



DEVELOPING ANTI-VIOLENCE AGAINST WOMEN LAWS

Discussion
Paper Part 2

Content Options

Gender Equality Network
January 2013

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1. Preamble

One option is to provide a concise statement of the purpose of the law, for example:

The purpose of this law is to eliminate all forms of violence against women by mandating a comprehensive program of prevention, including training and education; providing access to protective measures for women at risk of violence, including protection orders; and prohibiting and penalizing acts of violence against women.

Another option is to include a preamble in the law that lists the issues it sets out to address, for example:

Mindful of the fact that violence against women exists in all countries, societies and cultures; and may occur in the home, the workplace or the community;

Recognizing that violence against women is an extreme form of gender discrimination and an abuse of women's human rights;

Cognizant of General Recommendation No. 19 of the Committee on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), which obliges governments to take all necessary steps to eliminate violence against women by both public and private actors;

Recognizing that domestic violence affects societies and inhibits women's abilities to play a meaningful role in political, economic, social and cultural life;

Recognizing women's agency and the need to take a victim-centred approach to prosecution and to ensure remedies that place a woman's needs at the centre of justice system processes and guarantee her appropriate privacy and respect for her dignity;

Recognizing need to ensure accessible and effective protections and speedy access to justice, particularly in cases where women remain at risk;

Recognizing that some women, including those who have disabilities and those who are displaced, experience increased vulnerability;

The Republic of the Union of Myanmar hereby enacts this legislation with the aim of eliminating violence against women in all its forms and reducing its ongoing impacts.

Stakeholders should discuss the issues they want the law to address and try to summarize them, if there is a dispute about whether or not a law applies, a court may look to the Preamble to determine whether the law applies.

It is important to be mindful as to how this law may interact with, mirror, or be affected by provisions in other laws, including laws that have been recently enacted or amended, such as child, disability or labour laws. Family law should also be considered, particularly in the case of domestic violence.

2. Application of the Act and General Provisions

These are some of the standard clauses in most laws. They provide a short name, tell when the law takes effect, and make clear that everyone in Myanmar has to follow the law. Myanmar law may have other standard general clauses that should be included.

Short title: This Act may be cited as the ...

Commencement: This Law shall come into force ...

This Law shall apply to all persons in Myanmar.

This Law binds the Government of the Republic of the Union of Myanmar and all its agents, which includes members of the armed forces, police and government staff.

The following tables provide some examples of provisions that could be included in relation to violence and discrimination, with discussion of why they should be considered, and what options exist. **These provisions are intended to provide guidance only, they will need to be more accurately drafted before being inserted into a proposed bill.**

The left hand column contains possible provisions. The right hand column gives sources or precedents and additional information on why these provisions are useful and what should be considered when discussing them.

General Equality Provisions

Possible Provisions	Sources/Precedents/Comments
1. Gender equality is the equality of men and women irrespective of their biological differences or the social understanding of their roles. Men and women in Myanmar shall enjoy the same rights in society and under the law regardless of sex or gender, race, national or ethnic origin, religion, colour, sexual orientation, mental or physical disability, age, or family status.	<p>See CEDAW Articles 1, 2 and 4, and <i>CEDAW General Recommendation No. 19</i>.</p> <p>Consideration needs to be given to making the law a general equality law, or focusing only on domestic violence, or only on domestic and sexual violence.</p> <p>When considering the above the following should be taken into account:</p> <p>The Myanmar Constitution's equality provisions are not currently in complete compliance with CEDAW standards. Stating in the law that violence against women is a human rights abuse strengthens the legislation and brings it closer to what is advocated in CEDAW-based commentaries evaluating legislative compliance with the CEDAW.</p>
2. Discrimination against women is any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.	
3. Provide that no relationship status, custom, culture, tradition or religious consideration may be invoked to justify violence against women.	
4. Discrimination against women for the purposes of this Law shall include direct or intentional discrimination as well as indirect discrimination or any act that has the effect of creating or perpetuating inequality	

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between men and women.	
5. Discrimination against women is prohibited and is subject to criminal and civil penalties as provided for in this Law.	
6. Special temporary measures taken to accelerate women's participation in social, political and economic activities, including the use of electoral, educational and hiring quotas and workplace accommodations are not to be considered discrimination under this Law.	

Violence Against Women

Possible Provisions	Sources/Precedents/Comments
<p>7. Sexual violence includes all acts of force of a sexual nature committed against a woman without her consent.</p> <p>or</p> <p>Sexual violence includes sexual acts, attempts to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.</p>	<p>All provisions in this part could be put into the Definitions. They are important to discuss and less generic than the Definitions examples above and should come at the beginning of the division of the Law on violence, if chosen. Statements such as these allow for potential inclusion and prohibition of acts not explicitly referred to in this Law, including acts of violence that are culturally specific.</p> <p>The alternative definition, taken from the UN Virtual Knowledge Centre, is much broader than the first definition, which requires proof of force. Proof of force has often been interpreted in a manner that requires women to show active resistance to acts of sexual violence. This may not be possible in many cases, and does not accurately capture women's experience of sexual violence. This is particularly true in cases where violence is committed in coercive environments where intimidation, manipulation, threats of negative treatment (withholding a needed service or benefit) and blackmail is used. In such circumstances, women are unlikely to put up any physical resistance due to fear. It is therefore, recommended that this term be broadly defined as demonstrated, rather than being limited to sexual violence committed with the use of force.</p>
<p>8. Violence against women includes any act of gender based violence that results in, or is likely to result in, physical, sexual, psychological harm or suffering to women, including threats of such acts, coercion, arbitrary deprivation of liberty, whether occurring in public or private life</p>	<p>This provision is intended to capture other acts of violence that do not fall under sexual and domestic violence. Violence against women take many forms and vary according to the social, economic, cultural and political context. Although, it is not possible to exhaustively list all forms of VAW, the DEVAW delineates VAW according to the site or setting in which it occurs as follows:</p> <p>Violence within the family - including battering, sexual abuse of female children in the household, dowry related violence marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.</p> <p>Violence in the community – including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.</p> <p>Violence perpetrated or condoned by the State – including custodial violence, forced sterilization, forced pregnancy and forced abortion. States may also condone VAW through inadequate laws or through the ineffective implementation of laws, thus allowing perpetrators of violence impunity for their acts.</p>
<p>9. Acts of sexual and gender-based violence described herein are human rights abuses and criminal offences. Violence against women as described herein is a violation of</p>	<p>Not all ASEAN laws criminalize domestic violence. Criminalizing it recognizes that it is a serious offence. It is important to note that by providing for both criminal sanctions and civil protective orders, the law treats</p>

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<p>women human rights.</p>	<p>gender-based violence as both a criminal offence as well as a civil wrong. The significance of this lies in that it provides different forms of redress. As has been observed in India, Bangladesh and Laos, women may in some cases, want to pursue only civil remedies under this law. For instance, while drafting the domestic violence law in India, many women consulted with, reported that criminal provisions alone are inadequate. For instance, imprisonment of the sole male breadwinners under criminal law would mean that they would not be able to provide maintenance in practical terms. In such cases women would prefer to obtain civil orders to stop the violence rather than avail of criminal provisions to convict perpetrators.</p> <p>The advantage of pursuing civil remedies is also that a lesser level of burden of proof under is required. A civil order requires proof based on a balance of probabilities (i.e. which is the more likely or probable event), whereas convictions under criminal law require a higher standard of proof beyond reasonable doubt.</p> <p>However, unlike the Indian and Bangladeshi laws, the proposed Myanmar law aims to include both criminal and civil provisions. However, treating all forms of VAW as criminal offences may result in depriving women of the option of obtaining civil orders only. (Criminal offence necessitates the initiation of criminal proceedings and mandatory reporting) The Anti-Violence against Women and their Children Act, Philippines provides a good option in this regard—it sets out broad definitions of acts that constitute violence against women and then separates out specific acts that amount to criminal offences and prescribes penalties for these.</p>
<p>10. Acts of VAW not included in this Law shall be punished according to the provisions of the Penal Code. Courts are authorized to use enhanced sentencing to recognize that the act in question was a human rights abuse.</p>	<p>If other acts of violence besides sexual and domestic violence need to be considered, this provision should be changed to reflect their inclusion, both with respect to prohibition and punishment. In most countries, ordinary assault is a matter under the general criminal law; however, there may be specific instances of culturally condoned violence which need to be specified for inclusion.</p>
<p>11. A person shall be found to have committed an aggravated act of violence if the act:</p> <ul style="list-style-type: none"> • Was committed with a weapon; • Caused bodily injury that wounded or maimed the complainant; • Threatened the complainant's life; • Involved mutilation, including disfigurement; • Was accompanied by kidnapping or imprisonment; • Involved the abuse of a position of authority, power or trust; or 	<p>This section adds to the prohibited acts, so that if acts are undertaken under particular circumstances, additional penalties are available. This provision could be reconfigured and listed under Definitions.</p>

<ul style="list-style-type: none"> • Was committed against someone particularly vulnerable by reason of age or disability. 	
<p>12. Attempted acts mean incomplete acts for which there exists sufficient evidence for a court to conclude that a person intended to commit the prohibited act.</p>	<p>This replicates the wording of the Penal Code.</p> <p>The terms ‘attempted acts’ or ‘attempts’ are included in definitions of a wide range of violence, e.g. the Philippines Anti-VAW law uses the term ‘attempted’ repeatedly while defining violence. For instance- sexual violence refers to ‘acts causing or <i>attempting</i> to cause the victim to engage in any activity by force, threat of force...’</p> <p>The term ‘attempt’ is well defined under common law hence there is ready jurisprudence available on this issue. It is unclear why this provision requires a better definition. Also, given that point 10 mentions a link with Penal Law, ‘attempts’ to commit violence shall be interpreted in consonance with Section 511 of the Penal Code and jurisprudence evolved under this provision. Please note that ‘attempt’ as covered in Section 511 is a general clause and also applies to offences that do not mention or separately provide for attempted acts.</p> <p>It is however, useful to specifically mention ‘attempts’ in the special legislation to make it clear that such acts are criminalized. Another method of including such acts is to insert the term into definitions of each form of violence and provisions criminalizing acts of violence (as has been done in the Philippines Anti-VAW law).</p>

Domestic Violence

Possible Provisions	Sources/Precedents/Comments
13. Domestic violence is a form of gender-based violence and in all its forms constitutes a human rights abuse.	Many of these provisions are essentially definitions. Model United Nations Framework for Domestic Violence Legislation recommends recognizing domestic violence explicitly as a human rights abuse. See also Declaration on the Elimination of Violence in the ASEAN Region, 2004
14. Domestic violence includes, but is not limited to: <ul style="list-style-type: none"> • Physical violence and threats of physical violence; • Sexual violence, including any act of a sexual nature committed with a person without consent of that person; • Emotional and psychological violence, including intimidation, harassment, public or other humiliation, or repeated verbal abuse; • Economic violence, meaning any acts that attempt to prevent a woman from achieving financial independence including, but not limited to: <ul style="list-style-type: none"> - Withdrawal of financial support or preventing the woman from engaging in an occupation; - Deprivation of the right to use common property; - Destruction of common property; and - Denial of access to financial resources to which a woman is entitled for the purposes of controlling her behaviour. 	Including all four forms of violence is advocated in Model United Nations Framework for Domestic Violence Legislation on violence against women. The Philippines Domestic Violence Act uses similar definitions.
15. For the purposes of this Law, domestic violence is any act committed recklessly or with intention by a person against another in a domestic relationship that causes or is likely to cause harm.	Including acts that are both reckless (not intended) and those that are intended makes it more difficult for a person committing an act of violence to claim as a defence that the act was an accident.

