i) inserting the following definition -

" "domestic violence offence" means a domestic violence offence as defined in section 4 of the [Penal Code](#)";

(ii) repealing the definition of "serious offence" and substituting the following definition -

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"serious offence" means -

(a) the offence of breach of a domestic violence restraining order; or

(b) any offence for which the maximum penalty includes imprisonment for 5 years or more;"

(b) in section 3(4) by -

(i) deleting "or" at the end of paragraph (a);

(ii) deleting the full-stop at the end of paragraph (b) and substituting "; or"

(iii) adding the following paragraph -

"(c) the person has been charged with a domestic violence offence.";

(c) in section 3(5) by -

(i) deleting "or" at the end of paragraph (b);

(ii) deleting the full-stop at the end of paragraph (c) and substituting "; or"

(iii) adding the following paragraph -

"(d) the person has been charged with a domestic violence offence."

(d) in section 8(2) by -

(i) deleting "or" at the end of paragraph (b);

(ii) deleting the full-stop at the end of paragraph (c) and substituting "; or"

(iii) adding the following paragraph -

"(d) the offence is a domestic violence offence unless satisfied that the release of the person on conditions, that would or could be applied, would not pose a risk to the safety of a specially affected person.";

(e) by repealing subsections (3) and (4) of section 16 and substituting the following subsections -

"(3) Subject to subsections (5) and (6), where a person who is charged with a domestic violence offence is granted bail the person must reside at the residential address stipulated in the bail conditions until the hearing of the case.

(4) Subject to subsection (5) where a person who is charged with an offence other than a domestic violence offence is granted bail the person must reside at the address provided under subsection (1) until the hearing of the case.

(5) If the accused person wishes to reside elsewhere than at the address at which the person is required to reside in accordance with subsection (3) or (4), the person must, in writing or in person notify the police officer or the bail officer, as the case may be, and that officer must either make a decision or obtain a decision of the court, as the case may be, on whether the bail undertaking should be varied accordingly.

(6) Where a person is charged with a domestic violence offence a police officer or a court must have regard to the following in making a decision about where the person may reside while on bail -

(a) if the person's residential address is also the normal residential address of a specially affected person, unless it appears safe for each specially affected person and that person or those persons are agreeable, it must be a condition of bail that the accused reside at a residential address other than that residential address while on bail;

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(b) where paragraph *(a)* applies, the accommodation needs of a specially affected person have priority over the accommodation needs of the accused person.";

(f) in section 19 by -

(i) deleting "or" at the end of paragraph *(b)*;

(ii) deleting the full-stop at the end of paragraph *(c)* and substituting "; or"

(iii) adding the following paragraph -

"*(d)* the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.";

(g) in section 19(2)(c) by deleting the full-stop at the end of sub-paragraph (iii) and substituting a semi-colon and by adding the following paragraph -

"*(d)* as regards the safety of a specially affected person when the accused is charged with a domestic violence offence -

(i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;

(ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and well being of a specially affected person while on bail;

(iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;

(iv) the likelihood of the accused person committing a further domestic violence offence while on bail."

(h) in section 22 by -

(i) deleting "Bail" in subsection (1) and substituting "Subject to subsection (1A), bail";

(ii) inserting after subsection (1) the following subsection -

"**(1A)** Where an accused person is charged with a domestic violence offence -

(a) bail may not be granted unconditionally; and

(b) if bail is granted, bail must be subject to a condition that the accused person must not assault, threaten or harass the person or persons in respect of whom the alleged offence was committed.";

(i) in section 23 by -

(i) deleting "Bail" in subsection (1) and substituting "Subject to subsection (3), bail";

(ii) by inserting after subsection (2) the following subsection -

"**(3)** Where an accused person is charged with a domestic violence offence -

(a) bail may not be granted unconditionally, and

(b) if bail is granted, bail must be subject to a condition that the accused person must not assault, threaten or harass the person or persons in respect of whom the alleged offence was committed.";

(j) by adding after Part V the following Part -

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**"PART VA - NOTIFICATION OF DECISIONS IN
DOMESTIC VIOLENCE CASES**

Duty to notify persons at risk of domestic violence

24A. Where an accused person is charged with a domestic violence offence and bail is granted, refused, varied or discharged by a police officer or by the court, immediate steps must be taken by the police or by the court, as the case may be, to inform each specially affected person -

(a) of the decision; and

(b) where bail conditions apply, then of the precise terms and conditions of bail."

PART 3 - AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

3. The Criminal Procedure Code (Cap. 21) is amended -

(a) by adding after section 15 the following section -

"Entry and search in case of domestic violence offence

15A.-(1) Where a police officer reasonably suspects that a person is about to commit or is committing a domestic violence offence or that such an offence was committed before the officer's arrival, on any premises, the officer may without a warrant enter those premises and may remain in those premises for as long as the officer considers necessary -

(a) to ensure that, in the officer's opinion, there is no imminent danger of a person committing a domestic violence offence on the premises;

(b) to investigate whether or not a domestic violence offence has been committed; and

(c) to give or arrange for such assistance as is reasonable in the circumstances.

(2) If after entering premises, pursuant to the power conferred by subsection (1) or pursuant to a power conferred by any other law, a police officer reasonably suspects that a domestic violence offence is being or is about to be committed, or was committed before the officer's arrival, on the premises the officer without further authority may -

(a) search the premises to establish whether any person on the premises -

(i) is in need of assistance; or

(ii) is in possession of a weapon;

(b) search -

(i) in the premises for a weapon; and

(ii) any person on the premises whom the officer reasonably suspects is in possession of a weapon; and

(c) seize any weapon found on the premises, or on a person, that the officer reasonably suspects -

(i) was used to commit a domestic violence offence; or

(ii) may be used to commit a domestic violence offence.

(3) A police officer may use such force and such assistance as is necessary and reasonable in the circumstances in order to exercise the powers under this section.

(4) This section does not limit any other power a police officer may have under this Act, any other written law or at common law."

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(b) by adding after section 163 the following section -

"Section 163 not to apply to domestic violence offence

163A. Section 163 does not apply to a charge, which in the circumstances of the case, is a charge for a domestic violence offence."

(c) by adding to Schedule 1 the following offence -

"common assault that is a domestic violence offence".

PART 4 - AMENDMENTS TO THE PENAL CODE

4. The Penal Code (Cap. 17) is amended as follows -

(a) in section 4 by inserting in the appropriate alphabetical order the following definitions -

"de facto relationship" means the relationship between a man and a woman who live or lived with each other as spouses on a genuine domestic basis although not legally married to each other;"

"domestic violence offence" means -

(a) a personal violence offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship;

(b) a property damage offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship; or

(c) the offence of breach of domestic violence restraining order under section 77 of the Domestic Violence Decree 2009;"

"family or domestic relationship" means the relationship of -

(a) spouse;

(b) other family member;

(c) person who normally or regularly resides in the household or residential facility;

(d) boyfriend or girlfriend;

(e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care;"

"other family member" means any of the following -

(a) parent, grandparent, step-parent, father-in-law, mother-in-law;

(b) child, grandchild, step-child, son-in-law, daughter-in-law;

(c) sibling, half-brother, half-sister, brother-in-law, sister-in-law;

(d) uncle, aunt, uncle-in-law, aunt-in-law;

(e) nephew, niece, cousin;

(f) clan, kin or other person who in the particular circumstances should be regarded as a family member,

provided that if a person was or is in a de facto relationship with another person the relationship of other family member includes a person who would be included if the persons in that de facto relationship were or had been married to each other;"

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" "personal violence offence" means an offence specified in [Part 1](#) of Schedule 1A;"

" "property damage offence" means any an offence specified in [Part 2](#) of Schedule 1A;"

" "spouse" includes a person who is or has been in a de facto relationship with the other person;"

(b) by adding after section 46 the following sections -

"Domestic violence offences-determining penalty

46A.-(1) Notwithstanding any other provision of this Act, where a person is charged with a domestic violence offence the matters listed in section 46A(3), so far as each is relevant in the particular case, must be taken into account by the court, in addition to any other relevant matters, in determining penalty.

(2) Where there was more than one victim of a particular domestic violence offence, references in this section to "the victim" means each of the victims.

(3) The matters referred to in section 46A(1) which must be taken into account are -

(a) whether the defendant has any previous convictions for a domestic violence offence;

(b) whether the defendant has previously been charged with a domestic violence offence where the charge was stayed or terminated under section 163 of the [Criminal Procedure Code](#) or otherwise;

(c) the extent of the damage, injuries or loss suffered by the victim as a result of the offence;

(d) any special considerations relating to the physical, psychological or other characteristics of the victim when the offence occurred including but not limited to -

(i) the age of the victim;

(ii) whether the victim was pregnant;

(iii) whether the victim was disabled;

(e) whether a child or children witnessed or heard the offence;

(f) the effect of the offence on the emotional, psychological and physical well being of the victim;

(g) the effect of the offence in terms of hardship, dislocation or other difficulties caused to the victim;

(h) the weight that can be accorded to any evidence, including a report by a person who has counselled, assisted or treated the victim since the offence, that deals with the victim's -

(i) attitude to the offence;

(ii) views in relation to any steps taken or proposed to be taken by the defendant to address his or her behaviour;

(iii) assessment of whether the defendant continues to pose a risk or threat to the victim and if so what measures would help ensure the victim's safety and well being;

(i) the conduct of the defendant towards the victim since the offence occurred so far as it relates to whether the defendant -

(i) accepts responsibility for the offence;

(ii) has taken reasonable steps available to the defendant to make amends to the victim including addressing or reducing the negative effects of the offence on the victim;

(iii) appears to pose any further threat to the victim;

- (j) whether the defendant is willing to take steps, or further steps, to attempt to make amends to the victim;
- (k) whether the defendant has sought and received personal counselling or other assistance since the offence or intends to do so;
- (l) whether the defendant is willing to participate in personal counselling or in an educational or other programme if ordered by the Court;
- (m) the weight that can be accorded to any report submitted by a person who has counselled, assisted or treated the defendant since the offence occurred that deals with whether -
 - (i) the defendant accepts responsibility for the offence;
 - (ii) the defendant appears to pose any further threat to the victim;
 - (iii) the defendant is likely to be assisted by further counselling or assistance or treatment.

Matters courts must consider

46B. Where section 46A applies, the court must:

- (a) consider whether conditions should be imposed and whether a domestic violence restraining order should be made under the Domestic Violence Decree 2009 to ensure the safety and well being of the victim, or where more than one, then of each victim,
- (b) consider making an order that the defendant undertake a course of counselling or suitable education or treatment programme that is likely to assist to ensure that the defendant does not re-offend;
- (c) in a case where the court -
 - (i) has power to order that the defendant pay or provide compensation to or for the victim or victims; or
 - (ii) power to order payment of compensation for any loss or injury caused by the offence from a fine or money found on or in the possession of a convicted person pursuant to section 161 of the [Criminal Procedure Code](#),consider and make proper inquiry into whether an order for compensation, to or for the victim or victims, should be made.";
- (c) by adding after Schedule 1 the following Schedule -

[...]

49. FINLAND

[Act on Restraining Orders, 1998 \(As amended\)](#) ¹¹⁸

Chapter 1 General provisions

Section 1 – Restraining order

- (1) A restraining order may be imposed to prevent an offence against life, health, liberty or privacy or a threat of such an offence or some other kind of severe harassment.
- (2) If the person who feels threatened and the person against whom the restraining order is applied for live permanently in the same residence, a restraining order may be imposed to prevent an offence against life, health or liberty or a threat of such an offence (inside-the-family restraining order). (30.7.2004/711)

¹¹⁸ Act on Restraining Orders, Law No. 898 of December 1998 (with amendments up to 384/2010), available at <http://www.finlex.fi/sv/laki/ajantasa/1998/19980898> (last visited December 30, 2018). Unofficial translation by the Finnish Ministry of Justice.

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Section 2 – Prerequisites for the imposition of a restraining order

(1) A restraining order may be imposed, if there are reasonable grounds to assume that the person against whom the order is applied for is likely to commit an offence against the life, health, liberty or privacy of the person who feels threatened or in some other way severely harass this person.

(2) An inside-the-family restraining order may be imposed, if the person against whom the restraining order is applied for, judged by the threats he or she has made, his or her previous offences or other behavior is likely to commit an offence against the life, health or liberty of the person who feels threatened, and the imposition of a restraining order is not unreasonable with regard to the severity of the impending offence, the circumstances of the persons living in the same household and other facts presented in the case. (30.7.2004/711)

Section 2 a (30.7.2004/711) – Assessment of the prerequisites for the imposition of a restraining order

The assessment of the prerequisites for the imposition of a restraining order is made with regard to the circumstances of the persons involved, the nature of the offence or harassment that has already taken place, whether the offence or harassment has been repeated, as well as how likely it is that the person against whom the restraining order has been applied for is going to continue the harassment or commit an offence against the person who feels threatened.

Section 3 (30.7.2004/711) – Contents of a restraining order

(1) In accordance with what is ordered in the decision in the matter, the person on whom a restraining order has been imposed, may not meet the person being protected or otherwise contact or try to contact this person (basic restraining order), unless otherwise provided in subsection 4. It is also forbidden to follow and observe the person being protected.

(2) In addition to what is provided in subsection 1, a person on whom an inside-the family restraining order has been imposed must leave the residence where he or she and the person protected permanently live together, and he or she may not return there.

(3) If there is reason to believe that a restraining order in accordance with subsection 1 is not sufficient to prevent the threat of an offence or other harassment, or a restraining order in accordance with subsection 2 is not sufficient to prevent the threat of an offence, the restraining order may be imposed as an extended order, in which case it also applies to being in the vicinity of the permanent residence, holiday residence or workplace of the person being protected or of another comparable place specified separately (extended restraining order).

(4) The restraining order does not apply to contacts for which there is an appropriate reason and that are manifestly necessary.

Chapter 2 Imposition of a restraining order

Section 4 – Competent authority

(1) A restraining order matter is decided by a district court. The district court constitutes a quorum also when only the chairperson is present. The hearing may also be held at some other time and in some other place than what is elsewhere provided concerning hearings at general courts of first instance.

(2) The competent court is the district court with jurisdiction for the place, where the person protected by a restraining order has his or her domicile or where the restraining order would mainly be applied. If the person, against whom the restraining order is applied for, is a suspect in a criminal case, which may be of relevance when deciding the restraining order matter, the competent court in the criminal matter is also competent in the restraining order matter.

(3) Provisions on temporary restraining orders are laid down in sections 11 -13.

Section 5 – Initiation of an application for a restraining order and preparation of the matter in the district court

(1) Imposition of a restraining order may be applied for by anyone who feels threatened or harassed or by a police, social welfare or prosecuting authority. The application may be written or oral. When necessary, the applicant may be requested to supplement the application.

(2) A police investigation as referred to in section 37 of the Police Act (493/1995) may be conducted in a restraining order matter, if this promotes the consideration of the case. The order to conduct a police investigation is issued by the authority considering the restraining order matter.

(3) A notice of the application for a restraining order must be served to the person against whom the restraining order is applied for and to the person who is to be protected by the restraining order, if he or she is not the applicant, in accordance with the provisions on service of a summons in Chapter 11 of the Code of Judicial Procedure. At the same time the party concerned is requested to respond to the application for a restraining order in writing within a time limit determined by the court or orally in a hearing. If the request for a written response is deemed unnecessary, the matter is ordered to be transferred directly to the main hearing.

Section 6 – Main hearing in the district court

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- (1) The provisions on criminal procedure apply, as appropriate, to the consideration of the matter.
- (2) A matter may be heard and decided regardless of the absence of the person against whom a restraining order has been applied for, if his or her presence is not necessary for the resolution of the matter and if he or she has been summoned to the hearing under such a threat. A police, social welfare or prosecuting authority has a right to be present and to be heard in the consideration of the matter, even if the authority in question is not the applicant.
- (3) The district court must ensure that the case is thoroughly considered. A restraining order matter must be considered urgently.

Section 7 (30.7.2004/711) – Duration of a restraining order

- (1) A restraining order may be imposed for at most one year. However, an inside-the family restraining order may be imposed for at most three months. A restraining order enters into force as soon as the district court has issued a decision to impose the restraining order. The decision must be complied with notwithstanding an appeal, unless otherwise ordered by an appellate court considering the matter.
- (2) A restraining order may be renewed. In this case, the restraining order may be imposed for at most two years. When an inside-the-family restraining order is renewed, it may, however, be imposed for at most three months. Renewal of a restraining order may be applied for before the previous restraining order expires.

Section 8 – Contents of the decision

- (1) In a restraining order matter, the court must issue a written decision stating (1) the name of the authority that decided the matter, (2) the date of the decision, (3) the name of the applicant of the restraining order, (4) the name of the person against whom the restraining order has been applied for and the name of the person protected by the restraining order, (5) a short account of the matter, (6) the decision and the reasons for the decision and (7) the legal provisions applied.
- (2) If a restraining order is imposed, the decision must include a specification of the contents of and possible exceptions in the restraining order and a notification of the threat of penalty for breach of the restraining order. The expiry date of the restraining order must be stated in the decision.
- (3) If an inside-the-family restraining order is imposed, the decision must also specify the residence which the person on whom the restraining order has been imposed must leave, and include orders on how the person on whom the restraining order has been imposed gets his or her necessary personal belongings in his or her possession. When necessary, the decision must include instructions on where the person on whom the restraining order has been imposed can get assistance in arranging his or her accommodation during the time that the restraining order is in force. (30.7.2004/711)

Section 9 – Notifications of the decision

- (1) The district court must serve a notice of the judgment in a restraining order matter to the applicant, to the person protected by the restraining order, unless he or she is the applicant, and to the person against whom the restraining order had been applied for. If the application for a restraining order is dismissed, a notice does not need to be served to the person against whom the restraining order had been applied for, if this person has not been heard in the matter.
- (2) Service of a notice to the person, on whom a restraining order has been imposed, must be effected using a mode for verifiable service as provided in chapter 11 of the Code of Judicial Procedure, unless the judgment has been handed down or made available in his or her presence.
- (3) The court must without delay notify a judgment, by which a restraining order has been imposed, repealed or modified, for entry into the register referred to in section 15. The notification must include the information specified in paragraphs 1-4 of section 8(1) and the contents of the decision. Separate provisions on the duty of a court to notify a judgment by entering the data on the judgment into the judgment or decision notification system in the judicial administration's national information system or by submitting the data to the Legal Register Centre to be entered into the register referred to in section 15 may be issued by a decree of the Ministry of Justice. The entries are made and the data is submitted in accordance with the Act on the judicial administration's national data system (372/2010) and the provisions issued under it. (14.5.2010/384)

Section 10 – Consideration of a matter along with a criminal case

- (1) If a criminal case, which may be of relevance when deciding the restraining order matter, against the person against whom a restraining order has been applied for, is pending in the court, the restraining order matter may be considered along with the criminal case.

Chapter 3 Temporary restraining order

Section 11 (30.7.2004/711) – Decision on a temporary restraining order

- (1) A restraining order may be imposed as temporary. A temporary restraining order is imposed by an official with powers of arrest. A temporary restraining order may also be imposed by a court.
- (2) An official with powers of arrest may, ex officio, impose a temporary restraining order, if the apparent need to protect a person by means of a restraining order requires that the restraining order is imposed with immediate effect and if the

circumstances of the matter indicate that the person in need of protection due to his or her fear or some other reason is unable to apply for a restraining order himself or herself.

(3) Before a matter concerning a temporary restraining order is decided, both the person on whom the temporary restraining order is intended to be imposed and the person to be protected by the restraining order must be reserved an opportunity to be heard. The matter may, however, be decided without hearing the parties, if the application is manifestly unfounded or if the person on whom the restraining order is to be imposed cannot be reached.

(4) A decision on imposing a temporary restraining order is not separately subject to appeal.

Section 12 – Bringing a decision up for consideration in a district court

(1) The official with powers of arrest must without delay and at the latest within three days bring his or her decision to impose a temporary restraining order up for consideration in the competent district court. At the same time, the official who made the decision must submit his or her decision and the material related to the matter to the district court. The court must take the matter up for consideration at the latest within seven days of the date of the decision.

(2) In a decision by which a temporary restraining order has been imposed must, in addition to what is provided in section 8, be stated when and in which district court the matter will be taken up for consideration. A temporary restraining order must be observed immediately, unless otherwise ordered by the court considering the matter.

Section 12 a (30.7.2004/711) – Consideration of a temporary inside-the-family restraining order in a district court

(1) A district court must hold a main hearing within a week of the date when the official with powers of arrest brought his or her decision to impose a temporary inside-the-family restraining order up for consideration in the district court. If the main hearing is cancelled, it must be rescheduled to be held at the latest within two weeks of the date when the main hearing was intended to be held.

(2) If there are very important reasons to do so, the time limit referred to in subsection 1 may be ordered to be extended. (3) If the main hearing is cancelled or postponed, the district court must at the same time order whether the temporary inside-the-family restraining order remains in force.

Section 13 – Supplementary provisions

(1) In other respects, the provisions on a restraining order apply, as appropriate, to a temporary restraining order.

Chapter 4 Miscellaneous provisions

Section 14 – Costs for considering the matter

(1) The parties themselves are liable for the costs incurred by the consideration of a restraining order matter. If there are important reasons to do so, the court may order that a party is liable for part of or all reasonable legal costs of the opposing party.

Section 15 (30.7.2004/711) – Registration of a restraining order

(1) Provisions on recording data on a restraining order in the Data System for Police Matters and deleting data from the system are laid down in the Act on the Processing of Personal Data by the Police (761/2003).

Section 16 – Repealing or modifying a restraining order

(1) A restraining order may by request of the person on whom the restraining order has been imposed or the person being protected by it be repealed or modified, if this is justifiable on grounds of changed circumstances or other special reasons. The request is addressed to the district court that decided the matter. However, if the matter is pending in a court, the request is addressed to the court considering the matter. The request may be oral or written. Such requests are processed in compliance with the provisions in sections 5 and 6.

Section 17 – Penal provision

(1) Provisions on the punishment for breach of a restraining order are laid down in section 9 a in Chapter 16 of the Criminal Code.

[...]

50. FRANCE

[Law on Violence against Women, Couples, and its Impact on Children, 2010](#) ¹¹⁹

¹¹⁹ Law on Violence against Women, Couples and its Impact on Children (Loi relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants), No. 2010-769 (9 July 2010), available at

Chapter 1: Protection of Victims

Article 1

I. The Civil Code is completed by adding Title XIV as hereby redacted:

"Title XIV "Protective Measures for Victims of Violence"

" Art. 515-9

When the violence exercised within the couple, or by a former spouse, a former partner bound by a civil solidarity pact, or a former cohabitant, endangers the person who is the victim of it, or one or more children, the family judge can issue urgently a protection order to the latter.

"Art. 515-10.-The protection order is issued by the judge, seized by the person in danger, if there is a need for assistance, or, with the latter's consent, by the public prosecutor's office.

"Upon receipt of the application for a protection order, the judge convenes, by all suitable means, for a hearing, the plaintiff and the defendant, assisted, if necessary, by a lawyer, as well as the public prosecutor's office. These hearings may be held separately. They can be held in the council chamber.

"Art. 515-11.-The order of protection is issued by the family matters judge, if he considers, in the light of the evidence produced before him and contradictorily debated, that there are serious reasons to consider as probable the commission of facts of alleged violence and the danger to which the victim is exposed. At its issuance, the family judge is competent to:

"(1) Prohibit the defendant from receiving or meeting certain persons specially designated by the family court judge, and from entering into contact with them, in any way whatsoever;

"(2) Prohibit the defendant from detaining or carrying a weapon and, if necessary, order him to hand over to the registry against a receipt the weapons of which he is the holder;

"3 ° Decide on the separate residence of the spouses by specifying which of the two will continue to reside in the marital home and how to cover the costs of the accommodation. Except in special circumstances, the enjoyment of this accommodation is attributed to the spouse who is not the perpetrator of the violence;

"4 ° Assign the use of the couple's home or residence to the partner or cohabiting partner who is not the perpetrator of the violence and specify how to cover the costs of the accommodation;

"5 ° Decide on the methods of exercising the parental authority and, if necessary, on the contribution to the expenses of the marriage for the married couples, on the material aid within the meaning of the article 515-4 for the partners of a civil solidarity pact, and on the contribution to the maintenance and upbringing of children;

"6 ° Authorize the plaintiff to conceal his domicile or his residence and to elect domicile with the lawyer who assists or represents him, or with the public prosecutor at the tribunal of first instance for all civil proceedings in which it is also a party to. If, for the purpose of enforcing a court decision, the bailiff responsible for that execution must have knowledge of that person's address, it shall be communicated to him, without him being able to reveal it to his principal;

"7 ° Decide on the provisional admission to legal aid of the plaintiff pursuant to the first paragraph of Article 20 of Law No. 91-647 of 10 July 1991 on legal aid.

"Where appropriate, the judge shall provide the claimant with a list of qualified moral persons who may accompany him for the duration of the protection order. He may, with his consent, transmit to the qualified moral person the contact details of the plaintiff, so that it may contact them.

"Art. 515-12.-The measures mentioned in article 515-11 are taken for a maximum duration of four months. They may be extended if, during this period, a petition for divorce or legal separation has been filed. The family court judge may, at any time, at the request of the public prosecutor's department or of one of the parties, or after having carried out any useful investigative measure, and after having invited each of the they may express themselves, remove or modify all or part of the measures set out in the protection order, decide on new ones, grant the defendant a temporary exemption from observing certain of the obligations imposed on him or report the protection order.

"Art. 515-13.-An order of protection may also be issued by the judge to the person threatened with the threat of forced marriage under the conditions set out in article 515-10.

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"The judge is competent to take the measures mentioned in 1 °, 2 °, 6 ° and 7 ° of article 515-11. It may also order, at its request, the temporary ban on leaving the territory of the person under threat. This prohibition of exit from the territory is entered in the file of persons sought by the public prosecutor. Article 515-12 is applicable to measures taken on the basis of this article. "

II. - The same code is thus modified:

1 ° The third paragraph of article 220-1 is deleted;

2 ° In the fourth paragraph of article 220-1, the word: "others" is deleted;

3 ° In the third paragraph of Article 257, after the reference: "220-1", is inserted the reference: "and title XIV of the present chapter ".

Article 2

Articles 53-1 and 75 of the Code of Criminal Procedure are supplemented by a paragraph 6 ° as follows:

"6 ° To apply for a protection order, under the conditions defined by articles 515-9 to 515-13 of the civil code. Victims are also informed of the penalties incurred by the perpetrator or perpetrators of the violence and the conditions of execution of any possible convictions that may be imposed against them. "

[....]

Article 5

I. - After section 2 of Chapter VII of Title II of Book II of the Penal Code, a section 2 bis is inserted as follows:

Section 2a

"Violation of the orders made by the judge family affairs in case of violence

"Art. 227-4-2.-The fact, for a person subject to one or more obligations or prohibitions imposed in a protection order made pursuant to Articles 515-9 or 515-13 of the Civil Code, of not complying with the relevant obligations or prohibitions is punishable by two years' imprisonment and a fine of € 15,000.

"Art. 227-4-3.-The fact, for a person obliged to pay a contribution or subsidies under the protection order made pursuant to Article 515-9 of the Civil Code, of not notifying his change of domicile to the creditor within one month of the change is punishable by six months' imprisonment and a fine of € 7,500. "

[...]

Article 6

I. - After article 142-12 of the Code of Criminal Procedure, an article 142-12-1 is inserted as follows:

"Art. 142-12-1.-By way of derogation from the provisions of article 142-5, the house arrest under mobile electronic surveillance may be ordered when the person is indicted for violence or threats, punishable by at least five years' imprisonment, committed:

"1 ° Against his spouse, his cohabiting partner or his partner through a civil solidarity pact;

"2 ° Against his children or those of his spouse, cohabiting partner or partner.

"This article is also applicable when the offense is committed by the former spouse or partner of the victim, or by the person who has been linked to it by a civil solidarity pact, the domicile concerned being that of the victim. "

II.-The penal code is thus modified:

1 ° After article 131-36-12, it is inserted an article 131-36-12-1 thus written:

"Art. 131-36-12-1.-By way of derogation from the provisions of article 131-36-10, placement under mobile electronic surveillance may be ordered against a person of full age, whose medical expertise has established the dangerousness sentenced to deprivation of liberty for a term of five years or more for violence or threats:

"1 ° Against his spouse, his cohabitant or his partner bound by a civil solidarity pact;

"2 ° Against his children or those of his spouse, cohabiting partner or partner.

"This article is also applicable when the violence has been committed by the former spouse or partner of the victim, or by the person who has been linked to it by a civil solidarity pact, the domicile concerned being that of the victim. »;

2 ° After article 222-18-2, an article 222-18-3 is inserted as follows:

"Art. 222-18-3.-When committed by the spouse or the cohabiting partner of the victim or the partner related to the victim by a civil solidarity pact, the threats provided for in the first paragraph of article 222-17 are punishable by two years of imprisonment and a fine of € 30,000, those provided for in the second paragraph of the same article and in the first paragraph of Article 222-18 shall be punishable by five years of imprisonment and a fine of € 75,000, and those provided for in the second paragraph of Article 222-18 are punishable by seven years of imprisonment and a fine of € 100,000. »;

3 ° In the second paragraph of article 222-48-1, the reference: "and 222-14" is replaced by the references: ", 222-14 and 222-18-3".

III.-When a person indicted for a crime or offense committed against his spouse, his cohabiting partner or his partner bound by a civil solidarity pact is placed under house arrest with mobile electronic surveillance and that a prohibition to meet the victim

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has been pronounced, the latter may, if it expressly consents to it, be proposed the attribution of a device of tele-protection allowing him to alert the public authorities in case of violation of the obligations imposed on the indicted or wearing an electronic device to remotely report that the charged person is nearby.

Such devices may also be offered to the victim when a person convicted of a crime or offense committed against his spouse, her partner or her partner bound by a civil partnership is placed under mobile electronic surveillance. as part of a socio-judicial follow-up or parole and that a ban on meeting the victim was pronounced.

