



**LEGISLATION IN THE MEMBER STATES
OF THE COUNCIL OF EUROPE
IN THE FIELD OF VIOLENCE AGAINST WOMEN**

VOLUME II: ITALY to UNITED KINGDOM

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ITALY

Information provided by the Department for Rights and Equal Opportunities in **November 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

Over the last few years, in Italy, there has been substantial progress with respect to the understanding of the phenomenon of violence against women, to the opening of shelters, as well as in the legislation field.

The starting point of a series of activities that have involved the State Administration, local authorities and women's associations, was constituted by the Directive of the Italian Prime Minister dated March 27, 1997, entitled "Actions aiming at promoting women empowerment, at acknowledging and guaranteeing freedom of choice and social equality for men and women".

One of the most important initiatives aiming at assisting and helping women victims of violence consists in the opening of shelters, managed by women's associations and financed by local authorities. In November 2000, there were 15 such Centres, which have become 22 in 2002. These shelters, some of which are kept secret, offer reception services, legal advice, psychological counselling, as well as other forms of support. Approximately 90% of the women looking for help in shelters are escaping from physical or psychological domestic violence.

More than one hundred associations offer listening services, counselling call centres and law experts in order to help and give psychological support to women victims of violence. Moreover, a network was set up connecting public services, shelters and all the associations dealing directly with violence against women.

Some regions have achieved important results, such as Emilia-Romagna Region, which opened a shelter in each provincial capital, also coordinating them at regional level.

However, the situation is still critical. Over the last few years, the number of cases of sexual assault and physical and psychological abuse reported to the police have been increasing. Moreover, many of such cases and serious injuries are often reported as home accidents, while they are the consequences of domestic violence and abuse.

1.2 DOMESTIC VIOLENCE

In compliance with the provisions of the aforementioned Directive, the Government undertook a

legislative action by promulgating Law n. 154 of April 5, 2001: "Measures against violence in familiar relations", which introduced some of the judicial measures that already exist in other countries' legislation. "Barring orders", one of the measures introduced, ensure the separation of the perpetrator of violence from the family house.

The approval of law n. 154/2001, dealing with the separation of the violent relative from the family, through civil or penal legal action. Especially in the past, violence against women in domestic life has created a problem of big proportions to be regulated by national legislation.

Before this measure there was not specific legislation to avoid the persistence of violent behaviour of the aggressive relative in the family previous to the penal process.

Law n. 154/2001 has established that the judge can order the immediate separation of the violent relative from the places frequented by the family (for example the work place, the school of the children), if his behaviour causes serious prejudice to the physical or moral integrity or to the personal freedom of the family, when the fact is not liable of persecution.

This law introduces a change of perspective in facing violence against women, because it deals with the demand of victims to stay in their own homes and not to leave their own habits of lives.

An other sign of the will to eliminate violence is the creation of a National Emergency Number for women victims of violence, in 2005. The main objectives of this number are the following:

To guarantee phone assistance and adequate services to victims of violence, able to orient their help request to other specialised services operating on the territory (anti-violence centres, social services, police force, health structures..);

To guarantee the efficiency and effectiveness of the abovementioned services, also in relation with the achievement of all National Network against violence objectives.

Above all, the service will assure: the acceptance of all help requests, a professional help for psychological support and legal orientation, the transferring of the calls or the victims of violence to specialized services operating on the territory.

URBAN CITY NETWORK AGAINST VIOLENCE

As far as the national programmes concerns, you can underline the the organization and realization of a programme called "National network against violence among Urban Italy cities" by the Department for Equal Opportunities in 1997.

This programme has initially involved 8 cities (Venice as leader, Rome, Naples, Foggia,, Reggio Calabria, Lecce, Catania and Palermo), then it has been enlarged to other 8 cities in 2001 (Genova, Trieste, Cagliari, Bari, Salerno, Siracusa, Cosenza and Catanzaro) and finally to other 9 (Torino, Carrara, Pescara, Caserta, Mola di Bari, Brindisi, Taranto, Crotone, Misterbianco), for the current number of 25 cities. This network represents a part of the communitarian Programme "Urban Italy 1994-1999", an initiative create for disadvantaged urban areas in European cities, financed by the European Regional Development Fund. The main goal of this project has been investigating the social, cultural and institutional context in which the problem of violence against women is developing. Thanks to this National network, it has been possible to identify the perception of violence and its stereotypes in different national places.

- The activities of the pilot project have been organized in:
 - Analysis of the perception of violence against women in different areas and monitoring of services and institutions involved in this phenomenon;
 - On-line publication of analysis system, data and information about violence;
 - Collection and exchange of information and experiences among different operators working in this Network, through the organization of local and national seminars;
 - Creation of database and construction of a website for the National Network against Violence to classify and organize all results of the researches.
- The Italian government has also promoted a system action to realize a National Network against violence, after the conclusion of the actions promoted in the 25 cities integrated in the Urban project. The essential purpose of the system action is the organization of a structure to protect and assist women victims of violence.
- This intervention programme has realize the following objectives:
 - the census of operations and local programmes in favor of women victims of violence;
 - a specific programme to create a collaboration among social services, health and police structures to remove any forms of violence;
 - the involvement of the centres against violence;
 - the support to the services against violence and the creation of new services to increase their distribution in the national territory;
 - the organization of detailed programmes to support courses of education for public services operators working in first aid, social and psychiatric services;
 - a National Observatory to collect and share all data and experiences about violence;
 - the promotion of initiatives to create awareness in the citizens of the problem of violence, like media campaigns, seminars and conferences;
 - the monitoring of public and private services operating at national level in the field of fight against violence, through the use of Urban methodology;

- the synchronization of public and private services which deal with problems concerning intra and extra familiar violence against women.

STATISTICAL SURVEY

The Italian Government, has promoted a specific investigation to study and analyze the problem of violence and to distinguish the different forms of violence, collaborating with the National Statistic Institute (ISTAT).

The project is organized in two main parts:

1. The first part aims to study the dimension of sexual crimes (sexual harassment, sexual blackmail at work and sexual violence) in women experience;
2. The second part aims to analyze the sense of social security of women and a more specific research about every forms of violence.

The National Statistic Institute has adopted a specific method to carry out this type of investigation, achieving some important objectives:

- the detailed definition of the phenomenon;
- the creation of specific indicators to estimate the problem of violence;
- the identification of victims of violence and the establishment of samples;
- the organization of qualitative studies to value any aspect or manifestation of violence against women;
- the administration of the sample investigation of 2004 about violence to verify methodologies and tools of research;
- the organization of a final investigation, at the end of 2005, using a representative sample of women between 16 and 70 years old.

The first data resulting from the pilot investigation, called " Social security", shows the persistence of violence against women and the need to manage a detailed strategy to resolve this problem, through the organization of specific programmes and interventions.

However the study illustrates a regular improvement of the situation compare to previous investigations (1997-1998): the number of women victims of sexual violence has decreased from 24% to 19,7%, at the same time as the attempted rapes (from 3,6% to 2,6%), the obscene calls (from 18,5% to 9,4%) and the sexual blackmails (from 1,8% to 0,4%).

1.3 RAPE/SEXUAL ASSAULT

The first outcome of the World Conference of Women in Beijing was the approval on 15 February 1996 of a *new law against sexual violence*, that is Law n.66. Twenty years after the introduction of the first draft legislation, based on a citizens' initiative for which 300,000 signatures had been collected, the Italian female members of Parliament decided to start working together. They overcame their party differences, and pooled their efforts. Offence against the physical and psychological integrity of women, through sexual abuse, was in the new law taken out of the category of offences against public morality, and was instead placed in the category of crimes violating personal rights and freedom. The other big changes introduced by the new law included the unification of rape and sexual abuse in the single act of sexual assault. According to the law, this crime can be prosecuted based on the woman simple accusation, or with no need to report the case to the police if violence is associated to other crimes including, in particular, armed robbery and if the victim is a disabled, a minor child or is under legal guardianship. Conversely, the assault cannot be punished if it is perpetrated by a minor under thirteen and the age difference of the two children is less than three years.

To respond more adequately to the women who denounce sexual violence in many police stations throughout Italy, special investigation services have been organised.

Many training courses have been organised for social workers in a variety of contexts. The first emergency service for the victims of violence was organised by the "Mangiagalli Clinic" in Milan and the University of Rome carried out a first study on gastro-intestinal pathologies produced by violence.

The approval of law n. 66 has represented a significant innovation against sexual violence and a legislative means of women protection.

1.4 CHILD SEXUAL ABUSE/INCEST

In 1998, Law n. 269/98 “Provisions countering sexual exploitation and prostitution, pornography, and sexual tourism to the detriment of minor children, considered as new forms of enslavement” was promulgated. It was approved thanks to the pressure of public opinion, which was seriously worried by the numerous cases of violence, abuse and paedophilia reported.

Law 269/1998, in accordance to the New York Convention on the Rights of the Child of 1989, aims to protect the physical and psychic integrity of the child.

It aims to realize the following purposes:

To reinforce penal repression through the introduction in the code of new crimes

Provide the judicial police with more effective processual tools

Assign new means to combat the specific type of crime to the judicial police

Protect the minors from physical and psychic harm related to the crimes suffered by them

Assign important coordination tasks to the Presidency of the Council and to the Interior Minister

Moreover, a campaign had been carried out by some NGOs and, in February 1998, a National Committee was set up for the Coordination of the actions implemented to counter the mistreatment, abuse and sexual exploitation of minor children.

Based on the Commission work, in January 1999, a Committee was set up for the Coordination of the activities carried out by all Public Administrations, concerning prevention, assistance and legal services, as well as the protection of minors against sexual abuse under article 17 of the aforesaid law.

Besides the representatives of governmental institutions, the Committee also included some representatives of the NGOs operating in this sector (such as ECPAT, Terres des Hommes, Telefono azzurro, Telefono Arcobaleno, CISMAI), as well as some “experts”, including doctors, neuropsychiatrists and Juvenile Court judges.

The Coordination Committee’s main activity consisted in the definition of the guidelines for the training of the personnel, and in working for the best integration and coordination of the activities carried out by the institutions dealing with prevention and fighting abuse of children.

Law 269/1998, entitled “Provisions against the exploitation of minors’ prostitution, pornography and sexual tourism, as new forms of “reduction into slavery”, has been recently substituted with Law 38/2006, “Provisions regarding the fight against child sexual exploitation and child pornography, also through internet” (published in the Gazzetta Ufficiale no. 38 on February 15 2006, and included in the penal code and in the penal procedure code, redefining the existing types of crimes and introducing new ones.

The recent Law 38/2006 provides for the embittering of punishments against sexual abusers, those exploiting minors, those having pornographic materials involving minors and the tourists enjoying minors’ prostitution. It founds the National Centre to combat web pornography involving minors within the Ministry of Interior.

Finally, Law no. 38 of February 6 2006 introduces the new crime of “virtual pedophily-pornography”, occurring when the illegal pornographic material represents images involving minors and realized with graphic elaboration techniques detached from reality, but making those images appear real (virtual images).

1.5 SEXUAL HARASSMENT

Considerable work has been done the last years on the issue of sexual harassment and coercion in the workplace, thanks to the efforts of women trade unionists. This contribution led to the introduction of specific measures in the national labour contracts to protect working women from harassment.

Many codes of conduct have also been drafted, especially in the civil service and health-care sectors.

Sexual coercion at work is a widespread phenomenon. Sexual harassment affects also self employed female workers, as demonstrated by the ISTAT survey.

It has been made a breakthrough with the approval of the legislative decree of 8th of June 2005 (putting into effects the EU directive 73/2002/EC), which deals with the principle of equality of treatment between men and women as far as access and working conditions concerned, in particular with nuisances and sexual harassments. This decree compares sexual harassments in the workplace to other forms of discrimination, extending all the protection measures of the Italian legislation also to this field. In particular, article 2 updates the existing definition of direct and indirect discrimination with new communitarian definitions, according to the decree law n. 215 and 216 of 2003. It has been also introduced a definition of sexual harassment and several provisions to qualify as discriminations all treatments of the employer which don't respect the principle of equality of treatment between men and women. This legislative overview seems to offer suitable legal protection to prevent and repress discriminative behaviours and to guarantee the rights of the victims during the civil process.

1.6 PORNOGRAPHY

No information available.

1.7 PROSTITUTION

No information available.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

As it has been demonstrated in statistics elaborated by ISTAT, the phenomenon of obscene calls is increasingly decreased, from 18,5% (1997-98) to 9,4% (2002). This decrease is also due to the telecommunications changes: women are less exposed to receive obscene calls because they use mobile phones and there is a easy and quick possibility to find the caller.

1.9 FEMALE GENITAL MUTILATION

Over the last few years, in Italy, especially after the Beijing Conference and the UN Conference on Development, the focus of attention has shifted on the issue of Female Genital Mutilation, due to the increasing presence of sub-Saharan African immigrant women and political refugees.

In order to face this problem, the Government's first initiative consisted in a scientific action, dating back to 1997. That year, an international workshop was organised, envisaging the participation of health professionals and aiming at increasing awareness with respect to the gravity of such phenomenon, at understanding its global magnitude (in terms of women and countries affected), its extremely serious human and health implications, as well as its impact on new generations of children and young girls.

The self-determination and health of women, including immigrants, have since been among the Government's objectives. In fact, the above-mentioned Directive of March 7, 1997 denounces both public and private violence against women as human right violations.

During the international workshop, which was jointly organised with the *Istituto Superiore di Sanità* (National health Institute) and open to the participation of medical doctors, advisory office workers, associations and universities, the themes of the origin of such practice, its spreading and health (gynaecological, obstetrical and psychiatric) implications were tackled, also identifying its various forms and effects, which are still insufficiently analysed.

Italy has been dealing for a long time with the issue of the international defence of the rights of women and children, and their protection against genital mutilation practices. The Italian delegation played a major role during the 56th session of the United Nations General Assembly, when it was one of the promoters of the resolution on "traditional or customary practises affecting the health of women and girls", which condemns such practices since they are a serious form of violence against women and girls, as well as a violation of their basic human rights.

The above-mentioned Resolution aims at eradicating any customary practice hurting and physically handicapping women and girls, and female genital mutilations in particular, by forbidding such practices and seriously punishing their perpetrators.

It also obliges all nations to introduce concrete measures aiming at guaranteeing due respect for women and girls' human rights and fundamental freedoms, with a view to improving the status of women, and favouring their economic independence, thus enabling all women and girls to reject such practices and protect themselves against the risk of unhealthy genital mutilation.

Italy proved to be very sensitive towards the extremely delicate issue of genital mutilations. In fact, on February 12, 2003, the Senate's Justice Committee passed a bill entitled "Amendments to the Penal Code on the subject of mutilations", considering such mutilations as being relevant, from a criminal viewpoint, as such; it also envisages the application of the principle of extra-territoriality in the prosecution of this crime, even if it is perpetrated abroad by Italian citizens or by foreign nationals residing in Italy.

The new law n.7 on 9th January 2006 concerning the prevention and the prohibition of female genital mutilation considers such practices a crime.

This law represents a tool which on the one hand bans and punishes a custom not much known, on the other hand it carries out an information and sensibilization campaign addressed to health workers (article 4 concerns the "Training of health workers"), to immigrants living in our country, considering that victims usually are 45000 foreign young girls every year.

From a juridical point of view, this new law foresees a period of imprisonment from 4 to 12 years for everyone practicing infibulation; even to 16 years if the victim is under 18. It has been established a period of 10 years of cancellation from the profession category book for all the doctors practicing infibulation.

The law foresees information campaigns and initiatives and training courses (article 3): the Italian Government has indeed realized an information and dissemination campaign on the practice of female genital mutilation. For this reason it has been created an informative pamphlet translated in nine languages delivered in the whole national territory .

In order to organize the sub-mentioned informative initiatives, it has been foreseen an annual amount of 2 million euro.

1.10 INTERNATIONAL CONVENTIONS

The Italian Parliament has committed in contrasting the trafficking of human beings and other criminal activities connected to this phenomenon, in particular through the work of the Parliamentary Commission against-mafia.

Italy has been chosen by the United Nations as the place to present the Convention against transnational organized crime and the two Protocols

The Italian Parliament has treated human beings' trafficking and the criminal activities related to it, in particular through the work of the parliamentary commission against Mafia. Italy has been chosen by the United Nations for the presentation of the Convention against transnational organized criminality and of the two protocols, one related to repression of migrant smuggling and the other related to trafficking in human beings.

The Convention and the two attached protocols became effective between September 2003 and January 2004, thanks to the ratification by the signatory states: 60 countries for the Convention, 46 for the protocol against trafficking in human beings and 41 for the protocol against migrant smuggling.

Furthermore, Italy signed the Convention on the fight against the trafficking in human beings of the Council of Europe on June 8 2005. In this regard, on October 19-20 2006 the Department for Rights and Equal Opportunities organized a seminar against the trafficking, connected to the information Campaign of the Council of Europe.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

See statistical survey.

3.2 MAIN PROBLEMS

The data collected in the “*2002 survey on the citizens’ security*” outline an overview about violence partially different from that one resulting from the first 1997-1998 survey. Physical sexual harassments, obscene phone calls, tempted rapes and sexual blackmails in seeking work have decreased, whereas the data related to the number of rape victims and those of sexual blackmails while pursuing professional career have remained the same.

Only 7.4% of women, who have undergone some form of violence, have denounced these crimes (9.3% in the last three years). The number of unknown cases of violence against women is still very high.

Women victims of violence not denouncing the abuse are about 90%: they have been asked to explain the reason of their silence. There are many different causes, but the most frequent concern the fear of being negatively judged or not being believed, their shame and their blame. The fear towards the abuser and the distrust in the police forces are other significant reasons.

Moreover, 14.3% of victims have not denounced violence, because they have acted on their own or with their relatives, and 16.8% have declared that the crime was not sufficiently serious.

Women who have undergone violence have mainly pointed out the fear of being judged and not believed, the fear of being treated badly or without discretion, and the fear of not having denounced because of shame or guilt. Furthermore, victims state that they have not denounced because they were afraid for their safety or they did not want that the offender went to prison.

30.6% of women victims do not speak about their violence during their whole life and 31.2% in the last three years.

Among the women having undergone violence during their life and having decided to not speak about it, the majority has told a relative, a friend or a neighbour about it, while the percentage of people having turned to social services, police forces, psychologists or doctors is lower. The number of rape victims has remained the same for years as well as that of sexual blackmails to maintain job or make career advancement; worrisome steady data, difficult to reduce. This seems true in particular for frequent and repeated rapes, usually more than weekly, in familiar places and with dramatic consequences.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information available.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

LATVIA

Information provided by the Ministry of Welfare in **November 2000** and **May 2003**, and by the Ministry of Welfare, the Ministry of Justice, the Ministry of the Interior, the Ministry for Children and Family Affairs in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

There are grades of bodily injuries defined in the Latvian Penal Code.

Section 125 (1) defines **intentional serious bodily injury** as bodily injury as is dangerous to life or has been the cause of loss of vision, hearing or any other organs or functions of organs, or mental or other trauma to health, if it is associated with a general ongoing loss of ability to work to the extent of not less than one third, or has resulted in the termination of pregnancy, or has been manifested in irreparable facial disfigurement (serious bodily injury).

Section 126 (1) defines **intentional moderate bodily injury** as such bodily injury as is not dangerous to life and has not resulted in the consequences provided for in Section 125 of this Law but has resulted in protracted damage to health or general ongoing loss of ability to work to the extent of less than one third (moderate bodily injury).

Section 130 (1) defines **intentional slight bodily injury** as such bodily injury as has not caused damage to health or the general ongoing loss of ability to work (slight bodily injury), and also intentional beating, if it has not caused the consequences mentioned.

Section 159 (1) defines **rape** as an act of sexual intercourse by means of violence, threats or taking advantage of the state of helplessness of a female victim (rape).

1.2 DOMESTIC VIOLENCE

There are no specific laws in Latvia to combat domestic violence against women. Few institutions and organisations, either governmental or non-governmental, have initiated the process. Involved governmental institutions like the Ministry of Welfare, the Ministry of the Interior, and the State and Municipal police co-operate with non-governmental organisations to educate professionals who deal with cases of domestic violence in their everyday work.

The NGO crisis centre “Skalbes” has been conducting several multidisciplinary seminars regarding domestic violence for district attorneys, judges, police officers, medical doctors, psychologists and social workers. Similarly the NGO centre against violence “Dardedze” offers seminars for specialists from different spheres to contribute to an effective multidisciplinary approach.

Criminal Law defines responsibility for murder or serious or moderate harm, committed in a state of sudden intense psychical exasperation. In these cases “sudden intense psychical exasperation” is a palliative circumstance. The weak point is that “sudden intense psychical exasperation” which results in a murder or a serious injury of the victim, must be an immediate reaction to the victim’s action. Cases in Latvia show that women who have been suffering from domestic violence for years, see sometimes as the only solution to escape from an abusive relationships is to murder their partner, thus they continuously and rationally plan the murder. The Latvian justice encountered such a case in 1997 and the woman was sentenced to eight years of imprisonment.

The legal solution could be to introduce a specific rule in the Criminal Law concerning murder or severe harm, if victim has been violent against his partner or spouse (the perpetrator).

According to the law, private violence should be sanctioned in the same way as public violence. The problem in Latvia is that domestic violence is often considered to be the family’s personal business or a private matter how people organise their relationship. This myth about domestic violence is very

strong in Latvian society. This problem should be addressed by educative and informative work with professionals and society.

In 2003 530 women and children who had suffered from violence addressed the crisis centre "Skalbes" (provider of assistance for women who have suffered from violence). In the year 2004 crisis centre received request for assistance from 1813 persons – victims of violence.

Ministry for Children and Family Affairs in the year 2003, 2004 and 2005 in the framework of the National Program for the Improvement of the Family's Situation in cooperation with local governments implemented projects for the establishment of support and crisis centres for families, thus granting the opportunity for families in crisis and among them – women who are victims of domestic violence, to receive psychosocial assistance and support by qualified specialists. From the year 2003 to 2005 nineteen family support and crisis centres have been opened in different parts of Latvia.

At the moment there does not exist a comprehensive support system for women who are victims of violence in the framework of which victims of violence would receive assistance to solve problems related new lodging (if the women wants to terminate the forcible relations and they do not have a living accommodation where to move) and to overcome problems of a psychological character that have evolved because of living in the forcible relations.

At the moment services for perpetrators are not provided and consequently these persons often lack the understanding and are not aware about the reasons and effects of their behaviour and therefore often repeatedly become violent. Criminal punishment for these persons additionally creates significant emotional effects which result in social integration problems afterwards.

Very little attention is being paid to persons who have been emotionally violent as this form of violence is difficult to discover and therefore almost never prosecuted.

Taking into account the above mentioned and according to the Working Strategy of the Ministry for Children and Family Affairs it is planned that in 2008 the state will provide social rehabilitation services for women who have suffered from violence, for minor pregnant women, mothers of newborn children in crisis situation and perpetrators.

In order to implement activities mentioned above amendments to the Law on Social Services and Social Assistance are necessary.

Section 22 of Apartment Property Law defines that the owner of the apartment can demand to stop rights of a family members to use the apartment, if they derogate the towards the owner of the apartment, that is outrage in word and deed, intentionally cause a material damage, endangers life, leaves helpless if it was possible to help. For the purpose of this law family members of the owner are spouse, children of either spouse, while they live in a common household, as well as persons, the owner has placed in his/her apartment and which he/she or his/her spouse has to subsist on the base of law, contract or testamentary.

Divorce or annulment of marriage enables the owner of an apartment to request to terminate the right to use the apartment of the former spouse and on the grounds of affinity into the apartment lodged persons, in case the apartment was not a joint property (according to the Section 89 of the Civil Law of Latvia).

1.3 RAPE/ SEXUAL ASSAULT

In the Criminal Law all sexual crimes are defined as "criminal offences against morality and sexual inviolability".

Rape is defined as "sexual intercourse using violence, threat or the helpless state of the victim" (Section 159). According to Section 159, rape has three levels of severity:

- Sexual intercourse using violence, threat or the helpless state of the victim is punishable with up to 7 years of imprisonment, with an optional subsequent term of police supervision.
- If a rape recidivist or a group of people commits rape, the sanction is 5 to 15 years of imprisonment, with an optional subsequent term of police supervision.
- Rape with severe consequences or rape of a minor is punished with 10 to 20 years of imprisonment or prison for life, with an optional subsequent term of police supervision.

"Severe consequences" mean the victim's death, suicide or suicidal attempt or severe harm.

Commentaries to the Criminal Law explain “helpless state” as cases when the victim is not aware of the intent or seriousness of the violent act and does not show any resistance against the perpetrator because of physical disabilities, psychiatric disorders, other states of illness or unconsciousness, severe intoxication of alcohol or narcotics or if the victim is a minor (under the age of 14 years).

Rape can only be vaginal intercourse and is considered as a completed crime at the time of penetration.

According to Latvian legislation, only females can be victims of rape, and the direct perpetrator can only be a male. This is the weak point because the definition of rape and the commentaries of the Criminal Law, as well as court practice show that rape means only vaginal intercourse. Sodomy and violent anal intercourse (both female and male victims) are classified as “violent sexual abuse”. The imprisonment sanctions for the last is in average two years less than for rape.

These sanctions seem illogical, because, as we know, both of the mentioned crimes often cause serious continuous consequences – both mental and physical health problems, problems in social adaptation etc.

In rape trials, the most important technical evidence is the report of the forensic expert, witnesses' evidence is also relevant.

Cases of rape are usually ruled by the district courts. Cases that are classified as extremely severe crimes (offences which can be sentenced for imprisonment for more than ten years or prison for life) are ruled by the regional court.

RAPE AND SEXUAL ASSAULT IN MARRIAGE

According to the letter of the law, rape and sexual assault in marriage should be prosecuted and sentenced the same way as other forms of rape. In practice, Latvian court practice does not come across cases concerning rape in marriage. It is probably a question of attitude – in our society there are strong myths about gender roles in the family, therefore both the general public and professionals (policemen, district attorneys, judges) tend to consider rape in marriage as “a marital duty”, not a crime.

In Latvian Civil Law, the family rights section concerning divorce sets out that “a spouse can file for divorce, if the other spouse endangers her/his health.” The Supreme Court of Latvia has ruled that in such cases the court should divorce the spouses immediately. Nevertheless, there should be sufficient evidence of violence or abusive relations (for example a police act or a forensic expert report).

1.4 CHILD SEXUAL ABUSE/ INCEST

The following crimes relating to child sexual abuse are punishable under the Latvian Criminal Law:

- For a person who has reached the age of majority and who has sexual intercourse with a person under the age of 16 years who is economically or otherwise dependent on the perpetrator the punishment is up to 4 years of imprisonment.
- Improper activities with an under age child against his/her will or where the perpetrator is an adult is sentenced to up to 3 years of imprisonment.
- Improper activities with an under age child (under the age of 14 years) is punished with up to 5 years of imprisonment.
- Rape of a minor or under age child is considered as a circumstance for increased punishment to 5 years of imprisonment (if victim is of 14 to 18 years of age), or 10 to 20 years of imprisonment or prison on life (if victim is under the age of 14 years).
- Sodomy or lesbianism, or other kinds of unnatural sexual abuse is sentenced as follows; if the victim is of 14 to 18 years of age the sanction 3 to 12 years of imprisonment, and if the victim is under the age of 14 years – 5 to 15 years of imprisonment.

Incest as a sexual crime is not separately defined and consanguinity between the victim and the perpetrator is not a consideration.

Under section 52 of the Protection of the Rights of the Child Law special institutions or sections in general medical institutions shall be established and special resources allocated in the state budget for the medical treatment and rehabilitation of a child who has suffered as a result of violence.

Expenditures for the medical treatment and rehabilitation of the child shall be covered by the state and shall be collected from the persons at fault by subrogation procedures.

It is prohibited for a child who has been a victim of violence (illegal act):

- 1) to be left alone, except in cases when the child himself or herself so wishes and this choice is considered appropriate by a psychologist who has undergone special preparation for work with children who have suffered from violence;
- 2) to be left without psychological or other form of care [state provides social rehabilitation for children who have suffered from violence, incl. sexual abuse (section 13, part one, clause 3 of the Law on Social Services and Social Assistance)];
- 3) to be confronted by the possible perpetrator of the violence (illegal act) while the child is not sufficiently psychologically prepared for such a confrontation;
- 4) to be subjected to the use of any compulsory measures in order to obtain information or for any other purpose.

Extra-familial care shall be provided without delay for a child who has suffered from violence (illegal act) in his or her family or who is exposed to real threats of violence, if it is not possible to isolate the persons at fault from the child.

1.5 SEXUAL HARASSMENT

In April 2004 amendments to the Labour Law came into force. Section 29.(4) defines that discrimination for the purpose of this law is also harassment of a person and instructions to discriminate against him or her. Harassment of a person for the purpose of this law is "the subjection of a person to such actions which are unwanted from the point of view of the person, which are associated with his or her belonging to a specific gender, including actions of a sexual nature if the purpose or result of such actions is the violation of the person's dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment." If the prohibition against differential treatment and the prohibition against causing adverse consequences is violated, an employee in addition to other rights specified in this Law, has the right to request compensation for losses and compensation for moral harm. In case of dispute, a court at its own discretion shall determine the compensation for moral harm.

Inhabitants of Latvia regarding violations of labour legal relations can submit claims to the Latvian National Human Rights Office and State Labour Inspectorate.

Sexual harassment is not punishable as a criminal offence against the person. It can in some cases be classified as rape, threat of rape, rowdysm or offence against a person's honour.

Section 162. Immoral Acts With a Minor

For a person who commits immoral acts with a minor against the will of the minor or if such have been committed by a person who has attained the age of majority, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest.

For a person who commits immoral acts with a juvenile, the applicable sentence is deprivation of liberty for a term not exceeding six years.

Section 174. Cruelty Towards and Violence Against a Minor

For a person who commits cruel or violent treatment of a minor, if physical or mental suffering has been inflicted upon the minor and if such has been inflicted by persons upon whom the victim is financially or otherwise dependent, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service.

1.6 PORNOGRAPHY

A person can be punished under section 166 of the Latvian Criminal Law for violating the regulations on importing, producing and distribution of pornographic materials like publications, pictures, films, video and audio tapes. The sentence is a fine, forced labour or up to 1 year of imprisonment. If above-mentioned pornographic materials describe or visually show sexual abuse of children, sexual actions with animals, necrophilia or pornographic violence, the sentence is up to 3 years of imprisonment. This

section also provides that a person who involves an under age child in the production of pornographic materials is sentenced to up to 5 years of imprisonment.

In order not to tolerate involvement of children in circulation of materials of pornography among them by using information and communication technologies, under section 50 (6) of the Protection of the Rights of the Child Law¹ (hereafter – law) a project of a Regulations to be issued by the Cabinet of Ministers “Provisions on the Circulation of Materials of Pornographic and Erotic Character” has been drafted.

Until now the above mentioned project has been supported at the Sitting of the Committee of the Cabinet of Ministers on 12 December 2005 and brought into accord with European Commission. The Regulations will substitute the Regulations issued by the Cabinet of Ministers on 22 November 1995, No.348 “Provisions on importation, production, distribution, public demonstration and advertising”.

1.7 PROSTITUTION

Latvian Criminal Law provides criminal responsibility for a person who violates the regulations of the Cabinet of Ministers “On prostitution restriction”, i.e. forcing somebody to practice prostitution, and pimping.

Prostitution as such is not prohibited in Latvia, except for under age children, incapable persons, and prostitutes without a medical card.

Regulations of the Cabinet set the following rules for persons who practice prostitution:

- It is prohibited to offer and provide the service in other venues but these appointed by municipality, or in apartments or houses which are not under the title or hired by a prostitute or a client;
- It is prohibited to provide sexual services if any under aged child is in the same apartment or room;
- It is prohibited for prostitutes to get organised in groups for providing sexual services or to take orders for sexual services, except for cases when the client is the same person;
- Thorough health control and supervision is carried out by medical doctors, Centre for Sexually-transmitted diseases, AIDS Centre, and the police.

Repeated violation of the regulations on prostitution restriction is sentenced with forced labour, fine or imprisonment.

A person who forces another person to practice prostitution is sentenced to a fine or up to 3 years of imprisonment. Force to practice prostitution by breaching the person’s confidence or by deceit or using the victim’s dependency of the perpetrator or the helpless state of the victim is punished with a fine or up to five years of imprisonment. A person who forces or induces an under age person to practice prostitution is sentenced to up to six years of imprisonment.

Pimping is defined as abuse of a prostitute with the intent to benefit. This criminal offence is sentenced with up to four years of imprisonment. If the pimps are acting in group, or a procurer abuses an under age prostitute, the sentence is up to eight years of imprisonment and the seizure of the belongings.

1.8 OBSCENE PHONE CALLS/ TELEPHONE SEX

Obscene phone calls and telephone sex are not a subject for criminal responsibility, nor are they regulated in the Latvian legislation.

1.9 FEMALE GENITAL MUTILATION

There are no specific rules on female genital mutilation. Theoretically, the sections on committing severe or medium harm could cover the issue. According to the Latvian Criminal Law one of the requirement for the offence “harm” is that it causes loss of an organ or the function of an organ.

¹ Restrictions for importation, production, distribution, public demonstration and advertising of materials of erotic and pornographic character are established by the Cabinet of Ministers. According to the proposals to the draft law “Amendments to the Protection of the Rights of the Child Law” submitted in Saeima (Parliament) it is provided to express article 50 part six of the law in the following wording: “Restrictions for importation, production, purchase, download, distribution, storage, public demonstration and advertising of materials of erotic and pornographic character as well as restriction of distribution of such materials shall be established by the Cabinet of Ministers.”

1.10 INTERNATIONAL CONVENTIONS

Latvia has ratified the following international treaties relating to children's and women's rights:

- Convention On Children's Rights of November 20, 1989, (in September 1991)
- Convention on Elimination of All Forms of Discrimination Against Women of 1979, (in May 1992)
- Convention for the Suppression of the traffic in persons and of the Exploitation of the Prostitution of Others of 1949, (in July 1992)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (in May 2004)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2002, (in February 2006)

1.11 PROTECTION OF PREGNANCY/ PREGNANT WOMEN

There are several rules in the Criminal Law protecting pregnant women.

Murder of a pregnant woman, if the perpetrator was aware of the woman's pregnancy is considered as a severe crime, which is punished with 10-20 years of imprisonment and up to three years of subsequent police supervision or prison for life.

According to the law it is a criminal offence to force a woman to have an abortion, if abortion is completed. The sanction for this crime is up to two years of imprisonment, custodial arrest, forced labor or a fine. Unauthorised performing of an abortion (Section 135), depending on the severity, is punished with imprisonment, a fine or the loss of the right to practice medicine. If the abortion caused the death of the pregnant woman or other serious consequences the term of imprisonment is up to 15 years.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

On 1 April 1999 the new Criminal Law and on 1 October 2005 the new Criminal Procedure Law came into force.

According to Latvian Law, domestic violence as such is not considered a criminal offence. Domestic violence with severe consequences can be classified as slight, moderate or serious harm, threat to commit serious harm or murder (Sections 130, 126, 125).

Domestic violence, depending on the consequences, is sentenced under various articles of the Criminal Law to up to 15 years of imprisonment, a fine or police supervision.

Section 7 of the Criminal Procedure Law provides, that for offences provided in the Sections 130 (in cases regarding domestic violence), 131, 132, 136, 145, 159(1), 160(1), 168 and 169 criminal proceedings as public prosecution are initiated if the application has been received from the person on whom harm has been inflicted.

Section 12(5) of the Criminal Procedure Law provides, that physical person has the right to require not to include in the criminal case any information about his/her private life, business or property status of this person or his/her close relatives, if this is not necessary for fair adjustment of criminal law relations.

From the above one can understand that it is persons free choice to bring a suite against his/her spouse, if he/she has committed violent harm, or not.

Sections 125, 126, 130, that defines accountability for bodily harm, as well as section 160, that defines accountability for forcible sexual assault, refer both to persons, who have committed these offences against their family members, and to persons, who have committed these offences against persons out of family. The Criminal Law does not separate the accountability for these offences if they have been committed within or out of family.

Section 243 among other security measures defines also ban to approach.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 MAIN PROBLEMS AND PROPOSED REFORMS

Existing work experience with assaulted women shows that the general public as well as professionals from the legal and social field are unaware of the scope and seriousness of domestic violence. This makes the existing system unsupportive and unfriendly to the victims and their families. Open discussions concerning myths and stereotypes about both victims and perpetrators in the general public would empower people to participate in the change of the protective and preventive systems.

It is possible to draw up the following objectives:

- Increase public awareness about domestic violence and gender roles;
- Amendments in the Criminal Law regarding domestic violence as a separate crime;
- correct and thorough implementation of the existing laws.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.2** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

LIECHTENSTEIN

Information provided by the Equality bureau, Vaduz, in **November 2000, March 2003 and September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

The Violence Protection Act took effect on 1 February 2001. As a central innovation of this Act, it contains a provision providing for protection against domestic violence, which includes the right to expel potential perpetrators from the home as a precautionary measure. Where a grievous attack on the life, health or liberty of a person is anticipated, the police may, as a precautionary measure, expel the potential perpetrator and issue a temporary restraining order, thereby providing adequate protection for the potential victim of domestic violence. This provision is meant to counter previous practice, whereby the victims of domestic violence (mainly women and children) were forced to abandon the home.

The revised laws on sexual offences took effect in February 2001. They place emphasis on the principle on empowering women to decide freely on matters relating to their sexuality (sexual self-determination). The main innovations as regards gender equality issues and protection of women against violence are the extension of the statute of limitations for sexual offences, the establishment of marital rape as a criminal offence and inclusion of sexual harassment in the workplace as a sexual offence.

On 1 January 2005, a partial revision of the Code of Penal Procedure, referred to as the "**Victims Protection Act**", entered into force. The goal of this legislative amendment is to improve the legal standing of victims in criminal proceedings by establishing a procedural right to respectful treatment and the greatest possible protection. In particular, the interests of young victims and victims of sexual offenses will be taken into account more strongly.

The draft of the "**Victims Assistance Act**" was approved by the Government in May 2006. Parliament is expected to consider the draft in the autumn of 2006. The goal of the proposal, namely the best possible support for victims, will be achieved on the basis of the two pillars of "counseling" and "financial assistance".

The appropriate care of victims and their families is the most important objective of victims' assistance. For this purpose, a Victims Counseling Office is being created. Its goal is to provide the necessary assistance in individual cases with respect to medical, psychological, social, material, and legal needs. These provisions are intended to enable victims to receive compensation from the State for material and non-material injury suffered, to the extent that no or only insufficient compensation is given by third parties. The compensation of non-material injuries is intended to express society's recognition of the difficult situation of the victim as part of comprehensive victims protection, and especially to take into account the situation of victims of sexual offenses, who as a rule suffer hardly any material injuries, but usually grave non-material injuries.

1.2 DOMESTIC VIOLENCE

PENAL LAW

There is a specific legislation concerning sexual domestic violence (the victim has to make an application):

- To compel, by force or threat of force, a person to have sexual intercourse (rape);
- Sexual offence by force or threat of force against a person;

Sexual domestic violence is regulated in § 202 of the Penal Code LGBl. 16/2001.

There is no specific legislation concerning other forms of domestic violence, it is regulated as any other form of violence. There are various articles that concern violence in the Penal Code. The maximum and minimum sentences vary with the grossness of the crime.

CIVIL LAW

The new Protection against Violence Act took effect on 1 February 2001 (LGBl. 25/2001; 26/2001; 27/2001). See Section 1.1. Since entry into force of the Violence Protection Act¹ on 1 February 2001, the most important innovation of which is the right to expel the perpetrator as a preventive measure, the National Police has conducted a total of 115 interventions (2005: 20) in Liechtenstein pursuant to the Violence Protection Act. In 79 cases (2005: 11), the interventions led to mediation, while a prohibition of entering the abode was issued in 35 cases (2005: 6). In the police operations relating to domestic violence in 2005, 11 women, 2 men, and 2 children/young people were affected by violence; in 5 cases, the man and the woman were both affected by violence and perpetrators of violence. Since the introduction of the Violence Protection Act, the National Police has compiled data on interventions according to gender. In 39 cases since February 2003, 39 women and 39 men (2005: 19 each) have been invited to counseling by the Office of Social Affairs in accordance with the provisions of the Violence Protection Act. In 2005, 16 of the 38 persons invited came to the appointment.

Under the new Marriage Law from 1999, it is possible to file for divorce if the continuation of the marriage is not reasonable for a spouse.

1.3 RAPE/ SEXUAL ASSAULT

Rape and Sexual Assault are regulated in the Penal Code LGBl. 16//2001. Victims of sexual domestic violence have to make an application.

Liechtenstein Penal Code criminalises:

- To compel, by force or threat of force, a woman to have sexual intercourse (rape) (§ 200 Penal Code);
- Sexual offence by force or threat of force against a woman or a man (§ 201 Penal Code);
- Rape or other sexual offence against a woman who suffers from insanity or other mental deficiency of a woman or who is unable to prevent the act or understand its meaning (§ 204 Penal Code)

1.4 CHILD SEXUAL ABUSE/INCEST

Child Sexual Abuse/Incest is ruled in the Penal Code LGBl. 16/2001.

- Heavy Sexual abuse of persons under the age of 14 (§ 205 Penal Code);
- Sexual abuse of persons under the age of 14 (§ 206 Penal Code);
- Moral endangering of persons under the age of 14 and under the age of 18 (§ 207 Penal Code);
- Sexual Abuse of Persons under the age of 16 (§ 208 Penal Code);
- Incest (§ 211 Penal Code)
- Abuse of an authority relationship (§ 212 Penal Code)

1.5 SEXUAL HARASSMENT

The revised Penal Code now covers sexual harassment in § 203. Sexual harassment, whether verbal or by deed, is subject to fines or a term of imprisonment of up to six months LGBl. 16/2001.

The Equality Act, which is in force since 5 May 1999, covers sexual harassment. Parliament approved the revision of the Equality Act on 17 May 2006. This included incorporation of the definitions of harassment, sexual harassment, and direct and indirect discrimination. Employers and employees will be briefed on the legislative revision in the autumn of 2006. Newsletters will be sent to businesses, and employees will be made aware of the amendments through an information and sensitization campaign.

¹ Law of 14 December 2000 amending the National Police Act, LGBl. 2001 No. 27.

The Labour Act, which came into force the 1 January 1998, stipulates that the employer has to ensure that an effort is made to establish a safe and healthy working environment, and to prevent sexual harassment.

A working group has compiled draft amendments to the Public Employees Act and draft rules on the topics of "Sexual harassment in the workplace" and "Mobbing in the workplace". The Government took note of these drafts on 8 April 2003. The amendments to the Public Employees Act will be reviewed and taken into consideration in the framework of the total revision planned for 2006/2007.

1.6 PORNOGRAPHY

The Liechtenstein Penal Code LGBl. 16/2001 criminalises: Pornography (§ 218a Penal code), Prostitution (§ 210 and 215 Penal Code) and Trafficking in Human beings (§ 217 Penal Code).

1.7 PROSTITUTION

The prostituted person is only subject to criminal sanction if her conduct constitutes a public nuisance (§ 210 Penal Code, LGBl. 16/2001).

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

As a member of the United Nations and the Council of Europe, Liechtenstein has ratified a number of European and international conventions relating to the protection of human rights. In 1996, Liechtenstein ratified the UN Convention on the Elimination of all Forms of Discrimination against Women. The European Convention on Human Rights was ratified in 1982. On 10 December 1999, Liechtenstein signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999, which entered into force on 22 December 2000 and provides for the submission of communications by individuals. Liechtenstein deposited its ratification at the UN of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in October 2001. Liechtenstein signed the UN Convention against Transnational Organized Crime (Palermo Convention) on 12 December 2000, and it signed the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, on 14 March 2001. The necessary preparations for ratifying the convention and the protocols are currently underway.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The Employment Act was amended in 1998. In general, an employer is required to take all measures that are technically practicable, and that are compatible with conditions in the workplace, to protect the health of the employees. Regulations dictate what measures a company must take to protect the employees' health. There are special provisions in the Employment Act for pregnant women and nursing mothers. The employer is required to provide working conditions for, and assign duties to, pregnant women and nursing mothers that do not have a negative impact on their health or the health of the child. Under Liechtenstein's current legislation, a mother may be dismissed neither during pregnancy nor the 16 weeks after delivery.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/ PROTECTION

WOMEN'S SHELTER

In 1991, the Women's shelter was established in Liechtenstein. It serves the whole country and the region. The shelter is run by the Association for Protection of Mistreated Women and Children. This institution has proved to be an important source of assistance for women in need. The Government supports the Liechtenstein Women's Home as part of a performance agreement with an annual contribution of CHF 320,000. Most of the nine women who came to the Women's Home in 2005 were migrants. Eight women live in Liechtenstein, one in the neighboring canton of St. Gallen/Switzerland. The use of the Women's Home has decreased since 2001. In 2001, 27 women, of whom 8 were residents of Liechtenstein, in 2002, 17 women (9 residents of Liechtenstein), in 2003, 13 women (6 residents of Liechtenstein), in 2004, 12 women (9 residents of Liechtenstein) and in 2005, 9 women (8 residents of Liechtenstein) sought refuge in the Women's House.

In 1998 and 1999, the Association for Protection of Mistreated Women and Children and the Association for Networking (Netzwerk) conducted projects in schools to prevent sexual exploitation. The Office of Equal Opportunity and the Office of Social Affairs published an information brochure for victims of violence entitled "Violence Protection Act – Concrete Implementation of the New Law for Protection from Violence" in February 2002. The brochure provides information on implementation of the right to expel the perpetrator, the prohibition of reentry, and temporary injunctions.

Since the implementation of the Violence Protection Act places high demands on the National Police, all officers of the Security and Transport Police must complete basic training (one day) and a half a day of advanced training each year on the topic of violence. In 2005, the officers were trained on "Analyzing violence – Where does the culture of arguing end and where does violence begin?". Advanced training organized by the Liechtenstein Women's Home is planned for 2006.

See **Section 1.2** above as well

NETWORK

Many non-governmental organisations, but also the women's organizations of Liechtenstein's political parties, have joined together into the Liechtenstein Women's Network, under the aegis of the Office of Equal Opportunity, which acts as an administration and coordination office. The Women's Network is open to all organizations engaged on behalf of the equal opportunity of girls and women. The joint events and projects attract more public attention and thereby have a greater impact than individual campaigns, and the activities of the individual organizations become better known. The Liechtenstein Women's Network currently encompasses 17 organizations: the Rhine Valley Business and Professional Club (BPW), the Parent-Child Forum, the Bureau for Sexual Matters and HIV Prevention, the Women in the Progressive Citizens' Party, the Women's Expert Group of the Patriotic Union, the Free List, infra – the Information and Contact Office for Women, the Gender Equality Commission, the Women's Section of the Liechtenstein Employees Association, Soroptimist International Club Liechtenstein, Soroptimist International Club Vaduz, the Turkish Women's Association, the Women's Educational Work Association, the Day-Care Association of Liechtenstein, the Association for the Protection of Abused Women and their Children, the Association of Women with a Good Constitution, and Zonta Club International Vaduz-Area.

The Office of Equal Opportunity has established a wide range of contacts with organizations working on gender equality in Switzerland and the neighboring Austrian province of Vorarlberg.

VIOLENCE AGAINST WOMEN

In Liechtenstein there is still a taboo with respect to violence against women, whether in public or in private. From September to December 1997, an anti-violence campaign was launched in Liechtenstein (through the Equality Bureau in cooperation with non-governmental organisations) in order to create and enhance awareness of this multi-faceted problem. After an invitation from the Government of Liechtenstein, the United Nations Special Rapporteur on violence against women, Radhika Coomaraswamy, visited the country in April 1998. She met with members of the Government,

of the administration, of the Public Prosecutor's Office, as well as with representatives of non-governmental organisations. During her visit to the Women's House, she also met with three victims of domestic violence. Her report was submitted to the Commission on Human Rights at its 55th session for consideration.

In February 2001 was launched a three-year interregional project with the aim of compiling transnational data on domestic violence, building awareness and sensitizing the public on a transnational basis through the provision of information and providing efficient and competent intervention against violence. (*through communication, cooperation, prevention, social awareness-building and adequate assistance*). The objective of the project entitled "Crossing boundaries – Setting boundaries" was to compile cross-border data on violence in marriages and partnerships and to educate and raise awareness by providing information. The project was jointly run by the Liechtenstein Office of Equal Opportunity, the Austrian province of Vorarlberg, and the Swiss canton of Graubünden and was concluded in July 2004. The planned measures – a campaign for general awareness-raising of the public, a survey and study on forms of violence and perceptions of violence in the domestic environment, and an information campaign to specifically raise the awareness of multipliers – were successfully implemented.