<p>16. Domestic relationship means a close personal or sexual relationship and may include any of the following prior and current relationships:</p> <ul style="list-style-type: none"> • Family relationships, including persons related by blood or adoption, parents, children, siblings, half-siblings and step-siblings, and others related by marriage; • Dating relationships; • Spousal relationships, including former relationships and same sex relationships; • Relationships between those sharing parentage of children; • Relationships between those sharing occupation of a residence; and • Relationships between domestic workers and employers. 	<p>This definition could be included in the Definitions section, rather than here.</p> <p>All ASEAN domestic violence legislation captures a wide range of relationships. The Indonesian Domestic Violence Act includes domestic workers.</p> <p>Other relationships or people with particular vulnerabilities could be included. For example, Singaporean law includes in-laws and incapacitated members of families.</p>
<p>17. For greater clarity, persons sharing occupation of a residence are not in a domestic relationship solely by virtue of a landlord/tenant or employment relationship, except where a person is employed as a domestic worker.</p>	<p>This prevents a finding of domestic violence in situations where a person rents housing from or works for another person, but otherwise has no personal relationship, as violence in those situations is captured under the ordinary provisions of the Penal Code. As noted above, Indonesia includes domestic workers in its domestic violence legislation, in compliance with UN recommendations.</p>
<p>18. In the case of uncertainty, a court may determine whether a relationship constitutes a domestic relationship giving consideration to the nature and intensity of the relationship, and in particular:</p> <ul style="list-style-type: none"> • The amount of time the persons spend together; • The place or places where that time is ordinarily spent; • The manner in which that time is ordinarily spent; and • The duration of the relationship. 	<p>This provision allows the court to use discretion to find domestic violence in non-traditional personal relationships.</p>
<p>19. Battered woman syndrome is a scientifically documented pattern of psychological and behavioural symptoms resulting from cumulative experiences of domestic violence.</p>	<p>This kind of provision is sometimes disputed. It is included to capture situations in which a woman who has been repeatedly abused acts to prevent anticipated violence, based on signs she has seen in the past. It is included in the Philippines Domestic Violence Act.</p>
<p>20. In the case of children harmed or likely to suffer harm from experiencing or witnessing threats or acts of violence, the court may make a temporary order preventing the offender from having visitation or custody rights, pending resolution of the case.</p>	<p>While this repeats some of what may be included in protection orders, it recognizes that domestic violence can affect all members of a household, not just the person who is abused, and that the effects of an abusive parent's actions on children should be considered.</p>

Penalties

Drafting of penalties will require significant discussion during consultations and cross-referencing with existing penalties. One way to reduce confusion in these provisions and to avoid the tricky issue of framing specific penalty clauses for each type of domestic violence is to define domestic violence with an overall definition centred around the injury or harm caused and then detail specific forms of abuse.

To illustrate: According to the Indian Domestic Violence law 'domestic violence' is– any act of omission or commission (thus expanding the definition to include acts that may not require force but are a result of omission or negligence); or conduct that:

- a. Harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or any other property or valuable security
- c. Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned above
- d. Otherwise injures or causes harm, whether mental or physical, to the aggrieved person.

This is then followed by explanations of the terms physical abuse, sexual abuse, verbal/emotional abuse and economic abuse.

The advantage of including an overall definition like this is that it allows for an assessment of injury caused, which may then be penalized by appropriate sentences. The sentencing or the penalty clause can then be a single clause putting in a range for sentencing- e.g. '*whoever commits an act of domestic violence shall be punished with a term that may extend to three year and a fine of ____ amount*'. The court will decide the amount of penalty – term of imprisonment or the penalty by judging the level of injury/harm, etc. sustained by the complainant.

This formulation may be easier than drafting penalties for each form of abuse. Also, drafting penalties for each form may lead to establishing a hierarchy of DV forms irrespective of the impact the act may have had. Further, including an overall provision acknowledges that the experience of domestic violence may involve a combination of one or more these specific forms of abuses and have a cumulative effect.

This penalty clause may be supplemented by additional provisions for enhanced penalties for second or repeat offences and/or stipulations of mandatory minimum sentences (e.g. whoever commits marital rape shall be punished with term not less than 3 years but which may extend to 7 years and/or penalties, or see Section 376 of the Penal Code).

It is also important to classify the offence as cognizable/non-cognizable, bailable/non-bailable and compoundable/non-compoundable. [terms explained in the glossary] These designations will assist in understanding the gravity of the offence. E.g. the offence of murder punished under Section 302 of the Penal Code is a cognizable, non-bailable, non-compoundable offence. Offences attracting imprisonment sentences of 7 years and more are all classified in this manner.

The Philippines adopts a slight different approach under its Anti-Violence against Women and their Children Act (Philippines Anti-VAW law). In this law too, an overall definition is adopted to include– 'acts or series of acts committed... which result or are likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment, or arbitrary deprivation of liberty.' Specific acts are then separated as criminal offences- e.g. causing physical harm, depriving women of custody, etc. Penalties are then prescribed for each of these acts with reference to general offences recognized under the Revised Penal Code. E.g. acts of causing physical harm that constitute attempted or frustrated murder attempts will be punished in accordance with murder provisions in their revised Penal

<p>Code. Those constituting serious physical injuries have higher penalties than those constituting less serious and slight physical injuries.</p> <p>A combination of the Indian and Philippines drafting techniques may reduce confusion related to drafting clauses on definitions and penalties.</p> <p>The Indonesian law on domestic violence, however, prescribes penalties (criminal stipulations) for each form of domestic violence and may be a useful reference if the method below (of stipulating penalties for each form of domestic violence) is followed. However, it must be born in mind that higher penalties, which may have a stronger deterrent effect, also involve stricter standards of proof.</p>	
<p>21. Any person convicted of domestic violence causing physical injury is liable to a term of imprisonment from 6 months to 6 years.</p>	<p>Model United Nations Framework for Domestic Violence Legislation recommends explicitly stating that physical violence is unacceptable and punishable.</p> <p>Indonesia, the Philippines, Thailand all include penalties in their domestic violence laws, need to include lengths as examples.</p> <p>These provisions should parallel the Penal Code. Many laws focus on protection orders and allow sentencing under the existing criminal law as set out in the Penal Code, so these should be adjusted according to what stakeholders think is appropriate.</p>
<p>22. In the event that the complainant of domestic violence is guilty of assaulting the offender, the defence of battered woman syndrome is available upon presentation of expert evidence and may be considered in sentencing.</p>	<p>As noted previously, this provides a defence for a woman who has been repeatedly assaulted in the past and is accused of attacking her assailant. See the Philippines Domestic Violence Act.</p>
<p>23. Any person convicted of domestic violence involving emotional or psychological violence is liable to a term of imprisonment of 6 months to 3 years.</p>	<p>Penalties require discussion. There is considerable variation among ASEAN countries' laws.</p>
<p>24. Any person convicted of domestic violence involving economic violence is liable to a term of imprisonment of 6 months to 3 years.</p>	<p>Penalties must be commensurate with injuries or harm caused as suggested in the overall section above. Section 488 of the Code of Criminal Procedure may also be referenced in this regard.</p>
<p>25. In the case of aggravated acts of violence referred to in s. 11, the court is authorized to extend the sentences.</p>	
<p>26. In the case of a conviction involving multiple or repeated forms of abuse, the court is authorized to enhance penalties and imprisonment sentences.</p>	

Sexual Violence

Possible Provisions	Sources/Precedents/Comments
<p>27. Sexual violence includes any conduct of a sexual nature that abuses, humiliates or degrades or is violative of a person's dignity and physical integrity, including rape.</p> <p>Or</p> <p>As laid down in Prosecutor v Jean Paul Akayesu – 'Sexual violence', which includes rape, is any act of a sexual nature which is committed on a person under circumstances, which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts, which do not involve penetration or even physical contact</p> <p>Or</p> <ul style="list-style-type: none"> • Unwanted touching or coercion to touch someone else; • Bodily injury targeting reproductive organs, breasts or buttocks; and • Coercion to observe a sexual act. 	<p>This provision puts in place a broad definition of sexual violence, which is not limited to rape.</p> <p>The Indian domestic violence law defines sexual abuse broadly to include any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the victim's dignity. Similarly, the Turkish Penal Code defines rape as conducts that violate physical integrity, involving and not involving penetration.</p> <p>Internationally, recommendations on core elements to be provided for in definitions of sexual assault include:</p> <ul style="list-style-type: none"> - A definition of sexual assault which is not framed as a crime of honor or morality; - A definition of sexual assault that does not require penetration or force; - Prohibition of mitigating factors such as intoxication of perpetrator; - Provision for enhanced penalties for aggravating circumstances such as the threat or use of force, or the age or disability of survivor; - Criminalization of sexual assault within an intimate relationship; - Burden on accused to prove consent; - Provision for a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority such as in a correctional facility or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship; - Provision for a broad range of coercive circumstances around consent such as intimidation or fraud <p>To the left, a similar provision is used in the Criminal Code of Papua New Guinea, which also includes acts compelling the victim to touch the abuser's body or sexual parts.</p>
<p>28. Rape is a specific form of sexual assault involving penetration of any bodily orifice with any body part or an object.</p>	<p>UN Model Legislation recommends particularizing the act of rape. However, another option is to simply have a broad provision against acts of a sexual nature committed without the consent of the person.</p> <p>It is important to include a definition of rape to replace the definition under Section 375 of the Penal Code.</p> <p>All ASEAN countries penalize rape. Singapore, which uses the same Penal Code as Myanmar, has effected amendments to expanding on definitions of rape contained therein. Philippines, Australia, Fiji, New Zealand, Singapore define rape broadly to include- introduction of a</p>

