

# Model Law on Violence against Women

## Domestic Violence

The Protection  Project

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Development



# Model Law against Domestic Violence



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## **Preamble**

## **Chapter I – General Principles and Definitions**

### **Article 1. [Title]**

The present Law may be cited as the [Law against Domestic Violence] of [name of State] [year of adoption].

### **Article 2. Commencement**

The present Law shall come into force on the [date].

### **Article 3. Objectives of the Law**

This Law aims at guaranteeing the human rights of all women in the scope of domestic and family relations, with a view to protecting them against all forms of discrimination, exploitation, violence, cruelty, oppression and negligence, by -

- a. Classifying and defining domestic violence against women;
- b. Recognizing the crime of domestic violence, providing for the appropriate sanctions and establishing criminal liability;
- c. Establishing measures for assistance and protection of women in the situation of domestic violence;
- d. Ensuring efficient access to justice for the victims of domestic violence;
- e. Creating special Family Courts for domestic violence against women with civil and criminal competence to address the issue of violence against women.

## Commentary

Source: The introductory sentence is based on Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 3, Paragraph 1.

See also:

\* *“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.” (Source: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 1)*

\* *“The purpose of this law is to regulate relationships arising in connection with the prevention of domestic violence, its revealing and bringing to an end, elimination of causes and consequences thereof, protection of victim’s rights, and imposition of liability on offenders with a view to ensure the equal rights of family members and to protect their rights and interests.” (Source: Mongolia, Law of Mongolia against Domestic Violence, Article 1.1)*

\* *“The object of this Act is to reduce and prevent violence in domestic relationships, by – (a) recognizing that domestic violence, in all its forms, is unacceptable behavior; and (b) ensuring that, where domestic violence occurs, there is effective legal protection for its victims. This Act aims to achieve this object, by – (a) empowering the court to make certain orders to protect victims of domestic violence, (b) ensuring that access to the court is as speedy, inexpensive, and simple as it is consistent with justice, (c) providing for persons who are victims of domestic violence appropriate programmes, (d) requiring respondents and associated respondents to attend programmes that have the primary objective of stopping or preventing domestic violence, (e) providing more effective sanctions and enforcement in the event that a protection order is breached.” (Source: New Zealand, Domestic Violence Act (1998), Section 6, Subsections 1 and 2)*

*Any Court which, or any person who, exercises any power conferred by or under this Law must be guided in the exercise of that power by the aims specified in this Article. (Source: based on New Zealand, Domestic Violence Act (1995) (as amended in 1998), Article 6, Paragraph 3)*

*CEDAW’s Article 16 specifically demands that - “State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]” In Article 2, the obligations of the States Parties to CEDAW are set out in a more general way. It requires that a State takes all the appropriate legal measures to eliminate discrimination against women. (Source: United Nations Convention on the Eliminations of All Forms of Discrimination against Women (1979))*

*The CEDAW Committee found that the lack of specific legislation to combat domestic violence “[...] constitutes a violation of human rights and fundamental freedoms [...]” and concluded that “[...] the obligations of the State party set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of and protection from violence against women [...]” (Source: A.T. v Hungary, communication No. 2/2003, views adopted 26 January 2005, Paragraph 9.3.)*

*In this context, general recommendation No. 19 (1992) by the Committee on the Elimination of Discrimination against Women affirms that - “[...] discrimination under the Convention [on the*

*Elimination of All Forms of Discrimination against Women] is not restricted to action by or on behalf of Governments [...]", but that "[...] states may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." In addition, the Committee recommends that – "State parties should take all legal [...] measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia, [...] violence and abuse in the family [...]." (Source: Committee on the Elimination of Discrimination against Women, general recommendation no. 19 (1992) on violence against women, Paragraphs 9 and 24 (t))*

## **Article 4. Underlying Principles of the Law**

This Law takes into consideration the following principles that guide its implementation and interpretation:

- a. Respect for the human rights of women, their integrity and dignity;
- b. Non-discrimination and the principle of equality;
- c. A gender-sensitive approach;
- d. A victim-centered approach
- e. The best interest of the child as a member of the family.

### **Commentary**

*See also: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 2.*

***Interpretation of this Law:*** *In the interpretation of this Law, its social purpose and, especially, the peculiar conditions of the woman in a situation of domestic violence shall be taken into account. (Source: Brazil, Maria da Penha Law, Article 4)*

***Non-Discrimination:*** *As stated in the preamble, this Law aims at protecting all women suffering domestic violence, regardless of their origin, race, religion or any other personal or social condition or particular. All women shall be guaranteed the rights recognized herein. (Source: based on Spain, Organic Act 1/2004 - Integrated Protection Measures against Gender Violence, Article 17, Paragraph 1)*

***Victim-centered Approach:*** *Officials related to the protection of victims, investigations and judicial decisions pertaining to domestic violence shall, in the performance of their duties, take into consideration the psychological and physical conditions of the victims and their environment, respect their human rights regardless of their nationality, origin, race, religion or any other personal or social condition, and give due consideration to ensuring their safety and to*

protecting their privacy. (Source: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 23, Paragraph 1)

**Best Interest of the Child:** The standard of the best interest of the child (a child-centered approach) can be seen in the following principles of this Law:

- \* The Definition of Domestic Violence is expanded in connection to children (Article 5, Paragraph 3).
- \* Child-witnesses are not summoned to testify in the courtroom. Rather their testimony is read. If the court considers their testimony inevitable, it shall be provided that the child-witness can give testimony outside a courtroom, in a less stressful environment (Article 18, Paragraph 2).
- \* Protection Orders shall not be issued against a respondent who is under the age of eighteen (Article 20, Paragraph 1 – Commentary).
- \* Within the issuing of a Protection Order, the court can decide on custody and/or specify and restrict the contact between the offender and the child involved (Article 24, Paragraph 1 (i) and (j)).
- \* In determining an application for a Protection Order, the court shall take into account the welfare of any child involved (Article 26).
- \* Extension of Protection Orders to children (Article 30).
- \* Provision for aggravated circumstances when the domestic violence is committed against children, in their presence, or against pregnant women (Article 35 (a) and (b)).
- \* The statutory limitation deadline is suspended in the cases of child-victims (Article 38).

## Article 5. Domestic Violence

(1) For the purpose of this Law, domestic violence against women is defined as any action, threat thereof, or omission that causes the woman's death or injury, or any physical, psychological, sexual, or economic abuse or moral damage within the scope of a domestic relationship.

### Commentary

Source: based on Brazil, Maria da Penha Law, Article 5; words changed.

The 1993 UN Declaration on the Elimination of Violence against Women provides a similar definition for the broader category of violence against women, which states - "[...] the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." (Source: United Nations, General Assembly resolution 48/104 of 20 December 1993, Article 1)

See also aspects of domestic violence included in other laws:

- \* Australia, Model Domestic Violence Laws (1999), Section 3, Subsection 1: "[...] Causing or threatening to cause the death of, or injury to, an animal, even if the animal is not the protected person's property [...]."

- \* *Bulgaria, Protection against Domestic Violence Act (2005), Section 2:*  
*"[...] as well as the forcible restriction of individual freedom and of privacy [...]."*
- \* *Ghana, Domestic Violence Act (2007), Section 1:*  
*"[...] 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; [...] 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."*
- \* *India, Law No. 43 of 2005 – The Protection of Women from Domestic Violence Act, Section 3:*  
*"[...] harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security [...]."*
- \* *Pakistan, The Prevention of Domestic Violence Bill (2005), Section 2, Subsection 1 (g) [excerpt]:*  
*"[...] entry into the victim's place of residence, without the victim's consent, where the parties do not share the same residence [...]."*
- \* *Poland, Act on Counteraction of Domestic Violence (2005), Article 2, Item 2:*  
*"[...] destroys their dignity [...]."*
- \* *Romania, Law to Prevent and Fight Against Domestic Violence, Article 2:*  
*"It is also considered domestic violence to encroach on women's fundamental and freedom rights."*
- \* *Sierra Leone, The Domestic Violence Act (2007), Section 2, Subsection 2:*  
*"[...] including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless; [...] undermines another person's privacy, integrity or security; or (iii) detracts or is likely to detract from another person's dignity or worth as a human being."*

(2) The forms of domestic violence include, but are not limited to -

- a. Physical violence, understood as any behavior that offends the woman's bodily integrity or health;
- b. 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, intimidations, blackmail, ridiculing, exploitation and limitation of the rights to come and go, or any other means that cause damage to the woman's psychological health and self-determination, or any series of acts which collectively cause a woman to fear for her safety;
- c. Sexual violence, understood as any behavior that constitutes sexual assault, irrespective of the nature of the relationship between the perpetrator and the victim; that includes forcing the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that includes the woman to commercialize or to use, in any way, her sexuality; that forces her to marry, to become pregnant, to have

- an abortion or to engage in prostitution, by means of coercion, blackmail, bribe, manipulation, intimidation or other illegal means;
- d. Economic abuse, understood as any behavior that constitutes deprivation of economic or financial resources which a woman is entitled to by law, the disposition, retention or subtraction of moveable or immovable property in which she has a material interest and that results in hiding or hindering the use of property or in damaging or destroying property in which the woman has a material interest;
  - e. Moral violence, understood as any behavior that constitutes slander, defamation or insult; or verbal attacks, profanity, name-calling and other violent harassment.

**Commentary**

*Source: Brazil, Maria da Penha Law, Article 7; (d) - “Economic abuse” is based on a combination of the former and Ghana, Domestic Violence Act (2007), Article 1 (b) (iii)); (e) - “Moral violence” is based on a combination of the former and Bosnia and Herzegovina, Law on Protection from Domestic Violence (2005), Article 6 (5).*

*Similar Comprehensive Definitions of Domestic Violence can be found in the Laws of: Albania, Law No. 9669 – On Measures Against Violence in Family Relations, Article 3, Point 1 and 2; Bosnia and Herzegovina, Law on Protection from Domestic Violence (2005), Article 6; Georgia, Law on the Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 3 together with the definitions in Article 4; Ghana, Domestic Violence Act (2007), Section 1; India, The Protection of Women from Domestic Violence Act (2005), Section 3; Mongolia, Law of Mongolia against Domestic Violence (1999), Article 4.1.1., 4.1.5. - 4.1.7.; New Zealand, Domestic Violence Act (1998), Section 3; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 2, Subsection 1 (g); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Sections 3 and 5; Sierra Leone, Domestic Violence Act 2007, Section 2, Subsection 2 (together with Section 1); Slovenia, Family Violence Prevention Act, Article 3; Trinidad & Tobago, The Domestic Violence Act (1999), Section 3.*

**Psychological Violence:** *“Because the existence of psychological violence and abuse might be difficult to prove, it is advisable to utilize the expertise of relevant professionals (including psychologists and counselors, advocates and service providers for victims of domestic violence, and academics).” (Source: United Nations Department of Economics and Social Affairs/Division for the Advancement of Women, Handbook for legislation on violence against women (Advanced Version 2009), Chapter 3.4.2.1.)*

**Sexual Violence:** *The term “sexual assault” covers a range of crimes, from sexual molestation to rape. The perpetrator’s behavior may include any behavior that violates the victim’s bodily integrity and/or her sexual autonomy. Thus, any such act as described in Paragraph 2 (c) shall constitute sexual violence against a women, irrespective of the nature of the relationship between the perpetrator and the victim.*

**Movable or Immovable Property:** *Shall include any of the women’s objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs. (Source: Brazil, Maria da Penha Law, Article 7 (V))*

(3) Without limiting Paragraph (2) of this Article, a person psychologically abuses a female child, if that person -

- a. Causes or allows the child to see or hear the physical, psychological and moral, or sexual abuse of a person with whom the child has a domestic relationship; or
- b. Places the child, or allows the child to be placed, at real risk of seeing or hearing that abuse occurring,

and as a result causes actual or imminent harm to the child.