Other initiatives have been undertaken in Liechtenstein by the Office of Equal Opportunity in cooperation with the Liechtenstein Women's Home, such as a training event for nursing staff at the National Hospital. In cooperation with the Women's Home, infra – the Information and Contact Office for Women, the Violence Protection Commission, the Theater am Kirchplatz, the Office of Social Affairs, and the Office of Equal Opportunity, a study entitled "Because walls cannot speak.....they protect perpetrators", undertaken as part of the Interreg project, was presented in conjunction with a forum theater performance. Another performance preceded by an introduction to the topic was organized for students in continuing schools. The Office of Equal Opportunity and the Office of Social Affairs published an information brochure for victims of violence entitled "Violence Protection Act – Concrete Implementation of the New Law for Protection from Violence" in February 2002. The brochure provides information on implementation of the right to expel the perpetrator, the prohibition of reentry, and temporary injunctions.

SEXUAL EXPLOITATION

Concerning sexual exploitation of children and adolescents, the Government appointed the Expert Group against Sexual Abuse of Children and Young People in 1999. The members of the Expert Group constitute a multiprofessional team from the fields of psychology, psychotherapy, medicine, and law. The mandate of the Expert Group is to provide support and services for institutions and persons dealing with cases of sexual abuse. It also serves as a contact office for those affected. As part of a coaching model, the Expert Group develops appropriate responses on a case-by-case basis, together with specialists and victims and/or their families. The interdisciplinary composition of the Expert Group is intended to ensure that the complexity of the cases is taken into account. Thanks to the establishment of this central office, experiences can be gathered with respect to child abuse, and the competence of counselors and professional assistance can be optimized. In December 2004, the Expert Group published guidelines in the form of a brochure. These guidelines are intended to be binding on all participants, so that the assistance rendered is predictable, understandable, transparent, and controllable. Through activities such as public outreach, the organization of continuing training for a wide circle of specialists, prevention projects, and lectures, the Expert Group is making further contributions in the fight against the sexual abuse of children and young people.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

LITHUANIA

Information updated by the Ministry of Justice, Ministry of the Interior and Equal Opportunities Division of the Ministry of Social Security and Labour in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

Legal acts of the Republic of Lithuania provide for strict sanctions for violence. Criminal Code of the Republic of Lithuania and Code of Criminal Procedure of the Republic of Lithuania, which have been harmonised with the EU law, provide legal measures to protect by penal law measures human and civil rights and freedoms, public and state interests from criminal acts; when protecting human and civil rights and freedoms as well as public and state interest, to detect criminal acts without delay and to identify and apply the relevant law to ensure that the person guilty of the commission of the criminal act be justly punished and no innocent person be punished. Various types of violence – murder, bodily injury, rape, other physical violence is punishable under the appropriate Articles of the Criminal Code of the Republic of Lithuania.

Criminal Code, chapters XVII-XXXIII establish the corpus delicti of crimes and misdemeanours, defining the attempts at human life, health, liberty, freedom and inviolability of sexual self-determination, honour and dignity prohibited under law as well as crimes and misdemeanours against children and family, and prescribe penalties for non-compliance with the said prohibitions. Here the following crimes and misdemeanours should be mentioned: murder (Article 129), serious health impairment (Article 135), minor health impairment (Article 138), causing physical pain or minor health impairment (Article 140), threat to murder or a person serious health impairment or terrorising of a person (Article 145), rape (Article 149), sexual harassment (Article 152), sexual abuse of a minor (Article 153), insult (Article 155), etc.

Circumstances aggravating the liability of the offender are listed in Article 60 of the Criminal Code of the Republic of Lithuania. In this relation mention should be made of commission of the act as a result of disorderly conduct or for personal gain or out of other base motives, commission of the act by torturing the victim or subjecting the victim to degrading treatment, commission of the acts against a young child (under 14 years of age), against a pregnant woman, against a person in a helpless state owing to an illness, disability or old age or for other reasons, commission of the act by a person in the state of alcoholic intoxication or under the influence of narcotic, psychotropic or toxic substances, etc. When determining the penalty, the court shall take account both of the culprit's personality, criminal record, goals and motives of the committed acts, other circumstances.

Article 135 of the Criminal Code of the Republic of Lithuania "Serious Impairment of Health" determines criminal liability of persons who intentionally cause injury or disease resulting in the victim's loss of his sight, hearing, ability to speak or ability to reproduce, pregnancy; or otherwise incapacitate him or cause him to become ill with a serious incurable disease or a long-lasting and life-threatening illness or a serious mental illness, or to lose considerable capacity for work in a profession or in general employment, or to become permanently disfigured in body. The scope of health impairment is established by forensic medicine experts in compliance with the Regulations for the Establishment of the Scope of Health Impairment approved by the Health Minister, Minister of Justice and Minister of Social Security and Labour by Order No V-298/158/A1-86 of 23 May 2003. Serious health impairment is punishable by a term of imprisonment for up to 10 years. Penalty for the commission of the crime the body of which is qualified in paragraph 2 of this Article as serious health impairment is punishable for a term of imprisonment from 2 to 12 years if the crime has been committed with respect to a young child (under 14 years of age), against a pregnant woman, against a person in a helpless state by torturing or subjecting the person to cruel treatment, etc.

Article 138 "Minor Health Impairment" of the Criminal Code of the Republic of Lithuania establishes criminal liability for intentionally causing injury or illness to a human being by reason of which the victim lost an insignificant part of his capacity for work in a profession or in general employment or was ill for a long time but without developing the after effects specified in paragraph 1 of Article 135 of this Code. The Regulations for the Establishment of the Scope of Health Impairment specify that causing

injury or illness is deemed as a minor health impairment if it causes illness to a human being for a not longer than 10-day period or where the victim loses only a minor part - over 5 % but not more than 30% - of his capacity for work in a profession or a general employment. Minor health impairment is punishable by restriction of liberty, or detention, or imprisonment for a period of up to three years shall be punished by detention or imprisonment for a term of up to three years. Penalty for the commission of the crime the body of which is qualified in paragraph 2 of this Article as minor health impairment is punishable for a term of imprisonment for up to five years if the crime has been committed with respect to a young child, against a pregnant woman, against a person in a helpless state by torturing or subjecting the person to cruel treatment, etc (analogous to Article 135(2)).

Article 140 "Causing Physical Pain or Minor Health Impairment" of the Criminal Code of the Republic of Lithuania establishes criminal liability of persons who by intentional battery or other acts of violence cause physical pain or light injury, or a short disease to a human being. The conclusion on the causing of pain to a human being is made by the forensic experts on the basis of the case material data confirming the fact of battering or any other violence causing injury or illness is deemed as a minor health impairment if it causes illness to a human being for a not longer than 10-day period or where the victim loses 5 % of his capacity for work in a profession or a general employment. For the above acts the culprit may be punished by public works or a fine, restraint of liberty, detention, or by imprisonment for a term of up to one year. As it has already been mentioned the person who committed the above act may be held criminally liable only subject to a complaint filed by the victim if his legal representative has made a statement or the prosecutor has voiced his demand.

Article 143 of the Criminal Code of the Republic of Lithuania establishes that a person who, using physical or psychological violence, compels a pregnant woman to have an illegal abortion shall be punished by public works or detention, or by imprisonment for a term of up to two years.

Article 143 "Threatening to Murder or Cause Serious Health Impairment or Terrorising the Person" of the Criminal Code of the Republic of Lithuania establishes that criminal proceeding will be instituted against any person who threatens to kill a human being or cause serious health impairment to him if there are sufficient grounds to believe that the threat may be carried out. The commission of the act shall be punishable by public works or a fine, or by restriction of liberty, or detention, or imprisonment for a term of up to three years. It should be noted that criminal liability under the Article arises in cases where only a threat is made. If a person really starts preparing for the crime – is looking for means and instruments, gathers accomplices, works out the action plan or makes an attempt at the person's life or at causing him health impairment, he is held criminally liable for preparing to murder the person or to make an attempt at the person's life or for attempting to cause him grave impairment of health. The act is punishable by a term of imprisonment of liberty for a term of up to four years. The offender may be held criminally liable only subject to a complaint filed by the victim if his legal representative has made a statement or the prosecutor has voiced his demand.

Paragraph 1 of Article 149 of the Criminal Code of the Republic of Lithuania, regulating liability for rape establishes that any person who, through physical violence or threats of imminent violence or otherwise depriving the person of the possibility to resist or by exploiting the helpless state of the victim, has sexual intercourse with the person against the person's will, shall be punished by imprisonment for a term of up to seven years. It is established in paragraph 2 of the Article that any person who commits rape with a group of accomplices shall be punished by imprisonment for a term of up to 10 years, whereas paragraph 3 establishes that any person who rapes a minor shall be punished by imprisonment from three to ten years, while as established in paragraph 4 that any person who rapes a child shall be punished by imprisonment for a term of 5 to 15 years. It is established in paragraph 1 of Article 150, which regulated criminal liability for rape, that any person who, against the will of the victim, satisfies his sexual desires through anal, oral or any other type of intercourse using physical violence or threats of imminent violence or in any other way depriving the victim of the possibility to show resistance or by exploiting the helpless state of the victim, shall be punished by detention or imprisonment for a term of up to six years; paragraph 2 of this Article establishes that any person who commits the acts specified in paragraph 1 of this Article aided by a group of accomplices, shall be punished by imprisonment for a term of up to eight years; as established in paragraph 3 of this Article, any person who commits the acts specified in paragraph 1 of this Article in relation to a minor shall be punished for a term of imprisonment from 2 to 10 years; as established in paragraph 4 any person who commits the actions provided for in paragraph 1 of this Article with respect to a child shall be punished by imprisonment from 3 to 13 years.

Pre-trial investigation in respect of criminal acts under the Criminal Code of the Republic of Lithuania may be commenced both where there is a complaint filed by the victim or his lawful representative or on the initiative of law enforcement institutions or where there is a statement by any other person. In the cases provided for by the Code of Criminal Procedure of the Republic of Lithuania law enforcement institutions must commence investigation if it establishes elements of a criminal act even though the victim has not filed any complaints. On the other hand, in respect of certain less dangerous criminal acts (paragraph 1 of Article 139, paragraph 1 of Article 140, Article 145, paragraph 1 of Article 149, paragraph 1 of Article 150, Article 152, Article 155, etc.) criminal proceedings may be instituted only provided there is the victim's complaint or a statement of the victim's lawful representative or the prosecutor's demand. This provision protects the person's right to privacy and provides conditions facilitating reconciliation of the victim and the offender; whether or not the culprit will be punished for the committed criminal act will depend on the will of the victim. In the cases where the victim for serious reasons is unable to defend his legitimate interests or the case is of public concern, the prosecutor takes up the defence of the victim's rights having submitted a demand to commence pre-trial investigation.

It has been mentioned that should elements of criminal act be discovered the law enforcement institutions commence pre-trial investigation, question the suspect, the victim, the witnesses, collect evidence and, upon completion of pre-trial investigation, refer the case for hearing before the court. However, with respect to certain cases (paragraph 1 of Article 140, Articles 152, 154, 155, etc of the Code of Criminal Procedure of the Republic of Lithuania) pre-trial investigation is not conducted, the cases are heard as private prosecution cases in accordance with Articles 407-417 of the Code of Criminal Procedure of the Republic of Lithuania. Exceptions will be made in the cases where the prosecutor, being convinced that the committed criminal act is of public (not only private) concern or that damage has been inflicted thereby to a person unable for serious reasons to defend his interests, files a written application to the court stating that he will prefer public charges. In such event the private prosecution proceedings are terminated, the material of the case is transferred to the prosecutor and the investigation and trial proceed according to the regular procedure. Cases where the person suspected of having committed the criminal act is unknown are also treated as exceptions—in such cases pre-trial investigation proceeds according to the regular procedure.

In private prosecution cases pre-trial investigation is not carried out and the victim files the application directly in court. Having received the victim's application the examining judge holds a reconciliation hearing at which the accused and the victim are urged to seek reconciliation. In case of failure to reach reconciliation the court makes a ruling to consider the victim's application at the trial. During the private prosecution proceedings the victim acquires the status of the private prosecutor, i.e. he himself prefers the charges – collects the evidence and submits the collected evidence to the court, reads out the bill of indictment, etc. At the same time the court may charge the pre-trial investigations institutions to determine within the set time period the circumstance of the case which the court is not in the position to determine. Having heard the case the court will render the judgement.

In order to protect the life, health, property, constitutional rights and freedoms of the participants in operational activities, witnesses, victims or other persons connected with the criminal case as well as to ensure comprehensive and objective investigation of the circumstances of the case, measures aimed at protecting the victims of misdemeanours, witnesses and their family members from criminal influence provided for in the Code of Criminal Procedure of the Republic of Lithuania as well as by the Law of the Republic of Lithuania on the Protection from Criminal Influence of Participants in the Operational Activities, Officers of Justice and Law Enforcement Institutions (13 February 1996, No I-1202), i.e. physical protection of the person and his property, temporary relocation of the person to a safe place, change of place of residence, work or study, etc.

Measures of protection from criminal influence may be applied to the persons listed in paragraph 1 of Article 3 of the above-mentioned law – participants in the operational activities; persons taking part in the criminal proceedings: witnesses, victims, experts, defence counsels, the suspects, the accused, the convicted, the acquitted; officers of justice and law enforcement institutions: judges, prosecutors, pre-trial investigation officers, court bailiffs; family members of the above-listed persons: parents, adoptive parents, children, adopted children, brothers and sisters, grand-parents, grandchildren and spouses, where, when carrying out pre-trial investigation or hearing criminal cases relating to grave or very grave crimes there are grounds to believe that the life or health of the persons is in danger or the persons' property may be destroyed or the persons' constitutional rights and freedoms are in danger. Measures of protection from criminal influence are applied to victims, witnesses and their family members provided the above persons actively co-operated with the officers of justice and law

enforcement institutions, helped to detect a criminal act or were a source of other valuable information for the officers of justice and law enforcement institutions. Measures of protection from criminal influence may be assigned and applied when carrying out operational activities, during pre-trial investigation, during the court hearing of a criminal case, also after the completion of operational activities or court hearing of a criminal case.

In criminal proceedings arrest is restricted, under international and constitutional human rights requirements, by the necessary grounds, conditions, time limits and the established procedure. An arrest may be ordered only by the court or the pre-trial judge and only when there is probable cause to believe that a suspect might obstruct the course of proceedings or will go into hiding from the pre-trial investigation officers or the prosecutor or the court or obstruct the course of the proceedings or commit serious or very serious crimes or medium-gravity crimes listed in the law. An arrest may be employed only in the investigated and considered cases involving crimes which, under criminal law, provide for a stricter penalty than deprivation of liberty for a term of over a year, i.e. imposition of arrest is not allowed in the investigation of misdemeanours and certain crimes, e.g., provided for in paragraph 1 of Article 140 of the Criminal Code of the Republic of Lithuania (causing physical pain or minor health impairment).

Taking into account the fact that in cases of family violence arrest may often not be applied for the above-mentioned reasons, the culprit residing with the victim even after the commencement of the criminal proceedings, may exert upon the victim unlawful influence or even continue resorting to violence, the Criminal Code of the Republic of Lithuania does not contain any adequate provisional measures, Amendments to the Criminal Code of the Republic of Lithuania have been passed by the Parliament in 2004, amending articles 120, 121, 126 of the Criminal Code of the Republic of Lithuania and supplementing the Code with Article 1321. These amendments provide for a new preventive measure - obligating the suspect to reside separately from the victim if there is justified cause to believe that suspect residing together with the victim will attempt to exert upon the victim an unlawful influence or commit new criminal acts against the victim or the persons residing together with him. The measure may be imposed by the pre-trial judge or upon the court ruling whereby the judge/the court will also be able to obligate the suspect to refrain from communicating or seeking communication with the victim or the persons residing together with him, also refrain from visiting certain places visited by the victim or persons residing together with the victim. It should be noted that enactment of the above legal provisions will immensely aid the victims of domestic (family) violence, in most cases women and children.

1.1 LETTER OF LAW - DEFINITIONS

The Law on Equal Opportunities for Women and Men, forbids both direct and indirect discrimination sexual harassment and harassment on the grounds of sex..

Direct discrimination on the grounds of sex:

Passive or active conduct expressing humiliation and contempt, also restrictions of rights or granting of privileges by reason of the persons sex, except when relating to:

- 1) Special protection of women during pregnancy, delivery and breast feeding;
- 2) Compulsory military service prescribed by the Law exclusively for men
- 3) Different pensionable age for women and men, except of professional social security systems
- 4) Requirements for safety at work applicable to women aimed at protecting the women's health owing to their physiological properties;
- 5) The performance of certain jobs that may be done only by a person of a particular gender;
- 6) Special temporary measures foreseen in the Laws, which are applied to accelerate the implementation of de facto equality between women and men and are to be cancelled when equal opportunities for women and men are realised;
- 7) Different rules and conditions when implementing specific punishments.“

Indirect discrimination on the grounds of sex:

Action or inaction, legal norm or evaluation criterion when being formally equal to both women and men when implemented or applied have different factual impact on one of sexes in terms of restriction of rights and granting of privileges, preference or advantage.

Sexual harassment

Offensive conduct of sexual nature, verbal or physical, towards a person with whom there are work, business or other relations of subordination.

Harassment on the grounds of sex

When unwanted verbal, non-verbal or physical conduct occurs, with the purpose or effect of violating the dignity of a person due to his/her sex, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

1.2 DOMESTIC VIOLENCE

There is no special law on domestic violence. The Criminal Code, Section 3 includes “crime against a person’s life, health, freedom and dignity”. Section XXIII of the Criminal Code “Crimes against family and children” partially cover punitive measures for domestic violence.

Amendments of the Criminal Code and Code of Criminal Procedure in 2004 created legal conditions for isolating the perpetrator from the victim. It is worth while noting that the problem is especially acute when the person resorts to domestic (family) violence thereby in most cases causing damage to women and children. Both during the pre-trial investigation and during the court hearing the prosecutor, the pre-trial judge or the court, seeking to ensure the participation of the suspect, the accused or the convicted person in the judicial proceedings, unhindered pre-trial investigation, court hearing and execution of the judgement and to prevent commission of any new criminal acts preventive measures may be imposed on the suspect according to the procedure established by the Code of Criminal Procedure of the Republic of Lithuania – detention, home arrest, bail, seizure of documents, etc.

In criminal proceedings arrest is restricted, under international and constitutional human rights requirements, by the necessary grounds, conditions, time limits and the established procedure. An arrest may be ordered only by the court or the pre-trial judge and only when there is probable cause to believe that a suspect might obstruct the course of proceedings or will go into hiding from the pre-trial investigation officers or the prosecutor or the court or obstruct the course of the proceedings or commit serious or very serious crimes or medium-gravity crimes listed in the law. An arrest may be employed only in the investigated and considered cases involving crimes which, under criminal law, provide for a stricter penalty than deprivation of liberty for a term of over a year, i.e. imposition of arrest is not allowed in the investigation of misdemeanours and certain crimes, e.g., provided for in paragraph 1 of Article 140 of the Criminal Code of the Republic of Lithuania (causing physical pain or minor health impairment).

Taking into account the fact that in cases of family violence arrest may often not be applied for the above-mentioned reasons, the culprit residing with the victim even after the commencement of the criminal proceedings, may exert upon the victim unlawful influence or even continue resorting to violence, the Criminal Code of the Republic of Lithuania does not contain any adequate provisional measures, the Ministry of Justice of the Republic of Lithuania has drawn up a draft law amending Articles 120, 121, 126 of the Criminal Code of the Republic of Lithuania and supplementing the Code with Article 1321. The draft law provides for a new preventive measure - obligating the suspect to reside separately from the victim if there is justified cause to believe that suspect residing together with the victim will attempt to exert upon the victim an unlawful influence or commit new criminal acts against the victim or the persons residing together with him. The measure may be imposed by the pre-trial judge or upon the court ruling whereby the judge/the court will also be able to obligate the suspect to refrain from communicating or seeking communication with the victim or the persons residing together with him, also refrain from visiting certain places visited by the victim or persons residing together with the victim. It should be noted that enactment of the above legal provisions will immensely aid the victims of domestic (family) violence, in most cases women and children.

In 2005 Law on Compensation of Damage of Violent Crimes came into force. The Law determines cases, when the state compensates material or non-material damage, which arise of violent crimes, as f.i., murder, rape, sexual assault, physical violence etc.

In 2005 the Law on Legal Aid guaranteed by State has been updated. The Law establishes the order of getting Legal Aid and natural persons who can use this opportunity. Of them, persons, who due to the objective reasons are not able to dispose their money are provided with legal aid, including legal advice, consultations, representation of their interests before the courts. (f.i. women, victim of domestic violence living in the crisis centre).

In 2006 National Strategy and Action Plan for 2007-2009 on combating violence against women is prepared and submitted to the Government for adoption on September 2006. It is expected that implementation of the Action plan will start in January 2006. The Strategy and actions cover three main areas: prevention of domestic violence, protection of and support to victims of domestic violence and prosecution of perpetrators. Goals and activities of the Programme are coordinated with the goals of the Council of Europe Campaign to Combat Violence against Women.

The main directions of the Strategy are prevention of domestic violence, assistance to the victim of domestic violence, work with perpetrators, improvement of legislation and its implementation processes, awareness raising, information and education of the public, as well as changing patriarchal stereotypes, trainings for relevant officials: police, judges, pedagogues, social workers etc., promotion of cooperation with the women's NGOs. Funds for the implementation actions will be allocated from the State Budget of the Republic of Lithuania.

Besides, law enforcement and police institutions carry out measures for prevention and control of domestic violence, investigate cases of violent crimes, participate in the programmes, related to prevention and control of violence, carry out preventive measures targeted to risk groups in cooperation of state institutions, municipalities and non-governmental organisations, also organising trainings for police officers.

The Instruction of Centralised Registration of Criminal Acts, Persons who Committed the Acts and Victims of the Acts, approved by Order No IV-160 of the Minister of the Interior of 8 May 2003 became effective as of 24 May 2003. The Instruction establishes the procedure for the registration, management of data of persons recognised as victims in compliance with Article 28 "Victim" of the Code of Criminal Procedure of the Republic of Lithuania and the procedure for filling in, registration, sending and keeping of statistical cards (Card 50). Up till now such data system has not been administered by the Informatics and Communications Department under the Ministry of the Interior, therefore it was not possible to ascertain the number of women and children who were victims of domestic (family) violence. The introduction of the above-mentioned statistical card should materially improve the analytic characterisation of women – victims of coercion and violence.

In the Republic of Lithuania the official statistics of offences registers only a minor portion of all domestic violent misdemeanours, as in most cases the victims of domestic (family) violence do not apply to law enforcement institutions or other public organisations. According to the data of the Informatics and Communications Department under the Ministry of the Interior, in Lithuania in the period from May to December 2003, 13 890 women and 21 065 men became victims of criminal acts; 300 persons were subjected to violence by their spouses, 137 by cohabitants, 18 by partners, 146 by their children.

Following the Programme of the Government of Lithuania the first National Programme on Equal Opportunities for Women and Men 2003-2004 is implemented and the New National programme on Equal Opportunities for Women and Men 2005-2009 was adopted. One of the goals of the both programmes are combating violence against women. 42. It is stated that violence against women both in public and private life constitutes violation of human rights and is a major obstacle for implementing gender equality. Violence against women violates and restricts women's possibilities to exercise human rights and fundamental freedoms. Violence based on the conflict between genders (battering or other domestic violence, sexual molestation and exploitation, trafficking in women and children, forced prostitution, sexual harassment) are contrary to human honour and dignity. The measures of the Programme aims at developing a system for combating violence against women and to ensure a set of measures embracing education, of law enforcement institutions, support for the victims of violence, work with the persons who committed acts of violence, provision of information to the public and victims of violence, education and health care, analysis of the effective legal acts and drawing up recommendations for their revision, drafting of new legal acts and building of an adequate legal basis for combating violence against women, especially as regards domestic violence, expanding the network of crisis centres, ensuring support got victims of violence and work with the persons committing acts of violence, supporting the projects of NGOs relating to the said issues, including information of the public about the problem, preparation of the information and its spread among the victims of violence. Violence against women - one of the largest part of the National Programme on Equal Opportunities for Women and Men. It covers 10 activities including improvement of legislation, especially related to isolation of perpetrator and separation order, development of women's shelters system, support to victims of violence, trainings for police officers, medical, social workers, pedagogues, other important activities are foreseen in this part.

Different Ministries are responsible for implementation of appropriate activities. Interministerial Commission on Equal Opportunities for Women and Men monitors implementation of the programme. . The Commission t reports to the Government on implementation of the Program every year.

Implementation of the programme leads to ensuring of protection of women's human rights, including protection of violence, especially domestic violence and implementation of equal opportunities for men and women in seeking education, in upgrading their qualifications, in employment, promotion, setting the salaries; will enable women to participate on equal conditions in all areas of political and public life and high-prestige activities, to occupy leading positions in public administration institutions.

The Government of the Republic of Lithuania supports the development of assistance centres for women victims of violence. More than 25 women's crisis centres, run by the Women's NGOs' mostly, provide assistance (including shelter, psychological, legal assistance and consultation, "hot line" telephone services) to victims of violence. Implementing the National Programme for Equal Opportunities for Women and Men, support has been given to over 11 projects of NGOs, intended for provision of social assistance to victims of domestic violence, including their temporary accommodation, provision with food, legal, psychological consultations, other assistance, in 2004 – for 12 projects and in 2005 – for 12 projects. Especially successful in its activities is the Vilnius Shelter for Battered Women and Children providing all-round assistance to battered women and children is financed by the Vilnius city municipality. Successful functioning of the said Shelter is an example for emulation for the crisis centres opened in the territories of other municipalities. No less important activities of Kaunas Women's Crisis centres, ensuring complex support to victims of domestic violence from all the Kaunas region.

In 2004 the Women's Issues Information Centre (Vilnius) together with the Oslo Centre for Legal Assistance to Women started implementing the project "Legal Consultations to Women" the purpose of which is provision of free legal consultations to Lithuania's women. Starting from 10 April 2004, every Wednesday and Thursday 5 students of Lithuania's Law University offer free legal consultations on the issues of family law, labour law and domestic violence. The duration of the project is one year. In addition, the Women's Issues information Centre initiated Nordic-Baltic network of Women's Crisis centres in Nordic and Baltic states.

The first Men's Crisis and Information Centre was set up in Vilnius in 2002. The centre is aimed to provide consultation and therapy services to perpetrators of violence who try to eliminate violent behaviour in the family.

Society, especially women's organisations, besides organising information campaigns, have provided substantial assistance to battered women. Recommendations are being worked out with a view to including the gender issue in the study programmes of lawyers, social pedagogues, social workers, police officers, physicians. Implementing National Programme on Equal Opportunities for Women and Men, the Manual of Legal and Practical Advice for Women Subjected to Domestic Violence has been prepared and presented to municipal institutions, wards, NGOs, women's crisis centres, police officers.

1.3 RAPE/SEXUAL ASSAULT

CRIMINAL CODE

Article 149 – Rape:

1. Any person who, against the will of the victim, through physical violence or threats of immediate violence or by depriving the victim in any other way of the possibility to show resistance or by exploiting the helpless state of the victim, has sexual intercourse with him, shall be punished by imprisonment for a term of up to 7 years.
2. Any person who, with a group of accomplices, rapes a victim, shall be punished by imprisonment for a term of up to 10 years.
3. Prosecution for the act specified in paragraph 1 of this Article may be instituted subject to a complaint being lodged by the victim or by the victim's legitimate representative, or where so required by the prosecutor.

Article 150 - Sexual Assault:

1. Any person who, against the will of the victim, satisfies his sexual desires through anal, oral or inter-femoral intercourse by using physical violence or threats of immediate violence or in any other way depriving the victim in any other way of the possibility to show resistance or by exploiting the helpless state of the victim, shall be punished by detention or imprisonment for a term of up to 6 years.
2. Any person who commits the acts specified in paragraph 1 of this Article with a group of accomplices shall be punished by imprisonment for a term of up to 8 years.
5. Prosecution for the acts specified in paragraph 1 of this Article may be instituted subject to a complaint being filed by the victim or by the victim's legitimate representative, or where so required by the prosecutor.

Article 151 - Sexual Abuse :

1. Any person who, by using threats of violence or any other psychological violence or by taking advantage of a person's dependency, compelled the person to have sexual relations with him or in some other way to satisfy the sexual desires of the perpetrator or a third person, shall be punished by detention or imprisonment for a term of up to 3 years.
3. Prosecution for the act specified in paragraph 1 of this Article may be instituted subject to a complaint being filed by the victim or by the victim's legitimate representative, or where so required by the prosecutor.

Article 151¹ Satisfaction of sexual desires violating inviolability of minors.

1.4 CHILD SEXUAL ABUSE/INCEST

Criminal Code articles 149 – 151 criminalises actions against young children. In addition:

Article 153 - Molesting of a young child:

1. Any person who carries out molesting acts in respect of a young child, shall be punished by a fine or restriction of liberty or detention, or imprisonment for a term of up to 2 years.

Article 149 – Rape:

3. Any person who rapes a minor, shall be punished by imprisonment for a term from 3 to 10 years.
4. Any person who rapes a young child, shall be punished by imprisonment for a term from 5 to 15 years.

Article 150 – Sexual Assault:

3. Any person who commits the acts specified in paragraph 1 of this Article in relation to a minor, shall be punished by imprisonment for a term from 2 to 10 years.
4. Any person who commits the actions specified in paragraph 1 of this Article in relation to a young child, shall be punished by imprisonment for a term from 3 to 13 years.

Article 151 - Sexual Abuse:

2. Any person who commits the acts specified in paragraph 1 of this Article in relation to a minor, shall be punished by imprisonment for a term of up to 5 years.

SEXUAL ABUSE OF GIRLS

The age of maturity is 18. Sexual intercourse with a girl under the age of 14 years is rape. If a 14 –16 year-old girl gives her consent to have sexual intercourse, a physician shall examine the questions about her sexual maturity.

1.5 SEXUAL HARASSMENT

Women's dignity is protected by the Constitution (art. 21), and the Law on Equal Opportunities of Women and Men protects women's dignity at work. Article 2 part 5 of the Law defines sexual

harassment as offensive conduct of sexual nature, verbal or physical, towards a person with whom there are work, business or other relations of subordination.

Article 5 of the law lays down the employer's responsibility to prevent sexual harassment and to take appropriate measures prevent persecution of an employee who has lodged a complaint on grounds of discrimination.

Article 416 of the Administrative Offences Code stipulates a fine of 100 to 2 000 litas for public officials, employers and persons authorised by the latter, for the violation of equal rights of women and men (i.e. for sexual harassment).

Criminal Code introduced penalties for sexual harassment.

Article 152 - Sexual Harassment:

1. Any person who, in seeking sexual contact or satisfaction harasses a human being, who is dependent due to the relations in service or in any other way, by the use of vulgar or other comparable acts or by making suggestions or intimations, commits a misdemeanour, and shall be punished by a fine or restriction of liberty, or detention.

2. Prosecution for the act specified in paragraph 1 of this Article may be instituted subject to a complaint being filed by the victim or by the victim's legitimate representative, or where so required by the prosecutor.

1.6 PORNOGRAPHY

No information available.

1.7 PROSTITUTION

No information available.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

The Seimas ratified the Convention on the Elimination of all Forms of the Discrimination of Women in 1995, and ratified its Optional Protocol in 2004 Lithuania has ratified United Nations Convention against Transnational Organised Crime in April 2002 and ratified its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2003.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Labour laws regulate the protection of pregnant and breast-feeding women.

New Labour Code approved on 4 June 2002 came into force on January 1 2003.

Article 132 – Guarantees to Pregnant Women and Employees Raising Children:

1. An employment contract may not be terminated with a pregnant woman from the day on which her employer receives a medical certificate confirming pregnancy, and for another month after maternity leave, except for the cases specified in Articles 136 (1) and (2) of this Code.
2. Employment contracts with employees raising a child (children) under three years of age may not be terminated without any fault on the part of the employee concerned (Article 129 of the Code).

Article 155 – Duty at the Enterprise or at Home:

4. Persons under 18 years of age may not be appointed to be on duty at the undertaking or at home. Pregnant women, women who have recently given birth and breast-feeding women,

employees raising a child under three years of age, employees solely raising a child under fourteen years of age or a disabled child under sixteen years of age, persons taking care of a disabled person, the disabled, if not restricted by a commission stating the disability, may be appointed to be on duty at the enterprise or at home only upon their consent.

Article 162 – Holidays:

It shall be prohibited to work during holidays, with the exception of work which cannot be interrupted on technical grounds (enterprises and organisations of uninterrupted operation), work involving the need to provide services to the population as well as work involving urgent repair and loading. Pregnant women, women who have recently given birth to a child, breast-feeding women, the employees raising, as single parents, a child under three years of age and employees raising a child before he has reached the age of fourteen or a disabled child before he has reached the age of sixteen, and persons under eighteen may be assigned work during holidays only subject to their consent.

Article 179 – Maternity Leave:

1. Women shall be entitled to maternity leave: 70 calendar days before the childbirth and 56 calendar days after the child birth (in the event of complicated confinement or birth of two or more children – 70 calendar days). This leave shall be added up and granted to the woman as a single period, regardless of the days used prior to the confinement.
2. The employees who have adopted newly born babies or who have been appointed as their guardians shall be granted leave for the period from the date of adoption or guardianship before the baby is 70 days old.
3. An allowance provided for in the Law on Social Insurance of Sickness and Maternity shall be paid for the period of leave specified in paragraphs 1 and 2 of this Article.

Article 278 - Maternity protection:

1. Pregnant women or women who have recently given birth or breast-feeding women may not be assigned to perform work in the conditions that may be hazardous and affect the health of the woman or the child. The list of hazardous conditions and dangerous factors prohibited for pregnant women, women who have recently given birth or breast-feeding women (hereinafter – list of hazardous conditions of work) shall be approved by the Government.
2. In compliance with the list of hazardous conditions of work and working environment risk assessment results, the employer must establish the nature and duration of potential effect to safety and health of woman who has recently given birth and breast-feeding woman. Upon assessment of the potential effect, the employer must take necessary measures to ensure that the above risk is eliminated.
3. Where the elimination of dangerous factors is impossible, the employer shall implement measures to adjust the working conditions so that exposure of a woman who has recently given birth or a breast-feeding woman to risks is avoided. If the adjustment of her working conditions does not result in avoidance of her exposure to risks, the employer must transfer the woman (upon her consent) to another job (working place) in the enterprise, agency or organisation.
4. Having been transferred to another job (working place) in the enterprise, agency or organisation, the pregnant woman, the woman who has recently given birth or the breast-feeding woman shall be paid not less than her average pay she received before being transferred to another job (working place).
5. If transferring a pregnant woman to another job (working place) where her and her expected child's exposure to risks could be avoided is not technically feasible, the pregnant woman shall, upon her consent, be granted a leave until she goes on her maternity leave and shall be paid during the period of extra leave her average monthly pay.
6. If it is not technically feasible to transfer a woman who has recently given birth or a breast-feeding woman after her maternity leave to another job (working place), where her or her child's exposure to risks could be avoided the woman shall, upon her consent, be granted an unpaid leave until her child is 1 year of age and shall be paid for the period maternity insurance contributions prescribed by law.

7. Where a pregnant woman, a woman who has recently given birth or a breast-feeding woman has to attend medical examinations, she must be released from work for such examinations without loss in her average pay, if such examinations have to take place during working hours.
8. In addition to the general break to rest and to eat, a breast-feeding woman shall be at least every three hours given at least 30-minute breaks to breast-feed. At the mother's request the breaks for breast-feeding may be joined or added to the break to rest and eat or given at the end of the working day, shortening the working day accordingly. Payment for these breaks to breast-feed shall be calculated according to the average daily pay of the employer.
9. Pregnant women, women who have recently given birth or breast-feeding women may not be assigned to work overtime without their consent.
10. Pregnant women, women who have recently given birth or breast-feeding women may be assigned to work at night, on days off or on holidays, or be sent on business trips only with their consent. If such employees refuse to work at night and submit a certificate that such work would affect their safety and health, they shall be transferred to day-time work. Where it is not possible to transfer such employees to day-time work due to objective reasons, they shall be granted a leave until they go on maternity leave or child-care leave until the child is 1 year of age. During the period of leave granted before the employee goes on maternity leave she shall be paid her average monthly pay.

LAW ON SOCIAL INSURANCE OF ILLNESS AND MATERNITY

Article 18, P1

1. The maternity allowance during pregnancy and maternity leave shall be 100% of the replacement income of the recipient of the allowance. However, this allowance per month cannot be less than one quarter of the average monthly-insured income effective on the month the pregnancy and maternity leave was granted.

Article 16

Women covered by the mandatory illness and maternity social insurance in compliance with the Law on Social Insurance of Illness and Maternity and granted the pregnancy and maternity leave shall be eligible to receive the maternity allowance during pregnancy and maternity leave if their coverage by the illness and maternity social insurance before the first day of the pregnancy and maternity leave is at least 3 months during the last 12 month period or at least 6 months during the last 24 month

2.0 SENTENCING

Statistics provided by the Ministry of the Interior

	Articles of Criminal Code of the Republic of Lithuania									
	Art. 149 „Rape“		Art. 150 „Sexual Assault“		Art. 151 „Sexual Abuse“		Art. 152 „Sexual Harassment“		Art. 153 „Molesting of a young child“	
	2004	2005	2004	2005	2004	2005	2004	2005	2004	2005
Registered criminal offences	260	265	128	231	10	5	3	3	46	57
of which against children	114	113	63	130	7	4	-	-	46	57
Victims:										
females	257	264	58	115	6	3	5	2	36	34
of which children	113	114	31	64	3	3	4	1	36	34
Cleared-up criminal offences	138	172	86	173	5	2	4	-	29	28
Persons charged with criminal offences	131	169	31	148	2	2	3	-	20	22

According to the official statistics on criminal offences in Lithuania, in 2005 464 women fell victim to her husband or partner and 111 women – to her child or adopted child (in 2004 – 634 and 118).

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

No information provided.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

LUXEMBOURG

This information was provided by the Ministry for Equal Opportunities (former Ministry for the Advancement of Women), in **November 2000**, **March 2003** and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

The 1993 United Nations Declaration on the Elimination of Violence against Women recognised the wide range of forms of violence against women as violations of human rights. It was from this standpoint that the Ministry for the Advancement of Women conducted a nation-wide campaign in 1999 against violence towards women and girls. HRH the Grand Duchess Joséphine-Charlotte was the patron of the campaign, which was conducted in collaboration with some thirty Luxembourg women's associations. The campaign slogan was "No more compromises: against violence towards women and girl".

This campaign followed on from the one conducted in 1993, which focused mainly on "Breaking the silence" and steps to deal with women and children who had been subjected to domestic violence.

1999 was declared (national) Year against Violence towards Women and a large number of information and awareness-raising schemes were undertaken in this context. A working group examined the legislation applicable in this field. The Government formed after the general election in May 1999 committed itself to introducing legislation on domestic violence.

Campaigns against violence towards women are conducted regularly.

As part of its national action plan for equality between women and men for 2005 to 2008, the Ministry for Equal Opportunities is planning a nation-wide project to promote a culture of non-violence, through the introduction of the following measures:

- Networking of, and co-operation among, members of governmental and non-governmental organisations working on the theme of violence;
- Training for those intervening at all levels in order to make them better acquainted with means of identifying domestic violence;
- Training for those intervening in the social, medical and paramedical sectors;
- In-service teacher training;
- Training in domestic violence for police officers;
- Scientific monitoring of the impact of the law on domestic violence;
- Preparation of tools ensuring optimum supervision of children who are victims of and/or witnesses to domestic violence;
- Appraisal of the effectiveness of the services provided by shelters and advice centres for women.

The purpose of this nation-wide project is to reduce domestic violence and violence in general, so as to achieve a more egalitarian society.

1.1 LETTER OF LAW – DEFINITIONS:

Luxembourg had not specific legislation relating to violence against women. Ordinary law was therefore to be applied.

In a Government Declaration of 12 August 1999, the Government committed itself to passing legislation on the eviction from the family home of perpetrators of domestic violence.

On 15 July 2003 the Domestic Violence Bill was passed by the Chamber of Deputies with 59 votes in favour and one abstention.

The Act of 8 September 2003 on domestic violence, amending

1. the Act of 31 May 1999 on the police and the General Inspectorate of the police

2. the Criminal Code
3. the Code of Criminal Procedure
4. the new Code of Civil Procedure

entered into force on 1 November 2003.

The Act aims to implement the Coalition Agreement (1999), which provides that: “The two partners in the coalition agree to ensure that, in the event of domestic violence against a woman, it will no longer be the woman who is obliged to leave the family home. Steps should be taken to ensure that the person who is responsible for the violence is forbidden entry to the home.”

Eviction of perpetrators of domestic violence from the home is a novel measure designed to achieve the following three objectives:

- immediate prevention of domestic violence in serious situations;
- making perpetrators of violence act responsibly, particularly with a view to long-term prevention;
- making the public aware of the gravity and special nature of domestic violence.

Since eviction does not in itself suffice to achieve these objectives, the law is based on a comprehensive concept involving five closely inter-related measures: provision for aggravating circumstances, police eviction of the perpetrator of violence from the home, special urgent procedures, a greater role for associations for the defence of victims’ rights and the compilation of statistics. In addition, the law repeals Article 413 of the Criminal Code, which rendered murder and assault and battery perpetrated by one spouse on the other and on the “co-respondent” excusable when the perpetrator caught them in the act of committing adultery.

A. PROVISION FOR AGGRAVATING CIRCUMSTANCES

The law of 8 September 2003 provides for longer sentences where physical, psychological or sexual violence has been perpetrated against a spouse or partner, ascendant, descendant or other close relative.

These aggravating circumstances reflect a growing public awareness that domestic violence is not a trifling offence but, on the contrary, a particularly serious form of violence.

Indeed, because domestic violence is perpetrated by someone with whom the victim has ties based on affection, the victim’s suffering is even greater.

B. EVICTION BY THE POLICE

Before the law came into force, police intervention in most cases of domestic violence boiled down to what is known in German as “*Streitschlichtung*”: the police tried to calm down the husband and, if necessary, took the wife to a shelter.

Intervention of this kind has the effect of trivialising the facts that elicited police intervention and implicitly condones the balance of power between the perpetrator and the victim since, by removing the victim, it makes the latter responsible for the cessation of the violence. In addition, it has been shown in practice that intervention of the “*Streitschlichtung*” kind is very ineffective in preventing domestic violence.

Police intervention in domestic violence is highly symbolic since, chronologically, it is the authorities’ first reaction to such violence.

The Domestic Violence Act provides for an administrative police order enabling the police to evict from their homes, for 10 days, people who pose a threat to the person with whom they are living. The police are responsible for taking this measure, with authorisation from the Public Prosecutor, where there are serious, specific and consistent signs that someone is likely to commit an offence endangering the life or safety of the spouse or partner, an ascendant or descendant or an ascendant or descendant of the spouse or partner.

C. URGENT PROCEDURE

Eviction of the perpetrator of violence is not in itself sufficient to protect the victim from all forms of attack: it does not prevent the perpetrator from harassing the victim by telephone, making impromptu visits to the victim's workplace or the child's day nursery, following the victim by car, and so on.

Moreover, the ten-day period during which the police ban on returning home is operative is generally too short to enable victims to take themselves in hand and make arrangements for a new start.

The law therefore provides for three types of protective measures that victims of domestic violence may ask the courts to impose:

1. an injunction banning the offender's return following police eviction;
2. eviction of the offender and an injunction banning the latter's return;
3. a series of injunctions designed above all to come into play after the final separation of the offender and victim or in addition to an injunction banning the offender's return, for example an injunction against frequenting certain places or making contact with the victim.

D. A GREATER ROLE FOR ASSOCIATIONS FOR THE DEFENCE OF VICTIMS' RIGHTS

Stepping up efforts to combat domestic violence involves enhancing the role of associations for the defence of victims' rights, whose experience, expertise and contact with victims make them essential partners in this area.

This enhanced role will be ensured by three measures:

- (a) creating the conditions needed to enable such associations to play an active role in crisis situations; the police will be required to work with a service providing assistance to victims of domestic violence;
- (b) enabling victims to be assisted or represented by a person working for a domestic violence victim support service;
- (c) enabling associations for the defence of victims' rights to bring criminal proceedings.

E. COMPILATION OF STATISTICS AND MONITORING OF THE IMPLEMENTATION OF THE LAW

Every year the Minister for Justice, the police, the prosecuting authorities and the services providing assistance to domestic violence victims have to compile statistics for the number of complaints, cases reported, eviction measures, other types of police intervention, cases where social workers intervened, prosecutions and convictions for particular offences.

Under the law of 8 September 2003, a committee for co-operation among professionals combating domestic violence is responsible for:

- 1) centralising and examining statistics for violence against people with close connections with the offender;
- 2) monitoring implementation of the provisions of the law;
- 3) submitting an annual report to the Government Council (*Conseil de Gouvernement*).

The Grand Ducal regulation of 24 November 2003 on the Committee for Co-operation among Professionals combating Domestic Violence sets out the membership and organisation of the committee and lays down its working arrangements. It makes provision for nine working members, including four representatives of the government, two representatives of the judicial authorities, one member of the police force and two members representing approved services assisting victims of domestic violence. Members are appointed by the Minister for Equal Opportunities on recommendations from the ministers concerned and the services assisting victims of domestic violence, respectively.

F. PERSONS "CAUGHT IN THE ACT OF COMMITTING ADULTERY"

Lastly, the Bill proposes to repeal Article 413 of the Criminal Code, which renders excusable murder or assault and battery perpetrated by one spouse on the other and the "co-respondent" when the perpetrator catches them "in the act of committing adultery".

G. SUMMARY OF THE FINDINGS OF THE STUDY "ASSESSMENT OF THE CHANGES IN LUXEMBOURG SINCE THE INTRODUCTION OF THE DOMESTIC VIOLENCE ACT

The Domestic Violence Act came into force on 1 November 2003. It provides for the eviction of the perpetrator from the home for a ten-day period, on the basis of the principle that people who hit their partners must pack their bags and leave.

The victims may stay in the home, and they have time to reflect on what steps to take as regards the future. A service providing assistance to domestic violence victims (SAVVD), set up to provide guidance and support, contacts the victims concerned direct. The co-operation committee monitors the implementation of the Act, checks its effectiveness and helps to solve problems in specific cases.

In order to assess the changes resulting from the implementation of the Domestic Violence Act, data from the police, the prosecuting authorities, the service providing assistance to domestic violence victims and members of the co-operation committee and the findings of a survey of the clients concerned and the various services providing aid were evaluated.

Between the beginning of November 2003 and the end of October 2005, there were 619 cases of police intervention, of which 316 were followed by eviction of the perpetrator. The percentage of evictions is 51.1%, and the trend is on the decline for 2005.

When we talk of domestic violence, it is mainly a case of violence perpetrated by men against women in a married or cohabiting couple: in over 83% of cases, the offender is a spouse or partner; former spouses play a marginal part. 90% of the victims, and 10% of the perpetrators, are women. Domestic violence offences mainly concern the 31-to-50 age bracket, although victims and offenders are to be found in all age groups.

Domestic violence exists in all social classes, but there is a higher percentage among people of immigrant origin (60%, compared with 40% in the case of the native resident population) and in the most disadvantaged sections of society and the middle classes.

It is worth noting that intervention and eviction is very common in central and southern Luxembourg and less so in rural areas.

The most common domestic violence offence is assault and battery, which may or may not render the victim unfit for work. Domestic violence accounts for 8.5% of all offences recorded by the police involving violence against other people.

Between 1 November 2003 and 31 October 2005, the services providing assistance to domestic violence victims registered 311 consultations. Thirteen new cases were recorded on average each month.

If the perpetrator is evicted, the police inform the services providing assistance to domestic violence victims, which contact the victim within 24 hours. In most cases, an appointment is made within three days of police intervention at the most, and consultation continues after this initial contact, particularly during the eviction period. On average, there are three to six consultations. Advice may be provided by telephone, at home or in the office, depending on the wishes of those concerned.