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	<p>penis into the vagina, anus, mouth, of another person, introduction of an object or any other body part into the vagina or anus of another or performance of oral sex, without consent. Under the new Penal Code in Cambodia, rape is defined broadly to include all acts of sexual penetration of whatever kind, or insertion of any object into sexual organs.</p>
<p>29. Consent means the voluntary agreement of the complainant to engage in the sexual activity in question. Any person under the age of 16 cannot be deemed to have given consent to acts described here, unless in respect of the acts in question, the person accused of the act in question was:</p> <ul style="list-style-type: none"> • Between 12 and 16 years of age at the time the act in question was committed; and • Less than two years older than the complainant; and • Not in a position of trust, power or authority with respect to the complainant. 	<p>Consider moving this provision to Definitions. Consent, not coercion, should be the defining feature of acts of sexual violence, because otherwise, a woman may be forced to prove that she resisted. The UN Handbook for Legislation on Violence Against Women urges the use of consent as the measure of whether both parties willingly took part in an act.</p> <p>These provisions appear so that young people who willingly engage in sexual acts are not automatically accused of rape. However, the ages are open to debate. This could be amended to comply with the Child Law, the age of consent, or cultural norms.</p> <p>The qualification on power and authority is included to capture situations in which, even though both parties are in puberty, one may use a position of authority to gain the other person's consent.</p>
<p>30. No consent is obtained where:</p> <ul style="list-style-type: none"> • The complainant expresses, by words or conduct, a lack of agreement to engage in the act in question; • The complainant, having consented to sexual activity, expresses, by words or conduct, a lack of agreement to continue with the activity; • Agreement to the act in question is expressed by words or conduct of a person other than the complainant; • The complainant lacks capacity to consent to the act in question, including by reason of intoxication or disability; or • The accused induces the complainant to engage in the act in question through abuse of a position of trust, power or authority. 	<p>Further qualification on consent is provided so that consent must be explicit, not implied, and so that withdrawal of consent is possible. If someone cannot consent, including because they are asleep, no consent can be found to have been given.</p> <p>Consent given out of fear of authority is not consent.</p>
<p>31. Nothing in s. 30 shall be taken to limit the circumstances in which a lack of consent may be found.</p>	<p>There may be other situations in which the court can find consent was not freely given.</p>
<p>32. No relationship, including marriage, between the complainant and the accused shall be construed as a defence to the act of rape. For greater clarity, a spouse may be charged with rape, whether cohabiting with the complainant or not.</p>	<p>Marriage is not a defence to rape, i.e. sexual acts of penetration without consent.</p> <p>In most countries in the ASEAN region, exemptions of marital rape were included in criminal provisions on rape. Some countries criminalize marital rape by removing this exemption, (for instance, exemptions of marital rape were</p>

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	<p>removed from the Thai Penal Code through amendments effected in 2007), others continue with such exemptions (the Article 127 of the Laotian Penal Law, being an example in this regard).</p> <p>Examples of countries that have either removed or modified marital rape exemptions are:</p> <ul style="list-style-type: none"> - Rape is included in the definition sexual violence in Philippines Anti-VAW law and is penalized under the Anti-Rape Act. Unfortunately, this law also provides that a marital rape offender may be pardoned if the spouse forgives the husband. - Malaysia amended Section 375 of its Penal Code to penalize husbands causing hurt or threatening to cause hurt in order to have sexual intercourse. However, the marital rape exemption has not been removed from this provision. - The Hong Kong Crimes Ordinance of 1971, provides that for the avoidance of doubts, the criminal offence of rape 'does not exclude sexual intercourse that a man has with this wife'.
Penalties	
<p>33. Any person convicted of rape shall be liable to a term of imprisonment of 10 years.</p>	<p>Penalties in all sections require discussion, including the length of potential sentences, comparison with the penalty for murder, set minimums or adding the possibility of fines.</p> <p>Section 376 of the Penal Code already sets a minimum sentence prison of 7 years that may be extendable to 10 years or life and/or fines.</p> <p>In the Philippines penalties in rape cases range from life imprisonment to the death penalties in cases of aggravated acts, and six years or more in other instances of rape.</p> <p>In Singapore, rape sentences may extend from 8 to 20 years. Similarly penalties for rape in Thailand range from 7-20 years with or without fines extending up to 40,000 Baht. Rape of a victim under the age of 13 is punishable with a minimum sentence of 7 years, which can extend up to 20 years, as well as fines. However, there are no minimum penalties prescribed, except for rape in aggravated circumstances, where the minimum sentence is set at 8 years.</p> <p>In Malaysia, rape may be penalized with an imprisonment sentence extending to up to 20 years and or lashing. In cases of aggravated rape, the sentence is a minimum of 5 years and a maximum of 30 years. Minimum sentence in cases of incestuous rape and causing death whilst committing rape are 8 and 5 years respectively.</p> <p>It can be seen from these examples that sentences for rape can extend from three years imprisonment to death</p>

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	<p>penalties. The formulation of this provision can be done only after definitions have been drafted and the scope of the offences is defined.</p> <p>As the UN Handbook recommends, sentences must be commensurate with the gravity of the crime. Some countries classify crimes into felonies, misdemeanours, etc, to define gravity. For instance, the Cambodian acts of domestic violence to be designated as felonies or severe misdemeanours. The Code of Criminal Procedure classifies crimes into -- cognizable, bailable and compoundable categories. Provisions on sentencing must, therefore, be referenced to these classifications.</p>
34. Any person convicted of sexual assault shall be liable to a term of imprisonment of 6 years.	
<p>35. In the sentencing of any aggravated act, the court shall consider:</p> <ul style="list-style-type: none"> • The degree of injury to the complainant; • The psychological effects of the act on the complainant; • The age and vulnerability of the complainant, including any disability; and • Such others factors as it sees fit to ensure the administration of justice. <p>In all cases of aggravated acts, the court is authorized to exercise discretion to extend the sentence.</p>	
36. Any person committing an aggravated act of sexual assault may be subject to imprisonment of a term from 14 years to life imprisonment.	
37. Any attempted act is subject to a sentence equivalent to one-half of the maximum penalty.	

Violence Against Women in Emergencies

Possible Provisions	Sources/Precedents/Comments
38. In recognition of the particular vulnerabilities that women experience during emergencies, in the event of a natural disaster, in armed conflict or other emergency situations, particularly those resulting in widespread displacement of civilian populations, the Government of the Republic of the Union of Myanmar shall together with other stakeholders, such as non-government organizations, establish independent programs specifically aimed at monitoring and preventing incidents of violence against women.	<p>Consider both independent or cooperative monitoring programs. Provisions could be more specific, for example, by requiring all personnel operating in emergency situations to adhere to codes of conduct (IASC documentation/Global Protection Cluster Handbook for Coordinating GBV Interventions in Humanitarian Settings/UN Codes of Conduct; http://cdu.unlb.org/UNStandardsOfConduct/CodeOfConduct.aspx) and to make these publicly available.</p> <p>Stakeholders include members of the uniformed personnel (military, police), others include medical personnel, and those escorting or providing humanitarian assistance to women. Some countries provide trainings on SCR 1325 to military personnel. The UK includes training on the implementation of SCR 1325 as part of its equality and diversity training. Qatar trains military personnel on protecting civilians, particularly women and children in situations of armed conflict. Other countries that have policies to implement SCR 1325 are Spain, Rwanda and Sierra Leone. However, the issue of training for military personnel is already been accounted for in point 111.</p>

Incest

Possible Provisions	Sources/Precedents/Comments
<p>39. Incest means any relations of a sexual nature between persons related by blood; or between a person and his or her parent, child, brother, sister, step-brother, step-sister, grandparent or grandchild, whether that relationship is by blood adoption, or marriage.</p>	<p>More traditional legislation in some jurisdictions only criminalizes sexual relations between blood relatives, however modern legislation recognizes familial sexual relations as abusive.</p> <p>Provisions on incest can be found in the laws of a number of countries in the ASEAN region. However, there are diverse conceptions of kinship, social appropriateness and risk. Prohibitions against incest vary greatly depending on the type of kin one must avoid having sexual relationships with, which are reflective of social principles of proximity and distance rather than degrees of biological relatedness.</p> <p>Some practices from other countries:</p> <p>The UK's Sexual Offences Act, 2003 has a comprehensive definition of family relationships, (defined in the context of child sexual abuse) classified into three categories—blood and foster relationships, relationships that have lived in a shared household and fiduciary relationships.</p> <p>The New Zealand Crimes Act, 1961, recognizes incest as an offence and also criminalizes sexual conduct with dependent family members. It has a broad and detailed definition of 'dependent family member'.</p> <p>In the ASEAN region, Malaysia defines incestuous relationships as those in which marriage is not permitted under the law, religion, custom or usage applicable to the parties.</p> <p>The Laotian Penal Law, on the other hand, lists out specific relationships within which sexual intercourse is penalized--biological parent, parent by adoption, step-parents, grandparent, parent-in-law, biological child, adopted child, step child, grandchild or sibling.</p> <p>Section 376 A of the Singapore Penal Code penalizes men and women over the age of 16 having sexual relations with blood relations.</p>
<p>40. Any person convicted of incest shall be subject to a term of imprisonment of up to xx years.</p>	<p>Penalties for incest should be discussed in concert with other penalties for violence.</p>

Stalking

Possible Provisions	Sources/Precedents/Comments
<p>41. Stalking means repeated contact by a person with a woman over a period of time that causes a person to fear for her safety. Contact can include:</p> <ul style="list-style-type: none"> • Physically following a person; • Sending a person written letters or leaving a person messages; • Contacting a person by telephone, email, social media or other electronic means; • Watching a person at her residence, school, workplace, business or other places she frequents; • Attempting to pass messages to a person through other persons or making inquiries about a person; or • Engaging in threats against a person's friends or family. 	<p>This could be moved to Definitions, noting the previous caveat about readability.</p> <p>Some ASEAN countries such as Vietnam include provisions for stalking, also known as criminal harassment. This behaviour is detrimental in itself, but may also precede more serious acts of violence.</p>
<p>42. Any person convicted of stalking is liable to a term of imprisonment of six months or fine, or both.</p>	<p>The Philippines Anti-VAW law includes stalking in its definition of psychological violence and defines it as an intentional act of placing women under surveillance. Stalking is punished with imprisonment terms extending to 6 years.</p> <p>Some countries address stalking by enacting laws on harassment; New Zealand, UK and South Africa being examples in this regard.</p> <p>Singapore does not have a specific anti-stalking law. However, some stalking behaviours are prohibited under harassment laws and laws against cyber crimes.</p>
<p>43. In the case of a sentence for stalking involving a fine, a court of competent jurisdiction may also issue a protection order preventing the person convicted of stalking from contacting the victim.</p>	
<p>44. A person who, in committing the offence of stalking, breaches a protection order is liable to a term of imprisonment of up to 2 years.</p>	

Protections for Victims of Sexual and Gender-based Violence in the Criminal Justice System