These provisions are also applicable when the facts were committed by a former spouse or former cohabitant of the victim or by a person who has been linked to the victim by a civil solidarity pact.

These provisions are applicable on an experimental basis, for a period of three years from the publication of this law, in jurisdictions determined by the Ministry of Justice, according to the terms specified by decree.

[...]

Article 9

The first paragraph of Article 378 of the same Code reads as follows:

" The father and mother who are condemned, either as authors, co-perpetrators or accomplices of a crime or offense committed on the person of their child, or as co-perpetrators or accomplices of a crime or offense committed by their child, or as authors, co-perpetrators or accomplices of a crime committed on the person of the other parent, may have their parental authority totally withdrawn by an express decision in the penal judgment. "

Article 17

Paragraph 3 ° of article L. 213-3 of the code of the judicial organization is completed by paragraphs e and f as follow:

"(E) Protection against a spouse, a partner bound by a civil partnership or an abusive cohabiting partner or a former spouse, partner bound by a civil solidarity pact or cohabiting partner;

"(F) The protection of the person threatened with the threat of forced marriage. "

Article 18

Article 66-1 of the law n ° 91-650 of July 9, 1991 reforming the civil procedures of execution is thus written:

"Art. 66-1.-Articles 62, 65 and 66 of this law as well as articles L. 613-1 to L. 613-5 of the code of construction and housing are not applicable to the expulsion of the spouse, a partner bound by a civil partnership or an abusive cohabiting partner ordered by the family court judge on the basis of Article 515-9 of the Civil Code."

Article 19

I. - After the first paragraph of Article 5 of Law No. 90-449 of 31 May 1990 on the implementation of the right to housing, a paragraph is inserted as follows:

"Agreements have also been made with the housing funders to reserve in each department a sufficient number of housing, distributed geographically, for victims of violence, protected or having been protected by the protection order provided for in Articles 515-9. and following of the civil code. "

II. - The first paragraph of Article 4 of the same law is completed by two sentences as follows:

"It also takes into account the needs of those who are victims of violence within their couple or within their family, threatened with forced marriage or forced to leave their homes after threats of violence or actual violence. This paragraph also applies to the victim spouse when the latter owns his dwelling. "

Article 20

Article L. 822-1 of the Education Code is amended as follows:

1 ° After the second paragraph, a paragraph is inserted as follows:

"An agreement concluded between the State and the regional centers of university works aims at the reservation of a sufficient number of dwellings for the major victims of violence registered in a school or university which are protected or which have been protected by the protection order provided for in Articles 515-9 et seq. of the Civil Code. »;

(2) In the second sentence of the sixth paragraph, the word "third" is replaced by the word "fourth".

Article 21

A report submitted by the Government on the implementation of specific training in the prevention and management of violence against women and violence committed within the couple is presented to Parliament before June 30, 2011. This training would be intended for doctors, medical and paramedical personnel, social workers, civil status officers, prison officers, magistrates, lawyers, national education personnel, animation staff sports, cultural and leisure activities and to police and gendarmerie personnel.

[...]

CHAPTER II: PREVENTION OF VIOLENCE

Article 23

I. - After article L. 312-17 of the code of education, an article L. 312-17-1 is inserted as follows:

"Art. L. 312-17-1. - Information on equality between men and women, the fight against gender bias and the fight against violence against women and violence committed within the couple is provided at all stages of schooling. Schools, including French schools abroad, may join forces for this purpose with women's rights advocacy groups promoting equality between men and women and staff working in the field of education. the prevention and repression of this violence. "

II. - Article L. 721-1 of the same code is completed by a paragraph as follows:

"The training courses mentioned in the previous three paragraphs include awareness-raising actions to combat discrimination, issues of equality between women and men, violence against women and violence committed within the couple. "

Article 24

A national awareness day on violence against women is scheduled for 25 November.

Article 25

I. - After paragraph 4 of Article 222-14 of the Penal Code, a paragraph is inserted as follows:

"The penalties provided for in this article are also applicable to habitual violence committed by the spouse or cohabiting partner of the victim or by the partner associated with her by a civil solidarity pact. The provisions of the second paragraph of Article 132-80 shall apply to this paragraph. "

II.- In the last paragraph of article 222-48-1 of the same code, after the word: "preceding", are inserted the words: "which are committed on a minor of fifteen years by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim ".

[...]

Article 27

I. - Law n ° 86-1067 of September 30th, 1986 relating to the freedom of communication is thus modified:

1 ° In the last paragraph of Article 42, the words: "and family associations" are replaced by the words: ", family associations and associations for the defense of women's rights";

2 ° In the third sentence of the second paragraph of Article 43-11, the words: "and the fight against discrimination and" are replaced by the words: ", the fight against discrimination, sexist prejudices, violence against women, violence committed within the couple and equality between men and women. They ";

3 ° In the last paragraph of Article 48-1, the words: "and the family associations recognized by the National Union of Family Associations" are replaced by the words: ", the family associations recognized by the National Union of family Associations and women's rights associations ".

II. - The first paragraph of article 2 of the law n ° 49-956 of July 16, 1949 on publications intended for the youth is supplemented by the words: "or sexist".

[...]

Article 29

A report submitted by the Government on the creation of a National Observatory of Violence against Women is presented to Parliament before 31 December 2010.

CHAPTER III: REPRESSION OF VIOLENCE

Article 30

Article 41-1 (5) of the Code of Criminal Procedure is amended as follows:

1 ° In the first sentence, the words: "with the agreement of the parties" are replaced by the words: "at the request or with the agreement of the victim";

2 ° It is added a sentence thus written:

"The victim is presumed not to consent to the criminal mediation when she has seized the family court judge pursuant to Article 515-9 of the Civil Code because of violence committed by her spouse, her partner or the partner with whom she is bound by a civil union; "

Article 31

I. - After Article 222-14-1 of the Criminal Code, article 222-14-3 is inserted as follows:

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"Art. 222-14-3.-The violence provided for by the provisions of this section are punishable regardless of their nature, including psychological violence. "

II. - After article 222-33-2 of the same code, an article 222-33-2-1 is inserted as follows:

"Art. 222-33-2-1.-The act of harassing a spouse, a partner bound by a civil solidarity pact or a cohabiting partner by repeated acts whose purpose or effect is a deterioration of his living conditions resulting in an alteration his physical or mental health is punishable by three years' imprisonment and a fine of € 45,000 where these events caused a total incapacity for work of eight days or less, and resulted in no incapacity for work and five years of imprisonment and a fine of € 75,000 when they caused a total incapacity for work of more than eight days.

"The same penalties are incurred when the offense is committed by a former spouse or former cohabitant of the victim, or a former partner linked to it by a civil partnership. "

Article 33

I. - After paragraph 9 ° of article 221-4 of the same code, a paragraph 10 ° is inserted as follow:

"10 ° Against a person because of his refusal to enter into a marriage or to conclude a union. "

II. - After article 221-5-3 of the same code, an article 221-5-4 is inserted as follows:

"Art. 221-5-4. - In the event that the crime provided for in paragraph 10 of article 221-4 is committed abroad against a person ordinarily resident in France, the French law is applicable by way of derogation from the provisions of Article 113-7. "

III. - After paragraph 6 ° of article 222-3 of the same code, a paragraph 6 ° bis is inserted as follow:

"6 ° bis against a person for the purpose of compelling her to enter into a marriage or to enter into a union or because of her refusal to enter into that marriage or marriage; ".

IV. - After article 222-6-2 of the same code, an article 222-6-3 is inserted as follows:

"Art. 222-6-3. - In the event that the crime provided for in paragraph 6 bis of section 222-3 is committed abroad against a person ordinarily resident in France, the French law is applicable by way of derogation from of article 113-7. "

V. - After paragraph 6 ° of articles 222-8 and 222-10 of the same code, a paragraph 6 ° bis is inserted as follow:

"6 ° bis Against a person for the purpose of compelling her to enter into a marriage or to enter into a union or because of her refusal to enter into that marriage or marriage; ".

VI. - After paragraph 6 of articles 222-12 and 222-13 of the same code, a paragraph 6 ° bis is inserted as follow:

"6 ° bis against a person, by reason of his refusal to enter into a marriage or to enter into a union or to compel him to enter into a marriage or to enter into a marriage; ".

VII. - After article 222-16-2 of the same code, an article 222-16-3 is inserted as follow:

"Art. 222-16-3. - In the case where the offenses provided for in paragraph 6 ° bis of Articles 222-8, 222-10, 222-12 and 222-13 are committed abroad against a person ordinarily resident in France French law is applicable by way of derogation from the provisions of Article 113-7. In the case of an offense, the provisions of the second sentence of Article 113-8 shall not apply."

Article 34

The French consular authorities shall take appropriate measures to ensure, with their consent, the return to France of persons of French nationality, or who habitually and in a regular manner reside on the French territory, when those persons have been victims of voluntary violence abroad or sexual assault committed as part of a forced marriage, or because of their refusal to submit to a forced marriage.

[...]

Article 37

I. - Articles 1, 2, 5, 6, 16, 17, 18, 23, 25, 26, 27, 28, 30 to 34, II of Article 35 and Article 36 are applicable in the islands of Wallis and Futuna.

II.-Articles 1, 2, 5, 6, 15 to 17, 23, 25, 26, 27, 28, 30 to 34, II of Article 35 and Article 36 are applicable in French Polynesia.

III.-Articles 1, 2, 5, 6, 8, 16, 9, 17, 23, 25, 26, 27, 28, 30 to 34, II of Article 35 and Article 36 are applicable in New Caledonia.

IV.-Articles 11 and 12 are applicable to Saint-Barthélemy and Saint-Martin.

V. -The order n ° 2000-373 of April 26, 2000 relating to the conditions of entry and stay of foreigners in Mayotte is thus modified:

1 ° After article 16-1, three articles 16-2, 16-3 and 16-4 are inserted as follow:

"Art. 16-2.-Except if its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted an order of protection under Article 515-9 of the Civil Code because of the violence committed by her spouse, her partner bound by a civil partnership or her cohabiting partner.

"Art. 16-3.-Except if its presence constitutes a threat to public order, a temporary residence permit bearing the mention "private and family life" is issued to foreigners who benefit from a protection order under the Act. Article 515-9 of the Civil Code. The condition set out in article 6-1 of this order is not required. This temporary residence permit entitles you to the exercise of a professional activity.

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"Art. 16-4.-In the event of a final conviction of the person implicated, a residence card may be issued to a foreigner who has lodged a complaint for an offense mentioned in the first paragraph of Article 132-80 of the Penal Code. »;

2 ° The IV of Article 42 is completed by a paragraph as follows:

"Except where its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted a protection order under Article 515-9 of the Civil Code. "

VI.-Order n ° 2000-372 of April 26th, 2000 relating to the conditions of entry and stay of foreigners in French Polynesia is modified as follow:

1 ° After article 17-1, are inserted three articles 17-2, 17-3 and 17-4 thus written:

"Art. 17-2.-Except if its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted an order of protection under Article 515-9 of the Civil Code because of the violence committed by her spouse, her partner bound by a civil partnership or her cohabiting partner.

"Art. 17-3.-Except if its presence constitutes a threat to public order, a temporary residence permit bearing the mention "private and family life" is issued to foreigners who benefit from a protection order under the Act. Article 515-9 of the Civil Code. The condition set out in article 6-1 of this order is not required. This temporary residence permit entitles you to the exercise of a professional activity.

"Art. 17-4.-In the event of a final conviction of the defendant, a residence card may be issued to a foreigner who has lodged a complaint for an offense mentioned in the first paragraph of Article 132-80 of the Penal Code. »;

2 ° The IV of Article 44 is completed by a paragraph as follows:

"Except where its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted a protection order under Article 515-9 of the Civil Code. "

VII.-The order n ° 2002-388 of March 20th, 2002 relating to the conditions of entry and stay of the foreigners in New Caledonia is thus modified:

1 ° After article 17-1, three articles 17-2, 17-3 and 17-4 are inserted as follow:

"Art. 17-2.-Except if its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted an order of protection under Article 515-9 of the Civil Code because of the violence committed by her spouse, her partner bound by a civil partnership or her cohabiting partner.

"Art. 17-3.-Except if its presence constitutes a threat to public order, a temporary residence permit bearing the mention "private and family life" is issued to foreigners who benefit from a protection order under the Act. Article 515-9 of the Civil Code. The condition set out in article 6-1 of this order is not required. This temporary residence permit entitles you to the exercise of a professional activity.

"Art. 17-4.-In the event of a final conviction of the defendant, a residence card may be issued to a foreigner who has lodged a complaint for an offense mentioned in the first paragraph of Article 132-80 of the Penal Code. »;

2 ° The IV of Article 44 is completed by a paragraph as follows:

"Except where its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted a protection order under Article 515-9 of the Civil Code. "

VIII. - Order No. 2000-371 of 26 April 2000 on the conditions of entry and residence of aliens in the Wallis and Futuna Islands is amended as follow:

1 ° After article 16-1, three articles 16-2, 16-3 and 16-4 are inserted as follow:

"Art. 16-2.-Except if its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted an order of protection under Article 515-9 of the Civil Code because of the violence committed by her spouse, her partner bound by a civil partnership or her cohabiting

partner.

"Art. 16-3.-Except if its presence constitutes a threat to public order, a temporary residence permit bearing the mention "private and family life" is issued to foreigners who benefit from a protection order under the Act. Article 515-9 of the Civil Code. The condition set out in article 6-1 of this order is not required. This temporary residence permit entitles you to the exercise of a professional activity.

"Art. 16-4.-In the event of a final conviction of the person implicated, a residence card may be issued to a foreigner who has lodged a complaint for an offense mentioned in the first paragraph of Article 132-80 of the Penal Code. »;

2 ° The IV of Article 42 is completed by a paragraph as follows:

"Except where its presence constitutes a threat to public order, the administrative authority shall grant, as soon as possible, the issue or renewal of the residence permit of a foreigner who has been granted a protection order under Article 515-9 of the Civil Code. "

IX.-In the absence of adaptation, the references of this law to provisions that are not applicable to Mayotte, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon, in the islands Wallis and Futuna, French Polynesia and New Caledonia are replaced by references to provisions having the same object applicable locally.

[...]

[Criminal Code, 1994 \(As amended\)](#) ¹²⁰

Article 222-24

Rape is punishable by twenty years of imprisonment:

[...]

4° When committed by an ascendant or by any other person having a de jure or de facto authority over the victim;

[...]

11° When it is committed by a spouse or cohabitant of the victim or the partner linked to the victim by a contractual civil union

[...]

14° When a minor was present at the time of the incident and witnessed it;

[...]

Art. 132-80

[Modified by Law n ° 2018-703 of August 3rd, 2018 - art. 13]

In cases provided for by law or regulation, penalties for a crime, offense or contravention are aggravated when the offense is committed by the spouse, the cohabitant or the partner related to the victim by a civil pact solidarity, even when they do not cohabit.

The aggravating circumstance provided for in the first paragraph also exists when the facts are committed by the former spouse, former partner, or former partner related to the victim by a civil solidarity pact. The provisions of this paragraph are applicable if the offense is committed because of the relationship that existed between the perpetrator and the victim.

Art. 222-8

[Modified by Law n ° 2018-703 of August 3rd, 2018 - art. 13]

The offense defined in section 222-7 is punishable by twenty years of criminal imprisonment when it is committed:

[...]

4 ° ter - on the spouse, ascendants or descendants in direct line or on any other person habitually living in the home of the persons mentioned in paragraph 4 ° and 4 ° bis, due to the functions performed by the latter;

[...]

¹²⁰ Criminal Code (1 March 1994, last amended on 25 November 2018), available at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719&dateTexte=20181214> (last visited December 30, 2018). Unofficial translation by Compendium team.

Art. 222-10

[Modified by Law n ° 2018-703 of August 3rd, 2018 - art. 13]

The offense defined in section 222-9 is punishable by fifteen years' imprisonment when it is committed: [...]

4 ° ter - on the spouse, ascendants or descendants in direct line or on any other person habitually living in the home of the persons mentioned in paragraphs 4 ° and 4 ° bis, due to the functions performed by the latter;

[...]

Article 222-33-2-1

[Modified by Law n ° 2018-703 of August 3rd, 2018 - art. 13]

The harassment of a spouse, a partner bound by a civil partnership, or a cohabiting partner by recurring words or behavior whose purpose, or effect, is a deterioration of her living conditions, resulting in an impairment of her physical or mental health, is punishable by three years of imprisonment and a fine of € 45,000 where these events caused a total incapacity to work for up to eight days or less, or resulted in no incapacity to work, and five years of imprisonment and 75 € 000 where they caused a total incapacity for work exceeding eight days or were committed while a minor was present and witnessed these acts.

The same penalties are applicable when the offense is committed by a former spouse or former cohabitant partner of the victim, or a former partner associated with the latter by a civil partnership.

[Civil Code, 1804 \(As amended\)](#) ¹²¹

Article 515-11

Modified by Law N ° 2014-873 of August 4, 2014 - Art. 32

The protection order is issued, as soon as possible, by the family judge, if he considers, on the basis of the evidence presented before him that has been debated in an adversary manner, that there are serious reasons to consider as probable the allegations of violence and the danger to which the victim or one or more children are exposed. On the occasion of its issuance, the family court judge is competent to:

1 ° Prohibit the defendant from receiving or meeting certain persons specially designated by the family court judge, and from contacting them in any way whatsoever;

2 ° Prohibit the defendant from detaining or carrying a weapon and, if necessary, order him to surrender to the police or gendarmerie he designates the weapons which he holds for filing at the registry;

3 ° Decide on the separate residence of the spouses by specifying which of the two will continue to reside in the marital home and how to cover the costs of the accommodation. Except in special circumstances, the enjoyment of this accommodation is attributed to the spouse who is not the perpetrator of the violence, even if he has received emergency accommodation;

4 ° Specify which of the partners bound by a civil solidarity pact or cohabitants will continue to reside in the common dwelling and decide on the arrangements for covering the costs of this accommodation. Except in special circumstances, the enjoyment of this accommodation is attributed to the partner bound by a civil solidarity pact or to the cohabiting partner who is not the perpetrator of the violence, even if he has received emergency accommodation;

5 ° To pronounce on the methods of exercise of the parental authority and, if necessary, on the contribution to the expenses of the marriage for the married couples, on the material aid within the meaning of the article 515-4 for the partners a civil solidarity pact and the contribution to the maintenance of children;

6 ° Authorize the plaintiff to conceal his domicile or residence and to take up residence with the lawyer who assists him or represents him or with the public prosecutor at the "tribunal de grande instance" for all civil proceedings in which he is also part. If, for the purpose of enforcing a court decision, the bailiff responsible for that execution must have knowledge of that person's address, it shall be communicated to him, without him being able to reveal it to his principal;

6 ° bis Authorize the plaintiff to conceal his domicile or residence, and to elect his domicile for the purposes of daily life with a qualified legal person;

7 ° To pronounce provisional admission to the legal aid of the plaintiff according to the first paragraph of article 20 of the law n ° 91-647 of July 10th, 1991 relative to the legal aid.

Where applicable, the judge presents the claimant with a list of qualified legal persons who may accompany him for the duration of the protection order. He may, with his consent, transmit to the qualified legal person the contact details of the plaintiff, so that this may contact them.

When the judge issues a protection order because of violence likely to endanger one or more children, he informs without delay

¹²¹ Civil Code (as amended up to 1 October 2018), available at

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=2B943A4C64FEDDAD70E0F97C5F84C98A.tpdila10v_1?idSectionTA=LEGISCTA000022469694&cidTexte=LEGITEXT000006070721&dateTexte=20170331 (last visited December 30, 2018). Unofficial translation by Compendium team.

the public prosecutor.

51. GABON

[Penal Code, 1963](#)¹²²

CHAPTER VII ATTACKS AGAINST MORALITY

[...]

Article 259: - (amended by Ordinance No. 39/69 of 12 April 1969). Where the perpetrators are ascendants of the person against whom the [indecent] assault was committed, if they have authority over him/her, they are teachers, hired servants, or ministers of worship, or if the perpetrator, whoever he may be, has been aided in his crime by one or more persons, the applicable penalties shall be as follows:

- in the case of rape, life imprisonment;
- in case of indecent assault committed with violence, ten years' imprisonment;
- in the case of indecent assault committed without violence, five to ten years' imprisonment;
- in case of commission of a shameless act on an individual of the same sex, and under the age of 21 years, 3 to 8 years imprisonment.

[...]

Article 261: - The penalty shall be imprisonment from two to five years and a fine of 100,000 to 2,000,000 francs, where:

- 1- the offense was committed against a minor under 18;
- 2- the offense was accompanied by coercion, abuse of authority or fraud;
- 3- The perpetrator is the husband, father, mother or guardian of the victim.

[...]

CHAPTER VIII CRIMES AGAINST MARRIAGE AND THE FAMILY

Article 264: - Anyone who will give in customary marriage, or who will customarily marry a girl who is not consenting, or who is under the age of fifteen shall be punished by imprisonment for one to five years.

Art. 265: In a customary marriage, anybody who performs or attempts to perform sexual intercourse with a child who is less than 15 years old will be punished by imprisonment from one to ten years.

Art. 266: If as a result of this the child has reported severe injuries, an infirmity, even if temporary, or if the intercourse has resulted in the death of the child, the perpetrator will be punished by temporary criminal imprisonment.

52. GAMBIA, THE

[Women's Act 2010](#)¹²³

Domestic Violence Act, 2013¹²⁴

¹²² Penal Code, Law No. 21/63 (31 May 1963), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=266824 (last visited December 30, 2018). Unofficial translation by Unofficial translation by Compendium team.

¹²³ Women's Act 2010, available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf> (last visited December 30, 2018).

¹²⁴ Domestic Violence Act, 2013, please see Annex III.

53. GEORGIA

[Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, 2006 \(As amended\)](#)¹²⁵

Chapter 1 - General Provisions

Article 1 – Scope of the Law

This Law defines a set of actions which characterise domestic violence, legal and organisational grounds for detecting and eliminating domestic violence, as well as guarantees for legal protection and support for victims of domestic violence.

Article 2 - Aim of the Law

The aim of this Law shall be to:

- a) ensure creation of legislative guarantees for protecting the rights and freedoms of all family; members, their physical and mental integrity and family values by recognising their equal rights;
- b) create an efficient legislative mechanism to detect, eliminate and prevent domestic violence;
- c) create a system for providing access to justice for victims of domestic violence;
- d) create foundations for protection, support and rehabilitation of victims of domestic violence;
- e) ensure collaboration among different institutions to prevent and combat domestic violence;
- f) support rehabilitation measures for abusers.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 3 - Domestic violence

Domestic violence is the violation of constitutional rights and freedoms of one family member by another family member through neglect and/or physical, psychological, economic, sexual violence or coercion.

Article 4 - Definition of terms

Terms in this Law shall have the following meaning:

- a) physical violence – beating, torture, damage to health, illegal deprivation of liberty or any other action that causes physical pain or suffering, withholding health needs, which leads to damage to health or death of a family member;
- b) psychological violence - offence, blackmailing, humiliation, threats, or any other action that violates a person's honour and dignity;
- c) coercion - compelling a person by using physical or psychological force to carry out or fail to carry out an act, carrying out or refraining from which is
the right of that person, or making a person tolerate an action carried out against his/her will;
- d) sexual violence - sexual act by violence or threat of violence, or by taking advantage of the victim's helplessness; sexual act or other acts of sexual nature or child sexual abuse;
- e) economic violence - an act, which causes restriction of the right to have food, dwelling and other conditions for normal development, to enjoy property and labour rights, to use common property and to administer one's own share of that property;
- e1) neglect – failure by a parent and/or a legal representative to satisfy physical and psychological needs of a child, restriction of a child's right to basic education, failure to protect a child from danger or to perform the actions necessary to register birth or to use medical and other services, provided the parent and/or the legal representative has appropriate information, possibility and access to the appropriate services;
- f) victim - a family member who suffered from physical, psychological, sexual and economic violence or coercion and who was given the status of a victim of domestic violence by the relevant service of the Ministry of Internal Affairs and/or by a court and/or by a group tasked with determining the status of victims of domestic violence (victim identification group);
- g) family member - for the purposes of this Law, mother, father, grandmother, grandfather, spouse, child (stepchild), adopted child, adoptive parent, spouse of adoptive parent, foster family (foster mother, foster father), grandchild, sister, brother, parents of a spouse, son-in-law, daughter-in-law, former spouse, persons who are in a non-registered marriage and members of their families, guardians;
- h) abuser - a family member who commits physical, psychological, economic, sexual violence or coercion towards another family member;

¹²⁵ Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, No. 3143 (25 May 2006, as amended by Law No. 2507 of 28 December 2009, and Law No. 2697 of 17 October 2014), available at <https://www.refworld.org/pdfid/548f0f8a8.pdf> (last visited December 30, 2018).

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i) shelter - a place of temporary residence for victims of domestic violence, or temporary accommodation for victims of domestic violence that operates within the system of the Ministry of Health, Labour and Social Affairs of Georgia and/or on the premises of a non-commercial legal person, which is intended for psychological and social rehabilitation of victims, their legal and medical assistance and protection measures; as well as families of relatives and friends - until Chapter VI of this Law enters into force;

j) rehabilitation measures for abusers - measures that include rehabilitation of abusers and crisis intervention according to standards determined by the legislation of Georgia;

k) crisis centre - place of temporary accommodation for alleged victims and victims of domestic violence that is intended for psychological and social rehabilitation, primary and emergency medical care and legal assistance. Persons (or their dependents) may be placed at a crisis centre before or after the status of victim has been determined, unless the victim expresses willingness to be accommodated in the shelter and if he/she needs only psychological and social rehabilitation and/or legal assistance and/or primary and emergency medical care without placement at a shelter;

l) alleged victims of domestic violence - a person who believes himself/herself to be a victim and who, applies to the relevant authorities/group for determining the status of the victim of domestic violence (victim identification group), for establishing the status of victim.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 5 - Legislation of Georgia on elimination of domestic violence, protection and support of victims of domestic violence
The legislation of Georgia on elimination of domestic violence, protection and support to victims of domestic violence is based on the Constitution of Georgia, treaties and international agreements of Georgia, this Law and other normative acts of Georgia.

Chapter II - Prevention of Domestic Violence

Article 6 - Mechanisms for prevention of domestic violence

1. Mechanisms for prevention of domestic violence include a set of social, economic, legal and other measures that are directed towards elimination of the reasons and preconditions of domestic violence, prevention of cases of domestic violence, prosecution of abusers and rehabilitation and adaptation of victims and abusers.

2. The State shall support and ensure introduction and implementation of the mechanisms for prevention of domestic violence through its authorized bodies.

3. Mechanisms for prevention of domestic violence shall include:

a) analysis, studying and assessment of the factors that provoke domestic violence;

b) implementation of efficient legal methods for detecting and preventing cases of domestic violence;

c) maintenance of relevant statistics;

d) taking preventive measures against those persons who belong to risk groups of domestic violence perpetration, or who have already committed domestic violence;

e) conducting appropriate awareness raising campaigns in order to make people aware of their rights and obligations, as well as their protection guarantees, including those rights and obligations that ensure the equality of family members and their obligations to each other;

f) in cases of domestic violence, spreading and making available information on the liability of the abuser, rights of the victim and the guarantees for protecting those rights,

g) implementing measures for protecting and supporting victims and for rehabilitation of abusers in the event of domestic violence;

h) creation and promotion of joint programmes with interested institutions for ensuring prevention of domestic violence.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 7 - Implementation of domestic violence preventive measures

1. The Ministry of Labour, Health and Social Affairs of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Education and Science of Georgia, the Prosecutor's Office and judicial bodies of Georgia shall ensure implementation of domestic violence preventive measures within the scope of their authority and according to the procedures determined by this Law.

2. During implementation of domestic violence preventive measures the relevant state bodies may collaborate with interested organisations that work on issues of domestic violence and protection of human rights and ensure planning and implementation of joint programmes.

Article 8 - Social services

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1. The Ministry of Labour, Health and Social Affairs of Georgia, within the scope of its authority, shall provide social services for implementation of domestic violence preventive measures.
2. Social services shall include:
 - a) studying the causes of family disputes, their appropriate analysis and assisting family members to resolve disputes;
 - b) implementing assistance and support measures for domestic violence victims;
 - c) identification of risk groups of domestic violence perpetrators and assisting in overcoming the problems related with them together with relevant state bodies;
 - d) participation in the process of issuing protective orders;
 - e) monitoring the execution of protective and restraining orders;
 - f) developing programmes for support and social rehabilitation of victims and abusers and assisting in their implementation.(Operation of this article shall be suspended until 1 July 2015).