The socio-economic background of the people receiving advice from the service providing assistance to domestic violence victims is broken down according to age, region, nationality and social class. In comparison with the police statistics, a higher proportion of people who consult the service providing assistance to domestic violence victims are living together.

Fewer under-age victims of domestic violence consult the service. Those concerned have suffered various forms of domestic violence over a long period. Physical and psychological violence are the most common forms; sexual violence is reported less frequently.

Nearly three-quarters of the people dealt with by the service providing assistance to domestic violence victims have one or two children between the age of 3 and 12. Experience has shown that many children and adolescents are concerned. In autumn 2005 the service providing assistance to domestic violence victims undertook to take responsibility for this group of minors. When minors have violent parents, one-third of them have suffered either physical or psychological violence on the part of the violent parent.

Problems relating to childminding and access rights often ensue in the event of separation or divorce. The survey of clients of the service providing assistance to domestic violence victims shows that most of them consider police intervention in cases of domestic violence, the practice of eviction, the

information provided and the active efforts made to contact them to be very beneficial. Many women who would never on their own initiative have asked for assistance or professional help to put a stop to the violence, and who would probably not have done so in the future, were contacted in this way.

The help offered during the appointment with the service providing assistance to domestic violence victims is tailored to the individual case; in other words, account is taken of the living situation of the people concerned and their personal needs. Consultation with the service's staff is useful and important for the women concerned. If necessary, they may also consult lawyers and other institutions, such as the psycho-social advisory services. In general, the women are highly satisfied with the work of the service providing assistance to domestic violence victims: 90% of the women questioned said they would turn to the advisory services again.

Most of the women questioned took civil and criminal law measures against the perpetrator. In the majority of cases, they felt these were beneficial. Where they did not take such measures, the justification for not doing so was that the woman no longer felt threatened, or that she wanted to give her partner another chance.

Many of the women questioned said their situation had changed for the better as a result of police intervention and the help of the service providing assistance to domestic violence victims. Three-quarters of them had left their violent partner. Half of them had noticed a change in the perpetrator's behaviour, which had often come about as a result of outside support (from doctors or psychologists, for example). Such beneficial changes were, however, observed only after a period of time.

As for how safe they felt in the presence of the perpetrator, only 52% replied that they felt safer. A crucial factor in respect of this subjective feeling of security would appear to be the current and/or former behaviour of the violent person and current living conditions, particularly if children are concerned.

In many cases, the evicted perpetrator did not comply with the eviction order, and harassed and threatened the victim. Many perpetrators returned home before the period had elapsed, putting pressure on the victim.

There has been a change in the way domestic violence is viewed both by the prosecuting authorities and by the courts. This form of violence is no longer considered as a private matter, but as an offence punishable by law. On average, the prosecuting authorities authorise one eviction for every two instances of police intervention in cases of domestic violence. In many cases, criminal proceedings are instituted, even against the victim's wishes. The existing judgments show that prison sentences are being handed down (of between 6 and 24 months, suspended or otherwise), and fines (between 200 and 2,500 euros) are being imposed, or a combination of the two. In 24% of cases, proceedings are discontinued.

The new possibilities provided for by law and the establishment of the service providing assistance to domestic violence victims have not rendered other bodies providing help, in particular shelters and women's advisory services, unnecessary. On the contrary, they complement one another. The proactive approach of the service providing assistance to domestic violence victims and the traditional shelters provide a means of getting through to other target populations. There has been no decrease in the number of women asking to be taken in by shelters for women or women with children.

Co-operation within the co-operation committee and its activities are considered beneficial and useful. The fact that the committee is responsible for seeking solutions to particularly problematic and contentious cases is especially significant.

The introduction of the Domestic Violence Act and the fact that the public has been made aware of it has also brought about substantial social changes: victims, perpetrators, people working in the domestic violence field and institutions are now much better informed.

To conclude, it can be observed that the law has had beneficial effects on the institutions of the victim support system. The law works well in most cases as far as processes and procedures are concerned. The active efforts made to contact the victims concerned are bearing fruit, and the victims themselves consider this contact, and the support and advice from the service providing assistance to domestic violence victims, to be effective and very useful. The chain of aid put in place, from police intervention to the steps taken by the prosecuting authorities and the service providing assistance to domestic violence victims, usually unfolds smoothly.

H. DOMESTIC VIOLENCE VICTIM SUPPORT SERVICE (DVVSS)

In 2003, the Ministry for Equal Opportunities granted a ministerial agreement to the Domestic violence victim support service (DVVSS). The role of the service is to proactively contact the victim, in order to give him or her appropriate support, inform him or her of the possibility of lodging a complaint and applying under urgent procedure for appropriate protective measures.

I. THE ASSISTANCE SERVICE

In 2004 the Ministry for Equal Opportunities authorised the Luxembourg Family Planning and Sex Education Movement, a not-for-profit organisation, to run a centre providing advice and assistance to perpetrators of violence, "Riicht eraus". The centre's objective is, in the short term, to protect victims and, in the long term, to reduce or even eliminate violence.

J. THE ADVICE AND INFORMATION CENTRE FOR WOMEN (VISAVI)

This service offers psychological support and legal information to women victims of domestic violence.

K. SPECIFIC ASSISTANCE GROUP FOR CHILDREN VICTIMS OF VIOLENCE

In 2005, the North shelter of the Open House has launched a specific assistance group for children victims of violence in shelter services.

L. PSY-CHILDREN

Since 2006, this service takes into care children victims of domestic violence.

1.2 DOMESTIC VIOLENCE

In the area of domestic violence, the 1999 Coalition Agreement provides that:

"The two partners in the coalition agree to ensure that, in the event of domestic violence against a woman, it will no longer be the woman who is obliged to leave the family home. Steps should be taken to ensure that the person who is responsible for the violence is forbidden entry to the home.

The legislation currently in force will also be reviewed, so that women who leave their home to escape from domestic violence will not forfeit their right to maintenance on the grounds that they had deserted the home in the legal sense of the term."

Violence within a couple is not censurable *per se*, but comes under the scope of the ordinary law governing offences against the person (Articles 392 to 417 of the Criminal Code).

The Criminal Code takes certain factors into account in categorising violent crimes:

- degree of intention (premeditation);
- gravity of the consequences (illness, incapacity, death);
- the relationship between the perpetrator and victim (relationship of descent between the perpetrator and victim);
- status of the perpetrator or victim (i.e., where the perpetrator exercises authority over the victim, or an under-age victim);
- specific means of committing the offence (administration of substances).

As regards intentional injuries, it is appropriate to refer firstly to Article 398 of the Criminal Code, which provides that:

Any person who intentionally injures or assaults shall be punished by eight days' to six months' imprisonment and a fine of €251 to €1000, or by only one of these penalties.

In the event of premeditation, the guilty party shall be sentenced to one month's to one year's imprisonment and to a fine of €500 to €2000.

The penalties range from two months' to two years' imprisonment and a fine of €500 to €2000 if the assault or battery resulted in illness or personal disablement (Article 399(1)). In the event of an illness that is apparently incurable or of permanent personal disablement, loss of complete use of an organ or mutilation, the sentence is increased: two to five years' imprisonment and a fine of €500 to €5000 (Article 400(1)).

If the assault or battery has caused unintentional death, the penalty will be five to ten years' imprisonment. Where the violent acts, but not the death, were premeditated, the sentence will be ten to fifteen years' imprisonment (Article 401(1-2)).

In the event of intentional administration of substances, Articles 402 to 405 apply.

Extreme cases of physical violence, namely murder and premeditated murder, are punished under articles 393, 394 and 397 of the Criminal Code.

Under Article 393, homicide "*committed with the intention of causing death is classified as murder. It shall be punished by penal servitude for life.*"

Murder committed with malice aforethought is defined as premeditated murder (Article 394).

Murder committed "*by means of substances which may sooner or later cause death, however these substances were used or administered*" is defined as poisoning (Article 397).

Premeditated murder and poisoning are punished by life imprisonment.

"Psychological violence is punished as assault and battery, as insults or as threats. According to the Supreme Court of Justice (Cour Supérieure de Justice), a psychological shock constitutes an injury, whereas the overall meaning of the words "assault and battery" includes all assaults on a person's physical integrity or health, and consequently refer not only to external injuries, but also to internal injuries, illnesses and even internal disorders" (Cour Supérieure de Justice, 13 October 1978, Pasicrisie 24, page 198).

Verbal threats give rise to sanctions only exceptionally. Article 327(1 –2) of the Criminal Code states:

Anyone who, either verbally or in an anonymous or signed written statement, or by any analogous method, has threatened to carry out an attack against persons or property that would be a criminally punishable offence shall be punished by six months' to five years' imprisonment and a fine of €5000 to €5000 Francs.

A verbal threat, or a threat made in an anonymous or signed written statement, or by analogous methods, to carry out an attack on persons or property that would be punishable by a criminal sentence, and which does not contain an order or condition, shall be punished by three months' to two years' imprisonment and a fine of €500 to €3000.

Article 330 states:

A threat, made either verbally or through an anonymous or signed written statement, containing an order or condition, to carry out an attack on persons or property that would be punishable by eight days' imprisonment or less, shall be punished by eight days' to three months' imprisonment and a fine of €251 to €1000.

Accordingly, verbal threats made without an order or condition are only punishable if they concern an attack against persons (or property) that would be punishable by a criminal sentence. Consequently, simple oral threats to inflict an injury, made without an order or condition, are not punishable. However, this is a common form of domestic violence that is frequently accompanied by physical violence.

Sexual violence by a husband against his wife, the following section should be consulted.

1.3 RAPE/ SEXUAL ASSAULT

Sexual violence is covered by Articles 372, 373 and 375 of the Criminal Code, under Book II, Part VII "*crimes and offences against family order and against public morality*".

Article 373 punishes indecent assault, committed with violence or threats, or committed against persons who are not in a position to give free consent or to offer resistance, by six months' to 5 years' imprisonment. The case law classifies indecent assault as "*a physical action, contrary to the common sense of decency, carried out on another person against his or her will*".

Since its modification by the Law of 10/08/92 on the protection of young people, Article 375(1) classifies rape as any act of sexual penetration, of whatever kind and by whatever means, committed against another's person, by the use of violence or threats, or by trickery or artifice, or by taking advantage of a person who is not in a position to give free consent or to offer resistance.

Before the Law of 10/08/92 entered into force, rape was not defined and, in the majority of cases, the case law reserved the classification of rape for “*the ultimate attack on a person’s privacy, likely to lead to pregnancy*”. At the most, forced anal or oral penetration of another person, whether male or female, was punishable as indecent assault.

Articles 373 and 375 do not exclude from their ambit sexual violence between spouses and between unmarried consorts. Moreover, the case law seems to recognise the existence of rape within a couple. In a judgment of 21 June 1994 (Judgment N° 223/94 V), the Court of Appeal stated:

“It is now accepted that rape of a spouse is punishable in the same way as that carried out by the perpetrator against a person to whom he is not linked in matrimony.”

However, there is very little case law as regards marital rape.

LAW ENFORCEMENT

Where a complaint has been lodged with respect to sexual violence against a woman, the judicial investigation is automatically entrusted to the criminal investigation section competent in the district concerned, which will ascertain the facts, conduct the investigation and file a report. When questioning the victim, the investigators are assisted by women police officers.

In June 2000, a new tool was given to technical police: the “Sexual Assault Pack” (SAP). It is used as a means of preserving samples from a victim of sexual assault and the members of the forensic team will, with the victim’s agreement and on orders from the Public Prosecutor or the investigating judge, use them in investigations into rape and attempted rape. SAS are for the exclusive use of the doctor requisitioned for the purposes of the investigation and contain the instruments and receptacles needed for taking, preserving and storing samples taken following a sexual assault.

THE VARIOUS SUPPORT SERVICES

Victims of sexual assault may seek assistance from the Family Planning service, the association De Waisse Rank (The White Ring), the Educational Psychology and Guidance Service, INFO VIOL (Rape Information), SOS Distress and the Women in Distress helpline.

For these purposes the Ministry for Equal Opportunities (former Ministry for the Advancement of Women) has published a pamphlet entitled *Rape*, a guide for victims explaining, *inter alia*, what steps to take and the various support services available to them.

1.4 CHILD SEXUAL ABUSE/ INCEST

Any indecent assault committed against the person or using the person of a child under the age of 16, even in the absence of violence or threats, is punishable by one to five years’ imprisonment (Article 372 (new) of the Criminal Code). The sentence is extended to 5 to 10 years if the child is under 11 years old.

In addition, any act of sexual penetration, of whatever nature and by whatever means, committed on the person of a child who has not reached the age of 14 years, is deemed to be rape (Criminal Code, Article 375(2)).

The penalties incurred for indecent assault or rape are aggravated when the perpetrator is an ascendant of the victim (Criminal Code, Article 377).

Articles 11 to 13 of the Act of 31 May 1999 strengthening the provisions on trafficking in human beings and the sexual exploitation of children and amending the Criminal Code and the Code of Criminal Procedure, make it legally acceptable to use audio or video recordings of statements by persons who are under age or witnesses in evidence, on the authorisation of the State Prosecutor or at the request of the investigating judge and only with the consent of the witness or under-age person where he or she has reached the age of discretion. This will make it easier to hear persons who find it difficult to testify in the ordinary way and persons whose subsequent appearance in court proves difficult or inappropriate (sexual abuse).

“RAPE INFO – SEXUAL VIOLENCE” UNIT

As part of the fight against sexual abuse, the Ministry of the Family and Integration and five associations – namely ALUPSE, the Kannerschlass Foundation, Pro Familia, the Family Planning service and the Red Cross’s Youth Psychology service – have combined forces to set up a service

whose purpose is to put professionals who suspect sexual abuse is taking place and are seeking assistance in managing that situation in touch with other professionals who have experience of dealing with abused children and sexual abusers.

The unit functions on the basis of a telephone helpline using the single number 49 58 54, which the member associations take it in turns to man. Following an awareness campaign launched in 2000, the telephone number and the unit's objectives have been made known to a great many professionals. While it is true that the initiative was widely welcomed, it has to be said that few professionals have availed themselves of it. Some contact the partner associations directly when they need assistance.

In 2002, the members of the unit met regularly to analyse the content of the calls received and the statistics. Some of the calls were limited to telephone conversations which were sometimes lengthy, while others were followed by meetings between callers and members of the unit.

In 2002, the working group organised a lecture by Mr Yves-Hiram HAESVOETS, a psychologist and psychotherapist, on the theme, "Encouraging child victims of sexual assault to talk during the ordeal entailed by investigations". The lecture was followed by a day's training for professionals, the subject of which was "From sexual victimisation to the issue of adolescent sexual aggressors".

The members of the unit continue to be involved in continuing training for teachers in the form of a course called "I suspect a pupil in my class is being abused ...".

After participating in the World Congress Against the Commercial Sexual Exploitation of Children in Stockholm in 1996, Luxembourg took a number of initiatives in order to inform and raise the awareness of:

- (1) children, through a poster entitled 'Och dest si Kannerrechter', a pamphlet entitled "The Sexual Abuse of Children" in French and German published in 1999 by the Ministry of Family Affairs, Social Solidarity and Youth, and through the preparation and distribution in schools of a leaflet giving parents advice on how to protect their children from sexual abuse;
- (2) adults, through campaigns and lectures, in addition to the poster, pamphlet and leaflet;
- (3) teachers, social workers working with children and others, through courses and the above-mentioned pamphlet;
- (4) the police, by distributing the pamphlet "The Sexual Abuse of Children" to every police unit and placing copies of it on the reception desk and in the waiting-room in police stations.

In 1999, the Police Advisory Bureau produced leaflets and posters to raise public awareness of crime in general (burglary, assault, sexual assault). The leaflets were distributed in or otherwise made available to the public. With the assistance of the municipal authorities and shopkeepers, the posters were put up in places where they were likely to be seen.

Co-operation with national and international NGOs was put in place.

Following the Second World Congress Against the Commercial Sexual Exploitation of Children held in Yokohama, Japan, in 2001, Luxembourg took the initiative in 2002 of organising a campaign against sex tourism involving children.

THE INFORMATION CAMPAIGN "NO TO SEX TOURISM INVOLVING CHILDREN"

The campaign was organised by the Ministry of Family Affairs and Integration and the Luxembourg branch of ECPAT (End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes). The campaign will be launched in order to inform and raise the awareness of the general public and, in particular, tourists travelling from Luxembourg. The aim is to get through to as many tourists as possible.

The purpose of the campaign is to make the travelling public aware of their responsibilities as tourists during their stay in nearby or distant countries and to appeal to their good moral sense and urge them to behave impeccably, while at the same time making them aware that all tourists have a responsibility not only to behave properly themselves but also to express disapproval when witnessing a situation in which children are being sexually abused.

The campaign calls on tourists to co-operate fully, but not with the aim of making them feel guilty: it provides information about legal procedures, specifying that sexual abuse of children is a crime, even when committed abroad, and is punishable by law.

Anyone guilty of sexually abusing a child will be prosecuted in the place where the offence was committed or in the abuser's country of origin (Article 10 of the Act of 31 May 1999 on the sexual exploitation of children).

ECPAT's mission is to combat all forms of sexual exploitation of children for commercial purposes, i.e. all forms of prostitution, pornography, sale of or trafficking in children for sexual purposes.

The leaflet provides information on persons indulging in sex tourism, the Act of 31 May 1999, the main causes of child prostitution, what to do and who to contact.

SUPPORT SERVICES

Victims of sexual assault may seek assistance from the Family Planning service, the association De Waïsse Rank (The White Ring) or the Educational Psychology and Guidance Service.

1.5 SEXUAL HARASSMENT

THE LAW OF 26/5/2000 ON PROTECTION AGAINST SEXUAL HARASSMENT IN THE WORKPLACE

The purpose of this Law is to compensate for the legislative vacuum with regard to protection against sexual harassment in the workplace, by adopting a comprehensive approach based on the principles outlined in the code of practice presented by the European Commission on 27 November 1991.

Firstly, the Law provides a definition of the phenomenon. Under the law, this concept includes all physical, verbal or non-verbal behaviour based on sex, where the guilty party ought to be aware that such conduct affects the dignity of a person at work and where one of the following three conditions is met:

- 1) the conduct is inappropriate, offensive and distressing to the recipient;
- 2) the recipient's refusal of or submission to such conduct is used as the basis for decisions affecting his or her rights in relation to employment;
- 3) the conduct creates an intimidating, hostile or humiliating environment for the recipient.

It is the victim's responsibility to substantiate the facts and the perpetrator's responsibility to prove that he did not or could not know that his conduct would affect the dignity of a person at work.

Victims and witnesses are protected against reprisals. Thus, any decision taken against the victim on account of her opposition to sexual harassment, for example a decision to dismiss her, is invalid. This also applies to workers who have testified about harassment. In the event of dismissal, the victim and the witness can request reinstatement.

In order to provide maximum protection for workers against the risk of sexual harassment at work, employers are responsible for creating a working environment that is free from sexual harassment, by taking preventative measures and putting a stop to any sexual harassment brought to their notice, whether it is perpetuated by an employee, a client or a supplier.

As regards preventative measures, the law expressly provides that these should include information measures. In addition, in order to put a stop to conduct that is expressly forbidden by law, employers must if necessary apply one of the disciplinary sanctions which, under this Law, will be included in collective agreements.

The equality delegate and the staff committee are responsible for assisting and advising the victim. In this capacity, they are obliged to observe confidentiality, except where the victim has waived this right. The victim may be accompanied and assisted by a staff representative in meetings with the employer connected with the inquiry into sexual harassment.

Where employers take no action despite their legal obligation to end sexual harassment of which they are aware, the victim may request the President of the Labour Tribunal to compel the employer to put a stop to any activity that it recognises as constituting sexual harassment in the workplace, by a date set by the Tribunal.

The victim may resign without notice, with compensation payable by the employer responsible for the immediate resignation. Employers' responsibility in such cases will be evaluated with reference to the obligations imposed on them by the new law, namely to refrain from any act of sexual harassment, to prevent any form of sexual harassment and to put an end to any sexual harassment of which they are aware.

The Inspectorate of Labour and Mines is responsible for enforcing the Law.

Although the Law is aimed primarily at the private sector, insofar as the majority of its provisions refer to this sector, it also provides for protection against sexual harassment in the public sector. Under the Law, the State and the municipal authorities are obliged to protect their employees against any acts of sexual harassment.

The Law of 28 June 2001 on the burden of proof in sex discrimination cases is applicable to all civil and administrative court cases in the private and public sectors concerning access to employment, remuneration, promotion and vocational training opportunities, access to a profession, working conditions as well as occupational social security schemes and therefore also to cases of sexual harassment. It provides for the burden of proof to be shared.

Once the victim has established the facts leading to a presumption of direct or indirect discrimination, it is for the defendant to prove the contrary.

EXHIBITIONISM/INDECENT BEHAVIOUR

Exhibitionism falls within the scope of Article 385 of the Criminal Code, which classifies affronts to public decency, constituted by immodest acts, as offences. The penalty is eight days' to one year's imprisonment and a fine of €251 to €25,000.

1.6 PORNOGRAPHY

Under Articles 383, 384 and 385 of the Criminal Code, as amended by the Act of 31 May 1999, which also broadened the scope of the articles concerned and generally increased the sentences set out in the Criminal Code, a whole series of acts relating to pornography constitute obscene publication offences. These include (Article 383):

- the production or possession of written material, drawings, photographs, films and other items of a pornographic nature with a view to their distribution or public display;
- the importation, exportation, transport or circulation in any such material for the above purposes;
- any form of trading, even where it is not public, or any transaction involving such material and the distribution, public display or renting out of such material;
- announcing or making it known in any way whatsoever with a view to favouring unlawful circulation or trafficking that a person is engaging in one of the unlawful acts listed above, or how or through whom the above material may be obtained directly or indirectly.

The penalty is eight days' to three years' imprisonment and a fine of €251 to €50,000.

The penalty will be heavier where the acts listed above involve persons under 18 or persons who are particularly vulnerable, in particular as a result of their unlawful or precarious administrative situation, pregnancy, illness, disability or a physical or mental impairment. The term of imprisonment is from one to five years and the fine between €251 and €50,000.

The Act also makes it an offence to possess pornographic material involving or depicting a child under 18 (Article 384).

In the event of a conviction, the material will systematically be confiscated.

Under Article 383 a, it is an offence to sell, display or distribute to children under 16 indecent written material, images, figures or objects of a kind that they may find disturbing.

1.7 PROSTITUTION

Luxembourg has ratified the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Consequently, all rules governing prostitution have been abolished.

There is no law making prostitution an offence.

Mention should again be made of the Act of 31 May 1999 strengthening measures against trafficking in human beings and the sexual exploitation of children and amending the Criminal Code and the Code of Criminal Procedure. The Act considerably extends the scope of the existing articles of the two Codes and increases the penalties provided for in them.

Procuring, in the broad sense, is punishable under Articles 379 and 379 bis of the Criminal Code, as amended by the Act of 31 May 1999.

Article 379 of the Code states that anyone who affronts public decency by inciting or aiding and abetting the immorality, corruption or prostitution of a person under 18 in order to satisfy the desire of another person, or who has exploited a person under 18 for the purposes of prostitution or of producing pornographic entertainment or material, or who has facilitated the entry to, transit through, stay in or departure from national territory of a person under 18 shall be liable to one to five years' imprisonment and a fine of €251 to €50,000.

Anyone who has attempted to do any of the above is liable to six months' to three years' imprisonment.

Where the offence has been committed against a child under 14, the sentence is increased to two to five years' imprisonment; where it has been committed against a child under 11, to five to ten years. The sentence is also heavier in cases of attempt to commit such an offence.

Under Article 379 bis, six months' to three years' imprisonment and a fine of €251 to €50,000 are imposed on:

1. anyone who, in order to satisfy the desire of another, recruits, incites or corrupts a person for the purposes of prostitution or debauchery, even with the latter's consent, whether within the Grand Duchy of Luxembourg or in a foreign country. The prison sentence is increased by one to five years where the victim has been recruited, incited or corrupted by fraudulent means or with the use of violence, threats, abuse of authority or any other means of coercion, where the victim has actually prostituted himself- or herself or been corrupted or where the offender has taken advantage of a person's particularly vulnerable situation, and by five to ten years where two of the above circumstances have been present;
2. anyone who has facilitated the entry to, transit through, stay in or departure from the territory for the purposes enumerated under (1) above (this provision makes trafficking in human beings for the purposes of sexual exploitation an offence). In this precise case, the sentences are also heavier in the circumstances provided for under (1);
3. anyone who owns, directly or through an intermediary, manages or runs a brothel;
4. any landlord, hotelier, innkeeper or other person who sells, rents out or makes available to another or tolerates another's use of all or part of a building, in the knowledge that those premises will be used for the purposes of exploiting the prostitution of others;
5. procurers: the persons who may be regarded as procurers are listed.

Persons attempting to commit any of these offences are also liable to a prison sentence.

The penalties for the offences provided for in paragraphs 1, 3, 4 and 5 are progressively heavier where they are committed against persons under 18, under 14 or under 11. The same applies to attempts to commit the offences.

Article 5, paragraph 2 of the Code of Criminal Procedure, as supplemented by the Act of 31 May 1999, provides that any citizen of the Grand Duchy of Luxembourg who has committed, in another country, an act which is an offence under Luxembourg law may be prosecuted and sentenced in the Grand Duchy if the act is an offence under the law of the country where it was committed.

The Act of 31 May 1999 also makes sex tourism by citizens and residents of Luxembourg an offence.

Thus Article 5-1 of the Code of Criminal Procedure, as amended by the same Act, provides that any citizen of Luxembourg or any foreigner present in the Grand Duchy of Luxembourg who has committed abroad one of the offences set out, in particular, in Articles 368 to 382, and therefore including Articles 379 and 379 a, may be prosecuted and sentenced in the Grand Duchy even if the act in question is not an offence under the legislation of the country in which it was committed and the Luxembourg authorities have not received a complaint from the injured party or from the authorities of the country in which the offence was committed.

ASSISTANCE FOR PROSTITUTES

The Red Cross "Drop-In" dispensary provides (male and female) prostitutes, and particularly persons who are especially vulnerable, with professional healthcare services, advice and medical, psychological and social assistance.

Prostitutes hold meetings, debates and information and discussion days at the Drop-In dispensary.

The themes covered in sessions with the psychologist concern sexual identity, drug use, sexual violence, rehabilitation, building self-esteem, mediation and self-determination. The multidisciplinary approach (doctor, social worker, youth worker, psychologist, etc) enables solutions to be found to their problems.

PREPARATION OF A MAP OF PROSTITUTION

From September 2006, the Ministry for Equal Opportunities will arrange, in conjunction with the Luxembourg Red Cross, to have a map produced of prostitution in Luxembourg, as part of its national action plan for equality between women and men.

The Ministry will also take steps to make prostitutes' clients aware of the risks incurred.

The measures provided for in this project are:

- a quantitative and qualitative assessment of the attitude of the public, and in particular men, to the purchase of sexual services, with or without the use of a condom;
- the preparation of a map of prostitution;
- a survey of client demand;
- a campaign to make clients aware of the danger of catching STDs (sexually transmitted diseases);
- the preparation of a special information document in several languages for people engaging in prostitution.

The objectives of the project are:

- to identify and protect victims of trafficking and prostitution;
- to reduce the incidence of sexually transmitted diseases;
- to ensure egalitarian sexual relations.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

Luxembourg's legislation does not recognise any specific offence with regard to genital mutilation. However, the provisions of the Criminal Code on deliberate injuries (Article 398 onwards) are applicable. It should be noted that Article 401 bis deals specifically with assault and battery on children under the age of 14.

1.10 INTERNATIONAL CONVENTIONS

The Grand Duchy of Luxembourg has signed, and in some cases ratified, a number of international conventions that include measures on the rights of women and, more particularly, those that refer to violence against women.

On 5 October 1983 it ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the Final Protocol to the Convention.

It has also ratified the International Convention on the Elimination of all Forms of Racial Discrimination (on 1 May 1978), the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (on 18 August 1983), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (on 29 September 1987), the Convention on the Elimination of All Forms of Discrimination against Women (on 2 February 1989) and the Convention on the Rights of the Child (on 7 March 1994).

The Grand Duchy of Luxembourg has signed the Optional Protocol to CEDAW (on 10 December 1999. A Bill was tabled in the Chamber of Deputies on 27 May 2002 with a view to its ratification), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (on 18 September 2000), and the United Nations Convention on Transnational Organized Crime and the Protocol to it (on 15 December 2000), and on 15 May 2003

it passed the law approving the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 6 October 1999.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Under the law of 1 August 2001 on the protection of workers who are pregnant, have just given birth or are breastfeeding, pregnant women and nursing mothers may not be required to work between 10 pm and 6 am when the works doctor considers such work to be detrimental to their health or safety. In such cases the employer is required to transfer the female employee to a daytime post, while continuing to pay her previous salary, throughout the period necessary for the protection of her health or safety. If it is technically or objectively impossible to do so, the employed woman is dispensed from working.

In the case of any activity where pregnant women or nursing mothers are likely to be exposed to harmful substances, processes or working conditions, the employer is required to evaluate the nature, degree and duration of the exposure so as to be able to assess whether there is any risk to their health and safety and whether there will be any repercussions on the pregnancy or breastfeeding. If the results of the evaluation reveal a risk to the woman or repercussions on the pregnancy or breastfeeding, the employer is required to take steps to prevent the woman from being exposed to this risk.

If the necessary adjustments are not possible, the employer is required to assign the women to another post, continuing to pay her previous salary, or, if a change of post is impossible, to dispense her from working.

A list of relevant substances, processes and working conditions is appended to the law of 1 August 2001, and employers are obliged to determine the activities in their companies that entail a risk of such exposure. A pregnant woman may not under any circumstances be required to carry out activities involving a risk of exposure. Employers are required to provide all women employed in their companies with a list of jobs to which pregnant women and nursing mothers may not be assigned.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

ACTIVITIES OF THE MINISTRY FOR EQUAL OPPORTUNITIES (FORMER MINISTRY FOR THE ADVANCEMENT OF WOMEN)

The Ministry for Equal Opportunities (Advancement of Women) organised various activities in the context of the Campaign against Violence towards Women from 1999 to 2006:

- Lecture by Professor Alfred GODENZI, Switzerland, and Workshop. Presentation of research findings including alarming statistics on male potential for violence, 1999.
- Lecture in Luxembourg by Dr Albin DEARING: "Wegweisung und Rückverbot der Täter häuslicher Gewalt" (guidance and prohibition of the return of persons guilty of domestic violence), 2000.
- Lecture on violence in the family in relation to the Act of 31 May 1999 (measures against trafficking in human beings), as compared with Austrian legislation.
- The Ministry for Equal Opportunities (former Ministry for the Advancement of Women) organised self-defence courses for women and adolescent girls.
- A television advertisement provided by the European Commission was adapted into Luxembourgish and broadcast for a fortnight. Articles were published in the Luxembourg dailies and in periodicals aimed particularly at women.
- A logo was designed for the campaign and distributed in the form of a badge. The Postal and Telecommunications Authority franked all stamped mail with the campaign logo during the month of November.

- The campaign awareness poster was published in co-operation with the Ministry of Education and Vocational Training and emphasised prevention and awareness among young people.
- Three pamphlets on violence and rape were prepared and distributed in collaboration with women's refuges.
- The official campaign closed with a day of solidarity on 27 November 1999. This one-day event, in which some thirty associations¹ played an active part, was a great success.

From 1999 to 2002, the Ministry for Equal Opportunities set up a network of female instructors to train professionals in the police, the medical professions and social workers how to detect signs typical of domestic violence. They organised training modules on the subject of domestic violence for professionals in the social and educational sectors and prospective police officers at the Luxembourg police training college.

Brochures in French and German entitled "*Les Visages multiples de la violence envers les femmes*" and "*Gewant gegen Frauen hat viele Gesichter*" ("The many facets of violence against women"), produced by women's shelter services in conjunction with the Ministry for Equal Opportunities, were published in 2002.

In November 2003 the Ministry for Equal Opportunities (Women's Advancement Section) organised an international colloquy on the theme "Domestic violence – a new challenge" in order to speed up implementation of the new Domestic Violence Act.

In 2003 the Ministry for Equal Opportunities continued with its awareness campaign, showing a spot with the slogan, "Violence against women and girls: no more compromises" on television and in cinemas through the country. As one of the measures taken to implement the Domestic Violence Act, a spot on the eviction of perpetrators of domestic violence from the home was also broadcast on the radio.

In 2004 an anonymous telephone helpline subsidised by the Ministry for Equal Opportunities was set up specifically for men who wanted to extricate themselves from the vicious circle of violence, as part of a project by the European Society counselling Violence Perpetrators (EUGET), in the context of the European DAPHNE programme. Treating perpetrators of violence means breaking the spiral of violence and preventing mechanisms of violence from being handed down from one generation to the next.

In 2004 a seminar on domestic violence and co-operation with women's shelters focused on work with children and the portrayal of domestic violence in the media.

The brochures in French and German on violence against women, first published in 2002, were updated and re-issued towards the end of 2005.

In 2005 the Ministry, in conjunction with women's shelters, organised a training course on the theme "Action to combat domestic violence against women, children and young people".

In 2006 the Ministry organised a conference and workshops with Professor Barbara Kavemann on the themes "Personalised support for women in violent relationships" and "Children and domestic violence". Ms Kavemann explained, among other things, that proactive intervention after the perpetrator had been evicted was a means of getting through to women and children who had not yet been taken in hand by the traditional intervention systems.

In the same context, Ms Gitte Landgrebe ran a workshop on the theme "Benefits of women's shelters from the viewpoint of users".

¹ AFP Services; Aidsberodung Red Cross; National Association of Luxembourg Nurses; Amnesty International; Caritas Foundation; Carrière; CID Femmes; CLAE; National Council of Luxembourg Women; Foyer Sud Fraen an Nout; Christian-Socialist Women; Femmes en Détresse – Fraenhaus – Kannerhaus – Mederchershaus; Socialist Women; Kannerschlass Foundation; Fondation Maison de la Porte Ouverte; Pro Familia Foundation; Foyer Bethlehem; Fraëform; Foxtrott; Groupe Lidia; Info-handicap; Initiativ Liewensufank; Jugendtreff –Reiden; Kiwanis Luxembourg Aalstad, Noémi; Oekumenische Forumsgruppe; Participation action femmes immigrées; the Family Planning Service; Rosa Lila; Status of Women Department of the Municipality of Bettembourg; Union of Luxembourg Women; Luxembourg Union of Baha'i Women; Lycée Technique des Arts et Métiers; NAMASTE of the Lycée Hubert Clement; Lycée Technique, Bonnevoie; Lycée Technique, Centre; Ministry of Education and Vocational Training; Ministry of Family Affairs; Ministry of the Police; Ministry of Youth; Ministry of Justice; Ministry of Health.

Through agreements made with the managing bodies and with the support of the Ministry for Equal Opportunities, the Luxembourg Government supports the activities of reception centres for women in distress.

24-HOUR RECEPTION SERVICES, EMERGENCY SERVICES RUN BY NGOS AND NON-PROFIT-MAKING ASSOCIATIONS

Most centres take in women, alone or with their children, who face distressing situations such as violence, family break-up, housing problems, debt, a difficult pregnancy, social problems, etc round the clock. Such services are State-funded.

Initially, women are housed with their children without charge in houses where educational facilities are provided during the day. After a period of personal stabilisation, the women can, for a limited period, avail themselves of what is known as second-stage housing, where reception centre staff provides them with support. Such housing is placed at women's disposal in return for a means-tested rent until they have gained sufficient autonomy to be able to return to an environment where they are not sheltered.

The activities of the various services (24-hour reception and emergency services) are outlined below.

Open House (*Maison de la Porte Ouverte*)

The Open House Foundation takes in pregnant women and women with newborn children in the "*Hôtel Maternel*" hostel.

Most of the young women who are taken in by the hostel or join the young mothers' group are pregnant when they arrive. They leave the hostel once they have made stable arrangements for themselves and the baby (a job or a minimum subsistence income, housing or arrangements to continue an interrupted education).

The Paula Bové Hostel houses women facing a variety of situations: they may have been victims of violence and/or be in situations of acute distress on account of family problems, housing problems, etc.

The Ozanam Centre helps women with administrative formalities and is responsible for admissions to one of the Foundation's hostels.

The Sichem Hostel assists women in distress and takes in lone women and pregnant women with children.

The Young Mothers' House takes in pregnant women and young mothers with babies. A large number of those taken in are minors who are pregnant or already have children.

Many women are regularly subjected to psychological, physical, financial and sexual violence. After a while, they confide that they were victims of sexual abuse and fondling in childhood. In numerous cases, such experiences have led to relationship problems and prevented their building a relationship based on mutual trust.

Women in Distress (*Femmes en détresse*)

Women in Distress runs a house for women called "Fraenhaus", a house for girls called "Medercheshaus" and sheltered housing for girls and women who are victims of violence.

The Frauenhaus systematically uses techniques to dispel the "victim" mentality and adopts a feminist approach to the issue of domestic violence. One of the aims of this approach is to avoid situations of whereby people become victims again and institutional violence, in other words, to avoid situations in which women are unable to develop an ability to look after themselves and take decisions concerning their children and their future. Social workers help the women in their quest to rebuild their self-esteem through intensive discussions. The idea is to make the women aware of their learned helplessness and of the symptoms of post-traumatic stress disorder.

The Women in Distress Mederchershaus takes in adolescent victims of sexual, physical and psychological abuse.

The Luxembourg National Council of Women

There are a number of criteria for admission to South Shelter, a hostel run by the Luxembourg National Council of Women. Domestic violence is the prime reason for admission, followed by housing problems.

The Pro Familia Foundation

The Pro Familia Foundation runs a hostel for women which takes in women in a variety of situations: women suffering psychological, social or financial problems as a result of violence in the family, separation, divorce proceedings, loss of job, housing problems and relationship or social problems.

Noémi asbl

The main criterion for admission to the Noémi hostel is the desire to give birth anonymously.

The hostel provides women and their children with educational, psychological and social support during pregnancy, and offers help with bringing up their children and with personal, relationship and debt problems and situations of social distress.

INFORMATION, TRAINING AND ADVICE SERVICES FOR WOMEN

Such services for women are government-funded. Information and advice offices run by Women in Distress, the Luxembourg National Council of Women and the Pro Familia Foundation, provide psychological, social and legal advice.

THE TELEPHONE HELPLINE FOR WOMEN ("FRAENTELFON")

The non-profit-making association Women in Distress has been running "Fraentelefon 12344" since 14 March 1998. The service is run by a multidisciplinary team. The aim is to provide help over the phone through conversations as well as information on the following: the family, employment and housing, financial questions, violence and rape, sexuality, motherhood, mental and physical health, old age, immigration, leisure, etc (see Annual Report, Ministry for Equal Opportunities, 1998-2005).

GRAND-DUCAL POLICE MEASURES

Seminars on violence against women have been introduced into the new police training courses and more particularly basic training for inspectors and sergeants (respectively Articles 3 and 5 of the draft Grand-Ducal regulation on the functioning of the Police College, adopted by the Cabinet on 6 December 2000), in the light of the opinion of the Ministry for the Advancement of Women as to the importance of introducing modules on violence against women.

Generally speaking, the Grand-Ducal police have taken three types of measures to prevent and punish violence against women in the context of the police action proposed by the UN after analysis of the 3rd periodic report on the implementation of the Convention on the Elimination of all Forms of Discrimination against Women:

1. practical measures with respect to staff training
2. practical measures with respect to prevention
3. practical measures with respect to law enforcement.

POLICE TRAINING

Basic training at the Police College

Trainee inspectors are given an eight-session course on "victim support", which deals in particular with domestic violence. The programme also includes a number of presentations on the subject by lecturers from the private sector (NGOs working with women, particularly hostels - the Open House Foundation, the Pro Familia Foundation, Women in Distress - and a doctor).

Furthermore, the "Behaviour in Violent Situations" course includes a practical exercise in police intervention in the family in the event of physical violence (see Grand-Ducal Regulation of 20 June 2001 on the recruitment, training and promotion of senior police officers and criteria for admission to particular services).

Chapter II, Section C – The Career of Police Inspector - and Chapter III, Section D – The Career of Police Sergeant – lay down the subjects for the final admission examination, which include a practical course on the control of violence.

In-service training

In collaboration with a foundation for children with family problems, police investigation and criminal investigation personnel have in recent years attended training courses on:

- the investigative interview;
- Sexual abuse: the search for the truth;
- Violence in the family: from indifference to a failure to distinguish between generations;

The courses are attended by both male and female police officers as part of their basic and in-service training. 5.4% of police officers are now women.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

MALTA

This information has been updated by the National Commission for the Promotion of Equality (NCPE) Ministry for the Family and Social Solidarity in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

Relevant sections of Maltese national legislation arise principally from the Criminal Code, and are categorised under the sections on Crimes against the Peace and Honour of Families and against Morals. These cover rape and violent indecent assault; crimes against the person; private violence; abduction; defilement of minors; pornography; prostitution; trafficking in women. The Domestic Violence Act (Laws of Malta, Cap 481), is also relevant in this regard.

1.2 DOMESTIC VIOLENCE

Domestic violence is prosecuted under violence against the person: causing bodily harm; grievous bodily harm; grievous bodily harm caused by weapons. Such offences are aggravated within the context of Domestic Violence. The Domestic Violence Act defines domestic violence as 'Any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other'. In this context 'household member' includes :

- (i) persons married or formerly married to each other;
- (ii) persons living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence;
- (iii) persons whose marriage has been dissolved or declared null;
- (iv) parents and their children;
- (v) other adults sharing the same household;
- (vi) persons who are, or have been, formally or informally engaged with a view to get married;
- (vii) persons who are related to each other either by consanguinity or affinity up to the third degree inclusively;
- (viii) persons having or having had a child in common;
- (ix) the child conceived but yet unborn of any one of the persons mentioned in paragraphs (i) to (viii), both inclusive;

1.3 RAPE/SEXUAL ASSAULT

Rape is defined as "carnal knowledge by violence of a person of either sex". The sanction is imprisonment from 3-9 years, with or without solitary confinement.

Proof of carnal connection:

"A carnal connection shall be deemed to be complete by the commencement of the connection, and it shall not be necessary to prove further acts".

Violent Indecent Assault is defined as: "any violent indecent assault, which does not, in itself, constitute any of the crimes above". The sanction is between 3 months - 1 year of imprisonment.

"Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender".

1.4 CHILD SEXUAL ABUSE/INCEST

"Whosoever, by lewd acts, defiles a minor of either sex shall, on conviction, be liable to a sentence of imprisonment for not more than two years, with or without solitary confinement".

Punishments for any of the above crimes shall be increased by one degree in each of the following circumstances:

- when the offence is committed on a person under 12 years of age or with violence
- if the offence is committed by means of threat of deceit
- if the offence is committed by any ascendant, adoptive father or mother, or by the tutor of the minor, or by any other person charged even temporarily with the care, education, instruction, control or custody of the minor.

Prosecutions will not be instituted without a complaint from the injured party, and complaints are not admissible after a lapse of one year from the day the act was committed or knowledge thereof was obtained by the person entitled to lodge a complaint in lieu of the injured party.

Instigation, encouragement or facilitation of defilement of a minor is punishable with 2-4 years imprisonment.

1.5 SEXUAL HARASSMENT

Sexual Harassment is prohibited both under the Employment and Industrial Relations Act and the Equality for Men and Women Act.

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002

Article 29 (2):

It is unlawful for an employer/employee to sexually harass another employee/employer by:

- (a) subjecting victim to an act of physical intimacy;
- (b) requesting sexual favours;
- (c) subjecting victim to any act/conduct with sexual connotations, including:
 - spoken words, gestures or the production, display or circulation of written words, pictures or other material where
- (i) act/request/conduct is unwelcome to victim and could reasonably be regarded as offensive, humiliating or intimidating to victim;
- (ii) victim is or could be treated differently because of victim's rejection of such behaviour.

Article 32 (Offence):

Any person contravening Victimisation/Harassment (Art. 28, 29) provisions is liable to:

- (a) a fine not exceeding Lm1000
- (b) imprisonment for a period not exceeding 6 months
- (c) both fine and imprisonment.

EQUALITY FOR MEN AND WOMEN ACT

(1) Without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say:

- (a) to subject other persons to an act of physical intimacy; or
- (b) to request sexual favours from other persons; or
- (c) to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or

(d) the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.

(2)

(a) Persons responsible for any work place, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public, shall not permit other persons who have a right to be present in, or to avail themselves of any facility, goods or service provided at that place, to suffer sexual harassment at that place.

(b) It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent such sexual harassment.

(3) Persons who sexually harass other persons shall be guilty of an offence against this article and shall, without prejudice to any greater liability under any other law, be liable on conviction to a fine (multa) of not more than one thousand liri or to imprisonment of not more than six months or to both such fine and imprisonment.

1.6 PORNOGRAPHY

The Pornography and Obscenity Regulations (LN 80 of 1975) provide that an article is deemed pornographic if:

"Its dominant characteristic is the exploitation of, or undue emphasis on, sex, or any one or more of the following subjects, namely, crime, horror, cruelty and violence; or it directly or indirectly advertises or gives information on any article considered to be pornographic or obscene under these regulations".

An article shall not be considered pornographic or obscene to the extent that it serves the public good on the ground that it is in the interests of science, literature, art or learning or other subjects of general concern.

RELATED OFFENCES

- Distribution of pornography in a public place or in a place accessible to the public;
- Manufacturing, printing or otherwise making pornography or introducing it into Malta;
- Acquiring, keeping, trading or putting pornography into circulation;
- Exporting any pornographic or obscene print, painting, film, book, card or writing or any other pornographic or obscene article whatsoever, whether similar to the above or not.

SANCTION

Imprisonment for a term not exceeding 6 months or to a fine not exceeding 200 Liri, or to both such imprisonment and a fine.

The taking of indecent video recording/photographs etc of minors is punishable by up to 6 months imprisonment and/or maximum of Lm200, which punishment is increased to imprisonment for a term between 7-12 months with/without solitary confinement if minor is under 9 years of age or offender is an ascendant, related by affinity or consanguinity, tutor etc.

A committee is appointed to consult with the Minister to make regulations defining pornography or obscenity.

1.7 PROSTITUTION

PROSTITUTING A DESCENDANT UNDER AGE

"Any ascendant ... who, by the use of violence or by threats compels, or by deceit, induces any descendant under age to prostitution shall on conviction be liable to imprisonment for a term from 3-6 years with, or without solitary confinement".

The same punishment shall apply to any husband or tutor who, by the use of violence or by threats compels, or by deceit induces to prostitution his wife or a minor under his tutorship.

If the above offences are committed by a husband, proceedings will only be initiated on a complaint of the wife if she is of age, or if under age, on a complaint of the person under whose authority as parent she would have been if she were unmarried. A husband convicted under this section loses his authority; a tutor convicted under this section is perpetually disqualified from being a tutor.

INDUCING A PERSON UNDER AGE TO PROSTITUTION

Inducing, encouraging or facilitating a person under age to practise prostitution, is punishable with imprisonment for a term from 18 months - 2 years, with or without solitary confinement.

The sentence rises to a term of between 2 and 6 years in each of the following circumstances if the offence is committed:

- to the prejudice of a person under 12 years of age;
- by deceit;
- by an ascendant, tutor, adoptive parent or person with temporary care, control or custody of the minor;
- habitually or for gain.

COMPELLING OR INDUCING WOMEN OF AGE INTO PROSTITUTION

Inducing a person of age to practice prostitution, where the act committed does not constitute a more serious offence, is punishable with imprisonment for a term not exceeding 2 years, with or without solitary confinement (of age means 21 years/+, under age is under 21).

The maximum sentence rises to from 1-4 years if it is committed:

- With abuse of authority, trust or domestic relations;
- Habitually or for gain.