Possible Provisions	Sources/Precedents/Comments
<p>45. Any complainant shall be accorded the following rights and protections during criminal justice procedures:</p> <ul style="list-style-type: none"> • The right to decide whether or not to report an alleged offence; • The right to decide whether or not to testify; • The right to prompt, sensitive and appropriate treatment of her injuries, and clinical care for the prevention and management of other sexual and reproductive health concerns as a consequence of unprotected sex - regardless of whether she chooses to report an alleged offence and without the need to notify or obtain the consent or permission of any person or entity; • The right to enjoy sensitive and respectful treatment during collection of forensic and other evidence; • The right to enjoy protection, including special measures as set out in s. 55, where available, during the trial process; • The right to apply for protective orders; • The right to privacy, including with respect to her identity, address of residence, disclosure of therapeutic records, and sexual history, except when disclosure of such particulars and evidence are found to be necessary to the prosecution of the matter before the court; and • The right to support from non-government organizations in the form of counselling, access to safe housing, and assistance with court procedures. 	<p>These provisions attempt to protect women's rights to dignity and privacy during criminal proceedings. The decision on whether or not to testify reflects a victim-centred approach.</p> <p>Clinical care includes access to other services including, pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases, post exposure prophylaxis, and counselling services.</p>
<p>46. The fact that a woman who has experienced any form of violence under this Law has engaged in prostitution shall not disqualify her from receiving the full benefit of the law and all provisions of this Law.</p>	
<p>47. This Law protects all women without discrimination as to race, colour, language, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV or AIDs status,</p>	

migrant or refugee status, age or disability.	
48. Appropriate measures shall be taken to prevent secondary victimization in interactions with the justice system and first responders such as medical personnel. In particular, complainants of sexual violence shall not be required to undergo forensic examination before being permitted to make a report on an offence under this Law to police.	<p>The law should not restrict medical personnel's ability to respect the complainant's decision, and to provide appropriate clinical responses in order to prevent sexual and reproductive health concerns, including unwanted pregnancy and sexually transmitted infections.</p>
49. Within one year of the coming into force of this Law, the Government of the Republic of the Union of Myanmar shall establish women's anti-violence centres in each State and Region to provide assistance and support to women reporting violence, staffed by medical and criminal justice system personnel such as prosecutors and police officers specifically trained to deal with cases of sexual and gender-based violence.	<p>The time frame here is arbitrary and should be adjusted according to what is realistic. This provision envisions centres to assist women established away from police stations where women may access services and support if they have been assaulted and report an assault to justice personnel if they desire. Nepal, Brazil, and the United Kingdom have established these kinds of centres.</p> <p>Thailand also makes some similar services available.</p> <p>If this concept were to be included in this legislation, it would require considerable research and additional provisions (or perhaps an additional act or regulations) to implement it, to ensure there is capacity.</p> <p>Another method of ensuring access to justice and available support services is the appointment of Protection or Enforcement Officers. In India, Protection Officers are vested with a dual role of assisting the woman access justice and support services (including legal aid, medical assistance and shelter), and also assist the court in collecting evidence (much like the role of local commissions appointed under the Code of Civil Procedure) and with the enforcement of orders. Similar appointments are made under the Malaysian and Bangladeshi laws on domestic violence.</p> <p>The name of the proposed women's anti-violence centres requires discussion and consideration of translation into Myanmar.</p>
50. Within one year of the coming into force of this Law, the Government of the Republic of the Union of Myanmar together with non-government organizations and women's organizations shall develop a program of training for delivery in all States and Regions, for local officials, law enforcement, medical and criminal justice system personnel, including police, prosecutors and judges, specifically on addressing offences of sexual and gender-based violence, including domestic violence.	<p>Consideration should be given to the capacity of different agencies to unfold this kind of training. Time frames should be set accordingly. The value of including a time frame for delivery of such a program is that without a time commitment, programs can be much delayed.</p> <p>The Philippines Anti VAW law contains details on the provision of training and sets out duties of those required to provide such trainings, although it does not put in place time lines for conducting such trainings.</p> <p>The Indian domestic violence law specifically provides that preference must be given to women while appointing protection officers (who are key implementing personnel appointed under the law). The law also contains provisions</p>

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	<p>for imparting trainings, however, it is not outlined in as much detail as the aforementioned Philippines law.</p> <p>For medical responses, protocols for the clinical management of women experiencing sexual violence should be developed for all qualified medical personnel to follow regarding the provision of health care services.</p>
51. Any complainant reporting an act of sexual or gender-based violence or domestic violence to the police will be directed to personnel who have been specifically trained in this area.	<p>This provision reflects a multi-agency approach, where police are required to work with specially trained court personnel and members of non-government organizations. Specially trained personnel may not be available in all areas; however, if including the qualification “where available,” there may be less of an incentive to ensure that there are qualified personnel at each police station. This provision should be adjusted to these considerations.</p>
52. Where Sexual Violence Centres are available, police shall refer complainants to them for treatment, counselling, and collection of forensic evidence if the complainant desires.	<p>This provision depends on whether it is decided that special centres should be made available, or whether there should just be specially trained personnel as noted above.</p>
53. The Government working together with non-government organizations and women’s organizations shall develop appropriate literature for complainants in the major languages explaining to them their rights, the protections available to them under the law and the trial process.	<p>Provision of information about complainants’ rights is an important aspect of being able to exercise rights, particularly with respect to participating in criminal trials. The Indonesian domestic violence legislation requires that information be provided to complainants.</p>
54. Criminal offences under this Law shall be prosecuted in special courts established to try offences of sexual and gender-based violence, where available.	<p>Establishment of special courts makes it more likely that judges and prosecutors will be familiar with the specifics of the law and the human rights principles behind it. Nepal has established special courts for domestic violence, as have some Western countries. However, this may be a substantial undertaking only possible in major urban centres.</p>
<p>55. In the case of trials, the following supports, to be known as “special measures,” should be made available to complainants and witnesses at their request:</p> <ul style="list-style-type: none"> • Use of a screen to protect the person testifying from seeing or being seen by the accused; • Availability of a support person of the complainant’s choice to be physically present with the complainant while she testifies; and • Where possible, use of closed circuit television to allow the complainant to give testimony in a different room from the accused. 	<p>Making the trial process less intimidating increases the likelihood that complainants will be willing to testify and that they will give usable evidence. These special measures are available in other common law jurisdictions including the UK, Scotland, Canada, Australia and New Zealand.</p> <p>Special measures identified should also be made available for women seeking protection orders in cases of domestic violence.</p> <p>Closed circuit television may not be a possibility in Myanmar. It is used in other jurisdictions.</p>

<p>56. If it is believed that a complainant is or will be unavailable to testify, a police statement taken from the complainant at the time the complaint was reported may be entered into evidence.</p>	<p>Witnesses who are threatened or intimidated may recant on the stand or refuse to testify. Under traditional rules of evidence, out of court statements are hearsay and not normally admissible. Admission of police statements makes it possible to proceed against violent offenders even when a witness or complainant is unwilling.</p>
<p>57. On application by the complainant, if the court believes the complainant may not otherwise be able to give a full account of her evidence, the court may make orders:</p> <ul style="list-style-type: none"> • Banning disclosure of the complainant's name on court records, • Banning publication of the proceedings or • Prohibiting the public from being present in the courtroom during proceedings. 	<p>The open court principle in common law requires that opposing parties face each other before the public. Offering the possibility of protecting a complainant's privacy by not allowing details of the trial to be disclosed may increase the chances that she will testify in a case of sexual or domestic violence. Publication bans are available by special application in many common law jurisdictions. Section 53 allows for proceedings to be held in camera.</p>
<p>58. In the case that a person accused under this Law is self-represented, he shall not be permitted to conduct cross-examination of the complainant, and the court shall be required to appoint a lawyer to conduct cross-examination on his behalf.</p>	<p>Many common law jurisdictions prevent an accused from conducting his own cross-examination in cases of sexual or domestic violence, because it can be extremely traumatizing for the complainant.</p>
<p>59. The law should allow for shifting the burden of proof to the accused in cases involving sexual violence, if sexual contact or intercourse is proved and the complainant states that she did not consent to the sexual act.</p>	<p>Cases involving sexual violence or violence within intimate relationships are rarely witnessed. This makes proof beyond reasonable doubt, as required under criminal law, an onerous burden on the complainant. Hence the law must allow for shifting the burden of proof to the accused.</p> <p>This provision must be carefully drafted to ensure that fair trial guarantees are not violated. One method of doing so is to include 'presumptions' in provisions relating to standards of proof, which allow for the burden of proof to be shifted from the complainant to the accused. Presumptions are a legal device that allow for such shifts in favour of the complainant, without jeopardizing fair trial guarantees. This means that an act of violence is presumed to have been committed if certain conditions are met. For example, the Indian Evidence Act was amended to make special provisions for rape cases. The amendment was framed as follows:</p> <p><i>Section 114A: In prosecution for rape, ..., where sexual intercourse by the accused is proved and the question is whether it was without consent of the woman and she states in her evidence... that she did not consent, the <u>Court shall presume</u> that she did not consent."</i></p> <p>This means that if the prosecution can prove intercourse and the woman <u>states</u> that it was not with consent, the burden shifts to the defendant to prove consent.</p> <p>If rape is defined in terms of sexual intercourse in coercive environments, then examples of coercive environments could be built into the law. For instance, the court will</p>

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	<p>presume that sexual intercourse occurred without consent in cases involving a mentally disabled person and her care-giver. The new Zealand Crime Act, 1961 serves as a good reference point in this regard.</p> <p>This provision, coupled with the provision allowing convictions based on the victim's sole testimony, will allow for shifting of burdens without jeopardizing fair trial guarantees.</p>
60. Corroboration of a complainant's testimony is not required for a conviction under this Law.	In cases that are not witnessed and for which there is no material evidence, this puts the victim's testimony on the same footing as the accused's testimony.
<p>61. Mistaken belief of consent is not a defence to any charge under this Law when:</p> <p>a. The accused's mistaken belief arose as a result of:</p> <ul style="list-style-type: none"> • Self-induced intoxication; or • Reckless or wilful blindness; or <p>b. The accused did not take reasonable steps in the circumstances to ensure that the complainant consented to the act in question.</p>	<p>This provision is included for policy reasons to ensure that those engaging in sexual relations consent clearly.</p> <p>The Philippines Anti-VAW law includes a provision on 'prohibited defence' (on grounds of being under the influence of alcohol or illicit drugs) in cases of VAW in domestic and interpersonal relationships.</p> <p>Practices from other countries:</p> <ul style="list-style-type: none"> - The UK law was amended to impose greater responsibility and duty upon men to take 'reasonable' care to ensure that women consent prior to engaging in sexual intercourse. - The New Zealand Crimes Act, 1961 applies a standard of reasonableness while deciding whether an offender's belief was mistaken.
<p>62. Evidence of a complainant's sexual activity with the accused or any other person shall not be admitted to support an inference that the complainant:</p> <ul style="list-style-type: none"> • Is more likely to have consented to the act in question; or • Is less worthy of belief. 	<p>This provision is included to prevent the accused from engaging in character assassination or relying on biases about women based on social mores about sexuality. "Rape shield" laws ban the introduction of sexual history evidence <i>going to credibility</i> (which is what this provision says). Putting an absolute ban on the introduction of sexual history evidence may not be possible, since there may be limited circumstances in which it is admissible.</p>

Compensation

<p>63. In the event of a conviction under this Law, the prosecutor may apply on behalf of a complainant for compensation to be paid by the offender in respect of injury, damage to property or other losses incurred as a result of the offence, including but not limited to:</p> <ul style="list-style-type: none"> • Pain and suffering, taking into account the degree of physical, social and mental injury suffered; • The cost of medical treatment for injuries and other sexual and reproductive health concerns, including counselling; • Any loss of earning; • The amount and value of property destroyed; and • Reasonable expenses incurred by the complainant as a result of: <ul style="list-style-type: none"> - Relocation expenses, including both the cost of temporary lodging and the cost of establishing a separate household; and - Transport and moving expenses. 	<p>The UN Handbook for Legislation on Violence Against Women recommends including the possibility of compensation for harms suffered.</p> <p>The Code of Criminal Procedure in Malaysia has a general clause allowing compensation to be paid to injured parties. Similarly the new Criminal Procedure Code in Singapore makes it mandatory for courts to consider making a compensation order at the time of sentencing in all criminal cases.</p> <p>A number of ASEAN countries (Philippines, Malaysia, Thailand, Laos) include compensation orders as part of civil remedies in cases of domestic violence. The Laotian law allows compensation orders even in cases of violation of equality rights. However, claims under this provision are yet to reach the courts.</p>
<p>64. In making this determination in a case involving domestic violence, the court may take into account:</p> <ul style="list-style-type: none"> • The relative financial positions of the parties; • Any other proceedings taken between the parties; and • Support requirements of children and any other dependents. 	
<p>Right to Bring a Case in Civil Court</p>	
<p>65. Notwithstanding any criminal charges or court-ordered compensation relating to offences under this Law, the complainant does not prevent from bringing an action in civil court for injuries and damages in addition to any charges laid or damages awarded against the accused.</p>	<p>You may wish to consider provisions on legal aid (free legal services for certain types of plaintiffs or cases) to accompany this. In the criminal justice system, victims are not represented by lawyers; the case is handled by prosecutors working for the state, so women do not need to hire lawyers. However, in civil cases, they will need to pay legal fees. Making state-supported legal aid available increases the likelihood they can bring civil cases. Providing legal aid can be very important in family cases, as women may otherwise not be able to file for divorce or custody proceedings.</p>

Protection Orders

This section requires substantial discussions during consultations. In addition to civil orders, outlined below, the law must also include provisions on victim's rights to facilitate access to justice and support services.