**Commentary**

*Source: based on New Zealand, Domestic Violence Act (1998), Article 3, Paragraph 3; words added.*

*Similar Provision: Slovenia, Family Violence Prevention Act, Article 4, Paragraph 2: "Children are victims of violence, even if they are only present when violence is exerted against other family members, or if they live in an environment where violence is exerted."*

***Non-punishable Participation:*** For the purpose of this Paragraph, the person who suffers that abuse is not regarded as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put at risk of seeing or hearing the abuse. (*Source: based on New Zealand, Domestic Violence Act (1998), Article 3, Paragraph 3*)

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

**Commentary**

*Source: Ghana, Domestic Violence Act (2007), Section 5, Subsection 1.*

*Identical Provisions: New Zealand, Domestic Violence Act (1998), Section 3, Subsections 4 (a); Sierra Leone, Domestic Violence Act 2007, Section 4, Subsection 1.*

(5) A number of acts that form a pattern of behavior may amount to domestic violence even though some or all of the acts, when viewed in isolation, may appear minor or trivial.

**Commentary**

*Source: Ghana, Domestic Violence Act (2007), Section 5, Subsection 2.*

*Identical Provisions: New Zealand, Domestic Violence Act (1998), Section 3, Subsection 4 (b); Sierra Leone, Domestic Violence Act 2007, Section 4, Subsection 2.*

## Article 6. Use of Terms in the Law

In this Law, unless the context otherwise requires -

“Applicant” means a person who applies for protection under this Law, a person on whose behalf an application is made, or a person who is granted a Protection Order;

“Child” means a person under the age of eighteen years who is living as a dependent of the family of the victim or the offender;

“Complainant” means the victim of domestic violence herself or any other person, who makes a complaint to the police under Article 10;

“Courts” shall mean specialized Courts for Domestic Violence as in Article 14;

“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 an offender and includes a relationship where the complainant -

- a. Is or has been married to the offender;
- b. Is engaged to the offender;
- c. And the offender are parents of a child, are expecting a child together or are foster parents to a child;
- d. Is a parent, an elderly blood relation or is an elderly person who is by law a relative of the offender;
- e. Is a domestic worker in the household of the offender;
- f. Lives in or attends a public or a private care institution and is under the care and control of the offender; or
- g. Is in a relationship determined by the Court to be a domestic relationship.

“Marriage” means an institution recognized under any law;

“Offender” means a person against whom a complaint of domestic violence is filed;

“Place of Safety” means premises where the welfare of a victim of domestic violence is assured;

“Respondent” means the person against whom a Protection Order or an Emergency Protection Order is sought or made;

“Shelter” means a temporary residence for domestic violence victims, where they are provided with rehabilitation and protection services;

“Victim” means a victim of domestic violence, including alleged victims of domestic violence.



### **Commentary**

**Victim:** “The term ‘victim’ shall not assert that women and girls are inherently passive and vulnerable, and it shall not preclude the possibility of resistance and/or coping at the same time assaults take place, as well as in their aftermath. Instead, it shall only mean that one’s rights to bodily integrity were violated.” (Source: UN Expert Group Meeting (Division for the Advancement of Women), Good practices in legislation on violence against women, 26-28 May 2008, Terminology, page 12)

## **Article 7. Prohibition of Domestic Violence**

(1) Under this Law, it is prohibited for any person in a domestic relationship to engage in any act of domestic violence.

### **Commentary**

Source: based on Sierra Leone, Domestic Violence Act 2007, Section 2, Subsection 1.

Similar provision: Ghana, Domestic Violence Act (2007), Section 3.

“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 [...]. 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.” (Source: Bosnia and Herzegovina, Law on the Protection from Domestic Violence, Article 5)

(2) The use of violence in the domestic setting is not justified on the basis of consent.

### **Commentary**

Source: Ghana, Domestic Violence Act (2007), Section 4.

**Other prohibited/invalid defenses under this Law:** Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this act. (Source: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 27) Furthermore, marriage shall never be a defense to sexual assault.

## Article 8. Rights of the Victim

The victim of domestic violence shall be guaranteed the following rights -

(1) Right to Privacy: The confidentiality and privacy of every woman in the situation of domestic violence shall be ensured, especially with regards to the investigation and any judicial proceedings, as well as with regards to medical proceedings and care. This shall include the non-disclosure of the victim's sexual history in any court proceedings;

### **Commentary**

*Source: based on United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), Paragraph 6 (d).*

**Right to Privacy with Regards to Investigation and Judicial Proceedings:** *The Court proceedings about domestic violence shall not be published (see the exceptions in Article 37, Paragraphs 3 and 4). The court, the police and the prosecutor's office shall not disclose the name and residence of the victim to other persons.*

**Rights to Privacy with Regards to Medical Proceedings and Care:** *The medical and health status information related to victims of domestic violence shall be kept confidential. They shall be kept private, including from members of their family. Any health staff may disclose information about the health of the victim only to people who need to be involved in the medical examination and treatment, or with the express consent of the victim.*

(2) Right to be Treated with Respect and Dignity: It shall be provided that police, law enforcement forces and courts show and treat every victim of domestic violence with compassion, respect and dignity to avoid re-victimization;

### **Commentary**

*Source: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republican Act No. 9262, Section 35 (a).*

*See also: United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), Paragraph 4.*

(3) Right to get a Divorce and Live Apart: Every woman in the situation of domestic violence shall have the right to set up her own household, to live separately and to claim a divorce from her husband;

### **Commentary**

*Source: based on Iceland, Law in Respect of Marriage –No. 31 of April 14<sup>th</sup> 1993, Article 40.*

*Identical Provision: Mongolia, Law of Mongolia against Domestic Violence, Article 12.1.6.*

(4) Right to be Represented and Assisted by a Lawyer at no Charge: Every woman in a situation of domestic violence shall be guaranteed free, specialized legal assistance at all stages of the investigation and judicial proceedings;

**Commentary**

*This right shall be accorded to the successors in interest in the event that a victim dies.*

**Legal Assistance:** *The assistance and representation shall be specialized, so that the likelihood of a positive outcome is provided. And, the Assistance shall be humanized, so that re-victimization is avoided. Also, if a case requires, this right shall include free access to a qualified and impartial interpreter.*

See also: *In addition to a victim's right to free legal counsel, the law of Slovenia provides for a victim's assistant: Article 7 (Victim's Assistant):*

*(1) Victims of violence can by themselves choose a person who can represent them in all violence-related proceedings (hereinafter: assistant).*

*(2) It suffices for the assistant to be present in the proceedings mentioned in the above paragraph that the victim declares prior to the beginning of the proceedings or at the proceedings itself that he or she wants that a specific person accompanies him or her and that he or she wants that they are present in the proceedings.*

*(3) The assistant can be any adult person that is not considered in the proceedings as the perpetrator of violence.*

*(4) The assistant helps the victim in protecting his or her own integrity in the proceedings before authorities and organizations, and also helps in finding the solution as well as providing psychological support for the victim.*

*(5) The authority that governs the proceedings can prohibit a person to accompany the victim in the proceedings if they do not meet the conditions from the paragraph 3 of this Article, or if there exists a probability that the person will not be able to carry out the tasks from the above paragraph according to the family relationships or any other relations with the victim or perpetrator of violence.*

*(Source: Slovenia, Family Violence Prevention Act, Article 7)*

(5) Right to be Informed of all the Procedural Acts: The victim of domestic violence shall be informed of all the procedural acts related to the aggressor, especially those related to the entry and exit from prison;

**Commentary**

Source: *based on Brazil, Maria da Penha Law, Mechanisms of the new Law.*

**Exit from Prison:** *The United Kingdom's Domestic Violence, Crime and Victims Act (2004) provides for certain information that shall be provided to victims, if a court has convicted a person of a sexual or violent offense and a relevant sentence was imposed on the offender in respect of the offence. If the victim so requests, she/he "shall be provided with information about any license conditions or supervision requirements to which the offender is to be subject in the*

event of his release.” If a victim wishes to receive the information, the relevant authority “must take all reasonable steps -

- a. To inform the person whether or not the offender is to be subject to any license conditions or supervision requirements in the event of his release,
- b. If he is, to provide the person with details of any license conditions or supervision requirements which relate to contact with the victim or his family, and
- c. To provide the person with such other information as the relevant local probation board considers appropriate in all the circumstances of the case.” (Source: UK, Domestic Violence, Crime and Victims Act (2004), Section 35, Paragraphs 1, 3, 5 and 7)

(6) Right to Cessation of Domestic Violence: Every woman in the situation of domestic violence shall have the right to have protective measures adopted to prevent further violence; she shall have the right to be taken to a medical facility for treatment and to be referred to a place of safety.

#### **Commentary**

Source: based on Mongolia, Law against Domestic Violence, Article 12.

## **Article 9. Prevention**

(1) The State through its authorized bodies shall support and ensure introduction and application of mechanisms for the prevention of domestic violence.

#### **Commentary**

Source: Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 6, Paragraph 2.

See also: “The national government and local public entities shall have the responsibility of preventing spousal violence and providing appropriate protection for victims, including assistance in making them self-reliant.” (Source: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 2)

**Prevention:** The State shall focus on all three types of prevention: Primary Prevention, which means stopping the violence before it occurs; Secondary Prevention, as an immediate response after the violence has occurred to limit its extent and consequences; and Tertiary Prevention, which shall include longer-term care and support for those who have suffered domestic violence. While the emphasis of Paragraph 2 of this Article is on Primary Prevention, the other types of prevention are addressed in Article 42.

(2) Mechanisms for prevention of domestic violence shall include, but are not limited to -

- a. Promotion of studies and research, statistics and other relevant information on the causes, consequences and frequency of domestic violence against women, for the systematization of data, to be unified nationally, and the regular evaluation of the results of the adopted measures;
- b. 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 violence in compliance with the Right to Free Speech;
- c. Promoting and conducting of educative campaigns to prevent domestic violence against women, which disseminate ethical values of unrestricted respect to the dignity of every human person with a gender and race or ethnicity perspective;
- d. 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 violence against women;
- e. Sensitization and training for healthcare personnel, promotion of common protocols and development of common healthcare indicators for monitoring gender violence and for a fast and early detection of violence against women in the Health-Care-System;
- f. Implementation of specialized police assistance for women;
- g. Dissemination of this Law and the instruments of protection of women's human rights, including the distribution of information in a form understandable by the general public on the rights of victims the protection of such rights and the legal consequences for abusers.

### **Commentary**

*Source: based on Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 8; in addition: (e) is inspired by Spain, Organic Act 1/2004 on Integrated Protection Measures against Gender Violence, Articles 15-16; and (g) is inspired by Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 6, Paragraph 3.*

*Similar Provision: Georgia, Law on the Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 6.*

**Studies/Research:** *States parties shall encourage the compilations of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence. (Source: UN Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), Paragraph 24 d)*

*Inter alia, the police register, as described in Article 12 of this Law, and the Court's record of applications and issued Protection Orders, as described in Article 19, might be used as sources for any research and study. Also, case-numbers provided by NGOs, academics and other actors engaged in research shall be considered.*

*“In order to contribute to the prevention of spousal violence and the protection of victims, the national government and local public entities shall endeavor to promote research and study concerning methods, etc. for guidance for the rehabilitation of perpetrators and the restoration of the physical and psychological health of victims, as well as to foster personnel pertaining to the protection of victims and enhance their qualifications.” (Source: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 25)*

**Evaluation:** *The Government shall adopt and implement and periodically review and analyze legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders. (Source: Beijing Declaration and Platform for Action (1995), Paragraph 124 (d))*

**Media:** *The Government shall raise awareness of the responsibility of the media in promoting non-stereotyped images of women and men, as well as in eliminating patterns of media presentation that generates violence, and encourage those responsible for media content to establish professional guidelines and codes of conduct; also raise awareness of the important role of the media in informing and educating people about causes and effects of violence against women and in stimulating public debate on the topic. (Source: Beijing Declaration and Platform for Action (1995), Paragraph 125 (j))*

*Also, the Government shall encourage the media to examine the impact of gender role stereotypes, including those perpetuated by commercial advertisements which foster gender-based violence and inequalities, and how they are transmitted during the life cycle, and take measures to eliminate these negative images with a view promoting a violence-free society. (Source: Beijing Declaration and Platform for Action (1995), Paragraph 129 (d))*

*Reports concerning violence against women, within the requirements of journalistic objectivity, shall do the utmost to defend human rights and the freedom and dignity of the female victims of gender violence and their children. In particular, they shall take special care in the graphic treatment of such items. (Source: Spain, Organic Act 1/2004 - Integrated Protection Measures against Gender Violence, Article 14)*

**Educational Curricula:** *The Government shall adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women. (Source: Beijing Declaration and Platform for Action (1995), Paragraph 124 (k))*

*“The human rights of women and girls, the promotion of gender equality, and in particular, the right of women and girls to be free from violence, shall be incorporated at all levels of education, from kindergarten to the tertiary level. It shall be compulsory for all students. In addition, derogatory stereotypes and discriminatory attitudes toward women shall be eliminated from educational curricula, and textbooks shall be revised to conform to this principle.” (Source: UN Department of Economic and Social Affairs/Division for the Advancement of Women, Handbook for legislation on violence against women (Advanced Version 2009), Chapter 3.5.3.)*

*“In addition, the ability to resolve conflicts in a non-violent way shall be taught. It is advisable to adjust the content of the lessons to the age of the students:*

- Pre-school education might seek to develop conflict-solving ability.
- Primary education shall help the students to become skilled in the peaceful solution of conflicts and to understand and defend sexual equality.
- Compulsory secondary education will help develop the students' ability to relate peacefully to others and to understand, value, and defend the principle of equal opportunities between men and women.
- Upper secondary education and professional training shall develop the students' ability to consolidate their personal, social and moral maturity, so they act responsibly and independently, and to analyze and criticize gender inequalities and foster real, effective equality between men and women.
- Universities shall incorporate and encourage teaching and research on gender equality across the full range of academic studies and activities."