PROSTITUTION RELATED OFFENCES

-Detention of a woman or girl against her will in a brothel, sanction: up to two years' imprisonment; no legal proceedings, criminal or civil, shall be taken against any such woman or girl for taking away or being found in possession of, or wearing apparel as was necessary to enable her to leave the brothel;

- The police are empowered, where there is suspicion, to issue a search warrant for any woman or girl and take her out of such a place;
- Living on immoral earnings; sanction up to 2 years of imprisonment;
- Soliciting: sanction: between 18 months and 2 years of imprisonment;
- Brothel keeping: sanction: up to 2 years, rising by two degrees for subsequent convictions;
- The police can close any premises and the courts may revoke licences.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

Convention on the Elimination of All Forms of Discrimination against Women, 1979.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

Geneva Conventions of 12 August 1949.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The Equality for Men and Women Act makes it unlawful to treat a woman less favourably for reasons of actual or potential pregnancy or childbirth, within the context of employment, occupation and vocational training.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information available.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/ PROTECTION

The Equality for Men and Women Act provides for the setting up of the National Commission for the Promotion of Equality (NCPE). The NCPE has various functions:

(a) to identify, establish and update all policies directly or indirectly related to issues of equality for men and women;

(b) to identify the needs of persons who are disadvantaged by reasons of their sex and to take such steps within its power and to propose appropriate measures in order to cater for such needs in the widest manner possible;

(c) to monitor the implementation of national policies with respect to the promotion of equality for men and women;

(d) to liaise between, and ensure the necessary coordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by Government or the Commission from time to time;

(e) to keep direct and continuous contact with local and foreign bodies working in the field of equality issues, and with other groups, agencies or individuals as the need arises;

(f) to work towards the elimination of discrimination between men and women;

(g) to carry out general investigations with a view to determine whether the provisions of this Act are being complied with;

(h) to investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints;

(i) to inquire into and advise or make determinations on any matter relating to equality between men and women as may be referred to it by the Minister;

(j) to provide assistance, where and as appropriate, to persons suffering from discrimination in enforcing their rights under this Act;

(k) to keep under review the working of this Act, and where deemed required, at the request of the Minister or otherwise, submit proposals for its amendment or substitution;

(l) to perform such other function as may be assigned by this or any other Act or such other functions as may be assigned by the Minister.

The Domestic Violence Act also provides for the setting up of a Commission on Domestic Violence, whose functions include advising the Minister on:

(a) increasing the awareness and understanding of domestic violence and harassment and their consequences and on ways and means to reduce their incidence

(b) areas of domestic violence on which research is necessary or desirable

(c) strategies to expose domestic violence and to facilitate the intervention of public and private agencies and entities with respect to victims and perpetrators of such violence

(d) educating the public on all aspects of domestic violence

(e) ways to facilitate communication between between public and private agencies and entities involved in action against domestic violence

(f) standards for care facilities for victims and perpetrators of domestic violence, including public or private shelter services or facilities

(g) standards and protocols for practitioners

(h) procedures for the effective co-ordination on a national level of the activities of public and private agencies and entities engaged in the giving of services on domestic violence issues including support services

(i) a comprehensive and co-ordinated plan for the collection of data concerning domestic violence for use by the courts, prosecutors, law enforcement officers, health care practitioners, social workers and other agencies and entities in a manner that

protects the identity of victims of domestic violence

(j) developing a comprehensive plan for a multi disciplinary approach of active prevention and early intervention

(k) specialized training for professional groups involved and

(l) consulting and networking with other relevant national and international entities.

The Domestic Violence Act moreover designates an agency (Agenzija Appogg), which is expected provide (a) preventive, therapeutic and, or treatment programmes

for victims and perpetrators of domestic violence, (b) public help-line facilities for emergency access to specialised support services in those areas related to domestic

violence, (c) expertise for the assessment of the needs of victims of domestic violence, including the development of a care plan for each referral, (d) sheltered accommodation for victims of domestic violence, including in partnership with other organizations, institutions or other bodies providing similar accommodation, (e) the compilation and dissemination to interested persons and bodies of documentation on the rights of victims of domestic violence and on the remedies and services available to them and (f) the collation of data concerning domestic violence for use by the Courts, prosecutors, law enforcement officers, health care practitioners, social workers and other agencies and entities, in a manner that protects the identity of victims of domestic violence.

Other services, including shelters, are provided by non-governmental organizations.

4.0 DOMESTIC VIOLENCE

See **Sections 1.2 and 3.1** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

Rape and Sexual Assault in Marriage would constitute the offences of rape and violent indecent assault, which would be aggravated and therefore subject to harsher punishments if committed by a partner/spouse.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

MOLDOVA

Updated information was supplied by the Ministry of Labour and Social Protection in **June 2003**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

The National Legislation does not contain a definition of violence against women.

1.2 DOMESTIC VIOLENCE

See **Section 2.1** below.

1.3 RAPE/SEXUAL ASSAULT

The offence of rapes and sexual assault are governed by the new Criminal Code (which entered into force on 12 June 2003).

CHAPTER IV – "OFFENCES CONCERNING SEXUAL LIFE":

Article 171 – Rape:

Rape is defined as sexual relations committed using physical or psychological duress against an individual or by taking advantage of an individual's inability to defend him/herself or to express his/her wishes.

Paragraph 3 (defining the offence) identifies aggravating circumstances as rape committed against a person who is under the offender's protection or being educated or cared for by him/her.

The criminal sanction applicable for this offence is imprisonment for a period of 5-25 years or life imprisonment.

Article 172 – Sexual assault:

Sexual assault is defined as homosexuality, lesbianism or other acts of a sexual nature committed using physical or psychological duress or by taking advantage of an individual's inability to defend him/herself or to express his/ her wishes.

The criminal sanction applicable for this offence is imprisonment for a period of 3 to 25 years or life imprisonment.

1.4 CHILD SEXUAL ABUSE/INCEST

The new Criminal Code sets out criminal liability for sexual offences against minors.

CHAPTER IV :

Article 17 – Sexual relations with a person aged under 14 years:

Sexual relations with an individual aged under 14 years, i.e. sexual relations, homosexuality, lesbianism, and other sexual acts with a person who is known to be aged under 14 years.

The criminal sanction for this offence is imprisonment for a period of up to 5 years.

Article 175 - Acts of perversion:

Acts of perversion are defined as acts of perversion committed against a person who is known to be aged under 14 years.

The legislation defines the criminal sanctions for this type of offence as imprisonment for a period of 3 to 7 years.

These offences under articles 174 and 175 of the Criminal Code are violations of the rights of the child, and create grounds for the exploitation of children from the age of 14 onwards.

Article 201 – Incest:

Incest is defined as sexual relations or other sexual acts between close relatives to the third degree, including brothers, sisters and first cousins.

The criminal penalty for incest is imprisonment for a period of up to 5 years.

1.5 SEXUAL HARASSMENT

There is no specific law in the national legislation reflecting the phenomenon of sexual harassment. The phenomenon is dealt with in the Criminal Code, Art. 173 (see Section. 6.4 below).

1.6 PORNOGRAPHY

The Code on administrative offences regulates criminal liability for pornography as an administrative offence:

Article 171/1 – Production or dissemination of pornographic objects:

The production or dissemination of pornographic objects – the production, import, dissemination and publication of pornographic works, edited publications, pictures or other works of a pornographic nature, their sale or their possession with a view to sale or dissemination is an administrative offence.

The criminal penalty for this type of administrative offence is:

- 10 – 20 minimum salaries: the fine applicable to citizens,
- 50 salaries: the fine applicable to persons in posts of responsibility, with confiscation of the pornographic objects.

1.7 PROSTITUTION

Liability for prostitution is regulated by the Code on administrative offences:

Article 171/1 – Acts of prostitution:

Sub-paragraph 1 regulates administrative liability for acts of prostitution activity: the penalty for such acts is a fine of 10-12 minimum salaries or detention for up to twenty days.

Sub-paragraph 2 regulates liability for the same acts where they are committed for the second time in the year following execution of the administrative penalty.

The penalty is a fine ranging from 75 lei to 100 minimum salaries, or detention for up to 30 days.

Article 171/2 – Advertising of prostitution:

The advertising of prostitution through periodicals, audiovisual means or other methods.

The administrative penalty for an offence of this nature is a fine ranging from 100 lei to 150 minimum salaries, with confiscation of the advertising material.

In addition, Article 220 of the Criminal Code regulates the phenomenon of procuring.

Article 220 – Procuring:

1. Pushing or forcing someone into prostitution or deriving profit from acts of prostitution by another person, and recruitment of an individual to prostitution.

The criminal sanction for the respective offence is a fine of 200 to 800 conventional units or imprisonment for 2 to 5 years.

2. The same actions:

- a) committed against a minor;
- b) committed by an organised criminal group or an organisation;
- c) with serious consequences:

The criminal punishment is imprisonment for a period of 4 to 7 years.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

There are no legislative provisions on this subject.

1.9 FEMALE GENITAL MUTILATION

Female genital mutilation is not practiced in Moldova.

1.10 INTERNATIONAL CONVENTIONS

The Republic of Moldova has adhered to a series of international conventions, and assumes responsibility for implementing their provisions:

- Universal Declaration of Human Rights;
- Convention on the Elimination of all forms of discrimination against Women;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Chapter XI of the Moldovan Criminal Code, entitled "Employment of Women", contains a series of articles regulating this area and ensuring protection for pregnant women and motherhood:

Article 171 – Reduction in overtime work and work-related journeys for women

Women who have children aged between 3 and 14 years (children with disabilities: up to 16 years) must not be given overtime work or sent on work-related journeys without their consent.

Article 172 – Transfer to easier work for pregnant women and women with children aged up to three years

On the basis of a medical certificate; their production norms and working hours are reduced, or they are transferred to easier posts where they are protected from the effects of adverse production factors, and the average income from their previous post is maintained.

Before deciding, on the basis of a medical certificate, to transfer pregnant woman to easier posts where the effect of adverse production factors is minimised, the woman must be moved from the harmful post; she must continue to receive the average wage for all working days on which she does not work for this reason, this wage to be paid by the company, institution or organisation.

Where they cannot carry out their previous tasks, women with children aged up to 3 years shall be transferred to another post, and the average income from their previous post must be maintained until the child reaches the age of 3.

Article 173 – Maternity leave for the purpose of childcare

Women are entitled to maternity leave of 70 calendar days prior to childbirth and 56 calendar days after childbirth (for complicated births or the birth of two or more children - 70 calendar days); should they so wish, and if they have reached one year of length of service (for women aged under 18 – irrespective of their total length of service) they are entitled to post-natal leave, which is partially paid for up to 1.5 years, during which time they are paid from state social insurance benefits.

Working women who have a length of service of one year receive a 50% assistance.

Partially paid leave for the purpose of childcare may be used by the child's father, grandfather, grandmother and other close relatives who care for the child.

Partially paid leave for the purpose of childcare may be used in full or in separate blocks until the child reaches the age of 1.5 years. This leave is included in total continuous length of service, as well as in the length of service within one's specialisation.

Women and other persons who are entitled to care for a child may, if they so wish, work at home and part-time. In such cases, the right to benefit is maintained for the full period of childcare leave.

Article 174:

Is she so wishes, a woman may also take annual leave, irrespective of her length of service in the respective company, institution or organisation, prior to or immediately after maternity leave, or following childcare leave.

Article 175 – Additional leave without pay, for mothers of children aged up to 3 years.

In addition to maternity leave and leave for the purpose of childcare, women and the close relatives listed in the second part of Article 173 may, at their request, be granted additional leave without pay, in order to care for a child up to the age of three; in such cases, their posts are kept open for them.

This leave may be used at any time, in one or several blocks, until the child reaches the age of three years.

Additional leave without pay forms part of total continuous length of service, and of length of service in one's specialisation.

The period of additional leave without pay is not included in length of service giving entitlement to subsequent annual leave.

Article 176 – Leave for women who adopt new-born babies

These women are granted leave, starting on the day of adoption, for a period of up to 56 days from birth (where two or more children have been adopted, 70 days); where they have been in a post for at least a year, they may also be granted, at their request, part-paid post-natal leave until the child reaches the age of 1.5 years, during which time they are paid state social insurance benefits.

Employed women whose length of service is less than one year are paid an allowance at 50%.

Women who adopt newborn babies may, at their request, be granted additional leave without pay until the child reaches the age of 3 years (article 175).

Following the adoption, the father of the child may also take part-paid leave and additional leave without pay for the purpose of childcare (art.173, 175).

Article 177 – Rest periods for feeding a child

Women with children aged up to 3 years are granted additional rest periods to feed their children.

These thirty-minute breaks are given every three hours.

Rest periods for the purpose of feeding a child are included in working time and are paid on the basis of the average wage.

Where a woman has two or more children aged under three years, the length of the rest period may reach one hour.

The duration of rest periods and procedures for granting them are established by the management body in consultation with the trade union committee of the company, institution or organisation, taking the mother's wishes into account.

Article 178 – Guarantees concerning the recruitment of pregnant women and women with children, and prohibition on dismissing them.

It is forbidden to refuse to recruit women to a post or to reduce their salaries on the grounds of pregnancy or the existence of children aged up to 3 years; for single mothers, this age limit extends to 14 years (handicapped children – 16 years).

If the women cited in the preceding paragraph are refused individual employment contracts, the management is obliged to inform them in writing of the reasons for refusal. Refusal to enter into individual employment contracts may be appealed before a court.

Dismissal at the management's initiative of pregnant women and women who have children aged up to 3 years (for single mothers – up to 14 years, or those with handicapped children – up to 16 years) is forbidden, except where the company, institution or organisation is completely shut down; in such cases, dismissal is permitted but employment must be found for such women. It is the management's mandatory responsibility to find employment for such women in the event of their dismissal, on expiry of the individual employment contract.

In the period following recruitment, they must continue to receive their average income for at least three months following cancellation of the individual employment contract.

Article 179 – Allocation of places in sanatoria and rest homes, and financial assistance for pregnant women.

In co-operation with the company, enterprise or organisation's trade-union committee, the management may allocate free tickets, in cases of need, for a stay in a sanatorium or rest home, or reduced-price tickets; it may also grant financial assistance.

Article 180:

Companies and organisations which employ women shall organise crèches and kindergartens, rooms for feeding children, and rooms for women's personal hygiene.

Article 180/1 – Arrangements for other family members involved in educating under-age children.

These articles extend the arrangements for women in relation to motherhood (reduction in night-working, a reduction in overtime during rest days and work-related journeys, granting of additional leave, introduction of specific working-hours and other arrangements provided for by the legislation in force) to fathers who educate children without the mother (in the event of the mother's death, loss of parental rights, illness or other cases where the mother does not care for the child(ren)), and to guardians of minors.

The Moldovan Parliament is currently examining the new Labour Code, which contains amendments to the relevant chapter.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Following adoption of the new Criminal Code, a series of definitions of various offences have been amended and introduced with the aim of protecting society's values against offences arising from domestic violence. Thus, Article 151, paragraph 2, sets out new aggravating circumstances to these offences, such as serious injury to the person or health of one's spouse or a close relative (a) or a minor (b); a sentence of imprisonment for 6 to 12 years is provided for. Equally, article 152, paragraph 2 (c) covers intentional medium injury to the person or health of one's spouse or a close relative.

The provisions of article 153 "intentional light physical injury or light injury to a person's health" were initially included in the Code on administrative offences; under the newly-adopted Criminal Code, this article and particularly article 154 "Intentional mistreatment or other acts of violence" cover intentional mistreatment or other acts of violence if these lead to the consequences for the spouse or close relative set out in articles 151-153, or for a person who is known to be a pregnant woman or a minor.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY?

The phenomenon of violence against women is recognised as an important social mechanism which results in a situation where women are destined to occupy a secondary role in relation to men.

3.2 WHAT GOOD IDEAS HAVE BEEN SUGGESTED BUT NOT YET IMPLEMENTED?

Due to a lack of financial resources, it is impossible to develop the network of shelters for victims of violence at nationwide and regional level.

Work is currently being carried out in the Department of Social Welfare within the Ministry of Employment and Social Protection on developing social assistance services for persons/families in high-risk situations, including families where members display violent behaviour.

4.0 DOMESTIC VIOLENCE

4.1 ARE THERE SPECIFIC LAWS TO COMBAT DOMESTIC VIOLENCE?

See **Section 2.1** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE ?

5.1 ARE THERE CIVIL LAW REMEDIES – INCLUDING MEASURES RELATING TO THE SITUATIONS OF WIVES/COHABITERS AFTER SEPARATION AND DIVORCE?

The relevant provisions are contained in the Family Code, approved by Law No. 1316 – XIV of 26.10.2000.

The provisions of the Family Code are applicable to families created in the conditions and procedures set out by this Code. Co-habiting relationships, where couples live together without being married, are not regulated by the provisions of the Family Code.

Article 58 - Rights and obligations of parents:

(1) Parents have equal rights and obligations towards their children, irrespective of whether or not the children are born within marriage, and whether they live with their parents or separately.

Article 83 - Rights of ex-spouses with regard to maintenance payments after divorce.

The following are entitled to claim maintenance payments from their former spouse through legal channels:

- a) a pregnant spouse;
- b) either spouse, if he/she requires medical support and had cared for a child during the three years following the child's birth;
- c) either spouse, if he/she needs financial support and had cared for a handicapped child up to the age of 18 years or a child with disabilities from Group I from birth;
- d) either spouse, if he/she requires financial support and has become unfit to work during the marriage or the first year following divorce;
- e) either spouse, if he/she requires financial support and reaches retirement age during the 5 years following the divorce, if the spouses were married for at least 15 years.

6.0 RAPE AND SEXUAL ASSAULT

6.1 HOW IS SEXUAL CRIME DEFINED?

Crimes of a sexual nature are covered by the Criminal Code under the Chapter "Offences concerning sexual life".

6.2 DOES THE DEFINITION OF RAPE INCLUDE ALL ASPECTS OF SEXUAL VIOLENCE (INCLUDING SODOMY FOR EXAMPLE)?

Article 171 of the Criminal Code, on "Rape", paragraph (2), sets out criminal liability for rape and torture of the victim (see **Section 1.3** above).

6.3 ARE THERE LEVELS OF RAPE/SEXUAL HARASSMENT?

See the explanations under **Sections 1.3** and **1.5** above.

6.4 HOW IS CONSENT DEFINED?

The Criminal Code:

Article 173 - Constraint in actions of a sexual nature:

Constraint in actions of a sexual nature – where a person is forced to take part in sexual relations, homosexuality, lesbianism or other acts of a sexual nature through blackmail or by taking advantage of the victim's financial dependence, employment status or other conditions.

6.5 WHAT SENTENCES ARE USUALLY APPLIED TO RAPISTS?

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

7.1 DOES YOUR COUNTRY HAVE YOU A LEGISLATION TO PROTECT THE DIGNITY OF WOMEN AT WORK (VIOLENCE AGAINST WOMEN)?

The provisions regarding this form of violence are set out in the Criminal Code, article 173 (see **Section 6.4** above).

8.0 INCEST/SEXUAL ABUSE OF GIRLS

8.1 WHAT IS THE AGE LIMIT BETWEEN CHILD AND ADULT?

In accordance with the Law on Children's Rights, N° 338 – XIII of 15.12.94, and the Family Code approved by Law N° 1316 – XIV of 26.10.2000, a person is considered to be a child from the moment of birth to the age of 18 years.

8.2 DOES THIS CORRESPOND TO THE AGE OF CONSENT?

Articles 53 and 63 of the Family Code, approved by Law N° 1316 - XIV of 26.10.2000, states:

Article 53:

"... the child may contact a guardianship authority on his or her own initiative to ensure the protection of his/her rights and legitimate interests, but from the age of 14 this must be done through the courts".

Article 63:

States that, when determining which parent should have custody of a child in cases where the parents live separately, the courts shall take account of the child's interests and opinions if he or she is at least ten years old.

8.3 ARE ANY SPECIFIC MEASURES TAKEN TO COMBAT ORGANISED/NETWORKED RITUAL ABUSE RINGS?

No.

THE NETHERLANDS

Information provided by the Equality Policy Coordination Department, Ministry of Social Affairs and Employment, in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

At the end of the 1970s, the women's liberation movement in the Netherlands played an important role in drawing the government's attention to the maltreatment of women, incest, pornography, rape, sexual assault and sexual harassment at work, as consequences of the imbalance of power between women and men.

The government responded by establishing an expert group that met in 1982 and published its findings in a policy memorandum in 1984 ("Combating Violence Against Women"), and a follow-up memorandum in 1990 ("Combating Sexual Violence Against Women and Children").

These two memoranda formed the basis of a policy developed to combat sexual violence against women, comprising ill treatment of women; sexual abuse of children; sexual violence at work; sexual violence by care providers; pornography; prostitution; sex tourism; trafficking in women, women refugees and ethnic-minority women.

The principles underlying the policy are:

- women's right to independence in relationships and behaviour;
- women's fundamental right to the protection of their personal lives and physical integrity.;
- women's right to paid employment and an independent income.

The policy addressed legislation, enforcement, preventive measures, research, victim support and assistance. In addition to central government, other levels of government and private institutions have taken measures. However, there has not been any general overview of the problem or monitoring of new policies.

As sexual and physical violence is a major obstacle to equality between women and men, combating violence against women has been seen as part of the gender equality project in the Netherlands since the end of the 1970s.

In 2006 preventing and combating violence against women remains an important goal. Women and girls have a fundamental human right to safety and security. If that right is observed, their physical integrity – a basic precondition for participation in society – is guaranteed. It offers them freedom of movement in physical terms, but also the freedom to think independently and speak without fear, and to make autonomous choices regarding education, employment and partner.

Violence against women can be divided into five classes: domestic violence, sexual violence, honour violence, genital mutilation and human trafficking (where exploitation for sexual purposes is involved). Tackling domestic violence occupies a prominent place on the agenda. The approach includes both preventive and corrective measures, and particular attention is paid to honour-related violence within ethnic minorities. In 2002 the government published a policy memorandum on domestic violence setting out over 50 specific proposals and measures to combat the problem. An interministerial project coordinated by the Ministry of Justice was launched, in which that Ministry and the Ministry of Health, Welfare and Sport play a major role.

In the period from 2006 to 2010 the government is aiming to increase willingness to report domestic violence and reduce the number of repeated reports of domestic violence in the big cities as indicators for the success of their main objective: to combat violence against women and girls. It has also formulated the following sub-targets for this period:

1. to set up domestic violence advice and support centres in 35 central municipalities and launch a domestic violence policy in 250 municipalities for the period up to 2007;
2. to prevent and combat trafficking in women by implementing the National Human Trafficking Action Plan;
3. to include measures focusing on six target areas to prevent and combat female genital mutilation (FGM) in the FGM action plan;
4. to achieve a sustained effort to focus young people's attention on sexual issues and preventing violence in the period in question;
5. to focus on sexual and domestic violence in training courses for the professions involved;
6. to tackle honour violence through an appropriate, joint approach by the organisations concerned, consciousness-raising, promotion of expertise and development of instruments for intervention;
7. to award grants to support projects focusing on preventing and combating violence against women and girls.

A number of national measures have also been put in place, including:

- an assessment of the nature and volume of domestic violence, to be repeated every five years; the first assessment will take place in 2007;
- a domestic violence publicity campaign (in 2007);
- a preventive restraining order for perpetrators of domestic violence (will become law in 2007).

1.1 LETTER OF LAW – DEFINITIONS

In 1983, the Constitution of the Netherlands was revised to include the right to respect for privacy and the right to the inviolability of the person.

1.2 DOMESTIC VIOLENCE

CRIMINAL LAW

Domestic violence is covered by the general provisions of criminal law. All kinds of violence such as abuse, causing grievous bodily harm, manslaughter or murder, entering a dwelling unlawfully, criminal damage, rape or sexual assault are criminal offences, irrespective of whether they take place in the public or private sphere. Only criminal damage or theft within marriage are not criminal offences. If a husband and wife are legally separated, prosecution is only possible after a complaint has been made. Furthermore, if common or serious assault take place within marriage, the penalty can be raised by one third of the maximum. Common assault carries a maximum sentence of 3 years and serious assault 4 years.

It is not always possible to arrest a suspect who is not actually engaged in committing an offence. That is only possible when the person is suspected of a serious crime like murder, manslaughter, serious assault, rape, sexual assault and threat of a criminal offence.

CIVIL LAW

In cases involving an unlawful act, it is possible to bring interim injunction proceedings and apply for a banning order, e.g. a restraining order or stay-away order. Such orders are useful in situations where a woman has filed for divorce and the man continues to be violent and to violate the woman's right to privacy.

ADMINISTRATIVE LAW

Temporary restraining order Bill

The government wishes to introduce new legislation making it possible to impose a temporary restraining order on a perpetrator of domestic violence in situations that present an acute risk to the

victim and possibly children. The order will be for a period of ten days and may be enforced by the police on the instructions of the mayor. Within three days of its imposition the order may be examined by the courts, which can lift or confirm the order or prolong it for a maximum of four weeks. Such orders may also be imposed in cases of child abuse. In the ten days that the order is in force, a programme of assistance for the perpetrator will be drawn up. The Bill was introduced in Parliament in August 2006. At present a programme to offer training and necessary instruments to the relevant professions is being developed.

POLICING DOMESTIC VIOLENCE

On 1 April 2003 the Public Prosecution Service's Domestic Violence Directive entered into force. The Directive describes the policy of the Service and the police with regard to investigating and prosecuting domestic violence.

In view of the risk of reoffending, the Public Prosecution Service and the police have to act speedily. The Directive therefore instructs the police to arrest the perpetrator immediately if there is reasonable suspicion of guilt and they have been caught in the act. All data relating to the offence must be kept in a special domestic violence file. In principle, the Public Prosecution Service will always bring proceedings in cases of domestic violence where there is adequate proof.

Another important principle in the Directive is that help for the perpetrator must be integrated into the approach to domestic violence at the earliest possible stage in the interests of long-term effectiveness. In addition to guidelines for the Public Prosecution Service and police on investigating and prosecuting domestic violence, the Directive also sets out procedural conditions, such as the appointment of liaison officers in the court districts, local working arrangements with police, probation service and care organisations, and professional development.

An evaluation of the Directive performed early in 2005 revealed that the public prosecutors' offices at the district courts had implemented it effectively.

SUPPORT SERVICES

In 1997, the Netherlands had 22 refuges providing accommodation for victims of domestic violence. These are partly funded by the state.

1.3 RAPE/SEXUAL ASSAULT

Rape and sexual assault are offences against public decency.

A number of amendments to the provisions on sexual offences in the Dutch Criminal Code have come into force since January 1991. Their aim is to offer greater protection against serious sexual violence and to update the law in this area to reflect current public opinion.

The amendments included the following.

- Marital rape was made a criminal offence.
- The old-fashioned term "sexual intercourse" was replaced by the phrase "physical penetration". This notion is very broad and according to case law includes French kissing.
- Mentally disabled people, patients under treatment and persons in a state of reduced consciousness were offered greater protection against sexual violence.

PREVENTIVE MEASURES

In some cases, interim injunction proceedings can be used to declare certain areas off limits to offenders. Offenders can be fined or prosecuted for disobeying these injunctions. Similar measures can be included in sentencing.

A Bill to bolster the victim's legal position during criminal proceedings has now become law. It requires the provision of oral and written information to victims, and increases their chances of receiving compensation.

The advocate-general has introduced guidelines concerning arrest and prosecution, trafficking in women and treatment of victims. Police training was introduced, focusing on the vice squad, that covered treatment of victims, reporting sexual assault, tracing suspects, medical examinations and

provision of assistance and information. Training of policewomen was prioritised, as women prefer to speak to women officers.

The Ministry of Justice has included sexual violence in its booklet on victim support and produced leaflets on what to do after an assault or rape, and on compensation schemes.

PROBLEMS

- The high threshold of proof deters victims from reporting.
- The emotional ordeal that a court case involves.
- The fact that it often takes many years for a victim to report an offence.
- The fact that it is difficult for a victim to provide evidence. There are usually only 2 statements, that of the victim and of the perpetrator, and they are usually contradictory. This problem is compounded if the offence is reported many years later.

1.4 CHILD SEXUAL ABUSE/INCEST

Since 1999 the criminal law relating to sexual abuse of children has undergone substantial amendments. Incest has been redefined to include perpetrators other than blood relatives, including foster fathers, stepfathers and unmarried partners. In addition, the limitation period, i.e. the period in which an offender may still be prosecuted for incest offences, has been modified. The period now commences when the victim comes of age, in line with the view that victims are usually able to report such offences only when they are older.

In the case of sexual abuse of children between the ages of 12 and 16, the requirement that a complaint must first be lodged by the victim or on his/her behalf before a prosecution can be launched has been abolished. Instead, children from the age of 12 have a right to express their views on the offence in question.

The offence of inducing a minor to participate in sexual abuse has been extended to include abusive acts without the physical participation of the perpetrator. Sexual acts with a prostitute aged 16 or 17 have been made an offence in their own right. (Sex with a prostitute under the age of 16 is already covered by the general offence of sexual abuse of a minor under the age of 16.) It is also an offence to deliberately have a minor present when sexual abuse is taking place or to have them watch a 'peepshow'.

For amendments to the criminal law on child pornography please see section 1.6.

A multiple-track approach to incest has been initiated by many organisations. The aim is to provide individual help and treatment for the victim, the mother and possibly other family members, as well as the perpetrator.

Close cooperation takes place between the Public Prosecution Service, courts, probation and after-care staff and certain centres for outpatient mental health care.

A person who is convicted of a sexual offence may receive a suspended sentence provided that he/she is prepared to undergo treatment. Investigation takes place prior to trial in order to establish whether a multi-track approach can provide appropriate treatment.

Research has been commissioned linked to the support project, with the aim of learning more about perpetrators in order to improve treatment programmes and build up knowledge. The multi-track approach is being evaluated.

1.5 SEXUAL HARASSMENT

A draft Bill amending the Working Conditions Act with regard to sexual harassment, aggression and violence has been introduced. The Bill proposes to compel employers to develop a policy to prevent and combat sexual harassment in the workplace.

A bill is at present before the Dutch Senate to implement Directive 2002/73/EC by amending the Equal Treatment (Men and Women) Act and the Civil Code). The bill will make it easier for an employee to

take his/her employer to court if the latter does not do enough to prevent sexual harassment in the workplace or takes insufficient measures against someone guilty of such practices.

1.6 PORNOGRAPHY

Within certain limits, there is no ban on pornography in the Netherlands. It is however a criminal offence to:

- confront members of the public with undesired and unsolicited pornographic material;
- show pornographic material to children under the age of 16.

Producing, distributing and possessing child pornography – defined as an image, or a data carrier containing an image, portraying sexual acts involving a real or virtual person who is obviously under the age of 18 – are all criminal offences.

1.7 PROSTITUTION

An Act abolishing the ban on brothels was passed on 1 October 2000. Removing the ban is seen as a weapon in the fight against trafficking in women. The expectation was that decriminalising sex work, setting up a licensing system for brothel operators and improving working conditions for sex workers would make the industry less susceptible to crime. In addition, the licensing system would make the industry more transparent and easier for the police to monitor.

If a brothel owner employs women who do not have valid residence permits, this has implications for the licence and may lead to closure of the premises. The introduction of stringent regulations will make it unattractive and largely impossible to employ illegal immigrants as sex workers, so that traffickers in women will lose a key market in the Netherlands.

Municipal policy is organised along three lines. Firstly, the municipalities operate a licensing policy to control the number and type of brothels. Secondly, regulations have been introduced to govern the construction and design of brothels, for example as regards hygiene, prevention of sexually transmitted diseases and fire safety. Finally, regulations have been introduced to ensure that the way brothels are operated does not adversely affect the position and status of sex workers. This includes measures to protect their mental and physical well being and prohibit the employment of minors or illegal immigrants.

The aims of the Act have largely been achieved in licensed brothels. Fewer criminal activities, such as weapons and drugs transactions, are associated with this part of the industry, while recent research has shown that although labour regulations are often not observed, there are no major violations of sex workers' basic rights.

However, the volatile nature of the industry has created new risks, especially in those forms of sex work which are not dependent on a geographically fixed location, where contact with customers is arranged through internet and mobile phones.

Most of the activities envisaged as part of the National Human Trafficking Action Plan were completed on time. Some have been extended. In any event, an increasing number of municipalities have imposed a licensing obligation on escort services, which will make the sector more transparent and hopefully reduce the number of abuses. The municipality of Amsterdam is expected to impose the same requirements as of 1 January 2007.

In addition, an agreement with the daily newspapers on advertising by the sex industry has come into effect. Under this agreement, the newspapers ask such advertisers to state their licence or VAT number and postcode in the advert, so that potential customers can see whether they are dealing with a licensed business that is regularly inspected for compliance with hygiene and legal standards. This also makes it easier for the authorities to establish what particular business is behind the advert and where it is located.

The campaign launched by Meld Misdaad Anoniem (report crime anonymously) on 12 January 2006 has led to a substantial increase in reports of human trafficking, which in turn have led to an increase in investigations.

The abolition of the ban on brothels is currently being evaluated for the second time. The evaluation consists of independent studies in three areas: the social position of the sex worker, municipal policy on sex work and illegality, and the exploitation of minors. Reports in each of these areas and a general

report will probably be presented to Parliament at the end of 2006, and are expected to provide further insight into the impact of the abolition of the ban.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

The government was alerted to this subject when the number of refugees from Somalia, a country where women are traditionally circumcised, increased. Dutch legislation prohibits FGM on the basis of every individual's right to physical integrity. Such practices go against Dutch views on gender equality and women's place in society. In the Netherlands FGM is seen as a violation of women's human rights. This belief is reflected in policy and practice; women are informed of their rights and where necessary receive support (the Healthcare Centre for Refugees has advised the government to permit the less harmful forms of circumcision, believing this will prevent more extreme practices).

The requirement of double criminality in respect of offences committed by Dutch nationals abroad has been abolished in the case of genital mutilation of girls. Under legislation currently being prepared, the limitation period for genital mutilation will only begin to run once the victim reaches the age of 18. This will give young victims more time to decide whether they wish to report the offence or not.

1.10 INTERNATIONAL CONVENTIONS

THE BASIS OF POLICY IN THIS FIELD IS LAID DOWN IN:

- the Constitution of the Netherlands, revised in 1983 includes the right to respect for privacy and the right to the inviolability of the person;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the International Covenant on Civil and Political Rights.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 DOMESTIC VIOLENCE

The way offenders are dealt with is crucial to preventing the offender from seeking new victims and saving existing victims from further abuse. Custodial sentences temporarily remove offenders from the community, but they will eventually return. Traditional sanctions do not change their behaviour and many perpetrators reoffend. In recent years, offenders have been placed under treatment. Under Dutch law, a custodial sentence can be accompanied by compulsory treatment, or a course of treatment may be one of the conditions for imposing a suspended sentence. Research suggests that reoffending is reduced after a course of treatment.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

POSSIBLE PREVENTIVE MEASURES AGAINST SEXUAL VIOLENCE:

- Increase awareness of the problem among professionals
- Increase women's capability to resist sexual violence
- Organise nationwide self-defence programmes.

In 1991, a preventive campaign aimed at men and boys was introduced. The target group was informed via mass media, posters, advertisements, magazines, pamphlets and intermediaries (teachers, youth workers etc). Workshops and conferences were organised for intermediaries to help

them work within the target groups. There are, however, problems with cooperation between the intermediaries. They also need to make greater efforts to recognise the problem at an early stage.

In 2006 a study into the approach to sexual violence in the Netherlands was carried out. It resulted in recommendations in the field of policy, research, prevention and assistance. The aim was to link up with existing policy (such as that on domestic violence) wherever possible, but to develop specific policy where necessary.

Other policy recommendations included formulating a national policy framework for the allocation of resources for funding measures and activities, creating an incentives budget, designating a coordinating ministry, encouraging cooperation between the ministries involved, setting up an intensive prevention programme, adopting a joined-up approach, and directing policy at municipal/regional level. Recommended research options include studies into the nature and extent of sexual violence focusing on specific target groups such as young people, ethnic minorities and the disabled, as well as studies to evaluate the impact of prevention and care approaches. With regard to prevention, the study recommended that activities should focus both on the general public (awareness of risks and responsibilities) and on specific high-risk groups. Awareness of sexual violence can also be an element in general sex education.

With regard to care and support, the study recommended that problems of capacity and quality in the assistance offered after sexual violence has taken place need to be tackled. Steps to be taken include measures to increase awareness of the signs that violence is occurring, and to improve professional expertise, and the registration of problems in this area. The study also proposed encouraging the use of effective forms of treatment and a focus on specific target groups. Furthermore, the issues should be tackled at local, regional and national level.

The study made no recommendations concerning legislation.

The Dutch government takes these recommendations very seriously. Some but by no means all have already been implemented under current domestic violence policy.

POSSIBLE MEASURES TO PREVENT TRAFFICKING IN WOMEN

Update by Council of Europe.

3.2 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY

Violence against women is recognised as an obstacle to equality between women and men. Dutch policy on violence against women is part of the gender equality programme.

3.3 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

From a purely legal perspective, the 1951 Geneva Convention relating to the Status of Refugees does not offer clear-cut protection for women who have been victims, or fear they will become victims of sexual violence. Sexual violence could constitute grounds for admission, if the individual has a well-founded fear of persecution by the authorities in the country of origin, or if the authorities fail to or are not willing to offer protection against serious acts of violence.

The Netherlands pursues a generous admissions policy when it comes to claims based on FGM. Where an applicant has well-founded fears of FGM it is possible to obtain a temporary residence permit under section 29, subsection 1 (b) of the Aliens Act 2000. This section relates to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In cases involving a claim based on FGM, the IND assesses whether the authorities in the country of origin can or will offer protection against FGM in the specific case and whether there is a safe alternative in the region.

A temporary residence permit will be issued if there is a real risk of FGM upon return (article 3 ECHR), the authorities cannot or will not offer protection and there is no other settlement alternative. After a period of 5 years, a permanent residence permit may be applied for. Parents who fear their minor children will be suffer FGM and women/girls who fear FGM themselves can apply for asylum. Parents of minors whose asylum application is granted will themselves be issued with a temporary residence permit. Other children in the family will also be granted a permit.

At any stage of the asylum procedure a claim based on FGM can be put forward, even if the asylum seeker has exhausted all legal remedies. In such cases a new asylum application may be submitted by the parents or the girl in question. Furthermore, in asylum cases all high-risk groups (young women from countries known for FGM) will be interviewed about FGM, even if they do not make a FGM claim themselves. Cases involving re-circumcision will also be considered.

If she wishes, a female asylum seeker may be interviewed by women liaison officers, responsible for interviewing asylum seekers in respect of their claim to asylum. Women asylum seekers who have been raped or sexually assaulted often prefer to speak to women liaison officers, rather than to discuss the details of the rape/assault with a man.

The Refugee Health Care Centre (under the responsibility of the Ministry of Health, Welfare and Sport) has the task of ensuring adequate healthcare facilities for refugees and asylum seekers; special attention is paid to sexual violence.

WOMEN WITH DEPENDENT RESIDENCE STATUS

Termination of a relationship as a result of sexual violence may have implications for residence status. If the woman concerned has asylum status, this will not change. But the right to remain of women who do not have an independent residence permit is dependent on the continued existence of the relationship, unless it commenced 5 years prior to the time of separation. In exceptional cases, the right to remain may be granted if there are pressing reasons for doing so. In this context, account is taken of the position of women in the country of origin and the existence of acceptable reception facilities there.

Women (and men) who come to the Netherlands for the purposes of family reunification or family formation have dependent residence status for the first three years. If the relationship ends within three years, this affects their residence status. However, if the relationship ends within three years because of domestic violence, a specific policy on prolongation of residence applies. If the woman can submit written evidence that she reported the domestic violence as well as a doctor's certificate attesting to domestic violence, she may be granted an independent residence permit.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

NORWAY

Information provided and updated by the Ministry of Children and Gender Equality in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW - DEFINITIONS

Ban of visits

Assaulted and sexually abused women can now be protected against repeated violence from the abuser. Following an amendment of 1 January 1995 to the Criminal Procedure Act Section 222a, a person can be prohibited from entering a specific area, following, visiting or otherwise contacting another person. This can be done if there is specific reason to believe that the person will commit a criminal act against or otherwise violate the other person's right to be left peacefully alone. Police districts have reported that to deny access to the victims to persons, who have been sentenced for violence against family members, has been an effective means of combating violence against women. If a ban pursuant to section 222a of the Criminal Procedure Act on visiting another person is violated, the person violating the ban is, if certain conditions are met, arrested and remanded in custody. The Criminal Procedure Act Chapter 17a (including Section 222a) regarding "ban on visits etc" was changed and revised in 2002 and 2003. The changes are meant inter alia to provide better protection for persons exposed to violence from others in their own household. Section 222a of the Norwegian Criminal Procedure Act provides clear legal authority for prohibiting a person subject to such a ban from staying in his own home.

A new, more comprehensive provision prohibiting contact in section 33 of the Penal Code came into force on 1 January 2006. The provision is particularly designed to protect the aggrieved person in cases concerning abuse of women and domestic violence. The new penal provision makes it possible to impose a ban on more forms of threatening or annoying behaviour than was previously the case.

FORCED MARRIAGE

On 4 July 2003, the Norwegian Penal Code was amended to include a provision on forced marriage. The penalty for causing forced marriage is imprisonment for a term not exceeding six years.

1.2 DOMESTIC VIOLENCE

Penal provision regarding domestic abuse

In order to further strengthen the protection of, in particular, women and children, a revised provision relating to domestic violence entered into force 1 January 2006. Section 219 of the Penal Code reads (translation):

"§ 219. Any person who by threats, duress, deprivation of liberty, violence or any other wrong grossly or repeatedly maltreats

- a) his or her former or present spouse,
- b) his or her former or present spouse's kin in direct line of descent,
- c) his or her kin in direct line of ascent,
- d) any person in his or her household, or
- e) any person in his or her care

shall be liable to imprisonment for a term not exceeding three years.

If the maltreatment is gross or the aggrieved person dies or sustains considerable harm to body or health as a result of the treatment, the penalty shall be imprisonment for a term not exceeding six years. In deciding whether the maltreatment is gross, particular importance shall be attached to

whether it has endured for a long time and whether such circumstances as are referred to in section 232 are present.

Any person who aids and abets such an offence shall be liable to the same penalty.”

Unconditional prosecution

As early as 1988, unconditional prosecution was introduced in cases of domestic violence. A criminal case may be brought before the court, even if the woman withdraws the formal report.

Assistance of a lawyer

Victims of sex crimes and domestic violence are according to chapter 9a of the Criminal Procedure Act, entitled to the assistance of a lawyer. The lawyer shall be remunerated by the state, and is responsible for taking care of the interest of the victim in connection with the investigation and the main hearing of the case.

Fictitious identity

The Act relating to amendments in the Police Act pursuant to which persons who are exposed to threats may be given a new identity (fictitious identity) came into force on 1 January 2004. Persons who are in danger of being the victim of a serious criminal act targeting their life, health or liberty may now be granted a new identity (personal identity number). A fictitious identity is only granted if other protective measures prove to be insufficient.

Programme of action against domestic violence

THE ACTION PLAN TO COMBAT VIOLENCE AGAINST WOMEN (2000-2002)

The Norwegian government's first action plan (2000-2002) to combat violence against women expired in November 2003. The plan was a joint project between four ministries; the Ministry of Justice, Social Affairs, Health, and Children and Family Affairs. The Ministry of Justice performed a coordinating function for the work involved. The programme consisted of a wide range of activities to reduce domestic violence and to improve services to victims.

Focus was directed at improving existing measures and achieving enhanced competence among all actors. This included competence-enhancement and improved networking at the local level between all responsible actors such as police, social welfare services, childcare services, staff from shelters, etc. Improved research and routines for registration of information were also in focus. Other measures were:

- Security alarms: In 1997, a project was launched to equip all women in Norway who had been treated violently or threatened by their ex-husbands or ex-common law husbands or live-in boyfriends, with security alarms. While the first alarms could only be used in the home, alarms currently in use are part of a mobile system based on a universal positioning system of great accuracy (GPS). The alarms give immediate access to the police in an emergency. The alarm project, issued through the police authorities, became permanent in 1999, and is fully financed by the State.
- Police coordinators: To help the police in their efforts to combat domestic violence, a position as family violence coordinator was established in every police district in Norway in July 2002. The coordinators have undergone special training and a locally adapted handbook has been developed to guide their work.
- Commission on Violence against Women: In August 2001, the Norwegian government established a Commission on Violence against Women. The commission submitted its final report in December 2003. In accordance with its terms of reference, the final report from the commission contains an overview of issues relating to violence against women, proposals concerning the legal system, social services, women's shelters and health care. In addition, the commission has discussed questions concerning children as witnesses to violence.

THE ACTION PLAN TO COMBAT DOMESTIC VIOLENCE (2004-2007)

To continue the work against domestic violence, the Norwegian government launched a new action plan for the period 2004-2007 in June 2004. The plan places emphasis on reinforcing the forms of

treatment offered to women exposed to violence and sexual abuse, focus on immigrant women, on the services offered to children growing up in families in which violence is practised, and on reinforcing measures available to men with problems of violence. While the previous action plan all but lacked a children's perspective, the new one has given children a main focus. The plan has four general objectives:

- Improving the level of cooperation and knowledge in the support services.
- Increasing the visibility of violence in intimate relationships and improving the prevention of violence through behavioural change.
- Securing victims of violence in intimate relationships the necessary help, protection and assistance.
- Breaking down the spiral of violence by reinforcing forms of treatment available to perpetrators of violence.

Among the measures are the following:

- A National Centre of Competence on Violence and Traumatic Stress was established in January 2004. The centre is comprised of the former Psychosocial Centre for Refugees, University of Oslo (PSSF); Norwegian Resource Centre for Information and Studies on Violence (VOS); Norwegian National Resource Centre on Child Sexual Abuse (NRSB); and Division of Disaster Psychiatry, Dept Group of Psychiatry, Medical Faculty, University of Oslo (KKP). In addition, resources from Alternative to Violence (ATV) and Institute for clinical sexology and therapy (IKST) are affiliated with the centre. The purpose of the centre is to develop and spread knowledge and build competence that can contribute to reduce the psychological and social impact of violence and traumatic stress and prevent violence and traumatic stress.
- Financial support will be given to the production of an animated film "Sinna Mann" (Angry Man). This film will, for example, be used in conversations with children and adults about domestic violence. Advice on how to use the film will be prepared.
- The Government will draw up an information strategy aiming to break down taboos and increase knowledge about and awareness of domestic violence. As a part of this strategy the Ministry of Justice carried out a mapping of domestic violence in 2003 and 2005. The project "A Week to Count" counted the number of referrals related to domestic violence to several services nationwide. The registration is the first of its kind among the Nordic countries. The purpose of the project is to provide a "snap shot" of domestic violence and to bring about public awareness of the problem. This registration is not scientifically based and is not extensive in order to count how many on an annual basis are affected by domestic violence. Anyhow the registration in 2005 shows that during this week more than a thousand enquiries were made by someone experiencing violence from a person in the family or someone they had a close relationship with. About 2000 children were in the same week reported as witnesses or affected by threats or violence from a person in their immediate family. In about 85 per cent of the cases the perpetrator was a man.
- A pilot project is initiated, whereby routine questions are asked about violence during maternity check-ups. The purpose of the project is to develop methods to uncover violence. The project will include routines and measures for cooperation and follow-up of any violence that is discovered.
- A project is initiated to provide the women's shelters and local support services with expertise and knowledge about the needs of immigrant women who are the victims of violence. A training programme will be developed, implemented and evaluated. The intention is to continue the training programme after the conclusion of the project.
- A project is initiated to continue and follow up the survey of the municipal support services available to functionally disabled female victims of violence.
- A survey is carried out to identify the number of women who are turned away by the women's shelters and the reasons for this. The survey will form the basis for an assessment of suitable measures for abused women with special problems, such as a mental illness or drug or alcohol-related problems.
- The health services that are available at local level to victims of violence and rape will be strengthened.
- Measures will be prepared and implemented with a view to building up the health services' capabilities as regards examinations, securing evidence and documentation in rape cases.

- The Government has taken an initiative vis-à-vis the Director General of Public Prosecutions to prepare a circular clarifying the routines for handling rape cases, particularly in respect of the police and prosecuting authorities' cooperation with other bodies.
- The work of the police on domestic violence will be strengthened. The National Police Directorate is evaluating the family violence coordinator scheme. This evaluation will form the basis for the further development of police work in this area. The statistical tools used by the police to register family violence will be enhanced. Violence alarms, restraining orders, temporary accommodation, and special protection of personal data are some of the forms of police protection that may be used in cases of domestic violence. In extraordinary cases, when other protective measures are deemed to be inadequate, permission may be given to use a fictive identity.
- The Government will attach importance to the work of preventing and combating domestic violence by increasing the focus on treatment of the perpetrators. These efforts will be directed at the persons who use violence and at their violence problems. The Government will contribute to the systematic development of support and treatment services for perpetrators of violence and abusers. Its objective is to prevent the use of violence and ensure that help is available as close as possible to home or work.