Victim's rights: In most countries victim/complainants' rights are protected by taking a dual approach.- first to recognize victim's rights to services, which are broadly defined to include rights to legal assistance, counselling, assistance with gaining repossession, assistance in finding shelter, etc. For instance, the Philippines Anti VAW law includes legal assistance from the Public Attorney's Office under the Department of Justice as part of victim's rights. The Indonesian Domestic Violence Law recognizes victim's entitlements to protection, health services, assistance from social workers and legal aid workers, as well as spiritual guidance.

Second, is to put in place mechanisms that facilitate victim's access to justice and support services. For example, under the Malaysian domestic violence law, Enforcement Officers are duty bound to provide assistance to victims in filing complaints regarding domestic violence. Similarly, competent officers under the Thai law must assist victims while filing criminal complaints in domestic violence cases of domestic violence. Cambodia's law on domestic violence mandates that officials of the Ministry of Women's Affairs are trained as judicial police to represent victims in penal proceedings. These mechanisms are put in place to assist women in negotiating legal processes.

The Indian model adopted in the domestic violence law, is to appoint protection officers to not only to assist women in filing legal claims but also to assist the court in collecting evidence and enforcing orders, during the course of proceeding and after the order has been granted respectively.

Possible Provisions	Sources/Precedents/Comments
<p>66. A protection order may restrain the person against whom the order is sought from doing any or all of the following:</p> <ul style="list-style-type: none"> • Having any contact with the person seeking the order, including in person, by telephone, or by written communication such as fax, email or other electronic or social media • Frequenting or loitering in areas regularly visited by the applicant, including schools, places of employment or shopping areas, or from following the applicant • Perpetrating or threatening any acts of physical, psychological, emotional, sexual or financial violence against the person seeking the order and/or his or her children or other family members; or • Encouraging or abetting others to perpetrate or threaten such violence; or • Threatening to damage or interfere with or damaging or interfering with the property of the person seeking the order and any property jointly held. 	<p>The entire section on protection orders needs considerable discussion and consultation with those already working in the criminal justice system and those working with women in need of protection.</p> <p>There are many ways that protection orders can be structured, but it is common to at least provide for emergency protection orders, in cases of imminent fear of violence, and longer term protection orders. Sometimes these orders are called restraining orders or "no contact" orders. They are commonly used in domestic violence, but can also be useful in cases where a person has been sexually assaulted or stalked by someone whom they know, or when an offender is being released from custody. Cambodia, Indonesia, Singapore, Vietnam, and the Philippines all have injunctive (= protection?) orders to protect women against violence.</p> <p>The bullet points to the left show some of the common elements that can be included in a protection order.</p>
<p>67. In the event that the complainant and the accused occupy the same residence, the court may issue an order restraining the</p>	<p>In cases of domestic violence, it is important to provide women a safe place to live apart from an abusive spouse. If a couple lives in a shared residence, one way to do this is</p>

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accused from occupying the residence, temporarily or permanently.	to evict the abuser from the residence, usually temporarily pending settlement of the charges and any associated case of separation or divorce.
68. In the event that the complainant vacates a residence shared with the person against whom the order is sought, the complainant has the right to access furniture and other personal belongings from the shared residence, under the protection and supervision of a bailiff of the court.	If the woman moves out of the shared residence, she should be able to access her personal property safely.
69. The court may require the person against whom the order is sought to surrender any firearms.	This provision is often included in anti-violence legislation because it is not uncommon for escalating violence to end in an attempt on a woman's life if the accused has access to weapons. In Cambodia, authorities recognized under the domestic violence may seize weapons and other objects used as weapons to protect victims. The Philippines Anti-VAW law empowers courts to prohibit respondents from using firearms, direct them to surrender firearms to the court and revoke firearm licences.
70. Police are empowered to arrest a person against whom an order is sought without warrant on reasonable belief that he will cause harm to the complainant or her children.	This provision gives the woman claiming abuse immediate access to protection.
71. In circumstances where there are mutual allegations of abuse, the police should consider the relative physical strength of the parties, the access of each to financial and other resources, and the risk of injury to each party before making an order.	This provision is included because in some jurisdictions, when women defend themselves, they can be charged as co-offenders.
72. Temporary Protection Orders may be sought by a complainant allowing a police officer to arrest and detain the person against whom the order is sought for a period up to 24 hours and may be extended by application to a judge or magistrate.	These provisions on temporary and permanent protection orders may be moved to the Definitions section. Temporary protection orders provide immediate relief after an incident of violence. Cambodia, Malaysia, Vietnam and the Philippines allow intervention on an emergency basis. Some jurisdictions empower police or local village or township officials to authorize orders; others require that a woman appear before a judge or magistrate. This second option may make it more difficult for a woman to get a protection order. Consideration may be given to which officials are most easily accessible in emergency situations, and what the most practical procedure is, taking into account that situations may arise at night or on weekends. Need to ensure compatibility with the Constitution.
73. Permanent Protection Orders must be sought and obtained through a court of competent jurisdiction.	Permanent protection orders give more lasting protections that do not automatically expire. Because they are permanent, they usually require the woman to go to court and explain the need for the order to a judge or magistrate. They are often sought in conjunction with the adjudication of charges relating to the violent incident or

	family settlements (separation, divorce or child custody). Cambodia, Malaysia, Vietnam and the Philippines also provide for longer-term orders.
<p>Other Orders to Protect Women's Rights and Interests</p> <ul style="list-style-type: none"> • A residence order to prevent illegal dispossession, to provide complainants with alternate accommodation, or to restore the complainant to the shared household in case of illegal dispossession. • Orders for monetary reliefs including orders to compensate complainants for loss of income, medical and other expenses incurred due to acts of violence, maintenance orders, and compensation and damages for injuries, mental trauma and emotional distress. • Temporary custody orders of children and orders on visitation rights. <p>Orders can be granted on an interim or ex parte basis if the court is satisfied, on a prima facie assessment of the application that an act of domestic violence has occurred or there is a likelihood that such an act will be committed.</p>	<p>It is also suggested that other forms of protection orders or civil remedies be included in this section. For example orders for maintenance have proven most useful in the Indian context, (See also, the Singapore law on family matters and domestic violence) orders for temporary custody of children (Philippines Anti-VAW law), orders for providing alternate accommodation (Indian and Malaysian law), orders preventing the abuser from dispossessing the victim and taking any action to frustrate her legal rights, to name a few (India, Malaysia, Philippines). Another important aspect is to allow the court to grant interim orders based on a prima facie assessment of the evidence during the course of the proceedings.</p> <p>In so far as residence orders are concerned, the Indian and Bangladeshi domestic violence laws recognize a right to residence to guard against illegal dispossession. The right to reside must not be confused with property rights, as it does not create any title over the property. However, recognizing the right to reside means that due procedure must be followed in evicting dependents (those in domestic relationships) from the shared household.</p> <p>In India, prior to the enactment of the domestic violence law, it was observed that it was much easier to evict dependents than to evict defaulting tenants from rented premises. To evict tenants, one would have to initiate eviction proceedings in a court of law prior to dispossession, as tenants have a legal right over the premises. No such proceedings were required when evicting mothers, wives or daughters from the shared home, as in the context of patriarchy and gender discriminatory religious laws, such women are unlikely to have rights over the property, i.e. the shared household. The right of residence is always guaranteed to the owner of the property, which in patriarchal contexts tends to be the man. This means that a woman is in a precarious position vis-à-vis the right to residence because she has limited property rights. Recognizing the right to residence addresses this disparity and puts in place a procedural safeguard to prevent women from being thrown out of the shared household. It also prevents women from being rendered shelter-less or refraining from initiating legal action due to fears of dispossession and destitution-- a concern that assumes added significance the context of inadequate state sponsored shelter services.</p>

Application for an Order	
<p>74. Application for a protection order may be made by the complainant or any third party with the complainant's consent, including a relative, a welfare worker or person assisting the complainant, a guardian or other person on behalf of a minor child or a person lacking in capacity or a police officer.</p> <p>Applications for orders can be filed before any of the following forums:</p> <ul style="list-style-type: none"> • Special courts established under this law (See point 54) • First Class Magistrate • Courts in which the complainant and the respondent have pending proceedings 	<p>This provision allows someone else to make an application for an order, in the event a woman is injured or afraid to present herself to officials, or is unable to make an application. If a third party makes an application, there needs to be a method of showing that the woman has consented to the application. Not all jurisdictions allow third party applications, although the Philippines Domestic Violence Law does.</p> <p>Courts require definition under the law to clearly identify the forum and level at which applications for protection orders can be filed. In India and Bangladesh, such applications for protection orders are to be filed with the magistrate (1st Class, the lowest and hence most accessible court under the Code of Criminal Procedure), as well as in pending criminal or divorce proceedings.</p>
<p>75. The Courts in conjunction with the (insert respective department/ministry) shall enact regulations governing the form of application to be used for Temporary and Permanent Protection Orders.</p>	<p>The actual form of the application, including such particulars as name of the complainant, proof of her consent if the application is made by a third party, details of why the order is sought, contact information of both parties, etc., needs to be spelled out in regulations.</p>
<p>76. Upon investigation of an alleged incident, when there is reasonable evidence upon which to conclude that the complainant fears imminent risk of further harm, a police officer may issue a Temporary Protection Order.</p>	<p>Police usually conduct investigations, but the power to investigate and issue an order could also be placed in an official of the (insert respective department/ministry), a specific member of the judicial system, or another government official.</p>
<p>77. Temporary Protection Order may be extended or replaced by a Permanent Protection Order.</p>	<p>If you put a time limit on the duration of temporary orders, you may wish to make it possible to extend them by regulations.</p>
<p>78. A court of competent jurisdiction may issue a Permanent Protection Order on application made in conjunction with any other proceedings brought under this Law.</p>	
<p>79. An applicant may apply <i>ex parte</i> [or without notice to the other party] for a Permanent Protection Order when there is evidence that the complainant is at risk of imminent harm, or would be at risk of such harm if the person against whom the order was sought had notice of the proceeding.</p>	<p>This provision is available to protect a woman's safety, in the event that the other party is likely to threaten or harm the woman. <i>Ex parte</i> orders are unusual under law and only available under extreme circumstances, consideration may be given to modifying this provision to specify the circumstances in which an order must be sought or the proof required. They are available for domestic violence under Cambodian and Singaporean law.</p>
<p>80. In the case of an <i>ex parte</i> order, a court may dissolve or modify such an order upon presentation of further evidence by the person against whom the order is made, if it is convinced that no risk of imminent harm exists or that any parts of the order are unnecessary. The burden of proof in</p>	<p>Because of the unusual nature of an <i>ex parte</i> order, the accused must have the opportunity to challenge the order with sufficient proof.</p>