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Chapter III - Mechanisms for Identification and Elimination of Domestic Violence

Article 9 - Mechanisms for identification and elimination of domestic violence

1. Criminal law, civil law and administrative-law mechanisms shall be applied for the identification and elimination of domestic violence.
2. Criminal law mechanisms shall be applied in those cases of domestic violence that contain elements of a criminal offence.
3. Civil law mechanisms shall be applied for compensation of the damages caused by domestic violence, according to the procedure determined by the civil legislation.
4. Administrative law mechanisms shall be applied in the form of issuing restraining/protective orders, also when the nature of the offence, under the legislation of Georgia, does not attract criminal liability and it can be eliminated under the Administrative Code of Georgia.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 9/1 - Identification of domestic violence cases

Law enforcement and judicial bodies, also the Group for Determining Domestic Violence Victim Status of the Interagency Council for Prevention of Domestic Violence shall ensure identification of and relevant response to cases of domestic violence, according to the procedures established by this Law. The obligation to apply to relevant authorities for primary identification of and response to domestic violence shall rest with the authorized personnel of medical institutions, or in cases of violence against minors, authorised personnel of childcare and educational institutions, also authorized employees of the Legal Entity under Public Law (LEPL) – the Social Service Agency, of guardianship and custodianship authorities, and other entities provided by the legislation of Georgia.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 10 - Protective and restraining orders

1. To ensure prompt response to domestic violence cases, the authorised body, in order to ensure protection of the victim and to restrain certain actions of the abuser, may issue a restraining or protective order as a temporary measure.
2. A protective order is an act issued by a court (judge) of first instance through an administrative proceeding that determines temporary measures for protecting the victim.
3. A restraining order is an act issued by an authorised police officer that determines temporary measures for protecting a victim of domestic violence and that shall be submitted for approval to a court within 24 hours after its issuance.
<http://www.matsne.gov.ge> 080.080.050.05.001.002.259
4. Non fulfilment of the requirements under a restraining/protective order by the abuser shall result in legal liability under the legislation of Georgia.
5. The use of measures provided in the criminal legislation of Georgia (criminal mechanisms) against the perpetrator of domestic violence shall not hinder the issuance of a restraining or protective order to ensure the protection of the person affected by violence (victim).
6. If a measure of restraint (except for detention) is applied with respect to a domestic violence perpetrator, against whom the prosecution has been initiated on charges of domestic violence or domestic crime, the competent court, by way of criminal proceedings, shall consider and decide the use of restrictive measures against the abuser to ensure the protection of the person affected by violence (the victim).
7. For the purpose of rehabilitating the abuser, a protective order may instruct the abuser to complete mandatory training courses that are focused on changing the violent attitude and behaviour of the abuser.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

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Article 11- The right to request issuance of a protective order

Victims of domestic violence, their family members and/or, with the consent of the victim, a person who provides medical, legal or psychological assistance to the victim, may apply for a protective order. In cases of violence against minors, the issuance of a protective order may be requested by the relevant guardianship and custody authority.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 12 - Validity of restraining and protective orders

1. Protective orders shall be issued for a period of up to six months. A court shall specify its validity.

2. A court shall decide on the issue of changing the validity of a protective order. The validity of a protective order may be extended during the period of its operation and for an additional term that shall not exceed three months, if the victim and other family members of the victim are at risk.

3. At the request of the parties, a protective or restraining order may be terminated by a corresponding decision of a court upon conciliation of the parties, except for the cases determined by the second paragraph of this article and Article 13 of this Law.

4. A restraining order shall be issued for a period of up to one month, and the court shall approve or refuse to approve it within 24 hours after the application has been filed by an authorised person.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 13 - Operation of restraining and protective orders at the time of conciliation of the victim and the abuser

Conciliation of the parties shall not hinder the issuance of a restraining or protective order, neither cause the termination of the issued orders, if the domestic violence violates the interests of other family members, especially minors' interests.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Chapter IV - Specific Measures for Protecting Minors from Domestic Violence

Article 14 - Separation of a minor from an abusive parent/parents

1. If because of some forms of violence in the family, a person specified in the Article 11 of this Law applies to a court for a protective order, the court shall consider the relationship of the abusive parent/parents with the minor. If traces of violence can be observed in the minor, the court may be requested to separate the minor from abusive parent/parents, as a temporary measure, until the court makes its final decision.

2. When considering the matter related to the right of representation of the minor, account shall be taken of the fact that if the abusive parent retains the right to represent the minor it will be harmful to the interests of the minor. Parents may not retain joint custody of the minor, if there is reasonable belief that one of the parents may commit violence against the minor.

3. In cases determined by the legislation of Georgia, minors from the age of 14 may defend their right and legitimate interests in court. In that case the court shall assign a procedural representative and hear the case. Minor claimants may disagree with their procedural representative and defend themselves. The court shall involve the guardianship and custody authority in such matters.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.01.2010, Art. 4

Article 14/1 - Identification of domestic violence against minors (children)

1. The obligation to apply to the relevant authorities for identifying (primary identification) and responding to domestic violence against minors

(children) shall rest with medical institutions, childcare and educational institutions, LEPL Social Service Agency, the guardianship and custodianship authorities, and their authorised personnel, as well as other relevant institutions and their authorised personnel involved in child protection referral procedures provided by the legislation of Georgia.

2. If an entity (an institution and/or its authorised employee) involved in child protection referral procedures provided in the legislation of Georgia fails to perform its obligation to inform the relevant state body about the identification of child abuse or about the facts of child abuse, it shall incur liability under the legislation of Georgia.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 15 - Preventing the abduction of minors and ensuring other types of security

1. The court shall determine by its decision the terms of visiting the minor by the abusive parent. The abusive parent may be allowed to visit the minor only when all security measures have been taken with respect to him/her, which may include the place of visit of the minor, time of visit, frequency, duration, and the person who is responsible for the fulfilment of security requirements/measures.

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2. If security measures are not observed with relation to the minor, the right of the abusive parent to visit the minor shall be restricted. If this restriction lasts more than three months, the parent whose right is being restricted may apply to the court to change the visitation terms.

3. If there is a threat that the abusive parent may abduct or otherwise harm the minor, the abuser may be prohibited from visiting the minor under a court decision until there is a change of circumstances.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Chapter V - Peculiarities of Proceedings on Facts of Domestic Violence

Article 16 - Police duties

1. If the police become aware of an act of domestic violence, they shall be obliged to respond to such an act immediately and implement the measures prescribed by law.

2. If the police become aware of an act of violence, they shall be obliged to arrive at the scene immediately, regardless of whether they were notified by the victim, a witness, or a person specified in Article 11 of this Law.

3. If there is an act of violence, the police shall be obliged to:

a) take measures prescribed by law to eliminate the act of domestic violence;

b) conduct separate interviews with the alleged victim of domestic violence, witnesses, the abuser, including minors, and everything learned shall be written down;

c) inform the victim of domestic violence of her/his rights;

d) at the request of the victim, or in case of emergency, ensure the transfer of the victim to a medical facility;

e) at the request of the victim, or in case of emergency, ensure the transfer of the victim and/or a minor to a shelter;

f) arrange for bringing the articles of first necessity and identification documentation from the victim's place of residence in the event of transferring the victim to another place;

f1) remove, if necessary, the abuser, under this Law, from the victim's place of residence and ensure the victim's safety;

g) ensure the safety of persons who reported the act of violence;

h) issue a restraining order according to the procedure and conditions set out by this Law.

4. The police shall draw up a report on the act of violence and measures taken, which shall be submitted to the supervising prosecutor.

5. The police report shall separately indicate the data on the cases of domestic violence, measures taken, number of victims, measures implemented against the abuser, as well as other data on the abuser.

6. The police shall supervise the fulfilment of the requirements and conditions specified by the issued restraining or protective orders. The police shall be obliged to respond, as determined by law, if restraining or protective orders are breached.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

<http://www.matsne.gov.ge> 080.080.050.05.001.002.259

Article 16/1 - Granting the status of victim

1. In addition to the state authorities specified by this Law (the relevant bodies of the Ministry of Internal Affairs of Georgia, investigative bodies, court), the Group for Determining Domestic Violence Victim Status (Victim Identification Group) of the Interagency Council for Prevention of Domestic

Violence may also grant the status to a victim, unless the proceedings are pending for the issuance of a restraining or protective order to ensure the protection of the victim of domestic violence or unless criminal prosecution measures are being carried out in connection with the domestic violence.

The status of victim granted by the Victim Identification Group shall be valid for 18 months after its granting, and if the victim enjoys services of a shelter, the status shall be valid for the period specified by this Law for the placement of a victim in a shelter.

11. The Government of Georgia shall approve the procedures for introduction and withdrawal of a person from the Interagency Council for Prevention

of Domestic Violence and the composition and the rules of operation of the Council (Statute).

2. The procedures for identification and determination of the status of the victim by the Group for Determining the Domestic Violence Victim Status

(Victim Identification Group) of the Interagency Council for Prevention of Domestic Violence shall be laid down by Ordinance of the Government of Georgia.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 1251 of 20 September 2013 - website, 8.10.2013

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Chapter VI – Rights, Social and Labour Guarantees for Victims of Domestic Violence, Rehabilitation Measures for Abusers

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

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Article 17 - Rights and protection guarantees for victims of domestic violence

1. A domestic violence victim (an alleged victim) may:

- a) apply to relevant state authorities with a request to issue a restraining or protective order or to respond to the breach of the restraining or protective order;
- b) apply to relevant state authorities according to the severity of domestic violence or with a request to use criminal law mechanisms for the identification and elimination of domestic violence in case of breach of the issued restraining or protective order;
- c) apply to the appropriate judicial authority and request compensation for the damages incurred as a result of domestic violence;
- d) receive compensation under the legislation of Georgia if the damage caused to the victim is not covered according to subparagraph (c) of this paragraph and/or from other sources determined under this Law and other legislative and subordinate normative acts of Georgia for protection and provision of services to the victim;
- e) enjoy the services of a shelter/crisis centre;
- f) receive free legal advice, free primary and emergency medical and psychological assistance upon the placement in the shelter/crisis centre;
- g) enjoy the right to suspend labour relations under the legislation of Georgia during his/her stay at the shelter/crisis centre; the term of suspension shall not exceed 30 calendar days during a year;
- h) apply to the relevant state authorities to receive temporary residence permit to stay in Georgia, if the victim is an alien or a stateless person;
- i) receive legal assistance at the public expense as established by the Law of Georgia on Legal Assistance;
- j) enjoy legal and social protection mechanisms provided in this Law and other legislative and subordinate normative acts of Georgia.

2. When criminal prosecution measures are carried out in cases of a domestic crime, special protective measures provided under the Criminal Procedure Code of Georgia may be applied to protect the person affected by violence and other entities participating in the process.

3. At all stages of the criminal proceedings on domestic crime and domestic violence and during interrogation as well, account shall be taken of the best interests of minor witnesses and victims, according to their age and level of development. A minor witness or victim may not be interrogated in connection with a domestic crime; also, when issuing a restraining or protective order, a minor witness or victim may not be interviewed (asked to provide explanations) in the presence of the alleged abusive parent(s); it shall also be inadmissible to allow a person to act as a legal representative of the minor in the criminal proceedings if this person is an alleged abuser or if there are doubts as to his/her impartiality based on the nature of his/her relations with the abusive family member or if there are other cases of conflict of interests; it shall also be inadmissible to communicate or hand over to such person the testimony (interview report, explanations) given by the minor. In those cases the parent's right to represent the child in criminal/administrative proceedings shall be deemed suspended for the time the proceedings are pending in court, until the final resolution of the dispute. A guardianship and custodianship authority shall assign a child representative who will represent the interests of the child during the court hearings.

4. If an alien or a stateless person is a victim of domestic violence, a temporary residence permit shall be issued as established by the legislation of Georgia based on the recommendation of a victim service provider or of the authority in charge of the proceedings.

5. If an alien or a stateless person is a victim of domestic violence, he/she may not be returned to the foreign country if it is assumed that in case of return, his/her safety will not be protected and secured.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 17/1 – Raising awareness of domestic violence victims

1. Authorities issuing restraining and protective orders, the Victim Identification Group, authorities handling criminal cases involving domestic violence, facilities providing services to victims of domestic violence and other authorised bodies determined by the legislation of Georgia shall be obliged to provide information to domestic violence victims in the language and form they understand about the mechanisms of legal and social protection and assistance, also the types of respective services available in the country for the victims of domestic violence.

2. If necessary, facilities providing services to victims of domestic violence and other authorised bodies specified in the legislation of Georgia shall provide information to domestic violence victims and assist them in drafting applications (claims) related to domestic violence and claims on compensation for damages incurred as a result of domestic violence, as well as help them in respective proceedings.

3. The police shall be obliged to immediately notify a domestic violence victim, based on the information provided by the penitentiary system bodies, about the release from prison of the person (abuser) who has committed crime against the victim, also, about other cases when this person leaves the place of detention.

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4. The bodies of the penitentiary system shall be obliged, not later than three months before the expiration of the sentence of the person convicted of domestic violence, to send a written notification about his/her release to a local police precinct according to the location of the crime.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 17/2 - A temporary accommodation for victims of domestic violence (a shelter)

1. A shelter for domestic violence victims operating within the system of the Ministry of Labour, Health and Social Affairs of Georgia shall meet the requirements of the victim's living conditions and provide primary and emergency medical and psychological assistance to the victim.

2. A non-entrepreneurial (non-commercial) legal person may set up a shelter, if it meets the minimum standards determined for the facility of this type by the Ministry of Labour, Health and Social Affairs of Georgia.

3. Shelter activities shall be regulated by its Charter (Regulations), which shall determine the procedures for accommodation and rehabilitation of victims in the centre.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 18 - Placement of victims in a shelter

1. In the case of domestic violence, if a person specified in Article 11 of this Law requests to be transferred to a shelter, the law enforcement authorities shall ensure the transfer of the victim to a shelter.

2. A victim shall be placed in a shelter for up to three months. If required, this term shall be extended according to the procedure laid down by the Charter (Regulations) of the shelter, except when the victim is not willing to stay longer than the above period. If the term of placement at the shelter

expires but the victim's safety is still not secure, the shelter administration shall be obliged to inform the law enforcement bodies about the situation, in order to ensure further response.

3. If the victim is placed in a shelter or in a crisis centre, she/he shall retain the same job and the same position.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 18/1 - Crisis centre

1. The crisis centre is a place for temporary accommodation of alleged victims and victims of domestic violence, and it is intended for psychological and

social rehabilitation, primary and emergency medical aid and legal assistance.

2. A crisis centre shall be established within the system of the Ministry of Labour, Health and Social Affairs of Georgia and/or on the basis of a noncommercial

legal person. A crisis centre established by a non-commercial legal person shall meet the minimum standards determined for institutions of such type by the Ministry of Labour, Health and Social Affairs of Georgia.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Article 18/2 – Retention by victims of domestic violence of the right to temporarily use the place of residence. If a victim does not use the services of a shelter/crisis centre and wants to stay at his/her place of residence on the basis of a restraining or protective order, the abuser shall be temporarily removed from the place of residence of the victim. Under a restraining or protective order the police may remove the abuser from the place of residence even if the place is owned by the abuser.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 19 - Information on domestic violence victims

Identity of the victim, the information obtained on the health and psychological status of the victim shall be confidential and may be disclosed only as provided for by law.

Article 19/1 – Toll-free support line

1. In order to provide assistance and advice on relevant issues to persons affected by domestic violence (victims), a toll-free, 24-hour emergency service line shall be provided throughout the country.

2. Any interested person may receive information through the toll-free, 24-hour emergency service line about domestic violence response mechanisms and victim protection measures.

3. The support line shall be confidential. Information obtained through this network may not be disclosed, except where required by the legislation of Georgia.

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Article 20 - Rehabilitation measures for abusers

Rehabilitation measures for abusers shall include measures that are intended to provide psychological and social assistance to them, to improve their health, to enable them to recover and rehabilitate in order to prevent repeat violence and ensure

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safety of the victim. The measures shall also include completion by the abuser of mandatory training courses focused on changing the violent attitude and behaviour of abusers. Rehabilitation measures for abusers and the procedures and forms of their implementation shall be determined by ordinance of the Government of Georgia.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Chapter VII - Transitional Provisions

Article 21 - Measures related to putting the Law into force

1. The Ministry of Labour, Health and Social Affairs of Georgia shall determine minimum standards required for setting up temporary accommodations for domestic violence victims (shelters) and rehabilitation centres for abusers, and ensure that the above facilities are created before Chapter VI of this Law takes effect.
2. The Ministry of Labour, Health and Social Affairs of Georgia shall determine the mechanisms for implementation of social services in relation to domestic violence issues and arrange for the training of relevant social workers (certification) before 1 July 2015.
3. The Ministry of Internal Affairs of Georgia shall ensure designing and approval of a form for restraining order within one month after promulgation of this Law.
4. The Government of Georgia shall determine rehabilitation measures for abusers before 1 July 2015.
5. The Government of Georgia shall ensure development of the mechanisms for collaboration among agencies for exchanging information available on domestic violence.
6. The Ministry of Internal Affairs of Georgia shall ensure the formation of a database containing information on abusers and on the issued protective and restraining orders, timely exchange of that information with interested state bodies and its availability.
7. The Ministry of Labour, Health and Social Affairs of Georgia shall determine minimum standards required for setting up and operation of crisis centres before 1 July 2010.
8. The Government of Georgia shall ensure adoption of the Ordinance provided for in Article 161 (11) and (2) of this Law before 1 April 2014.
9. Until the Government of Georgia adopts the normative acts provided for in the eighth paragraph of this article, Edict No 665 of 5 October 2009 of the President of Georgia on Approving the Procedure for Identification of Victims of Domestic Violence and Edict No 625 of 26 December 2008 of the President of Georgia on Approving the Composition and Statute of the Interagency Council for Prevention of Domestic Violence shall remain in legal force.
10. The Government of Georgia shall ensure that before 1 September 2015, all necessary measures are taken to organise the mandatory training courses focused on changing the violent attitude and behaviour of abusers, which are to be completed by the abuser under a protective order. The Government of Georgia shall also determine, before 1 September 2015, the state body authorised to organise these courses.
11. The Government of Georgia shall ensure that, before 1 May 2015, all necessary organisational and legal measures are taken for the operation of the support line specified in Article 19/1 of this Law, and shall determine the procedure for granting compensation to domestic violence victims and the amount of the compensation.

Law of Georgia No 2507 of 28 December 2009 - LHG, No 3, 13.1.2010, Art. 4

Law of Georgia No 1251 of 20 September 2013 - website, 8.10.2013

Law of Georgia No 2697 of 17 October 2014 – website, 31.10.2014

Chapter VIII - Final Provisions

Article 22 - Entry into force

1. This Law, except for Article 8 and Chapter VI, shall enter into force upon promulgation.
2. Article 8 and Chapter VI of this Law shall enter into force from 1 January 2008.
3. The operation of Article 8 of this Law shall be suspended until 1 July 2015, and the operation of Article 20 of this Law shall be suspended until 1 March 2015.
4. The operation of Article 17(1)(i) shall be suspended until 1 December 2014 and the operation of Article 191 of this Law shall be suspended until 1 May 2015.

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[Criminal Code, 1999 \(As amended\)](#) ¹²⁶

Article 11

- Liability for domestic crime

Crime committed by one family member against another family member under Articles 108, 109, 115, 117, 118, 120, 125, 126, 137, 141, 143, 144-1443, 149-151, 160, 171, 253, 255, 2551, 3811 and 3812 shall be considered a domestic crime. Criminal liability for domestic crime shall be determined by the relevant article of the Criminal Code of Georgia specified in this article, by making reference to this article.

Note: For the purposes of this article, the following persons shall be considered family members: a spouse, mother, father, grandfather, grandmother, child (stepchild), foster child, adopting parent, adopting parent's spouse, adoptee, foster family (foster mother, foster father), guardian, grandchild, sister, brother, parents of the spouse, son-in-law, daughter-in-law, former spouse, also persons who maintain or maintained a common household.

Law of Georgia No 643 4 of 12 June 2012 – web-site, 25.6.2012

Law of Georgia No 2704 of 17 October 2014 – web-site, 31.10.2014

Law of Georgia No 3052 of 18 February 2015 – web-site, 26.2.2015

Article 126 - Domestic violence

1. Violence, regular insult, blackmail, humiliation by one family member of another family member, which has resulted in physical pain or anguish and which has not entailed the consequences provided for by Articles 117, 118 or 120 of this Code, shall be punished by community service from 80 to 150 hours or imprisonment for up to a year.

2. The same act committed:

- a) knowingly against a pregnant woman, minor or a helpless person;
- b) against a minor's family member in the presence of the minor;
- c) against two or more persons;
- d) by a group of persons;
- e) repeatedly,

shall be punished by community service from 200 to 400 hours or with imprisonment for a term of one to three years.

Note: For the purposes of this article, the following persons shall be family members: a spouse, mother, father, grandfather, grandmother, child (stepchild), foster child, adopting parent, adopting parent's spouse, adoptee, foster family (foster mother, foster father), guardian, grandchild, sister, brother, parents of a spouse, son-in-law, daughter-in-law, former spouse, also persons who maintain or maintained a common household.

Law of Georgia No 643 4 of 12 June 2012 – web-site, 25.6.2012

Law of Georgia No 3052 of 18 February 2015 – web-site, 26.2.2015

54. GERMANY

[Protection Against Violence Act, 2001](#) ¹²⁷

SECTION 1. Judicial measures to protect against violence and enforcements

(1) If a person intentionally violates another person's body, health or freedom unlawfully, the court shall, at the request of the injured person, take the measures necessary to prevent further injuries. The orders are to be limited in time; the deadline can be extended. In particular, the court may order that the offender refrain from:

- a. entering the residence of the victim,
- b. being within a certain radius of the victim's home,
- c. visiting certain places to be determined where the victim regularly resides,
- d. contacting the victim through telecommunication means,
- e. meeting with the victim,

as far as this is not necessary for the exercise of legitimate interests

Paragraph 1 shall apply mutatis mutandis when

- 1. one person has unlawfully threatened another with an injury to life, body, health or freedom or
- 2. a person unlawfully and intentionally
 - a) invades the dwelling of another person or their peaceful property or

¹²⁶ Criminal Code, 1999 (as amended up to 2016), available at <https://www.legislationline.org/documents/section/criminal-codes> (last visited December 30, 2018).

¹²⁷ Law on Civil Protection Against Violent Acts and Prosecutions (Gewaltschutzgesetz - GewSchG), (11 December 2001), available at <http://www.gesetze-im-internet.de/gewschg/BJNR351310001.html> (last visited December 30, 2018). Unofficial translation by Compendium team.

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b) harasses another person unreasonably by repetitively reenacting or persecuting the person using telecommunication means.

In the case of sentence 1 point 2 letter b, there is no unreasonable harassment if the act serves the exercise of legitimate interests.

(3) In the cases referred to in subsection (1) sentence 1 or subsection (2), the court may order the measures referred to in subsection (1) even if a person has committed the crime in a state of mental disorder that temporarily excludes freedom of choice because of the use of alcoholic beverages or similar means.

SECTION 2. The granting of a joint residence

If the victim, at the time of the commitment of an act specified under § 1 (1) sentence 1, also in connection with paragraph 3, has established a long-lasting joint household with the offender, she may demand the use of the common residence for herself.

The duration of the granting from the joint residence is to be limited, if the victim and the offender possess the property jointly, if the offender has the leasehold, or has the usufruct on the property on which the dwelling is, or if the victim rented the dwelling jointly with the offender, if the offender, alone or in conjunction with a third party, owns the property, the leasehold or usufruct on the property on which the dwelling is located, or if the offender has rented the dwelling alone or jointly with a third party, the court shall limit the barring to the duration of a maximum of six months. If the victim was unable to obtain affordable housing for justifiable reasons within the time limit set by the court pursuant to the second sentence, the court may extend the time limit for a maximum of six months, unless this is contrary to main interests of the offender or the third party. Sentences 1 to 3 apply mutatis mutandis to the home ownership, the permanent residence right and special property rights.

The claim under paragraph 1 is excluded:

1. if further injuries cannot be expected, unless the victim cannot reasonably be expected to continue living with the offender because of the seriousness of the offense or
 2. if the victim does not demand the granting of the apartment in writing from the offender within three months of the act or
 3. In case the granting of the residence to the victim is precluded by particularly serious interests of the offender
- (4) If the victim has been granted the use of the joint residence, the offender shall refrain from doing anything which is likely to hinder or prevent the exercise of this right of use.
- (5) The offender may demand compensation from the victim for use, as far as this is equitable.
- (6) If at the time of a threat under § 1 (2) sentence 1 no. 1, also in connection with para. 3, the threatened person has maintained a joint household with the offender, she may request the granting of the shared residence if necessary, to avoid undue hardship. An unreasonable hardship can also exist if the well-being of the children in a household is at risk. For the rest, paragraphs 2 to 5 apply accordingly.

SECTION 3. Scope, competitions

(1) If the victim or threatened person is under parental care, guardianship or under guardianship at the time of an act pursuant to § 1 (1) or (2) sentence 1, thus, in relation to the parents and persons entitled to custody, the provisions applicable to the custody, guardianship or guardianship relationship replace §§ 1 and 2.

(2) Further claims of the victim are not affected by this Act.

SECTION 4. Criminal provisions

Is punished with imprisonment up to a year or a fine who in a particularly enforceable way:

1. Contravened an order pursuant to § 1 (1) sentence 1 or 3, also in conjunction with paragraph 2 sentence 1, or
2. Failure to comply with a settlement, as far as the settlement under § 214a sentence 1 of the Law on Family Procedures and in the matters of voluntary jurisdiction in conjunction with § 1 paragraph 1 sentence 1 or 3 of this Act, in each case in connection with § 1 paragraph 2 sentence 1 of this Act, has been confirmed.

The criminal liability under other regulations remains untouched.

[Act on Proceedings in Family Matters and Matter of Non-contentious Jurisdiction, 2008 \(As amended\)](#)¹²⁸

Section 49

Interlocutory Orders

(1) The court may impose temporary measures by way of interlocutory order insofar as it is justified in accordance with the relevant provisions concerning the legal relationship and there is an urgent need for immediate action.

¹²⁸ Act on Proceedings in Family Matters and Matters of Non-Contentious Jurisdiction (17 December 2008; as amended by Article 11 of the Act of 20 April 2013), available at http://www.gesetze-im-internet.de/englisch_famfg/englisch_famfg.html#p0245 (last visited December 30, 2018).

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(2) The measure may secure or temporarily regulate existing circumstances. A participant may be compelled to perform or to refrain from performing an act, in particular, disposition of an object may be prohibited. In the interlocutory order the court may also issue other orders necessary for its implementation.

Section 50

Jurisdiction

(1) The court that would have jurisdiction for the main action in the first instance shall have jurisdiction. If a main action is pending the court in the first instance shall have jurisdiction and if it is pending before the court handling the complaint on appeal, that court shall have jurisdiction.

(2) In particularly urgent cases, the Local Court in the district of which the need for court action became known or in which the person or object related to the interlocutory order is located may also decide. It shall ex officio promptly relinquish the matter to the court with jurisdiction pursuant to subsection (1).

Section 51

Proceedings

(1) An interlocutory order shall only be issued upon the filing of an application therefor when a corresponding main action can only be initiated by an application. The applicant shall provide grounds for the application and shall credibly demonstrate the prerequisites for the interlocutory order.

(2) The proceedings shall be in accordance with the provisions applicable to the main action on the matter to the extent the particular circumstances of the temporary legal protection do not provide otherwise. The court may decide without oral argument. Default decisions shall be excluded.

(3) The proceeding on the interlocutory order is an independent proceeding, even when a main action is pending. The court may disregard individual procedural steps in the main action when such were already undertaken in the proceedings on the interlocutory order and no additional information is expected to be gained from repeating the step.

(4) The general provisions shall apply to the costs of the proceedings on the interlocutory order.

[...]

Section 53

Enforcement

[...]

(2) In matters of protection against violence, as well as in other cases in which there is a particular need, the court may order that enforcement of the interlocutory order is permissible prior to service upon the obligated participant. In such cases, the interlocutory order shall be effective upon issuance.

Section 54

Revocation or Modification of Decision

(1) The court may revoke or modify the decision in an interlocutory order matter. Revocation or modification shall only take place upon the filing of an application therefor if the corresponding main action can only be initiated upon an application. The preceding sentence shall not apply if the decision was issued without conducting a prior hearing necessary in accordance with the statute.

(2) If the decision in a family matter is made without oral argument, upon an application therefor the matter shall be decided a second time based upon oral argument.

(3) The court that issued the interlocutory order shall have jurisdiction over the matter. If the court had previously relinquished or referred the matter to another court, that court shall have jurisdiction over the matter.

(4) While an interlocutory order matter is pending before the appellate court, revocation or modification of the challenged decision by the court of first instance shall be impermissible.

Section 55

Suspension of Enforcement

(1) In cases under section 54 the court, or in matters under section 57 the appellate court, may suspend or limit enforcement of an interlocutory order. The order shall not be appealable.

(2) If a corresponding application is filed, a decision thereupon shall be made in advance.

Section 56

Expiration

(1) Unless otherwise previously determined by the court, the interlocutory order shall expire upon the effectiveness of a different provision. If this is the final decision in a family matter, its final and binding effect shall be determinative, insofar as it does not become effective at a later point in time.

(2) In cases that can only be initiated upon an application, the interlocutory order shall also expire when:

1. the application has been withdrawn in the main action;
2. the application has been rejected with final and binding effect in the main action;
3. there is agreement that the main action is declared to be concluded; or
4. the main action was otherwise concluded.

(3) Upon application, the court that made the most recent decision in the interlocutory order matter in the first instance shall pronounce the effect set forth in subsections (1) and (2). The decision shall be appealable.

Section 57

Appellate Remedies

Decisions in proceedings on interlocutory orders in family matters shall not be appealable. This shall not apply in proceedings pursuant to section 151 nos. 6 and 7, nor shall it apply when the court in the first instance reached a decision based upon an oral discussion:

1. concerning parental custody for a child;
2. concerning surrender of a child to the other parent;
3. concerning an application for a child to remain with a curator or a person who he trusts;
4. concerning an application pursuant to sections 1 and 2 of the Violence Protection Act (Gewaltschutzgesetz); or
5. in a matter concerning the marital home regarding an application for allocation of the residence.

55. GHANA

Domestic Violence Act, 2007¹²⁹

[...]

Domestic violence

Meaning of domestic violence

1. Domestic violence means engaging in the following within the context of a previous or existing domestic relationship:

- (a) an act under the Criminal Code 1960 (Act 29) which constitutes a threat or harm to a person under that Act;
- (b) specific acts, threats to commit, or acts likely to result in
 - (i) physical abuse, namely physical assault or use of physical force against another person including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment;
 - (ii) sexual abuse, namely the forceful engagement of another person in a sexual contact which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person's sexual integrity or a sexual contact by a person aware of being infected with human immunodeficiency virus (HIV) or any other sexually transmitted disease with another person without that other person being given prior information of the infection;
 - (iii) economic abuse, namely the deprivation or threatened deprivation of economic or financial resources which a person is entitled to by law, the disposition or threatened disposition of moveable or immovable property in which another person has a material interest and hiding or hindering the use of property or damaging or destroying property in which another person has a material interest; and
 - (iv) emotional, verbal or psychological abuse namely any conduct that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery or depressed or to feel inadequate or worthless;
- (c) harassment including sexual harassment and intimidation by inducing fear in another person; and
- (d) behaviour or conduct that in any way
 - (i) harms or may harm another person,
 - (ii) endangers the safety, health or well-being of another person, (iii) undermines another person's privacy, integrity or security, or (iv) detracts or is likely to detract from another person's dignity and worth as a human being.