OTHER ACTIVITIES TO REDUCE DOMESTIC VIOLENCE

Pilot project for a "reverse alarm" for violent offenders. The Ministry of Justice has established a working group to report on the implementation of a pilot project involving the use of electronic exclusion monitoring in the case of persons who have violated a ban on visits. The working group has been asked to present proposals regarding the type of electronic monitoring that should be used in the project and to study the need for, and make proposals regarding, solutions for organising electronic monitoring. The working group is to draw on the experience gained by Sweden, the UK, the USA and Spain, all of which have tested or are in the process of testing the use of electronic monitoring of persons who have breached a ban on visits. The report is to be finalised in autumn 2006, and the pilot project will begin in 2007.

1.3 RAPE/SEXUAL ASSAULT

Rape poses a special challenge for the legal system and health services. Both the frequency of reported rape and the number of reported rapes that culminate in a conviction are low. Furthermore, surveys have shown that health services for rape victims vary significantly in terms of quality, content and organisation. Through measures in the Action Plan, services for rape victims are to be improved by strengthening health services at the local and regional levels. At least one inter-municipal reception Centre for victims of violence and rape victims is to be established in every county.

The current Government stated on page 70 of its political platform (the Soria Moria Declaration) that it intends to appoint a broad-based public committee to report on the situation of women who have been subjected to rape or other types of sexual violence. The committee, which will be appointed in August 2006, will identify factors that contribute to rapes not being reported, propose measures and strategies to increase the rate of reported rape, assess how alternative conflict resolution strategies can be applied in rape cases and assess the situation of rape victims, both female and male, with various disabilities, minority backgrounds or, in particular, experience of prostitution.

The Government stated that they will also seek to raise the level of sanctions for rape, homicide, gross violence and sexual offences.

The Director General of Public Prosecutions is currently carrying out a study of legally enforceable judgments in rape cases that culminated in acquittals in the period from 2003 up to the end of the first half of 2005. A working group has been appointed to examine the quality of investigative and prosecution work and assess existing statistical data, and will present its report in September 2006.

1.4 CHILD SEXUAL ABUSE/INCEST

As mentioned before, the chapter on Sex Crimes (previously called Felonies against public morals) in the General Civil Code was amended in 2000. The rules mentioned below are also applying to accessories to such crimes.

To increase and strengthen the regional competence in this sector a three-year project is being implemented.

SEX WITH A PERSON BELOW THE AGE OF 14

Any person who commits a sexual act with a child under the age of 14, shall be sentenced to a term of imprisonment not exceeding 10 years. If the sexual act included sexual intercourse, the sentence shall be no less than 2 years.

The maximum sentence is 21 years of imprisonment if:

- The aggrieved person dies or sustains serious injury to body or health (including venereal disease);
- The offender has previously been convicted and sentenced for rape or child abuse;
- The act was committed in a particularly painful or particularly offensive manner;
- The offence was committed against a child under the age of 10 years and there have been repeated assaults.
- The act was committed by several persons; this is a new provision following the amendment in 2000.

A mistake regarding the child's age shall not exclude criminal liability. A penalty may be remitted, if those who have committed the act of indecency are about the same age and reached the same stage of development.

SEX WITH A PERSON BELOW THE AGE OF CONSENT

Any person who commits a sexual act with a child below the age of 16, shall be sentenced to a prison term not exceeding 5 years. A sentence not exceeding 15 years may be imposed, given the same aggravating circumstances as mentioned before concerning children below the age of 14.

INCEST

Any person who commits a sexual act with a relative in descending line, shall be liable to a term of imprisonment not exceeding 5 years. Relatives in this context are biological as well as adopted descendants.

Any person who has sexual intercourse with a brother or sister shall be liable to a punishment not exceeding one year. No penalty shall be imposed on persons under 18 years of age.

Like when other crimes are concerned, the punishment level of sentences in incest cases are depending upon whether or not other sections of the Penal Code have also been violated.

Special courses on child sexual abuse were introduced at the Police College.

Treatment projects for those convicted of sexual crimes were introduced in 1994.

In 1995, a national centre for sexually abused children was established. The centre is focusing on improving the expertise of personnel and occupational groups who have contact with children and young people.

New guidelines for judicial examination of children were introduced in 1998.

In 1998, Texmo and Aarvik made a report on behalf of The Northern Feminist University about children's and women's legal position and treatment in cases involving sexual abuse. The report showed an alarmingly high rate of dismissals in cases of rape and child sexual abuse. As many as 80% of the cases were dismissed, of the cases under "repeated sexual abuse of children under the age of 10 years". According to this report based on findings in three counties in Northern Norway, two of the main problems in these cases are negative attitudes in the police and the legal system and a lack of knowledge in this field.

Concern has been voiced in Norway regarding if children are being well enough protected in cases of suspected incest. This concern has been particularly serious in cases where there is not sufficient evidence for a trial pursuant to the Penal Code, their father or sometimes mother is the suspected abuser, their parents are separated/divorced/not living together, and a civil court shall decide upon the issue of contact with the child pursuant to the Children Act. A Supreme Court decision is pinpointing that in cases where there is a danger of child sexual abuse, no risks shall be taken. A circular letter from the Ministry of Children and Family Affairs in December 2000, is requesting municipal child welfare services to contribute to making the bases of such court decisions as thorough as possible. In

this letter, the municipalities are also requested to provide assistance to other involved agencies as regards protecting and serving the best interests of the children.

1.5 SEXUAL HARASSMENT

Research in Norway shows that sexual harassment has to do with a unequal power balance between women and men. Women are subordinated in the work place to men because of their sex. Sexual harassment experiences are not individual incidents but rather the result of a social system in which male values have priority over female values. For this reason, sexual harassment is a problem of the work environment. Women experience sexual harassment from their supervisors, fellow male employers, as well as from patients and clients. Students may also experience sexual harassment.

Unlike many other countries, the Norwegian government has not yet been involved in research on sexual harassment at work; the universities and the labour unions were the initiators of the studies. "Norsk Kommuneforbund" (Norwegian Union for Municipal Employees) were the first union to make reports on this issue. "LO" (Norwegian Confederation of Trade Unions) in Norway has implemented a plan against sexual harassment in the workplace.

Sexual Harassment is prohibited under the Working Environment Act. The Norwegian government also included a clause for protection against sexual harassment in the Gender Equality Law. This change was approved by the parliament in 2002.

PUBLIC INDECENCY

Any person or partner in crime who by indecent conduct in word or deed commits an offence against modesty in public, in the presence of, or against any person who has not consented thereto, or in the presence of, or against a child under the age of 16 years, is sentenced to a term of imprisonment not exceeding 1 year.

1.6 PORNOGRAPHY

LEGAL DEFINITION

Any person who:

- Publishes, sells or in other ways tries to spread pornography;
- Imports pornography while aiming at distribution;
- Delivers pornography to persons under the age of 18;
- Produces, imports, possesses, delivers to others or by paying for it gets access to child pornography;
- Gives a public lecture or arranges of public performance of a pornographic nature;
- Misleads any person below the age of 18 years, as a part of a commercial performance to be shown is movable and immovable pictures with a sexual content, or produces such performances which are showing persons below the age of 18 years;

shall be liable to fines or imprisonment for a term not exceeding 2 years.

Pursuant to the Penal Code, pornography means sexual depictions that seem offensive or in any other way are likely to have a degrading or corrupting effect, including sexual depictions showing children, corpses, animals, violence and coercion. Child pornography mean sexual depictions in movable and immovable pictures which are using children, persons who must be considered to be or are represented as being children. Pornography does not include sexual depictions which must be considered defensible for an artistic, scientific, informative or similar purpose.

Over recent years, pornography has become more "hard-core" and found new channels of distribution, including computer pornography. The Penal Code has provisions prohibiting the publication, sale, rental or other distribution of indecent or pornographic materials. It has been revised several times in the last 10 years.

1.7 PROSTITUTION

Buying sexual services from persons under the age of 18 years is a criminal offence that came into force on 11 August 2000. Whether buying sexual services shall be made a criminal offence or not will be considered during the two following years.

Promoting prostitution by others is prohibited (pimping). This is defined as follows:

"Any person who misleads another person into engaging in prostitution or continuing such an occupation, or who is an accessory thereto shall be liable for a term of imprisonment not exceeding 5 years.

Any person who assists or exploits another person engaging in prostitution shall be liable to fines or a sentence of imprisonment not exceeding 5 years. The same applies to any person who, for the sake of gain, aids and abets or exploits another person's commission of acts of indecency.

A proposal to prohibit the rental of properties for brothel activities was decided upon in 1995.

Prostitutes subjected to violence or abuse from their pimps are eligible to free legal aid if they make a complaint. Free legal aid extends to compensation claims.

The extent of prostitution in Norway is assumed to be limited, but may have increased recently due to problems in the labour market and the international sex industry reaching Norway, as indicated in the rise of foreign women in prostitution. The women come from East Europe, Asia and Latin America. There has been a marked growth of prostitution in northern Norway in the county of Finnmark. Norwegian men, in growing numbers are buying sex from Russian women. It is reasonable to believe that this prostitution is organised both at the Norwegian and Russian sides of the border. There has been a quite active mobilisation against the buying and selling of sex from people living in the villages where the prostitution is taking place.

There has been an increase in the number of "massage parlours" which sell sexual services and a growth of "mobile-massage".

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

A telemarketing service via public telephone service (Norwegian Telecom) was launched in 1990 and became quickly a telephone sex service, offering sex stories and "live" conversations with sex hostesses. It was advertised in the national press and reached a wide audience. In 1993, Norwegian "Save the Children" produced evidence of widespread child sex on the telesex market. The public protest led to the withdrawing the advertisements from the national papers.

New regulations are expected to prevent the sexual exploitation and harassment of women and children through telemarketing. Contact services and "chat lines" aimed at sexual relations are now forbidden.

1.9 FEMALE GENITAL MUTILATION

It has been roughly estimated that 4000 women and girls from countries practicing female genital mutilation are presently living in Norway. It is a challenge to offer these women and girls adequate medical services and to prevent female genital mutilation. (Ref. NOU 1999:13 "Women's health in Norway").

An Act prohibiting this practice entered into force in 1996. In the act the term "genital mutilation" was used instead of "circumcision", as the former term indicates the damaging effects of this practice.

The Act prohibits female genital mutilation; i.e. operation on the female genitals that damage or permanently change the genitals. The Act also prohibits reconstruction of a genital mutilation, for example after a birth.

Breaches of the law are punishable with imprisonment for up to 3 years. If death or severe damage occurs as a result of genital mutilation, the punishment may be imprisonment for up to 8 years. Assistance is punished equally. Consent from the woman or girl does not absolve from punishment.

The Norwegian Board of Health issued in October 2000 guidelines for health personnel in providing comprehensive medical care for girls and women who have undergone female genital mutilation, and in prevention of new cases.

The Norwegian Government presented a comprehensive plan of action against female genital mutilation in December 2000.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information provided. See **Sections 1.1** and 1.2 above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

NATIONAL ACTION PLANS

In 1983, the first programme of action against abuse of women, including shelters for battered women emergency centres, health and social services and training courses for health, judicial and social workers, was launched.

In 2000, a new plan of action was launched (see **Section 1.2** above).

In 1986, a "Rape Victim Reception Centre" (RVRC) opened in Oslo. "RVRC" works on the principle that rape is a trauma on a par with torture, war crime or natural disaster. "RVRC" offers the following services: medical examination and treatment; collection of evidence; counselling, to contact a lawyer and the police if the victim desires, and follow-up services.

In 1986, a programme of action against domestic violence was introduced as a part of the "National Plan for Health Year 2000". The programme emphasised public information, training of health workers and other key personnel. Colleges and universities are requested to integrate tuition on sexual violence in the health and social sectors and the judicial system.

In 1992-1993, a programme of action against child sexual abuse was implemented. The programme aimed to:

- Strengthen and systematise efforts to prevent sexual abuse of children;
- Rationalise the effort to disclose, investigate and bring to court cases of child sexual abuse;
- Strengthen and coordinate welfare measures for the children;
- Improve the expertise of personnel and occupational groups who have frequent contact with children and young people.

Funding was provided for a special hospital ward, to be expanded into a centre of expertise on child sexual abuse. Funding for 3 treatment projects for those convicted of sexual crime was also provided.

In 1994, a Centre of competence relating to victims of violence was established as a pilot project. The aim was to expose domestic violence and the conditions that create and conceal it, and to propose measures for its prevention. (Ref.1.2)

A national centre ("Pro-centre") of expertise in matters relating to prostitution has been set up in Oslo. Its task is to:

- Develop methods to work with prostitutes of both sexes;
- Provide guidance for welfare services;
- Engage in general information and education activities.

General assistance for women, and men in prostitution is provided by welfare services and special outreach programmes.

3.2 SUGGESTED REFORM

VIOLENCE AGAINST ELDERLY WOMEN

Nordic studies show that between 2%-4% of elderly women are abused by close relatives. Services are therefore needed. Elderly victims of violence need a place to turn to, and expertise needs to be developed.

RESEARCH

Research projects have provided important knowledge and expertise to understand the problem of violence against women. In the process, the focus has shifted from women as vulnerable to men as perpetrators, and to the relationship between victim and perpetrator, including that between men and children.

Researchers have found considerable resistance to this knowledge; it is important to analyse this resistance.

4.0 DOMESTIC VIOLENCE

See **Sections 1.1** and **1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information available.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

POLAND

This information, which originated with the Max Planck Institute, comes from a document drawn up for the Fourth World Conference on Women (Beijing, September 1995) by the Sub-Committee on Violence towards Women. Additional information was provided in **1997** by the Department for Family Affairs, Office of the Prime Minister, and updated in **February 2003** by the Secretariat of Government Plenipotentiary for Equal Status of Women and Men, Chancellery of the Prime Minister.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

Recent years brought significant progress in the awareness of domestic violence and violence against women in general. The issue has become more visible in the media and has been addressed by an increasing number of NGOs and other institutions. A wide range of activities has been undertaken by the Government Plenipotentiary for Equal Status for Women and Men. A number of important amendments have been made in Polish legislation with a view of combating gender discrimination.

1.1 LETTER OF LAW – DEFINITIONS

No information provided.

1.2 DOMESTIC VIOLENCE

Under the Polish Penal Code of the 6th June 1997, domestic violence falls into the category of “offences against family and custody”. Definition of domestic violence covers both physical and psychological violence:

Article 207 § 1 of the Penal Code:

“Anyone who inflicts ill-treatment of a physical or psychological nature on a member of his/her family, a person permanently or temporarily in his/ her care or a minor or vulnerable person is liable to imprisonment for between three months and five years”.

The custodial sentence is extended to ten years if the perpetrator acted with extreme cruelty (§ 2) and for a minimum of two and a maximum of twelve years if the victim attempts suicide in a consequence of perpetrator’s acts. (§ 3).

Police statistics show that domestic violence most commonly affects women. In 2001, woman made 58,87 % of all victims of domestic violence.

A survey conducted in 1993 and 1996 by the Public Opinion Research Centre revealed that marital violence was extremely common:

- 18% of married women claimed to have been subjected to the violent acts of their husbands;
- 41% of divorced women claimed that have been beaten on many occasions by their former husbands;
- 21% of divorced women claimed that have been beaten from time to time;
- 32% of divorced women indicated physical violence as the main reason for their divorce.

Domestic violence can be reported by anyone with grounds for suspicion and automatically leads to investigation. Although the victim doesn’t need to instigate proceedings by her or himself, in practice cases of domestic violence are often treated not enough seriously both by law enforcement officers and prosecutors. However, according to police statistic data, there were about 86 500 of police interventions in the situation of domestic violence (while the total figure of police interventions was about 480 000) in each of the last three years. Women are also often required to deliver well-documented complaints which include e.g. medical certificates and list of witnesses of the violent acts. There are some reasons why women withdraw their complaints of domestic violence:

- lack of awareness of the victims’ rights, possible measures to undertake in the situation of domestic violence and sanctions that can be put on the perpetrator;

- lack of confidence in the prosecuting authorities, who often still see domestic violence as a private matter;
- limitation of the access to forensic examinations in public clinics. Not only make the high cost of a medical certificate an obstacle for the majority of victims but also the attitude of doctors, who often refuse to deliver a proper certificate with injuries of the victim named;
- women feel ashamed of their injuries and the same time they are aware of the social stigma attached to battered women;
- as female victims of violent acts have no guarantees of adequate and effective protection, they are afraid of revenge of their husband or partner who often remains living in the same flat. Women usually have no alternative for accommodation, as there are very few shelters where victims can find refuge and isolation from the perpetrator (In Warsaw there are only two shelters – for 40 places – and in some regions of Poland there are no shelters at all). The dire economic situation of the victims and their families is an obstacle for women who want to leave an abusive relationships;
- women also face a problem of convincing witnesses to testify. Neighbours are often unwilling to get involved and often see domestic violence as private case to be settled within the family;
- some women also believe that no punishment will prevent perpetrator from committing the violent acts. Poland has no behaviour modification or rehabilitation programs for abusive men, which could constitute a surrogate punishment, exclude repetition of the crime, and ensure safety to victims. The recidivism rate for domestic violence crimes is about 72.4%.

The authorities have taken some measures to address domestic violence. In 1999, a Victim's Rights Charter was elaborated by the Ministry of Justice. It aims at promoting the rights of victims and perpetrators in judicial proceedings.

A "blue cards" system (exemplary forms of domestic incident reports) was introduced in 1998 by the national police authorities in the whole territory of Poland. It was aimed at simplifying and standardizing the procedure of police intervention in situations of domestic violence. The cards were designed for the best use by police officers during their interventions. One of the "blue cards" provides a victim with the information on his or her rights and includes telephone numbers of institutions that can assist the victims of violence. Another card contains guidelines for gathering and documenting the evidence at the crime scene.

A leading role in combating domestic violence is performed by local government bodies – i.e. county family assistance centres and social assistance centres, which function under the Social Assistance Act of 29 November 1990. Government response to domestic violence is coordinated by the State Agency for Prevention of Alcohol Related Problems. It shows that domestic violence remains in interaction with alcoholism. However NGOs state that alcoholism may contribute to but does not cause domestic violence.

According to the survey conducted by Public Opinion Research Centre in November 1999:

- Almost two thirds of Poles have never heard about any programs against domestic violence operating in their region. Among the various assistance programs, people most often mention hot-lines (27%);
- Although most Poles believe that providing help to the victims of domestic violence is a moral duty of every person, about 50% of the people polled are against interfering with family affairs, even when violence occurs;
- Fifty five percent of those polled responded they would fear the consequences of such interference;
- 50% said they wouldn't know which of the spouses was right;
- 46% of them would be afraid that their action might indirectly harm the victim.

The percentage of Poles who are against intervening in domestic affairs, has grown in comparison with the 1997 studies.

According to survey conducted in February 2002:

- 79% of Poles stated that there was no such situation that could justify beating anyone;
- 75% was in favour of penalizing all forms of violent acts;
- 50% believed that institutions responsible for providing support for the victims of domestic violence could effectively provide them with real assistance;

- 27% of Poles did not believe in effective assistance for victims of domestic violence;
- 18% said that there was no violence without a reason and that perpetrator must have had a reason for using violence against victim.

1.3 RAPE AND SEXUAL ASSAULT

According to Polish law rape is an offence against "sexual freedom of a person and morality".

Article 197 of the Penal code:

"Anyone who uses force (violence) threats or illegal means to compel another person to submit to a sexual act is liable to imprisonment for between one and ten years. If the perpetrator, in a way described in Paragraph 1, makes another person submit or perform to another sexual act is liable to imprisonment for between three months and five years. Acts of a particularly cruel nature and gang rape carry a penalty of between two to twelve years of imprisonment."

This definition is very wide as it does not specify the gender of the rapist or the victim and covers the homosexual rape, marital rape and the rape of prostitutes. Gang rape is defined as an offence of rape committed by two or more persons. The Penal Code does not explain the term "particular cruelty," however, based on the court's guidelines, this term indicates any behaviour of the perpetrator not essential to overcome the victim's resistance. It is behaviour intended to humiliate the victim, to inflict feeling of physical or moral pain and suffering, or to cause serious injuries of sexual organs or disfigurement to the victim.

In cases of rape, it is incumbent on the victim to instigate proceedings. This is a consequence of the desire to avoid interference in the private matters of those who would perhaps prefer, for various reasons, not to become involved in criminal proceedings. Police statistics show that in 1999 there were 2029 offences of rape reported to the police, in 2000 – 2 399 and in 2001 - 2339 cases of rape reported to the police. NGOs claim that the official figures for cases of ill-treatment or rape might account only for about 10% of the real number of such offences.

According to the Women's Rights Centre Report on "Women's situation in Poland in 90s", there is an attempt often made during criminal proceedings, to place the blame on the victim of rape.

1.4 CHILD SEXUAL ABUSE/INCEST

No information provided.

1.5 SEXUAL HARASSMENT

The question of sexual harassment becomes more visible in Poland each year. One can observe various public disputes, discussions in media and increasing public interest in this subject. Number of cases brought to the court increases as well, although law in Poland does not adequately address the issue of sexual harassment yet, either in the Penal, Civil, or Labour Code. Cases that were recently brought to the court base on the provision of the Labour Code:

"Employers shall respect dignity and other personal good of his/ her employees" (Article 11¹ of the Labour Code).

However the draft of amendments to the Labour Code, which is being considered by the Parliament, defines harassment in the article 18^{3a} § 4:

"Discrimination also means any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. (sexual harassment)."

The Penal Code does not state the crime of sexual harassment *expressis verbis*. However, Article 199 § 1 can be used in more severe cases of harassment.

"Anyone who abuses a relationship of dependence or takes advantage of critical circumstances to compel another person to perform or submit to a sexual act is liable to imprisonment up to three years."

According to the Supreme Court guidelines, such relation of dependence can occur between employer and employee, supervisor and subordinate, teacher and student. Abusing may occur when a subordinate is obligated to fulfil the orders of his or her supervisor, and a supervisor is aware of taking

advantage of his/ her position to demand sexual favours related in no way to subordinate's employment.

This crime is only investigated if the victim reports it. The reasons why very few cases have been brought to the court are:

- lack of awareness among women about penalizing an offence of sexual harassment;
- difficulties with proving sexual harassment;

unwillingness to instigate proceedings because of the fear of losing a job.

1.6 PORNOGRAPHY

Pornography is covered by Article 202 of the Penal Code.

Article 202§1:

"Anyone who present pornography in a public way and which may impose its perception on the person who do not wish it is liable to imprisonment for up to one year, restrictions on his/ her freedom or fine."

Article 202 §2:

"Anyone who present pornographic materials to the minor under fifteen years of age is liable to imprisonment for up to two years, restrictions on his/ her freedom or fine."

Article 202 §3:

"Anyone who produces with a purpose of dissemination, transfers or disseminates objects of a pornographic description with participation of minor under 15 years of age, with the use of violence or an animal is liable to imprisonment for between three months and five years."

There is no legal definition and no case law on what constitutes material or object of a pornographic description.

1.7 PROSTITUTION

Poland ratified many international instruments concerning forced prostitution and trafficking in women, but they are often implemented not consequently. Polish legislation in the field of prostitution is based on provisions of the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which Poland ratified in 1952. As a consequence of this ratification, prostitution itself is not illegal in Poland, police does not maintain registers of prostitutes and practice no repressions towards this group. According to the Penal Code, only crimes connected to prostitution, such as inciting others to engage in prostitution and running commercial activities linked with prostitutions (such as running, supporting or financing brothels) are subject to prosecution. (Article 204 of the Penal Code).

"Anyone who uses force (violence), threats or illegal means or abuses a relationship of dependence or takes advantage of critical circumstances to compel another person to prostitution is liable to imprisonment for between 1 and 10 years." (Article 203 of the Penal Code).

Pimping is punishable for up to three years. The custodial sentence is extended to ten years if the person involved in prostitution is less than eighteen years old.

The new democracy brought new forms of prostitution. Apart from the prostitution that occurs in the street and in hotels, there is a growing number of so called companionship agencies which are in fact camouflaged brothels. According to the police there are about 1000 companionship agencies currently operating in Poland. There were a few cases of charges brought against their owners for procuring prostitution, but police had difficulties to prove the crime of taking advantage of the prostitution of another person.

1.8 OBSCENE PHONES CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The special role of the public authorities in protecting the family, mothers and children stems directly from art. 68 of the Constitution. The Family Planning, Protection of the Human Foetus and Permissible Conditions for Aborting Pregnancy Act of 7 January 1993 specifies the tasks of the public authorities and rights to medical, social and legal care:

Article 2§1:

“Central and local government administrative bodies, within the scope of their competencies as specified in special regulations, shall be obliged to provide medical, social and legal care to pregnant women, in particular:

- 1) prenatal care of the foetus and medical care of pregnant women,
- 2) material assistance and care of pregnant women who find themselves in difficult material circumstances,
- 3) access to detailed information concerning the rights and benefits to which pregnant women, mothers, fathers and their children are entitled, and to information concerning institutions and organisations that help them to solve psychological and social problems as well as those involved in matters of adoption”.

The Act guarantees access to methods and means serving planned procreation and introduces the subject of human sexuality and the principles of conscious and responsible parenthood into school curricula.

The Act states that abortions may be performed solely by physicians and specifies the situations in which they are permissible:

- the pregnancy threatens the life or health of the pregnant woman,
- prenatal tests indicate a high probability of serious and irreversible damage to the foetus or an incurable disease threatening its health,
- it is suspected that the pregnancy arose as the result of a prohibited act.

In the aforementioned situations, abortion is covered by public health insurance – i.e. financed by the Patients' Funds.

Number of live births, abortions and miscarriages during the years 1965-2000.

Year	Live births (x 1000)	Abortions	Miscarriages
1965	547.4	168,857	66,797
1970	547.8	148,219	65,103
1974	623.7	142,281	72,106
1975	646.4	138,634	73,273
1976	672.8	140,909	74,455
1977	665.2	143,486	73,047
1978	669.3	145,630	77,658
1980	695.8	137,950	68,757
1981	681.7	132,894	69,879
1982	705.4	138,977	77,053
1983	723.6	130,980	74,011

1984	701.7	132,844	76,378
1985	680.1	135,564	72,785
1986	637.2	129,716	68,006
1987	607.8	123,534	66,751
1988	589.9	105,333	59,076
1989	564.4	82,137	59,549
1990	547.7	59,417	59,454
1991	547.7	30, 878	55,992
1992	515.2	11,640	51,802
1993	494.3	1,240	53,057
1994	481.3	874	46,970
1995	433.1	570	45,300
1996	428.2	505	45,054
1997	412.7	3,047	44,185
1998	395.6	310	43,959
1999	382.0	151	41,568
2000	378.3	138	41,007

According to Polish NGOs the real range of abortions can be estimated between 80 000 and 200 000. A high number of abortions practised illegally (without a reason justified by law) in private clinics or abroad is caused by a very reluctant attitude of doctors in the public hospitals, who often refuse to interrupt pregnancy even when the particular case falls under one of the four situations when the law allows to make an abortion. As a consequence of such situation, a lot of women decide to have an abortion in private clinics, where it is done in most cases illegally. But the access to clandestine abortion is limited by high costs .

The Penal Code makes an abortion an offence.

Article 152 of the Penal Code:

“Anyone who violating the law interrupts the pregnancy with a woman’s consent is liable to imprisonment for up to three years. Anyone who assists a women to interrupt her pregnancy with violating the law is liable to the same punishment”.

Article 153§1 of the Penal Code:

“Anyone who uses violence against pregnant woman or in any other means to interrupt her pregnancy without the woman’s consent, and anyone who uses force, threats or illegal means to encourage a pregnant woman to interrupt her pregnancy, is liable to imprisonment for between 6 months and 8 years”.

In both cases the custodial sentence is extended up to 8 in the first one and 10 years in the second case, if the child was able to live independently, out of the woman’s organism. If the woman died in the consequence of the act of abortion, the punishment is also extended to 10 years.

According to police statistics, in 1999, criminal proceedings were initiated in 92 cases based on Article 152 of the Penal Code (aborting a pregnancy with the consent of the pregnant woman but in violation of the Family Planning, Protection of the Human Foetus and Permissible Conditions for Aborting Pregnancy Act), in 2000 – 19, 2001 – 17 and in 2002 there were 200 proceedings initiated.

There were also proceedings based on the Article 153 of the Penal Code (aborting of pregnancy without the woman's consent or causing a pregnant woman to abort her pregnancy by means of violence, illegal threats or subterfuge) initiated in the last four years: two in 1999, eight in 2000, four in 2001 and 10 cases in 2002.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT AND PROTECTION

The Government Plenipotentiary for Equal Status for Women and Man coordinates activities that will be undertaken in the framework of the National Action Plan for Women. The aim of the Plan is to promote women's rights laid down in the United Nations, the Council of Europe, European Union documents. Its objective is to implement provisions of international agreements, by encouraging changes in the high priority spheres of social life. Question of violence against women is one of its main components. Its strategic aim is to combat violence against women. This aim will be achieved by *inter alia* improving a national legal system and implementation of legal proceedings on violence against women, elaborating a comprehensive draft law on prevention and combating domestic violence, reviewing the Victim's Rights Charter provisions as to include the rights of women – victims of violence.

One of the objectives of the National Action Plan is also incorporation of provisions on sexual harassment into the penal system and elaboration of the policy and proceedings aimed at combating sexual harassment. Compensation Fund as to provide victims of the violent crimes with the possibility of damages compensation is thought o be set.

Plan has also its educational dimension. This includes informative campaigns on violence against women and promotion of "No Tolerance for Violence" policy, activities on raising legal awareness, elaborating educational materials such as guidelines and info packets for women – victims of violence and those who wish to help them. Another objective is to incorporate the question of violence against women and children in the families to the programs of professional trainings for governmental officials, lawyers, judges, police officers, teachers, nurses, doctors, social workers, psychologists.

Plan focuses also on creating the system of statistic data collection on violence against women and basing on it, creating the institutional system of support for the victims of violence (including adequate policy, housing, system of legal assistance, systems of psychological, social and medical assistance for women and children – victims of violence and the system of information and documentation of cases of violence).

The National Plan of Action for Women also covers the area of prevention the trafficking in women and direct assistance to the victims. Interdisciplinary plan of activities is being prepared in terms of improving and verifying the legal system and its implementation in the sphere of trafficking in women. It also plans to create a system of collection of the statistic data and to carry out informative and education campaigns . It also includes HIV/AIDS prevention campaigns in the environments that are especially affected by violence and sexual exploitation.

There is a national agency with responsibility for alcohol-related problems (Ministry of Health and Social Welfare) has linked with the Psychology Institute for Health and Alcoholism-related Problems (a non-governmental organisation) to set up a programme to tackle violence in the family. There is a twofold purpose: to lay the foundations for a coherent system of support for victims of domestic violence, especially in its most serious manifestations (families confronted with the spectre of alcoholism), and to bring about changes in people's attitude towards such acts.

The National Centre for Emergency Relief for Victims of Family Violence is responsible for:

- gathering relevant information;
- maintaining a register of institutes, organisations and individuals offering their support for victims of domestic violence;

- informing those in need of support what options are available to them a free phone number and qualified staff manning a round-the-clock telephone help-line;
- determining means of response - modern methods have been developed in co-operation with the Warsaw police to respond to incidents connected with acts of domestic violence requiring police intervention;
- providing moral and practical support for NGOs assisting victims and working with perpetrators of acts of domestic violence;
- designing teaching materials and handbooks for victims and those helping them;
- raising public awareness of the problem of domestic violence and ways of containing it.

According to Ewa WIDEL, the programme can depend on a loyal and dynamic staff, but it lacks resources and is restricted by its mandate to taking action in cases of alcohol-related domestic violence. Under the theme "Sober men can be violent too", women are campaigning for recognition and support for all victims of domestic violence.

Also police elaborate its own programs to combat violence. There was "Police Program of the Support of the Victims" set up in 2001. It aims at reducing the victimization effect in contact between victims and police officers, wide co-operation with other institutions active in the field of victims of violence and the education both of the victims and perpetrators.

In August 2002 the National Program on Prevention and Combating Delinquency "Safe Poland" was adopted. It states that investigating crimes based on the grounds of violence and combating violence against women and children in the families are placed among the most important tasks of the State in the sphere of combating criminal offences that mostly affect the society.

We also expect to have the draft law on protection against violence in close relationships (domestic violence) elaborated very soon.

Further draft laws are prepared in order to increase the accountability of the perpetrators and protection of women, victims of trafficking in women. For example new proceedings focused on providing better legal assistance for irregular immigrants, including foreign females, victims of trafficking in persons.

The inter-ministerial team in the Ministry of Interiors, in co-operation with NGOs is currently preparing amendments to the law on foreigners and social assistance act in order to increase the efficient help for foreign citizens female and male who are victims of trafficking in persons and remain on territory of Poland. The inter-ministerial team also prepares a National Plan for Counteracting and Combating Trafficking in persons. This task is carried out with a co-operation of Government Plenipotentiary for Equal Status for Women and Men with police, prosecutor's office and NGOs.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

PORTUGAL

Information provided by the Portuguese Commission for Equality and Women's Rights (CIDM) and by *Associação Portuguesa de Apoio a Vítima*, the Portuguese Victim Support Association – APAV. in **1996** and updated by the Commission for Equality and Women's Rights (CIDM) in **December 2000**, **February 2003**, and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

Law No. 61/91 of 13 August 1991 was designed to provide appropriate protection for women victims of violence. Since then, several legal measures have been adopted and several information and awareness-raising campaigns have been conducted, in particular by the Commission for Equality and Women's Rights. These measures include the publication and distribution of leaflets informing the public of measures for the prevention of violence in the home and in public places and measures to be taken in the event of violence as well as a handbook for women who have been victims of violence. Since 1998 the Commission for Equality and Women's Rights created a national emergency hotline "Service of Information to the Victims of Domestic Violence". The hotline has been open round the clock every day since May 2000, with the involvement of the social emergency line. The calls received are regularly statistically analysed. The Commission also provides, in its offices in Lisbon and Oporto, a juridical information service to which women can turn to either by writing, phone or in person.

As regards legislation, there are measures to support non-governmental women's organisations, including associations involved in combating violence, and legislation on shelters and centres for women who are victims of violence.

Section 200/1 of Law No. 59/98 of 25 August 1998, amending the Code of Criminal Procedure provides for an injunction barring the assailant from the family home, which public prosecutors may call whenever there is justification for doing so.

1.2 DOMESTIC VIOLENCE

The records of the Ministry of Justice mention, for the year 2004, 817 offenders and 438 convictions for ill-treatment of spouses or persons living together as husband and wife (women).

Domestic violence is an offence under criminal law; it is classified as "(physical or psychological) ill-treatment of a spouse, minor or disabled person" and carries a prison sentence of between one and five years. The amendment on 1 October 1995 of the legal provisions in this field means that they now also apply to "persons living together as husband and wife". Law No. 7/2000 of 27 May 2000 made public the crime of ill-treatment of the spouse or partner, which means that not only the victims but also anyone who knows about such cases of violence can lodge a complaint and/or institute proceedings. Police authorities are obliged to inform the prosecuting authorities if they know of such crimes.

Anyone who subjects his or her spouse or partner or relative of the first degree to physical or psychological ill-treatment is guilty of this offence.

Prohibition of contact with the victim, including the aggressor's removal from the home for a maximum of two years, may be ordered as an additional measure. Since 2006, in order to render more effective the implementation of this measure, the electronic bracelet can be used on aggressors convicted to be removed from the family home.

The physical or psychological ill-treatment of women in the home may be reported to the competent authorities and punished by law though, in some circumstances, the victim may request suspension of the proceedings. Such ill-treatment also constitutes grounds for divorce.

Women who are subjected to domestic violence in Portugal can apply to the courts for compensation, payable by the assailant. In cases where the ill-treatment of a spouse or persons living together as husband and wife is considered a violent crime, Act 129/99 of 20 August 1999, approving the system whereby the State may advance the compensation due to victims, stipulates that if the assailant fails to pay compensation the State may do so on his behalf. This scheme applies to women who have been victims of the offence provided for under Article 152, paragraph 2, of the Criminal Code (ill-treatment), either in Portuguese territory or abroad, provided, in the latter case, that the victim possesses Portuguese nationality, is liable to be in serious financial difficulty as a result of the commission of the offence and has no right to compensation from the State in which the offence was committed.

According to non-governmental organisations, the main problems from the legal standpoint derive, on the one hand, from the fact that women rarely report the violence to which they are subjected and, on the other, from the fact that the law is seldom applied.

The new **Criminal Code**, which will come into force in 2006, pays particular attention to the crime of domestic violence, altering the nature of the offence. The code now includes ill-treatment involving former spouses, people (of the same or opposite sex) having lived in spouse-like situations and people in spouse-like relationships who do not live together. It also deems there to have been an offence following the occurrence of a single serious act of ill-treatment, whereas the previous legislation only did so following repeated ill-treatment.

LAW ENFORCEMENT

The attitude of the police towards domestic violence seems to have improved over the past ten years, especially since the Commission for Equality and Women's Rights began organising several information and training seminars as part of police officers' initial and ongoing training to make them more aware of domestic violence.

The "*INNOVAR*" (Innovate) Project, run by the Ministry of the Interior, aimed to promote further action by police officers, support for the victims of crime in general and special protection for more vulnerable groups (e.g. elderly people, women and young people). The project team also included representatives of the security forces. Its tasks included, among other things, the drawing up of a plan to promote support for the victims of domestic violence. This project was the subject of a Cabinet Resolution in February 1999 (Resolution No. 6/99 of 8 February).

The Interior Ministry Report on Domestic Violence for 2005 reports that 17 076 instances of domestic violence were recorded by the Public Security Police and the National Guard that year, 85% of which are cases of violence between spouses. Account should also be taken of the fact that many cases of violence, particularly between spouses, are not reported to the police.

Law No. 61/91 of 13 August 1991 provides for the setting up of specialised police stations directly responsible for dealing with women who have been victims of violence. These stations are supposed to be run mainly by specially selected and trained women police officers. In reality, women who have been victims of violence are received by women police officers only if they so request and if the latter are available.

Since the reports of complaint, that allow the Public Prosecution Ministry to act with the necessary swiftness, often failed to give sufficient information, a **standard complaint report** was created, containing the risk factors relevant in the cases of violence. It came into force on the 2nd of January of 2006, and contemplates the necessary items for the Public Prosecution Ministry to identify the gravity of the situation and to promote the most adequate measure to each situation; it allows to distinguish the type of violence concerned, the type of victimization and to carry out an accurate evaluation of the risk and danger of each situation and makes it possible for each security agent to collect the same sort of information for every situation of domestic violence recorded. These data allow a more accurate application of the law.

In articulation with several institutions in charge of counsel and assistance to women victims of domestic violence, a standardised sheet of counsel and assistance was produced to be used by all the institutions working with victims of this type of violence. This sheet aims at avoiding that these women have to repeat several times their testimony on their situation every time they address a service and also contributes to the deepening and follow-up of the action against domestic violence by collecting standardised data and by institutionalising these data.

SUPPORT SERVICES

There is a large number of support services providing psychological assistance, counselling and information for victims such as APAV, UMAR, AMCV, Fundação Byssaia Barreto, among others, and some of them have shelters.

In 1976 the Commission for Equality and Women's Rights opened a legal aid department for women. Some 25% of the cases dealt with by this department concern ill-treatment by spouses. Since 1997 the Commission has been storing information concerning its consultations in a computerised database.

In 1998 the Commission for Equality and Women's Rights set up a national emergency hotline for the victims of domestic violence, which provides legal information on this subject. This hotline has been in operation 24 hours a day since May 2000 and has nowadays the involvement of the social emergency line.

Between January and September 2000, the CIDM staff running this hotline received 4,156 calls, 1,807 of which specifically concerned cases of violence. A statistical analysis of these calls has been carried out.

In 2005, the helpline for victims of domestic violence received a total of 4 062 calls, 2050 of which specifically concerned cases of domestic violence.

NGOs have set up other local/regional hotlines providing information for women who are victims of violence.

Act 107/99 of 3 August 1999 on the establishment of a public network of shelters for women victims of violence sets out the general framework for that network. It lays down that it is incumbent on the State, through the Government, to ensure its establishment, running and maintenance. The network should consist of at least one refuge and one information and support centre in each district of Portugal and in each of the Autonomous Regions – two in the Metropolitan Regions of Lisbon and Oporto. The services provided through the public network and in the information and support centres are free of charge. This Act was implemented by Legislative Decree 323/2000 of 19 December 2000.

Some of these centres also shelter victims of trafficking in human beings. Most of these centres are managed by NGOs with the support of the Ministry for Labour and Social Solidarity and the municipalities. The public network has 32 shelter houses distributed throughout the country.

Recently, the Decree Law (nº1/2006, of 25 of January) regarding shelters for women victims of violence establishes minimum standards of installation and functioning of these shelters. It establishes the technical staff, the physical space, and minimum functioning rules for these structures, including the definition of the functions of each type of technical staff working in these structures by areas of intervention. It also includes a model of the internal regulation they must possess, establishing special recommendations regarding the infrastructures and a system of control of the quality of those services in which CIDM has a role as well as the Social Security.

PREVENTION PROGRAMMES

A *first* National Plan against Domestic Violence was approved on 15 June 1999 by Cabinet Resolution No. 55/99. The Plan was in force until May 2002 and was the subject of an evaluation. The Plan included three categories of measures: awareness-raising and prevention; action to protect victims of domestic violence; and research and studies.

The II National Plan against Domestic Violence (2003-2006) was approved on the 13th of June by the Council of Ministers in the Resolution 88/2003 and was published in the Government's Official Journal on the 7th of July 2003. It comprises 48 measures, whose implementation is based on the creation of a network of partnerships between several ministries, schools, universities and NGOs. The Plan establishes that the prevention of violence and the promotion of equality should be dealt with at all levels of the educational system, from nursery school to higher education level. It is divided into seven chapters; the first one regards information, awareness-raising and prevention, namely by promoting awareness-raising campaigns on the human rights of women and on the fact that violence is a crime. The second chapter concerns training of the persons who are in direct contact with the victims of violence – police forces staff, health professionals, social workers, lawyers and judges, and the civil society; the third chapter foresees the revision of legislation in order to facilitate the prosecution of aggressors and the application of law; the fourth aims at the protection of victims and their social

integration. The last three chapters regard respectively research; domestic violence and immigrant women; and the evaluation that envisages the creation of a mechanism of follow-up and evaluation of the implementation of the Plan. The Commission for Equality coordinated the elaboration of the Plan in close cooperation with representatives of the Ministries of Justice, Education, Internal Affairs, Health, Social Security and Employment and the National Association of Municipalities. A Mission Structure against Domestic Violence was created by the Resolution no. 104/2005 of the Council of Ministers.

The conception of this Plan was based on data deriving from various researches promoted by the Commission for Equality and Women's Rights (CIDM) since 1995:

- A first national study on violence perpetrated against women was promoted in 1995 by the Commission for Equality and Women's Rights and conducted by the "New University of Lisbon". This study showed that, at least 52% of Portuguese women had been victims of, at least, one act of violence, mainly domestic violence, with a special emphasis on psychological violence and to a lesser extent, were victims of physical violence. The most frequent aggressor was the husband or the partner.
- The Commission for Equality and Women's Rights started in 2006 a new study with a national scope, this time on "Gender based violence".
- A study conducted by the Research Centre of the "New University of Lisbon" on the social context of violence against women detected by the forensic institutes of Oporto and Coimbra during the year 2000, revealing that physical violence was the origin of 83% of the cases registered and that the family home was the most frequent place of acts of violence against women (67, 2%). In 95, 3% of the cases children witnessed these violent acts; 36, 7% of these women were victims of recurrent aggressions for more than 10 years and in 70, 5% of the cases the husband was the aggressor. These women considered that the reasons for the aggressions were jealousy (44, 4%) and alcoholism (19, 7%).
- The Commission also promoted in 2002 a study on the social and economic costs of domestic violence (quantitative and qualitative costs; individual costs in terms of family, friends, professional activity, physical and psychological health and education; and the social costs connected to justice, rehabilitation and support provided to the victims and other persons affected by the acts of violence, and health institutions). The study, conducted by the same research centre, demonstrates the need to invest in the prevention of violence rather than to look exclusively into ways of mending its effects.
- In 2004, CIDM promoted and published a « Preliminary Study of Characterization of the Intervention on the Aggressors in the Context of Domestic Violence » conducted by the Faculty of Psychology and Sciences of Education of the University of Oporto. In the same year CIDM also promoted and published a "Three party Study for a sustained Practise of Fight against Domestic Violence: elaboration of guidelines of counsel and assistance of the victims of domestic violence; production of training materials on the phenomena; identification of methodologies and indicators produced in Portugal during the five previous decades and that should be used in a future review of research, intervention and training in this domain", conducted by the same Faculty.

Combating violence against women was also one of the major objectives of **two National Plans for Equality**, specifying various measures for combating violence against women not covered by the National Plans against Domestic Violence.

Combating violence against women will continue to be a strong issue in the Portuguese Government's agenda.

INFORMATION AND AWARENESS-RAISING

Several information and awareness raising initiatives have played, so far, an important role in the prevention of violence.

Stop Domestic Violence television campaign

The Commission for Equality and Women's Rights organised a television campaign to publicise the issue, raise public awareness and challenge people to be proactive in combating domestic violence. The campaign took place during the week of 25 November 2003 as part of the International Day for the Elimination of Violence against Women.

The campaign message was Stop Domestic Violence. The tone was both hard-hitting, with a view to raising public awareness, and positive in the sense that solutions and resources were presented.

The spots began with an introduction setting out information about domestic violence. For instance, the statement that one in five women in Europe suffer domestic violence at some point in their lives was followed by an account by a public figure, with the spot ending with a call to women, men or neighbours designed to raise their awareness and get them involved in combating domestic violence.

The campaign included accounts by public figures from a wide range of fields: actors, a designer, a priest, a major, the head of a shelter for women, a singer, a journalist, a prosecutor from the department for penal action and research, a female doctor from the forensic science institute, a television presenter and a psychiatrist. Different perspectives of the issues were presented through their various accounts.

The spots were broadcast four times a day by the two state television channels (RTP and Channel 2), and twice a day by two channels of one of the main private television companies (SIC and SIC Women's Channel). The campaign continued throughout December on the two private channels.

Round table for journalists on domestic violence and the media

The Commission for Equality and Women's Rights organised a round table for journalists on the subject of domestic violence and the media. It was held on 20 November at the Forum Lisboa (a well-known venue in the heart of the capital, which usually hosts major events). The aim was to hold discussions with media professionals about how their sector should deal with the issue.

The round table was opened by a reporter from the private television company, SIC, who is well-known because of the issues covered in her broadcasts (justice, violence against women, trafficking, etc).

The participants were given a file containing a study on violence against women in the media, a text on the treatment of violence in the media and details of the legislation on the protection of the victims of domestic violence. The file was also sent to all journalists who had requested further information but were unable to attend the round table.

The discussions enabled the participants to ask questions, reflect on the issues and exchange views on the way domestic violence is treated in the media and the improvements necessary.

Stop Violence in the Home Campaign, in co-operation with The Body Shop

As part of the second National Plan against Domestic Violence, the Commission for Equality and Women's Rights ran a campaign entitled Stop Violence in the Home in co-operation with The Body Shop. It was held for the first time in Body Shop outlets from 21 March to 12 April 2004.

The aim of the campaign was to raise customers' awareness of the issue (the outlet managers attended information/awareness-raising sessions).

As part of the campaign, a small survival guide for domestic violence victims was published (52 000 copies), providing information on the public nature of the crime; the persons who can report it; the importance of witnesses; the psychological and social consequences of domestic violence; the reasons and difficulties that prevent victims leaving violent relationships; some strategies for the protection and safety of victims and their children; and other useful details, including the telephone number of the information service for domestic violence victims (Freefone).

The guide was distributed widely in Body Shop outlets throughout the country, as well as in health centres, hospitals, pharmacies and support and other centres for domestic violence victims. A T-shirt bearing the logo used in the guide was produced along with pin badges. Proceeds from the sale of these and a Body Shop product went to a shelter for women victims of domestic violence.

In this connection, the various shelters were asked to apply for this funding by presenting a project that could be of direct benefit to the women they take in.

During the campaign, the Commission for Equality and Women's Rights' co-ordinator of all activities concerning domestic violence took part in various television interviews on the subject, as well as discussion forums open to TV viewers and debates with other guests. The programmes in question usually also involved members of relevant NGOs and professionals from the widest range of fields (doctors, prosecutors, etc).