these proceedings is on the accused to demonstrate that the offence alleged did not take place.	
Service of an Order	
81. Once an order has been granted, the court shall immediately order the dispatch of copies of the order issued to the police zones where the complainant and those protected by the order reside, within 24 hours of the issuing order.	<p>Once an order has been granted, the person against whom it is made must be notified of it. Requiring official service of the order guards against the police and the accused denying knowledge of the order. The actual terms of service and the time frames given should be modified to reflect what is realistic given the police and court systems.</p> <p>In addition to provisions on serving orders, it is also important to include provisions on serving notices to the opposite party to attend court. The Indian law uses a mixture of Civil and Criminal Code provisions to ensure effective service of notice.</p>
82. Police receiving copies of any order granted shall serve the order on the person against whom it is sought within 12 hours of receipt.	
83. Proof of service shall be filed with the Registrar of the issuing court within 7 days of service.	
Modifying or Cancelling a Protection Order	
84. Protection orders may be modified or cancelled upon the application of the complainant, provided that a court of competent jurisdiction is satisfied that the order is no longer necessary and that the consent has not been obtained through duress.	<p>This provision allows the woman to withdraw the contact prohibitions in the order if the parties reconcile or want to maintain relations for co-parenting or other reasons, but keeps the anti-violence provisions in place.</p> <p>Provisions on appeals should be included in addition to provisions on discharge and modification.</p>
85. In the event of a cancellation of a protection order by consent:	
<ul style="list-style-type: none"> The portion of a protection order prohibiting contact between the complainant and the person against whom the order is sought may be cancelled; and 	
<ul style="list-style-type: none"> Provisions requiring the person against whom the order is sought refrain from committing acts of violence against the complainant and her children or family members shall stay in place. 	
Penalty for Non-Compliance	
86. Breach of any protection order, including an <i>ex parte</i> protection order, is a criminal offence. A person violating a protection order shall be held in contempt of court and subject to fines to be specified by regulation and a term of imprisonment not to exceed 6 months.	<p>Model United Nations Framework for Domestic Violence Legislation advocates penalties to deter breaches and demonstrate that breaches are serious offences. ASEAN countries with protection orders commonly have penalties for breaches.</p> <p>This provision would need to be harmonized with any existing penal provisions and other relevant statutes.</p>

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	<p>In the ASEAN region, penalties for breach of orders vary between maximum terms of 30 days to six months. Illustrations are-- the Indonesian domestic violence law penalizes second acts of breach with an imprisonment term not longer than 30 days. The Philippines Anti-VAW law penalizes the breach of temporary protection orders with imprisonment of 30 days. The Malaysian law stipulates a fine extending to two thousand and /or an imprisonment term not exceeding six months.</p> <p>The Indian law, however, allows the imposition of a term not exceeding 1 year in cases of breach, with or without penalties. Though the sentence prescribed is comparatively low, the Indian law also deems the breaches of orders to be cognizable and non-bailable.</p> <p>The Malaysian law also empowers courts to issue a suspended arrest warrant at the time of granting an order, that will lead to immediate arrests in cases of breach.</p>
87. In the case of a permanent protection order, where the defendant has been convicted twice of a breach in the previous 3 years, the punishment shall be up to 2 years imprisonment.	Escalation of violence and willingness to disregard prohibitions on contact are danger signs. Progressive penalties indicate that disobeying an order is a serious offence and will be punished accordingly.
88. The court shall establish appropriate procedures in each case to monitor the person against whom an order is made.	Consideration will need to be given to how monitoring is carried out. In some cases, it may be unnecessary. In others, it may be appropriate to require an offender to notify police of a change of address.
89. A conviction under this Law resulting in incarceration will not relieve the offender of the duty to pay child support or maintenance mandated under any other Act.	Note that the Philippine Domestic Violence Act allows a court to direct employers to pay a portion of a worker's salary to the woman in support – a mechanism like a garnishing order but to be paid out directly to the victim, not held by the court pending determination of proceedings.

Duties of Police Officers

Possible Provisions	Sources/Precedents/Comments
<p>90. While investigating any alleged offence under this Law, attending police officers should:</p> <ul style="list-style-type: none"> • Respond promptly to every request for assistance and protection in cases of violence against women, even when the person who reports such violence is not the complainant; • In the case that the offender is in the victim's residence, remove the offender from the premises or arrest him, if there is no alternative residence; • Inform the victim of her rights; • If appropriate, assist the victim in obtaining medical treatment for any injuries, and if necessary, transport the victim to medical facilities; • If appropriate, assist the victim in securing safe temporary housing; • If appropriate, assist the victim in contacting women's organizations or non-government organizations that offer support and counselling; • If the victim requests, assist her in applying for a protection order or arrange for an advocate to assist her; and • Serve protection orders on offenders are required elsewhere in this Law. 	<p>Laws in the Philippines, Cambodia and Malaysia prescribe duties of officers. The duties listed here summarize those recommended in the UN Handbook for Legislation on Violence Against Women. They necessarily repeat information provided in other parts of the law.</p> <p>Indonesian legislation.</p> <p>Philippines legislation.</p>

Duties of Prosecutors

Possible Provisions	Sources/Precedents/Comments
<p>91. Prosecutors appointed at all levels must be provided with training on issues related and laws applicable to violence against women, particularly trainings on obtaining civil orders and using civil procedures.</p> <p>Prosecutors must inform the complainant of her rights including:</p> <ul style="list-style-type: none"> • Her rights to make applications for civil reliefs, including maintenance and compensation. • Availability of [implementing officers/ service centres], support services and legal aid and ways of accessing such /agencies services • Explain and keep women updated on court proceedings, filings and its outcomes. • Explain and instruct women on content and implications of orders received from courts <p>Prosecutors must effectively represent victim's concerns in court proceedings</p> <p>Prosecutors must facilitate women's access to legal aid for civil proceedings under other laws and support services</p> <p>Prosecutors must coordinate with the police, other law enforcement mechanisms / implementing agencies, service providers, etc. while dealing with cases of violence against women</p>	<p>It is recommended that duties and trainings for public prosecutors are separately provided for. This is particularly due to the fact that prosecutors, functioning within the criminal justice system, have limited familiarity with civil orders and procedures.</p> <p>The Philippines Anti-VAW law contains provisions enlisting duties of prosecutors in dealing with cases of violence against women.</p>

Sexual Harassment

Possible Provisions	Sources/Precedents/Comments
<p>92. Sexual harassment is a form of gender discrimination and consists of any unwanted, offensive or humiliating behaviour related to a person's gender. It includes but is not limited to the following:</p> <ul style="list-style-type: none"> • Unwanted touching; • Coercion to engage in sexual acts; • Display of sexually explicit materials; • Offensive comments or acts that reference a person's gender; and • Repeated unwanted invitations to social activities. 	<p>This part deals with non-criminal acts. This part may not be included in the law, however it is in keeping with the CEDAW recommendation to ensure prohibitions on violence are directed at violence in the home, violence in the community (including both stranger violence and violence in places women work and go to school), and violence from state actors. This part is adapted from various ILO conventions summarized in Gender Equality and Decent Work: ILO Conventions and Recommendations that Promote Gender Equality as of 2012 (available online)</p> <p>In Malaysia and Singapore (also in India) Section 509 and 354 are used to penalize conduct amounting to sexual harassment. In these countries civil claims may also be filed against harassers (for trespass and harassment) and employers (for failing to ensure safety of employees, vicarious liability and contractual duty)</p> <p>The Philippines has enacted a special law to deal with sexual harassment at the workplace and in educational institutions. Sexual harassment is defined in relation to both sites. The definitions include quid pro quo harassment and hostile work environments. Other than providing for employment duties to prevent sexual violence and liabilities for the failures in discharging duties, it also penalizes sexual harassment with imprisonment of not less than one month extending to up to six months and/or a fine.</p> <p>In India, the Supreme Court has laid down guidelines to deal with sexual harassment. In these guidelines, sexual harassment is defined as <i>"Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment."</i></p>
93. Sexual harassment is prohibited.	
94. Workplace sexual harassment is sexual harassment that occurs between people who have a work relationship, including between co-workers, supervisors and workers, and patrons of a service or business and workers. Workplace sexual harassment includes any behaviour of a	This may be moved to Definitions.

<p>sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities.</p>	
<p>95. Employers have a legal responsibility to take reasonable care to provide workers with a safe work environment free of sexual harassment and to stop workplace sexual harassment when it occurs.</p>	<p>This provision is included to extend liability for harassment to employers, not just individual employees, because employers have a responsibility to create a safe workplace. However, liability may not arise in the case of an isolated incident.</p>
<p>96. Any person who has experienced sexual harassment may bring a complaint to the Courts</p>	<p>Direct access to courts must be ensured in the law. Most countries, while stipulating employer's duties for prevention also obligate the establishment of internal complaints committees to receive, investigate and recommend actions on complaints of sexual harassment. The Philippines law includes such provisions.</p> <p>In India, Internal Complaints Committees set up under the Supreme Court guidelines must include a member from an NGO to guard against bias. After such a committee completes its enquiries and makes recommendations, either party can file petitions before the court if recommendations of the internal complaints committee are not agreed with.</p> <p>Malaysia amended its Industrial Relations Act, 1967 for dealing with complaints of sexual harassment. Further the Ministry of Human Resources encourages employers to adopt a Code of Practice (1999) and establish an internal mechanism to deal with complaints of sexual harassment.</p> <p>Directives to employers to set up complaints committees and take steps to prevent sexual harassment at the workplace, are useful in so far as the organized sector is concerned. The establishment of a tribunal to hear sexual harassment claims may be useful in extending the law's ambit over the unorganized sector and other sectors (e.g. professional relationships, consumers, contractual services, etc.). However, the constitution and responsibilities of such a tribunal and its location (whether a labour commission, or any other commission) must be determined by studying existing complaints mechanisms (for receiving complaints of misconduct) established under other laws relating to employment and professional relationships.</p>