Meaning of domestic relationship

2. (I) A domestic relationship means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and a respondent

¹²⁹ Domestic Violence Act, Act No. 732 (3 May 2007), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88525/101248/F503368907/GHA88525.pdf> (last visited December 30, 2018).

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and includes a relationship where the complainant

- (a) is or has been married to the respondent;
- (b) lives with the respondent in a relationship in the nature of a marriage even if they are not or were not married to each other or could not or cannot be married to each other;
- (c) is engaged to the respondent, courting the respondent or is in an actual or perceived romantic, intimate, or cordial relationship not necessarily including a sexual relationship with the respondent;
- (d) and respondent are parents of a child, are expecting a child together or are foster parents of a child;
- (f)¹³⁰ and respondent are family members related by consanguinity, affinity or adoption, or would be so related if they were married either customarily or under an enactment or were able to be married or if they were living together as spouses although they are not married;
- (g) and respondent share or shared the same residence or are co-tenants;
- (h) is a parent, an elderly blood relation or is an elderly person who is by law a relation of the respondent;
- (i) is a house help in the household of the respondent; or
- (j) is in a relationship determined by the court to be a domestic relationship.

(2) A Court shall in a determination under paragraph (i) of subsection (1) have regard to

- (a) the amount of time the persons spend together,
- (b) the place where that time is ordinarily spent,
- (c) the manner in which that time is spent, and
- (d) the duration of the relationship.

(3) A person is in a domestic relationship where

- (a) the person is providing refuge to a complainant whom a respondent seeks to attack, or
- (b) the person is acting as an agent of the respondent or encourages the respondent.

Prohibition of domestic violence

3. (1) A person in a domestic relationship shall not engage in domestic violence.

(2) A person in a domestic relationship who engages in domestic violence commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both.

(3) The Court may in addition to imposing a fine or a prison term, order the offender in a case of domestic violence to pay compensation to the victim as the Court may determine.

(4) When a cause for complaint has arisen between persons in a domestic relationship and the persons do not cohabit, none of those persons shall enter into the residence of the other person without that other person's permission.

Domestic violence not justified by consent

4. The use of violence in the domestic setting is not justified on the basis of consent.

Number of acts which would amount to domestic violence

5. (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.

Filing of complaint with police

6. (1) A victim of domestic violence or a person with information about domestic violence may file a complaint about the domestic violence with the police.

(2) A child may be assisted by a next friend to file a complaint on domestic violence.

(3) Despite subsection (1) a social worker, probation officer or health care provider shall file a complaint about domestic violence where the intervention is in the interest of the victim.

(4) A member of the victim's family may file a complaint on behalf of the victim where the victim is for any reason unable to file a complaint personally.

(5) A deceased person's personal representative or a member of the deceased's family or another person competent to represent the deceased may file a complaint where a person who could have been a complainant under this Act has died.

(6) A complaint about domestic violence shall be filed with the police at the place where

- (a) the offender resides,
- (b) the victim resides,
- (c) the domestic violence occurred or is occurring, or

¹³⁰ In the law, (e) is missing.

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(d) the victim is residing temporarily, where the victim has left his or her usual place of abode.

Police assistance

7. A police officer shall respond to a request by a person for assistance from domestic violence and shall offer the protection that the circumstances of the case or the person who made the report requires, even when the person reporting is not the victim of the domestic violence.

Receipt of complaint by police and free medical treatment

8. (1) When a police officer receives a complaint under section 6(6), the officer shall
- (a) interview the parties and witnesses to the domestic violence including children,
 - (b) record the complaint in detail and provide the victim with an extract of the occurrence upon request in a language the victim understands,
 - (c) assist the victim to obtain medical treatment where necessary,
 - (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety,
 - (e) protect the victim to enable the victim retrieve personal belongings where applicable,
 - (f) assist and advise the victim to preserve evidence, and
 - (g) inform the victim of his or her rights and any services which may be available.
- (2) Police assistance to a victim under subsection (1) (c) consists of issuing a medical form to the victim and where necessary sending the victim to a medical facility. .
- (3) A victim of domestic violence who is assisted by the police to obtain medical treatment under subsection (1) (c) is entitled to free medical treatment from the State.
- (4) In case of emergency or a life threatening situation a victim of domestic violence may receive free medical treatment pending a complaint to the police and the issuance of a report.

Arrest by police

9. (1) A police officer may arrest a person for an offence of domestic violence with a warrant issued under this Act or without a warrant.
- (2) A police officer may arrest a person for an offence of domestic violence without a warrant where
- (a) an act of domestic violence is committed in the presence of the police officer,
 - (b) the police officer is obstructed by the person in the execution of police duties, or
 - (c) the person has escaped or attempts to escape from lawful custody.
- (3) A police officer may arrest a person without a warrant on reasonable suspicion that that person
- (a) has committed an offence of domestic violence, or
 - (b) is about to commit an offence of domestic violence and there is no other way to prevent the commission of the offence.
- (4) A police officer may arrest a person without warrant if the officer has reasonable cause to believe that the person has contravened or is contravening a protection order issued under section 13 or 14.

Arrest without warrant by person other than police officer

10. (1) A person other than a police officer may arrest without warrant, another person if that other person commits an act of domestic violence in the presence of the person.
- (2) A person other than a police officer may arrest without warrant, another person where the person has reasonable suspicion that the other person has committed an offence of domestic violence.
- (3) A person who effects an arrest under subsections (1) and (2) shall within a reasonable time hand over the person arrested to the police.

Protection orders

Jurisdiction of Court

11. (1) A Court with original jurisdiction may hear and determine a matter of domestic violence under this Act.
- (2) The Court may in the exercise of its jurisdiction issue a protection order.

Application for protection order

12. (1) A person referred to in this Act as the applicant, may apply to a Court for a protection order to prevent
- (a) another person, referred to in this Act as the respondent,
 - (b) a person associated with the respondent, or
 - (c) both a respondent and a person associated with the respondent
- from carrying out a threat of domestic violence against the applicant or to prevent the respondent, an associated respondent or both from further committing acts which constitute domestic violence against the applicant.
- (2) The application may be filed in a Court situated where

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- (a) the applicant resides, carries on business or is employed,
- (b) the respondent resides, carries on business or is employed, or (c) the act of domestic violence occurred or is occurring.

(3) The application shall be made ex-parte, unless the Court otherwise orders it to be on notice.

(4) A Court before which criminal proceedings in relation to domestic violence is pending may on its own volition, considering the circumstances of the case, or on an application by the victim issue a protection order in respect of the victim.

Conduct of proceedings

13. (1) Proceedings for a protection order shall be held in private in the presence of the parties, their lawyers and any other person permitted by the Court to be present.

(2) Despite subsection (1) where the Court is of the view that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, the Court may take the steps that it considers necessary to separate the respondent from the victim or the witness, without sacrificing the integrity of the proceedings.

(3) Subject to section 12 (3) an application for a protection order shall be heard by the Court within a period of fourteen days after the filing of the application.

(4) The Court may request a social or psychological enquiry report or both a social and psychological enquiry report on any of the parties to the proceedings and the report shall be prepared and submitted to the Court by a social welfare officer or a clinical psychologist as appropriate.

(5) The report shall contain details of the circumstances of the domestic violence, an assessment of the effect of the violence and any other information considered expedient by the social welfare officer or the clinical psychologist.

Interim protection order

14. (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 consider,

- (a) whether there is risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately;

- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and

- (c) whether there is reason to believe that the respondent is deliberately evading service of notice of the proceedings and the applicant, or a person in a domestic relationship with the respondent will be prejudiced by the delay involved in effecting service.

(3) An interim protection order shall be for a period of not more than three months.

(4) The Court shall when making an interim protection order, where the respondent is not already before the Court, summon the respondent to appear within the period of three months to show cause why the interim order should not be made final.

(5) Where the respondent, without reasonable cause, fails to appear before the Court in accordance with subsection (4), the order shall become final.

(6) Where an application is made on notice to the Court for a protection order and the Court is of the opinion that

- (a) the respondent has committed, is committing, or is likely to commit an act of domestic violence, and

- (b) the applicant may suffer significant harm if a protection order is not issued, the Court may issue an interim protection order pending the consideration of the order applied for.

Grant of protection order

15. (1) The Court may issue a protection order to prohibit a respondent from committing or threatening to commit an act of domestic violence personally or otherwise against an applicant or a relation or a friend of the applicant.

(2) The protection order may prohibit the respondent from

- (a) physically assaulting or using physical force against the applicant or any relation or friend of the applicant;

- (b) forcibly confining or detaining the applicant or a relation or friend of the applicant;

- (c) depriving the applicant access to adequate food, water, clothing, shelter arrest;

- (d) forcing the applicant to engage in a sexual contact;

- (e) engaging in a sexual conduct that abuses, humiliates or degrades the applicant or otherwise violates the applicant's sexual integrity;

- (f) depriving or threatening to deprive the applicant of

- (i) economic or financial resources to which the applicant is entitled by law including household mortgage

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- repayments or rent payments in respect of shared accommodation, and
- (ii) household chattels required by the applicant as a matter of necessity;
- (g) contacting the applicant at work or other places frequented by the applicant;
- (h) contacting the applicant by telephone or any form of communication;
- (i) disposing of or threatening to dispose of movable or immovable property in which the applicant has a material interest;
- (j) destroying or damaging, or threatening to destroy or damage property in which the applicant has a material interest;
- (k) hiding or hindering the use of property in which the applicant has a material interest;
- (l) threatening to abuse the applicant;
- (m) harassing the applicant;
- (n) entering the applicant's residence without consent, where the parties do not share the same residence;
- (o) emotionally, verbally or psychologically abusing the applicant;
- (p) coming within fifty metres of the applicant; or
- (q) doing an act which the Court considers is not in the best interest of the applicant.

Duration of final protection order

16. A final protection order issued by a Court shall not exceed twelve months in the first instance but may for good cause shown, be extended, modified or rescinded by the Court on a motion by a party to the original proceeding.

Conditions of protection order

17. (1) Subject to section 14, a protection order may
- (a) bind the respondent to be of good behaviour,
 - (b) direct the respondent to seek counselling or other rehabilitative service,
 - (c) direct the respondent to relocate and continue to pay any rent, mortgage payment and maintenance to the applicant,
 - (d) require the respondent to relinquish property to the applicant and pay the applicant for damage caused to the property of the applicant, and
 - (e) require the respondent to pay for medical expenses incurred by the victim as a result of the domestic violence.
- (2) In addition to the provisions in subsection (1), the Court may make any other order that it considers necessary for the health, safety and welfare of the applicant having regard to the recommendation in a social and psychological enquiry report.
- (3) A Court may not refuse to issue a protection order or impose any other condition solely on the grounds that other legal remedies are available to the applicant.

Reference to Family Tribunal

18. (1) Where there is a need for special protection for a child, the Court may refer matters concerned with the temporary custody of a child in a situation of domestic violence to a Family Tribunal.
- (2) Any matter connected with domestic violence in which a child is the perpetrator shall be referred to a juvenile court.

Extension of protection order to other persons

19. A Court may extend a protection order to a person specified in the order other than the applicant if the Court is satisfied that
- (a) the respondent is engaging in or has engaged in behaviour which would amount to domestic violence against the person specified in the order, referred to as the specified person, if the specified person were or had been in a domestic relationship with the respondent;
 - (b) the respondent's behaviour towards the specified person is due, in whole or in part to the applicant's relationship with the specified person; or
 - (c) the extension of the protection order is necessary for the protection of the specified person.
- Occupation order

20. (1) Where the Court in issuing a protection order considers it expedient to issue an occupation order, the Court may issue the order requiring the respondent to vacate the matrimonial home or any other specified home.
- (2) The Court shall issue the order only after the consideration of a social and a psychological enquiry report prepared by a social welfare officer and a clinical psychologist.

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- (3) The Court shall consider the effect of the order or omission of the order on the health, education and development of the family where the applicant and the respondent are in a marital relationship.
- (4) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease where the COU1 gives exclusive occupation of the residence which is the subject of the lease to the applicant.
- (5) In furtherance of subsection (4), the landlord shall provide the details of the lease to the applicant on request.

Power to discharge protection order

21. (1) A Court may discharge a protection order on an application on notice by an applicant or a respondent
- (2) The Court may discharge the order even if the order is
- (a) for the benefit of a specified person on the order other than the applicant, or
 - (b) against an associated respondent.
- (3) If an order is discharged under subsection (2) the order shall cease to have effect for the benefit of a specified person or associated respondent as if either of them had applied for or been granted a discharge of the order.
- (4) Where an order is for the benefit of a specified person or against an associated respondent, either of them may apply for the order to be discharged in so far as it applies to them.
- (5) An application may be made under this section for the discharge of an interim order in which case the Court shall fix a hearing date as soon as practicable but not later than thirty days after the filing of the application unless there are special circumstances.

Contravention of a protection order

22. (1) A person who contravenes a protection order commits an offence and is liable on summary conviction to a fine of not less than five penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one month and not more than two years or to both.
- (2) Any person convicted of a subsequent offence of contravening a protection order is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than one thousand penalty units or to a term of imprisonment of not more than three years or to both.

Miscellaneous provisions

Relation of Act to Criminal Code

23. The punishment provided for in of this Act applies only to offences which under the Criminal Code 1960, (Act 29) are misdemeanours and shall not apply to any offence that is aggravated or the punishment for which under the Criminal Procedure Code, 1960 Act 30 is more than three years imprisonment and in any other case the provisions 01 Ac130 in relation to punishment for the specific offence shall apply.

Court to promote reconciliation

24. (1) Despite section 22, if in a criminal trial in respect of domestic violence which is not aggravated or does not require a sentence that is more than two years,
- (a) the complainant expresses the desire to have the matter settled out of Court, the Court shall refer the case for settlement by an alternative dispute resolution method, or
 - (b) the Court is of the opinion that the case can be amicably settled, the Court may with the consent of the complainant refer the case for settlement by an alternative dispute resolution method.
- (2) Where a case is referred for settlement, the Court shall in addition;
- (a) refer the complainant and the accused for counselling,
 - (b) where necessary, require the accused to receive psychiatric help, or (c) in consultation with the Department of Social Welfare appoint a probation officer to observe and report on the subsequent conduct of the accused to the Court.
- (3) Where a probation officer appointed under subsection (2) rep011s that the accused has engaged in any act of domestic violence after the settlement, the accused shall be brought before the Court and prosecuted under section 22.

Publication of proceedings

25. (1) Except with the leave of the Court, a person shall not publish a report of the proceedings under this Act, other than criminal proceedings.
- (2) In a report of criminal proceedings under subsection (1), the reporter shall protect the identity of the victim.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of not more than two hundred and fifty penalty units or a tem1 of imprisonment of not more than twelve months or to both.

Criminal charges and protection

26. The institution of a criminal charge arising from acts of domestic violence shall be in addition to and shall not affect the rights of an applicant to seek a protection order under this Act.

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Civil claim for damages

27. Proceedings under this Act shall be in addition and shall not derogate from the right of a person to institute a civil action for damages.

Procedure rules for domestic violence

28. The rules of the specific Court shall, where action under the Act is instituted, apply as appropriate to the provisions of this Act.

Establishment of Fund

29. There is established by this Act a Victims of Domestic Violence Support Fund.

Objectives of the Fund

31. The moneys of the Fund shall be applied

- (a) towards the basic material support of victims of domestic violence,
- (b) for training the families of victims of domestic violence,
- (c) for any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence,
- (d) towards the construction of reception shelters for victims of domestic violence in regions and districts, and
- (e) for training and capacity building of persons connected with the provision of shelter, rehabilitation and reintegration.

Sources of money for the Fund

31. The moneys for the Fund include

- (a) voluntary contributions to the Fund from individuals, organizations and the private sector;
- (b) moneys approved by Parliament for payment into the Fund, and 14
- (c) moneys from any other source approved by the Minister responsible for finance.

Management of the Fund

32. (1) The Fund shall be managed by the Board established in section 35.

(2) Moneys for the Fund shall be paid into a bank account opened for the purpose by the Board.

Accounts, audit and financial year

33. (1) The Board shall keep books of account for the Fund and proper records in relation to them, in the form approved by the Auditor-General.

(2) The Board 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 receipt of the accounts, audit the account and forward a copy of the audit report to the Minister.

(4) The financial year of the Fund shall be the same as the financial year of the Government.

Annual report of the Fund

34. (1) The Minister shall within one month after receipt of the audit report submit an annual report to Parliament, covering the activities and operations of the Fund for the year to which the report relates.

(2) The annual report shall include

- (a) the audited accounts of the Fund and the Auditor-General's report on the account of the Fund, and
- (b) other information that the Minister may consider necessary.

Establishment of Victims of Domestic Violence Management Board

35. There is established by this Act, Victims of Domestic Violence Management Board.

Composition of the Management Board

36. (1) The Management Board consists of

- (a) the chairperson who is the Minister responsible for Women and Children's Affairs, or the representative of that Minister,
- (b) one representative of the Attorney-General not below the level of Principal State Attorney,
- (c) one representative of the Ministry for Local Government not below the rank of a Deputy Director,

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- (d)* one representative of the Ministry for Health not below the rank of Deputy Director,
 - (e)* one representative of the Ministry for Education not below the rank of a Deputy Director,
 - (f)* one representative from the Police Service not below the rank of Assistant Superintendent, .
 - (g)* one representative from the Department of Social Welfare not below the rank of a Deputy Director,
 - (h)* two representatives of civil society organizations, and
 - (i)* four persons nominated by the President.
- (2) The Chief Director of the Ministry or a representative of the Chief Director shall be secretary to the Board.
- (3) The members of the Management Board other than the Minister and the Director of Social Welfare shall be nominated by the institutions concerned.
- (4) The members of the Management Board shall be appointed by authority lent.

Function of the Management Board

37. The Management Board shall

- (a)* make recommendations for a national plan of action against domestic violence and monitor and report on the progress of the national plan of action through the Minister;
- (b)* advise the Minister on policy matters under this Act;
- (c)* propose and promote strategies to prevent and combat domestic violence;
- (d)* liaise with government agencies and organisations to promote the rehabilitation and reintegration of victims of domestic violence;
- (e)* prepare guidelines for disbursement from the Fund;
- (f)* manage the Fund;
- (g)* conduct research
 - (i)* on international and regional developments, and
 - (ii)* into standards for dealing with matters of domestic violence,
- (h)* and deal with any matter concerned with domestic violence.

Meetings of the Management Board

38. Management Board shall meet at least once every three months. The quorum at a meeting of the Management Board is five members. The chairperson or the representative of the chairperson shall convene and, at meetings of the Management Board and in the absence of the chairperson a member of the Management Board elected by the members present from among their number shall preside.

- (4)¹³¹ Matters before the Management Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.
- (5) The Management Board may co-opt a person to attend its meeting but the co-opted person may not vote on a matter for decision by the Management Board.
- (6) Subject to the provisions of this section, the Management Board may determine the procedure for its meeting.

Allowances

39. Members of the Management Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

Secretariat of the Management Board

40. (1) The Management Board shall have a secretariat.
- (2) The secretariat of the Management Board shall be located at the Ministry, which shall provide the facilities and personnel for the performance of the functions of the Management Board.

Regulations

41. The Minister responsible for Justice on the advice of the Minister responsible for Women and Children's Affairs may by legislative instrument make Regulations to
- (a)* provide forms necessary for the purpose of this Act;
 - (b)* prescribe the training of the police and court officials on domestic violence in consultation with the relevant institutions;
 - (c)* provide for education and counselling of victims and perpetrators of domestic violence;
 - (d)* provide for education and counselling in domestic relationships;
 - (e)* prescribe shelter for victims in consultation with the relevant institutions;
 - (f)* provide for enhancement of social welfare services for victims; *(g)* provide the modalities for the provision of free medical treatment for victims;

¹³¹ Numbering as in the original law.

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- (h) provide financial assistance to victims of domestic violence in case of imprisonment of a spouse; and
- (i) provide for the effective implementation of this Act.

Interpretation

42. In this Act unless the context otherwise requires, "abuse" means conduct that harms or may cause imminent harm to the safety, health or well-being of the complainant;

"applicant" means a person who applies for a civil protection order under this Act;

"associated respondent" means a person associated with another person against whom an application for a civil protection order has been brought; "child" means a person below eighteen years;

"complainant" means a person who is or has been in a domestic relationship with a respondent and is or has been subjected or allegedly subjected to an act of domestic violence and who makes a complaint to the police;

"Court" means the High Court, Circuit court or District Court; "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, telegrams, 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;

"household chattels" include jewellery, clothes, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles other than vehicles used wholly for commercial purposes and household livestock;

"interim protection order" means an order made by the Court under section 13 pending the final determination of an application; "intimidation" means intentionally inducing fear in another person by

(a) threatening to abuse that person or a third party,

(b) threatening to damage, destroy or dispose of property in which that person or a third party has a material interest, or

(c) exhibiting a weapon before that person;

"marriage" includes marriage under any custom or religion; "Minister" means the Minister responsible for Women and Children Affairs;

"Ministry" means the Ministry responsible for Women and Children Affairs; "next friend" means a person who intervenes to assist a child to bring a legal action;

"order" means a protection order;

"organisation" means a non-governmental organisation;

"place of safety" means premises where the welfare of a victim of domestic violence is assured; "physical abuse" means

(a) physical assault or any use of physical force against another person,

(b) forcibly confining or detaining another person, or

(c) depriving another person of access to adequate food, water, clothing, shelter or rest;

"protection order" means an order made by the Court under sections 14, 15 and 16 on the final determination of an application. "respondent" means a person who is or has been in a domestic relationship with a complainant and who has

committed or allegedly committed an act of domestic violence against the complainant; and "social welfare officer" includes a probation officer.

56. GREECE

Domestic Violence Law, 2006 ¹³²

CHAPTER I - GENERAL PROVISIONS

Article 1 - Definitions

According to this law:

1. domestic violence is a punishable act committed against a family member, in accordance with Articles 6, 7, 8 and 9 of this Act and Articles 299 and 311 of the Criminal Code.

¹³² Domestic Violence Law, Law No. 3500 (24 October 2006), available at <https://nomoi.info/ΦΕΚ-Α-232-2006-σελ-1.html> (last visited December 30, 2018). Unofficial translation by Compendium team.

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2. a. a family is a community consisting of spouses or parents and relatives of first and second degree bound by blood, marriage or adoption.
- b. the term family includes, if they cohabit, relatives bound by blood or marriage up to the fourth degree and members of a family with a member designated as a guardian, legal custodian or tutor of a minor, and any minor person leaving with the family.
- c. the provisions of this Act apply to the permanent companion of a man or the permanent companion of a woman and the children, whether common or of one of them, if those persons cohabit, as well as ex-husbands.
3. a victim of domestic violence is any person against whom a punishable act is committed under Articles 6, 7, 8 and 9 of this Act. A victim is also a family member in whose family a punishable act under Articles 299 and 311 of the Criminal Code is committed, as well as a minor under paragraph 2, before whom one of the punishable acts under this Act was committed.

Article 2 - Prohibition of the use of violence

Violence of any kind between family members is prohibited.

CHAPTER II - CIVIL PROVISIONS

Article 3 - Domestic violence as basis for marriage destabilization

The second paragraph of Article 1439 of the Civil Code is replaced as follows:

"If the defendant does not prove the contrary, the destabilization is presumed in case of bigamy or adultery when the complainant is abandoned, or his/her life was threatened by the defendant, as well as in the case the defendant has committed domestic violence against the complainant."

Article 4 - Physical violence against minors

In the case of exercise of physical violence against a minor as a correction in the context of his education, the Article 1532 of the Civil Code is applied.

Article 5 - Financial compensation

In accordance with Article 932 of the Civil Code financial compensation due to the victim's moral damages for one of the offenses under this Act may not be less than one thousand (1,000) Euros, unless the victim himself or herself asked for a smaller amount.

CHAPTER III - CRIMINAL PROVISIONS

Article 6 - Domestic physical injury

1. The family member who causes any physical injury or impairment of health to another member, within the meaning of subparagraph a' of paragraph 1 of art. 308 of the Criminal Code, or whose continuous behavior is causing even slight injury or health damage, in the sense of subsection b of the above provision shall be punished by imprisonment for at least one year.
2. If the offense under the first paragraph is likely to cause the victim a risk to life or serious physical injury, the imprisonment shall be for at least two years. If the victim suffers a heavy physical or mental injury, the imprisonment shall be up to ten years. If the offender knew or sought and accepted the result of his/her act, he/she is punishable by life imprisonment.
3. If the offense under the first paragraph was committed against a pregnant woman or against a family member who, for any reason, are unable to resist, said offense shall be punished with imprisonment of at least two years and if the act was committed before a minor member of the family, the offense shall be punished by imprisonment of at least one year.
4. If the act under the first paragraph entails systematic provocation of severe physical pain or physical exhaustion, dangerous to health, or mental pain that may cause serious psychological damage, especially with prolonged isolation of the victim, the offense will be punished by life imprisonment. If the victim is a minor, the imprisonment shall be of at least ten years.
5. The provisions of the preceding paragraphs shall also apply when the offender is working for a social care provider, and the act is directed against a person who receives services from that institution.

Article 7 - Domestic unlawful violence and threat

1. The family member who imposes violence on another member, threatens of immediate violence, tolerates it, or obliges the victim to submit to violence, is punishable by imprisonment of at least six months, regardless of whether the threatened harm is carried out against the victim himself/herself or any of his/her relatives in the sense of paragraph b of Article 13 of the Criminal Code.
2. The family member who causes fear or concern to another family member, threatening him or her with violence or another wrongful act or omission, is punishable by imprisonment.

Article 9 - Domestic insult on sexual dignity

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1. The family member who offends the dignity of another member, with a particularly humiliating expression or act referring to his/her sexual life, is punished with imprisonment of up to two years.
2. If the victim is a minor, the practice under the previous paragraph is punished by imprisonment of at least six months to three years.
3. The provisions of the preceding paragraphs shall also apply respectively even when the offender is working for a social care provider, and the act is directed against a person who receives services from that institution.

Article 10 - Obstruction in the administration of justice

Anyone who, in a case of domestic violence, is threatening a witness or member of his family or exercises violence or bribes in order to obstruct the administration of justice, shall be punished with imprisonment of at least three months to three years.

CHAPTER IV - CRIMINAL MEDIATION

Article 11 - Conditions

1. In domestic violence offenses involving prosecution, the prosecutor must investigate the possibility of mediation by following the procedure in the following articles.
2. A prerequisite for the initiation of a criminal mediation process is the presentation of an unreserved statement by the person to whom the crime is attributed of his/her readiness, cumulatively:
 - a) to promise not to carry out in the future any act of domestic violence (by oath) and, in case of a cohabitation, agree to leave the family residence for a reasonable period if this is proposed by the victim. Said promise will be recorded under Articles 148 et seq. of the Criminal Procedure Code.
 - b) to attend special consultative - therapeutic programs for the treatment of domestic violence in a public institution or in any other place, for as long as it is deemed necessary by the competent therapists. The responsible person of the program certifies the completion of the treatment. The certificate is attached to the case file with specific mention of the consultative - therapeutic program and the number of sessions attended by the applicant.
 - c) to lift or restore, if possible, immediately the consequences caused by the act and pay fair compensation to the victim.
3. If the victim of domestic violence is a minor and if said minor is not the same person as the alleged perpetrator of the crime, criminal mediation may be used in cooperation with the territorially competent prosecutor for minors and the competent custodian. If consensus is not reached, mediation is not possible. The minor who has completed the fourteenth year of age can, if so desired, may be present and heard. The persons mentioned in the first subparagraph shall represent the minor in criminal mediation and civil claims.
4. The relevant provisions on criminal mediation in this law do not apply if the alleged perpetrator of the domestic violence act is the guardian, legal custodian or a god parent of the minor.
5. If the act of domestic violence is alleged to have been committed by a minor, Article 45A of the Criminal Procedure Code applies.

Article 12 - Procedure

1. If the procedure under Articles 417 et seq. of the Criminal Procedure Code is initiated against the offender, criminal mediation is permitted only if the court postpones the trial of the case in accordance with Article 423 of the Criminal Procedure Code. In this case, the procedure takes place in accordance with paragraphs 3 to 6 of this Article. The court may postpone the trial of the case under this first paragraph at its own initiative and decide, when appropriate, to impose protective orders in accordance with Article 18 of this Law.
2. During the preliminary examination carried out against the alleged perpetrator, the prosecutor may before any other measure:
 - a) order a medical examination on the alleged victim, to investigate the merits of the complaint based on the act
 - b) interrogate any proposed witness as well as family members, or order their interrogation by competent investigative officials and
 - c) summon the alleged perpetrator to provide explanations to the prosecutor himself/herself or to competent investigative officials under the terms of Article 31 paragraph 2 of the Criminal Procedure Code.
3. If the alleged perpetrator does not submit explanations himself, or through his counsel, as per paragraph 2 of Article 11, the declaration concerning criminal mediation may be called for that purpose by the competent prosecutor. In this case, he/she may take up to three days to respond.
4. If the explanation is negative or he/she does not give any answer, the criminal proceedings are initiated in accordance with the provisions of the Criminal Procedure Code. If the explanations are positive, the prosecutor informs the victim or his/her lawyer about the statements made by the alleged perpetrator and provide, if requested, the victim a time period of three days to indicate whether mediation is accepted.