The campaign has been renewed every year since.

Re-issue in several languages of an information leaflet on violence against women in the family

An information leaflet on violence against women in the family is to be re-issued in Portuguese, English and Russian to make it more accessible to immigrants.

Several interviews were given on the subject on Channel 2 of state television and on two channels of one of the main private television companies (SIC and SIC Women's Channel).

2005

During the week of 25 November 2005, the Mission Structure against Domestic Violence (EMCVD) conducted a national radio and newspaper campaign, accompanied by the large-scale distribution of postcards and posters. Around the slogan "One of these three women is the victim of domestic violence", the campaign conveyed the message of combating violence against women to several thousand people.

Several other initiatives were aimed at more specific target groups, including the presentation of the campaign to the media and a large number of guests; the launch of a free quarterly newsletter on the subject; the inauguration of the EMCVD website; and the organisation of a closing seminar for the week against domestic violence (Preventing domestic violence: local policies and action), at which the various partner bodies adopted a declaration publicly committing themselves to continue implementing the second National Plan against Domestic Violence.

The media is taking an increasing interest in this issue giving way to frequent public debates, including television debates on domestic violence, thus raising the level of awareness.

1.3 RAPE/SEXUAL ASSAULT IN MARRIAGE

The 1982 Criminal Code introduced important amendments in this area, making physical assault on a spouse or a minor an offence.

Amendments under Legislative Decree 48/95 of 15 March 1995 provide for heavier sentences: for example, rape is now punishable by three to ten year's imprisonment (previously two to eight years).

Rape, whether committed by the spouse or a stranger, is punishable by a prison sentence and may be grounds for divorce or legal separation when it takes place in the context of marriage. Even where the sexual act is imposed by a friend, partner or husband, it may constitute rape. Provided the woman has not given her consent to the sexual act, coitus or anal penetration, such acts may be considered rape, whether or not there are ties of kinship or affinity between perpetrator and victim.

In 2004, the Ministry of Justice registered 76 offences and 42 convictions for rape.

LEGAL DEFINITIONS

The Criminal Code makes rape and sexual assault criminal offences.

Article 164 of the Criminal Code, Legislative Decree 48/95 of 15 March 1995 defines rape as follows:

"1. Anyone who, by means of violence, serious threats, or having rendered a person unconscious for this purpose, or having made it impossible for that person to resist, forces another person to be subjected to or perform with him or her or with a third party, copulation or anal or oral coitus shall be liable to three to ten years' imprisonment.

2. Anyone who, abusing a relationship of authority in the context of a hierarchical relationship or one of financial dependency or, in the workplace forces another person, by means of orders or threats not included in the previous paragraph, to be subjected to or perform, with him or her or with a third party copulation or anal or oral coitus shall be liable to a term of imprisonment of up to three years."

The prison sentence for rape is between three and ten years. Following a reform of the relevant provisions in October 1995, anal penetration is considered to be an offence. Law No. 65/98 of 2 September 1998, making major amendments to the Criminal code, also renders oral penetration illegal. Since 1995, the Criminal Code has also penalised "sex under duress". This offence is defined as

“being subjected to or forced to take part in a major sexual act under the constraint of violence, serious threats or the action of a third party making it impossible for victims to defend themselves”.

The penalty for this offence is one to eight years' imprisonment. There are few complaints concerning sex under duress but non-governmental organisations say that the existing legislation has been strongly criticised, particularly on account of the failure to apply the 1991 law on the granting of special assistance to women and their legal representation by NGOs.

LAW ENFORCEMENT

The police forces are now better informed and also respond better to cases of women who have been victims of sexual violence; the victims may, moreover, ask to be heard by women police officers.

SUPPORT SERVICES

Progress has been made with regard to the work done and information provided by support associations, legal bodies and medical services. Victims can also seek assistance from private self-help organisations and the Association of Women against Violence.

Under Law No. 11/98 of 24 January 1998, reorganising the forensic medicine system, complaints can now also be lodged with the coroner's services.

REFORMS REQUIRED

Law No. 93/99 of 14 July 1999, governing the application of measures to protect witnesses during criminal proceedings, establishes a special system for the protection of particularly vulnerable witnesses, thus ensuring that victims are not obliged to appear in court.

1.4 SEXUAL ABUSE OF CHILDREN/INCEST

The following numbers of cases of sexual abuse of children have been reported:

- 35 in 1992
- 21 in 1993
- 31 in the first half of 1994.

In 1999 there were 76 convictions for sexual abuse of children or minors.

In 2004, 80 judicial proceedings were registered on the grounds of sexual abuse against minors, 83,8% of the victims were female children. One can say that the data available is not comprehensive and concerns only the cases brought to Court.

Incest is not an offence as such. However, where rape and sexual assault are concerned, the fact that these acts have been perpetrated by an ascendant, an adoptive parent, a relative of the first or second degree (direct ascendant or collateral) is an aggravating circumstance.

If the victim is under 16 years of age, the public prosecutor may institute criminal proceedings if this is necessary in the interests of the victim.

LAW ENFORCEMENT

There is a National Commission for the Protection of Minors but there is still no data available.

SUPPORT SERVICES

Telephone help lines have been set up and the number of cases of this type brought before youth courts are increasing.

REFORMS REQUIRED

It is necessary to launch prevention campaigns and to implement the provisions of the 1991 law on assistance for victims, which is all the more important in cases of sexual abuse of under-age children.

1.5 SEXUAL HARASSMENT

Although rape and sexual assault are offences under the Criminal Code, there are no specific provisions concerning sexual harassment. Nevertheless, Section 163 of Law No. 65/98 of 2

September 1998 punishes certain particularly serious forms of sexual blackmail in the context of a hierarchical relationship or one of financial dependency and in the workplace. They carry a prison sentence of up to two years in the event of sex under duress, while Section 164 lays down a prison sentence of up to three years in cases involving rape. This legislative shortcoming can be explained by the general silence surrounding sexual harassment at work. Despite this, the perpetrators of such acts can be prosecuted and punished in the civil courts.

The Commission for Equality in Labour and in Employment national mechanism for equal opportunities between women and men) is also entitled to give its opinion on such cases if so requested. The Commission for Equality and Women's Rights may also provide information on this subject through its Legal Advice Service.

A study on sexual harassment at work (*Assédio Sexual no Mercado de Trabalho*), carried out in 1988-1989, showed that there was little interest in this issue, despite the large percentage of women who had been victims of some form or other of sexual harassment.

The Labour Code, adopted in 2003, has a specific provision on harassment in Article 24, applying only to the labour field. Article 24 -1 Harassment of a candidate to an employment or worker constitutes discrimination. 2- Harassment is understood as unwanted behaviour related to one of the factors stated in nº 1 of Article 23 (prohibition of discrimination on the grounds of sex, among others), performed in the framework of employment, access to an employment, or professional training with the purpose or the effect of affecting the person's dignity, or creating an intimidating, hostile, degrading, humiliating or unbalancing environment. 3 – In particular, it is considered harassment all the unwanted sexual behaviours, under verbal, non verbal or physical forms, with the purpose or the effect mentioned before.

REFORMS REQUIRED

- A legal framework needs to be established.
- Employers and employees and political leaders need to be made more aware of the problem.

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

LEGISLATION

In 1981, Portugal ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and, in 1991, the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. These two instruments oblige States to take measures to fight trafficking in human beings, which is also punished by the Criminal Code.

The law in Portugal leaves no room for the existence of places where prostitution can be exercised, nor does it foresee the obligatory registration of prostitutes.

Law No. 65/98 of 2 September 1998 makes it easier to punish crimes concerning trafficking in human beings and the exploitation of prostitution by no longer requiring that, in order to be recognised as a crime, these must be based on the exploitation of situations of abandonment or of the financial needs of the victim.

The Criminal Code, through Law 99/2001 of 25 August 2001, has increased the penalty for involvement in this type of crime (two to eight year's imprisonment).

Law 5/2002 of 11 January 2002 sets out measures for combating organised and economic/financial crime. It provides for a special system for the gathering of evidence, setting aside professional confidentiality, and confiscation of property by the State in relation to a number of crimes, among them exploitation of prostitution, including child prostitution, and trafficking in minors.

SUPPORT SERVICES

The non-governmental organisation "Ninho" ("The Nest") provides assistance to prostitutes in order to help them escape this kind of exploitation.

The CIDM has always supported projects to help groups of women prostitutes and co-ordinated an interdisciplinary group, of which NGOs and services working with prostitutes were members.

In the context of the Working Community involving Galicia (Spain) and Northern Portugal, CIDM and the Galician Department for Equal Opportunities submitted a joint application to Interreg III. This project, entitled ISADORA, was carried out between June of 2003 and December of 2004 and concern the drafting of a study on prostitution between the two borders, the training of staff concerned with this problem and of the prostitutes themselves and the setting up of support services.

Other project CIDM was involved with institutions from other countries was the Proclusion Project, regarding migrant prostitution. It had the participation of Germany, Netherlands, Portugal and Sweden. Special attention was given to the different models of intervention and the different legal frames.

Until September of 2004 CIDM was involved, under EQUAL Initiative, in a Project entitled InExtremis aiming mainly at: making a diagnosis of the social exclusion phenomenon, and mapping the legal frame, social answers and the needs of the technicians involved in those areas, including prostitution. It also carried out and organised Workshops and Training sessions related with the social and extreme vulnerability in the areas of immigration, prostitution and drugs addiction.

REFORMS REQUIRED

General information and awareness-raising; education and employment policies; prevention programmes; co-operation between the police forces and with other countries.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

In Portugal female genital mutilation is considered a crime (although not autonomously) under the Articles 144. ° (serious offence to physical integrity) and 146. ° (qualified offence to physical integrity) of the Portuguese Penal Code (these articles were last altered by the Decree-Law n.° 48/95, of 15th March). The punishment for this crime may vary between 2 to 10 years and the allegation of tradition or costumes in defence of this practice does not hold. The Decree-law n. ° 48/95, of the 15th March, brought about a general aggravation of the applicable sentences.

The II National Plan against Domestic Violence, 2003- 2006 has a chapter that focuses on immigrant women and the matter of female genital mutilation. This plan states that the Government will not allow female genital mutilation in Portugal and shall adopt measures to fight this practice, namely by:

- promoting studies aimed at a deeper understanding of the specific problems of domestic violence in immigrant communities and promotion of awareness-raising activities specifically addressed at those communities;
- promoting awareness-raising activities for immigrant communities aimed at the prevention of female genital mutilation as a violation of the human rights of women;
- the explicit criminalization of female genital mutilation;
- providing health centres and hospitals the resources to ensure the necessary assistance to the women and girls seeking for help in situations of female genital mutilation in communities where this is a traditional practice.

Only recently has the subject of harmful traditional practices, female genital mutilation in particular, come to light in Portugal. In Portugal there is no tradition of such practices and therefore almost none information or data on this issue. However such practices are known to be carried out in the Portuguese territory by communities of immigrants (mostly from Guinea-Bissau) from countries where these practices are common or traditional. Neither police authorities nor hospitals have official record of female genital mutilation cases, although some health services professionals admit its existence.

In November 2003 the Commission for the Equality and Women's Rights organized a Conference about Female Genital Mutilation, with the objective of discussing the subject on the perspective of Health and Human Rights. The target audience was mainly health, education and social service professionals as well as students. A study about female genital mutilation conducted under the coordination of APF (Family Planning Association), which included an enquiry on this subject made to health professionals, was presented at the Conference.

Although the enquiry's results might have been somewhat limited by the small number of health professionals who actually answered the enquiry (151), the study revealed that the majority of the enquired persons knows what is female genital mutilation (94%), does not agree with medical assistance to this practice (92%), does not know any law that might apply to female genital mutilation (98%), agrees that female genital mutilation should be considered an autonomous crime (88%), agrees that female genital mutilation should be reported to the authorities (91%), agrees with the need to work with the communities which practice female genital mutilation (99%). However, only a minority of these health professionals has had specific professional training on this subject (11%), has observed genital mutilated women (17%), is aware that this practice exists in Portugal (15%), has observed sequels and was asked to perform the practice (1%). It should also be noted that almost half of the health professionals enquired (44%) is not sure of being capable of recognising a case of female genital mutilation.

1.10 INTERNATIONAL CONVENTIONS

Portugal has ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

The Portuguese courts take account of international conventions, i.e. the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See Section 1.2 above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 PROPOSED REFORMS

See Sections 1.3, 1.4, 1.5 above.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.

ROMANIA

Information provided by the National Agency for Equal Opportunities between women and men, Ministry of Labour, Social Solidarity and Family, in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

It is true that violence against women (both inside and outside the home), domestic violence, incest, murders of members of the same family, sexual harassment, sexual abuse and rape are phenomena observed worldwide, affecting all social classes and cultures.

In the Romanian legislation, the fundamental legal framework regarding family protection and, particularly, the prevention and fight against domestic violence, has started in a substantial and coherent form concurrently with the coming into force of the Law no. 217/ May, 22, 2003. A result of the efforts made by decision-makers, specialists and the ones in direct connection with the victims of domestic violence, the framework also draws on the ground-breaking work – in the field of attending the victims of gender-based violence and of domestic violence in general – started by the Romanian NGOs 10 years ago.

According to the law on the prevention and fight against domestic violence “the prevention and fight against domestic violence are part of the integrated family protection and support policy and represent an important public health issue”. The entire law is in perfect accordance with the provisions on domestic violence in the Penal Code.

Part XI

- Offences against the person;
- Offences against life, the person and physical integrity (Chapter 1);
- assault causing bodily harm (Section 11, Articles 180-184);
- sexual offences (Chapter 11, Articles 194-204).

Part IX

- offences against specific relations in community life;
- offences against the family (Chapter 1, Articles 300-304);
- other offences against specific relations in community life (Chapter 4, Articles 317-330).

1.2 DOMESTIC VIOLENCE

In the sense of this law, domestic violence represents any physical or verbal action deliberately perpetrated by a family member of the same family, resulting in physical, psychological, sexual suffering or material loss. Preventing the woman from exercising her fundamental rights and liberties is also considered domestic violence.

According to the annual report of the National Agency for Family Protection the statistic situation of year 2005 shows that cases of domestic violence grew with more than 1433 than the 8104 cases from the previous year. The Police have notified more about cases of domestic violence, as in the previous years. The particularity of year 2005 was that many cases of domestic violence were notified from the rural area. The NGOs notified about 20, 54% of the cases and the General Departments for Social Assistance and Child Protection 20, 47%. At the Pilot Center for Assistance and Protection of Domestic Violence Victims the number of cases reported has grown more than three times and a half since last year, counting almost 7,73% of the cases at national level.

The beneficiaries of the law are also the individuals who established relationships similar to those between married couples, or between parent and child, proved on the basis of social investigation.

Situation of death caused by domestic violence for 2005

Women where the age is stated	Men where the age is stated	Female Minors	Male Minors	Women where the age is not stated	Men where the age is not stated	No. of death where the sex and the age are not stated	Minors where the sex is not stated	Total Of death cases
42	31	4	3	33	39	16	1	169

Total of deaths by sex and age groups

Age groups	Female victims	Male victims
0 – 14 years	3	3
14 – 18 years	1	0
18 – 25 years	4	1
25 – 35 years	4	4
35 – 45 years	5	9
45 – 55 years	7	4
55 – 65 years	8	6
Over 65 years	13	7
Total	45	34

Thus, the **National Agency for Family Protection** started to operate in the year 2004, subordinated to the Ministry of Labour, Social Solidarity and Family, with the purpose of managing the above-mentioned phenomenon, having institutional structures dedicated to the victims and to the aggressors, and fulfilling at the same time the functions of providing information and counseling to families facing difficulties.

The main objectives of the National Agency for Family Protection, which is a public institution with legal personality, are:

- to promote family values, understandings and mutual assistance in the family; to prevent and fight against violence between family members;
- to sustain family members in distress as a result of domestic violence between family members;
- to support the victims through health recovery and social rehabilitation programmes;
- to assist aggressors undergo psychological and psychic treatments, as well as treatments for drug addiction and alcoholism;
- to protect victims, especially the minors, through identity secrecy, as well as psychological protection during case execution;
- to initiate and coordinate social partnership, in view of preventing and fighting against domestic violence.

In each district and in Bucharest municipality, within the directorates for dialogue, family and social solidarity are departments with responsibilities in fighting domestic violence under the methodological coordination of the Agency. Under the Agency operate the Pilot Center for Assistance and Protection of Domestic Violence Victims and the Family Information and Counsel Centre.

The main responsibilities of the Agency are:

- to develop, justify and implement the strategy and programmes in the field of domestic violence;
- to verify the implementation of the regulations specific to its field, and to methodologically guide the activity of those units designed to prevent and fight against domestic violence;
- to endorse the setting up of centers for sheltering the victims of domestic violence, of centers for the rehabilitation of victims of domestic violence and centers for the assistance of aggressors;
- to include telephone calls related to cases of domestic violence within the emergency telephone service, allocating a unique call number, according to the law;
- to train, authorise and coordinate the professional activity of the family assistant;

- to organise courses on types of domestic violence, as well as on the means for preventing and fighting against these;
- to undertake research and studies, to design strategies, prognoses, to develop and publish related scientific and promotional materials;
- to involve and support the initiatives of the social partners in solving the problems of domestic violence.

Family assistants

Family assistants are social workers authorized by the agency to provide the specific assistance for family relations. They have the following responsibilities:

1. to identify and keep account of the families where conflicts which may lead to violence occur;
2. to monitor the domestic violence prevention activity;
3. to identify amiable settlement by maintaining contact with the persons herein;
4. to demand the support of natural or legal persons to settle the situations generating domestic violence;
5. to monitor the observance of the rights of those persons forced to resort to shelters.

The rehabilitation centers for victims of domestic violence are social assistance units, with or without legal personality which ensure the accommodation, care taking, as well as rehabilitation and social reintegration of said victims. The assistance centers for aggressors are social assistance units with or without legal personality, which ensure the rehabilitation and social reintegration of the aggressors, under a residential or semi residential regime, as well as educational actions, counseling and family mediation.

During the legal proceedings or the trial, the Court of Justice, upon request of the victim or ex officio, whenever there is solid evidence or indication that a family member has perpetrated a violent deed causative of physical or psychological suffering to another member, can temporarily decide to take one of the measures stipulated in the Penal Code, as well as the measures of banning the returning to the family home.

Sanctions

The following deeds stand for contraventions unless in accordance with the Penal Code, they stand for offences, and are to be fined between approximately 300 Euros (10,000,000 lei) and 1.500 Euros (50,000,000 lei):

6. to deny admittance in the shelter or to refuse to grant, following motivated demand of the family assistant, free medical care to a person under visible distress, in order to remove the consequences of violence;
7. failure of the family assistant to notify the National Authority for Child Protection or the local specialized public service;
8. to change the purpose of the shelter.

The persons who perpetrated the aggression and wants to enter the premises of a shelter where the victim is or is considered by the aggressor to be found, is to be fined between approximately 150 Euros (5,000,000 lei) and 300 Euros (10,000,000 lei).

These contraventions are found and the sanctions applied, according to the law, by the family assistant, the mayor or their authorized persons.

Persons who testify before judicial bodies may enjoy witness protection, according to the special provisions in this matter, namely Law No. 682/2002 on Witness Protection.

Law No.682/2002 ensures the protection and the assistance of the witnesses whose lives, individual safety and freedom are threatened as a result of their knowledge of data and information regarding severe crimes perpetration, information they have provided to the judicial authorities and that have an important role in the detection of criminals and in solving the cases.

Romanian criminal law draws no distinction between the private and public spheres.

Policies

The National Agency for Family Protection developed a National Strategy in the field of preventing and fighting against domestic violence phenomenon for the period 2005-2007.

A study by a Romanian NGO carried out in the year 2003 indicated that the global rate of domestic violence incidence was of 14, 3% at a national level, representing an average value, which showed that between 12, 4% and 16, 2% of Romania's adult population, has experienced domestic violence during their lifetime, under one or more forms. Significant determinant factors of domestic violence in Romania are alcoholism, poverty, socialization in an environment marked by violence and by a patriarchal model of family organization.

1.3 RAPE/SEXUAL ASSAULT

Under criminal law, rape is subject to the penalties stipulated in Article 197 of the Penal Code.

Rape is defined as "sexual intercourse with a person of female gender by using force or taking advantage of the inability of the person in question to defend herself or explain her wishes". Rape is subject to between two and seven years' imprisonment.

The penalty is increased to a prison sentence of between five and eighteen years in the following aggravating circumstances:

- the victim was under the age of fourteen;
- the offence was committed by several persons;
- the victim was under the authority, protection, supervision or custody of, or was being treated by, the perpetrator of the offence;
- the offence caused the victim grievous bodily harm.

If the victim dies or commits suicide as a result of the offence, the perpetrator is subject to a prison sentence of between ten and twenty five years.

The victim must file a complaint if he/she wishes to bring criminal proceedings under these provisions. So, according to the Criminal Code these deeds are considered aggravating circumstances and are punished differently.

For both women and men it is applied the same punishment if he/she kills the husband/wife.

For the moment there are no provisions recognising gender prosecution as grounds for granting refugee status.

Violence against women is considered an obstacle to equality. There are a series of policies which address this specific problem like: National Strategy in the field of preventing and fighting against the domestic violence phenomenon and the National Strategy for equal opportunities between women and men for the period 2006-2009.

Law 217/2003 for preventing and fighting against domestic violence and other antidiscrimination legislation (Law 202/2002 regarding equal opportunities between women and men and Governmental Emergency Ordinance No. 137 / 2000 for preventing and sanctioning all forms of discrimination) is the main piece of legislation in this field. But all legislation refers to women and men both and uses a gender neutral language.

Art. 48 of Law on equal opportunities states that "The burden of proof shall be due to the person against the complaint/intimation have been submitted or, as the case may be, the file to court have been submitted for facts that allow the assumption of a direct or indirect discrimination and who has to prove the non-infringement of equal treatment principle», so there are some positive actions taken to support the persons who consider themselves discriminated against.

According to Law 202/2002 regarding equal opportunities between women and men, "the agency (National Agency for Equal Opportunities between women and men), trade unions and NGO's working in the field of human rights protection, as well as other legal persons with a legitimate interest in observing the equal opportunities and treatment principle are entitled to represent from legal point of view the discriminated persons and to assist them within the administrative procedures framework, at their request".

Law No.197 /2000 repealed paragraph 5 of Article 197 of the Criminal Code – "Rape", regulating the so-called "reparatory marriage". Hence, since 2000, "reparatory marriages" are no longer allowed.

1.4 CHILD SEXUAL ABUSE/INCEST

The age limit between child and adult is eighteen years old.

Under criminal law, sexual intercourse with an under-age girl is subject to the penalties set out in Articles 198 to 203 of the Romanian Penal Code.

Under the terms of Article 198, sexual intercourse with a girl under the age of fifteen is subject to between three and ten years' imprisonment. The same penalty is applied to sexual intercourse with a girl between the ages of fifteen and eighteen where the offence is committed by a guardian, a person having custody of the girl, a hierarchical superior, a family doctor or a teacher, if they have taken advantage of their position to commit the offence. If the offence causes grievous bodily harm, the perpetrator is subject to between five and eighteen years' imprisonment. If it causes the death of the victim he is subject to between fifteen and twenty five years' imprisonment.

Enticement of under-age girls (Article 199): Any person inciting a girl under the age of eighteen to have sexual intercourse with him in return for a promise of marriage shall be subject to a prison sentence of between one and five years. Reconciliation between the parties shall annul all criminal liability.

Sexual corruption (Article 202): Obscene acts committed with an under-age child or in his or her presence shall be subject to between three months' and two years' imprisonment.

Attempts to commit the aforementioned offences shall also be punishable under these provisions.

The legislative framework was complemented with Law No. 108/2.06.1998 (approving Emergency Order No. 26/1997), which lays down measures to protect children in difficulty and defines the situations and conditions in which such measures should be implemented.

The Romanian legislation states the following violations regarding sexual life:

- a) rape;
- b) sexual intercourse with a under-aged person;
- c) enticement;
- d) perversion;
- e) sexual corruption;
- f) incest;
- g) harassment.

1.5 SEXUAL HARASSMENT

The concept of "sexual harassment" is stipulated in Law 202/2002 regarding equal opportunities between women and men. According to the Law, "by *sexual harassment* it is understood the situation where any unwanted physical, verbal or non-verbal conduct is manifested, having as purpose or effect the violation of the dignity of a person and, in particular, creating an intimidating, hostile, degrading, humiliating or offensive environment". According article 12 of the Law, "It is considered as gender-based discrimination any behavior defined as sexual harassment, having as purpose:

- a. to create at the workplace an atmosphere of intimidation, hostility or discouragement for the affected person;
- b. to negatively influence the situation of the employed person as regards the vocational promotion, wage or revenues of any nature or the access to vocational training or retraining, in the case of his/her refusal to accept an undesired behavior, related to Art. 12. – In order to prevent and eliminate any behaviors, defined as gender-based discrimination, the employer has the following obligations:
- c. to stipulate in the internal regulations disciplinary sanctions, in conditions stipulated by the law, for employees infringing the personal dignity of other employees, by creating degrading, intimidating, hostile, humiliation or offending environments by committing the discriminatory actions defined in art. 4 lit. a) – d) and in art. 11;
- d. to ensure the information of all employees on the prohibition of harassment and sexual harassment at the work place, including by posting in visible places the internal regulations to prevent any act of gender-based discrimination.

- e. to inform, immediately after the complaint, the public authorities in charge with implementation and control of the enforcement of the legislation on equal opportunities between women and men.
- f. sexual life. “

The sanctions for this type of gender-based discrimination are sanctioned with a fine in the amount of approximately between 430 Euros (15,000,000 lei) and 4.300 Euros (150,000,000 lei).

On the other hand, art. 48 states that “The burden of proof shall be due to the person against the complaint/intimation have been submitted or, as the case may be, the file to court have been submitted for facts that allow the assumption of a director or indirect discrimination and who has to prove the non-infringement of equal treatment principle.”

The National Agency for Equal Opportunities between women and men received since its establishment in April 2005 a number of 6 complaints. Out of these 3 were about sexual harassment at the working place. All complaints were filled in by women. There was not a case where it could be applied a sanction because of lack of evidence.

According to the Labor Inspection, in the period 2005-2006 they received 3 complaints about sexual harassment out of which just one received a favourable consultative bill regarding the possibility to sanction.

According to the Ministry of Justice in the period 2005-2006 were not registered any complaints regarding the felony of sexual harassment as it is put in the Penal Code.

1.6 PORNOGRAPHY

The dissemination of obscene material is punishable under Article 325 of the Romanian Penal Code, which prohibits:

“The sale or distribution of obscene objects, drawings, writings or other obscene material, and the production or possession of such material with a view to its distribution”.

Persons infringing this provision are subject to between three months’ and two years’ imprisonment or a fine.

We have received no information on the implementation of this law, any problems relating to the definition of obscenity or other difficulties in imposing penalties or conducting prosecutions under this provision.

1.7 PROSTITUTION

Prostitution, trafficking in women and procuring are punishable under criminal law.

Prostitution is a specific offence in Romania. Article 328 of the Romanian Penal Code defines persons exercising this activity as follows:

“Any person deriving all or most of his/her means of subsistence from sexual intercourse performed for this purpose with a variety of persons”.

The sanction incurred is a prison sentence of between three months and three years.

Procuring is also an offence. Article 329 of the Penal Code defines this activity as follows:

“The fact of encouraging or forcing another person to engage in prostitution, facilitating the exercise of prostitution or deriving profit from it, as well as recruiting other persons for the purposes of prostitution or engaging in the traffic in persons to this end”.

Procuring is subject to a prison sentence of between one and five years, and disqualification from exercising certain rights. Attempts to commit this offence are also subject to the same penalties.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

This concept does not exist in Romanian legislation. However, it could fall within the ambit of the legislation on assault and battery (articles 180-184 of the Penal Code).

1.10 INTERNATIONAL CONVENTIONS

Romania is a signatory to the following conventions:

- The International Convention for the Suppression of the Traffic in Women and Children of 30.9.1921, ratified by Romania in 1923;
- The International Convention for the Suppression of the Traffic in Women of Full Age of 11.10.1933, ratified in 1935 (Law No. 2/1935);
- The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified in 1950 (on 21.5.1950);
- The 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1981 (Decree No. 342/1981);
- The International Convention on the Rights of the Child, ratified in 1990 (Law No. 18/27.09.1990);
- The Convention on the Rights of Children related to the sell of children, child prostitution and infantile pornography, ratified in 2001 (Law 470/20.09.2001).

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 MAIN PROBLEMS

Official statistics underestimate the number of offences linked to sexual assault because of reluctance on the part of women to report them. The Bucharest Institute of Forensic Medicine has recorded 4 460 cases of battered women - 47% reported their cases spontaneously and 53% were encouraged to do so by the police. The Romanian authorities and women's associations have never conducted research into this matter, concentrating instead on women's economic, social and social welfare rights.

3.2 NECESSARY REFORMS

Romania must adopt measures to protect women who suffer acts of violence inside and outside the home. Such protection presupposes co-operation by the police, assistance by NGOs, legal support, financial aid and provision of new reception centres.

The first step must be to change attitudes in the police service, which usually refuses to become involved in what are still widely seen as "family quarrels". Regulations must be issued to organise police intervention and prevent domestic violence leading to grievous bodily harm or even death.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.2** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

RUSSIAN FEDERATION

Information provided by the Ministry of Foreign Affairs in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

In order to strengthen interdepartmental co-operation in the field of gender equality, an Interdepartmental Commission on Gender Equality has been established in the Russian Federation. It involves Ministry of Healthcare and Social Development, Ministry of Foreign Affairs, Ministry of Education and Science, Ministry of Interior and Ministry of Agriculture.

This Commission is to approve conceptual document "Gender Strategy of the Russian Federation", in which great importance is paid to problems of violence against women, such as generating activities on prevention of violence and diminution of its consequences, establishing of mechanism of relief action to victims of domestic violence, sexual harassment and trafficking of women and children.

In order to solve those tasks, it is necessary to implement measures aimed at the improvement of the existing legislation; elaboration of the Action Plan on Prevention of Violence; monitoring for the purpose of estimation of real scales of violence against women and children; initialisation and supporting of scientific researches, aimed at elaboration of effective models of social control on prevention of violence against women and children; promotion of educational campaigns on violence against women; prevention of mass media from advertising women as an object to satisfy sexual needs and an article of trade; passing of anti-trafficking law; raising responsibility of law-enforcement bodies in the field of preventive measures and prevention of personal crimes; conducting a campaign in mass media, aimed at change of public opinion, behavioural and social norms, projecting gender inequality.

Moreover, great attention is planning to be paid to development and strengthening of material and technical basis of acting and new-established specialised institutions and broadening of spectrum of services for women and children, who have suffered or are suffering from domestic, sexual or some other violence, taking into account specific needs of women, suffered during armed conflicts, refugees and forcedly displaced persons, from migrant communities, disabled women, elderly women, women from ethnic minorities; conducting of specialised and educational programs for law-enforcement personnel at all levels, judges, healthcare personnel, psychologists, social workers helping women in crisis situations.

According to the Constitution of the Russian Federation motherhood and childhood, as well as family benefit state protection. The rights of spouses, parents and children are guaranteed by the Family Code of the Russian Federation. The Code explicitly states equality of spouses, father and mother, priority of interests of child during the process of solving various family issues, alimony payments, measures to protect children from cruel treatment and violence, assistance to children deprived of parental care.

1.1 LETTER OF LAW – DEFINITIONS:

Here are some extracts from the Russian law.

CONSTITUTION

All are equal before the law and the courts.

The state guarantees equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, property and position, place of residence, attitude towards religion, convictions, membership of public associations and also other circumstances. Any forms of restriction of citizens' rights on grounds of social, racial, national, linguistic or religious affiliation are prohibited.

Men and women have equal rights and freedoms and equal opportunities to exercise them (Article 19).

The dignity of the individual is protected by the state. Nothing may be grounds for disparaging it.

No one must be subjected to torture, violence or other brutal or humiliating treatment or punishment. No one may be subjected to medical, scientific or other experiments without their voluntary consent (Article 21).

Each person has the right to inviolability of his/her private life, individual and family privacy, and defence of his/her honour and good name.

Each person has the right to privacy of correspondence, telephone conversations and postal, telegraph and other communications. Limitation of this right is permitted only on the basis of a judicial decision (Article 23).

Maternity and childhood and the family are under the state's protection.

Concern for children and their upbringing are the equal right and duty of the parents.

Able-bodied children who have reached the age of 18 years must look after disabled parents (Article 38).

CRIMINAL CODE

There are no definitions of violence in the Criminal Code of the Russian Federation.

A crime is deemed to be a wilfully committed socially dangerous action prohibited by the Criminal Code under threat of penalty (Article 14.1).

Depending on their character and degree of social danger, actions specified in the Criminal Code are subdivided into crimes of minor severity, crimes of moderate severity, grave crimes, and especially grave crimes (Article 15.1).

Persons who have reached the age of 14 by the time of commission of a crime are subject to criminal responsibility for murder (Article 105), intentional infliction of grave bodily harm (Article 111), intentional infliction of moderately bodily harm (Article 112), kidnapping (Article 126), rape (Article 131), forced actions of a sexual character (Article 132), hooliganism under aggravating circumstances (part two of Article 213).

If a minor has reached the age specified in parts one or two of the present article, but as a result of retardation in mental development not associated with mental disorder at the time of commission of a socially dangerous act he could not in full measure understand the actual character and social danger of his actions (inaction) or manage them, he is not subject to criminal responsibility (Article 20.3).

Mitigating circumstances are recognised to be pregnancy, if the guilty party has minor children, illegality or amorality of behaviour of the victim, which served as the reason for the crime (Article 61.1.).

Aggravating circumstances are deemed to be onset of grave consequences as a result of commission of the crime; commission of the crime within the complement of a group of persons, a group of persons by preliminary agreement, an organised group or criminal association (criminal organisation); especially active role in commission of the crime; involvement of persons in commission of the crime who suffer from grave mental disorders or are in a state of stupefaction, as well as persons who have not reached the age at which criminal responsibility ensues; commission of a crime in regard to a woman known by the guilty party to be pregnant, as well as in regard to a minor, other defenceless or helpless person, or person who is in a state of dependence on the guilty party; commission of a crime with particular cruelty, sadism, humiliation, as well as torture of the victim (Article 63.1).

Murder is the intentional infliction of death upon another person (Article 105).

Murder committed in a state of temporary insanity, murder committed while exceeding the limits of necessary defence or while exceeding measures necessary for detainment of a person who has committed a crime, intentional infliction of grave injury to health, intentional infliction of moderately severe harm to health, infliction of grave or moderately grave injury to health while in a state of temporary insanity, infliction of grave injury to health while exceeding limits of necessary defence or while exceeding measures necessary for detainment of a person who has committed a crime, intentional infliction of mild injury to health, beatings, torture in regard to a woman who is known by the

guilty party to be in a state of pregnancy, infection with venereal disease, infection with HIV are also punishable.

Trafficking in human beings is buying-selling of a person or his/her recruiting, transportation, transmission, hiding or receiving for the purpose of exploitation (Article 127.1.1).

Insult is the debasement of the honour and dignity of another person, expressed in indecent form (Article 130.1).

Creation of a religious or social association whose activity is associated with violence to citizens and other infliction of harm to their health, or with motivation of citizens to reject fulfilment of their civic responsibility or to perform other unlawful actions, and likewise the leadership of such association, are punishable by a fine in the amount of from 200 to 500 times the amount of the minimal labour wage or the amount of wages or other income of the convicted person for a period of from 2 to 5 months, or by imprisonment for a term of up to 3 years.

Participation in the activity of said association, and likewise propaganda of the actions specified in part one of the present article, are punishable by a fine in the amount of from 100 to 300 times the amount of the minimal labour wage or the wages or income of the convicted person for a period of from 1 to 3 months, or by imprisonment for a term of up to 2 years. (Article 239).

1.2 DOMESTIC VIOLENCE

No information provided.

1.3 RAPE/SEXUAL ASSAULT

Rape that is sexual relations with application offeree or with threat of its application to the victim or to other persons, or by making use of the helpless state of the victim is punishable by imprisonment for a term of from 3 to 6 years.

Rape performed by a group of persons, a group of persons by preliminary agreement or an organised group; combined with threat of murder or infliction of grave bodily harm, as well as performed with particular cruelty in regard to the victim or to other persons; entailing infection of the victim with venereal disease; of a person known to be a minor is punishable by imprisonment for a term of from 4 to 6 years.

Rape entailing death of the victim due to negligence; entailing infliction of grave injury to health of the victim due to negligence, infection with HTV or other grave consequences; of a victim known to be under the age of 14 is punishable by imprisonment for a term of from 8 to 15 years (Article 131).

Homosexuality, lesbianism and other actions of a sexual character with application of force or with threat of its application to the victim (male or female), or to other persons, or making use of the helpless state of the victim (male or female) are punishable by imprisonment for a term of from 3 to 6 years.

The same actions committed repeatedly or by a person who previously committed rape; committed by a group of persons, a group of persons by preliminary agreement or by an organised group; associated with threat of murder or infliction of grave bodily injury, and likewise performed with particular cruelty in regard to the victim (male or female) or to other persons; entailing infection of the victim with venereal disease; performed in regard to a person who is known to be a minor (male or female) are punishable by imprisonment for a term of from 4 to 10 years.

Actions specified in parts one or two of the present article, if they entailed death of the victim (male or female) due to negligence; entailed infliction of grave harm to the health to the victim (male or female), his (her) infection with HTV, or other grave consequences due to negligence; were performed in regard to a person known to be under the age of 14 are punishable by imprisonment for a term of from 8 to 15 years (Article 132).

Compulsion of a person to engage in sexual relations, homosexuality, lesbianism or to perform other actions of a sexual character by means of blackmail, threat of destruction, damage or seizure of property or with the use of the material or other dependence of the victim (male or female) is punishable by fine in the amount of from 200 to 300 times the amount of the minimal labour wage or in the amount of the labour wage or other income of the convicted person for a period of from 2 to 3 months, or by correctional work for a term of up to 2 years, or by imprisonment for a term of up to 1 year (Article 133).

1.4 CHILD SEXUAL ABUSE/INCEST

Rape entailing death of the victim due to negligence; entailing infliction of grave injury to health of the victim due to negligence, infection with HTV or other grave consequences; of a victim known to be under the age of 14 is punishable by imprisonment for a term of from 8 to 15 years (Article 131).

Homosexuality, lesbianism and other actions of a sexual character with application of force or with threat of its application to the victim (male or female), or to other persons, or making use of the helpless state of the victim (male or female), performed in regard to a person who is known to be a minor (male or female) are punishable by imprisonment for a term of from 4 to 10 years.

Actions specified in parts one or two of the present article, if they were performed in regard to a person known to be under the age of 14 are punishable by imprisonment for a term of from 8 to 15 years (Article 132).

Sexual relations, homosexual or lesbian acts, performed by a person who has reached the age of 18 with a person who is known to be under the age of 16 are punishable by limitation of freedom for a term of up to 3 years, or by imprisonment for a term of up to 4 years (Article 134).

Performance of lewd actions without the application of force in regard to a person known to be under the age of 16 is punishable by fine in the amount of from 300 to 500 times the amount of the labour wage, or in the amount of the labour wage or other income of the convicted person for a period of from 3 to 5 months, or by limitation of freedom for a term of up to 2 years, or by imprisonment for a term of up to 3 years (Article 135).

1.5 SEXUAL HARASSMENT

No information provided.

1.6 PORNOGRAPHY

Unlawful preparation for purposes of distribution or advertisement of pornographic materials or objects, and likewise the unlawful trade in printed matter, films, or video materials, depictions or other objects of a pornographic character are punishable by a fine in the amount of from 500 to 800 times the amount of the minimal labour wage or in the amount of the labour wage or other income of the convicted person for a period of from 5 to 8 months, or by imprisonment for a term of up to 2 years (Article 242).

1.7 PROSTITUTION

Involvement in engaging in prostitution by means of application of force or threat of its application, blackmail, destruction or damage to property, or by means of fraud, are punishable by a fee in the amount of from 200 to 500 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted person for a period of from 2 to 5 months, or by imprisonment for a term of up to 4 years.

The same action, performed by an organized group is punishable by a fine in the amount of from 700 to 1,000 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted persons for a period of from 7 months to 1 year, or by imprisonment for a term of from 3 to 6 years (Article 240).

Organisation or maintenance of dens for engaging in prostitution is punishable by a fine in the amount of from 700 to 1,000 times the amount of the minimal labour wage or in the amount of the wages or other income of the convicted person for a period of from 7 months to 1 year, or by imprisonment for a term of up to 5 years (Article 241).

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

No information provided.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Pregnancy is recognised to be a mitigating circumstance.

Serving sentence is postponed for pregnant women and women with young children. Convicted pregnant women and women with children under 8 years of age, except for those sentenced to imprisonment for a term exceeding 5 years for grave and especially grave crimes against the individual, may have serving of their sentence postponed by the court until the child reaches the age of 8.

If the convicted woman indicated in part one of the present article has given up her child and [handed him over to a children's home, or] continues to evade upbringing of the child after receiving a warning from the agency implementing control over the behaviour of the convicted woman whose sentence has been postponed, the court may, upon request of this agency, rescind the postponement of serving sentence and send the convicted woman to serve her punishment at the place appointed in accordance with the court sentence.

When the child reaches the age of 8, the court excuses the convicted woman from serving the remaining portion of her sentence, or replaces the remaining part of the sentence with a milder form of punishment, or makes the decision to return the convicted woman to the appropriate institution for serving the remaining part of the sentence (Article 82).

Murder of a woman known by the guilty party to be pregnant, committed for the purpose of concealing another crime or facilitating its commission, and likewise associated with rape or forced actions of a sexual character is punishable by imprisonment for a term of from 8 to 20 years, or life imprisonment.

Torture in regard to a woman who is known by the guilty party to be in a state of pregnancy is also punishable.

2.0 SENTENCING

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 NECESSARY REFORMS

See **Section 1.0** above.

4.0 DOMESTIC VIOLENCE

No information provided.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

No information provided.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

SAN MARINO

Information provided by the Department of Foreign Affairs in **December 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

No information provided.

1.2 DOMESTIC VIOLENCE

The San Marino Penal Code¹ classifies domestic violence as an offence against the person (a category which includes homicide, assault and intentional bodily harm). However, there is a lacuna in the provision governing the crime of homicide, viz Article 150 of the Penal Code, because it does not consider the fact of this offence being perpetrated against a spouse as an aggravating circumstance. Where Article 155 of the Penal Code governing the offence of intentional bodily harm is concerned, victims must report the incident to the police if they wish to commence legal proceedings. This makes it difficult to ascertain the violence in question, particularly in cases of violence within the family. Since, as stated above, victims must put themselves at risk by reporting the family member in question, they are exposed to further violence inflicted in order to force them to withdraw the complaint.

The assault offence governed by Article 157 raises the same problems, because it stipulates, as the procedural prerequisite for commencing proceedings, that an individual must apply to the courts or else the victim herself must file a complaint.

1.3 RAPE/SEXUAL ASSAULT

Article 171 of the Penal Code lays down sanctions for violation of sexual freedom, and Article 172 stipulates that penetrative sex is an aggravating circumstance vis-à-vis sexual violence. Article 173 of the Penal Code punishes sexual abuse of minors and persons unable to consent or resist, and Article 174 punishes other types of sexual abuse not covered by the preceding articles. Lastly, Article 177 penalises the offence of corruption of minors.

The legally protected interest which is infringed in such cases is individual freedom, and the relevant prescriptions would appear to be commensurate with this type of offence. It should in particular be noted that “sexual offences” refer to all acts geared to and capable of endangering the primary interest of the individual’s freedom by arousing or satisfying the perpetrator’s sex drive. Such acts include various types of physical contact, molesting and rubbing of the victim’s private parts.

1.4 CHILD SEXUAL ABUSE/INCEST

Sexual violence against minors has been attracting much greater interest and attention among experts and the general public in recent years. Given that offences relating to violations of sexual freedom and sexual abuse are punishable by law on the basis of a complaint lodged by the victim or, in the case of minors, by their parents or guardians, Article 178 of the Penal Code provides that proceedings are commenced *ex officio* where the perpetrator of the offence is a parent or guardian or a person responsible for protecting the under-age victim.

¹ Articles 20 and 21 of the San Marino Penal Code break violations down into crimes, offences and summary offences, crimes being punishable by heavier penalties and offences and summary offences being subject to lighter penalties, in decreasing order.

Article 228 of the Penal Code punishes incest as an offence against the family, defining it as penetrative sex with a descendent, an ascendant, a relative by marriage, a sibling or a half-brother or half-sister on the father's or the mother's side.

In the case of violence against minors, welfare workers, teachers and law enforcement officers must be involved in proceedings with an eye to establishing an effective protection network to prevent the minor in question from suffering any further trauma.

1.5 SEXUAL HARASSMENT

Sexual harassment is defined as any sexual act or other conduct based on sex that affects the dignity of the individual; sexual harassment includes any behaviour of a sexual nature, including abuse of authority, wherever it may occur. Such conduct is punished not as a crime but as an offence against public morality, when it occurs in a public place, a place open to the public or in locations where the perpetrator of the offence against public decency might be seen and/or heard.

On the other hand, the conduct of a person publicly committing an indecent act is considered a crime. The conduct of an individual engaged in harassing persons or bothering them through effrontery or for any other reprehensible reason by telephone or in a public place or a place open to the public is considered a public order offence, punishable under Article 293 of the Penal Code as a public disturbance.

1.6 PORNOGRAPHY

Pornography is punishable under the general provisions of the Penal Code rather than under any specific legislation. However, Law No. 61 of 30 April 2002, which added Article 177 *bis* (exploitation of under-age prostitution), 177 *ter* (child pornography) and 177 *quater* (organisation of journeys aimed at exploitation and prostitution of minors) to the list of offences against individual freedom set out in the Penal Code, laid down specific provisions on child pornography.

1.7 PROSTITUTION

The chapter of the Penal Code on offences against public morality defines prostitution as a crime. The relevant articles are Article 268 (Trafficking for the purposes of prostitution), Article 269 (Incitement to prostitution), Article 270 (Running brothels), Article 271 (Exploitation of prostitution), Article 272 (Encouraging prostitution) and Article 273 (Expulsion of aliens encouraging prostitution). Articles 278 (Procuring and scandalous prostitution) and Article 279 (Common tolerance of prostitution in public establishments) cover further violations.

Law No. 61 of 30 April 2002 added Article 177 *bis* (Exploitation of child prostitution), Article 177 *ter* (child pornography) and Article 177 *quater* (organisation of journeys aimed at the exploitation of child prostitution) to the list of offences against individual freedom set out in the Penal Code. Trafficking for and incitement to prostitution in general should also be included among these offences, given that such acts primarily affect human dignity and individual freedom, whereas in fact they are still classified as offences against public morality. The age limit in this field is 18 years, as specified in Articles 177 ff.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Where sexual harassment does not involve violence but rather consists in conduct of a sexual nature or any other type of behaviour based on sex which infringes the dignity of women in the workplace, including telephone harassment, it is punished not as a crime but as an offence against public morality, provided that the perpetrator of the indecent acts, public decency being geared to protecting modesty and courtesy in public interaction (Article 282 – indecent acts) in a public place, a place open to the public or in a location where the perpetrator of the offence against public decency might be seen and/or heard. On the other hand, the conduct of an individual engaged in harassing persons or bothering them through effrontery or for any other reprehensible reason by telephone or in a public place or a place open to the public (Article 293 – Disturbing the peace) is considered a public order offence.

Criminal law provides insufficient protection in failing to protect women who are subjected to sexual harassment in such a way as to avoid violating "public decency" or "sexual modesty", including when such acts occur in places other than public places and places open to the public.

1.9 FEMALE GENITAL MUTILATION

There is no specific legislative provision in San Marino concerning genital mutilation, but this type of offence may fall under Article 155 of the Penal Code as a physical injury. Such mutilation constitutes bodily harm, and anyone perpetrating attacking the physical or mental integrity of another person is punishable under this provision.