(Source: Spain, Organic Act 1/2004 - Integrated Protection Measures against Gender Violence, Article 4)

**Health Care:** The objective for this kind of prevention measure is the early and optimized detection of violence against women, the identification of victims, and the improved care and recovery of women suffering gender violence. Health care personnel shall receive special training in handling domestic violence cases and for detecting the specific indications of violence. Common protocols and indicators, guidelines, directives and standardized forms, designed by the medical association or the National Health Service, will help doctors, nurses and other health care personnel to comply with these objectives.

**Specialized Police Assistance:** The purposes for establishing specialized police assistance for women, who are victims of violence, are to create an environment that encourages women victims to report the incidents of violence and abuse, and to prevent re-victimization during the process of investigation. In addition, Paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that – "Victims should be treated with compassion and respect for their dignity." (Source: United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985))

**Dissemination of this Law:** The dissemination of this Law serves the purpose of informing victims about their rights regarding assistance, protective measures and remedies available to them. It also serves the purpose to inform perpetrators of the expected consequences and penalties for their actions. To simplify measures, the dissemination of a recapitulation/synopsis of the assistive and protective measures and of the rights of victims is preferable over a dissemination of the complete text of this Law. Also, standardized forms for the application of a Protection Order, Residence Order and Emergency Protection Order shall be issued by the government, with the aim to alleviate the application process for the victim and to minimize mistakes. All these documents and forms, together with a copy of this law, shall be distributed to police stations, shelters, safe houses, and other service providers for victims of violence, and they shall be available online.

"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 [...]." (Source: Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 33)

## Chapter II – Complaints

### Article 10. Filing of a Complaint

(1) A victim of domestic violence or any other person with information about domestic violence may file a complaint about the domestic violence.

#### **Commentary**

***Eligibility to File a Complaint:*** *Some countries have an additional provision in their domestic violence laws, which explicitly authorize social welfare officers or health care providers, e.g. doctors, to file a domestic violence complaint.*

*Example of such an optional provision:*

*“(1) Authorities and organizations as well as non-governmental organizations, which in their work find out the circumstances on basis of which it is possible to assume that violence is being inflicted, are obliged to immediately inform the Social Work Centre, except in cases when the victims themselves oppose expressly and there is no suspicion of criminal offence that should be prosecuted under compulsory powers.*

*(2) Anyone and in particular social workers or health care workers together with the personnel working in educational and care institutions as well as educational institutions, have to – regardless of the provisions on protection of business secrecy – immediately inform Social Work Centre, the police or the State Prosecutor’s Office when there exists a suspicion that the child is a victim of violence.” (Source: Slovenia, Family Violence Prevention Act, Article 6 – Obligation of Reporting)*

*\* or: “(2) Physicians or other medical personnel who detect, during the course of their duties, a person whom they consider to have suffered from injuries or medical conditions resulting from spousal violence may notify the fact to a Spousal Violence Counseling and Support Center or a police officer. In such cases, they shall endeavor to respect the intentions of the person in question.*

*(3) Provisions of the Penal Code [...] concerning the unlawful disclosure of confidential information and provisions of other acts concerning confidentiality obligations shall not be construed as those preventing notification under the preceding two paragraphs.*

*(4) Physicians or other medical personnel who detect, during the course of their duties, a person whom they consider to have suffered from injuries or medical conditions resulting from spousal violence shall endeavor to provide the person with the information at their disposal concerning the use of Spousal Violence Counseling and Support Centers, etc.” (Source: Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (2001), Article 6)*

*Even other countries make the reporting of domestic violence mandatory:*

*“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 shall have the responsibility to immediately report such cases to the police. (...) Failure to report domestic*



violence shall constitute an offence.” (Source: Bosnia and Herzegovina, Law on Protection from Domestic Violence (2005), Article 7)

\* or: “Any person who omits to report a case of violence against a minor or a person having severe mental or psychological deficiencies, which came to his knowledge, shall commit an offence and in case of conviction, shall be liable to imprisonment up to two years or to a fine up to one thousand pounds or to both such penalties.” (Source: Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 35A)

(2) If the victim is a female child, the complaint may be made by one of the parents;

(3) Where a victim is, for any reason, unable to file a complaint personally, a member of the victim’s family may file a complaint on behalf of the victim.

(4) Where a person who could have been a complainant under this Law has died, the complaint may be made by the deceased person’s personal representative or by a member of the deceased’s family or any other person competent to represent the deceased.

(5) A complaint of domestic violence shall be filed with the police at the place where -

- a. The victim resides;
- b. The victim is residing temporarily, where she has left her usual place of abode;
- c. The offender resides;
- d. The domestic violence occurred or is occurring.

**Commentary**

Source: based on Sierra Leone, Domestic Violence Act (2007), Section 5; words added.

(6) A complaint may be submitted in various forms, including orally, in writing and by telephone.

**Commentary**

Source: Mongolia, Law of Mongolia against Domestic Violence, Article 7.5.

(7) No person who gives any such information in good faith shall incur any civil or criminal liability in respect of the giving of such information.

**Commentary**

Source: Combination of Malaysia, Domestic Violence Act (1994), Section 18, Paragraph 2; and Pakistan, Prevention of Domestic Violence Bill (2005), Article 5, Paragraph 2.

Similar Provision: India, The Protection of Women from Domestic Violence Act (2005), Section 4, Subsection 2.

**Good Faith:** This Paragraph is not applicable to false accusations made with the intention to mislead the police.

**Purpose:** A victim or other complainants might be dissuaded from filing a complaint due to fear of not being believed or of being confronted with an offense of false accusation, if the investigating police do not find evidence for domestic violence. The purpose of this Paragraph is to encourage complaints which are filed in good faith, to indirectly increase protection for victims of domestic violence.

## Article 11. Police Assistance

(1) In case of imminent or actual domestic violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

### **Commentary**

Source: Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 10.

Similar Provision: “When, following notification or by other means, the police believe that there is a case of spousal violence, they shall endeavor to take any necessary measures pursuant to the provisions of the Police Act [...] and other laws and regulations in order to prevent the victim from suffering harm from spousal violence, such as stopping the violence or providing protection to the victim, etc.” (Source: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 8)

Similar Provisions: Georgia, Law on the Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 3; Ghana, Domestic Violence Act (2007), Section 7; Sierra Leone, Domestic Violence Act (2007), Section 6.

**Appropriate:** The appropriateness of the measures has to be evaluated on an individual basis in consideration of the circumstances of the case and the person who made that report and the protection that the victim requires. The measures shall aim at eliminating the domestic violence straight away and with the utmost probability.

(2) In all other cases of domestic violence, the police officer shall respond promptly and shall offer all the assistance and protection that the circumstances of the case or the person require, even when the person reporting is not the victim of the domestic violence.

### **Commentary**

Source: based on Sierra Leone, Domestic Violence Act (2007), Section 6.

**Promptly:** Shall mean without delay.

(3) Assistive measures shall include, but are not limited to -

- a. Guaranteeing police protection; when necessary, communicating the occurrence immediately to the Prosecutor's Office and the Judiciary Branch;

**Commentary**

Source: Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 11.1.

- b. Ensuring the safety of the person reporting the domestic violence;

**Commentary**

Source: Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 3(g).

*The person reporting the incident of domestic violence might not always be the victim herself, but could be a family member, a friend or neighbor. If the circumstances of the case require the protection of this person, the police are obliged to offer the necessary protection and ensure that the identity of that person is not disclosed to the offender.*

- c. Assisting the victim in the preparation of any kind of Protection Order under this Law;

**Commentary**

Source: based on Pakistan, Prevention of Domestic Violence Bill (2005), Article 6 (5).

- d. Upon request of the victim or in case of necessity, to ensure transfer of the victim to the institution of medical care;

**Commentary**

Source: Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 3 (d).

Similar Provision: Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 11 (II); Belize, Domestic Violence Act (Revised Edition 2000), Section 40 (a); Ghana, Domestic Violence Act (2007), Section 8, Subsection 1 (c); Malaysia, Domestic Violence Act (1994), Section 19, Subsection 1 (c); Mongolia, Law of Mongolia against Domestic Violence, Article 9.1.5; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 6, Subsection (2); Sierra Leone, Domestic Violence Act (2007), Section 7, Subsection 1(c) and 2.

*The victim of domestic violence shall be allowed to be treated or examined by a forensic doctor without the consent of any other party, such as a male relative.*

**Medical Assistance:** *A victim of domestic violence who is assisted by the police to obtain medical care and treatment shall be entitled to free medical treatment. (Source: Ghana, Domestic Violence Act (2007), Section 8, Subsection 3)*

**Medical Care:** *In the case of sexual violence, the necessary and appropriate medical procedures shall include inter alia emergency contraception services, prophylaxis of Sexually Transmitted Diseases and of the Acquired Immune-Deficiency Syndrome (AIDS). (Source: Brazil, Maria da Penha Law, Article 9, Paragraph 3)*

- e. Upon request of the victim or in case of necessity, to ensure transfer of the victim and her children to a shelter or safe place;

**Commentary**

Source: *Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 3 (e).*

Similar Provision: *Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 11 (III); Belize, Domestic Violence Act (Revised Edition 2000), Section 40 (b); Ghana, Domestic Violence Act (2007), Section 8, Subsection 1 (d); Malaysia, Domestic Violence Act (1994), Section 19, Subsection 1 (b); Mongolia, Law of Mongolia against Domestic Violence, Article 9.1.5; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 6, Subsection (3); Sierra Leone, Domestic Violence Act (2007), Section 7, Subsection 1 (d).*

- f. In case of transfer to another location, to ensure that the victim takes her personal belongings from the place of occurrence or residence, if necessary, to accompany the victim to assure her safety.

**Commentary**

Source: *Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 11.4; Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 3 (f); Malaysia, Domestic Violence Act (1994), Section 19, Subsection 1 (e).*

Similar Provision: *Belize, Domestic Violence Act (Revised Edition 2000), Section 40 (c); Ghana, Domestic Violence Act (2007), Section 8, Subsection 1 (e); Sierra Leone, Domestic Violence Act (2007), Section 7, Subsection 1 (e).*

- (4) The police shall form a team of specialized police personnel to assist victims of domestic violence and to deal with the prevention and combating the crimes and offenses of domestic violence.