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5. If the answer is negative or the victim does not respond or fails to reach an agreement on the terms of the case under paragraph 2 of Article 11, the criminal proceedings are initiated in accordance with the provisions of the Criminal Procedure Code. If the answer of the victim is positive, the prosecutor puts the file in a special prosecution scheme and accordingly, this approach is not open to appeal.
6. If there are more than one alleged perpetrators, the initiation of criminal mediation is subject to their common agreement. The same applies if the alleged act includes several victims. If no agreement is reached under the preceding paragraphs, mediation is not possible.
7. The agreement of the parties sought under paragraph 2 of Article 11 for the initiation of criminal mediation may be submitted to the public prosecutor with the related minutes from their legal counsels.

Article 13 - Criminal consequences

1. The order of the prosecutor issued after criminal mediation is classified into a special file of the criminal records and kept for a period equal to the statutory time limitation of crime to which it relates.
2. If the person concerned to comply with the terms of the criminal mediation for three years, then the procedure is completed and the State criminal claim eliminated for the crime concerned.
3. The noted by the prosecutor unjustifiable failure to complete the criminal mediation stops the process and causes the recursive removal of results occurred. In this case the prosecutor retrieves the file from the archives, and the criminal proceedings are continued against the relevant provisions of the Criminal Procedure Code, no longer allowed to submit a new request for criminal mediation.
4. During the criminal mediation procedure the act to which it relates remains pending. The prosecution is unacceptable for an act for which the criminal claim of the State has been eliminated, because of the completion of the criminal mediation process. The statutory time limitation of the act is suspended until the completion of the criminal mediation process.
5. The refusal of either involved parties to accept mediation or the failure of finalization, for any reason, is not inducing against them any negative substantive or procedural consistency in the criminal trial that ensues.
6. In paragraph 3 of Article 574 of the Code of Criminal Procedure, a new point c) is added to read as follows:
"c) the order of the prosecutor issued after a criminal mediation involving crimes related to intra-family violence."

Article 14 - Civil consequences

1. The agreement of the parties to initiate criminal mediation procedure is valid as a compromise for the financial claims for the crime of domestic violence. The victim's spouse agreement to the initiation of the procedure does not prevent the divorce process or the request for a friendly divorce, the progress of the trial and the dissolution of a marriage.
2. Within three years of the filing, non-compliance of the alleged offender with the terms of criminal mediation gives the victim of domestic violence crime the right to request, by legal action, the repeal of the agreement with respect to monetary claims. By exercising the option to repeal the agreement, the financial claims of the victim will be revived, while the paid amounts according to the agreement can be sought based on unjust enrichment.
3. Upon completion of the criminal mediation the agreement cannot be repealed for any reason and the recovery of the paid amount in compliance with the agreement. The dissolution of marriage between spouses within three years generates the same results.

CHAPTER V - PROCEDURAL PROVISIONS

Article 15 - Temporary arrangement of the situation

At the end of Article 735 of the Civil Procedure Code a paragraph is added, which reads:

"In cases of domestic violence can be ordered, in particular, the removal of the perpetrator from the family home, his/her relocation, a protective measure to prevent [the perpetrator] from approaching the home, or even the work place of the applicant, the house of close relatives, the schools of children, and shelters "

Article 16 - Statutory time limitation

If the acts of Articles 6, 7 and 9 of the present [law] are directed against a minor, the commencement of the statutory time limitation period is suspended until adulthood.

Article 17 – Criminal Prosecution

1. The crimes under Articles 6, 7, 9 and 10 are prosecuted ex officio.
2. Against the person responsible is applied the procedure of articles 417 et seq. of the Criminal Prosecution Code.

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Article 18 - Protective orders

1. In cases of intra-family violence, if it is necessary, under certain circumstances, to protect the physical and mental health of the victim, protective orders may be imposed against the accused by the competent criminal court to which the case is referred, the responsible investigator or judicial council, and for as long as it is necessary, including removal from the family home for a specific term, his relocation, the ban from approaching the residence or even the work place of the victim, houses of close relatives, the schools of children and shelters. The validity of these restrictive condition ceases after a final judgment or order of the public prosecutor, with which the case is filed because of criminal mediation.
2. The restrictive condition imposed under the provisions of the preceding paragraph may be revoked, replaced or amended by the competent judicial body that imposed it, after request from the accused, stating the reasons why it should be revoked, replaced or amended. For the discussion of the request the convocation of the victim is required, according to the provisions in force.
3. The judicial body empowered under paragraph 1 to enforce, revoke, replace or amend the restrictive conditions may request an advisory opinion to psychiatrists, psychologists, social workers and other scientists with expertise in domestic violence issues, if those persons are working in the public health sector.

Article 19 - Hearing of witnesses

1. In domestic violence cases, family members are examined as witnesses without oath.
2. Minors in cases foreseen by the previous paragraph shall not be summoned as witnesses in the hearing, but their deposition can be read, unless their examination is considered necessary by the court.

Article 20 - Obligation to observe confidentiality

1. Where a domestic violence crime has been committed, the police authorities carrying out a preliminary investigation in accordance with the provisions of Article 243, paragraph 2, of the Criminal Procedure Code are forbidden to communicate in any way the name of the victim and the accused, their address and any other data that might reveal their identity.
2. Violators of this provision are punishable by imprisonment up to two years.

CHAPTER VI - ASSISTANCE FOR VICTIMS

Article 21 - Social support

1. The victims of domestic violence are entitled to moral support and the necessary material assistance of public or private legal entities that work specifically for these purposes under the supervision of the Ministry of Health and Social Welfare, and local social services.
2. The police authorities dealing, within their competences, with domestic violence cases are obliged, at the request of the victim, to inform her about her right to assistance, and the above mentioned bodies to immediately provide, if appropriate, the necessary assistance.

Article 22 - Legal aid

To the victims of domestic violence seeking protective measures for a temporary arrangement of the situation, legal aid is provided according to the provisions of Articles 194 et seq. of the Civil Procedure Code on the sole basis of the occurrence of violence, if are unable to pay, even temporarily, the required judicial costs.

Article 23 - Obligations of teachers

1. A teacher of primary or secondary school who, during the execution of his/her educational duties, is informed, from whatever source, that a crime of domestic violence has been committed against a student shall inform, without delay, the director of the school.

The director of the school communicates immediately the criminal offense to the competent prosecutor, in accordance with the provisions of Article 37, paragraph 1, of the Criminal Procedure Code, or to the nearest police station.

The same obligation applies to teachers and principals of private schools and those in charge of any kind of preschool units.

2. During the preliminary investigation and the trial hearing, the director of the school, which reported the crime to the above authorities, and the teacher, who found out, or learned, about it are invited to be examine as witnesses only if the information cannot be demonstrated by any other mean.

Article 24

Article 342 of the Criminal Code (abuse of minors in lechery) is replaced by the following:

"Article 342. Abuse of minors in lechery

1. An adult who commits lewd acts with a minor, who has been entrusted, even temporarily, to his supervision or care, is punishable as follows:
 - a) if the victim has not reached fourteen years, with imprisonment of at least ten years,

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b) if the victim has completed the fourteenth year, but is less than eighteen, with life imprisonment.

2. It constitutes an aggravating circumstance, the commission of the act of the first paragraph by:

a) family member

b) a person that cohabits with the minor, or maintains friendly relations with his/her family

[...]

3. The adult that with gestures, suggestions or narrative, or presentation of instruments concerning sexual life offends the decency of a minor, when said adult has been entrusted with supervising or taking care of him/her, even temporarily, is punished with at least six-month imprisonment and if the act was performed routinely by imprisonment of at least two years. Paragraph 2 shall apply mutatis mutandis in such cases.

4. The adult who, through the internet or other means of communication, is entering in contact with a person who has not reached sixteen years and with suggestions or narrative, representation or presentation of instruments concerning sexual life offends his/her decency is punishable by imprisonment of at least one year and if the act was performed routinely by imprisonment of at least three years.

5. The statutory time limitation of the preceding paragraphs acts shall be suspended until the child has reached the age of majority. "

[...]

Article 28 – Effectiveness

The validity of this law begins three months after its publication in the Official Government Gazette.

We order the publication hereof in the Official Gazette and its execution as Law of the State.

[...]

57. GRENADA

[Domestic Violence Act, 2010](#) ¹³³

PART I PRELIMINARY

1. (1) This Act may be cited as the DOMESTIC VIOLENCE ACT, 2010.

(2) This Act shall come into operation on a day to be fixed by the Minister by Order published in the Gazette.

2. In this Act, unless the context otherwise requires–

“applicant” means a person who applies or on whose behalf an application is made, for an order pursuant to section 5;

“approved social worker” means a person experienced and qualified in social work, and approved by the Minister, in writing;

“attorney-at-law” means an attorney-at-law admitted to practise before the Eastern Caribbean Supreme Court in Grenada;

“child” means a person under the age of eighteen years who–

(a) normally resides with the applicant, whether or not the child is a child of the applicant and the respondent, or either of them;

(b) is an adopted child, a stepchild, a child who is treated as a child of the family;

(c) is related by consanguinity or affinity, to either the applicant or the respondent;

(d) is in the care and protection of the applicant or the respondent;

(e) is a person of whom either the applicant or the respondent is a guardian; or

(f) is, or was, a member of a shared household; and

(g) is not a person who is, or was married; “Court” means the Magistrate Court;

“cohabitant” means a person who is living, or has lived, with a person of the opposite sex, as a husband or wife, although not legally married to that person;

“dependant” means a person of or over the age of eighteen years, who by reason of physical or mental disability, age or infirmity, is reliant on either the applicant or the respondent, for his or her welfare;

¹³³ Domestic Violence Act, Act No. 19 (10 December 2010), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98277/116882/F-962113168/GRD98277.pdf> (last visited, December 30, 2018).

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“Director” means the Director of Social Services;

“domestic relationship” means a relationship between an applicant 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 are cohabitants or were cohabitants;
- (c) they are the parents of a child, or are persons who have, or had parental responsibility for the child, whether or not at the same time;
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they would be family members related by affinity, if the persons referred to in paragraph (b) were, or were able to be married to each other;
- (f) they are or were in an engagement, dating or visiting relationship which includes, but is not limited to an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (g) they share or shared the same household or residence;

“domestic violence” means any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child, and includes but is not limited to the following–

- (a) physical abuse or threats of physical abuse;
- (b) sexual abuse or threats of sexual abuse;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to or destruction of property; or
- (i) entry into the applicant's residence without consent, where the parties do not share the same residence;

“economic abuse” means the avoidance of financial obligations owed to the applicant and child, or a dependant of the respondent, including mortgage or rental obligations;

“emergency monetary relief” means compensation for monetary losses suffered by an applicant and any child, at the time of the issue of an interim protection order, as a result of the domestic violence, including–

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving, relocation and accommodation expenses; or
- (d) household necessities and other interim expenses;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by the respondent to the applicant, including–

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain; or
- (c) the repeated exhibition of behaviour, which constitutes serious invasion of the applicant's privacy, liberty, integrity or security;

“firearm” shall have the meaning assigned to it under the Firearms Act, Cap. 105 of the 1990 Revised Laws of Grenada;

“harassment” means engaging in a pattern of conduct that induces the fear of harm, including–

- (a) watching or loitering outside of, or near the building or place where the applicant resides, works or carries on business, studies or happens to be;
- (b) repeatedly making telephone calls, or inducing another person to make telephone calls to the applicant, whether or not conversation ensues; or
- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant;

“interim protection order” means an order made pursuant to section 6;

“intimidation” means uttering, conveying or causing any person to receive a threat which induces fear;

“Judicial Officer” means a Judge or a Magistrate;

“member of the household” means a person who normally resides in the same dwelling house as the applicant or the respondent, and is related to the applicant or respondent by blood, marriage or adoption;

“Minister” means the Minister responsible for Social Services;

“Ministry” means the Ministry responsible for Social Services;

“order” includes an interim protection issued under section 6, and a final protection order issued under section 13;

“police officer” has the meaning assigned to it under the Police Act, Cap. 244 of the 1990 Revised Laws of Grenada;

“physical abuse” means any act of assault;

“prescribed” means prescribed by the Regulations made pursuant to this Act;

“probation officer” means an officer appointed as such by the Probation Act, Cap. 256 of the 1990 Revised Laws of Grenada;

“protection order” means an interim order issued under section 6 and a final protection order issued under section 12;

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“Registrar” means the Registrar of the High Court;

“respondent” means a person who is, or has been in a domestic relationship with the applicant, and against whom the applicant has applied for an order under this Act;

“sexual abuse” means any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person;

“shared household” means a household where the applicant and the respondent live, or lived together, in a domestic relationship;

“spouse” includes a former spouse, a cohabitant or a former cohabitant;

“stalking” includes repeatedly following, pursuing or accosting the applicant;

“victim” means any person who alleges to have been subjected to an act of domestic violence;

“visiting relationship” means a non co-habitational relationship, which is otherwise similar to the relationship between husband and wife.

3. Duty to inform victim and applicant of rights.

(1) A police officer, at the scene of an incident of domestic violence, or when the incident of domestic violence is reported shall—

(a) inform the victim of his or her rights in the form set out in Schedule I; and

(b) provide the victim with a printed copy of the information relating to the right of the victim, pursuant to paragraph (a).

(2) Upon the report of a breach of a protection order to a police officer, by a person or a victim, the police officer shall inform the person, or the victim, of the right to lodge a concurrent complaint against the respondent, if a criminal offence appears to have been committed against the person, the victim or a child.

(3) The Director may inform any person, or a victim, of the relief available pursuant to this Act.

4. Arrest by police officer without warrant.

Subject to section 21, a police officer may arrest any person at the scene of an incident of domestic violence, without a warrant, whom he or she reasonably suspects of having committed an act of domestic violence.

PART II
PROTECTION ORDERS

5. Person entitled to apply for a protection order

(1) A person referred to in subsection (2), may apply to the Court, in the form set out as Form I in Schedule II, for a protection order, on the grounds that the respondent engaged in domestic violence.

(2) An application for a protection order referred to in subsection (1), may be made by—

(a) the spouse of the respondent;

(b) a member of a shared household, either on his or her own behalf, or on behalf of any other member of the shared household;

(c) a child;

(d) a dependant;

(e) a parent or sibling, by consanguinity or affinity of either the spouse or respondent, not being a member of the shared household;

(f) a person who has a child in common with the respondent; and

(g) a person who was engaged, dating or has been in a visiting relationship with a person of the opposite sex, which includes, but is not limited, to an actual or perceived romantic, intimate or sexual relationship of any duration.

(3) An application made pursuant to subsection (1), may be brought on behalf of the applicant by any other person, who has a material interest in the well-being of the applicant, including a police officer, the Director, a probation officer or an approved social worker, except that the application shall be brought with the consent of the applicant, but such consent shall be dispensed within circumstances where the applicant is—

(a) a child;

(b) a dependant;

(c) physically or mentally incapacitated by unsoundness of mind or a disability;

(d) unconscious;

(e) under the influence of intoxicating liquor or is misusing drugs; or

(f) a person whom the Court is satisfied, is unable to provide the required consent.

(4) Pursuant to subsection (3) (a), a child or dependant may apply for a protection order through—

(a) a person with whom the child or dependant ordinarily or periodically resides, or re-sided with, or is reliant upon for his or her welfare, or any adult member of his or her household;

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- (b) a parent or guardian, or a person who is in loco parentis to the child; or
- (c) the Director, or other person who has parental responsibility for the child.
- (5) The application referred to pursuant to subsection (1) may be brought outside the ordinary hours of the Court, or on a day which is not an ordinary day for the sitting of the Court.
- (6) The application for an order under this Act shall be supported by evidence on affidavit, unless the Court otherwise orders, and an affidavit shall include—
 - (a) the facts on which the application is based;
 - (b) the nature of the order applied for; and
 - (c) the name of the police station at which the applicant is likely to report any breach of the order.
- (7) The application made pursuant to this Act, may be accompanied by supporting affidavit of any person who has knowledge of the matter concerned.
- (8) The applicant may request, that his or her physical address be omitted from the protection order.
- (9) The application and affidavits shall be lodged with the Registrar who shall forthwith submit the application and the affidavits for consideration of the Court.
- (10) In considering an application made pursuant to subsection (1), the Court—
 - (a) may require further oral evidence, or evidence by affidavit; and
 - (b) shall record any oral evidence referred to in paragraph (a).

6. Power of Court to issue interim protection order.

- (1) If the Court is satisfied that the respondent is committing, or has committed, or is likely to engage in conduct that would constitute an act of domestic violence, the Court shall issue an interim protection order against the respondent, in the form set out as Form II in Schedule II.
- (2) The Court may issue an interim protection order, pending the hearing and determination of the proceedings for a protection order, if it appears necessary or appropriate to do so, in order to ensure the safety and protection of the applicant.
- (3) In exercising its powers pursuant to this section, the Court shall not refuse to issue an interim protection order, by reason of the fact that the respondent has not been given notice of the proceedings.
- (4) An interim protection order issued pursuant to this section, shall be served on the respondent, and shall call upon the respondent to show cause, on the return date specified in the interim protection order as to why the interim protection order should not be confirmed.
- (5) The return date referred to in subsection (4), shall not be less than ten days after the date of the order.
- (6) An interim protection order may be made for such period of time as the Court considers necessary, but shall not exceed twenty-eight days.
- (7) An interim protection order shall have no effect, until it has been served on the respondent in the manner provided for in section 10 (1).

7. *Terms of Protection Order*

- (1) A protection order issued by the Court pursuant to this Act may prohibit the respondent from—
 - (a) committing any act of domestic violence;
 - (b) enlisting the help of any person to commit any act of domestic violence;
 - (c) entering the shared household, except that the Court shall only impose this prohibition if it appears to be in the interests of the applicant or any child or dependant;
 - (d) entering a specified part of the shared household;
 - (e) entering the residence of the applicant;
 - (f) entering the place of employment or education of the applicant;
 - (g) preventing the applicant, any child or dependant, who ordinarily resides, or has resided in the shared household, from entering or remaining in the shared household, or a specified part of the shared household;
 - (h) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant as the case may be;
 - (i) approaching the applicant within a specified distance; or
 - (j) committing any other act as specified in the order.
- (2) In addition to the prohibitions referred to in subsection (1), the Court may direct that—
 - (a) any or all of the conditions of an order be applied for the benefit of a child or dependant;
 - (b) the respondent—
 - (i) return to the applicant, specified property that is in his or her possession or under his or her control;
 - (ii) pay emergency monetary relief to the applicant;
 - (iii) pay interim monetary relief to the applicant for the benefit of a child or dependant, where there is no existing order relating to maintenance, until such time as an obligation for support is determined, pursuant to any other law;
 - (iv) immediately vacate any shared- household for a specified period, whether or not the shared household is owned

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- or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) make, or continue to make payments, in respect of rent or mortgage payment, for premises occupied by the applicant, having regard to the financial needs and resources of the applicant and the dependant; or
 - (vi) the applicant, or both, receive professional counselling, psycho- education al programming or therapy from any person or agency, approved by the Ministry.
- (3) The Court may impose any additional conditions which it considers reasonably necessary to provide and protect the safety of the applicant, any child or dependant, including but not limited to, an order, that a police officer shall accompany the applicant to a specified place to supervise the collection of personal property.
- (4) The Court may direct that any or all of the prohibitions or conditions contained in an order, apply for the benefit of a child or dependant.
- (5) The Court may–
- (a) refuse the respondent contact with any child, if it is shown that such contact is not in the best interests of the child; or
 - (b) order structured contact with any such child.
- (6) The Court shall not refuse to issue an order under this Act, on the basis that–
- (a) a single act has been committed, or a single threat has been made by the respondent; or
 - (b) the acts or threats when viewed in isolation, appear to be minor or trivial.
- (7) Where pursuant to subsection (2) (b) (vi), the Court makes an order which includes counselling or therapy, the order shall specify–
- (a) that the Court receive written notification from the counsellor or therapist, of sessions missed by the applicant, the respondent, or both, as the case may be, without reason- able excuse; and
 - (b) the date by which the counsellor or therapist shall submit a report to the Court, in respect of the counselling or therapy.
- (8) Where the Court makes an order, which includes a direction that the respondent–
- (a) vacate any shared household; or
 - (b) return to the applicant, specified property that is in his or her possession or control,
- the Court may, in the same order, if it considers necessary, direct a police officer to remove the respondent, either immediately or within a specified time, from the shared household, or to accompany the applicant, as the case may be, either immediately or within a specified time, to specified premises, in order to supervise the removal of property belonging to the applicant, and to ensure the protection of the applicant.
- (9) A protection order may be for such period as the Court considers necessary, but shall not exceed three years.
- (10) Where an order contains any prohibitions or directions, the Court shall specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

8. Matters to be considered by Court.

In determining whether or not to impose one or more of the prohibitions, or issue a direction specified in section 7, the Court shall have regard to the following–

- (a) the nature, history, or pattern of the domestic violence that has occurred, and whether a previous interim protection order, or a final protection order has been issued;
- (b) the need to protect the applicant, and any other person for whose benefit the order has been granted, from further domestic violence;
- (c) the welfare of any child;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused to the applicant, as a result of making the order;
- (f) the income, assets and financial obligations of the respondent, the applicant, and any other person affected by the order;
- (g) the need to preserve and protect the institution of marriage and other relationships, whilst affording protection and assistance to the family as a unit; and
- (h) any other matter, that in the circumstances of the case, which the Court considers relevant.

9. Seizure of firearm and dangerous weapons.

(1) The Court may make an order, directing a police officer to seize any firearm or dangerous weapon in the possession of the respondent, if the affidavit made pursuant to section 5 (6), contains information to the effect that–

- (a) the respondent has threatened or expressed the intention to kill or injure, any person in a domestic relationship, including himself or herself, whether or not by means of the firearm or dangerous weapon; or
- (b) possession of the firearm or dangerous weapon is not in the best interests of the respondent, or any other person, as a result of the respondent's–
 - (i) state of mind or mental condition;

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- (ii) inclination to violence, whether a fire- arm or a dangerous weapon was used in the violence or not; or
- (iii) the use of, or dependence on, intoxicating liquor or drugs.

(2) The Court shall direct the Registrar to refer a copy of the affidavit, made pursuant to section 5 (3), to the Chief of Police, for consideration in relation to the Firearms Act, if the Court had ordered the seizure of any firearm pursuant to this Act.

10. Service of notice of proceedings

- (1) Upon an application for a protection order pursuant to section 5 (1), and the granting of an interim protection order by the Court, a copy of the application and the interim protection order, together with the notice of the date on which, and the time at which the respondent is to appear before the Court, to show cause as to why the interim protection order should not be confirmed, shall be served on the respondent.
- (2) A notice of the proceedings pursuant to subsection (1), shall be issued in the form set out as Form III in Schedule II.
- (3) Where an application is filed in respect of a child or dependant, a copy of the application, together with notice of the date on which, and the time and place at which, the application is to be heard, shall, as soon as practicable, be served on the parent or guardian of the child or dependant, or other person with whom the child or dependant ordinarily resides, or resides with on a regular basis.
- (4) A notice of proceedings which is issued and served under this section, shall be deemed to be a summons that is duly issued and served, pursuant to the Rules of the Court made under section 32, and shall compel the respondent to appear in Court to answer to the application.
- (5) A notice of proceedings issued under this Act may be served on the respondent or his or her agent, and the Court shall receive proof of service by affidavit, in the form set out as Form IV in Schedule II.
- (6) Where the hearing of an application is adjourned, because the application and notice of the proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

11. Service other than personal service.

- (1) Where the Court has not served notice of proceedings pursuant to section 10, or an interim protection order on the respondent personally, it may make an order for substituted service of the notice of the proceedings, or an interim protection order, as the case may be.
- (2) For the purpose of subsection (1), “substituted service” means service—
 - (a) by registered post, to the last known address of the respondent;
 - (b) by leaving the document at the last known address of the respondent, or his or her closest relative;
 - (c) at the workplace of the respondent;
 - (d) by advertisement in a newspaper of general circulation, which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant; or
 - (e) provided in such other manner as the Court may direct.

12. Filing of affidavits

- (1) The respondent shall, before the return date, file with the Registrar, supporting affidavits, showing cause as to why the interim protection order must not be confirmed.
- (2) A copy of the affidavits of the respondent shall forthwith be served on the applicant.
- (3) The applicant, upon receipt of the affidavits may, before the return date, file a replying affidavit, together with any supporting affidavits, with the Registrar, in which shall be stated the reasons why the interim protection order must be confirmed.
- (4) A copy of the replying affidavit of the applicant, shall forthwith be served on the respondent.
- (5) On the return date, the Registrar shall submit to the Court—
 - (a) application for the protection order;
 - (b) the interim protection order granted;
 - (c) any supporting affidavits made by the respondent; and
 - (d) any replying affidavits made by the applicant.

13. Power to issue final protection order.

- (1) Where notice is served on the respondent to appear in person at the time fixed for the hearing, the Court may—
 - (a) proceed to hear and determine the matter in the absence of the respondent, and issue a final protection order in the form set out as Form V in Schedule II; or
 - (b) if the Court is satisfied, having regard to the materials before it, that it is appropriate to do so, adjourn the matter, and issue a warrant for the respondent to be apprehended and brought before the Court.
- (2) If the applicant, or the person on whose behalf the application is made, does not appear either in person or represented by an attorney-at-law, on the return date, as stated pursuant to section 6 (4) and (5), and the respondent appears in Court, the

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Court may–

- (a) dismiss the application;
 - (b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing on such terms as it considers just; or
 - (c) where it is satisfied, having regard to the submissions before it, that it is appropriate for evidence to be given by affidavit pursuant to this section, it may so direct, but the Court shall, on the application of any other party, order the attendance for cross examination of the person making such affidavit.
- (3) If the respondent appears on the return date in order to show cause as to why the interim protection order should not be issued or confirmed, and the applicant or the person on whose behalf the application is made, also appears, the Court shall proceed–
- (a) to hear the matter, and consider any evidence previously received under section 5 (6) and (7); and
 - (b) to consider such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.
- (4) At the hearing of the matter, the Court may–
- (a) decide the matter on the papers, in the absence of either or both of the parties; or
 - (b) refer the matter for oral evidence.
- (5) At the conclusion of the hearing pursuant to subsection (4) (a) or (b), the Court–
- (a) may confirm, amend, or set aside the interim protection order; and
 - (b) shall issue a final protection order, in the form set out as Form V in Schedule II.
- (6) The Registrar shall forthwith notify the parties of the result, and shall–
- (a) serve the original final protection order referred to in subsection (5) (b), on the respondent;
 - (b) serve a certified copy of the final protection order referred to in sub- section (5) (b), on the applicant.
- (7) A final protection order shall be for such period as the Court considers necessary, but shall not exceed three years.
- (8) Where a final protection order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years, as the period for which each prohibition or direction shall remain in force.

14. Explanation of orders.

- (1) Where the Court proposes to make an interim protection order or a final protection order, and the respondent is before the Court, the Court shall explain to the respondent–
- (a) the purpose, terms and effect of the order;
 - (b) the consequences of failing to comply with the order; and
 - (c) the means by which the order may be varied or revoked.

15. Respondent to have notice of final protection order.

A respondent shall not be bound by a final protection order issued pursuant to section 13–

- (a) if he or she was not present at the time of the making of the order; or
- (b) if the order has not been served on him or her personally or in accordance with section 11.

16. Variation and revocation of orders.

- (1) Where an order is in force, a party to the proceedings in respect of whom the order was made may make an application to the Court in the form set out as Form VI in Schedule II, for an order to vary or revoke the order that is in force.
- (2) On an application made pursuant to subsection (1), the Court may by order, vary or revoke the order.
- (3) A copy of an application made under this section, must be served on each person who was a party to the proceedings, in respect of which the original order was made.
- (4) In determining whether to vary or revoke an order, and issue an order in the form set out as Form VII in Schedule II, the Court shall have regard to the matters specified in section 8.

17. Service of protection order.

Where an interim protection order, or a final protection order, is made or varied by the Court–

- (a) the Registrar shall arrange for the order to be drawn up in the form set out as Form VI in Schedule II and filed with the Court; and
- (b) the Court shall serve a copy of the order on–
 - (i) the respondent;
 - (ii) any other person to whom the order is to apply, whether or not the person is a party to the proceedings; and
 - (iii) the police officer in charge of the police station, located nearest to the area where the respondent or the applicant resides.

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18. Breach of protection order

- (1) A person against whom an order has been made, an offence if that person—
 - (a) has notice of the order or direction; and
 - (b) contravenes any provision of the order, or fails to comply with the direction.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on a first summary conviction, to a fine not exceeding five thousand dollars, or to a term of imprisonment not exceeding eighteen months;
 - (b) on a second summary conviction, to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years, or both;
 - (c) on any subsequent summary conviction, to a period of imprisonment not exceeding five years.
- (3) Where an order contains a direction of the Court pursuant to section 7, that the respondent seeks counselling, psycho-educational programming or therapy, and it is brought to the attention of the Court that the respondent has refused or neglected to comply with such a direction, and the Court finds that such refusal or neglect was unreasonable, the respondent commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars.
- (4) If a protection order is in force, a police officer may arrest, without warrant, a person whom the officer has reasonable cause to believe has contravened the order, and if the officer believes that the arrest of the person is reasonably necessary for the protection of the person for whose protection the order was made.
- (5) An arrest under this section, or on a warrant under section 18 (4), is an arrest for purposes of the Criminal Procedure Code, and other laws relating to arrested persons.

PART III
POLICE POWERS OF ENTRY AND ARREST

19. Duties of police officers.

- (1) A police officer shall respond to every complaint or report alleging domestic violence, whether or not the person making the complaint or the report is the victim.
- (2) A police officer responding to a domestic violence complaint, shall complete a domestic violence report, which shall form part of a Domestic Violence Register, to be maintained by the Chief of Police in the prescribed manner.
- (3) A domestic violence report shall be in the form set out as Form VIII in Schedule II, and shall include but not be limited to—
 - (a) the name of the parties;
 - (b) the relationship and sex of the parties;
 - (c) information relating to the history of domestic violence between the parties;
 - (d) the date and time the complaint was received; and
 - (e) the type of the abuse and the weapon used, if any.