1.10 INTERNATIONAL CONVENTIONS

San Marino is a Party to the main international conventions on human rights. In specific connection with the protection of women's rights:

- San Marino has ratified the Convention for the Elimination of All Forms of Discrimination against Women as adopted by the UN General Assembly on 18 December 1979, under Decree No. 154 of 25 November 2003, as well as the Optional Protocol (United Nations, 1999), under Regency Decree No. 108 of 4 July 2005;#
- San Marino ratified ILO Convention No. 103 concerning Maternity Protection of 25 June 1958 under Decree No. 83 of 15 September 1998;
- San Marino ratified ILO Convention No. 111 on Discrimination in respect of Employment and Occupation of 25 June 1958 under Decree No. 183 of 10 November 1986.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Law No. 49 of 10 May 1986 reformed family law by establishing the principle of spouse parity. This legislation stipulates that in relations with their children both spouses are required to maintain, raise and instruct their offspring with respect for their personality and aspirations. Both spouses must fulfil this obligation in proportion to their financial and other abilities (Article 31), and parental authority is also a matter for both.

Law No. 34 of 10 May 1974 introduced disability and retirement pensions for housewives in order to protect domestic activity and recognise its social function (Article 1). Law No. 53 of 5 July 1974 protects women working in the crafts industry, and also mothers by guaranteeing a daily allowance in the event of pregnancy, continuing after childbirth. Law No. 30 of 7 June 1977 protects women who choose to continue working during their pregnancy and after childbirth. It requires the payment of the relevant allowance and strictly prohibits employers from compelling mothers to work for sixty days following the date of childbirth. Law No. 6 of 1 March 1979 provides for State bonuses to be paid to employers recruiting female workers on open-ended contracts, without any age limit.

Law No. 40 of 25 May 1982 establishes total parity between women and men in the employment field, prohibiting discrimination based on sex in connection with access to work at all levels in the occupational hierarchy. Article 1 improves protection for working mothers by prohibiting night work during pregnancy and for seven months after childbirth, and entitles mothers to leave work to look after their children, over and above the mandatory period of leave. This facility must be maintained for five months, until the child is twelve months old, during which period the mother's job must be reserved for her (Article 4). These provisions also apply to adoptive mothers who have adopted legally (Article 6). Law No. 40 reinforces anti-discrimination measures by entitling working women to apply to the courts for an immediately enforceable measure (within five days from the submission of the application) requiring the employer to discontinue any illegal discrimination and to remedy the effects thereof (Article 9). This explicit recognition of equality is an absolutely vital means of protecting women, because it expressly guarantees parity at work between women and men. It ensures that women receive equal pay for equal work, thus making them financially independent and eliminating all forms of dependence on men. It ultimately recognises the role of women in the world of work as well as in the family circle, while at the same time providing them with the requisite protection.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

There has not as yet been any sentencing as such. In any case no reliable statistics are available on the subject. We are hoping that the Campaign to combat violence against women will produce the relevant figures.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN JUDICIAL PROCEEDINGS

San Marino has an Equal Opportunities Commission (set up under Article 3 of Law No. 26 of 25 February 2004, amended by Article 4 of Qualified Law No. 2 of 12 September 2006), which has *locus standi*.

3.2 ARE SPECIAL PROVISIONS MADE TO SUPPORT WOMEN AND GIRLS GIVING EVIDENCE?

No.

3.3 MAIN PROBLEMS AND NEW SOLUTIONS

We have identified a number of possible lines of action to be taken on board by the Republic of San Marino:

- Article 30 of Law No. 49 of 1986 is to be amended to stipulate that the fact of suffering violence from any family member (spouse, parents, children and other cohabitants) is a legitimate reason for desertion of the home, thus confirming the obligation of material assistance on the part of the perpetrator of the violence or the person who has tolerated violence being committed by other family members.
- Criminal courts must also be empowered to order the perpetrator's removal from the family home. The accused would thus have to leave the home immediately and/or undertake not to return to it, and promise not to attempt to approach it without the investigating judge's express permission. Furthermore, in view of the requirement to protect the integrity of the victim and her family, the court should be empowered to ban the accused from specified areas frequented by the victim, including her workplace, the original family home and any future spouse's home, unless the accused is obliged to enter such areas for professional reasons. The court should also be able to order regular payment of maintenance for any family members whom this expulsion measure deprives of their means of subsistence by adopting the provisional measures set out in Article 120 of Law No. 49 of 1986.
- Whether criminal proceedings have been brought or not, eg in cases in which proceedings could have commenced further to a complaint but where the victim does not wish to file such a complaint, the civil court should nonetheless be empowered to order the expulsion of the perpetrator where the conduct of the spouse or another family member is seriously damaging the victim's physical or mental integrity or infringing the freedom of the other spouse or family member. The court should also, where necessary, be empowered to ban the perpetrator from areas frequented by the victim, including the workplace, the original family home, the home of any possible future spouse or other persons, and places frequented by the couple's children, unless the perpetrator is obliged to enter such areas for professional reasons. The civil court should also be able to order the intervention of the social welfare services or family mediation centres, as well as the regular payment of maintenance to cohabitants who have been deprived of their means of subsistence. Violations of this order should be made liable to criminal sanctions.
- In all cases, a reception centre should be available for women, children and other victims of abuse and ill-treatment, providing them with psychological support, basic treatment and appropriate information.
- The State should provide legal assistance, if necessary by assigning an official defence counsel.
- It would also be useful to include among the grounds for dissolution or cessation of the civil effects of marriage set out in Article 126 (d) of Law No. 49 of 1986 the fact of being a spouse who has suffered of a crime against individual freedom.
- Since the Law deems serious offences that disrupt the conditions underpinning family life to be valid reasons for separation (Article 109), it might also be appropriate to lay down that, irrespective of whether this conduct is deemed a criminal offence and whether the couple has actually separated, and even where one family member has committed acts of violence against another, the victim is entitled to claim compensation for the damages suffered.
- Proceedings must be initiated *ex officio* even where the sexual abuse is committed by the spouse or partner, or else third parties, eg relatives or the welfare services, must be permitted to report the offence.

3.4 SPECIAL LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN (TREATMENT AS A "SPECIAL CASE" OR AS PART OF ANTIDISCRIMINATION LEGISLATION"?)

Violence against women is dealt with in general, not under a specific legislation.

3.5 CRIMINAL LAW/CIVIL LAW

Violence against women is dealt with under both criminal and civil law. However, where the violence occurs within the family, additional preventive and protective measures must be implemented.

3.6 SPECIALIST POLICE UNITS - COUNTRY WIDE OR PATCHY

Specialist police units were set up after the inauguration of the Campaign to combat violence against women.

3.7 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY?

Yes.

3.8 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

No.

3.9 WHAT GOOD IDEAS HAVE BEEN SUGGESTED BUT NOT YET IMPLEMENTED?

See **Section 3.3** above.

4.0 DOMESTIC VIOLENCE

4.1 ARE THERE SPECIFIC LAWS TO COMBAT DOMESTIC VIOLENCE?

No, no collateral protection measures have been adopted to date to prevent domestic violence or abuse. Law No. 49 of 26 April 1986 does recognise parity between women and men in the family home, based on the free and responsible choice of the spouses and on their legal and moral equality, but Article 30 of this Law, for instance, fails to consider the fact of any family member having suffered violence as a legitimate reason for removing the perpetrator from the family home.

Where general violence against women is concerned, there are shortcomings at the legislative and cultural level, and women are considered as weak individuals who have received insufficient legislative attention and protection in the fields of criminal, civil, family and labour law.

The general ignorance of the phenomenon of violence against women, particularly domestic violence, is the root cause of the shortcomings in protection.

The San Marino Penal Code classifies homicide, assault and intentional bodily harm as offences against the person. In connection with the offence of homicide, there is a lacuna in Article 150 of the Penal Code in that it does not consider the fact of this offence being perpetrated against a spouse as an aggravating circumstance. As regards the offence of intentional bodily harm set out in Article 155 of the Penal Code, victims must report the incident to the police if they wish to commence legal proceedings. This makes it difficult to make an official finding of violence, particularly where it takes place within the family. Since, as stated above, the victim must put herself at risk by reporting the family member in question, she is exposed to further violence inflicted in order to force her to withdraw the complaint.

The assault offence governed by Article 157 raises the same problems, because it stipulates, as the procedural prerequisite for commencing proceedings, that an individual must apply to the courts or else the victim herself must file a complaint.

4.2 ARE CURRENT DEFENCES ADEQUATE WHEN WOMEN KILL ABUSIVE HUSBANDS/PARTNERS?

There are no specific provisions in this field. Defence lawyers can only plead general mitigating circumstances.

4.3 IS PRIVATE VIOLENCE PUNISHED IN THE SAME WAY AS PUBLIC VIOLENCE?

Article 171 (violation of sexual freedom) of the Penal Code makes such violation punishable by “third-degree” imprisonment (sentences ranging from two to six years). If the act of violence was committed by an ascendant, a teacher, a health worker or a person having custody of a minor for the purposes of supporting, raising or educating him or her or caring for his or her health, the following additional sanctions are imposed: a “fourth-degree” (between two and five years) prohibition of parental authority, custody, and exercise of professional or other duties. Moreover, Article 174 (sexual abuse) lays down that any person, apart from in the cases covered by Articles 171, 172 (aggravating circumstances) and 173 (sexual abuse of minors and persons unable to consent or resist), who commits sexual abuse against persons in hospitals, retirement homes, boarding schools or rehabilitation centres, or against detainees or prisoners, while holding a position of authority over the victims, as well as against persons officially entrusted to them, is punishable with “first-degree” imprisonment (sentences ranging from three months to one year) and “fourth-degree” (between two and five years) prohibition of holding public office and or exercising related professional activities.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

5.1 IS RAPE IN MARRIAGE OUTLAWED AND PROSECUTED IN THE SAME WAY AS OTHER FORMS OF RAPE?

Yes, it is treated as violent sexual abuse.

5.2 ARE THE SANCTIONS FOR RAPE AND RAPE IN MARRIAGE THE SAME?

Yes.

5.3 HAVE ANY SPECIFIC SOLUTIONS BEEN SUGGESTED FOR RAPE IN MARRIAGE (RESTRICTIONS AND BANNING ORDERS)?

See Section 3.3 above.

5.4 ARE THERE CIVIL LAW REMEDIES - INCLUDING MEASURES RELATING TO THE FINANCIAL SITUATIONS OF WIVES/COHABITERS AFTER SEPARATION AND DIVORCE?

Yes.

5.5 IS THERE SPECIAL LEGISLATION TO DEAL WITH RAPE IN MARRIAGE?

No.

6.0 RAPE AND SEXUAL ASSAULT

6.1 HOW IS SEXUAL CRIME DEFINED?

It is defined as an offence against individual freedom.

- a crime against the person? Yes.
- a crime against individual freedom? Yes.
- a crime against morality/honour/society?. Yes

6.2 DOES THE DEFINITION OF RAPE INCLUDE ALL ASPECTS OF SEXUAL VIOLENCE (INCLUDING SODOMY FOR EXAMPLE)?

Yes. Trafficking for the purposes of prostitution (Article 268) and incitement to prostitution (Article 269) are defined as offences against public morality. However, the use of violence, threats or deception are defined as aggravating circumstances. The offences in question infringe not only public morality but also, and above all, human dignity and individual freedom, which the State has an absolute duty to protect. This is why the offences governed by Articles 268 and 269 should be included in category of crimes against individual freedom.

6.3 ARE THERE DIFFERING DEGREES OF RAPE/SEXUAL HARASSMENT?

Yes, as set out in the Penal Code. Article 171 punishes violations of sexual freedom committed by individuals through violence, threats and hypnotic or other influence, or by other relevant means, geared to forcing or inciting a person to sexual abuse. Article 172 defines penetrative sex as an aggravating circumstance vis-à-vis sexual violence. Article 173 (Sexual abuse of minors or persons unable to consent or resist) punishes the perpetrators of the acts set out in Articles 171 and 172 without violence, threat or deception against children under the age of 14 or persons who are unable to resist owing to specific physical or mental conditions. Article 174 (Sexual abuse) punishes individuals, apart from in the cases covered by Articles 171, 172 and 173, who commit sexual abuse against persons in hospitals, retirement homes, boarding schools or rehabilitation centres, or against detainees or prisoners, while holding a position of authority over the victims, as well as against persons officially entrusted to them. Lastly, Article 177 (Corruption of minors) punishes persons inciting children under the age of 18 to sexual corruption, abuse of alcohol or narcotics, or gambling.

6.4 HOW IS CONSENT DEFINED?

Article 173 of the Penal Code (Sexual abuse of minors or persons unable to consent or resist) punishes the perpetrators of the acts covered by Articles 171 and 172 without violence, threat or deception against children under the age of 14 or persons who are unable to resist owing to specific physical or mental conditions. Article 174 (Sexual abuse) punishes individuals, apart from in the cases set out in Articles 171, 172 and 173, who commit sexual abuse against persons in hospitals, retirement homes, boarding schools or rehabilitation centres, or against detainees or prisoners, while holding a position of authority over the victims, as well as against persons officially entrusted to them.

6.5 WHAT KIND OF TECHNICAL EVIDENCE IS NECESSARY IN A RAPE TRIAL?

The investigating judge is responsible for securing evidence of the offences in question. The judge may, in particular, organise an interview with the victim in order to gather evidence.

6.6 IS CROSS-EXAMINATION ON THE VICTIM'S SEXUAL HISTORY AUTHORISED IN RAPE TRIALS AND IN WHAT CONTEXT?

Such questions are permitted, although this practice is to be abolished.

6.7 WHICH COURT RULES ON CASES OF RAPE?

The ordinary courts.

6.8 DOES MEMBERSHIP OF THIS COURT REFLECT THE PRINCIPLE OF EQUAL OPPORTUNITIES?

There is a single judge.

6.9 WHAT SENTENCES ARE USUALLY APPLIED TO RAPISTS?

Prison sentences and prohibition of activities.

6.10 ARE FEMALE POLICE OFFICERS PRESENT IN ALL BODIES CHARGED WITH EXAMINING AND PROSECUTING RAPE?

Very often, in fact virtually always.

6.11 HAVE PROVISIONS BEEN MADE FOR FEMALE FORENSIC EXAMINERS?

Yes.

7.0 SEXUAL HARASSMENT

7.1 DOES YOUR COUNTRY HAVE LEGISLATION TO PROTECT THE DIGNITY OF WOMEN AT WORK (VIOLENCE AGAINST WOMEN)?

Yes, Law No. 40 of 25 May 1981 on Parity between men and women in the employment field. Article 9 of this Law entitles women to apply to the courts for an order requiring the employer to discontinue

any discriminatory acts, by affording working women the right to delegate trade union organisations to submit the application to the courts on their behalf.

Furthermore, by Decree of 25 November 2003 the Grand and General Council ratified the Convention for the Elimination of All Forms of Discrimination against Women adopted by the UN General Assembly on 18 December 1979.

7.2 ARE OTHER FORMS OF SEXUAL VIOLENCE LEGISLATED AGAINST?

Yes, see **Section 6.3** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

8.1 WHAT IS THE AGE LIMIT BETWEEN CHILD AND ADULT?

14 years.

8.2 DOES THIS CORRESPOND TO THE AGE OF CONSENT?

The age of consent is 18 years.

8.3 IS THERE SPECIFIC LEGISLATION AGAINST CHILD PROSTITUTION?

Yes. Law No. 61 of 30 April 2002 added Article 177 *bis* (exploitation of under-age prostitution), 177 *ter* (child pornography) and 177 *quater* (organisation of journeys aimed at exploitation and prostitution of minors) to the list of offences against individual freedom set out in the Penal Code.

8.4 WHAT OTHER FORMS OF SEXUAL ABUSE ARE LEGISLATED AGAINST? -SEXUAL HARASSMENT, FEMALE GENITAL MUTILATION?

The same as for adults. Sexual harassment is also legislated against, and genital mutilation is defined as grievous bodily harm. Moreover, corruption of minors is also punishable under Article 177, sanctioning any individual who incites a child under the age of 18 to sexual corruption, abuse of alcohol or narcotics, or gambling.

8.5 ARE THERE PROVISIONS FOR THE REMOVAL OF ABUSERS FROM HOUSEHOLDS?

No, but this problem has been noted and the relevant legislation is to be amended.

8.6 ARE THERE DIFFICULTIES REGARDING THE CREDIBILITY OF CHILDREN AS WITNESSES?

No; the testimony of under-age persons is accepted on condition that it can be backed up by guarantees on its reliability. The judicial procedure for submitting statements includes attendance by a child psychology expert from the Youth Department during questioning, which may take place elsewhere than in the courtroom itself.

8.7 ARE THERE ANY SPECIAL PROVISIONS FOR EVIDENCE GIVING BY CHILDREN?

Yes; "protected hearings" have been introduced, and the proceedings take place *in camera*.

In the specific case of crimes related to the sexual exploitation of minors, the judge may order under-age victims of this crime to be questioned behind a one-way mirror via an interphone system, rather than directly in the courtroom like the accused and any witnesses.

8.8 ARE CHILDREN ALLOWED TO RECEIVE THERAPEUTIC SUPPORT BETWEEN THE TIME OF REPORTING AND THE COURT CASE?

Yes.

8.9 ARE THERE ANY SPECIFIC MEASURES TAKEN TO COMBAT ORGANISED/NETWORKED RITUAL ABUSE RINGS?

No, but this problem has never been noted in San Marino.

SERBIA

Information provided by the Department for OSCE and Council of Europe, Ministry of Foreign Affairs, in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

The Criminal Code adopted on 6 October 2006, Official Gazette No. 85, does not provide for violence against women as a criminal offence. As far as violence against women is concerned, the Criminal Code defines it in broader terms as the criminal act of domestic violence in Chapter IXX of the Code relating to criminal offences against marriage and family and in Chapter XVIII relating to criminal offences against sexual freedom.

1.1 LETTER OF LAW – DEFINITIONS

Article 194 of the Criminal Code

(1) Whoever by use of violence, threat against life and body violates the tranquility, integrity of body or mental condition of a member of his family shall be punished with a monetary penalty or with an imprisonment of up to one year.

1.2 DOMESTIC VIOLENCE

Domestic violence is sanctioned under the Criminal Code.

1.3 RAPE/SEXUAL ASSAULT

Rape and sexual assault are sanctioned under the Criminal Code.

1.4 CHILD SEXUAL ABUSE/INCEST

Child sexual abuse and incest are sanctioned under the Criminal Code.

1.5 SEXUAL HARASSMENT

Sexual harassment is sanctioned under the Criminal Code.

1.6 PORNOGRAPHY

Pornography is sanctioned under the Criminal Code.

1.7 PROSTITUTION

Prostitution is sanctioned under the Criminal Code.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Obscene phone calls/telephone sex are not sanctioned under the Criminal Code.

1.9 FEMALE GENITAL MUTILATION

Female genital mutilation is sanctioned under the Criminal Code.

1.10 INTERNATIONAL CONVENTIONS

All international conventions ratified by Serbia are applied.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Fines and prison sentences are prescribed, but in practice conditional sentences are most frequently passed in legal proceeding.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN JUDICIAL PROCEEDINGS?

Yes, they have.

3.2 ARE SPECIAL PROVISIONS MADE TO SUPPORT WOMEN AND GIRLS IN GIVING EVIDENCE?

There are not such provisions.

3.3 MAIN PROBLEMS AND NEW SOLUTIONS

There are not adequate solutions when it comes to violence against women.

3.4 SPECIAL LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN (TREATMENT AS A "SPECIAL CASE" OR AS PART OF ANTIDISCRIMINATION LEGISLATION"?)

There is no special legislation addressing violence against women.

3.5 CRIMINAL LAW/CIVIL LAW

Criminal law

3.6 SPECIALIST POLICE UNITS - COUNTRY WIDE OR PATCHY

No information available.

3.7 VIOLENCE AGAINST WOMEN – AN OBSTACLE TO EQUALITY?

Yes.

3.8 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS?

No.

3.9 WHAT GOOD IDEAS HAVE BEEN SUGGESTED BUT NOT YET IMPLEMENTED?

Law on Gender Equality.

4.0 DOMESTIC VIOLENCE

4.1 ARE THERE SPECIFIC LAWS TO COMBAT DOMESTIC VIOLENCE?

No.

4.2 ARE CURRENT DEFENCES ADEQUATE WHEN WOMEN KILL ABUSIVE HUSBANDS/PARTNERS?

Yes, there are because they face 3 to 12 years in prison

4.3 IS PRIVATE VIOLENCE PUNISHED IN THE SAME WAY AS PUBLIC VIOLENCE?

Yes.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

5.1 IS RAPE IN MARRIAGE OUTLAWED AND PROSECUTED IN THE SAME WAY AS OTHER FORMS OF RAPE?

Article 194 of the Criminal Code regulates rape in marriage.

5.2 ARE THE SANCTIONS FOR RAPE AND RAPE IN MARRIAGE THE SAME?

Yes.

5.3 HAVE ANY SPECIFIC SOLUTIONS BEEN SUGGESTED FOR RAPE IN MARRIAGE (RESTRICTIONS AND BANNING ORDERS)?

Article 194 of the Criminal Code, Chapter IXX relating to criminal offences against marriage and family.

5.4 ARE THERE CIVIL LAW REMEDIES - INCLUDING MEASURES RELATING TO THE SITUATIONS OF WIVES/COHABITERS AFTER SEPARATION AND DIVORCE?

No.

5.5 IS THERE SPECIAL LEGISLATION TO DEAL WITH RAPE IN MARRIAGE?

No.

6.0 RAPE AND SEXUAL ASSAULT

6.1 HOW IS SEXUAL CRIME DEFINED?

As a criminal offence against sexual freedom.

6.2 DOES THE DEFINITION OF RAPE INCLUDE ALL ASPECTS OF SEXUAL VIOLENCE (INCLUDING SODOMY FOR EXAMPLE)?

No.

6.3 ARE THERE DIFFERING DEGREES OF RAPE/SEXUAL HARASSMENT?

No.

6.4 HOW IS CONSENT DEFINED?

No information available.

6.5 WHAT KIND OF TECHNICAL EVIDENCE IS NECESSARY IN A RAPE TRIAL?

No information available.

6.6 IS CROSS-EXAMINATION ON THE VICTIM'S SEXUAL HISTORY AUTHORISED IN RAPE TRIALS AND IN WHAT CONTEXT?

Yes, in the context of evidence gathering

6.7 WHICH COURT RULES ON CASES OF RAPE?

No information available.

6.8 DOES MEMBERSHIP OF THIS COURT REFLECT THE PRINCIPLE OF EQUAL OPPORTUNITIES?_Yes.

6.9 WHAT SENTENCES ARE USUALLY APPLIED TO RAPISTS?

Fines and prison sentences are prescribed, however in practice legal proceedings most frequently conclude by the imposition of conditional or suspended sentences.

6.10 ARE FEMALE POLICE OFFICERS PRESENT IN ALL BODIES CHARGED WITH EXAMINING AND PROSECUTING RAPE?

Yes.

6.11 HAVE PROVISIONS BEEN MADE FOR FEMALE FORENSIC EXAMINERS?

No.

7.0 SEXUAL HARASSMENT

No information provided. .

8.0 INCEST/SEXUAL ABUSE OF GIRLS

8.1 WHAT IS THE AGE LIMIT BETWEEN CHILD AND ADULT?

- A child is a person under fourteen years of age.
- A minor is a person who has turned fourteen but is under eighteen years of age.
- A minor is a person under eighteen.

8.2 DOES THIS CORRESPOND TO THE AGE OF CONSENT?

No information provided.

8.3 IS THERE SPECIFIC LEGISLATION AGAINST CHILD PROSTITUTION?

No information provided.

8.4 WHAT OTHER FORMS OF SEXUAL ABUSE ARE LEGISLATED AGAINST? -SEXUAL HARASSMENT, FEMALE GENITAL MUTILATION?

No information provided.

8.5 ARE THERE PROVISIONS FOR THE REMOVAL OF ABUSERS FROM HOUSEHOLDS?

No.

8.6 ARE THERE DIFFICULTIES REGARDING THE CREDIBILITY OF CHILDREN AS WITNESSES?

Yes, there are.

8.7 ARE THERE ANY SPECIAL PROVISIONS FOR EVIDENCE GIVING BY CHILDREN?

Yes.

8.8 ARE CHILDREN ALLOWED TO RECEIVE THERAPEUTIC SUPPORT BETWEEN THE TIME OF REPORTING AND THE COURT CASE?

Yes.

8.9 ARE ANY SPECIFIC MEASURES TAKEN TO COMBAT ORGANISED/NETWORKED RITUAL ABUSE RINGS?

No.

SLOVAK REPUBLIC

Information provided by the Coordinating Committee on Women's Issues, Ministry of Labour, Social Affairs and Family of the Slovak Republic in **November 2000** and in **February 2000** and by the Department on Family and Gender Policy Ministry of Labour, Social Affairs and Family in **August 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

It is considered essential to examine problems of violence in society. The importance of doing so is underlined by the fact that over the last few years, a rise has been registered in the number of violent crimes.

The definition of violence against women is not regulated in any legal regulations within Slovak law, but the National Action Plan for the Prevention and Elimination of Violence against Women for 2005 – 2008 uses the definition adopted from the UN Declaration on the Elimination of Violence against Women (1993): "violence against women shall mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

In accordance with the judicature, the abuse of a person in care or custody (ward) pursuant to Section 215 of the Penal Code (see below), shall mean the maltreatment of a ward that is characterized by a more cruel level of callousness and ruthlessness of a certain duration; it is not required that the ward suffers health implications, but it must concern an act, which the abused person feels to be a severe indignity for its cruelty, ruthlessness or painfulness. (R 11/ 1984)

In accordance with criminal law, a close person pursuant to Section 127(4) of the Penal Code, shall mean a relative in direct generation, adoptive parent, adopted child, sibling and spouse; other persons in the family or similar relations are only considered to be close to each other if the harm suffered by one of them is felt by the other one the same as if it was harm to themselves.

The re-codified Penal Code extended its definitions of a close person with respect to specific criminal acts as follows:

Section 127, paragraph 5: A close person for the purposes of criminal acts of blackmail pursuant to Section 189, rape pursuant to Section 199 (2), sexual violence pursuant to Section 200 (2), sexual abuse pursuant to Section 201 (2), maltreatment of a close person or ward pursuant to Section 208 or dangerous threats pursuant to Section 360 (2) shall also be understood to be a former spouse, cohabitant, former cohabitant, parent of a joint child or a person who is a close person in relation to them pursuant to paragraph 4 (see above), as well as a person, who lives or lived with the offender in a common household.

The definition of a close person pursuant to Section 116 of the Civil Code reads as follows: A close person is a relative in direct line, sibling or spouse; other persons in the family or similar relations shall only be considered to be close to each other, if the harm suffered by one of them is justifiably felt by the other one the same as if it was harm to themselves.

1.2 DOMESTIC VIOLENCE

CRIMINAL LAW

The Penal Code does not differentiate between violence committed in public and domestic violence. Domestic violence is not a specific crime, but the Penal Code covers offences concerning: assault, sexual violence, rape, violence related to exploitation, limitation of personal liberty, and blackmailing.

Violence is prohibited between spouses, cohabiting couples, former partners, lodgers, children and relatives.

A regulation was adopted by Act of 19 June 2002 amending Act No. 140/1961 Coll., the Penal Code as amended:

64. Section 215, including its heading, shall read as follows:

Section 215 - Maltreatment of Close Person and Wards:

- (6) *Anyone maltreating a close person or a person in his care or custody, causing to such person physical or mental suffering, in particular through*
- a) *beating, kicking, striking, causing injuries and burns of various types, humiliation, disdainful treatment, continual following, threats, inflicting fear or stress, forcible isolation, emotional blackmail or other action threatening physical or mental health or confining safety of such person;*
 - b) *unreasonable withholding of food, rest or sleep or withholding of necessary personal care, wear, hygiene, medical care, housing, upbringing or education;*
 - c) *forcing to beg or to carry out activities putting excessive physical or mental load on such person, with respect to such person's age or health or activities capable of harming such person's health;*
 - d) *exposure to substances capable of harming health of such person; or*
 - e) *unreasonable restriction of access to property rightfully disposed by such person,*
- shall be sentenced to a term of imprisonment of two to eight years or to a ban on activities.*
- (7) *An offender shall be sentenced to a term of imprisonment of three to ten years*
- a. *if through the act mentioned in paragraph 1, the offender breaches a special obligation binding him by virtue of his employment, profession, position or office, or commitment which he specifically undertook to meet;*
 - b. *if he commits such act even though during the previous two years he was sentenced for such act or released from imprisonment imposed for such act;*
 - c. *if he commits such act against several persons; or*
 - d. *if he continues in committing such act for an extended period.*
- (8) *An offender shall be sentenced to a term of imprisonment of five to twelve years*
- a. *if he commits the act mentioned in paragraph 1 in particularly brutal manner;*
 - b. *if through such act he inflicts a grievous bodily harm.*
- (9) *An offender shall be sentenced to a term of imprisonment of ten to fifteen years if through the act mentioned in paragraph 1 he inflicted a grievous bodily harm to several persons or death.*
- (10) *An offender shall be sentenced to a term of imprisonment of twelve to fifteen years or with extraordinary sentence if through the act mentioned in paragraph 1 he inflicts death intentionally.*

The Code of Criminal Procedure (Act No. 301/2005 Coll., as amended by Act No. 650/2005 Coll.) and the Penal Code (Act No. 300/2005 Coll., as amended by Act No. 650/2005 Coll.) were re-codified with the effectiveness from 1 January 2006. The original Section 215 regarding the criminal act of maltreating a close person or ward occurs in the Penal Code under Section 208 and is regulated as follows:

- (1) *Anyone maltreating a close person or a person in his care or custody, causing to such person physical or mental suffering, in particular through*
- a. *beating, kicking, striking, causing injuries and burns of various types, humiliation, disdainful treatment, continual following, threats, inflicting fear or stress, forcible isolation, emotional blackmail or other action threatening physical or mental health or confining the safety of such person,*
 - b. *unreasonable withholding of food, rest or sleep or withholding of necessary personal care, clothing, hygiene, medical care, housing, upbringing or education*

- c. forcing to beg or to repeatedly carry out activities putting excessive physical or mental load on such person, with respect to such person's age or health or activities capable of harming such person's health
 - d. exposure to substances capable of harming the health of such person, or
 - e. unreasonable restriction of access to property rightfully disposed of by such person,
 - f. shall be sentenced to a term of imprisonment of three to eight years.
- (2) An offender shall be sentenced to a term of imprisonment of seven to fifteen years, if he commits a criminal act mentioned in paragraph 1
- a. causing grievous bodily harm or death,
 - b. based on a special motive,
 - c. even though during the previous twenty four months he was sentenced for such act or released from imprisonment imposed for such act, or
 - d. in a particularly brutal manner.
- (3) An offender shall be sentenced to a term of imprisonment of fifteen to twenty five years or for life, if he commits an act mentioned in paragraph 1, causing grievous bodily harm to several persons or the death of several persons.
- a. The object of this criminal act is the protection of close persons and the protection of persons, who, in consideration of their young age or adult persons because of sickness, old-age, invalidity or mental retardation, are in the care or upbringing of other persons. In both categories of persons, it particularly concerns protection against "domestic violence". (O. Samaš, H. Stiffel, P. Toman, Criminal Law, Brief Commentary, page 435)

CRIMINAL PROCEEDINGS

The victim, witness or family members of the victim may make complaints of domestic violence. Complaints are made to the police, the courts, or the prosecutor. Physical examinations, conducted by state medical officials or private doctors, are required as proof of the injury. The decision to prosecute lies with the police; witnesses are required for a prosecution.

In accordance with 11 § of the Penal Code, criminal proceedings cannot start and, in the case that it has already started, cannot continue, if the victim did not give his/her consent or withdrew consent to the criminal proceedings. This right to withdraw the consent to criminal proceedings pertains to specific crimes, such as violence against the person, damage of health, limitation of personal freedom and rape.

The police estimate that:

11% - 30% of assaulted women file a complaint, of which;

2% - 10% of the complaints result in a prosecution, of which;

11% - 30% of the complaints result in a conviction;

2% - 10% of the convicted are imprisoned;

2% - 10% are ordered to institutionalised care against alcoholism.¹

From the previous Code of Criminal Procedure, the re-codified Code of Criminal Procedure adopted and adjusted the victim's right, particularly in cases of violent crimes, to request the criminal proceedings bodies to submit information that an offender is released from imprisonment, while such legal regulation accordingly applies to a witness. An obligation was established for criminal proceedings bodies upon providing written advice to victims, including basic information concerning their rights, and organisations that provide free assistance to them and the scope of such assistance. The victim's consent to criminal proceedings against an offender in violent crimes is no longer necessary. At the same time, the examination of minors was modified. The victim's dispositional rights were considerably strengthened.

¹ These statistics are based on police reports.

 VICTIM'S RIGHTS AND CLAIMS FOR COMPENSATORY DAMAGES
Section 46

- (1) A victim is a person to whom bodily harm, pecuniary, moral or other damage is inflicted or whose other legally protected rights or freedoms are violated or endangered. In cases established by the law, the victim is entitled to express his consent with criminal proceedings, claim compensatory damages, file motions for the development of evidence or for the complement of it, submit evidence, inspect and study the relevant files, take part in the main proceedings and in a public meeting held in regard to an appeal or agreement on a plea of guilty or the acceptance of a sentence, express himself regarding developed evidence, make the final plea and file remedies in the scope specified by this law.
- (2) The victim is obliged at the latest at the beginning of his first examination to define the address for the service of papers, including papers intended for personal delivery, as well as the method of service, while if he changes this address or method of service he shall notify such fact, without undue delay, to the relevant body; the criminal proceedings body shall advise the victim of the service and the related consequences.
- (3) The victim, according to the law, is entitled to the compensation from the defendant for damage that was inflicted on him by a criminal act, and to propose that the court places an obligation to the defendant in a judgement of conviction to compensate for such damage; the victim must apply this proposal at the latest until the investigation or shortened investigation is finished. Such proposal must clearly define the reasons for and the level of the compensatory damages claimed.
- (4) The proposal pursuant to paragraph 3 cannot be filed, if a decision regarding entitlement was already made in civil legal proceedings or in other relevant proceedings.
- (5) If the victim wants to use the evidence that is known to him, he must submit a proposal for the development of it in the pre-trial to a prosecutor or policeman, and at the court of first instance to a court, at the latest during the criminal evidence stage at the main trial. If the victim submits earlier such proposal for the development of evidence, the court shall be obliged to deliver it, without undue delay, to the prosecutor and to the defendant.
- (6) The victim is entitled to apply specific proposals for the purposes of a consent decree or agreement with the offender, while these may also be applied through a probation or mediation officer.
- (7) The victim may waive the procedural rights that are admitted to him by this law, through an explicit written or verbal declaration into a protocol in front of a criminal proceedings body or court.
- (8) If a criminal proceedings body or court discovers that the victim is endangered in connection with a defendant or convict remaining at liberty, it shall inform him that
 - a) the defendant was released or escaped from imprisonment,
 - b) the convict was released or escaped from the execution of punishment by imprisonment.
- (9) The victim may request a prosecutor already in a pre-trial, and a court in a trial by court, to inform him about the facts defined in paragraph 8. If the convict is sentenced in to punishment by imprisonment, such request shall be filed at the court, which decided in the first instance.

Anyone is able to file a complaint to the criminal proceedings bodies, if he learns about or if he is suspicious of the commitment of a criminal act regarding the abuse of a close person or ward. The criminal proceedings bodies include a prosecutor and a policeman (Section 10 paragraph 1 of the Code of Criminal Procedure).

CIVIL LAW

- The perpetrators may be required to pay assistance to the victim;
- Divorce/legal separation is not available as a remedy for domestic violence;
- Protection orders are not available;
- Counselling may be required for the perpetrator and is available to the victim;
- No financial support is available from the state.

The Civil Code has been amended through Act adopted on 19 June 2002 amending the Civil Code, as amended, and Amending Some Other Laws:

Current text of Section 146 shall be marked as paragraph 1 and paragraph 2 shall be added that shall read:

“(2) If further cohabitation became unbearable due to bodily or mental violence or threat of such violence with respect to a spouse or close person sharing a common house or apartment, the court may, upon petition filed by either of spouses, restrict other spouse’s right to use the commonly-held house or apartment or completely exclude such other spouse from such use.”

The wording of Section 146 remains unchanged and concerns the Second Head of the Civil Code “Co-ownership” Section 136 to Section 151.

d) After Section 705, new Section 705a shall be added that shall read:

Section 705a

If further cohabitation became unbearable due to bodily or mental violence or threat of such violence with respect to a spouse or divorced spouse as joint user of an apartment and with respect to a close person sharing a common household, a court may, upon petition filed by either of spouses or divorced spouses, restrict other spouse’s right to use or completely exclude such other spouse from such use.”

The wording remains unchanged and occurs in the part “Common flat rental” Section 703 to Section 705a.

e) In Section 712a para. 3, the following sentence shall be added to the end: *“If a divorced spouse, during marriage or after divorce committed or commits bodily or mental violence against the other spouse or close person sharing a common flat, a court shall rule that such divorced spouse is not entitled to a substitution dwelling.”*

The wording of Section 712 paragraph 3 remains unchanged, but is moved to Section 712a paragraph 8 of the Civil Code.

Code of Civil Procedure was amended through Act of 19 June 2002 amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended:

7. In Section 75, paragraph 2 shall read:

“(2) Emergency ruling shall be issued by a court without any unnecessary delay, no later than 30 days from filing a petition to issue an emergency ruling. A court deciding on petition to issue an emergency ruling in respect of minors or persons endangered by violence shall decide without any unnecessary delay no later than seven days from filing a petition to issue an emergency ruling; if such petition is short of requisites (Section 79 para. 1), seven-days period shall commence on the day when defects were removed from such petition.”

Emergency rulings in cases of domestic violence are regulated in the Code of Civil Procedure No. 99/1963 Coll., as amended, in Section 75 and following:

Section 75

(1) An emergency ruling shall be issued by a court on the basis of a petition. Filing a petition is not necessary if it concerns an emergency ruling regarding proceedings that the court is able to commence without such petition.

(4) The court shall decide in respect of a petition to issue an emergency ruling, which includes requisites pursuant to paragraph 2, at the latest within 30 days from the petition being filed and in the case that no court fee is paid together with the petition, which includes requisites pursuant to paragraph 2, within 30 days from the payment of this court fee.

(5) If the court decides in respect of a petition to issue an emergency ruling pursuant to Section 76 paragraph 1 letter b) and g), it shall decide **at the latest within seven days from the petition**, which includes requisites pursuant to paragraph 2, being filed. If the court decides in respect of a petition to issue an emergency ruling pursuant to Section 75a, it shall decide **at the latest within 24 hours from the petition**, which includes requisites pursuant to paragraph 2, being filed.

(7) The state existing at the time that the court decides upon the emergency ruling is the determining factor for the court’s decision-making in respect of the emergency ruling.

(8) The Court may issue a decision on emergency ruling even without examining the respective parties.

Section 75a

(1) If a minor is found without any care or if its life, health or beneficial development is seriously endangered or disturbed, the court shall issue an emergency ruling, without a petition or upon the suit of a body authorized to execute social and legal protection and prevention pursuant to special regulations, that the minor is temporarily placed in the care of a physical person or legal person defined in a resolution.

(2) Upon issuing an emergency ruling pursuant to paragraph 1, a minor does not need to be represented. If a minor does not have any legal representative or if such legal representative cannot represent the minor in the proceeding, the court shall appoint a guardian for the minor immediately after the execution of the emergency ruling is carried out.

(3) A decision on the issue of an emergency ruling pursuant to paragraph 1 shall be delivered to the respective parties as late as upon its execution. The competent court pursuant to Section 88 paragraph 1 letter c) shall additionally deliver the decision to parties not present upon the execution of the decision, together with a notice concerning its execution.

(4) An emergency ruling pursuant to paragraph 1 shall exist for a minimum of three months from its enforceability; if proceedings as such commence before the expiry of this period, the emergency ruling shall exist and expire as soon as the decision on the matter as a whole is enforceable.

Section 76

(1) Through an emergency ruling, the court may place upon a party in particular,

- a. to pay alimony to the necessary extent,
- b. to hand over a child to the care of the other parent or to a person appointed by the court,
- c. to provide at least part of the work remuneration, if it concerns the duration of an employment and the plaintiff does not work due to serious reasons,
- d. to place a financial sum or object into deposit at the court,
- e. to dispose of certain objects or rights,
- f. to perform, refrain from or withstand something,
- g. temporarily not to access the house or flat inhabited by a close person or person in his care or custody, in relation to whom he is reasonably suspected of violence.

(2) An obligation may only be placed through an emergency ruling on a person different from the party, if it could be reasonably required from such person.

(3) Upon issuing an emergency ruling, the court lays the obligation upon the plaintiff to file a petition for the commencement of proceedings in a court or arbitration tribunal within a specified period; if concerning proceedings that can commence without petition, the court shall issue a decision on the commencement of proceedings. The court may also determine that an emergency ruling shall only last for a certain defined time.

MEASURES AGAINST DOMESTIC VIOLENCE

Act on Social Assistance

The new Act on Social Assistance contains preventive measures against domestic violence. Social prevention and solving material or social hardships are part of social assistance. Counselling, legal protection and social services address material and social hardship.

Social prevention: Education programmes aiming to change violent behaviour, are important within the framework of social prevention.

Counselling: The scope, the nature and the reason for an individual's negative behaviour are first identified. Potential solutions or further counselling provided by specialised institutions are then recommended.

Legal protection: Educational programmes aiming to improve the family relations are an important way to protect the individual's legal rights.

Social services: There are 23 shelters with 247 places that can provide housing and counselling to women and their children subjected to domestic violence.

National Action Plan for Elimination of Violence Against Women

In Slovakia there is under preparation basic document: **National strategy for prevention and the elimination of violence against women and in families.**

Combating violence against women is included in 2 existing documents on status of women and equal opportunities between women and men. They are:

1. National Action Plan for Women (1997)
2. Concept of Equal Opportunities of Women and Men (2001)

1. *Measures and recommendations of the National Action Plan for Women in the Slovak Republic in the field violence against women.*

Part VI. To Create Conditions to Eliminate Violence Against Women:

Provisions

- Create legislative and educational measures for the elimination of violence against women;
 - Support new shelters for women subjected to violence, and centres with counselling for people in difficult life situations;
 - Promote changes in legislation so the criminal acts committed against the family members were punished by law and the victim's approval would not be necessary;
 - Prepare educational programmes to change the behaviour of aggressive individuals, and when it is possible, their reintegration and return to the family;
 - Promote the creation of the SOS line for victims of domestic violence and the training of SOS line staff.
 - Join the national and international programmes to eliminate prostitution and trafficking in women and children and publish these programmes.
2. *Measures and recommendations of the Concept of Equal Opportunities of Women and Men in the field violence against women.*

Establishment of national strategy for the elimination of violence against women and in families

Responsible Ministry: Ministry of Labour, Social Affairs and Family of the Slovak Republic;
Council of the Government of the Slovak Republic for Crime Prevention

Time plan: 2003

Support of formation of establishments for victims of domestic violence within the amendment to the Act on Social Assistance

Responsible Ministry: Ministry of Labour; Social Affairs and Family of the Slovak Republic;
Ministry of Interior of the Slovak Republic

Time plan: 2002

Completion of current regulations in force related to elimination of domestic violence, sexual harassment and traffic in human beings

Responsible Ministry: Ministry of Justice of the Slovak Republic

Time plan: 2001

Ensuring of the implementation of training programmes focused on increasing the sensitivity of gender-conditioned violence for policemen, prosecutors, judges, social workers and physicians

Responsible Ministry: Ministry of Justice of the Slovak Republic; Ministry of Interior of the Slovak Republic; Ministry of Labour, Social Affairs and Family of the Slovak Republic

Time plan: yearly, on 30 April

Specifying of the perpetrator's and victim's gender and of their mutual relationship in all statistical records on crimes, with the aim to facilitate the identification of gender-conditioned crimes

Responsible Ministry: Ministry of Interior of the Slovak Republic

Time plan: yearly, on 30 April

Monitoring and minimising of traffic in women, including information on numbers of victims and subsequent sanctions against the perpetrator

Responsible Ministry: Ministry of Interior of the Slovak Republic, Ministry of Justice of the Slovak Republic

Time plan: yearly, on 30 April

Inclusion of the topics of domestic violence and traffic in women and children into the curricula of Level 2 of basic schools (ages 7-10) and of secondary schools

Responsible Ministry: Ministry of Education of the Slovak Republic

Time plan: 2002

The "Coordination Committee for the Problems of Women" prepared a National Action Plan for Elimination of Violence Against.

The Ministry of Labour, Social Affairs and Family of the SR was the sponsor of the documents: the National Strategy for Prevention and Elimination of Violence against Women and in Families and the National Action Plan for the Prevention and Elimination of Violence against Women for 2005 – 2008, which was adopted by the Government of the SR through Resolution No. 635 of 24 August 2005.

Annex to Resolution of the Government of the SR

No. 635/2005

Implementation Schedule of the National Action Plan for the Prevention and Elimination of Violence against Women for 2005 – 2008

1. Develop a comparative study regarding the legal protection instruments for women, victims of violence in the SR and in selected EU member states and the use of its results for proposing new legislative regulations within the system of laws of the SR.

Responsible: Slovak National Centre for Human Rights, Ministry of Interior of the SR, Ministry of Labour, Social Affairs and Family of the SR, Ministry of Justice of the SR

Time plan: 31 May 2006

2. Develop the monitoring reports on the procedures of criminal proceedings bodies and of evaluation reports on the use of valid legislation with the view of providing more efficient protection to women – victims of violence.

Responsible: Ministry of Interior of the SR, Attorney General of the SR

Time plan: 31 May 2006

3. Develop an investigation method with the view of protecting women, the victims of violence, against repeated traumatization and victimization.

Responsible: Ministry of Interior of the SR

Time plan: 31 May 2006

4. Renew the activity performed by the Expert Group for Prevention and Elimination of Violence against Women and in Families acting alongside the Government Council for Crime Prevention.

Responsible: Ministry of Interior of the SR

Time plan: 31 October 2005

5. Ensure within the subsidy policy of the Ministry of Labour, Social Affairs and Family of the SR for 2006, that emphasis is also put on the financial support of facilities providing activities that consider the diversified needs of women – victims of violence.

Responsible: Ministry of Labour, Social Affairs and Family of the SR in cooperation with higher territorial units

Time plan: 31 May 2008

6. Develop specific standards of activities considering the diversified needs of women exposed to violence or the threat of violence in the area of social services based on the standards used in EU countries.

Responsible: Expert Group for Prevention and Elimination of Violence against Women and in Families, acting alongside the Government Council for Crime Prevention, in co-operation with the Ministry of Labour, Social Affairs and Family of the SR

Time plan: 31 May 2006

7. Develop the methodologies for procedures upon providing assistance and educational schemes for professions in the area of justice, the police, the health industry and social work with respect to activities with women – victims of violence.

Responsible: Ministry of Labour, Social Affairs and Family of the SR, in cooperation with the Headquarters of Labour, Social Affairs and Family, Ministry of Interior of the SR, Ministry of Justice of the SR and Ministry of Health of the SR, through the Expert Group for the Prevention and Elimination of Violence against Women and in Families acting alongside the Government Council for Crime Prevention.

Time plan: 31 May 2006

8. Coordinate the joint tactics of all concerned professions providing assistance and protection to women – victims of violence – in practise through cooperative support at the local level.

Responsible: Ministry of Labour, Social Affairs and Family of the SR in cooperation with the Headquarters of Labour, Social Affairs and Family, Ministry of Interior of the SR, Ministry of Justice of the SR, Ministry of Health of the SR and higher territorial units.

Time plan: continuously, annual performance check by 31 May

9. Include the formation of a specialized network of emergency telephone lines for assistance and counselling within the ESF programmes, as one of the legitimate activities.

Responsible: Ministry of Labour, Social Affairs and Family of the SR

Time plan: 31 May 2008

10. Explicitly include employees oriented towards psychological counselling for women – the victims of violence – into descriptions of work activities.

Responsible: Headquarters of Labour, Social Affairs and Family

Time plan: 31 May 2006

11. Inform the public how to recognise violence against women and about the possibilities of help (with special regard to specifically endangered groups of women) through assisting professions.

Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Health of the SR, Ministry of Interior of the SR, Ministry of Justice of the SR and Ministry of Culture of the SR

Time plan: continuously, annual performance check by 31 May

12. Supplement the lifelong education system of all concerned professions about the issue of violence against women.

Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Education of the SR, Ministry of Health of the SR, Ministry of Interior of the SR and Ministry of Justice through the Expert Group for Prevention and Elimination of Violence against Women and in Families acting alongside the Government Council for Crime Prevention.