### **Commentary**

*Source:* based on Mongolia, Law of Mongolia against Domestic Violence, Article 6.1.3; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 4.

*Similar Provision:* Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 7, Paragraph 1.

**Composition:** It shall be provided that the specialized team consists of male and female police officers.

**Humanized:** The domestic violence team shall be trained in gender-sensitivity and in dealing with traumatized victims.

*See also:* The Mongolian Law also specifies, that the police conducts “on a regular basis and in accordance with a concrete program, training on a crime and offense of domestic violence, methods of their handling, rights of victims and duties of policemen” and “to monitor, on a permanent basis, a status of the handling of the crimes and offenses of domestic violence, and the performance of policemen [...] to take pertinent measures.” (*Source:* Mongolia, Law of Mongolia against Domestic Violence, Article 6.1.1 and 6.1.4)

## **Article 12. Duties of the Police after Receiving a Complaint**

(1) In all cases of domestic violence, after registering the occurrence, the police authority shall immediately -

- a. Hear the victim;
- b. Advise the victim of her rights and the services available to her;
- c. Collect all the evidence that can serve to clarify the fact and its circumstances;
- d. Determine the victim’s physical condition and request subsequent examination by a medical expert;
- e. Hear the aggressor and the witnesses, including children;
- f. Identify the aggressor, add his/her criminal records to the report and indicate the existence of arrest warrants or records of other police occurrences against him/her;
- g. Send, within the legal period of time, the complete police report to the judge and the Prosecutor’s Office.

### **Commentary**

*Source:* based on Brazil, Maria da Penha Law, Article 12; (b) is inspired by Article 11 (I) of the same law.

*Similar Provisions can be found in the Laws of: Belize, Domestic Violence Act (Revised Edition 2000), Section 40 (Assistance to Victims of Domestic Violence and Section 41 (Preparation of Reports); Ghana, Domestic Violence Act (2007), Section 8; Mongolia, Law of Mongolia against Domestic Violence, Article 9, Sierra Leone, Domestic Violence Act (2007). Section 7, Subsection 1; Trinidad & Tobago, The Domestic Violence Act (1999), Sections 21 and 23A.*

**Register:** *An official record on the incidents of domestic violence shall be kept. Irrespective of whether or not action is taken such record shall include: the first information received about the incident of domestic violence, including the nature of violence and the number of victims; the assistance, if any, offered to the victim; the action taken; where applicable, the reason for not taking action; where applicable, the reason for refusal of the victim to take assistance from the police; where applicable, the grounds for entering any premises; and the name and contact details of the service provider, if any, from whom the victim sought help. The register shall not be open to the general public. (Source: based on Pakistan, Prevention of Domestic Violence Bill (2005), Article 6 (5); additional words added).*

**Hearing and Interviewing:** *The victim, the offender, witnesses, including children, shall be interviewed in separate rooms to ensure that there is an opportunity to speak freely and without fear. Special arrangements and trained officers shall be available for the hearing of child witnesses with respect to their special needs.*

**Advice of Rights and Services available to Victims:** *From the first contact with the police, the victim/complainant shall be informed about her right to various forms of assistance for her and her family (including medical assistance and shelter), her right to apply for a protection order, and her right to have access to free legal services. The information shall be provided in a language that the victim/complainant understands. If the victim/complainant cannot read, she shall be briefed by a competent authority.*

*“Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.” (United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), Paragraph 15).*

**Examination of the Victim’s Body:** *The police shall advise the victim to allow a timely testing. The examination shall be conducted through a well-trained doctor/medical professional in a private and comfortable environment to avoid re-victimization.*

(2) The police shall not consider a domestic violence case to be inferior to other cases of violence.

### **Commentary**

*Source: Georgia, Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 16, Paragraph 1, Sentence 2.*

(3) In all cases of domestic violence, the competent police authorities that conduct the preliminary investigation are not allowed to communicate in whatever way the name and surname of the victim and the offender, their home address, as well as any other facts that are likely to reveal their identity.

**Commentary**

Source: Greece, Law Number 3500 – On Domestic Violence and other Provisions, Article 20.

(4) Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of domestic violence.

**Commentary**

Source: Sierra Leone, Domestic Violence Act 2007, Section 7, Subsection 4.

*If at the time the complaint is filed with the police, the victim and the offender, are engaging in any kind of mediation or intervention, this shall not prohibit the police from investigating, or the court from prosecuting the incident with all due care and respect.*

## **Article 13. Arrests by the Police**

(1) A police officer may arrest a person for domestic violence with a warrant issued in pursuance of this Law or without a warrant.

(2) A police officer may arrest a person for 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 is held in lawful custody under this act and has escaped or attempts to escape from such custody.

(3) A police officer may arrest without a warrant upon reasonable grounds of suspicion, a person who -

- a. Has committed an offense of domestic violence; or
- b. Is about to commit an offense of domestic violence and there is no other way to equally effectively prevent the commission of the offense.

(4) A police officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person has contravened or is contravening a Protection Order issued under Chapter V of this Law.

**Commentary**

Source: *Sierra Leone, Domestic Violence Act 2007, Section 8.*

Similar Provision: *Ghana, Domestic Violence Act (2007), Section 9.*



## Chapter III – Judicial Proceedings / Procedures

### Article 14. Specialized Courts

There shall be specialized courts for cases involving domestic violence and any kind of violence against women.

#### **Commentary**

*Similar Provisions:* Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 14; Spain, Organic Act (1/2004) – On Integrated Protection Measures against Gender Violence, Articles 43-48.

### Article 15. Conduct of Proceedings / Court Hearing

(1) Proceedings for a Protection Order shall be held in private and in the presence of the parties, their lawyers and any other person permitted by the court to be present.

#### **Commentary**

*Source:* Ghana, Domestic Violence Act 2007, Article 13, Paragraphs 2.

*Identical Provision:* Sierra Leone, Domestic Violence Act (2007), Section 11, Subsection 1.

*Similar Provisions:* Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 18; Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 18.

**Control of Examination:** *The judge shall intervene during the examination of minors or other victims of violence and give appropriate directions to prevent their intimidation by aggressive and intensive questioning or by questions containing threats of any kind. (Source: based on Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 20.)*

(2) Despite Paragraph 1, when the Court is of the opinion that the presence of the respondent is likely to have a serious 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.

#### **Commentary**

*Source:* Ghana, Domestic Violence Act 2007, Article 13, Paragraph 2.

*Identical Provision:* Sierra Leone, Domestic Violence Act (2007), Section 11, Subsection 2.

*In the case of Paragraph 2, the Court shall ensure that the rights of the defendant are not violated. It shall be ensured, that he, or his lawyer, are able to respond to the testimony of the victim/witness and question them. (See: International Standards on the rights of the accused).*

**Protection of the Victim/Complainant/Witness:** *“It shall also be provided that there are separate waiting areas for complainants/victims/witnesses and defendants and separate entrances/exits to ensure the safety and welfare of the complainant/victim/witness. In addition, when the circumstances of the case require it, police escorts and staggered arrival and departure times shall be arranged.” (Source: UN Department of Economic and Social Affairs/Division for the Advancement of Women, Handbook for legislation on violence against women (Advanced version 2009), Chapter 3.9.4.)*

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

### **Commentary**

Source: *Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 18, Paragraph 3.*

Similar Provisions: *Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 18, Subsection 3; Belize, Domestic Violence Act (Revised Edition 2000), Section 9, Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 18, Paragraph 3; India, The Protection of Women from Domestic Violence Act (2005), Section 16; Trinidad & Tobago, The Domestic Violence Act (1999), Section 10, Paragraph 3 provide for in camera proceedings as the general procedure.*

See also: *Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 18 – Prevention of Intimidation:*

*“(1) During the trial of cases for the commission of offences of violence, the Court–*

- (a) Shall order that the whole or part of the case be tried in camera; and*
- (b) may order, that the testimony of any victim of violence and any other person for whom there is reasonable suspicion that he/she is in any danger or under threat by a reason of the fact that he/she will testify as a witness, or that his/her testimony may be adversely affected, be taken in the absence of the accused giving all those directions and causing all the necessary arrangements to be made so that the accused will know of the testimony of the said witness and cross-examine him/her.*

*(2) Without prejudice to the generality of subsection (1), the following measures may be used for purposes of protecting the witnesses:*

- (a) The placing of a special screen; or*
- (b) The use of a closed television circuit; or*
- (c) The use of any other means or system,*

*in a manner that the witness shall not be visible by the accused and vice versa. In order to safeguard the rights of the accused the appropriate technological arrangements or*

*other installations shall be made in the aforesaid cases, so that the accused shall be able to listen to the procedure and give instructions to his lawyer.”*

(4) There shall be no publication of any proceedings related to domestic violence.

**Commentary**

*See the exceptions in Article 37, Paragraphs (3) and (4) of this Law.*

*A similar provision can be found in the laws of: Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 21; Belize, Domestic Violence Act (Revised Edition 2000), Section 43; Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 21; Ghana, Domestic Violence Act (2007), Section 25; New Zealand, Domestic Violence Act (1998), Section 125; Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 63.*

## Article 16. Evidence

(1) Testimonies, written statements and affidavits of the victim and the respondent, witness statements, police reports, medical findings or records by hospitals and health centers, acts of expertise (expert witness declarations) and other documents issued by the social workers shall be admissible evidence in a hearing for a domestic violence Protection Order.

**Commentary**

*Source: based on Albania, Law No. 969 – On Measures against Violence in Family Relations, Article 15, Paragraphs 1-2; words added.*

*The enumeration of admissible evidence must not be understood as exhaustive. Other evidence may be accepted, if it serves the purpose of the Law.*

**Compellability of Spouses:** *The spouse of an accused charged with an offence of violence within the meaning of this Law, shall be a competent witness if the spouse is the victim of violence and a competent and compellable witness if the victim of violence is another member of the family. (Source: Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 20.)*

**Prohibition of the Cautionary Warning/Corroboration Rule:** *It shall be unlawful for the Court to require corroboration of the applicant’s/victim’s evidence. The credibility of a complainant in a sexual violence case is the same as the credibility of a complainant in any other proceeding.*

**Police Reports:** *The applicant shall have the right to request from the police a certified copy (with official seal) of their report on the occurrence of domestic violence to support her application for any kind of Protection Order provided for under this Law. Upon the failure of the*

*police to issue such a certified copy, the Judge shall have the authority to immediately request such copy, and otherwise sanction the responsible person.*

**Medical Reports:** *All provisions regarding police reports shall apply equally to medical findings and reports.*

(2) When the Court does not possess all evidence mentioned in Paragraph 1 of this Article, it shall assess the situation based on the description of circumstances and facts regarding the occurrence of domestic violence.

**Commentary**

Source: *based on Albania, On Measures against Violence in Family Relations, Article 15, Paragraph 3.*

(3) Evidence of the victim's sexual history shall not be introduced in any legal proceedings arising under this Law.

## **Article 17. Standard of Proof**

Every question of fact arising in any proceedings under this Law (other than criminal proceedings) shall be decided on a balance of probabilities.

**Commentary**

Source: *Caribbean Community, Caricom Model Legislation on Domestic Violence, Clause 20.*

See also: *Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 20; Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 20; New Zealand, Domestic Violence Act (1998), Section 85; Singapore, Women's Charter (Chapter 353) (as amended in 2007), Section 65, Paragraph 1; Trinidad & Tobago, The Domestic Violence Act (1999), Section 5, Paragraph 1.*

## **Article 18. Witness Interrogation**

(1) In cases of domestic violence, the members of the family shall be interrogated as witnesses without oath.

(2) The minors at the hearing of the case are not summoned as witnesses in court, but their testimony, if it exists, is read, unless their interrogation is considered necessary by the Court.

**Commentary**

Source: Greece, Law Number 3500 – On Domestic Violence and other Provisions, Article 19.

## Article 19. Record of Applications and Protection Orders

The Registry of the court shall maintain a record of all applications filed pursuant to this Law, and all the Protection Orders and Emergency Protection Orders issued by the Court under this Law.

**Commentary**

Source: based on Malaysia, Domestic Violence Act 1994, Section 16.