20. Issue of warrant.

Where a judicial officer is satisfied, by information on oath, that—

- (a) there are reasonable grounds to suspect that a person on a premise has suffered, or is in imminent danger of physical injury at the hands of another person, in a situation amounting to domestic violence, and needs assistance to deal with or prevent the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a);

the judicial officer may issue a warrant in writing, authorising a police officer to enter the premises specified in the warrant, at any time within twenty-four hours after the issue of the warrant, and subject to any conditions specified in the warrant, to take such action as is necessary, to prevent the commission or repetition of the offence, or a breach of the peace, or to protect life or property.

21. Police powers of arrest without warrant.

- (1) A police officer may act in accordance with the provisions of the Criminal Procedure Code, where he or she has reasonable cause to believe, that a person is engaging in, or attempting to engage in, conduct which amounts to physical violence, and failure to act immediately may result in serious physical injury or death.
- (2) This section does not authorise the entry onto premises by a police officer, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1).
- (3) Where a police officer exercises a power of entry pursuant to subsection (1), he or she shall immediately submit a written report to the Chief of Police, through the head of his or her division where the incident occurred, and the report shall contain—
 - (a) the reasons for entering the premises without a warrant;
 - (b) the offence being committed or about to be committed; and
 - (c) the manner in which the investigation was conducted, and the measures taken to ensure the protection and safety

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of the person at risk.

(4) The report referred to in subsection (3), must be submitted to the Director of Public Prosecutions by the Chief of Police, within seven days of its receipt by the Chief of Police.

(5) Where a complaint is made against a police officer by a person resident in a premise, alleging that the entry of the police officer onto the premises pursuant to subsection (1), was unwarranted, the Chief of Police shall order an investigation into a complaint, and take such *action* as he may deem necessary in the circumstances.

22. Duty of police officer to assist victims.

Where a police officer has entered onto premises pursuant to sections 4, 20 and 21 (1), the police officer shall—

- (a) assist a person who has suffered injury;
- (b) ensure the welfare and safety of a child or dependant, who may be on the premises; and
- (c) prevent any further breach of the law.

23. Warrant of arrest and procedure upon arrest of respondent, where Court issues interim protection order.

(1) In granting an interim protection order pursuant to section 6, the Court may—

- (a) issue a warrant for the arrest of the respondent, in the form set out as Form IX in Schedule II; or
- (b) suspend the execution of such a warrant, subject to compliance with any prohibition, condition, obligation or order imposed under section 7.

(2) The warrant referred to in subsection (1), shall remain in force until the interim protection order is set aside.

(3) A police officer shall—

- (a) execute a warrant of arrest, upon its production and receipt of an affidavit, in the form set out as Form X in Schedule II wherein it is stated that the respondent has breached any prohibition, condition or obligation or order imposed pursuant to section 7; or
- (b) arrest the respondent upon receipt of an affidavit by the applicant, in the form set out as Form X in Schedule II, wherein it is stated that—
 - (i) an interim protection order has been issued pursuant to section 6, or that a final protection order has been issued pursuant to section 13;
 - (ii) a warrant of arrest for the respondent has been issued;
 - (iii) the warrant of arrest has been lost or destroyed; and
 - (iv) the respondent has breached any prohibition, condition, obligation or order imposed, pursuant to section 7.

(4) The Court shall issue the applicant with a second or further warrant of arrest, upon the applicant filing an affidavit in which it is stated that—

- (a) the respondent has not been arrested; or
- (b) the warrant of arrest issued has been lost or destroyed.

(5) Subject to this Act, the provisions of the Criminal Procedure Code relating to—

- (a) the form and manner of execution of warrants of arrest;
- (b) the arrest;
- (c) the detention, search, release from custody; and
- (d) the criminal prosecution of the respondent;

shall apply, with the necessary changes applicable in respect of warrants of arrest issued pursuant to subsection (1).

(6) A respondent arrested pursuant to subsection (3) shall—

- (a) not be released, unless—
 - (i) a Court orders the release; and
 - (ii) the respondent, having been given a reasonable opportunity to do so, adduces evidence, which satisfies the Court, that the interests of justice permits his or her release from detention in custody;
- (b) be brought before the Court as soon as reasonably possible, but not later than—
 - (i) forty-eight hours after arrest; or
 - (ii) at the end of the first Court date, after the expiry of the forty-eight hours, if the forty-eight hours expire outside the ordinary Court hours, or on a day which is not an ordinary Court day; and
- (c) be criminally charged with—
 - (i) an offence referred to in section 36; and
 - (ii) any other offence resulting from a complaint lodged by the applicant against the respondent.

24. Existing criminal law to apply.

(1) Subject to subsection (2), where a person is arrested pursuant to section 20 or 21, the person shall be charged in accordance with the relevant provisions of the criminal law, for committing, or attempting to commit, any of the offences, and shall be dealt with accordingly.

(2) Where upon hearing the evidence pursuant to section 13 for the granting of a final protection order, the Court is satisfied

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that—

- (a) the incident was an isolated one;
- (b) there are circumstances which make it reasonable opportunity to do so, adduces evidence, which satisfies the Court, that the interests of justice permits his or her release from detention in custody;
- (c) the conduct complained of is not sufficiently grave to warrant the imposition of the order or the penalty, as the case may be,

the Court may, with the consent of the applicant, withhold the granting of a final protection order, or the imposition of any penalty as prescribed by law, and require the respondent to enter into a bond of good behaviour for a period not exceeding six months.

(3) Where a bond of good behaviour has been entered into pursuant to subsection (2), the Court may prescribe such additional conditions as follows—

- (a) that the parties receive professional counselling, including family counselling;
- (b) that the parties report to a probation officer at certain fixed intervals; or
- (c) that the matter be reviewed by the Court within three months.

(4) A bond of good behaviour entered into pursuant to subsection (2) shall be forfeited if the Court is satisfied that—

- (a) the respondent has continued to engage in conduct amounting to domestic violence against the applicant;
- (b) based on a report from a probation officer, the Director, an approved social worker or a police officer, domestic violence is likely to be perpetrated against the applicant;
- (c) or the applicant has become fearful of the respondent to the extent, that he or she is no longer willing to continue the domestic relationship.

PART IV
MISCELLANEOUS

25. Conduct of proceedings.

(1) The following persons may be present during the hearing of any proceedings pursuant to this Act—

- (a) an officer of the Court;
- (b) parties to the proceedings and their attorneys-at-law;
- (c) witnesses; or
- (d) any other person permitted by the judicial officer to be present.

(2) A witness shall leave the Court room if asked to do so by the judicial officer.

(3) This section shall not limit any other power of the Court to hear proceedings in camera, or to exclude any person from the Court.

(4) Where an application is made on behalf of a child, the parent or guardian of that child, or the person with whom the child ordinarily resides with on a regular basis, shall be entitled to be a party to the proceedings.

(5) This section shall not prevent a child, on whose behalf an application for an order is made, from being heard in the proceedings, and where the child expresses his or her views, the Court shall take account of those views, having regard to the age and maturity of the child, and the ability of the child to express his or her views.

26. Evidence.

In any proceedings pursuant to this Act, other than criminal proceedings, the Court may receive such evidence as it thinks fit, whether it is otherwise admissible in a court of law.

27. Standard of proof.

A question of fact arising in any proceedings pursuant to this Act, other than criminal proceedings, shall be decided on a balance of probabilities.

28. Restriction of publication of reports.

(1) Subject to subsections (3) and (4), a person shall not publish any report of proceedings pursuant to this Act, other than criminal proceedings, except with the leave of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years.

(3) This section does not limit—

- (a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports, or particulars relating to judicial proceedings; or
- (b) the power of the Court to punish any contempt of Court.

(4) This section shall not apply to the publication of any report in any publication that—

- (a) is of a bona fide professional or technical nature; or

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(b) is intended for circulation among members of the legal or medical profession, officers of the public service, police officers, psychologists, marriage counsellors or social workers.

29. Orders by consent

In any proceedings pursuant to this Act, the Court may make any order with the consent of all the parties to the proceedings.

30. Appeal

(1) A person aggrieved by—

- (a) an order of the Court; or
- (b) the refusal of the Court to make an order;

may, within twenty-eight days after the decision of the Court, appeal to the Court of Appeal.

(2) Except where the Court, which makes an order pursuant to the provisions of this Act otherwise directs, the operation of such an order shall not be suspended, by virtue of an appeal made pursuant to this section, and every order may be enforced in the same manner and in all respects, as if an appeal under this section is not pending.⁵³⁰ Act 19 Domestic Violence 2010

31. Protection of mortgage.

(1) The rights conferred on any person in respect of any property by an order made under this Act, shall be subject to the rights of any person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if—

- (a) the mortgage, security, charge or encumbrance was registered before the order was registered; or
- (b) the rights of that other person entitled to that benefit, arise, under an instrument executed before the date of the making of the order.

(2) Money payable under any mortgage, security, charge or encumbrance, shall not be called up or become due, by reason of the making of the order under this Act.

32. Rules of the court

The Chief Justice may make Rules of the Court—

- (a) to regulate the practice and procedure of the Court with respect to proceedings under this Act; and
- (b) to provide for such matters as are necessary for giving full effect to this Act, and for its due administration.

33. Property rights.

This Act shall not be construed as altering the rights of a spouse, in respect of ownership of any real or personal property.

34. Obligation to report ill treatment of a child

(1) Subject to the Child (Protection and Adoption) Act, 2010, a:

- a) health practitioner, dental practitioner and allied health practitioner or psychologist registered pursuant to the Health Practitioners Act;
- b) nurse;
- c) health or mental health practitioner;
- d) social worker; or
- e) a teacher

who examines, attends to or deals with any child, in circumstances giving rise to reasonable suspicion, that the child has been subject or witness to any act of violence, as a result of which the child suffers from injury, whether single or multiple, shall immediately notify a police officer of the said circumstances.

(2) A person referred to in subsection (1) shall not be liable, in respect of any notification given in good faith in accordance with this section.

35. Bail.

(1) Where the Court is required to determine whether to grant bail in respect of an offence committed under this Act, the Court shall consider—

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child or dependant, where the respondent or the applicant has custody of that child or dependant;
- (c) the welfare of any child or dependant being a member of the household;
- (d) any hardship that may be caused to the respondent or other members of the family, if bail is not granted.

(2) The Court, in granting bail, may order that the recognisance be subject to any one or more of the following conditions, as the Court considers appropriate—

- (a) that the respondent not harass or molest, or cause another person to harass or molest the applicant;
- (b) that the respondent not be present on the premises in which the applicant works or resides; and
- (c) that the respondent not be in a locality, in which is situated, the premises in which the applicant works or resides.

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(3) Where a police officer believes, on reasonable grounds, that a person, who has been admitted to bail subject to one or more conditions, has failed to comply with a condition of the recognisance, the police officer may arrest the person without a warrant.

36. Offences

A person who contravenes any prohibition, condition or obligation or order imposed under this Act, and for which a penalty is not stipulated, commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

37. Regulations.

The Minister may make regulations to give effect to this Act.

38. Repeal and savings.

(1) The Domestic Violence Act No. 15 of 2001 is hereby repealed.

(2) Any application made, proceedings instituted, or order made under the Act referred to in subsection (1), shall be deemed to have been made or instituted, pursuant to this Act.

58. GUATEMALA

[Law Against Femicide and other Forms of Violence Against Women, 2008](#) ¹³⁴

CONSIDERING: That the Political Constitution of the Republic establishes that the State of Guatemala is organized to protect people and the family, its supreme purpose is the realization of common good, in addition to protecting human life since its conception, as well as the integrity and security of people.

CONSIDERING: That Guatemala approved, through Decree Law Number 49-82, the Convention on the Elimination of All Forms of Discrimination Against Women, and through the Decree Number 69-94 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, and as a State Party, it pledged to take all adequate measures to modify or repeal laws, regulations, customs and traditions that constitute discrimination against women, and enact all the laws necessary for this purpose.

CONSIDERING: That Guatemalan women have the right to recognition, enjoyment, exercise and protection of all human rights and freedoms enshrined in the Political Constitution of the Republic and international instruments in the field of human rights, and that the problem of violence and discrimination against women, girls and adolescents that has prevailed in the country has been aggravated by murder and impunity, due to the unequal power relations between men and women in social, economic, legal, political, cultural and family spheres, thus demanding the existence of a law to prevent and punish such issues.

THEREFORE: In exercise of the powers conferred by Article 171, a) of the Political Constitution of the Republic of Guatemala.

ENACTS the following Law Against Femicide and Other Forms of Violence Against Women.

CHAPTER I
GENERAL PART
GENERAL PROVISIONS

Article 1 – Object and purpose of the law

The purpose of this law is to guarantee life, freedom, integrity, dignity, protection and equality of all women before the law, particularly due to their gender, protecting them in relationships of trust and power, both in public or private, from whoever assaults, commits discriminatory practices, or any type of physical, psychological or economic violence, or belittle their rights. The purpose of the law is to promote and implement provisions aimed at the eradication of physical, psychological, sexual, economic or any type of violence or coercion against women, assuring them a life free of violence, as stipulated by the Political Constitution of the Republic, and international instruments on women's human rights ratified by Guatemala.

Article 2 – Applicability

¹³⁴ Law Against Femicide and Other Forms of Violence Against Women (Ley Contra el Femicidio y Otras Formas de Violencia Contra la Mujer), Decree No. 22 of 2008, available at https://www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otras_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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This law will be applied when there is a violation to a woman's right to a life free of violence however it manifests itself, both in the public and private sphere.

CHAPTER II DEFINITIONS

Article 3 – Definitions

For the purposes of this law, it shall be understood as:

- a. Access to information: It is the right of women victims of violence to receive full information and advice appropriate to their personal situation, through the services, agencies or offices that may be available to the institutions competent, both public and private. This information will include measures contemplated in this law, regarding their protection and security, and the rights and aid provided therein, as well as the place of provision of care, emergency, support and comprehensive recovery services.
- b. Private sphere: Includes domestic, family, or trust interpersonal relationships within which acts of violence are practiced against women, when the aggressor is the spouse, former spouse, partner or former partner – whether the victim has had children or not –, the boyfriend or former boyfriend, or relative of the victim. It also includes the relationship between a woman's spouse, former spouse, partner, former partner, boyfriend or former boyfriend, with her daughter(s).
- c. Public sphere: Includes interpersonal relationships that take place in the community, including the social, labor, educational and religious sphere, or any other type of relationship that is not included in the private sphere definition.
- d. Integral assistance: The woman victim of violence and her children have the right to social services of attention, emergency, support, refuge, as well as of recovery. The multidisciplinary care will involve especially:
 1. Medical and psychological care.
 2. Social support.
 3. Legal follow-up of claims regarding women's rights.
 4. Support for training and job placement.
 5. Assistance through an interpreter.
- e. Femicide: Violent death of a woman, caused in the context of unequal power relations between men and women, exercising the power of gender against women.
- f. Misogyny: Hate, contempt or underestimation of women by the mere fact of being women.
- g. Power relations: Manifestations of control or domination that lead to the submission of women and discrimination against them.
- h. Compensation to the victim: Compensation will be understood as the set of measures to approximate the situation of the victim to the state in which she would find herself if the crime against her had not occurred. The compensation must be characterized by its integrality and includes compensation of economic nature, and all the measures aimed at providing the victim with medical, psychological, moral and social reparation.
- i. Victim: The woman of any age who is inflicted with any type of violence.
- j. Violence against women: Any action or omission towards the female gender that results in immediate or subsequent harm, physical, sexual, economic or psychological suffering for women, as well as the threats of such acts, coercion or arbitrary deprivation of liberty, whether it occurs in the public sphere or in the private sphere.
- k. Economic violence: Actions or omissions that have an impact on the use, enjoyment, availability or accessibility of a woman to the material goods that belong to her by right, by marriage or de facto union, by capacity or by inheritance, causing deterioration, damage, transformation, subtraction, destruction, retention or loss of objects or material goods that belong to her or to her family group, as well as the retention of work instruments, personal documents, property, currency, rights or economic resources.
- l. Physical violence: Actions of aggression in which corporal force is used direct or by means of any object, weapon or substance with which it is caused injury, physical suffering, or illness to a woman.
- m. Psychological or emotional violence: Actions that may cause harm or psychological or emotional suffering to a woman, to her sons and daughters, as well as actions, threats or violence against sons, daughters or other relatives up to the fourth degree of consanguinity and second of affinity of the victim, in order to intimidate her, undermine or control her self-esteem, or subject her to such an emotional climate that can cause her to suffer a progressive psychological weakening with depression episodes.
- n. Sexual violence: Actions of physical or psychological violence whose purpose is to violate the freedom and sexual indemnity of women, including humiliation sex, forced prostitution and denial of the right to make use of family planning methods, both natural and artificial, or to adopt protection measures against sexually transmitted diseases.

CHAPTER III PREVENTIVE MEASURES

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Article 4 – Inter-institutional coordination

The State of Guatemala, through the governing body of policies related to the prevention and eradication of violence against women, will be responsible for inter-institutional coordination, promotion and monitoring of campaigns raising awareness and generating spaces for discussion to coordinate and promote public policies for the prevention of violence against women and femicide, which are considered of national urgency and of social interest, in congruence with the subscribed and ratified international commitments on the subject.

CHAPTER IV
CRIMES AND PENALTIES

Article 5 – Public action

The offenses established in this law are of public action.

Article 6 – Femicide

The crime of femicide is committed by whoever, within the framework of unequal power relationships between men and women, kills a woman due to her condition of being a woman, under any of the following circumstances:

- a. Have attempted unsuccessfully to establish or reestablish a relationship of partnership or intimacy with the victim.
- b. Have maintained a relationship of family, marriage, cohabitation, intimacy or courtship, friendship, companionship or employment relationship with the victim, at the time when the act was perpetrated or in the past.
- c. As a result of the repeated manifestation of violence against the victim.
- d. As a result of group rituals, with or without the use of weapons of any kind.
- e. In contempt of the victim's body for the satisfaction of sexual instincts or committing acts of genital mutilation or any other type of mutilation.
- f. Misogyny.
- g. When the act is committed in the presence of the victim's children.
- h. Concurring any of the qualifying circumstances contemplated in Article 132 of the Criminal Code.

The person responsible for this crime will be punished with a prison sentence of twenty-five to fifty years and cannot be granted penalty reduction for any reason. The persons prosecuted for committing this crime may not enjoy any substitute measure.

Article 7 – Violence Against Women

The crime of violence against women is committed by whoever, in public or private, exercise physical, sexual or psychological violence, under the following circumstances:

- a. Have attempted, repeatedly or continuously, unsuccessfully, to establish or restore a relationship of intimacy with the victim.
- b. Have maintained a relationship of family, marriage, cohabitation, intimacy or courtship, friendship, companionship, or an educational, religious or employment relationship with the victim, at the time when the act was perpetrated or in the past.
- c. As a result of group rituals, with or without the use of weapons of any kind.
- d. In contempt of the victim's body for the satisfaction of sexual instincts or committing acts of genital mutilation.
- e. Misogyny.

The person responsible for the crime of physical or sexual violence against women will be punished with imprisonment of five to twelve years, according to the seriousness of the crime, notwithstanding that the facts constitute other crimes stipulated in ordinary laws.

The person responsible for the crime of psychological violence against women will be punished with imprisonment of five to eight years, according to the seriousness of the crime, notwithstanding that the facts constitute other crimes stipulated in ordinary laws.

Article 8 – Economic Violence

The crime of economic violence against women is committed by whoever, within the public or private sphere, engages in conduct included in any of the following assumptions:

- a. Undermine, limit or restrict the free disposal of the woman's assets, property right or labor rights.
- b. Force the woman to sign documents that affect, limit, restrict or put at risk her equity; or that exempt the perpetrator from economic, criminal, civil or any other form of responsibility.
- c. Destroy or hide proof of ownership or personal identification documents, assets, personal objects, or work instruments that are essential to perform the victim's usual activities.
- d. Submit the woman's volition through financial abuse by not covering hers and her children's basic needs.

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- e. Exercise psychological, sexual or physical violence against women, in order to control the income or the flow of monetary resources that enter the home.

The person responsible for this crime will be punished with imprisonment of five to eight years, without prejudice that the facts constitute other crimes stipulated in ordinary laws.

Article 9 – Prohibition of grounds for justification

In crimes against women, cultural or religious customs or traditions may not be invoked as a cause of justification or exculpation to perpetrate, inflict, consent, promote, instigate or tolerate violence against women. With the sole denunciation of the fact of violence in the private sphere, the jurisdictional body must dictate the security measures referred to in article 7 of the Law to Prevent, Punish and Eradicate Intrafamily Violence, being able to apply to women who are victims of the crimes defined in this law, even when the aggressor is not their relatives.

Article 10 – Aggravating circumstances

Circumstances that aggravate the violence against women should be analyzed according to the following:

- a. In relation to the personal circumstances of the perpetrator.
- b. In relation to the personal circumstances of the victim.
- c. In relation to the existing power relations between the victim and the perpetrator.
- d. In relation to the context of the violent act and the damage caused to the victim.
- e. In relation to the means and mechanisms used to perpetrate the event and the damage produced.

CHAPTER V REPARATION

Article 11 – Compensation to the victim

The compensation for the victim will be proportional to the damage caused and the degree of culpability of the perpetrator. In no case shall it imply an enrichment without cause for the victim.

The compensation may be established by the courts that know the specific case.

When the victim has died, the right to reparation extends to her successors, according to the provisions of the Civil Code and Criminal Procedure Code.

Article 12 – State's Responsibility

In compliance with the provisions of the Political Constitution of the Republic of Guatemala and international conventions and treaties on human rights accepted and ratified by the State of Guatemala, the State will be jointly and severally liable for the action or omission incurred by Public officials who obstruct, delay or deny compliance with sanctions provided for in this law, being able to exercise against them the action of repetition if convicted, without prejudice to administrative or civil responsibilities.

CHAPTER VI STATE'S OBLIGATIONS

Article 13 – Rights of the Victim

It is the obligation of the State to guarantee women victim of any form of violence, the following rights:

- a. Access to information.
- b. Integral assistance.

The officials who, without justified reasons, deny or delay the delivery of information or integral assistance to the detriment of the process or the victim, will be subject to labor and administrative measures and sanctions, without prejudice to civil or criminal liabilities according to the case.

Article 14 – Strengthening of the institutions responsible for criminal investigation

To comply with the provisions contained in this law, the Public Ministry must create the Office of Crimes Against the Life and Physical Integrity of Women, specialized in the investigation of crimes created by this law, with budgetary resources, physical, material, scientific and human resources that allow the fulfillment of the purposes of this law.

Article 15 – Creation of specialized jurisdictional bodies

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The Supreme Court of Justice will implement specialized jurisdictional bodies that must know about the offenses established in the present law, organizing their operation in regime of twenty-four (24) hours, without prejudice to the competence attributed to the criminal courts.

Article 16 – Integral Support Centers for Women Survivors of Violence

It is an obligation of the State to guarantee access, quality, and financial, human and material resources, for the operation of the Integral Support Centers for Women Survivors of Violence. Its creation shall be promoted by the National Coordinator for the Prevention of Intrafamily Violence and Violence Against Women (CONAPREVI), who will provide accompaniment, advice and monitoring of specialized women's organizations that administer the support centers.

Article 17 – Institutional Strengthening

The National Coordinator for the Prevention of Intrafamily Violence and Violence Against Women (CONAPREVI) is the entity in charge of coordinating, advising, and promoting public policies aimed at reducing intrafamily violence and violence against women.

It is the State's duty to strengthen and institutionalize the instances already created, to address the social problem of violence against women, to ensure the sustainability of the institutions, among them: CONAPREVI, the Ombudsman for Indigenous Women (DEMI), the Presidential Secretariat for Women (SEPREM), as well as the free legal assistance service provided to victims by the Institute of Public Criminal Defense. Also, it will guarantee the strengthening of other non-governmental organizations in the same way.

Article 18 – Training for State Officials

In the framework of the execution of the National Program for the Prevention and Eradication of Domestic Violence and Violence Against Women (PLANOVI), the National Coordinator for the Prevention of Intrafamily Violence and Violence Against Women (CONAPREVI) and other non-governmental organizations, will be in charge of advising, tracking and monitoring of processes, and training of public officials, specially justice operators, on violence against women.

Article 19 – Legal assistance to the victim.

The State has the obligation to provide free legal assistance to the victim or her family members, providing them with the services of a public defender, to guarantee the exercise of their rights.

Article 20 – National information system on violence against women.

The National Institute of Statistics (INE) is obliged to generate indicators and statistical information, with the information that it submits to the Judicial Branch, the Public Prosecutor's Office, the Office of the Attorney General, the Human Rights Attorney, the National Civil Police, the Institute of Public Criminal Defense, Popular Law Firms and any other institution that knows about the crimes contemplated in this law, creating a National Information System on Violence Against Women. The aforementioned entities shall implement the appropriate mechanisms, according to their internal regimes, to fulfill this obligation.

Article 21 – Budgetary allocations.

The Ministry of Public Finance shall assign the resources within the Budget of Income and Expenditures of the State, for compliance of the present law, in relation to the following aspects:

- a. Creation of the Office of Crimes against Life and Physical Integrity of Women.
- b. Strengthening of the National Institute of Forensic Sciences -INACIF-.
- c. Creation of specialized jurisdictional bodies to hear crimes against the life and physical integrity of women.
- d. Strengthening and adequate functioning of the National Coordinator for Social Security of Intrafamily Violence and Against Women - CONAPREVI-.
- e. Implementation of the National Plan for the Prevention and Eradication of Violence Intrafamiliar and Against Women -PLANOVI-.
- f. Strengthening of the protection service for procedural subjects and persons linked to the administration of criminal justice. g) Strengthening the Institute of Public Criminal Defense for the provision of the service of free legal assistance.

CHAPTER VII FINAL AND TRANSITIONAL PROVISIONS

Article 22 – Transitional

Until the Supreme Court of Justice implements the specialized jurisdictional bodies referred to in Article 15 of this Law, the provisions of the Criminal Procedure Code (Decree Number 51-92 of the Congress of the Republic and its amendments) and the Law of the Judicial Organism will be applied. Until the specialized courts are established, those which are determined by the

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Supreme Court of Justice will have jurisdiction to hear the cases referred to by this law. The specialized jurisdictional bodies referred to in Article 15 of this law must be established progressively within twelve months after the effective date of this law, throughout the Republic.

Article 23 – Transitional

Until the Office for Crimes Against the life and Physical Integrity of Women, mentioned in Article 14 of this Law, is implemented by the Public Prosecutor's Office, the Attorney General and the Head of the Public Ministry shall determine which prosecutors should act, according to the regime of the Public Ministry. The office of the public prosecutor referred to in article 14 of this law shall be established within of the twelve months following the validity of this law.

Article 24 – Article 2 of Decree n. 70-96 (Law for the Protection of Procedural Subjects and Persons Linked to the Criminal Justice Administration) is hereby reformed and shall be written like the following:

"Article 2. Object. The protection service has as its essential objective, to provide Protection of officials and employees of the Judicial Branch of the security forces and the Public Prosecutor's Office, as well as witnesses, experts, consultants, complainants, women victims of violence, their daughters and sons, as well as other people who are exposed to risks due to their involvement in criminal proceedings. It will also cover journalists who need it because they are at risk, due to the fulfillment of their informative function. "

Article 25 – Supplementarity

This law is supplemented by the provisions of Decree Number 17-73 Penal Code; Decree Number 51-92, Criminal Procedure Code; Decree Number 2-89, Law of the Judicial Branch; Decree Number 97-96, Law on Dignity and Integral Promotion of Women; Decree Number 42-2001, Development Law Social; Decree-Law 106, Civil Code; Decree-Law 107, Civil and Commercial Procedure Code, as well as the modifications and reforms to all the aforementioned laws.

Article 26 – Sources of interpretation

The sources of interpretation of this law are the ones established in the Political Constitution of the Republic of Guatemala and in the conventions and international treaties on human rights, accepted and ratified by the State of Guatemala. In particular, the following are considered as sources of interpretation of this law:

- a. The Convention on the Elimination of All Forms of Discrimination Against Women.
- b. The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women.

Article 27 – Repealing.

All legal or regulatory provisions that oppose or contravene the rules contained in this law are hereby repealed.

Article 28 – Validity

This Decree will enter into force eight days after its publication in the Official Gazette.

[Law to Prevent, Punish and Eliminate Interfamily Violence, 1996](#) ¹³⁵

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

CONSIDERING: That the State of Guatemala guarantees equality of all human beings in dignity and rights and that the man and the woman, whatever their marital status, have equal opportunities and responsibilities.

CONSIDERING: That Guatemala ratified, through the Decree Law 49-82, the Convention on the Elimination of All Forms of Discrimination Against Women, and through the Decree Number 69-94, the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, and as a State party, was forced to adopt all appropriate measures, including those of a legislative nature, to modify or repeal laws, regulations, uses and practices that constitute discrimination against women and issue all those laws that are necessary for that end.

CONSIDERING: That the problem of intra-family violence is a problem of a social nature, due to the relationships inequalities between men and women in the social, economic, legal, political and cultural field.

¹³⁵ Law to Prevent, Punish and Eliminate Intrafamily Violence (Ley Para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar), Decree n. 97 of 1996, available at <https://guatemala.justia.com/nacionales/leyes/decreto-no-97-1996-oct-24-1996/gdoc/> (last visited December 30, 2018). Unofficial translation by Compendium team.

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CONSIDERING: That the State of Guatemala, according to Article 47 of the Political Constitution of the Republic, guarantees the social, economic and legal protection of the family.

CONSIDERING: That it is necessary to take legislative measures to decrease and subsequently put an end to intrafamily violence, which causes so much harm to the Guatemalan society, and to contribute in this way to the construction of families based on equality and respect to human dignity of both men and women.