<p>97. If a complaint is found to be substantiated, the tribunal may award damages and compensation to the victim including, but not limited to,</p> <ul style="list-style-type: none"> • Pain and suffering, taking into account the degree of physical and mental injury suffered; • The cost of medical treatment for injuries including counselling; • Any loss of earning; • The amount and value of property destroyed; and • Fines to both employer and offender 	<p>In cases of non-criminal harassment and discrimination, the appropriate penalty is usually a fine, although consideration may be given to other measures such as mandatory gender awareness training or community service, or informal mediation procedures involving formal apologies or other restorative justice measures.</p>
<p>98. In the event that the complaint involves breach of other sections of this Law, the offender may be also subject to the penalties provided there, including criminal sanctions.</p>	<p>This provision makes explicit that if, for example, a woman is verbally harassed by a co-worker and then sexually assaulted, the co-worker may be liable for penalties for both types of actions and from different adjudicative bodies.</p>
<p>99. The Parliament shall develop guidance for employers to enable them to create their own sexual harassment policies.</p>	<p>The aim of this provision is prevention. As mentioned above, the Malaysian Ministry of Human Resources has prepared a Code of Practice, 1999 that employers are encouraged to adopt.</p> <p>In India, the Supreme Court has laid down guidelines for employers to prevent and address sexual harassment at the workplace and educational institutions. However, it is widely felt that the Parliament should enact a separate law on sexual harassment based on these guidelines. Ministries and government departments can also formulate such policies.</p>

Administration

Possible Provisions	Sources/Precedents/Comments
100. The (insert respective department /ministry) may make other regulations as necessary for the operation of this Law, including as designated herein.	This is a “basket clause” dealing with a variety of administrative issues, because there are many issues to be decided which will require additional regulations. Sometimes, regulations pertaining to specific issues that may change more frequently (like monetary penalties, fees, or terms regarding benefits) are put into regulations, which are more easily amended, rather than into the law itself.
101. For the purposes of administering this legislation, the [appropriate body] shall establish special courts empowered to deal specifically with offences of sexual and domestic violence as set out in this legislation.	Nepal has established special courts for domestic violence. As noted above, this may not be practical but bears discussion.
102. Until the establishment of such special courts referred to in s. 101, the regular Myanmar courts of competent jurisdiction will have jurisdiction over cases of violence against women and their children under this law.	Need to seek advice of child law expert
103. For the purposes of administering this Law, wherever possible, police units and prosecution services shall assign each complainant a point person to coordinate all communications regarding his or her case, including offender bail hearings, releases, familiarization with court procedures, trial dates, and sentencing.	Studies internationally have shown that women experience greater understanding and satisfaction, and less stress, from their experiences with court processes when they are assigned a person to coordinate their cases or when there is continuity of personnel throughout.
104. Within one year of the coming into force of this Law, Court Services, working with non-government organizations, shall establish a court accompaniment program with advocates trained in the provisions of this Law, the court system and violence against women prevention, whose job it is to assist women testifying as victims and witnesses in court proceedings and to familiarize them with procedures. Advocates shall be paid through Court Services. A training program for advocates shall be established by Court Services, the (insert respective department/ministry) and non-government organizations with expertise in the area of violence against women.	<p>Victim services support is a critical element to getting women to testify in cases of violence. More cases successfully go to trial when women have support throughout the criminal process. In many countries, the government funds victim services workers to support people through the court system, by providing education about the legal system, emotional and practical support, such as transportation to court dates, and counselling.</p> <p>There are two ways in which victim service support, in varying degrees, is provided to complainants. First, duties are prescribed for state functionaries. social workers and other service providers (health services, legal aid services) to assist women in filing complaints and during court proceedings. Philippines and Indonesia are examples in this regard.</p> <p>The other method is to appoint officers (Protection Officers in India, Enforcement Officers in Malaysia and Bangladesh, Competent Officers in Thailand) to assist women in accessing justice and support services.</p> <p>In India, service providers (including NGOs working on</p>

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	women's issues or providing services to women) can be registered under the domestic violence law. The purpose of registering NGOs and service providers is to protect their actions (taken in good faith) and empower them to create authentic documentation of domestic violence complaints, which may be relied on by courts. It must be noted that registering NGOs does not allow the State to delegate its duties of protecting victims of violence to private entities, nor does registration result in loss of the NGO's autonomy and independence. Instead it is to recognize and protect the role of legitimate NGOs and service providers engaged in assisting women. (This point might be useful in dealing with the issue raised in the section on 'registration of organizations protecting women's human rights.')
105. A communication mechanism shall be established so that, in the case of complaints brought under this Law, records of those complaints and any proceedings or convictions may be made available in any parallel family proceedings involving the same parties concerning issues of separation, divorce, child custody and succession.	Coordination with family courts is important in cases involving violence, particularly family violence. If a family court issues visitation or custody orders contrary to the protection orders issued by a criminal court, problems arise.
106. In the case of complaints brought under this Law parallel to family proceedings involving the same parties, a court of the same division should hear all related cases, in order to allow information to be shared between judges.	Allowing one court to hear all related proceedings eliminates these problems.

Tribunals - Sexual Violence/Gender Discrimination

Sources/Precedents/Comments

The remedies in cases of sexual harassment at the workplace differ greatly from remedies needed in cases of violence against women. The main difference being that VAW remedies are accessed primarily through the criminal justice system. Such remedies must be provided on an emergency basis and its execution must be done by those vested with enforcement powers. An administrative tribunal is usually vested with powers of investigation, however its decisions are mostly recommendatory in nature. Hence tribunals may not have powers to enforce orders. Further creating tribunals may result in duplicating forums and create diversions from courts, thus leading to impunity in VAW cases. Also, appropriate remedies in cases of sexual harassment and sexual violence may, in cases, be conflicting. (See discussion on mediation remedies in cases of sexual harassment and sexual violence above)

It is possible to vest tribunals with enforcement powers. This has been done in special circumstances, for instance tribunals set up to address genocide and war crimes. It is unclear why the establishment of tribunals is being contemplated under VAW legislation.

However, it is recommended practice to institute specialized tribunals to deal with complaints of discrimination and sexual harassment at the workplace. But such tribunals are better accommodated within special laws on discrimination and sexual harassment at the workplace.

In the Asian region, (though not within ASEAN) Hong Kong has established an Equalities Commission to address various forms of discrimination including discrimination based on sex, disability, family status and race. This Commission can receive and process claims on sexual harassment at the workplace. However, this Commission does not deal with complaints of other forms of violence.

Other countries such as Laos, Cambodia, Philippines and Indonesia have established women's commissions to address discrimination, monitor implementation of laws and provide policy inputs. Women's Commissions set up in India are expected to monitor and review laws as well as receive complaints of discrimination and recommend action to be taken by enforcement agencies. However, the Commission's decisions are purely recommendatory in nature. Filing complaints before the Women's Commission is useful in where cases police or other enforcement authorities refuse to initiate action in cases of VAW – thus exhibiting attitudes that are discriminatory towards women. In such cases, women may bring complaints to the Commission, which will then recommend actions to be taken by the relevant enforcement officials.

Training of Government Personnel

Possible Provisions	Sources/Precedents/Comments
107. All personnel working the special courts referred to in s.101 or, until the establishment of such special courts referred to in s. 102, administering this Law, including prosecutors and judges, shall undergo prescribed training in violence against women and domestic violence and the provisions of this Law in order to undertake their duties in prosecuting cases of violence against women.	The provisions here may be arranged differently or distributed throughout earlier parts of the Law. In all aspects of training, it will need to be decided who is best positioned to deliver it. Consideration may also be given to mandating funding and making one ministry responsible for distribution of program funds, but have other organizations actually give it.
108. Police and other first responders, including forensic medical personnel, shall undergo special training in violence against women and domestic violence and the provisions of this Law in order to undertake their duties investigating the offences in this legislation.	
109. The Armed Forces shall require that all its personnel undergo sensitivity training in sexual and gender-based violence in a program to be drawn up jointly with the (insert respective department/ministry). The training program shall include familiarization with this Law and the penalties available under law for contraventions, including how to recognize and report incidents of sexual and gender-based violence.	The UN Handbook for Legislation on Violence Against Women includes examples from Spain, the Philippines,
110. For the purposes of ensuring the safety of women in emergency situations, all emergency personnel shall undergo special training in violence against women and domestic violence and the provisions of this Law.	
111. Training programs for personnel in the criminal justice system shall be developed in conjunction with non-government organizations with expertise in the area of violence against women and shall be delivered by the (insert respective department/ministry) and shall be required for all employees entering service, to be repeated on an [annual/regular] basis.	As noted above, should be adapted to the groups best placed to engage in training and appropriate the Ministry.
112. The Government of the Republic of the Union of Myanmar shall institute a program of training with the Armed Forces on understanding women's participation	See UN Security Council Resolution 1960

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in peace processes.	
113. Upon adoption of this law, the (insert respective department/ministry) will develop a training program about the contents and import of this law for government personnel, and ensure that it is delivered to all government personnel at the State, Region, and Township levels.	

Public Education and Awareness Raising

Possible Provisions	Sources/Precedents/Comments
114. Upon the adoption of this law, the (insert respective department/ministry) and other relevant government ministries will undertake public education programs on radio, television, and through the public school system, in each State and Region, to make people aware of the contents and import of the law.	The UN Handbook for Legislation on Violence Against Women recommends that public awareness raising and education programs are an important aspect of changing the social tolerance for sexual and gender-based violence. These provisions should be adapted to reflect the programs that you think should be delivered and the bodies most appropriately mandated to do that.
115. The (insert respective department /ministry) and other relevant government ministries, in conjunction with non-government organizations with expertise in issues of violence against women, will develop a series of public education programs for delivery in schools and popular media, including on radio, television and in newspapers, on: <ul style="list-style-type: none"> • Sexual violence and consent • Domestic violence • Sexual harassment and gender discrimination in the workplace • The responsibilities of parents in child-rearing. 	
116. Upon adoption of this law, the (insert respective department/ministry) shall develop and deliver a public program on the responsibilities of employers to ensure that their workplaces are free of sexual harassment and gender discrimination.	
117. For the purposes of education, materials about this law shall be developed in major languages.	

Programs

Possible Provisions	Sources/Precedents/Comments
118. The (insert respective department /ministry) in conjunction with non-government organizations with expertise in issues of violence against women will establish mandatory counselling and rehabilitation programs for all offenders on women's human rights, anger management and healthy relationships.	Preventative measures are another recommendation of the UN Handbook for Legislation on Violence Against Women. Counselling and rehabilitation programs are just examples of the form these could take. Consideration could be given to making these provisions more detailed based on stakeholder knowledge of existing programs.
119. In order to provide for the safety of women and their children, agencies providing programs under this Law and relevant government ministries are mandated to share information regarding concurrent charges, convictions and location of offenders, including with victims.	<p>This provision is meant to capture the idea of multi-agency cooperation on protection issues but needs to be further developed, particularly with regard to confidentiality standards, data sharing etc.</p> <p>The aspects referred to above should be detailed in rules and other forms of delegated legislation. If the idea is to promote multi-agency cooperation-- including provisions on state obligations and duties can do it. These duties will have to be performed by a nodal department or ministry. One of the duties that can be included is -- develop protocols and set standards for multi-agency cooperation and coordinated delivery of services. This provision is included in the Indian law on domestic violence. The Indonesian law on domestic violence sets out duties of the State that includes efforts to prepare and develop service program cooperation system and mechanisms that the victim has easy access to.</p> <p>Duties of the state should also include provisions for trainings to ensure that protocols are uniformly understood are followed. Finally, there should be a link established in the law with national plans and strategies on VAW or broader issues of women's equality rights to ensure effective implementation. (UN Handbook, Chapter 1 recommendation 3.2) Enumeration of State obligations in the Indonesian domestic violence law may serve as a good reference in this regard.</p>
120. Despite provisions dealing with agency coordination to assist women experiencing violence, all complainants shall be entitled to privacy with respect to personal records, including therapeutic records.	It is important that while measures are being taken to protect women, their rights to enjoy privacy concerning their personal lives are not exposed, including to their communities and to government personnel who may have no reason to access that information. Similar provisions exist in the Philippines Domestic Violence Act.
121. The (insert respective department /ministry) shall oversee the establishment of funding programs for safe houses, to be administered by non-government organizations and relevant government agencies that provide temporary shelters for women and their families in immediate danger.	<p>Providing women a way of escaping violent situations is critical. Consideration should be given to deciding which groups are best placed to decide what kind of cooperation between government and non-government agencies is most appropriate, and provisions should be drafted to reflect the situation and the most practical approaches.</p> <p>The Philippines Anti-VAW law includes specific provisions on funding for the implementation of the law. As</p>