Similar Provisions: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 14, Paragraph 5.

**Record:** The record shall contain the names, gender and relationship of the parties, the effective date and terms of each order issued, as well as the kind of violence and whether it involved any weapons, or resulted in personal injuries and whether the injuries inflicted required medical treatment. (Source: based on Malaysia, Domestic Violence Act (1994), Section 16)

**Privacy:** The record shall not be open to the general public.

## Chapter IV – Protection Orders

### Article 20. Purpose and Definition

(1) A Protection Order is an act issued by the first instance court which defines temporary protection measures for victims in cases of domestic violence.

#### **Commentary**

*Source: based on Georgia, Law on the Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 10, Paragraph 2; words omitted.*

(2) The purpose of a Protection Order shall be to prevent and deter domestic violence, to reverse the consequences of an abuse and to undertake efficient measures for the rehabilitation of offenders and the elimination of the circumstances that encourage new acts of domestic violence.

#### **Commentary**

*Source: based on Bosnia and Herzegovina, Law on the Protection from Domestic Violence, Article 10.*

*“The relief granted under a protection order serves the purpose of safeguarding the victim from further harm, minimizing and disruption in the victim’s daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.” (Source: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8)*

(3) Protection Orders, including Emergency Protection Orders, shall be available to victims of domestic violence in addition to and without any requirement for the victim to institute other legal proceedings, such as criminal, civil or divorce proceedings.

#### **Commentary**

*Source: based on the UN Expert Group Meeting (Division for the Advancement of Women), Good practices in legislation on violence against women, 26-28 May 2008, Chapter 8.B., page 51.*

*There shall be no interdependency or interconnection between other legal proceedings and the ability to apply for a Protection Order under this Law. Domestic Violence Protection Orders shall be in addition and not in lieu of any criminal or civil legal proceedings. Any kind of requirement for the victim to press criminal charges or to file for divorce in order to be able to apply for a Protection Order might have negative effects on the safety of the victim and might keep/prevent her from applying.*

*At the same time, applying for any Domestic Violence Protection Order under this Law shall not deprive a victim of domestic violence from instituting separate civil or criminal actions.*

## Article 21. Application for a Protection Order

(1) A person who is or has been in a domestic relationship with another person may apply to the Court for a Protection Order against that other person.

### **Commentary**

***Application against Minors:*** No application for a Protection Order may be made against a child.  
(Source: New Zealand, Domestic Violence Act (1998), Article 10, Paragraph 1)

(2) Where the person who is eligible to apply for a Protection Order is a child, the application may be made by a representative.

(3) Where the person who is eligible to apply for a Protection Order is unable to make the application personally, whether by reason of physical incapacity or fear of harm or other sufficient cause, the application may be made on behalf of that person.

### **Commentary**

Source: based on New Zealand, Domestic Violence Act (1998), Articles 7, 9, 11-12.

(4) The application may be filed in a specialized court for violence against women/domestic violence situated where -

- a. The applicant resides;
- b. The applicant is residing temporarily, where she has left her usual place of abode;
- c. The respondent resides; or
- d. The act of domestic violence occurred or is occurring or is likely to occur.

(5) The application should address the following -

- a. The act of domestic violence that has taken place, its timing and place; or the imminent danger of such an act;
- b. The harm which has been or could have been inflicted on a victim as a result of domestic violence;
- c. The full name and place of residence of the complainant and offender;
- d. The data concerning the family or domestic relationship between the victim and the respondent;
- e. Any requests for special protection.

### **Commentary**

*Source:* based on Mongolia, Law of Mongolia against Domestic Violence, Article 11; (d) is based on Bulgaria, Protection against Domestic Violence Act (2005), Section 9, Subsection 1 (3).

*Similar Provision:* Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 14, Paragraph 1;

*If a victim needs to hide from the offender, her place of residence may be omitted from the application.*

### **Optional Provision:**

*(6) The applicant is assisted by a lawyer free of charge for the preparation of the application, the completion of the necessary documents and filing them in court.*

*(7) The applicant is exempt from court taxes/fees. Upon issuance of the protection order, court expenses are charged on the party who committed the domestic violence.*

*Source of the Optional Provisions:* Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 14, Paragraphs 3 and 4.

## **Article 22. Court Proceedings for the Issuance of a Protection Order**

(1) Immediately after receiving an application for a Protection Order, the Court shall schedule a hearing and summon the respondent to appear before the Court to show cause on why a Protection Order shall not be issued.

### **Commentary**

*Together with the summons, a copy of the application shall be given to the respondent.*

(2) The first hearing of the applicant and the respondent shall be within a period of 14 days after the filing of the application.

### **Commentary**

*Source:* based on Sierra Leone, Domestic Violence Act (2007), Section 11, Subsection 3; words added.

**Time Frame of 14 days:** *This is to ensure the safety of the victim of domestic violence with regards to her right to a speedy trial. A shorter period may be set.*



*Similar Provisions: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 16, Paragraph 1 (within 15 days from the filing); Belize, Domestic Violence Act (Revised Edition 2000), Section 10 provides for a first hearing of the application within 5 days of the filing; India, The Protection of Women from Domestic Violence Act (2005), Section 12, Subsection 4 (three days); Trinidad & Tobago, The Domestic Violence Act (1999), Section 11 provides for a first hearing within 7 days of the filing of the application.*

(3) Where the respondent appears on the date specified in the summons, the court shall proceed to hear the matter. Otherwise, where the respondent does not appear on the date specified, but the court is satisfied that the application contains *prima facie* evidence of domestic violence; the Court may grant the application/shall issue the Protection Order.

**Commentary**

*Source: based on Sri Lanka, Domestic Violence Act (2002), Article 7, Paragraphs 2-3.*

(4) In hearing the matter, the Court may consider any evidence previously received and such further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings.

**Commentary**

*Source: based on Sri Lanka, Domestic Violence Act (2002), Article 7, Paragraph 5.*

*The Court may take into account any received or requested evidence but it shall not draw any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof or the application for a protection order.*

(5) The Protection Order shall be issued in the presence of the offender.

**Commentary**

*Source: based on Mongolia, Law against Domestic Violence, Article 16, Paragraph 3; words omitted.*

***Presence of the Victim:*** *The presence of the victim during the issuance of the Protection Order is favorable, but it shall not be mandatory.*

(6) A court that issues a Protection Order must explain the following to the respondent and the applicant, or their legal representatives, who are present in the court when the order is issued -

- a. The purpose, terms and effect of the order;
- b. The consequences that may follow if the defendant contravenes the Protection Order;

- c. The means by which the Protection Order may be extended, varied or revoked.

**Commentary**

Source: based on Australia, Model Domestic Violence Laws, Section 20, Subsection 1; words omitted.

Similar Provisions are constituted in the Laws of: Belize, Domestic Violence Act (Revised Edition 2000), Section 18; New Zealand, Domestic Violence Act (1998), Section 87, Subsection 1; Trinidad & Tobago, The Domestic Violence Act (1999), Section 15.

(7) If the perpetrator is not present at the hearing and the pronouncement, the Protection Order shall be served on him immediately.

(8) The Court shall also send within 24 (twenty-four) hours a copy of the Protection Order to the following persons -

- a. The victim and other persons mentioned in the Protection Order;

**Commentary**

***Copies for the Victim:*** The victim of the domestic violence shall be provided with two copies of the original decision, one for her own records and the other to present it to the police if and when necessary.

- b. The police department serving the area in which the victim or other persons mentioned in the Protection Order resides temporarily or permanently.

**Commentary**

Source: based on Albania, On Measures against Violence in Family Relations, Article 17, Paragraphs 4-5.

Similar Provision: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 15, Paragraph 3); Mongolia, Law of Mongolia against Domestic Violence, Article 15.5 and 16.6.

**Optional Provision:**

- c. The social services department of the municipality or commune in which the victim or other persons mentioned in the Protection Order reside temporarily or permanently.

Source of the Optional Provision: based on Albania, On Measures against Violence in Family Relations, Article 17, Paragraphs 4-5.

(9) 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.

**Commentary**

Source: Ghana, Domestic Violence Act (2007), Article 17, Paragraph 3.

## Article 23. Effects of a Protection Order

(1) The Court shall grant a Protection Order if it is satisfied that -

- a. The respondent is using, or has used, domestic violence against the applicant, or is likely to engage in domestic violence against the applicant; and
- b. The issuance of a Protection Order is necessary for the protection of the applicant.

**Commentary**

Source: based on New Zealand, Domestic Violence Act (1998), Article 14 and Trinidad & Tobago, The Domestic Violence Act (1999), Section 5, Paragraph 2.

(2) The Protection Order shall prohibit the respondent from committing any act of domestic violence against the woman applicant, and in particular from –

- a. Physically abusing or threatening to physically abuse the woman applicant; and/or
- b. Engaging or threatening to engage in any behavior which amounts to psychological abuse; and/or
- c. Sexually abusing or threatening to sexually abuse, including forcing the applicant to engage in any sexual contact, whether married or not, and engaging in any sexual conduct that abuses, humiliates, or degrades the applicant or otherwise violates the applicant's sexual integrity, whether married or not; and/or
- d. Damaging, or threatening to damage property of the woman applicant, or engaging or threatening to engage in any behavior which amounts to economical abuse; and/or
- e. Any behavior which amounts to moral abuse; and/or
- f. Encouraging any person to engage in behavior against the applicant, where the behavior, if the respondent engaged in it, would be prohibited by the order.

**Commentary**

Source: based on New Zealand, Domestic Violence Act (1998), Article 19, Paragraph 1; (c) is a combination of the former and Sierra Leone, Domestic Violence Act 2007, Section 13, Subsection 2 (d) - (e) and section 15, Subsection 1.

With regards to (f), see also: “The court, in making a protection order, may include a provision that the person against whom the order is made may not incite or assist any other person to commit family violence against the protected person.” (Source: Singapore, Women’s Charter (Chapter 353) (as amended in 2007), Section 65, Paragraph 4)

Similar Provisions: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (a); Bulgaria, Protection against Domestic Violence Act (2005), Section 5, Subsection 1 (1); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Ghana, Domestic Violence Act (2007), Section 15; India, The Protection of Women from Domestic Violence Act (2005), Section 18 (a); Ireland, Domestic Violence Act (1996), Section 2, Subsection 2 (a); Malaysia, Domestic Violence Act (1994), Section 5, Subsection 1; Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.1; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 1 (a) and (b); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (a); Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (a); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(a)(i)(vii); Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (a).

## Article 24. Supplementary Order

(1) A Protection Order may, at the request of the applicant or on the Court’s own motion, be supplemented by any or all of the following provisions –

- a. Directing the respondent to seek counseling or other rehabilitative service;

### **Commentary**

Source: Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (a) (ii).