THEREFORE: In exercise of the attributions conferred by paragraph a) of Article 171 of the Political Constitution of the Republic of Guatemala.

ENACTS THE FOLLOWING: LAW TO PREVENT, PUNISH AND ERADICATE INTRAFAMILY VIOLENCE.

Article 1 – Intrafamily Violence

Intrafamily violence constitutes a violation of human rights, and for the purpose of this law, shall be understood as any action or omission that directly or indirectly causes harm or physical, sexual, psychological, or economic suffering, both in the public and private sphere, to an individual of the family group, by relatives, cohabitants, former cohabitants, partners or former partners, or by a person with whom the victim has had children.

Article 2 – On the application of the law

This law will regulate the application of measures of protection necessary to guarantee life, integrity, security and dignity of the victims of intrafamily violence. It also aims to provide special protection to women, children, young people, the elderly and the disabled, taking into account the specific situations of each case. The protection measures will be applied regardless of the specific sanctions established by the Criminal and Criminal Procedure Codes, in the case of facts constituting a crime or lack thereof.

Article 3 – Submission of complaints

The complaint or request for protection regulated by this law, can be done in written or verbal form, with or without the assistance of a lawyer, and can be presented by:

- a. Any person, regardless of age, who has been the victim of an act that constitutes intrafamilial violence;
- b. Any person, when the aggrieved victim suffers from physical or mental disability, or when the person is prevented from requesting it by herself/himself;
- c. Any member of the family group on behalf of another member of the group, or any witness to the fact;
- d. Members of health or educational services; doctors who, for reasons of occupation, have contact with the aggrieved person, for whom the complaint shall have a mandatory character according to Article 298 of Decree Number 51- 92 of the Congress of the Republic. Whoever refrains from making the report under these circumstances will be punished according to article 457 of the Criminal Code;
- e. Non-governmental organizations and social organizations whose object is the protection of women's rights, the rights of minors and, in general, those that deal with the family problems;
- f. If the victim is a minor, it shall be represented by the Public Ministry, when they attend the following circumstances:
 - 1) When the aggression comes from who exercises parental authority, and,
 - 2) In the case of minors who lack guardianship and legal representation.

Article 4 – Of the institutions

The institutions responsible for receiving the type of complaints mentioned in the previous article shall be:

- a. The Public Prosecutor's Office, through the Women's Prosecution Office, office of permanent care and attention to the victim.
- b. The Office of the Attorney General of the Nation, through of the Unit for the Protection of Women's Rights.
- c. The National Police.
- d. Family courts.
- e. Popular Law Firms.
- f. The Human Rights Attorney.

Whoever receives the complaint must send it to a family court or criminal court, as appropriate, within no more than twenty-four (24) hours.

Article 5 – Compulsory registration of complaints

All institutions mentioned in the previous article will be required to register allegations of intrafamily violence and submit them to the Judicial Statistics Office, for the purpose of evaluating and determining the effectiveness of measures to prevent, punish and eradicate such violence, and to formulate and apply the necessary changes.

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Article 6 – On duty courts

On duty special courts (juzgados de paz) will address the issues related to the application of this law in order to attend cases that cannot be attended during normal hours due to time or distance constraints. The attention given to these cases are of urgent nature.

Article 7 – Security Measures

In addition to those contained in Article 88 of the Criminal Code, the Courts will apply any of the following security measures, when dealing with situations of intrafamily violence. It will be possible to apply more than one of the following measures:

- a. Order the alleged aggressor to immediately leave the home shared with the victim. If he resists, public force will be used.
- b. Order compulsory attendance at institutions with therapeutic and educational programs that are created for that end.
- c. Order a search in the home when intrafamily violence poses a serious risk of physical, sexual, economic/patrimonial, or psychologic damage to its inhabitants.
- d. Prohibit the introduction or maintenance of weapons in the home, when they can be used to intimidate, threaten or cause damages to any of the members of the family group.
- e. Seize weapons in possession of the alleged aggressor, even if he has a license.
- f. Temporarily suspend the custody of minor children from the alleged aggressor.
- g. Order the alleged aggressor to abstain from interfering, in any form, in the exercise of the guard, breeding and education of their sons and daughters.
- h. Suspend the alleged offender's right to visit his sons and daughters, in case of sexual aggression against minors.
- i. Prohibit the alleged aggressor from disturbing or intimidating any member of the family group.
- j. Prohibit the access of the alleged aggressor to the permanent or temporary home of the aggrieved person, including her place of work and study.
- k. Establish a provisional alimony, according to the Civil Code.
- l. Arrange the freezing of assets of the alleged aggressor. To apply this measure, no guarantee deposit will be necessary. At the discretion of the competent judicial authority, the freezing of assets will fall on the family dwelling and on the necessary assets to support the alimony in favor of the aggrieved person and its dependents, according to the law.
- m. Create an inventory of existing personal property in the dwelling, in particular household goods or others that serve as a means of work to the aggrieved person.
- n. Grant exclusive use of the household goods to the aggrieved person, for a determined period of time. It shall be safeguarded especially the house and the goods protected by family assets regime.
- o. Order the alleged aggressor to abstain from interfering with the use and enjoyment of the instruments of the aggressed person's work. When the person is sixty (60) years or more or is disabled, the alleged aggressor should not interfere in the use and enjoyment of indispensable instruments so that the victim can fend for him or herself or integrate into society.
- p. Order the alleged aggressor, repair in money from the damages caused to the aggrieved person, or to the goods that are dispensable to continue its normal life. It should include transportation expenses, repairs to the property, housing and medical expenses. The amount will be effective in the form and procedure that the judicial authority deems appropriate.
- q. (Paragraph added by Article 22 of the Decree 49-2016 of the Congress of the Republic). Measures of security contained in this Law may be accompanied by a telematic control device, for the effective protection of the physical integrity of victims, for the period granted by the competent judge in the security measures applied; said device the alleged aggressor will be placed at the expiration of the term of opposition.

Article 8 – Duration

The protection measures cannot last less than one month or more than six months, except the one indicated in paragraph c) of the previous article. However, upon the expiration of the deadline and at the request of a party, the competent authority may extend it.

Article 9 – Aggressor's relapse

It shall be understood as a relapse of the aggressor, whoever assaulted the victim or another member of the family group more than once. This fact may be invoked as grounds for separation or divorce.

Article 10 – Obligations of the National Police

The authorities of the National Police will have the obligation to intervene in situations of intrafamily violence, ex officio or when they are required by the victims or by third parties. In these cases, they must:

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- a. Help and provide protection to people attacked, even when they are inside of your address at the time of the complaint, according to the provisions of articles 208 and 436 of the Criminal Code.
 - b. In case of flagrancy, stop the aggressor and put him under the order of the judicial authority.
 - c. Collect information for the police report on the facts occurred, for which they must collect information of relatives, neighbors or other persons present and take their names, qualities and where they can be located to request them in a possible judicial process.
 - d. Seize weapons and objects used to threaten or attack and put them at the order of the respective judicial authority.
- Failure to comply with these obligations will be sanctioned as indicated in Article 114 of the Criminal Procedure Code.

Article 11 – Supplementation of the law

To anything that is not provided for in this law, supplemental provisions of the Civil Code, Civil and Commercial Procedure code, Criminal Code, Criminal Procedure Code, Family Law, and Law of the Judicial Organization shall be applied, without any specific order of priority.

Article 12 – Duties of the State

The State must create, through the Human Rights Attorney's Office, an instance that is responsible for coordinating the teaching workshops, seminars and conferences for judges, staff Assistant to the Courts, Public Ministry, Attorney General's Office of the Nation, prosecutors, forensic doctors, complaints reception officers, National Police, Ministry of Public Health and other institutions that know about intrafamily violence, its seriousness and consequences.

Article 13 – Advisor

Until an advisory institution is created, the Attorney General's Office of the Nation, in accordance with the functions stipulated in the Political Constitution of the Republic of Guatemala, will have the competence to be the advisory body in charge of public policies that promote prevention, attention, sanction and eradication of intrafamily violence. It will also monitor compliance with the Inter American Convention to Prevent, Punish and Eradicate Violence Against Women. To comply with these obligations entrusted to the Attorney General's Office of the Nation will do so in the following terms.

1. Ensure that the authorities, their workers, staff and agents of the institutions behave in accordance with the obligations stipulated in this law.
2. Suggest appropriate measures to encourage the modification of legal or customary practices, which support persistence or tolerance of intrafamily violence.
3. Strengthen knowledge and enforcement of women's rights and the rights of children, the elderly and elderly women in a life free from violence, enhancing respect and protecting their rights.
4. Recommend the modification of sociocultural behavior patterns of men and women, including the design of education programs, formal and informal, appropriate for all the levels of the educational process, in order to counteract prejudices, customs and all kinds of practices that are based on the premise of the inferiority of any of the genres or in the stereotypes for men and women, which legitimize or exacerbate violence against people.
5. Promote education and training for people in the administration of justice, police and other officials responsible for the application of the law, as well as the personnel in charge of applying the policies to prevent, punish and eliminate intrafamily violence.
6. Stimulate educational programs, both governmental and in the private sector, aimed at raising awareness to the population about related problems with intrafamily violence, legal remedies and the corresponding repair.
7. Encourage the media to develop appropriate guidelines for dissemination and thus help to eradicate intrafamily violence in all its forms and, in particular, to enhance the respect for human dignity.
8. Encourage the research and collection of statistics and relevant information on causes, consequences and frequency of intrafamily violence, in order to evaluate the public measures.
9. Promote, with international cooperation, the promotion of programs aimed at protecting the right to a life without violence and exchange of ideas and experiences on the subject.

The State will try to offer treatment alternatives and rehabilitation to aggressors, taking into account, among others, its double condition of victims and of aggressors.

Article 14 – This decree will come into force thirty days after its publication in the official newspaper.

[Criminal Code, 1973](#)¹³⁶

¹³⁶ Código Penal, Decree n. 17-73 (27 July 1973), available at http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/cds/CDs%20compilaciones/Compilacion%20Leyes%20Penales/expedientes/01_CodigoPenal.pdf (last visited December 30, 2018). Unofficial translation by Compendium team.

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Article 131 – Parricide

Whoever, knowing the kindred, kill any ascendant or descendent, spouse or the person with whom they live a marital life, will be punished as parricide with imprisonment of 25 to 50 years. The death penalty will be imposed, instead of the maximum penalty, if due to the circumstances of the event, the manner of carrying it out and the determining motives, it is revealed a greater and particular danger from the agent. Those who do not receive the death penalty for this offense cannot receive a penalty reduction for any reason.

Article 174 – Penalty aggravation

The penalty imposed to the crimes mentioned in the previous articles¹³⁷ will be augmented in two thirds in the following cases: [...]

(4) When it is committed against a woman in a state of pregnancy, or when that state occurs as a consequence of the crime.

(5) When the agent is a relative of the victim, or responsible for their education, custody, care, guardianship, that is, he is the spouse, former spouse, cohabiting or former partner of the victim or one of their relatives within the degrees established by the law.

Article 483 – It shall be punished with arrest from fifteen to forty days:

[...]

(2) Whoever mistreat his/her spouse, a person with whom he/her is in union or cohabiting with, when it does not cause injuries.

59. GUINEA BISSAU

Domestic Violence Law, 2014 ¹³⁸ (picture Oct15)

Preamble

Domestic violence is an attack on the right to life, security, freedom, dignity and physical and mental integrity of the human person, and an obstacle to the development of a society of solidarity and democracy. The increasing visibility it has acquired, the redefinition of gender roles, the affirmation of human rights, and the building of a new social and citizenship awareness, demands from the public authorities the monitoring, the adjustment of public policies and a greater commitment in the fight against a phenomenon which, for many years, the society remained silent about.

Despite major national and international efforts for the protection and preservation of the fundamental rights of the human person, there are still increasing violations of human rights on the African continent and, in particular, in Guinea-Bissau. The country is a signatory of several international legal instruments for the promotion and preservation of human rights. In this context, it is an obligation of the Guinean State to promote specific laws to ensure the implementation and fulfillment of human rights, in order to provide the victims of violence, with maximum protection against abuse of power in domestic, family and social relationships, introducing measures to ensure that the competent organs of the State ensure full and effective action according to the estimates and greater commitment to eradicate the practice.

The Constitution of the Republic of Guinea-Bissau provides in Article 38 (1) and Article 37 (1) that every citizen enjoys the inviolability of his person as well as his/her moral and physical integrity. However, there are high levels of violence against the human being in various forms and a high incidence of domestic violence. Similarly, it results from Article 37 (2) of the Constitution that "No one shall be subjected to torture or cruel or inhumane treatment".

The prevention and combat of domestic violence requires the promotion of values of equality and citizenship that decrease the social tolerance to violence and increase the acceptance of a culture of non-violence. In another perspective, it demands the elimination of stereotypes, myths, alterations of gender representations and the values that have perpetuated the existence of unequal relationships in the family, school and social environment. It has to be recognized that domestic violence continues to be a major challenge of modern civilization, in spite of all the legislative efforts in favor of its eradication, and that its manifestation in the context of family relations, and in the different socio-economic and political dimensions it is still evident.

Article 5 of the Universal Declaration of Human Rights states that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". Article 4 of the African Charter on Human and Peoples' Rights also provides that "The

¹³⁷ See Title III of the Criminal Code-Crimes against the sexual integrity and freedom of individuals.

¹³⁸ Domestic Violence, Law No. 6 (29 January, 2014). Unofficial translation by Compendium team. See Annex IV.

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human person is inviolable". "Every human being has the right to respect for his life and to the physical and moral integrity of his person. No one shall be arbitrarily deprived of this right. "

The successive international reports on domestic violence show that violence is a universal problem, and that it exists in all societies, in all regions of the world, irrespective of the degree of development, political, economic and social others.

According to statistical data, most of the victims of violence within Bissau Guinean society are women of all ages, social classes, religions, races, ethnicities, nationalities, and others, whether they are disabled or not, due to the structural conditions of power relations between the genres.

In this context, in consideration of the principle of equality, it is necessary to reveal the situation of women's social vulnerability in their respective contexts and to take steps to encourage a real transformation of their future prospects, by creating appropriate systems to free themselves from the male power and historically determined living dynamics.

Accordingly, the National People's Assembly, concerned about the growing social dimension of the situation, decrees, in accordance with article 86 (h) of the Constitution of the Republic of Guinea-Bissau, the following:

CHAPTER I

General provisions

Article 1. Object

The purpose of this law is to criminalize all acts of violence committed within domestic and family relationships, which do not result in death, and establish the legal regime applicable to the prevention, care and legal protection of victims.

Article 2. Scope of application

This law applies to all acts of domestic violence committed in the national territory.

It also applies to acts committed outside the national territory provided that:

- a) is practiced against Guineans and the agent is found in the country;
- b) the fact is considered as a crime in the country of origin and the agent is in national territory.

Article 3. Nature of crime

The crime of domestic violence has the nature of a public crime, with the specificities which result from this law.

Chapter II

Definitions and Fundamental Principles

Section I. On the definitions

Article 4. Definitions

(a) "Domestic violence" means domestic violence, any pattern of conduct or omission of a criminal nature, repeated or not, which inflicts physical, sexual, psychological or economic suffering, whether directly or indirectly, within the family, against any person who habitually resides in the same domestic space or who, not residing in the same space, is a person with whom the victim has relations.

(b) "Victim" shall mean a natural person who has suffered harm, including an assault on his or her physical or psychological integrity, moral injury or material loss, directly caused by action or omission in the course of domestic and family relations;

(c) "Psychological violence" psychological violence means any action or omission intended to degrade or control the actions, behavior, beliefs, rights or decisions of victims through intimidation, manipulation, threat, humiliation, isolation or any other conduct or omission that implies harm to psychological health, integral development or self-determination;

(d) 'Physical violence' physical violence means any act or omission which causes harm to the physical or corporal integrity of the victims;

(e) "Sexual violence" sexual violence means any conduct involving threat or intimidation that affects the integrity or sexual self-determination of the victim;

(f) "Sexual violation" shall mean any sexual violation, copulation committed against the victim's will, in a variety of ways, including that of which is practiced within marriage, in the context of the crime of rape, as provided for in article 133 of the Penal Code;

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- g) "Property violence" means property violence, any violence that causes deterioration or loss of objects, animals or property of the victim or his or her family;
- (h) "Unequal exercise of power" unequal exercise of power means any conduct aimed at affecting, jeopardizing or limiting the free development of the personality of victims on the basis of gender;
- (i) 'Cycle of violence' cycle of violence means the repetitive sequence of stages characterized by the accumulation of tension, the explosion of verbal or physical violence, and the repentance of the perpetrator, which can terminate with the death of one of the parties.
- (j) "Reception center" reception center means residential units intended for the temporary reception of victims, who are accompanied or not by minor children.

Section II. On the fundamental principles

Article 5. Principle of equality

All victims, regardless of their ancestry, nationality, social status, sex, ethnicity, language, age, region, disability, political or ideological conviction, sexual orientation, culture and educational level, enjoy the fundamental rights inherent to the dignity of the human person, and they are ensured equal opportunity to life without violence, as well as their physical and mental health.

Article 6. Principle of respect and recognition

1. The victim is ensured treatment with respect for his personal dignity at all stages and instances of intervention.
2. The State shall ensure that victims who are particularly vulnerable have specific treatment, as appropriate as possible to their situation.

Article 7

Principle of the autonomy of the will

1. Without prejudice of the provisions of the Procedural Code, any intervention in support of the victim must be carried out with respect by their will, and any support can only be provided after they give his or her free and informed consent.
2. If the victim is less than 16 years of age, the consent depends on his / her legal representative, or in his / her absence or if he / she is an agent of the crime, the designated entity or person by the law, bearing in mind the best interest of the child.
3. Notwithstanding the fact that the crime is public, the victim may, at any time, freely revoke his consent.

Article 8. Principle of confidentiality

1. The technical support services to victims ensure the proper respect for their privacy, guaranteeing the professional secrecy of the information provided by them.
2. Anyone who fails to comply with the provisions of number 1 of this article, shall be punished with imprisonment up to two years or with a fine.
3. The attempt is punishable.

Article 9. The purposes

The purpose of this law is to create and strengthen mechanisms for prevention and legal protection due to victims of domestic violence, notably:

- a) To develop awareness campaigns in the areas of education, information, health, social support organizations and youth organizations, providing them with adequate means to achieve those ends;
- b) To ensure the rights of victims by ensuring their rapid and effective protection;
- c) Create protective measures to prevent, avoid and punish domestic violence;
- d) To provide for a combined response from the social emergency, health and victim support services, ensuring rapid and effective access to such services;
- e) To protect the rights of workers who are victims of domestic violence;
- f) Guarantee the economic rights of the victim of domestic violence;
- g) Ensure rapid and effective police and judicial protection for victims of domestic violence;
- h) Encourage the creation and development of associations and civil society organizations that aim at acts against domestic violence by promoting their collaboration with public authorities.

CHAPTER III

On the obligations of the State

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Article 10. Obligations of the State

In order to prevent, address and eradicate domestic violence, State institutions involved in education, information, health, justice, culture, youth, social security and solidarity, employment, vocational training and sports must:

- a) Promote the process of modifying the socio-cultural patterns of conduct of women and men, including the design of formal and non-formal education programs and curricula at all levels of the educational process;
- b) Disseminate the right to a life without violence;
- c) Instruct and sensitize health personnel to provide adequate treatment and privacy for victims of domestic violence, and avoid repetition of clinical examinations that affect their physical and psychological integrity;
- d) To create the necessary conditions for the psychological and psychiatric support the victims of crimes of domestic violence;
- e) To create the necessary conditions for the psychological and psychiatric support to the agents condemned by the practice of crimes of domestic violence, through the creation of centers of internment and social reintegration
- f) Promote educational campaigns to prevent domestic violence and instruments for the protection of human rights.

Article 11. Definition of policy and national plan

1. The sectors linked to social solidarity, justice, health, education, health, and security, in coordination with experts and researchers on domestic violence, should design a policy and the respective national plan to prevent, address and eradicate violence domestic.
2. The national plan should include educational, investigative, dissemination, integral care for victims, sensitization and training of magistrates, police officers, officials and other personnel of public or private institutions involved in the prevention, punishment and protection of victims of domestic violence.

Article 12. Data management

The Ministry of Social Solidarity should compile and publish data on cases of domestic violence throughout the country, in order to determine their incidence and subsequently assess the impact of the implementation of this law.

Article 13. Appropriate budgeting

The State budget must foresee and allocate funds necessary to comply with the obligations set forth in article 9 of this law.

CHAPTER IV

Measures of protection and penalties

Section I. Protection measures

Article 14. Protective measures

Victims of domestic violence are guaranteed the protection and restitution of their rights and security as well as precautionary measures, which must be established.

Article 15. Security measures

1. Security measures are those aimed at repelling violence in any of its manifestations.
2. The security measures shall include the following:
 - a) To temporarily separate the agent from the house in which he lives with the victim;
 - b) Prohibit the agent from temporarily being present at the residence of the victim and her/his place of work, as long as this measure does not interfere in the agent's employment relations;
 - c) To hold the agent in flagrante delicto;
 - d) To warn the agent who will commit a crime if he / she commits acts of intimidation or aggression against the victim or against any member of his / her family;
 - e) Seize weapons and materials usually used by the agent during the commission of violence;
 - f) create conditions to ensure, where necessary, the safe return of the victim forced to leave his or her home for security reasons.
3. Notwithstanding the coercive measures provided for in the Code of Criminal Procedure, the Judge or Prosecutor can decide on the application of the security measures set out in the preceding paragraphs, after evaluating the circumstances during the investigation phase.
4. The measures provided for in subparagraphs (c), (e) may be applied by the police during the investigation.

Article 16. Precautionary measures

1. The precautionary measures aim to prevent the repetition of domestic violence by re-educating the agent and strengthening the victim's self-esteem and ensuring the fulfillment of the agent's family responsibilities.
2. The precautionary measures are notably the following:

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- a) Provide the agent's compulsory assistance for re-education services;
 - b) Refer the victim to a social assistance center, counseling and legal advice;
 - c) The establishment of a provisional pension for the victim, the amount of which shall correspond to the economic capacity of the agent;
 - d) To suspend the parental or parental rights of the agent over the minor sons or daughters;
 - e) Prohibit the agent from concluding contracts on movable and immovable property, as well as the removal of movable property from the common residence to another place.
3. The Judge decides on the application of the precautionary measures provided for in points a), c), d), e).
4. In situations of urgency and extreme necessity, the measures provided for in subparagraphs c), d) may be applied by the Public Prosecutor, notwithstanding the need for their approval by the judge.
5. In the imminence or practice of domestic violence, the police authorities that encounter or become aware of the occurrence, must immediately approve legal measures, including:
- a) To guarantee the police protection when necessary, communicating immediately with the public ministry and to the judicial power;
 - b) Refer the victim to the hospital or health center;
 - c) In case of life-threatening, lead the victim and his / her dependents to a shelter or safe place;
 - d) If necessary, accompany the victim in the removal of their belongings from the place of occurrence or family residence;
 - e) Inform the victim about their rights and the services available for their defense.

Section II
On Penalties

Article 17. Penalties

The penalties are:

- a) Effective prison sentence;
- b) Suspended prison sentences;
- c) Fine;
- d) Provision of service to the community.

Article 18. Provision of service to the community

- 1. The provision of service to the community consists in the delivery of work, free of charge, to the State, other legal persons governed by public law, or to private entities whose purposes the court considers to be of interest to the community.
- 2. The application of the provision of service to the community requires the express consent of the agent, and must be carried out on working days, in a minimum of two hours and a maximum of four hours per day.
- 3. Beneficiaries of the work must submit two reports to the court, one of which is presented at the beginning and the other one by the end of the work.
- 4. According to the content of the reports presented, the judge decides to change the measure applied or to extinguish the sentence in compliance with number 1.

Article 19. Replacement of penalties

A prison sentence of not more than two years may be replaced by provision of service to the community when, for reasons of criminal prevention, the judge does not decide for the substitution of the prison sentence if the agent still expressly does not agree to provide the work to the community.

Article 20. Aggravation of penalties

Penalties for domestic violence offenses shall be increased by one third in their minimum and maximum limits when the commission of the violence is particularly reprehensible, in particular if:

- a) It is practiced in the presence of the children or other minors;
- b) If practiced against a minor;
- c) Is practiced against persons with disabilities or the elderly
- d) There is a history of violence;
- e) It is practiced against a pregnant woman;
- f) There is an incestuous relationship
- g) If when he/she practices the crime, the agent is under the effect of alcohol or drugs.
- h) If the practice of crime results in contamination with a Sexually Transmitted Diseases (STD) and/or HIV.

Article 21. Reduction of the penalty

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1. The court may reduce the penalty if there are circumstances that significantly reduce the illicitness of the act or the fault of the agent.
2. For the purposes of the previous paragraph, the following mitigating circumstances shall be taken into account:
 - a) Acts and signs demonstrating repentance of the agent;
 - b) It has been established that the agent suffers from any psychiatric illness.
3. In cases where the cycle of violence is verified, the mitigating circumstances provided for in this article will not be considered.

CHAPTER V
On the crimes

Article 22. Simple physical violence

A person who voluntarily assaults the physical integrity of a victim with whom he/she maintains family relationships, whether loving or intimate, using or not any instrument, and who causes any immediate or future physical or psychological harm, shall be punished with imprisonment for up to four years or with a fine.

Article 23. Severe physical violence

A sentence of imprisonment of three to nine years should punish a person who physically exerts violence towards the victim with whom he/she maintains family, love or intimate relations, in order to:

- a) To seriously affect the possibility of using the body, the senses, the speech and their reproductive capacity, or their manual or intellectual work;
- b) Cause serious and irreparable damage to any organ of the body or any limb;
- c) Cause the victim a life-threatening illness or injury that poses a risk to her/his life.

Article 24. Psychological violence

A sentence of imprisonment of up to two years or a corresponding fine shall be applied to those who, by acts or omissions, adopt positions that assault or may assault, demean or may demean, humiliate or may humiliate, discriminate or may discriminate against and disrespect or may disrespect the person with whom the agent has family, loving or intimate relationships, altering her psychological and emotional stability.

Article 25. Sexual violence

1. A sentence of imprisonment of three to twelve years is applicable to a person who obliges the victim with whom he has intimate, loving or intimate relationships to maintain sexual or physical contact or to participate in other sexual interactions or relationships through the use of force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other act that annuls or limits the personal will, with themselves or with third parties.
2. In the same sentence may be punished anyone who, through traditional practices, commits an act against the sexual and reproductive rights of the victim.

Article 26. Patrimonial crimes

1. A person who fraudulently causes the deterioration or loss of objects, animals or property of the victim or of anyone in their family circle, shall be punished by sentence of imprisonment of up to two years or by a fine.
2. Anyone who is a family member of one of the spouses and, after the death of one of the spouses, seizes illegally and conscientiously, property belonging to the family circle of the victim, shall be punished with sentence of imprisonment between two to eight years.

Article 27. Restriction of freedom

1. A person who prevents or deprives a victim with whom he/she has family loving or intimate relations, of freedom of movement, of contacting other persons, by holding the victim in a domestic space, is punishable by sentence of imprisonment for up to four years.
2. The same penalty can incur anyone who illegally prevents the victim with whom he/she has family loving or intimate relations from benefiting from access to education or primary education, through coercion and/or threat of a crime against him or her or their relative.
3. Any person, who is the parent or guardian of the minor, force the child through coercion or threaten, to marry another person against his/her will, shall incur the same penalty as that provided for in number one of this article.

CHAPTER VI
Rights and status of victims

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Article 28. Rights of victims

Without prejudice of their basic procedural rights, victims of domestic violence are granted the following rights:

- a) Be informed about the cycle of violence and about their rights;
- b) Provide urgent care by police, health and other entities, always protecting their privacy;
- c) At the police service, a private and calm space must be guaranteed so that victims of violence deliver their complaints without intimidation, safeguarding their dignity and privacy;
- d) To benefit from services, free medical examinations, and to be informed about the necessity, the type, and how of the exam will be performed and be clear about the result;
- e) Not to be submitted to face-to-face or confrontation with the agent, unless the lack of it could jeopardize the purpose of the proceedings;
- f) Provide, if necessary, statements for future memory;
- g) Be previously informed about the acts and procedural rights, the nature of the crime and the applicable sanctions;
- h) Be indemnified for harm and damages suffered as a result of domestic violence

Article 29. Duties of the victims

The victim's duties include:

- a) Cooperate with the judicial authorities at every stage of the proceedings
- b) Ensure full compliance with their obligations during all phases of the process
- c) Contribute with information to better decision on the case
- d) Contribute to the climate of understanding within the shelter
- e) Comply with the rules established for the proper functioning of the shelter
- f) Abandon the shelter/reception center if they are summoned to do so

Article 30. Cessation of victim status

1. The victim's status shall cease with the express intention of the victim or upon verification of the existence of strong evidence of unfounded denunciation.
2. The status of the victim shall also cease with the closure of the investigation, the order of non-pronouncement or after the final decision of the judicial process terminating the case.
3. The transfer of the victim's status shall be without prejudice to the applicable rules of criminal procedure.

CHAPTER VII

Denunciation, assistance, procedures, suspension of process and judgment

Section I. Reporting and assistance

Article 31. Complaint

1. A complaint may be made by the victim, family members, health workers, social security agents, members of non-governmental organizations or any person who is aware of the fact.
2. The complaint may be presented to the police or prosecutor's office, verbally or in writing, and may be done by telephone or electronic means.
3. After the complaint, authorities referred to by the previous number shall immediately register the complaint with a formal notice (auto de denúncia) and continue with the proceedings.

Article 32. Formal notice (auto de denúncia)

The formal notice is made according to legal terms, whenever possible, through the proper forms, specifically designed for the scope of prevention and criminal investigation.