	<p>mentioned above, the Indonesian law enumerates State obligations in implementing the law and providing support to victims of violence. Provisions on budgetary allocations and dedicated funds from government sources should be included in the law.</p> <p>Illustrations on kinds of cooperation between governments and NGOs-</p> <p>A number of countries reportedly collaborate with NGOs and community based organizations, in addressing violence against women, particularly with regard to policy formulation and law making, service delivery, implementing programs, plans and projects; creating awareness and providing trainings.</p> <p>In order to include NGOs in policy-making processes, many countries include NGO representatives in mechanisms instituted to address violence against women. For instance, in Austria, NGOs participate in inter-ministerial bodies that address issues relating to violence against women. The United Kingdom's Women's National Commission, which is an official advisory body to the government, includes organizations working on violence against women. NGOs are present in Ireland's National Steering Committee on Violence Against Women and Observatory on Violence against Women.</p> <p>Another method of involving NGOs in policy making is through consultations at the time of drafting laws or while preparing national action plans. For instance, in the Philippines, NGOs have been involved in the drafting of anti-violence laws, as was the case in Malaysia.</p> <p>A common reason to collaborate with NGOs is to ensure delivery of services to women victims of violence. To this extent, some countries provide support or funding to NGOs, examples being Finland, Germany, and Guyana. In Sweden funding is provided to various NGOs under the government action plan to combat violence against women. In other instances states provide services jointly with NGOs. For example, in Israel— state agencies and NGOs jointly operate centers and treatment programs for victims of sexual assault. Portugal co-supports NGOs that work on trafficking issues.</p> <p>Collaborations with NGOs are also undertaken with a view to implement national action plans. For instance, in furtherance of its national plan to eradicate violence against women, Lithuania collaborates with NGOs to ensure the provision of complex social services, which includes shelter, legal counseling services, social assistance, etc. In Botswana, programs under the national gender program are implemented in partnership with various NGOs.</p>
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	<p>Another significant reason for collaborating with NGOs is to create awareness on issues of violence against women- this is done either by partnering with NGOs in advocacy campaigns, or by involving NGOs while providing trainings to or building capacity of stakeholders and implementing agencies. Mauritius is an example of a country that has collaborated with NGOs to conduct campaigns, provide trainings and undertake capacity building efforts. In Suriname, there is collaboration between the police and NGOs in dealing with domestic violence cases, providing trainings etc. In Spain, NGOs involved in providing services, creating awareness and preparing educational materials receive state funding from government departments/ agencies at various levels.</p> <p>However, these kinds of collaborations are rarely reflected in legislative provisions and are a matter of policies and strategies.</p>
<p>122. In conjunction with the establishment of safe houses, the (insert respective department/ministry) shall work with non-government organizations to develop and fund counselling and job training programs for women and their children who are victims of violence under this Law.</p>	<p>Providing women support so they can establish economic autonomy is also an important consideration.</p>

Monitoring

Possible Provisions	Sources/Precedents/Comments
<p>123. The (insert respective department /ministry) on behalf of the Government of the Republic of the Union of Myanmar shall be mandated to collect and publish annually statistics on the following, disaggregated by type of offence and located by jurisdiction:</p> <ul style="list-style-type: none"> • Number of cases reported to police stations pertaining to offences under this Law • Number of charges approved under this Law • Number of guilty pleas under this Law, disaggregated as early (within one month of charge approval) or late • Number of prosecutions under this Law • Number of convictions under this Law • Number of protection orders made under this Law • Number of withdrawals by complainants regarding offences under this Law • Number of offenders completing rehabilitation programs under this Law • Number of civilian personnel trained under programs mandated under this Law • Number of military personnel trained under programs mandated under this Law • Number of non-government programs for safe houses, counselling, and job training established through funding mandated under this Law 	<p>Many commentaries on the CEDAW and UN Handbook for Legislation on Violence Against Women advise collecting data regularly after a law comes into effect as a valuable way of evaluating whether it is being properly implement and whether the provisions are effective.</p> <p>Early guilty pleas are desirable because they are efficient in terms of court resources, and they relieve the victim's stress of anticipating a trial. Note that with respect to early and late guilty pleas, consideration should be given as to how long cases usually take to resolve in the Myanmar court system.</p>
<p>124. The (insert respective department /ministry) shall establish programs to evaluate the satisfaction of complainants with police and court protocols on violence against women. Programs will be administered by third parties chosen by the (insert respective department /ministry) and non-government organizations working on violence against women, who will conduct exit interviews with complainants on their treatment by relevant authorities. Reports of their findings shall be produced annually for internal evaluation purposes.</p>	<p>A victim-centred approach such as the one taken in the UN Handbook for Legislation on Violence Against Women requires not only data but also qualitative information from women on what is working and what isn't.</p>

Miscellaneous Provisions

Possible Provisions	Sources/Precedents/Comments
Paid Leave of Absence	
125. Any complainant reporting offences under any part of this Law is entitled to paid leave of absence from employment for up to 10 days, in addition to any other entitlement of leave under existing labour laws or contractual provisions.	The Philippines Domestic Violence Act contains a provision like this. This may need to be qualified to make it more specific as to how to determine when a bona fide complaint is made; however, note that if a woman is required to wait until the complaint is settled, the paid leave of absence is not going to do her any good in terms of providing time to deal with the trauma of the event. If this seems excessive, remember that in many parts of the world, unionized workers have access to this type of relief.
126. Employers failing to grant paid leave shall be subject to penalties as defined by the (respective ministry/ministries) to be administered by the Tribunal.	

Registration of Organizations Protecting Women's Human Rights

Possible Provisions	Sources/Precedents/Comments
(Draft provision)	Discussion will need to take place as to how registration can impact upon organizations working for women. If this is desirable then the inclusion of a general provisions saying that organizations can be registered with the details of registration in separate regulations.

Implementation

Possible Provisions	Sources/Precedents/Comments
Further provisions to reflect para 3.3.1 of the UN Handbook	Aspects of implementation can be detailed once there is a decision on the kind of legislation that will be proposed.

Consequential Amendments to Other Legislation

Possible Provisions	Sources/Precedents/Comments
(Draft provisions)	<p>Consideration should be given as to what other laws may be affected by this law, and the changes to specific provisions listed.</p> <p>It may be useful to refer to the 'repealing clause' in Philippines Anti VAW law, on the issue of consequential amendments to other legislation. This provision stipulates that 'all laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.' This provision can be considered for adoption, with additions to prohibit customary practices that are inconsistent with the provisions of this law.</p>

Glossary

Aggrieved person	Person (including women and children) alleging to have faced violence from the accused/respondent and is in a domestic relationship, or dating/ sexual relationship with such person.
Bailable offences	Offences in which bail is granted as a matter of right, hence the person shall be offered to be released on suitable bail upon his arrest
Non- bailable offences	Offences in which the accused shall not be automatically entitled to be released on bail
Child marriage	Marriage of children and adolescent below the age of 18
Civil orders	Orders granted by courts directing a party to stop certain acts, provide compensation/ damages, and providing other reliefs to the complainant.
Cognizable offences	A criminal offence in which the police is empowered to register an FIR, investigate, and arrest an accused without a court issued warrant.
Non-cognizable offences	A criminal offence in which police can neither register an FIR, investigate, nor effect arrest without the express permission or directions from the court.
Complainant	Person (including women and children) initiating legal action by filing a complaint.
Compoundable offences	Offences, which can be compromised by the parties to the dispute. The permission of the court is not necessary.
Non compoundable offences	Offences in which no compromise is allowed
Crimes committed in the name of honor	The full range of discrimination and violence committed against women to control their life choices, movements and sexual behavior and reputation, in the name of honor.
Criminal provisions	Provisions that criminalize certain conduct and prescribe penalties in terms of imprisonment sentences and fines
Domestic violence	Violence perpetrated by intimate partners and other family members, and manifested through: <i>physical abuse</i> (e.g. slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder); <i>sexual abuse</i> (e.g. coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others); <i>psychological abuse</i> (e.g. threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation); and <i>economic abuse</i> (e.g. denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.)
FIR	FIR or a First Information Report is a written complaint lodged with the police by victims of cognizable offences. Lodging of an FIR sets the process of the criminal justice system in motion.
Forced marriages	Marriages lacking the free and valid consent of at least one of the parties. In its most extreme form, forced marriages can involve threatening behavior, abduction, imprisonment, physical violence, rape and in some cases, murder; an arranged marriage officiated without the consent of the interested parties.
Interpersonal Violence	Defined to include violence between family members and intimate partners and violence between acquaintances and strangers that is not intended to further the aims of any formally defined group or cause. Self-directed violence, war, state-sponsored violence and other collective violence are specifically excluded from these definitions.
Intimate Partner Violence	A pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners. It includes a range of sexually, psychologically and physically coercive acts used against adult or adolescent women by a current or former intimate partner, without her consent. Though women can be violent toward men in relationships, and violence exists in same-sex partnerships, the largest burden of intimate partner violence is inflicted by men against their female partners
Marital rape	Sexual intercourse forced on a woman by her husband, knowingly against her will.
Rape	Physically forced or otherwise coerced penetration of the vulva or anus, using a penis,

	other body parts or an object.
Respondent	Person against whom a protection order or any other civil remedy is sought
Sexual and gender based violence	A term which encompasses a wide variety of abuses, including rape, sexual threats, exploitation, humiliation, assaults, molestation, domestic violence, incest, involuntary prostitution (sexual bartering), torture, unwanted or noxious insertion of objects into genital openings, and attempted rape. Some have also considered female genital mutilation and other traditional practices (including premature marriage, which increases maternal morbidity and mortality) as forms of sexual and gender-based violence.
Sexual harassment	Harassment of a person because of her or his sex, as by making unwelcome sexual advances or otherwise engaging in sexist practices that cause the victim loss of income, mental anguish and the like.
Sexual violence	Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.
Shared household	A household where the respondent / accused and the aggrieved person reside or have resided irrespective of whether either has any right or title over the property.
Stalking	A pattern of behaviors, which are repetitive and unsolicited such as, unwanted attention, communication, or contact (e.g. following and spying on the victim, damaging property, threats, intrusive attempts for communication, etc.).
Trafficking	The recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (including, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs).
Warrant	A warrant is issued by a judge authorizing the arrest or detain an individual.

Source: <http://www.endvawnow.org/en/articles/347-glossary-of-terms-from-programming-essentials-and-monitoring-and-evaluation-sections.html>



Gender Equality Network