Similar Provisions: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (m); Belize, Domestic Violence Act (Revised Edition 2000), Section 5, Subsection 2; Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 2A (“obtain Treatment”); Bulgaria, Protection against Domestic Violence Act (2005), Section 5, Subsection 1 (5) (“obligation to attend specialized programs”); India, The Protection of Women from Domestic Violence Act (2005), Section 14, Subsection 1; Israel, Prevention of Family Violence Law, 5751-1991 (as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998), Section 2A(a); Malaysia, Domestic Violence Act (1994), Section 11, Subsection 1; Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.5; New Zealand, Domestic Violence Act (1998), Section 32; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 7; Sierra Leone, Domestic Violence Act (2007). Section 15, Subsection 2 (a)(ii); Sri Lanka, Domestic

*Violence Act (2002), Section 8, Subsection 2 (c); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(b)(viii) (see together with Paragraph 3).*

- b. Imposing mandatory rehabilitation of an abusive offender, 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 abusive person might repeat that act of violence;

**Commentary**

Source: *Bosnia and Herzegovina, Law on Protection from Domestic Violence, Article 16.*

See also: *The Turkish Law specifies, that an accused spouse can be ordered “not to arrive at the shared dwelling while under the influence of alcohol; or other intoxicating substances nor use such substances in the shared dwelling.” (Source: Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (f))*

- c. Prohibiting or restraining the respondent from entering the victims place of residence, or linger inside a specific distance to her place of residence, from haunting specified places which the victim regularly visits, such as her work-place, school, etc., or from otherwise intentionally inducing encounters with the victim or following her from place to place, or generally from being in a specific distance to the victim;

**Commentary**

Source: *based on Germany, Gewaltschutzgesetz (2001), Article 1, § 1, Paragraph 1.1; words added.*

Similar Provisions: *Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (ç),(d) and (ë); Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 4, Subsection 1; Belize, Domestic Violence Act (Revised Edition 2000), Section 5, Subsection 1 (a)-(d); Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (III)a) and c); Bulgaria, Protection against Domestic Violence Act (2005), Section 5, Subsection 1 (3); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Ghana, Domestic Violence Act (2007), Section 15, Paragraph 2 (g), (n) and (p); Greece, Law Number 3500 – On Domestic Violence and other Provisions, Article 18; India, The Protection of Women from Domestic Violence Act (2005), Section 19 (c); Ireland, Domestic Violence Act (1996), Section 2, Subsection 2 (b), Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 2 (a)(1); Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of 2001) (2001), Article 10, Paragraph 1 (only for cases of bodily harm or life-threatening intimidations by a spouse); Malaysia, Domestic Violence Act (1994), Section 6, Subsection 1 (b); Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.3 ; New Zealand, Domestic Violence Act (1998), Section 19, Subsection 2 (making this a obligatory condition of any Protection Order, provided that the applicant and respondent do not live in the same dwelling house); Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11,*

*Subsection 1 (e) and (f); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (d); Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (g), (n) and (p) and Section 15, Subsection 2 (a)(iv); Slovenia, Family Violence Prevention Act, Article 19, Paragraph 1; Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 64, Paragraph 3; Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (d) and (m); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1 (a)(ii),(iii) and (vi); Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (b).*

- d. Prohibiting the respondent from contacting the victim through any means directly or indirectly, including written or phone communication;

**Commentary**

Source: based on Cambodia, Law on the Prevention of Domestic Violence and the Protection of Victims, Article 25.

Similar Provisions: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (b); Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 4, Subsection 1; Belize, Domestic Violence Act (Revised Edition 2000), Section 5, Subsection 1 (f); Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (III)b); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Germany, Gewaltschutzgesetz (2001), Article 1, § 1, Paragraph 1.4; Ghana, Domestic Violence Act (2007), Section 15, paragraph 2 (h); India, The Protection of Women from Domestic Violence Act (2005), Section 19 (d); Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of 2001) (2001), Article 10, Paragraph 1 (only for cases of bodily harm or life-threatening intimidations by a spouse); Malaysia, Domestic Violence Act (1994), Section 6, Subsection 1 (d); New Zealand, Domestic Violence Act (1998), Section 19, Subsection 2 (making this a obligatory condition of any Protection Order, provided that the applicant and respondent do not live in the same dwelling house); Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 1 (g); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (b); Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (h); Slovenia, Family Violence Prevention Act, Article 19, Paragraph 1; Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 64, Paragraph 4; Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (j); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1 (a)(iv); Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (d) (“not to cause distress ... using means of communication”).

**Possible Exception to the Non-Contact Order:** “[...] except such contact – (a) as is reasonably necessary in any emergency; or (b) as is permitted under any order or written agreement relating to custody of, or access to, any minor; or (c) as is permitted under any special condition of the protection order.” (Source: New Zealand, Domestic Violence Act (1998), Section 19, Subsection 2 (e))

e. Forcibly confining or detaining the applicant;

Source: *Ghana, Domestic Violence Act (2007), Section 15, Paragraph 2 (b).*

Similar Provision: *Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (b).*

f. Depriving the applicant of access to adequate food, water, clothing, shelter or rest;

Source: *Ghana, Domestic Violence Act (2007), Section 15, Paragraph 2 (c);*

Identical Provision: *Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (b).*

g. Committing any act which the court considers not to be in the best interest of the applicant;

**Commentary**

Source: *Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (q).*

Similar Provisions: *Belize, Domestic Violence Act (Revised Edition 2000), Section 5, Subsection 1 (l); Ghana, Domestic Violence Act (2007), Section 15, Paragraph 2 (q); India, The Protection of Women from Domestic Violence Act (2005), Section 19 (g); Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 1 (h) and Subsection 3; Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (k); Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (h); Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (n).*

h. Imposing a temporary restriction on the respondent's right to dispose of common property;

**Commentary**

Source: *based on Mongolia, Law against Domestic Violence, Article 14.2.6.*

Similar Provisions: *Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 24 (II); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Ghana, Domestic Violence Act (2007), Section 15, Paragraph 2 (i); India, The Protection of Women from Domestic Violence Act (2005), Section 19 (e) (with an emphasis on bank accounts, operating bank lockers and any assets); Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.6; Sierra Leone, Domestic Violence Act (2007), Section 13, Subsection 2 (f(ii)) and (i) and Section 15, Subsection 2 (c); Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (l); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1 (a)(v).*

i. Temporarily -

-Forbidding contact between the respondent and any child of the applicant;

-Specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the Court for that purpose; or

-Allowing such contact only under specific conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members, if the Court is satisfied that it is reasonably necessary for the safety of the child in question;

**Commentary**

Source: *Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (f).*

Similar Provisions: *Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (e); Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (IV); Bulgaria, Protection against Domestic Violence Act (2005), Section 5, Subsection 1 (4); Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.4; New Zealand, Domestic Violence Act (1998), Section 27, Subsection 2; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 6; Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 66; Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 1 (g).*

j. Granting temporary sole custody of any child of the applicant or any child in the care of the applicant to the applicant or to another appropriate custodian if the Court is satisfied that it is reasonably necessary for the safety or welfare of the child in question;

**Commentary**

Source: *based on a combination of India, Law No. 43 of 2005 – The Protection of women from Domestic Violence Act, Article 21; and Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (e).*

Similar Provisions: *Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (j); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (f); Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 65.*

k. Temporarily directing the respondent to make periodic payments for the maintenance of the applicant, and of any children of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such maintenance order is already in force, together with other emergency monetary relief as is appropriate;

**Commentary**

Source: *Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (a) (iii).*



*Similar Provisions:* Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (h); Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (V); Cambodia, The Prevention on Domestic Violence and the Protection of the Victims (2005), Article 25; Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (g); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(c)(iii) and (vii); Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1.

- l. Directing the respondent to pay any rent, mortgage payment and maintenance to the applicant;

**Commentary**

*Source:* based on Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (d).

*Similar Provisions:* India, The Protection of Women from Domestic Violence Act (2005), Section 20; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 2, Subsection 4; Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(c)(vi).

- m. Granting the applicant temporary possession of or control over specified personal property, including a motor vehicle, check book, bank card, health care services card or supplementary medical insurance card, identification documents, keys, utility or household accounts or other personal effects;

**Commentary**

*Source:* Newfoundland and Labrador (Canada), Family Violence Protection Act (2006), Section 6 (f).

*Similar Provisions:* Malaysia, Domestic Violence Act (1994), Section 6, Subsection 1 (e); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (e).

- n. Requiring a police officer to seize -

-Any weapons where the weapons have been used or have been threatened to be used to commit domestic violence, and

-Any documents that authorize the respondent to own, possess or control a weapon described in the subparagraph above;

**Commentary**

*Source:* based on Albania, Law No. 9669 - On Measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (g).

\* For further more detailed information, see also: New Zealand, Domestic Violence Act 1995 (as amended in 1998), Sections 21-26, which makes this a standard provision to any protection order.

Similar Provisions: Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (I); Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 2(a)(4); Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.8; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 3 (a); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (h); Sierra Leone, Domestic Violence Act (2007), Section 15, Subsection 2 (b); Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 67; Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 2 (a); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(c)(v); Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (e) (“weapons or other similar instruments”).

- o. Ordering a social worker, counselor, medical officer, police officer, friend or other person whom the Court deems fit to monitor the relationship between the applicant and the respondent. An affidavit by such a person that the respondent has breached the terms of a Protection Order shall be *prima facie* evidence of such fact.

#### **Commentary**

Source: Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 2 (e).

## **Article 25. Residence Order**

(1) Where the Court in issuing a Protection Order considers it expedient for the safety of the woman/victim and her dependents to issue a Residence Order, the Court may issue the order requiring the respondent to vacate the matrimonial home or any other residence shared by the applicant and the respondent and grant the applicant exclusive possession, regardless of ownership.

#### **Commentary**

Source: based on a combination of: Ghana, Domestic Violence Act (2007), Article 20, Paragraph 1; and Germany, Gewaltschutzgesetz, Article 1, § 2, Paragraph 1.

Other Laws that provide similar Residence/Occupation Orders: Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 1 (c) and (ë); Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 7 and 11; Belize, Domestic Violence Act (Revised Edition 2000), Sections 23 ff; Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 22 (II); Bulgaria, Protection against Domestic Violence Act (2005), Section 5, Subsection 1 (2); Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clauses 7-16; Greece, Law Number 3500 – On Domestic Violence and other Provisions, Article 18; India, The Protection of Women from Domestic Violence Act (2005), Section 19;

Ireland, Domestic Violence Act (1996), Section 3, Subsection 2 ((a)(i)); Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of 2001) (2001), Article 10, Paragraph 1 (only for cases of bodily harm or life-threatening intimidations by a spouse)(and only for a period of two month); Malaysia, Domestic Violence Act (1994), Section 6, Subsection 1 (a); Mongolia, Law of Mongolia against Domestic Violence, Article 14.2.2; New Zealand, Domestic Violence Act (1998), Section 53, 54 an 56; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11, Subsection 1 (c); Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 8 (c); Sierra Leone, Domestic Violence Act (2007), Section 17; Singapore, Women’s Charter (Chapter 353) (as amended in 2007), Section 65, Paragraph 5; Slovenia, Family Violence Prevention Act, Article 21 and 22; Spain, Organic Act 1/2004 – On Integrated Protection Measures against Gender Violence, Article 64, Paragraph 1; Sri Lanka, Domestic Violence Act (2002), Section 8, Subsection 2 (f); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1(c)(iv) together with Paragraph 6; Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (b).

**Shared Residence:** Shall mean a residence shared by the victim and the respondent, including a residence solely owned or procured under any arrangement or title by the respondent or a residence jointly owned or procured by the victim and the respondent.

**Effect:** Such an order does not effect the title to or an ownership interest in any real property jointly held by the applicant and respondent or solely held by one of them. (See also: Belize, Domestic Violence Act (Revised Edition 2000), Section 44 – Ownership of Property: Nothing in this Act shall be deemed to have altered any right which a spouse may have to ownership of property.”) (Similar provision: Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 28)

**Pro-Eviction Policy:** It should be the rule that the aggressor has to leave a shared residence and not the victim. Only if the special situation of the victim requires that she (and her children) be moved to a shelter or safe place, the victim shall be required to leave the usual place of residence.

(2) Where a residence is leased by a respondent pursuant to an oral, written or implied agreement and the applicant who is not a party to the lease is granted exclusive possession of that residence as permitted by Paragraph 1, no landlord shall evict the applicant solely because the applicant is not a party to the lease.

### **Commentary**

Source: based on Northwest Territories (Canada), Protection against Family Violence Act (2005), Article 14, Paragraph 1; words changed.

Similar Provision: Sierra Leone, Domestic Violence Act (2007), Section 17, Subsection 3.

(3) In furtherance of Paragraph 2, the landlord shall provide the details of the lease to the applicant on request.

**Commentary**

Source: *Ghana, Domestic Violence Act (2007), Article 20, Paragraph 5.*

Identical Provision: *Sierra Leone, Domestic Violence Act (2007), Section 17, Subsection 4.*

(4) If the court issues a Residence Order, it shall be supplemented by a provision directing a police officer to remove the respondent from the residence immediately or within a specified time.

**Commentary**

Source: *Newfoundland and Labrador (Canada), Family Violence Protection Act (2006), Section 6 (b).*

(5) The Residence Order is a special kind of Protection Order. In this Law, all provisions regarding the Protection Order shall also be applicable to the Residence Order.