Article 33. Clinical treatment

1. The National Health Service, through its specialized technicians, assures the provision of direct assistance to the victim and promotes the existence of medical services for receiving and treating situations of domestic violence.
2. Non-governmental organizations which receive, and support victims of domestic violence shall provide them with psychological, legal and social support and shall promote the referral of cases to the competent authorities.
3. Victims shall be exempt from payment of assistance fees and fees for medical interventions.

Article 34. Clinical report

Whenever cases of domestic violence are received, health units or legal medicine services shall prepare a detailed report which should be sent to the Public Prosecution Service or to the police, assessing the state of health of victims, describing the

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injuries, the treatment administered, the probable time for recovery and, if possible, indicate the possible consequences and instruments used in the aggression.

Article 35. Legal assistance and legal representation

1. At the time of the complaint, the authorities shall inform the victim of their rights, in particular, about the mechanisms to receive legal aid and free legal assistance/representation and about the entire course of the proceedings.
2. Victims may request legal assistance to cover financial fees, through legal representation, in case of proven insufficiency of economic means, within non-governmental organizations or the responsible government structure.

Section II

On the procedures

Article 36. Procedural steps

If the complaint is submitted to the police authority, the police authority must refer the respective complaint to the Public Prosecutor's Office, which must launch/give the procedural impulse to the case.

Article 37. Coercive measures

The competent authorities may resort to coercive measures, according to the general terms of the Code of Criminal Procedure, whenever it is deemed necessary for the proper conduct of the proceedings.

Section III. Suspension of proceedings, conciliation and trial

Article 38. Provisional suspension of proceedings

1. If the offense is punishable by a sentence of imprisonment not exceeding four years or a sanction other than imprisonment, the Public Prosecutor's Office may decide, with the concurrence of the Criminal Investigation Judge, to suspend the prosecution, by imposing injunctions and rules of conduct, if the following requirements are met:
 - a) The agreement of the agent and the assistant;
 - b) Absence of criminal record of the agent;
 - c) The security measure of internment is not applicable;
 - d) Minor nature of guilt;
 - e) It is expected that compliance with the injunctions and rules of conduct will sufficiently respond to the prevention requirements of the case;
2. The following injunctions and rules of conduct shall be enforceable against the agent:
 - a) Compensation of the victim;
 - b) Give the victim adequate moral satisfaction through a registered apology;
 - c) Not attending certain places or environments;
 - d) not reside in certain places or regions;
 - e) Any other behavior specially required by the case.
3. The injunctions and rules of conduct imposed may not, in any case, represent to the agent obligations whose compliance could not reasonably be required of him.
4. The decision to suspend, in accordance with paragraph 1, shall not be open to appeal.

Article 39. Monitoring

1. The Criminal Investigation Judge and the Public Prosecution Service may, as appropriate, use social reintegration services, criminal police agencies and administrative authorities to support and monitor compliance with the injunctions and rules of conduct.
2. During the period of the provisional suspension of the process, the Public Prosecution promotes monitoring hearings with the victim, agent and other persons whom it deems necessary to monitor and evaluate the degree of compliance with any instructions imposed or the commitments assumed.

Article 40. Duration and effects of suspension

1. The suspension referred to by article 36 may not exceed two years.
2. The prescription period shall not be applicable in the course of the suspension of the procedure.
3. If the agent complies with the injunctions and rules of conduct, the Public prosecutor should close the case and it cannot be reopened. In the event of a breach of the injunctions and rules of conduct on the part of the agent, during the suspension period, the process will continue its terms.

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Article 41. Trial hearing

1. When the proceedings reach accusation, the day of the hearing and discussion is assigned.
2. Once the hearing has been opened, the Judge shall promote an attempt to bring the parties together for conciliation. If there is no consensus, the hearing shall continue.

CHAPTER VIII

Reception of victims

Article 42. Reception centers

1. The State is responsible for providing support to the centers for the reception of victims of domestic violence/shelters and ensuring their anonymity.
2. Reception centers may operate with equipment belonging to public or non-profit private bodies.

Article 43. Functioning of reception centers

1. The reception centers are organized in units that favor a family-type affective relationship, a personalized daily life and integration into the community.
2. For the purposes of the preceding paragraph, reception centers shall be governed by the terms of this law, its internal regulations and other applicable rule to entities which shall have the same legal status.
3. The internal regulations governing the operation of reception centers shall be approved by the member of Government responsible for the area of social solidarity.
4. In view of the nature and purpose of the reception centers, the territorially competent police authorities shall provide all necessary support for the protection of workers and victims and shall ensure appropriate surveillance.

Article 44. Technical team

1. The reception centers shall have technical assistance for the diagnosis of the situation of the victims of the institution and support in the definition of their promotion and protection projects.
2. The technical team must have a multidisciplinary structure, including law, psychology and social service skills.

Article 45. Admission

1. The admission of the victims in the reception centers is carried out either by indication by the technical team or by the technicians who provide the permanent telephone service.
2. The reception in the centers has short duration, during a period not exceeding six (6) months.
3. The stay for more than six months may exceptionally be authorized on the basis of a justified opinion by the technical team accompanied by the report of the evaluation of the situation of the victim.

Article 46. Causes for termination of care

Immediate causes of cessation of reception are, among others:

- a) Expiration of the time period specified in paragraphs 2 and 3 of the previous article
- b) Manifestation of the will of the victim
- c) Failure to comply with the operating rules of the reception center

CHAPTER IX

Final provisions

Article 47. Destination of gains

The earnings, products and assets used in the practice of the crime of domestic violence or resulting therefrom, which under this law revert to the State, are applied in programs for the prevention and reintegration of victims.

Article 48. Subsidiary legislation

In aspects not covered by the present law, the penal code and of Guinean criminal procedure code will subsidiarily apply.

Article 49. Regulation

The specific regulatory acts necessary for the full implementation of this law shall be approved by the Government through competent authority.

[...]

60. GUYANA

Domestic Violence Act, 1996 ¹³⁹

[...]

AN ACT to afford protection in cases involving domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs and for matters connected therewith or incidental thereto.

PART I

PRELIMINARY

1. This Act may be cited as the Domestic Violence Act.
2. In this Act—
 - (a) “applicant” means any person who applies for an order pursuant to this Act;
 - (b) “child” means a person under the age of eighteen years;
 - (c) “clerk” means the clerk of the court;
 - (d) “cohabitants” are a man and woman who, although not married to each other, are living together as husband and wife, and “former cohabitants” shall be construed accordingly, but does not include cohabitants who have subsequently married each other;
 - (e) “court” means a court of summary jurisdiction;
 - (f) “domestic violence offence” means a prescribed offence committed by a person against a person with whom he is associated or a relevant child;
 - (g) “drug” means a substance or product for the time being specified in the First, Second or Third Schedule to the Narcotics Drugs and Psychotropic Substances (Control) Act;
 - (h) “harassment” includes—
 - (i) the intimidation of a person by—
 - (A) persistent verbal abuse;
 - (B) threats of physical violence;
 - (C) the malicious damage to the property of a person;
 - (D) inducing fear of physical or psychological violence; or
 - (E) any other means;
 - (ii) the persistent following of a person from place to place;
 - (iii) the hiding of any clothing or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof;
 - (iv) the watching or besetting of the house or other places where a person resides, works, carries on business or happens to be or the watching or besetting of the premises that are the place of education of a person, or the watching or besetting of the approach to the house, other place or place of education;
 - (v) the making of persistent unwelcome communications to a person;
 - (vi) using abusive language to or behaving towards a person in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of that person;
- (i) “health” includes physical or emotional health;
- (j) “household residence” means the dwelling house that is or was used habitually by the respondent and the person named in the order, or either of them;
- (k) “intimidation” means any act, expression or gesture which, when used repeatedly, has the effect of exerting undue pressure on a person who, for fear of suffering emotional or physical injury to himself or property, is forced to perform an act against his will;
- (l) “occupation order” means an order made under section 8 and includes an interim order, made under that section;
- (m) “parent” means a person who is a parent or grandparent by—

¹³⁹ Domestic Violence Act (31 December, 1996), available at <https://mola.gov.gy/information/laws-of-guyana/488-chapter-1109-domestic-violence/file> (last visited December 30, 2018).

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- (i) blood
- (ii) marriage; or
- (iii) adoption,

and includes a guardian or any person who has actual custody of a child, and “parental responsibility” shall be construed accordingly;

- (n) “police officer”, notwithstanding anything in the Police Act means any member of the Police Force;
- (o) “prescribed offence” means—
 - (i) murder or attempted murder;
 - (ii) manslaughter;
 - (iii) the use or threatened use of any other violence or physical or emotional injury;
 - (iv) a rape offence within the meaning of the Criminal Law (Offences) Act;
- (p) “protection order” means an order made under section 5 and includes an interim order made under that section;
- (q) “psychological abuse” includes a repeated or habitual pattern of conduct which is performed to the dishonour, discredit or scorn of the personal worth of a person, unreasonable limitation to access and handling of common property, blackmail, repeated or habitual vigilance, isolation, deprivation of access to adequate food or rest, deprivation of custody of sons or daughters, threats of deprivation of custody of sons or daughters or destruction of objects held in esteem by the person, except those that privately belong to the respondent;
- (r) “relevant child” means—
 - (i) any child who is living with or might reasonably be expected to live with either party to the proceedings; and (ii) any other child whose interests the court considers relevant;
- (s) “respondent” means a person against whom an application is made;
- (t) “tenancy order” means an order made under section 11 and includes an interim order made under that section;
- (u) “tenant”, in relation to any dwelling house, includes any person—
 - (i) whose tenancy has expired or has been determined; and
 - (ii) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house, and the term “tenancy” has a corresponding meaning.

3. (1) For the purposes of this Act a person is associated with another person if—

- (a) they are or have been married to each other;
- (b) they are cohabitants or former cohabitants;
- (c) they are or have engaged in a relationship of a sexual nature;
- (d) they live or have lived together in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
- (e) they are relatives;
- (f) they have agreed to marry one another, (whether or not the agreement has been terminated); or
- (g) in relation to any child, they are persons falling within subsection (2).

(2) A person falls within this subsection in relation to a child if—

- (a) he is a parent of the child; or
- (b) he has or has had parental responsibility for the child.

(3) In the case where the child has been adopted, two persons are associated with each other for the purposes of this Act if—

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- (a) one is a natural parent of the child or a parent of such a natural parent; and
 - (b) the other is the child or any person—
 - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order; or
 - (ii) with whom the child has at any time been placed for adoption.
- (4) A body corporate and another person shall not by virtue of subsection (1) (g) be regarded for the purposes of this Act as associated with each other.

PART II

PROTECTION ORDERS, OCCUPATION ORDERS AND TENANCY ORDERS

4. (1) An application for a protection order may be made by any of the following—
- (a) a person associated with the respondent;
 - (b) where the alleged conduct involves a child under sixteen or a person suffering from a mental disability—
 - (i) a person with whom the child or person normally resides or resides on a regular basis;
 - (ii) a parent of the child or person;
 - (iii) a qualified social worker approved by the Minister by notice published in the Gazette; or
 - (iv) a police officer;
 - (c) a police officer;
 - (d) a qualified social worker approved by the Minister by notice published in the Gazette.
- (2) Where the applicant is a person other than the person on whose behalf the application is made, the person on whose behalf the application is made shall be a party to the proceedings, save that if that
- Parties who may apply for protection orders.
- If person is a child under sixteen or suffers from a mental disability, the parent of that person shall be a party to the proceedings as long as such parent is not the respondent.
- (3) A child under the age of sixteen may with leave of the court apply for a protection order but such leave shall not be given unless the court is satisfied that the child has sufficient understanding to make the proposed application.
- (4) For the purposes of this section “conduct” mean conduct in respect of which a protection order may be made under section 5.

5. (1) Where, on an application made in accordance with this Act, the court is satisfied, on a balance of probabilities, that—

- (a) the respondent has engaged in conduct that constitutes a domestic violence offence and unless the respondent is restrained the respondent is likely to engage in further conduct that would constitute that or another domestic violence offence;
- (b) the respondent has threatened to engage in conduct that would constitute a domestic violence offence and, unless the respondent is restrained, the respondent is likely to engage in conduct that would constitute that or another domestic violence offence;
- (c) the respondent has induced or forced the applicant or the person for whose benefit the order would be made without that person’s consent, to be drugged with a substance or any other means that alters the will of the person, or to become intoxicated with alcoholic beverages, or has reduced such person’s capacity to resist, by means of hypnosis, depressants, stimulants or by similar means or substances; or
- (d) the respondent has engaged in harassment or psychological abuse of the applicant or the person for whose benefit the order would be made which constitutes a threat to the health, safety and well-being of that person,

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the court shall, subject to this section, make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section.

(2) The court, when making a protection order, may impose one or more of the prohibitions or conditions specified in section 6.

(3) Where the court is satisfied that it is necessary in order to ensure the safety of the applicant or the person for whose benefit the order would be made pending the hearing and determination of the application to make an interim protection order the court may make such an order whether or not the application has been served on the respondent.

(4) Where the court is satisfied that a previous protection order has not been made against and no undertaking has been given by the respondent the court may at any time before a protection order is made accept from the respondent a signed undertaking in Form I in the Schedule that he shall refrain from engaging in conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence:

Provided that no undertaking shall be accepted if an allegation is made against the respondent of conduct referred to in subsection 1(a).

(5) An undertaking given under this section may deal with such other matters that may be dealt with in a protection order as the court sees fit having regard to the matters referred to in section 7.

(6) An undertaking given under this section and any matters dealt with in that undertaking shall remain in force for the period stated in the undertaking.

(7) Sections 28, 30 and 32 apply, with such modifications as may be necessary, in relation to an undertaking as they do to a protection order.

(8) The court is not precluded from making a protection order by reason of an undertaking being in force under a previous application.

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 acts which the court in the circumstances of the case considers relevant;
- (n) provide that the respondent seek appropriate counselling 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.

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7. (1) In determining whether to impose one or more of the prohibitions or conditions specified under section 6, the court shall have regard to the following—

- (a) the need to secure the health, safety and well-being of the applicant or the person for whose benefit the order is made;
- (b) the need to secure the health, safety and well-being of any relevant child;
- (c) the accommodation needs of the applicant or the person for whose benefit the order is made;
- (d) any hardship that may be caused to the respondent or to any other person as a result of the making of the order;
- (e) the income, assets and financial obligations of the respondent and of the applicant or the person for whose benefit the order is made;
- (f) any other matter that, in the circumstances of the case, the court considers relevant.

(2) In having regard to the matters referred to in subsection (1), the court shall consider the matters referred to in subsection (1)(a) and

(b) as being of primary importance.

8. (1) The court when making a protection order or an interim protection order may also make an occupation order or an interim occupation order, as the case may be, granting the person named in the order for such period or periods and on such terms and subject to such conditions as the court thinks fit, the right to live in the household residence or any other premises forming part of the household residence.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order—

- (a) is necessary for the protection of the applicant or the person for whose benefit the order is made; or
- (b) is in the best interests of a relevant child.

(3) An interim occupation order made while the person for whose benefit the order is made and the respondent are living together in the same household residence shall expire—

- (a) on the discharge of the order by the court;
- (b) on the discharge of an interim protection order.

(4) Where an interim occupation order is made the respondent may apply immediately for variation or discharge of that order.

9. (1) Where an occupation order or interim occupation order is made, the person to whom it relates shall be entitled, to the exclusion of the respondent, to occupy the household residence to which that order relates.

(2) Every occupation order shall have effect and may be enforced as if it were an order of the court for possession of the household residence in favour of the person to whom it relates.

10. The court may if it thinks fit, on the application of either party, make an order—

- (a) extending or reducing any period specified by the court pursuant to section 8(l); or
- (b) varying or discharging any terms and conditions imposed by the court pursuant to that subsection.

11. (1) The court when making a protection order or an interim protection order may also make a tenancy order or an interim tenancy order, as the case may be, vesting in the person named in the order, the tenancy of any dwelling-house which, at the time of the making of the order—

- (a) the respondent is either the sole tenant of or a tenant holding jointly or in common with the person named in the order; and
- (b) is the household residence of the person named in the order or the respondent.

(2) The court may make an order under subsection (1) only if the court is satisfied that such an order—

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- (a) is necessary for the protection of the applicant or the person for whose benefit the application is made; or
- (b) in the best interests of a relevant child.

(3) An interim tenancy order made while the person concerned and the respondent are living together in the same household residence shall expire—

- (a) on the discharge of the order by the court;
- (b) on the discharge of an interim protection order.

(4) Where an interim tenancy order is made the respondent may apply immediately for variation or discharge of that order.

12. (1) Where a tenancy order or interim tenancy order is made, the person to whom it relates shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house upon and subject to the terms of the tenancy in force at the time of the making of the order, and the respondent shall cease to be the tenant:

Provided that the court may order that the respondent contribute to the payment of rent, such amount as the court thinks fit.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the court for possession of the dwelling-house in favour of the person to whom it relates.

(3) Nothing in this Act or in any tenancy order—

- (a) limits or attracts the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling-house held under the tenancy;
- (b) authorises the court to vary, except by vesting the tenancy pursuant to this section or revesting the tenancy pursuant to section 13, any express or implied term or condition of the tenancy.

13. (1) The court may, if it thinks fit on the application of either party or the personal representative of either party, make an order (in this section referred to as a revesting order) revesting the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling-house upon and subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

14. (1) Before making any occupation order (other than an interim occupation order) or any tenancy order (other than an interim tenancy order) the court shall direct that notice be given to any person having an interest in the property which could be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard.

15. (1) On or after making an occupation order or a tenancy order the court may, subject to subsection (2), make an order granting to the person named in the order the use, for such period and on such terms and subject to such conditions as the court thinks fit, of all or any of the—

- (a) furniture;
- (b) household appliances; and
- (c) household effects, in the household residence or other premises to which the occupation order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling-house expires or is discharged.

16. (1) Where an agreement, including a mortgage or a lease of premises, provides that if the respondent ceases to reside in his place of residence, a person may take action that would be prejudicial to the interest of the respondent or a

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member of the respondent's family, the person is not entitled to take that action if the respondent ceases to reside in the place of residence in compliance with an order made under this Act.

(2) Where the court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the court shall, at the time of making an order, direct that a copy of the order be sent to the person referred to in subsection (1), by the clerk of the court.

17. An application for a protection order shall be made in Form 2 in the Schedule and shall be filed with the clerk.

18. (1) Proceedings in respect of an application shall be heard in camera unless the court otherwise directs.

(2) Except as otherwise provided by this Act, the Summary Jurisdiction (Procedure) Act shall apply mutatis mutandis in respect of proceedings on an application.

19. (1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings), except with the leave of the court which heard the proceedings.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in this section limits—

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that—

(a) is of a bona fide professional or technical nature; or

(b) is intended for circulation among members of the legal or medical profession, officers of the public service, psychologists, marriage counsellors or social workers.

20. The clerk shall fix a date for the hearing of an application for a protection order which date shall be no more than seven days after the date on which the application is filed.

21. (1) Where an application has been filed with the clerk, a copy of the application together with notice of proceedings in Form 3 in the Schedule shall, as soon as practicable, be served personally on the respondent.

(2) Where an application filed is in respect of a child under sixteen or person suffering from a mental disability a copy of the application together with notice of the date on which and time and place at which the application is to be heard shall, as soon as practicable, be served personally on—

(a) the parent with whom the child under sixteen or person suffering from a mental disability normally resides or resides on a regular basis; or

(b) where the child under sixteen or person suffering from a mental disability does not normally reside or does not reside on a regular basis with the parent, on the person with whom the child under sixteen or person suffering from a mental disability normally resides or resides on a regular basis.

(3) A notice of the proceedings which is issued and served under this Part is deemed to be a summons that is duly issued and served under the Summary Jurisdiction (Procedure) Act and the respondent shall appear in court to answer the application as if it were a complaint to which that Act applies.

(4) Any notice of proceedings issued under this Part may be served by the applicant or his agent and the court may, at its discretion, receive proof of such service by affidavit in Form 4 in the Schedule.

22. Where it appears to the court that it is not reasonably practicable to serve a copy of an application or an order personally the court may—

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- (a) order that the copy of the application for the protection order or the copy of the protection order itself, be served by such other means as the court thinks just; or
- (b) make an order for substituted service.

23.(1) Evidence on an application for a protection order may be given on affidavit.

(2) Unless a party to the proceedings or the court so requires, it is not necessary to call a person who made an affidavit pursuant to subsection (1) to give evidence.

24. Where the hearing of an application is adjourned by reason of the fact that the application and the notice of proceedings have not been served on the respondent, the date, time and place fixed by the court for the adjourned hearing shall be the date, time and place stated in the notice of adjourned proceedings.

25. Where notice of the proceedings has been served on the respondent in accordance with section 21 and the respondent fails to appear in person at the court at the time fixed for the hearing of the application for the protection order, the court may—

- (a) proceed to hear and determine the matter in the respondent's absence; or
- (b) where the court is satisfied having regard to the material before it that it is appropriate to do so, adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the court.

26. Where, on the date of the hearing of the application, the respondent appears in court, but neither the applicant nor the person on whose behalf the application is made appears either in person or by his attorney-at-law, the court may—

- (a) dismiss the application;
- (b) having received a reasonable excuse for the non- appearance of either party adjourn the hearing of the application upon such terms as the court may think just; or
- (c) where the court is satisfied having regard to the material before it that it is appropriate for evidence to be given by affidavit, the court may so direct, but the court shall on the application of any other party order the attendance for cross examination of the person making any such affidavit.

27. (1) Every interim order made under this Act shall specify a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any such interim order which is served on the respondent shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in substitution for the interim order, the court may discharge the interim order and make an order in substitution therefor.

(3) At the hearing referred to in subsection (1) the court may—

- (a) discharge the interim order; or
- (b) discharge the interim order and make an order in substitution therefor; or
- (c) on good cause being shown, adjourn the hearing to such date and place as the court may specify.

(4) Where a hearing is adjourned under subsection (3)(c) the court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or by paragraph (b) of that subsection.

(5) In this section—

- (a) "interim order" mean an interim protection order, an interim occupation order or an interim tenancy order, as the case may be;
- (b) "order" means a protection order, an occupation order or a tenancy order, as the case may be, not being an interim order.

28. Where the court proposes to make an order or orders under this Act and the respondent is before the court, the court shall before making the order or orders explain to the respondent—

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- (a) the purpose, terms and effect of the proposed order or orders;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order or orders; and
- (c) the means by which the proposed order or orders may be varied or revoked.

29. (1) A protection order may be made for such period as may be specified by the court.

(2) Where a protection order contains a prohibition of the kind specified in section 6, the court may specify different periods, being periods none of which exceeds the period during which the order remains in force as the period for which each prohibition or condition is to remain in force.

(3) Subject to subsection (4) an interim protection order shall remain in force for such period not exceeding fourteen days as the court shall specify in the order.

(4) Where the court adjourns the hearing of an application for a protection order and an interim protection order is in force, the court may extend the period for which an interim order is to remain in force until the date fixed for the further hearing of the application.

(5) An interim protection order ceases to be in force—

- (a) when a protection order is made on that application and the respondent is present at the time the protection order is made;
- (b) when a protection order is made on that application but the respondent is not present at the time the protection order is made, when the protection order is served on the respondent;
- (c) when the application is dismissed.

30. (1) Where a protection order or an interim protection order is in force a party to the proceedings in which the order was made may apply to the court in Form 5 in the Schedule for an order varying or revoking the order.

(2) On an application under subsection (1) the court may by order vary or revoke the protection order or interim protection order.

(3) A copy of an application under this section shall be served personally on each person who was a party to the proceedings in which the original order was made.

(4) In determining whether to vary or revoke a protection order the court shall have regard to the matters specified in section 7.

31. (1) Where a protection order or an interim protection order is made or varied by the court, the clerk shall arrange for an order in the prescribed form to be formally drawn up and filed in the court.

(2) A copy of an order made under subsection (1) shall be served by the applicant or his agent—

- (a) personally on the respondent;
- (b) on any other person who was a party to the proceedings; and
- (c) on a police officer who is the officer in charge of a police station in the district of the court in which the order was made.

(3) In subsection (1), a reference to an order in the prescribed form means—

- (a) in the case of the making of a protection order or an interim protection order, an order in Form 6 in the Schedule;
- (b) in the case of the varying of a protection order or an interim protection order, an order in Form 7 in the Schedule.

32. Where—

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- (a) a protection order or an interim protection order is made and—
 - (i) the respondent was present at the time the protection order or interim protection order was made; or
 - (ii) where the respondent was not present at the time the protection order or interim protection order was made but the order has been served personally on the respondent; and
- (b) the respondent contravenes the order in any respect,

the respondent commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars and to imprisonment for a period not exceeding twelve months.

PART III ARREST AND BAIL

33. (1) A police officer may without warrant enter any premises for the purpose of giving assistance to any one present thereon—

- (a) if he has reasonable grounds to suspect that a protection order is being violated; or
- (b) if upon the invitation of a person resident at the premises he has reasonable grounds to suspect that a person therein has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person therein.

(2) A police officer referred to in subsection (1) may without warrant enter premises for the purpose of giving assistance to a person on those premises whom that officer has reasonable grounds to suspect is in imminent danger of suffering physical injury or has suffered physical injury at the hands of another person.

34. Where a police officer believes on reasonable grounds that a person has committed or is committing an offence under section 32, he shall make an arrest without a warrant

35. (1) Where the court is required to determine whether to grant bail in respect of an offence under section 32 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.

(2) Where bail has been granted to a defendant, the court may direct that the defendant report at such times as are specified at a specified police station.

36. (1) Where the defendant is charged with an offence under section 32 the court, in granting bail, may also order that the recognisance be subject to such of the following further conditions as the court considers appropriate—

- (a) that the defendant not harass or molest, or cause another person to harass or molest, a specified person including the person named in the protection order or any relevant child;
- (b) that the defendant not be on the premises in which a specified person including the person named in the protection order or any relevant child resides or works;
- (c) that the defendant not be in a locality in which are situated the premises in which a specified person including the person named in the protection order or any relevant child reside or works;
- (d) that the defendant not be on premises which are or in a locality in which is situated the place of education of a specified person including the person named in the protection order or any relevant child;
- (e) where the defendant continues to reside, work or attend a place of education with a specified person including the person named in the protection order or any relevant child, that the defendant do not enter or remain in the place of residence, employment, or education while under the influence of alcohol or a drug.

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(2) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to one or more of the conditions set out in subsection (1) has failed to comply with a condition of the recognisance, the police officer may apprehend the person without a warrant

(3) Where—

- (a) bail has been granted to a person upon a condition imposed under subsection (1); and
- (b) the person contravenes or fails to comply with the condition,

37. Where a Magistrate is satisfied by information on oath that—

- (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of physical injury at the hands of another person and needs assistance to prevent or deal with the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person,

the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

38. Where a person has been charged with a domestic violence offence and an application for a protection order is before the court, the court may exercise its power to grant the order, notwithstanding that the offence for which the person has been charged and the application for the protection order arise out of the same conduct.

PART IV
MISCELLANEOUS

39. Nothing in this Act shall be construed as removing any jurisdiction which the Supreme Court may have in respect of the matters referred to under this Act.

40. (1) An appeal from any order or judgment of the court made or given under this Act shall lie to the Full Court and the appeal shall be regulated in all respects by the Summary Jurisdiction (Appeals) Act.

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every such order may be enforced in the same manner and in all respects as if no appeal were pending.

41. Rules of Court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

42. Whenever a police officer intervenes in a case of domestic violence the police officer shall as soon as possible take all reasonable measures within his power to prevent the victim of domestic violence from being abused again and shall also take the following steps -

- (a) where a victim indicates that he has suffered injuries which require medical assistance the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;
- (c) where a victim of domestic violence requests it, a police officer shall protect a victim by accompanying the victim when he takes his personal belongings from a place where the respondent may reside;
- (d) advise the victim of domestic violence on the importance of preserving the evidence; and
- (e) inform the victim as to his rights and services which may be available to assist him, be they government or private services.

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43. (1) Where a police officer intervenes in an incident of domestic violence, he shall prepare a written report which shall contain the allegations of the persons involved, the witnesses, the type of investigation conducted and how the incident was resolved.

(2) The police officer in charge of every police station in Guyana shall ensure that all records of domestic violence cases are properly compiled so as to facilitate easy reference to data.

(3) The police officer in charge of every police station in Guyana shall ensure that confidentiality is maintained with respect to the identity of persons involved in all cases of domestic violence and that interviews are carried out in an area of the police station which provides the utmost privacy.

44. (1) The Director of Human Services in the Ministry of Labour, Human Services and Social Security shall be responsible for—

- (a) promoting and developing educational programmes for the prevention of domestic violence;
- (b) studying, investigating and publishing reports on the domestic violence problem in Guyana, its manifestations and scope; the consequences and the options for confronting and eradicating it in conjunction with the Police Force and other agencies and organisations;
- (c) identifying groups and sectors in society in which domestic abuse is manifested and educating these groups and sectors making them aware of the skills required to combat domestic violence;
- (d) creating an awareness among society with regard to the needs of victims of domestic violence and their families;
- (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;
- (f) establishing and encouraging the establishment of programmes on information, support and counselling services for victims of domestic violence;
- (g) encouraging programmes of services for boys and girls who come from homes where there is abuse and violence;
- (h) providing training and orientation services for police officers and persons who assist in the treatment and counselling of victims of domestic violence and abuse; and

(i) analysing and carrying out studies on the need for education and retraining for persons who engage in conduct that constitutes domestic violence and abuse and for their rehabilitation.

(2) In carrying out his responsibilities the Director of Human Services may collaborate with such governmental, non-governmental and intergovernmental organisations as he thinks fit.

45. Nothing in this Act shall be deemed to have altered any right to ownership of property.

46. (1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

47. The Minister may make regulations for carrying out the provisions of this Act and for prescribing anything that needs to be prescribed.

[...]

[Sexual Offences Act, 2010 \(As amended\)](#)

Sections 3, 37 (marital rape)



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