## **Article 26. Matters to be Taken Into Consideration When Issuing a Protection Order**

In determining an application for a Protection Order, the Court shall regard -

- a. The need to ensure that the applicant is protected from any further violence;
- b. The nature, history or pattern of domestic violence and whether it is more likely than not that the respondent will continue the family violence;
- c. The welfare of any child affected or likely to be affected, by the respondent's conduct;
- d. The need for accommodation of the applicant and the children (if any);
- e. Any hardship that the issuance of the order would cause to the respondent or to any other person;
- f. Any other matter which the Court considers relevant in the circumstances of the case.

**Commentary**

Source: *based on Sri Lanka, Domestic Violence Act (2002), Article 3; (b) is based on a combination of Newfoundland and Labrador (Canada), Family Violence Protection Act (2006), Section 5, Subsection 2 (b) and Trinidad & Tobago, The Domestic Violence Act (1999), Section 7.*

*Similar Provisions are constituted in the Laws of: Belize, Domestic Violence Act (Revised Edition 2000), Section 6, Subsection 1 (a)-(e) and (g); Pakistan, The Prevention of Domestic Violence Bill (2005), Section 11.*

**Matters that should be of no interest to the Court:** *The Court shall not interpret as a disadvantage or disqualification the time elapsed between the account of violence and the application, nor shall the court interpret possible withdraws of past applications as disqualification against the victim.*

## Article 27. Emergency Protection Order

(1) An Emergency Protection Order is a short-term Protection Order issued by a Judge for immediate domestic violence protection.

*Laws that provide for Emergency Protection Orders (also ex parte Interim Protection Orders): Albania, Law No. 9669 – On measures against Violence in Family Relations (2006), Article 10, Paragraph 3, Article 19; Antigua and Barbuda, Domestic Violence (Summery Proceedings ) Act (1999), Section 4, Subsection 3; Ghana, Domestic Violence Act (2007), Section 14; India, The Protection of Women from Domestic Violence Act (2005), Section 23; Ireland, Domestic Violence Act (1996), Section 4 and 5; Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 4(a); Mongolia, Law of Mongolia against Domestic Violence, Article 15; Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 15; Singapore, Women’s Charter (Chapter 353) (as amended in 2007), Section 66; Sri Lanka, Domestic Violence Act (2002), Section 5, Subsection 1 (i) and section 6; Trinidad & Tobago, The Domestic Violence Act (1999), Section 8.*

(2) The Emergency Protection Order may be requested by the victim or by the police or any other person on behalf of the victim if the victim is unable, whether by reason of physical incapacity or fear of harm or other sufficient cause, to make the application personally.

### **Commentary**

*Source: based on New Zealand, Domestic Violence Act (1998), Articles 7, 9, 11 and 12.*

(3) Having received a request, the Judge, within a period of 48 (forty-eight) hours, shall know the request and decide upon the emergency protective measures.

### **Commentary**

*Source: based on Brazil, Maria da Penha Law, Law No. 11.340/2006, Article 18.*

**Time Frame:** *The forty-eight hour timeframe for a judge to decide on an Emergency Protection order should be the maximum. Countries should consider shortening the time frame for an Emergency Protection Order even more; a 24 (twenty-four) hour period is advisable to offer the best victim protection.*

See also: *The Mongolian Law demands that “within eight working hours” following the receipt of a complaint a court shall issue an ex parte restraining order. (Source: Mongolia, Law of Mongolia against Domestic Violence, Article 15.1)*

(4) The Emergency Protection Order shall be granted by the Judge, regardless of a hearing of the offender, when it appears, by oral or affidavit evidence, that the Emergency Protection Order is necessary -

- a. To ensure the safety, health and welfare of the applicant; or
- b. To prevent substantial damage to the property of the applicant.

**Commentary**

**Evidence:** *A live testimony or a sworn statement or affidavit of the victim shall be sufficient evidence for the issuance of an Emergency Protection Order. No additional independent evidence, including medical, police or other official records, shall be required in order for an Emergency Protection Order to be granted as such requirement may compromise the victims safety by causing significant delays.*

(5) The content of an Emergency Protection Order may be that of -

- a. A “Stay-Away Order” as described in Article 24, Paragraph 1 (c); and/or
- b. A “Residence Order” as described in Article 25, Paragraph 1; and/or
- c. A “Non-Contact Order” as described in Article 24, Paragraph 1 (d); and/or
- d. Any other content that the court deems necessary and appropriate for the specific circumstances.

(6) An Emergency Protection Order shall be granted for a period of not more than 21 (twenty-one) days.

**Commentary**

**Duration:** *The duration of the Emergency Protection Order may be set differently. But the Emergency Protection Order must have a finite life span and the maximum duration period must not be too long, since the Emergency Protection Orders are granted without the benefit of a court hearing. To grant such orders without a time limit, would deny the respondent his/her right*

*to trial/justice. A period of 21 days should be considered an appropriate (reflection) period for the victim of domestic violence to apply for a Final Protection Order.*

**Renewal:** *There can be an optional provision providing for a one-time renewal of the Emergency Protection Order for special cases, e.g. if an application for a final Protection Order has been made, but if for some reason, the court has not ordered a hearing.*

(7) A police officer shall serve the Emergency Protection Order on the applicant and the respondent with without undue delay.

(8) Every Emergency Protection Order shall -

- a. Advise the applicant and the respondent that they are entitled to a hearing before the court for the purpose of asking for the modification, termination or renewal of the Emergency Protection Order if either one requests a hearing; and
- b. Set out the procedures to be followed in order to make the request.

## **Article 28. Orders Made with the Consent of the Parties**

The Court may, with the consent of the parties to the proceedings, issue any order under this Law without proof or admission of guilt.

### **Commentary**

Source: *Sri Lanka, Domestic Violence Act (2002), Article 4.*

Similar Provisions: *Antigua and Barbuda, Domestic Violence (Summery Proceedings) Act (1999), Section 22; Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 22; New Zealand, Domestic Violence Act (1998), Section 86.*

## **Article 29. Duration of Protection Order**

(1) A final Protection Order issued by the Court shall not exceed twelve months in the first instance but may be extended, modified or rescinded by the Court on a motion by a party to the original proceeding if there is good cause.

### **Commentary**

Source: *Ghana, Domestic Violence Act (2007), Article 16.*

*Similar provisions are constituted in the Laws of: Belize, Domestic Violence Act (Revised Edition 2000), Section 19, Paragraph 1; Mongolia, Law of Mongolia against Domestic Violence, Article 16.2 (twelve to eighteen month, depending on the details of the act, extent of harm/danger, and the offender's personal state).*

***Duration:*** This Model-Law advises that the duration of a Protection Order may be set by the court for a time-period up to twelve month.

*See also: India, The Protection of Women from Domestic Violence Act (2005), Section 25, Subsection 1 ("until the aggrieved person applies for discharge"); Ireland, Domestic Violence Act (1996), Section 2, Subsection 5 ("up to five years"); Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 5 (three month, but may be extended to six month, or one year on special grounds); Slovenia, Family Violence Prevention Act, Article 19, Paragraph 4 (six month; might be extended for another six month); Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 9 provides a duration period for up to three years time; Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (six months).*

(2) Where a Protection Order contains a supplementary prohibition or condition of the kind specified in Article 24, the Court may specify different periods, each of less than twelve months, as the period for which each prohibition or condition is to remain in force.

**Commentary**

*Source: based on Barbados, Chapter 130A – Domestic Violence (Protection Orders), Section 16.2.*

(3) A Protection Order and an Emergency Protection Order are effective immediately upon being issued.

**Commentary**

*Source: based on Bulgaria, Protection against Domestic Violence Act (2005), Section 20.*

(4) Despite Paragraph 3, the Protection Order and the Emergency Protection Order are not enforceable against the respondent unless the respondent has been served with the order, or has received notice of the order.

**Commentary**

*Source: based on Northwest Territories (Canada), Protection against Family Violence Act (2005), Article 8, Paragraph 1; words changed.*



## Article 30. Extension of a Protection Order to Other Persons

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 behavior 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 behavior 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.

### **Commentary**

*Source: Ghana, Domestic Violence Act (2007), Article 19.*

*Similar Provisions: Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of 2001) (2001), Article 10, Paragraph 3 und 4; Sierra Leone, Domestic Violence Act (2007), Section 16; Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 1 (b).*

*Purpose: Intended to protect, for example, witnesses and family members of the applicant.*

## Article 31. Contravention of Protection Order

The violation of a Protection Order, Supplementary Order, or Emergency Protection Order shall be a criminal offense with the penalties described in Chapter VIII of this Law.

### **Commentary**

*Similar provisions in other Laws: Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 5, Paragraph 1; Georgia, On Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 10, Paragraph 4; Ghana, Domestic Violence Act (2007), Section 22; India, The Protection of Women from Domestic Violence Act (2005), Section 31; Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of 2001) (2001), Article 29; Malaysia, Domestic Violence Act (1994), Section 8; New Zealand, Domestic Violence Act (1998), Section 49, Subsection 1; Pakistan, The Prevention of Domestic Violence Bill (2005), Section 14; Sierra Leone, Domestic Violence Act (2007), Section 19; Singapore, Women's Charter (Chapter 353) (as amended in 2007), Section 65, Paragraph 8; Trinidad & Tobago, The Domestic Violence Act (1999), Section 20; Turkey, Law No. 4320 – On the Protection of the Family (1998), Clause 1 (“liable to arrest and confinement”).*

*It shall not be a valid defense for one who has violated a protection order to claim that his family members did not insist on its compliance or the operation of the Law as a result of the breach. (Source: Israel, Prevention of Family Violence Law, 5751-1991 [as amended by Amendment no. 3, 5748-1997 and Amendment no. 4, 5748-1998], Article 7 (c))*

*Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this act. (Source: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 27 – Prohibited Defense)*

## **Article 32. Modification and Cancellation of Protection Order**

(1) An applicant or respondent may apply to the Court who granted the Protection Order, for the modification or cancellation of the Protection Order.

### **Commentary**

*Source: Sierra Leone, Domestic Violence Act (2007), Article 21.*

(2) After hearing the victim and the respondent, the Court may accept such a request, when it is satisfied that there is a change of circumstances that require such alteration, modification, variation or revocation.

(3) If the request for alteration, modification, variation or revocation is made by the victim of domestic violence, in addition to the prerequisite in Paragraph (2) the Court has to be satisfied that the request is made freely and voluntarily and is in the best interest of the woman.

### **Commentary**

*Source: based on Sri Lanka, Domestic Violence Act (2002), Article 9; words added.*

## Chapter V – Civil Claims for Damages

### Article 33. Damages and Compensation

(1) Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the Court may award such damages in respect of the injury or damage or loss as it deems 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, including compensation for emotional distress;
- b. The cost of medical treatment for such injuries, including dental expenses;
- c. Any loss of earnings arising therefrom;
- d. The amount or value of the property taken or destroyed or damaged;
- e. The cost for legal services, including the costs of an application pursuant to this act; and
- f. The necessary and reasonable lodging, transport and moving expenses, including the expenses required for setting up a separate household for the victim who was compelled to separate or be separated from the offender due to the domestic violence.

(3) In considering any necessary and reasonable expenses that may be taken into account under Paragraph 2 (f), the court may also take into account -

- a. The financial position of the victim as well as the financial position of the offender;
- b. The relationship that exists between the parties and the reasonableness of requiring the defendant to make or contribute towards such payments;
- c. The possibility of other proceedings between the parties and the matter being more appropriately addressed under laws relevant to the financial responsibility to spouses, former spouses and other dependants.

#### **Commentary**

*Source: based on Malaysia, Domestic Violence Act (1994), Section 10; Paragraph 2, Lit. (e) is based on Trinidad & Tobago, The Domestic Violence Act (1999), Section 6, Paragraph 4 (d).*

*See also: Ghana, Domestic Violence Act (2007), Section 27; India, The Protection of Women from Domestic Violence Act (2005), Section 22 and 26.*

## Chapter VI – Sanctions / Penalties

### Article 34. Penalties for Domestic Violence

(1) Any person who causes or inflicts domestic violence as defined in Article 4 of this Law shall be punished by a fine or imprisonment or both.

(2) For domestic violence, which constitutes physical or sexual violence as defined in Article 4, Paragraph 2 (a) and (c), the punishment shall be imprisonment.

### Article 35. Aggravated Circumstances

In relation to domestic violence against women, the following circumstances shall be considered as aggravated circumstances resulting in enhanced penalties for the offender -

- a. The domestic violence is committed against a female child; or the action of domestic violence is performed in the presence of a minor.

#### **Commentary**

Source: based on Greece, Law No. 3500 – On Domestic Violence and other Provisions, Article 6, Paragraph 3.

See also: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 6 (f).

- b. The domestic violence is committed against a woman with special needs, a pregnant woman, or a woman who, due to whatever reason, is incapable of resisting;

#### **Commentary**

Source: Brazil, Maria da Penha Law, Innovations of the Law.

See also: Philippines, Anti-Violence against Women and Their Children Act (2004) – Republic Act No. 9262, Section 6 (f).

- c. The violence is severe or life-threatening, or inflicts wounds or grievous bodily harm;

#### **Commentary**

Source: Sierra Leone, Domestic Violence Act (2007), Article 1.

- d. A weapon is used; or

**Commentary**

Source: Sierra Leone, Domestic Violence Act (2007), Article 1.

e. In repeated incidents of domestic violence, regardless of the level of injury.

## **Article 36. Penalties for Violation of Protection Order**

(1) Any person who willfully contravenes a Protection Order or any provision thereof shall be guilty of an offense and shall, on conviction, be liable to [description of penalties].

**Commentary**

Source: based on Malaysia, Domestic Violence Act (1994), Section 8.

*See in addition:* Republic of Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 32 - Harassment of a victim and other person: "An accused or any other person acting on his behalf or by his own motion, who harasses or intimidates a victim of violence or a witness in a case of violence or a relative thereof in any place, and in a manner which affects or could affect the investigation or trial of a case of violence or causes mental agitation to a victim of violence or a witness in a case of violence knowing that he is a victim of violence or a witness in a case of violence, shall commit an offence punishable with imprisonment up to three years or with a fine up to one thousand five hundred pounds or with both such penalties and where the harassment or intimidation is committed against a victim accommodated in a shelter, the offence shall be punishable with imprisonment up to five years or with a fine up to three thousand pounds or with both such penalties."

(2) Any person who willfully contravenes a Protection Order by using physical violence on the protected person or any person who is convicted for a second or subsequent violation of a Protection Order shall be punished with [description of penalties for this aggravated offense].

**Commentary**

Source: based on Malaysia, Domestic Violence Act (1994), Section 8.

(3) For the purpose of this Article, a "Protection Order" shall include a Residence Order and an Emergency Protection Order under this Law.

## Article 37. Penalties for Publication of Domestic Violence Proceedings

(1) Subject to Paragraphs (3) and (4) of this Article, no person shall publish any report of proceedings under this Law except by leave of the Court which heard the proceedings.

(2) Any person who contravenes Paragraph (1) commits an offense and is liable on conviction to [description of penalties].

(3) This Article shall not apply to the publication of any report in any publications 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.

### **Commentary**

*Source: based on Caribbean Community, CARICOM Model Legislation on Domestic Violence, Clause 21.*

(4) This article shall not apply to the publication of criminal proceedings under this Law, if the reporter protects the identity of the victim.

### **Commentary**

*Source: based on Ghana, Domestic Violence Act (2007), Section 25.*

## Article 38. Statute of Limitations

(1) The start of the statutory limitation deadline shall be suspended until the victim liberates herself from the situation of domestic violence.

(2) For minors, the statutory limitation deadline shall be suspended until the minor reaches majority.

## Chapter VII – Appeals

### Article 39. Appeals to High Court / Courts of Appeal

(1) Where, in any proceedings under this Law, a Court -

- a. Has made or refused to make an order; or
- b. Has otherwise finally determined or has dismissed the proceedings,

any party to the proceedings or any other person prejudicially affected may appeal to a higher court.

(2) Every appeal of this Law shall be heard as soon as practicable after the appeal is lodged.

(3) Except where the Court making the order appealed from otherwise directs, -

- a. The operation of an order made under this Law is not suspended by an appeal; and
- b. Every order made under this Law shall be enforced as if no such appeal were pending.

#### **Commentary**

Source: based on New Zealand, Domestic Violence Act (1998), Articles 91, 94-95.

## Chapter VIII – Support Fund

### Article 40. Victims of Domestic Violence Support Fund

(1) A Fund for Victims of Domestic Violence shall be established.

#### **Commentary**

Source: based on Ghana, Domestic Violence Act (2007), Articles 29 ff.

(2) The monies of the Fund shall be applied -

- a. Towards the basic material support and compensation of victims of domestic violence;
- b. For any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence;
- c. Towards the construction and maintenance of reception shelters for victims of domestic violence;
- d. To set up rehabilitation centers for domestic violence offenders;
- e. For the training and capacity building of persons connected with the provision of shelter, rehabilitation and reintegration;
- f. For the training and sensitization of judges, police officers, lawyers and prosecutors and for the establishment and training of specialized female police officers.

#### **Commentary**

Source: based on Ghana, Domestic Violence Act (2007), Articles 30; words added.

See also: Republic of Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 26 (Paragraphs 4 and 5 in particular).

**Compensation:** As a minimum, the fund shall compensate the victims, who were not able to receive compensation from the perpetrator, and the victims, who the state failed to protect. The latter category shall e.g. include victims who reported domestic violence to the police, but who did not receive assistance.

\* With regards to compensation, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that –

“When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;



*(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.”*

*“The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.” (Source: United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), Paragraph 12-13).*

*\* The European Convention on the Compensation of Victims of Violent Crimes provides -  
“Article 2:*

*1. When compensation is not fully available from other sources the State shall contribute to compensate:*

*(a) Those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;*

*(b) The dependants of persons who have died as a result of such crime.*

*2. Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.” and*

*“Article 4: Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.” (Source: Council of Europe, Convention on the Compensation of Victims of Violent Crimes (1983))*

***Shelters/Safe-Houses:*** *The Government should provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counseling services. (Source: Beijing Declaration and Platform for Action (1995), Paragraph 125 (a)).*

*See also:* *Romania, Law to Prevent and Fight against Domestic Violence: Abstracts from Chapter VI – Shelters for the victims of domestic violence:*

***Art.23.–*** *“(1) The centers named shelters in what follows are social security units, most often than not devoid of legal statute to provide protection, accommodation, care taking and counseling to the victims of domestic violence, forced to resort to the social security service.*

*(2) [...] It is forbidden to the aggression perpetrators to be grounded to enter the premises of the shelter where the victims are located.*

*(3) The isolation of the victims from their aggressors can be done only with the consent of the former [...].*

*[...] (8) Public shelters have to provide gratuitously the following social services, in parallel with the observance of the quality standards both for the victim and for underage children under their supervision: protection against aggressor, medical care, food, accommodation, psychological service and legal counseling for a well determined period, until the settlement of the family crisis. In case of persons unable to self cater and accommodate, they have the right to residence in the shelter until settlement of these desiderata by the state or by the nongovernmental organizations through vocational training courses, institutionalization of the underage children etc.”*

***Art.24.–*** *“(1) Public security services [...] ensure the security of the public shelters in the respective area.*

(2) On reception in shelter, the victim is informed on the legal rights whereby to safeguard the possessions left with the aggressor, [...] The legal counseling is gratuitous, and the Town hall must defray, at least in part, the corresponding expenses.  
[...] (4) All shelters shall be rounded off to a hospital or another sanitary unit, apt to provide the medical and psychical care. “

See also: Republic of Cyprus, *The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 31*; Japan, *Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 3*;

**Rehabilitation Centers for Perpetrators:** *The Government should take measures to ensure rehabilitation of perpetrators. It should provide, fund and encourage counseling and rehabilitation programs for the perpetrators of violence and promote research to further efforts concerning such counseling and rehabilitation as to prevent recurrence of such violence. (Source: Beijing Declaration and Platform for Action (1995), Paragraphs 124 (d) and 125 (i))*

*The aim of the work with the perpetrators is to quickly and lastingly break the vicious circle. The perpetrators should gain an understanding of their risk to repeat violent acts, and they should be enabled to take preventive measures to stop them from doing so. Thus, the Rehabilitation Centers should focus on: Taking responsibility (the perpetrator shall learn to take responsibility for his/her actions), reflexivity and self-control, empathy (the perpetrator should learn to put him-/herself in the position of the victim of the domestic violence and of any affected children), alternative non-violent ways to solve conflicts and acquiring relationship and communication skills. (Source: based on German Federal Ministry for Family, Seniors, Women and Youth, Materials for Gender Equality No. 109/2008 [Standards and Recommendations for working with male perpetrators of domestic violence] (available only in German))*

*“The DSWD [Department of Social Welfare and Development] shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. [...]” (Source: Philippines, The Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 41)*

*Abusers’ Rehabilitation Centers are also established by the Law of Georgia. It requires that these centers ensure temporary placement, psychological assistance and treatment of abusers. (See: Georgia, Law on the Elimination of Domestic Violence, Protection of and Support to Its Victims, Article 20)*

**Training and Sensitization:** *The need for training is also explicitly mentioned in the Laws of: Japan, Act on the Prevention of Spousal Violence and the protection of Victims, Act. No. 31 of 2001 (2001), Article 23, Paragraph 2); Philippines, The Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 42; Romania, Law to Prevent and Fight against Domestic Violence, Article 6, Paragraph 1.*

## Article 41. Sources of Money for the Fund

The sources of money for the Fund shall include -

- a. Funding approved by Parliament for payment into the Fund;
- b. Voluntary contributions to the Fund from individuals, organizations and the private sector;
- c. Funding from any other source approved by the Minister of Finance.

### **Commentary**

*Source: based on Ghana, Domestic Violence Act (2007), Article 31.*

**Financial Resources:** *The main sponsor for the Fund shall be the Federal Government.*

## Article 42. Management of the Fund

(1) The Fund shall be managed by the Victim of Domestic Violence Management Board.

(2) The Management Board shall consist of -

- a. The Chairperson who is the Minister responsible for Woman and Children's Affairs, or the representative of that Minister;
- b. One high-ranked representative of the Attorney General;
- c. One high-ranked representative of the Ministry for Health;
- d. One high-ranked representative of the Ministry for Education;
- e. One high-ranked representative from the Police Service;
- f. One high-ranked representative from the Department of Social Welfare;
- g. Two representatives of civil society organizations; and
- h. Four persons nominated by the President.

### **Commentary**

*See also: Republic of Cyprus, The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 7.*

**Composition:** *The composition of the Management Board shall reflect the various persons and institutions that deal with the issue of (domestic) violence against women.*

(3) Members of the Management Board shall be paid allowances approved by the Minister of Finance.

**Commentary**

Source: based on Ghana, Domestic Violence Act (2007), Articles 35, 36 and 39.

## **Article 43. Function of the Management Board**

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 through the Minister for Woman and Children's Affairs;
- b. Advise the Minister for Woman and Children's Affairs on policy matters under this Law;
- c. Propose and promote strategies to prevent and combat domestic violence;
- d. Liaise with government agencies and organizations to promote the rehabilitation and reintegration of victims of domestic violence;
- e. Prepare guidelines for disbursement of monies from the Fund;
- f. Manage the Fund;
- g. Conduct research -
  - On international and regional developments, and
  - On standards for dealing with matters of domestic violence, and
- h. Deal with any matter concerned with domestic violence.

**Commentary**

Source: Ghana, Domestic Violence Act (2007), Article 37.

See also: Republic of Cyprus, *The Violence in the Family (Prevention and Protection of Victims) Laws 2000 and 2004, Section 7: Philippines, Anti-Violence Against Women and Their Children Act (2004) – Republic Act No. 9262, Section 39.*

## **Article 44. Meetings of the Management Board**

The Management Board shall meet at least once every three months.

### **Commentary**

Source: based on Ghana, Domestic Violence Act (2007), Article 38; words omitted.