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- Time plan: 31 May 2008
13. Provide for the implementation of special training for concerned professions (training of trainers in particular), which will be carried out through experts in cooperation with non-governmental organisations within projects and programmes.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Interior of the SR, Ministry of Justice of the SR
- Time plan: continuously, annual performance check by 31 May
14. Provide for the implementation of special programmes for convicts sentenced for violent crimes related to violence against women.
- Responsible: Ministry of Justice of the SR and Ministry of Labour, Social Affairs and Family of the SR
- Time plan: 31 May 2008
15. Promote the activities of non-governmental organisations, which act in the area of eliminating violence against women and create the conditions necessary for extending these activities, e.g., through grant programmes.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Health of the SR and Ministry of Interior of the SR
- Time plan: continuously, annual performance check by 31 May
16. Accentuate the issue of violence against women within the implementation of the National Plan of Education on Human Rights.
- Responsible: Ministry of Education of the SR
- Time plan: continuously, annual performance check by 31 May
17. Within education concerning human rights, pay attention to the issue of violence against women upon creating educational documents concerning the relevant subjects taught in elementary and secondary schools.
- Responsible: Ministry of Education of the SR and organisations directly controlled by this ministry
 - Time plan: 31 May 2008
18. Implement the education of media employees and media monitoring employees regarding the issue of violence against women.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, in co-operation with non-governmental organisations
- Time plan: continuously, annual performance check by 31 May
19. Form working groups alongside the councils with the view of motivating public media to provide information about violence against women in accordance with special knowledge concerning this issue.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, in co-operation with the STV Council and Radio Council
- Time plan: 31 May 2006
20. Implement educational and information activities intended to increase legal awareness concerning the illegality of harassment in labour-legal and other similar relations.
- Responsible: Slovak National Centre for Human Rights, Ministry of Labour, Social Affairs and Family of the SR, in co-operation with social partners.
- Time plan: continuously, annual performance check by 31 May
21. Inform women from specifically endangered or handicapped groups about the issue concerning violence against women and about the possibilities of help for such women.

- Responsible: Migration Office, SR Government Plenipotentiary for Roma Communities, Ministry of Labour, Social Affairs and Family of the SR, in co-operation with non-governmental organisations
- Time plan: continuously, annual performance check by 31 May
22. Enable information regarding assistance to women – the victims of violence – on a website.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR
- Time plan: 31 December 2005
23. Enhance the quality of the existing statistical reporting system (including departmental administrative sources) in the area of violence against women.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Interior of the SR, Ministry of Justice of the SR, Attorney General of the SR, Ministry of Health of the SR, in co-operation with higher territorial units
- Time plan: 31 May 2006
24. In reference to the higher quality of information in the area of violence against women, extend the summary processing system of this information in the form of statistical outputs from the relevant departments and provide for the regular publishing of it.
- Responsible: Statistical Office of the SR
- Time plan: 31 May 2008
25. Implement research and surveys concerning violence against women (including specifically handicapped groups of women) as a requirement for such research within the specialized research institutions of individual departments.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Culture of the SR and Ministry of Education of the SR
- Time plan: continuously, annual performance check by 31 May 2008
26. Financially ensure the engagement of the SR in EU programmes supporting research on violence against women.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR and Ministry of Finance of the SR
- Time plan: 31 May 2008
27. Develop a monitoring report on the implementation of policies and activities focusing on the abatement of violence against women on the basis of a complex of common indicators within the EU for the purpose of mapping the situation in the SR.
- Responsible: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Interior of the SR, through the Expert Group for Prevention and Elimination of Violence against Women and in Families, acting alongside the Government Council for Crime Prevention
- Time plan: continuously, performance check by 31 May 31. 5. 2008

1.3 RAPE/SEXUAL ASSAULT

DEFINITION OF RAPE

The new crime "*Sexual abuse by other means than sexual intercourse*" is defined as "any person who by violence, threat of violence, by use of the victim's defenceless or by any other means than by intercourse, sexually misuses a woman."

This crime is not identical to rape; it is defined as the abuse of a woman in a defenceless situation. The need to complement the Penal Code with such a qualification is necessary since a number of women might be sexually abused, in particular under the influence of drugs.

In point 53, Section 241a was promulgated after Section 241 that reads, including its heading, as follows:

Section 241a – Sexual Violence:

- (1) *Anyone who pressures, by force or through immediate threat of violence, another person to make oral intercourse, anal intercourse or other sexual practices or anyone who abuses the powerlessness of such other person to commit such act shall be sentenced to a term of imprisonment of two to eight years.*
- (2) *An offender shall be sentenced to a term of imprisonment of five to twelve years if*
 - a) *through the act described in paragraph 1 he inflicts grievous bodily harm;*
 - b) *he commits such act against a person younger than fifteen years of age.*
- (3) *An offender shall be sentenced to a term of imprisonment of ten to fifteen years if through the act described in paragraph 1 he inflicts death.”*

Another regulation was adopted by Act of 19 June 2002 amending Act No. 140/1961 Coll., the Penal Code, as amended:

3. In Section 15c para. 2, the words “sexual abuse” shall be replaced by words “sexual abuse”.

9. In Section 62 para. 1, the words “terrorism (Section 94)” shall be inserted after words “terror (Sections 93 and 93a)”; the words “and terrorist group” shall be inserted after the words “criminal gang”; the words “maltreatment of close person and ward under Section 215 paras. 2 to 5” shall be inserted after words “under Section 187a para.3”; the words “sexual abuse under Section 242 paras. 3 and 4” shall be replaced by words “sexual abuse under Section 242 paras. 2, 3 and 4, trafficking in human beings under Section 246 paras. 3, 4 and 5” and a comma and the words “crime against humanity (Section 259b)” shall be inserted after words “genocide (Section 259)”.

18. In Section 89 para. 7, the following sentence shall be added to the end:

“For the purposes of violent offences against a group of persons and against an individual under Section 197a para. 2, maltreatment of close person and ward under Section 215, extortion under Section 235 para. 2 letter c), rape under Section 241 para. 2 letter c), sexual violence under Section 241a para. 2 letter c) and sexual abuse under Section 242 para. 2, close person shall mean, inter alia, former spouse, cohabitee, former cohabitee, parent of joint child and person related to such persons under the first sentence, as well as person who shares or shared a common household with the offender.”

20. In Section 89, letter c) shall be added to paragraph 23 that shall read:

“c) in prohibition to near the aggrieved party for a distance shorter than five meters and to reside in proximity of aggrieved party’s dwelling.”

The definition of rape is regulated in Section 199 of the Penal Code as follows:

(1) Anyone who pressures, by force or through immediate threat of violence, a women to have sexual intercourse, or who abuses the powerlessness of such women in order to commit such act, shall be sentenced to a term of imprisonment of five to ten years.

(2) A perpetrator shall be sentenced to a term of imprisonment of seven to fifteen years, if he commits the act referred to in paragraph 1

- a. in a particular brutal manner,
- b. on a protected person,
- c. for reason of a special motive, or
- d. on a women in the execution of arrest or in the execution of imprisonment.

(3) A perpetrator shall be sentenced to a term of imprisonment of fifteen to twenty years, if he commits the act referred to in paragraph 1 and causes grievous bodily harm.

(4) A perpetrator shall be sentenced to a term of imprisonment of twenty to twenty five years, if he commits the act referred to in paragraph 1

- a. and inflicts death, or
- b. under crisis situation.

The object of this criminal act is the women’s right to a free decision regarding her sexual life. The subject of attack from the committal of such a crime is a person of female gender regardless of her

manner of life, her reputation, or whether it concerns a woman who is sexually unattached. It may even concern a woman with whom the perpetrator had sexual intercourse in the past, or with whom he lives in marriage or as a cohabitee (O. Samaš, H. Stiffel, P. Toman, Penal Code, Brief Commentary, page 408)

The definition of sexual violence is regulated in Section 200 of the Penal Code, as follows:

(1) Anyone who pressures, by force or through immediate threat of violence, another person to carry out oral intercourse, anal intercourse or other sexual practices, or anyone who abuses the powerlessness of such other person in order to commit such act, shall be sentenced to a term of imprisonment of five to ten years.

(2) A perpetrator shall be sentenced to a term of imprisonment of seven to fifteen years, if he commits the act referred to in paragraph 1

- a. in a particular brutal manner,
- b. on a protected person,
- c. for reason of a special motive, or
- d. on a person in the execution of arrest or in the execution of imprisonment

(3) A perpetrator shall be sentenced to a term of imprisonment of fifteen to twenty years, if he commits the act referred to in paragraph 1 and causes grievous bodily harm.

(4) A perpetrator shall be sentenced to a term of imprisonment of twenty to twenty five years, if he commits the act referred to in paragraph 1

- a. and inflicts death, or
- b. under crisis situation

The object of this criminal act is anyone's right, whether a man or woman, to make a free decision regarding his/her sexual life. The subject of attack of the committal of such a crime is a person of any sex. It concerns sexual practices different to sexual intercourse (O. Samaš, H. Stiffel, P. Toman, Penal Code, Brief Commentary, page 413)

1.4 CHILD SEXUAL ABUSE/INCEST

DEFINITION OF CHILD SEXUAL ABUSE

242 § of the Penal Code

- (1) *Anyone who engages in sexual intercourse, or by other means sexually abuses a person under the age of 15 years, shall be sentenced to 1 to 8 years of imprisonment.*
- (2) *Anyone who commits an act described in section. 1 on a person under his/her supervision, abusing his/her dependency, shall be sentenced to a prison term of two to ten years.*
- (3) *Anyone who by an act described in section 1, causes substantial damage to the health, shall be sentenced to 5 to 12 years of imprisonment.*
- (4) *Any person shall be sentenced to 10 to 15 years of imprisonment, if he, by the crime committed according to section 1, causes death.*

243 § of the Penal Code

Anyone who uses the dependency of a person under the age of 18 years, or a person under his/her supervision, to engage in sexual intercourse or sexually abuse by other means, shall be sentenced to up to 2 years of imprisonment.

See also **Section 8** below.

Sexual violence against children is regulated in several provisions of the Penal Code, as follows:

The definition of sexual abuse pursuant to Section 201 of the Penal Code reads as follows:

1) Anyone who engages in sexual intercourse, or by other means sexually abuses a person under the age of 15 years, shall be sentenced to three to ten years of imprisonment.

(2) A perpetrator shall be sentenced to seven to twelve years of imprisonment, if he commits the act referred to in paragraph 1

- a. in a particular brutal manner,
- b. on a protected person, or
- c. for reason of a special motive.

(3) A perpetrator shall be sentenced to a term of imprisonment of twelve to fifteen years, if he commits the act referred to in paragraph 1 and causes substantial damage to the person's health.

(4) A perpetrator shall be sentenced to a term of imprisonment of fifteen to twenty five years, if he commits the act referred to in paragraph 1

- a. and inflicts death, or
- b. under crisis situation.

Section 202

(1) Anyone who engages a person under the age of 18 years in extramarital sexual intercourse or who sexually abuses such person by other means,

- a. if such person is under his/her supervision or under his custody or if it concerns a dependent person, or
- b. anyone who benefits from it shall be sentenced to one to five years of imprisonment.

(2) A perpetrator shall be sentenced to two to eight years of imprisonment, if he commits the act referred to in paragraph 1 on a person under the age of 18, who is forced to such action from submission, by pressure or threat.

By this legal regulation, the legislator insists on the protection of the moral and physical development of children under the age of 15 against any attacks on their sexual inviolability. Contrary to the general lower limit of physical age for the arising of criminal liability being 14 years in accordance with Section 22 paragraph 1 of the Penal Code, as regards this criminal act, the legislator determined the lower limit of physical age to be 15 years. A person under the age of 15 years shall be a person until the date foregoing their fifteenth birthday. The sex, sexual maturity, disorder, emotional relation or consent of such person shall not be decisive. (O. Samaš, H. Stiffel, P. Toman, Penal Code, Brief Commentary, page 415)

Incest is regulated in the Penal Code, in Section 203 Sexual Intercourse between Relatives, as follows:

(1) Anyone who has sexual intercourse with a relative in direct line or with a sibling, shall be sentenced with up to two years of imprisonment.

(2) A perpetrator shall be sentenced to one to five years of imprisonment, if he commits the act referred to in paragraph 1 on a protected person.

Increased terms of imprisonment are determined upon rape and sexual violence, if committed on a protected person. Apart from other persons, a child shall also be understood to be a protected person (Section 139 paragraph 1 of the Penal Code). A child shall be understood to be a person under the age of 18 years, if they do not achieve legal age sooner. (Section 127 of the Penal Code)

1.5 SEXUAL HARASSMENT

There are no specific laws in Slovakia governing explicitly sexual harassment, but in the current Labour Code, in §13 (prohibition of discrimination) in art. (3) there is written: Accomplishment of rights and obligations to resulting from legislative- working relations has to be in accordance with good manners and customs.

No regulation yet exists in Slovakia that would deal with the issue of sexual harassment in detail. However, sexual harassment could be included under the term harassment, which is regulated in Act No. 365/2004 Coll. Antidiscrimination Act, as amended (hereinafter referred to as "law") and in Act No. 311/2001 Coll. Labour Code, as amended (hereinafter referred to as "Labour Code").

Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on the amendments of certain laws, the so-called "Antidiscrimination Act, as amended by Act No. 539/2005 Coll., which came into force on 1 July 2004 (amendments effective from 7 December 2005) regulates the application of the principle of equal treatment and establishes legal protection

instruments for cases in which this principle is violated. Section 2 of this law establishes a definition of harassment to be such treatment of a person that this person may reasonably consider to be unpleasant, inappropriate or offensive and the intention or consequence of which results or may result in the reduced dignity of such person or in the formation of an unfriendly, derogative or abashed environment, or the sufferance of which may be treated as a condition for a decision, or the execution of rights and obligations resulting from legal relations. Discrimination shall include direct and indirect discrimination, harassment and unjustified recourse; discrimination shall also include an instruction to discriminate and encouragement to discriminate.

LEGAL PROTECTION AND PROCEEDINGS IN MATTERS CONCERNING A BREACH OF THE EQUAL TREATMENT PRINCIPLE

Section 9

(1) Pursuant to the law, anyone has the right to equal treatment and protection against discrimination.

(2) Anyone is entitled to claim his/her rights in court, if he/she believes that his/her rights, legally protected interests or freedoms are or were violated by non-observance of the equal treatment principle. He/she may in particular claim that the person who did not observe the equal treatment principle desist from such action, if possible, rectify such unlawful action or provide appropriate redress.

(3) If such appropriate redress is not satisfactory, particularly if non-observance of the equal treatment principle results in considerably reduced dignity, social esteem or the social realisation of the aggrieved person, this person may also claim financial compensation of such non-pecuniary injury. In such case, a court shall decide upon the amount of such financial compensation of non-pecuniary injury in consideration of the severity of such non-pecuniary injury and of all circumstances under which it occurred.

(4) The right to compensatory damages or the right to other compensation pursuant to special regulations¹²⁾ shall not be affected by this law.

Section 11

(1) Proceedings in matters concerning a breach of the equal treatment principle shall commence upon the petition of person who objects that their rights are violated by such breach of the equal treatment principle (hereinafter referred to as "plaintiff"). In such a petition, the plaintiff is obliged to identify the person that he/she claims has breached the equal treatment principle (hereinafter referred to as "defendant").

(2) Defendants are obliged to prove themselves to be innocent of breaching the equal treatment principle, if the plaintiff submits evidence to a court from which it could reasonably be assumed that the equal treatment principle was breached.

(3) Proceedings in matters concerning a breach of the equal treatment principle shall follow the Civil Procedures Act, if not otherwise established by this law.

The basic characteristic of sexual harassment is the fact that it is unwelcome for such person. Each individual defines what behaviour is acceptable for him/her and what conduct is indecent from his/her point of view. Sexual attention becomes sexual harassment if it goes on and if it was clearly manifested that the specific person considers it to be indecent, while even one incident of harassment, if serious enough, can be considered to be sexual harassment.

Sexual harassment differs from friendly behaviour, which is welcome and mutual, by its unwelcome character.

In accordance with Section 13 of the Labour Code, an employee has the right to file a complaint to his/her employer in connection with a breach of rights and obligations concerning discrimination, which includes harassment, if it concerns unwelcome behaviour with the intention or effect of violating human dignity, and which creates an unfriendly, abashed, degrading, derogative or offensive environment for such employee. The employer is obliged to reply to such a complaint from an employee, redress, desist from such action and remove its consequences.

Employees who feel they are aggrieved may claim their rights at a court, including adequate financial compensation for non-pecuniary injury. If an employee who considers himself to be aggrieved due to the non-application of the equal treatment principle, proves such fact to a court, from which it could be deduced that direct or indirect discrimination occurred, his/her employer is obliged to prove that the equal treatment principle was not breached.

An employer cannot afflict or penalize an employee if such employee only exercises his/her rights resulting from labour-legal relations.

1.6 PORNOGRAPHY

In March 1997, the government adopted “Measures to Fight Against Child Pornography and Sexual Abuse of Women and Children”, which is currently being put into practice. Within the framework of implementation, the police cooperate with the authorities on a local level, and the National Centre of Interpol with the police from other countries.

In accordance with 205§ of the Penal Code the following acts are criminal:

- Offer and exhibition of pornography to persons under the age of 18 years (205§);
- Production and spreading of pornography (205 a§);
- Production of children pornography (205 b§);
- Spreading of children pornography (205 c§);
- Receiving (concealing) of children pornography (205 d§).

Criminal acts related to pornography are regulated in Section 368 to Section 372 of the re-codified Code of Criminal Procedure:

- Section 368 – Production of child pornography
- Section 369 – Distribution of child pornography
- Section 370 – Receipt of child pornography
- Section 371 and Section 372 – Morality endangerment

The definition of pornography and child pornography in accordance with Section 132 paragraph 2 and 3 of the Penal Code reads as follows:

2) Pornography for the purposes of this law shall mean the display of coitus, other means of sexual intercourse or other similar sexual connection or the display of naked genitals that is intended to invoke the sexual satisfaction of another person.

(3) Child pornography for the purposes of this law shall mean the display of coitus, other means of sexual intercourse or other similar sexual connection with a child or the display of naked parts of a child's body that is intended to invoke the sexual satisfaction of another person.

1.7 PROSTITUTION

Suppression of all forms of trade with women and exploitation of women for prostitution is regulated by the Penal Code (Act No. 140/1961 Coll.)

204 § of the Penal Code: Procuring

- 1) *Any person who contracts, entices or induces other persons to prostitution, or who benefits from prostitution of others, shall be sentenced to up to 3 years of imprisonment.*
- 2) *Any person, who commits an act according to section 1 by violence, threat of violence or other damage, or by misuse of hardship or dependency, shall be sentenced to 1 to 5 years of imprisonment.*
- 3) *The offender of a crime according to section 1 is sentenced to 2 to 8 years of imprisonment if:*
 - a) *The perpetrator makes a substantial profit;*
 - b) *The perpetrator is a member of an organised criminal group*
 - c) *The person subjected to procuring is under the age of 18;*
 - d) *The perpetrator commits the offence abroad.*

- 4) *The offender of a crime according to section 1 or section 2 is sentenced to 5 to 12 years of imprisonment if:*
- a) *The victim is under the age of 15 years;*
 - b) *The perpetrator is linked with an organised group active in several states.*

PROPOSED REFORM

A proposed draft for the new Penal Code creates two principal qualifications - procuring and pandering in order to extend the punishment to other forms of procuring.

- **Procuring:** A person who, in connection with his/her own business, or under the pretext of another business activity, even partially, acts as an intermediary or enables the repeated exercise of prostitution, and makes a profit from the participation of procuring, commits the criminal offence procuring. This is, in fact, the misuse of an otherwise legal business for the exercise of prostitution.
- **Pandering:** A person who induces another person to exercise prostitution, or who profits from prostitution exercised by another person, commits the criminal offence of pandering.

Procuring and pandering are often connected with the limitation of personal freedom and other violations of human rights.

The definition of prostitution in accordance with Section 132 paragraph 1 of the Penal Code reads as follows:

- 1) Prostitution for the purposes of this law shall mean the satisfaction of the sexual needs of others through coitus, other means of sexual intercourse or other similar sexual connection for reward.

This concerns a new provision of the Penal Code.

Pandering is regulated in Section 367 of the Penal Code.

1.8 OBSCENE PHONE CALLS

No information available. This is not regulated in the re-codified Penal Code.

1.9 FEMALE GENITAL MUTILATION

No information available. This is not regulated in the re-codified Penal Code.

1.10 INTERNATIONAL CONVENTIONS

The Slovak Republic is bound by international conventions resulting from its membership of international organisations, as well as by ratified international conventions related to adopted issues.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The protection of pregnant women is regulated in Labour Code No. 311/2001 Coll., as amended (hereinafter referred to as "Labour Code"), specifically in the provisions of Section 160 to Section 170, as follows:

- Section 160 to Section 163 Work conditions of men and women caring for children
- Section 164 to Section 165 Adjustment of working hours
- Section 166 to Section 169 Maternity leave and parental leave
- Section 170 Nursing breaks

Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on the amendments of certain laws, the so-called Antidiscrimination Act, as amended by Act No. 539/2005 Coll., which came into force on 1 July 2004 (amendments effective from 7 December 2005), and which regulates the application of the equal treatment principle and establishes legal protection instruments in the event that this principle is breached, may also be applied for the protection of pregnancy and pregnant women. Pursuant to Section 6 paragraph 3 of this law, discrimination on the grounds of gender is also considered to be discrimination by reason of pregnancy or maternity, as well as discrimination by reason of sexual or gender identification. For legal proceedings see Section 1.5

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 MAIN PROBLEMS

DOMESTIC VIOLENCE

There is a certain unwillingness of witnesses to talk about ongoing problems in the households of their neighbours. Withdrawal of a notice by the victim is also a frequent problem. Such a reaction from the victim is mainly due to the fact that there is often no opportunity to provide separate accommodation for the victim, and that the perpetrator is usually prosecuted with a release from custody. This overburdens the police, but at the same time, there are not sufficient grounds for the police to take decisive action. Investigation into such a closed unit as a family is, without the help of witnesses, almost impenetrable for the police. Evidence could also be quite dubious, since, without any witnesses, there are two conflicting testimonies.

3.2 PROPOSED REFORMS

One of the most important **expected** legislative changes is the amendment of the Act on police forces, specifically the exact provisions concerning the rights and obligations of police officers as regards interventions, examinations or other actions in cases of “domestic violence”.

Other amendments in criminal, civil or offence proceedings are incorporated and applied in practice.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4**

SLOVENIA

Information was provided by the Women's Policy Office in **November 2000** and by the Office for Equal Opportunities in **February 2003** and **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

Violence against women and violence in the family, despite some changes, is still a pressing problem in Slovenia. With amendments to the Penal Code in 1999, the criminal offence of violence (Article 299) was supplemented by violence in the family. The criminal offence of violence is committed by anyone who seriously insults another, behaves brutally with them, is violent towards them or threatens their safety, and thus in public or within the family causes a threat, disgust or fear. The criminal offence is prosecuted ex officio, and a prison sentence of up to two years is prescribed. If the offence has been committed by two or more persons, or if there has been grave humiliation of a number of people, or if the perpetrator could have physically injured the other persons, the perpetrator is punishable with a prison sentence up to three years. In 1999 Article 411 of the Civil Procedure Act came into force. The court can now in the case of matrimonial suit issue temporary injunction on deportation of the spouse out of common apartment, if necessary to prevent violence. In 1998, the Criminal Procedure Act was also adopted, which introduced the measure of a ban on approaching a specified place or persons (Article 195a) as an alternative measure to prison. The measure can also be passed if cause is given for a prison sentence, and there is a danger that the accused will destroy evidence of the crime, influence the witnesses, participants or co-perpetrators or repeat the crime, complete an attempted crime or commit an act by which she or he threatens, and the danger may be prevented by a ban on the accused approaching a specific place or persons. The court decides a suitable distance – distance from a specific place or person that the accused must respect and may not intentionally violate. If she or he does so, the court may order his or her detention.

Article 141 of Criminal Offences Against Human Rights and Liberties: Violation of the Right to Equality:

Whoever, due to differences in respect of nationality, race, skin colour, religion, ethnic roots, gender, political or other personal beliefs, birth status, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year (the punishment rises to 3 years if a civil servant commits official misconduct).

In 2002 Slovenia adopted Act on Equal Opportunities for Women and Men. Aim of the Act as said in Article 1 is:

(1) The aim of this Act is to define common grounds for the improvement of the status of women and the establishment of equal opportunities for women and men in political, economic, social, educational fields and other fields of social life (hereinafter: equal opportunities).

(2) The establishment of equal opportunities is a duty of the entire society and represents the elimination of obstacles to the introduction of gender equality, above all through the prevention and removal of unequal treatment of women and men as a form of discrimination in practice arising from traditionally and historically conditioned different roles within society, as well as the establishment of conditions for the introduction of equal representation of both genders in all fields of social life.

On its basis Slovenia adopted the Resolution on the National Programme for Equal Opportunities for Women and Men (in October 2005). The Resolution is a strategic document, which defines objectives and measures as well as key policy makers for the promotion of gender equality in different areas of life of women and men in the Republic of Slovenia in the period 2005 - 2013. The fundamental goal is to improve the status of women and/or ensure sustainable development in the realisation of gender equality. Concrete tasks and activities for the achievement of the objectives and implementation of

measures shall be determined in periodic plans, which are drawn up every two years and stipulate into more detail the timetable and manner of implementation of separate tasks and activities.

In the area of violence against women two main objectives are settled: 1) regulatory framework relating to the prevention of violence against women and 2) zero tolerance to violence against women. In order to achieve these main objectives specific objectives and measures are provided.

With a view to ensuring that the objectives and measures, as planned for the entire 8-years period, would not remain mere policy orientations, the Act on Equal Opportunities for Women and Men lays down that each two years a periodic plan be prepared, specifying the activities to be carried out over the next two years. Periodic plans are therefore implementing instruments of the national programme, establishing priorities and activities for the implementation of the objectives and measures thereof in particular areas. First Periodic plan has been adopted in 2006 for the period 2006 – 2007.

At the end of August 2003, amendments to the Police Act began to apply, providing the policewomen and policemen with more power of intervention in the cases of family violence. A policewoman or a policeman may issue a restraining order prohibiting a person from approaching a specified location or area and a particular person, which includes also a ban on harassment via means of communication. The police started to carry out the measure of banning the approach in September 2004, when detailed instructions to the police on how to handle such cases came into effect, as determined in the Rules on restraining orders on approaching a particular location or person. The policewomen and policemen impose this measure in cases when a well-founded suspicion exists that the person concerned committed a criminal offence with the elements of violence or that he or she was apprehended while committing such act. In order to impose the measure, it is in both cases necessary to establish the reason or suspicion that the perpetrator will threaten the life, personal safety or freedom of the person with whom he or she is or has been in a close relationship. The policemen and the policewomen may establish the existence of circumstances entailing the imposition of such a measure directly during their intervention, or they may establish such circumstances by gathering reports or on the basis of information forwarded to them by a social work centre or other entities. The measure of a ban on approaching is not imposed if during the intervention procedure, the police have established grounds for suspicion that the person concerned committed a criminal offence, which is prosecuted ex-officio or at the request of the injured party.

The Housing Act from 2003 introduced an important novelty by allowing the municipalities, state and the public housing fond or non-profitable housing organizations to rent, when allocating a dwelling unit as a provisional solution of housing needs of socially de-privileged persons, such a dwelling unit based on the list of persons eligible for such allocation (that is, on the basis of a public invitation to tender). This category includes also women and women with children, victims of violence in the family. The *Rules on renting non-profit housing units* provide the women and women with children, victims of violence in the family, who temporarily reside in maternity homes and shelters (safe houses, shelters, centres providing help to the victims of criminal offences), with the possibility of participating in public invitations to tender for renting non-profit housing units, including in the location of their temporary residence.

1.2 DOMESTIC VIOLENCE

STATISTICAL DATA

According to the data of the Ministry of the Interior, around one fifth of the victims of criminal offences against life and body are women. In 2004, 26.3 percent of women were among the victims of murders. Women were the victims in around 14.7 percent of cases suffering a grievous bodily injury and in 24 percent of cases suffering a minor bodily injury and in the same percentage in the cases of being threatened by a dangerous tool.

In the period from 2001 to 2004 the share of women that were victims of offences against the public law and order has slightly decreased. In 2001, this percentage was 42.3 and in 2004, it was 38.8. During the same period, the share of offences involving the family violence has increased considerably, i.e. from 2.566 or 15.5% in 2001 to 4.443 or 26.7% of the total of offences committed against the public law and order in 2004. The majority of offences involving the family violence were committed in domestic surroundings, accounting to almost 90% of the cases.

EXPERT COUNCIL

In 2001, within the framework of the Ministry of Labour, Family and Social Affairs, an Expert Council for problems of violence against women has been established as an advisory body. It was founded on the initiative of non-governmental organisations operating in this field. The Council performed an analysis of the situation concerning the violence against women in the family. The analysis was intended for the survey of methods of institutional treatment (health care, justice, police, social work centres and non-governmental organizations) of women who were exposed to family violence and legal bases for dealing with the violence against women. The analysis based on a questionnaire that was answered by police administrations showed that the majority of suspects and victims of violence are found in marital and extra-marital relationships (34 percents), followed by friendship relationships or acquaintances (25 percents), total strangers (15 percents) and former spouses or extra-marital partners (3 percents). Based on the findings of this analysis, the positions and draft proposal of a fundamental legal act on the prevention of family violence were prepared. The Council was reappointed and renamed (Expert Council for problems of domestic violence) in July 2005 by a decision issued by the competent minister. Its tasks are defined as preparing expert groundwork and providing guidelines for the adoption of the relevant legislation in the field of violence against women and supervising its implementation.

REGIONAL CO-ORDINATORS

Within the framework of public service, social work centres perform services aimed at eliminating the existing distress and problems and the protection of individuals in case of violence. Social work centres have an important role also in providing help to the offender when trying to eliminate the causes of violent behaviour and thus prevent its repetition. A new development is represented by regional co-ordinators co-ordinating and providing expert support to personnel in social work centres and to the victims of violence, and participating in the activities carried out by inter-institutional teams for the prevention of violence. In the period from 2004 to 2005, social work centres employed 12 regional co-ordinators.

SUPPORT SERVICES

In this area, the functioning of non-governmental organisations is also important, since they manage the majority of shelters in Slovenia and in addition carry out various other activities, such as education of police officers, prosecutors, social workers, programmes of assistance to violent persons, advocacy etc. In addition to the national non-governmental organizations having an invaluable role in preventing and eliminating the violence against women and family violence and in providing assistance and support to victims and working with the offenders, the educational, research and other institutions, international non-governmental organizations and media are also active in Slovenia in this field.

A number of organisations currently operate in Slovenia, where women with children who are under pressure can seek help: these are shelters, homes for mothers and related organisations. Shelters (safe houses, shelters, crisis centres) are intended for women and children, victims of all forms of violence who need immediate withdrawal to a safe environment. Living in shelters lasts from 3 months to a maximum of one year, in crisis centres two days. Homes for mothers are meant for pregnant women and women with babies in the post-natal period and mothers with young children, with whom social and/or economic risk prevail, and recently ever more frequently also victims of various forms of violence. The time of residence is from one year, with the possibility of extending the period to a maximum of two years. There are also so-called related organisations which supplement the activities of homes for mothers and shelters. One such are centres for helping victims of all types of crimes, which provide guidance and direct victims to suitable organisations for assistance, support and advocacy.

The Working Group for Non-Violence at the Nurses and Midwives Association of Slovenia plays an important role in identifying the violence through the personnel engaged in nursing care and their appropriate response. The operation of the Working Group is focused mainly on enhancing the role and responsibilities of those employed in health care institutions with respect to reducing the tolerance of violence in general and to preventing and eliminating the violence at work. Within the framework of its activities, the Working Group prepared (in 2004), among other things, special protocols on the actions to be taken by those employed in nursing care when meeting, in the course of their work, with women – victims of violence in the family, carried out several expert trainings for the employees on sexual violence at work, participated actively in different public campaigns and prepared different

educational materials for those employed in nursing care, users of hospital services, visitors of hospitals and other people entering the health care institutions.

Based on the public invitation to tender for co-financing the projects of non-governmental organizations, the Office for Equal Opportunities financially supported the implementation of 16 projects in the field of violence against women in the years 2004 - 2006. Among other things, the projects were focused on identifying and dealing with the violence in the field of nursing care, sexual harassment at work, violence against disabled women, advocacy for women exposed to violence, individual and collective counselling and support to victims, training in social skills for perpetrators of violence, prevention of violence and awareness-raising of the general public.

The Ministry of Labour, Family and Social Affairs is co-financing prevention programmes aimed at preventing the family violence. On the basis of a public invitation to tender, the Ministry of Labour, Family and Social Affairs co-financed in 2004 twenty-four programmes implemented by non-governmental organizations and public institutions (the programmes of safe houses, crisis centre and other programmes aimed at helping the victims of violence).

AWARENESS-RAISING

The Office for Equal Opportunities has carried out various activities in the area of violence against women, such as organising consultative meetings and campaigns, (co)financing projects of non-governmental organisations etc. The Office has been actively involved in activities devoted to protection of women victims of violence since 1999. At that time, activities took place as a unified project in which, in addition to the Office and the Commission of the National Assembly for Equal Opportunities Policy, and some ministries, non-governmental organisations dealing with problems of violence against women were also involved.

In November 2003, the human rights ombudsman organized an experts' meeting titled "*Family violence – the paths to solutions*", with the purpose of helping the victims and protecting both the victims and the society from the damage caused by family violence. He invited the experts from different ministries, governmental offices and non-governmental organizations, working in the field of combating family violence, to participate in the meeting. Based on the conclusions of this experts' meeting, the human rights ombudsman issued in June 2004 a special report containing practical experiences, needs and proposals of experts meeting and dealing with the issue of family violence in their everyday work.

During the international days dedicated to combating violence against women in 2004, the Office prepared a session titled "*Speaking up about the violence against elder women*", in which participated the representatives of non-governmental organizations, social work centres, home health care and nursing services, associations of retired people, justice, police and the interested individuals. The analysis presented at the session showed that elder women are much more frequently the victims of different forms of violence within the home environment than elder men. The most frequent forms of violence against elder women are psychological, emotional and physical abuse and the perpetrators of such acts of violence are most often their partners.

NGOs dealing with the issue of violence against women also play a very important role in awareness – raising campaigns. Since 2002 some of them perform joint campaign called 'The Stairs' – it is international awareness-raising campaign taking place in the chain of cities – Ljubljana (Slovenia) – Utrecht (The Netherlands) – Antwerpen (Belgium). The campaign is aimed at general and professional public.

CRIMINAL LAW

There is no specific legislation relating to domestic violence. Serious cases may be prosecuted under provisions in the general criminal code: negligent manslaughter, infanticide, soliciting and assisting suicide, illegal abortion (including abortion without the woman's consent), aggravated bodily harm, grievous bodily harm, participation in a brawl, exposure of another person to danger, criminal coercion, kidnapping, threats to kill or cause serious injury, false imprisonment, maltreatment, unlawful search of another person, unlawful eavesdropping.

The article defining "violent conduct" was changed in 1999. The wider definition of "violent conduct" applies also in cases of domestic violence.

Whoever insults another, or treats him badly or violently or endangers his security, thereby provoking public or family indignation or fright, shall be sentenced to imprisonment for not more than two years.

If the offence was committed by at least two persons, or has entailed the serious humiliation of several persons or actual badly harm, the perpetrator(s) shall be sentenced to imprisonment for not more than three years.

The provision concerning homicide contains a clause on self-defence:

Any person, who kills another person through no fault of his own and in the heat of the moment under provocation of assault or serious personal insult from that person, shall be sentenced to imprisonment for not less than 1 year but not more than 10 years.

This provision could be used as a defence for women who kill their violent partners, although there is no information regarding such usage.

CIVIL LAW

Any person who violates a family obligation and persistently neglects to support a person he/she is obliged to support by law, an enforceable judgement, a judicial settlement or any other enforceable agreement is sentenced to up to 1 year of imprisonment.

1.3 RAPE/SEXUAL ASSAULT

OFFENCES AGAINST SEXUAL INTEGRITY

Rape

Any person who compels a person of the same or opposite sex to engage in sexual intercourse, by force or threat of an imminent attack on life or limb, shall be sentenced to imprisonment for not less than 1 year but not more than 10 years.

The penalty rises to a minimum of 3 years of imprisonment if:

- The offence was committed in a cruel or extremely humiliating manner;
- The offence was accomplished by at least 2 persons;
- The offence was committed against an offender-serving sentence in a prison.

The penalty is 6 months to 5 years if the threat is "large loss of property for the victim or his/her relatives or with the disclosure of any matter concerning the victim or his/her relatives which is capable of damaging the victim's or his/her relative's honour or reputation".

A woman who has been raped must prove that she put up physical resistance. Physical injuries are often the only evidence of rape. Women are formally entitled to choose to report the offence either to a male or female police officer.

Rape in marriage and in extra-marital unions is criminalised under the provision above, but a prosecution is only initiated after a complaint.

Sexual Violence

Any person who compels a person of the same or opposite sex to engage in any lewd act not covered (in the rape provisions) or to perform such an act, by force or threat of an imminent attack on life or limb, shall be sentenced to imprisonment for not less than 6 months but not more than 10 years.

The same provisions as for rape are applicable regarding the increased penalty. Similarly, there is a requirement of a complaint before prosecution of sexual violence committed by a spouse or extra marital partner.

Sexual Abuse of a Defenceless Person

Any person who has sexual intercourse or performs any lewd act with a person of the same or opposite sex, by abusing the victim's mental disease, temporary or graver mental disorder or sickness, or any other condition that makes the victim incapable to resist the offence, shall be sentenced to not less than 1 year or not more than 8 years of imprisonment.

1.4 CHILD SEXUAL ABUSE/INCEST

Any person who has sexual intercourse or performs any lewd act with a person of the same or opposite sex, under the age of 15 years and there is obvious disproportion between maturity of the offender and the victim, shall be sentenced to not less than 1 year and not more than 8 years of imprisonment.

The minimum sentence is increased to 3 years of imprisonment if:

- The victim is under the age of 10;
- The victim is defenceless and under the age of 15;
- Threats to life or limb are used.

The sentence is increased to between 1 and 10 years if the perpetrator is a teacher, educator, guardian, adoptive parent, parent or anyone else abusing a position of trust.

VIOLATION OF SEXUAL INTEGRITY BY ABUSE OF POSITION

Whoever, by abusing his position, induces his subordinate or a person of the same or opposite sex who depends on him, to engage in sexual intercourse or any lewd act shall be sentenced to imprisonment for not more than 5 years.

If the perpetrator is in a position of trust, e.g. teacher, educator, guardian, parent, adoptive parent, and the victim is over the age of 15 years and entrusted to the perpetrator's care, the sentence rises from minimum 1 year to maximum 8 years of imprisonment.

1.5 SEXUAL HARASSMENT AT WORK

The Employment Relationships Act (in force since January 1, 2003) bounds employers to assure sexual harassment-free working environment. In Article 45 the act determines that an employer is obliged to guarantee a working environment in which no worker will be exposed to undesired treatment of a sexual nature, including undesired physical, verbal or non-verbal behaviour, or other behaviour based on gender, which would create intimidating, inimical or humiliating working relations and environment and insult the dignity of men and women at work. Rejecting the aforementioned treatment may not be a reason for discrimination in employment. If an employer behaves in conflict with the aforementioned provisions, in a case of dispute, she or he bears the burden of proof. If an employer does not ensure protection against sexual harassment, a worker may explicitly terminate an employment contract, in eight days after a preliminary warning to the employer on fulfilling his duties and a written warning about violations from a labour inspector. The act determines that in a case of such a termination, the worker has the right to redundancy determined for a case of ordinary termination of an employment contract for business reasons, to compensation at least to a level of pay lost for the period of notice (Article 112). A fine is specified for an employer that does not guarantee protection from sexual harassment, and supervision of its implementation will be performed by the labour inspectorate.

The prohibition of sexual harassment at work is included also in the Civil Servants Act, adopted and amended in December 2005. The added Article 15.a prohibits any unwanted physical, verbal or non-verbal conduct or behaviour of a public servant deriving from any personal circumstance and creating intimidating, hostile, degrading, humiliating, abusive or offensive working environment for any person and violating his or her dignity.

The provisions of Article 184 of *the Penal Code* are applied to the cases of sexual harassment, defining the violation of sexual integrity by abuse of position as a criminal offence, punishable by a sentence of imprisonment of not more than five years, and imposing the sentence from one to eight years of imprisonment for an aggravated form of this criminal offence. The statistical data of the police indicate¹ that the number of criminal offences against sexual integrity by abuse of position has been fluctuating during the recent years. Thus there were 12 criminal offences committed against sexual integrity by abuse of position in 2003, and 21 in 2004 - their victims were predominantly women.

In 2003 - 2005 the Advocate for equal opportunities for women and men dealt with three initiatives related to the sexual harassment at work.

¹ Source: Ministry of the Interior. 2005.

In 2004, labour inspectors did not establish any violations concerning the sexual harassment at work. However, they received several anonymous calls of women employees asking the inspectors for their professional help, but these callers declined to report the offence because the person allegedly harassing them was in the majority of cases their superior.²

1.6 PORNOGRAPHY

DISTRIBUTION OF PORNOGRAPHY

Any person who provides access to writing, pictures, audio-visual or other objects of pornographic content or whoever presents a pornographic performance to a person under the age of 14, shall be punished by a fine or sentenced to not more than 2 years of imprisonment.

PRODUCTION OF PORNOGRAPHY

Whoever abuses a minor for the production of pornographic pictures, audio-visual or other objects of pornographic content, or whoever who employs a minor to act in a pornographic performance shall be sentenced to minimum six months to maximum 5 years of imprisonment.

1.7 PROSTITUTION

In 2004, amendments to Chapter 19 (Criminal offences against sexual integrity) and Chapter 35 (Criminal offences against humanity and international law) of the Penal Code were adopted. In May 2004, amendments to the Penal Code came into force, defining the abuse of prostitution in a new Article 185, thus merging the former definitions of criminal offences of pimping (Article 185) and serving as agent in prostitution (Article 186). This criminal offence is defined as cooperation in the prostitution of another person for the purpose of exploitation and accustoming or inciting another person to prostitution or obtaining another person for prostitution by force, threat or deception. Such offence is punishable by imprisonment from three months to five years; if, however, it is committed against a minor or against several persons or within a criminal association, the perpetrator shall be punished by imprisonment from one to ten years.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information available.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

No information available.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information available.

2.0 SENTENCING

CRIMINAL PROCEDURE

The presence of the perpetrator is prohibited at a hearing where the victim of a sexual and violent criminal offence is under the age of 15 years. If the victim of a criminal offence against sexual integrity is minor, he/she must have an attorney from the beginning of the court proceeding. If he/she does not have an attorney, the court is obliged to appoint one.

A restriction to approach to a certain place or person can be ordered by the court as an alternative measure to custody. The court orders appropriate distance from certain place or person that has to be respected by the offender the court can otherwise order custody. According to information provided by the courts this measure is only used in a few cases of domestic violence.

² Source: Report on the Work of the Labour Inspectorate of the Republic of Slovenia for the year 2004, 2005.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

DOMESTIC VIOLENCE

From 1984, feminist campaigns have been organised to raise awareness of domestic violence. The first help line was established in Ljubljana in 1989 by the first non-governmental organisation providing support and information concerning domestic violence. Slovenia has now many NGOs dealing with violence against women. They provide counselling, self-support groups, shelters, safe-houses, crisis centre for women, victims of domestic violence, counselling and trainings of social skills for perpetrators.

CHILD SEXUAL ABUSE/INCEST

More cases of sexual abuse are discovered as a consequence of awareness raising campaigns. Training courses have been organised for social workers, counsellors and therapists providing assistance to children and adults who have suffered sexual abuse.

PROSTITUTION

Based on information available from the media, prosecutors and criminal investigation officers, the characteristic of prostitution in Slovenia are as follows:

- Most prostitutes are women and girls of 18 to 45 years of age. According to the criminal investigation officers, they are predominantly women from Ukraine, Russia, Bulgaria, Romania and the republics of the former Yugoslavia. Slovenia is particularly interesting for them, since the relatively high level of prostitution means that pimps do not force them «onto the streets».
- Prostitution has grown particularly noticeably since 1991. There has been a sharp increase during this period in the number of massage parlours, night bars and the demand for certain vocational profiles (platform dancers, masseuses, hostesses, strippers, etc.)
- It is characteristic for Slovenia that there is almost no street prostitution. The most widespread forms of prostitution are hotel and bar prostitution, while prostitutes from Slovenia mostly operate at a very high level (advertising and mobile telephones) and are very independent (no pimps).
- Pimps are mostly owners of private companies, renters of night bars and individuals.
- Clients come from different social classes, including many traders and businessmen.

3.2 PROPOSED REFORMS

See **Section 8** below.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

SPAIN

Information provided by the Women's Institute and the Special Bureau to Combat Violence against Women, General Secretariat for Equality Policies, Spanish Ministry of Labour and Social Affairs, in **November 2000, April 2003 and January 2007**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

Articles 14 and 32 of the Spanish Constitution establish the right to equality and non-discrimination on the grounds of sex. This is a right that should prevail throughout the rest of the body of law and which, according to Article 9.2, public authorities are obliged to further and guarantee. The substantial reforms introduced in the decade between 1975 and 1985 ensured that the basic right of non-discrimination on the grounds of sex was introduced in all legislation. The Women's Institute, created in 1983, is responsible for furthering equal opportunities between women and men and implementing initiatives to eliminate violence against women. At present and since 2004, gender equality policy is formulated by the *General Secretariat for Equality Policies*.

Before 2004 the legislative framework relating to violence against women comprised the following:

- *Organic Act 11/2003 of 29 September* on Specific Measures relating to Law and Order, Domestic Violence and Social Integration of Foreigners;
- *Organic Act 15/2003 of 25 November*, amending Organic Act 10/1995 of 23 November, on the Penal Code;
- *Act 27/2003 of 31 July*, on Court Orders for the Protection of Victims of Domestic Violence. This act stipulates that protection orders must be issued within 72 hours of the time claims are lodged with the respective court. Furthermore, it provides for the institution of a central registry containing all the records on protection orders to better protect domestic violence victims. Finally, it amends the Penal Code and Code of Criminal Procedure.

Organic Act 1/2004 of 28 December on Measures for Comprehensive Protection against Gender Violence, unanimously adopted by Parliament, constitutes the culmination of legislative action to protect citizens against this type of violence. Its institutional innovations include the Government's Special Bureau to Combat Violence against Women and the Nation-wide Observatory on Violence against Women.

Royal Decree 237/2005 of 4 March¹ regulates the Government's Special Bureau to Combat Violence against Women, which has Directorate General status and operates under the aegis of the Ministry of Labour and Social Affairs' Secretariat for Equality Policies. The Bureau's mission is to formulate public policies relating to gender violence for implementation by the Government, including any action effectively guaranteeing the rights of women who fall victim to such violence, coordinating and furthering action undertaken in this respect in conjunction and coordination with all other competent authorities. The Bureau's Chief Officer, moreover, is vested with authority to defend the rights and interests laid down in *Organic Act 1/2004 of 28 December* in court.

The Nation-wide Observatory on Violence against Women, in turn, is regulated by **Royal Decree 253/2006 of 3 March**². Ascribed to the Ministry of Labour and Social Affairs through the Government's Special Bureau to Combat Violence against Women, this collegiate inter-ministerial advisory body

¹ **Royal Decree 237/2005 of 4 March** establishing the status and duties of the Government's Special Bureau to Combat Violence against Women, created under Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence (Official State Journal 08/03/2005).

² **Royal Decree 253/2006 of 3 March**, establishing the duties, operating arrangements and composition of the State-wide Observatory on Violence against Women, and amending Royal Decree 1600/2004 of 2 July, setting out the basic structure of the Ministry of Labour and Social Affairs (BOE 14/03/2006).

engages in assessment and institutional cooperation and drafts reports, studies and proposals for action in the area of gender violence.

These two coordinating bodies are currently operational. They are primarily concerned with violence against women under the terms of the definition of gender violence laid down in Organic Act 1/2004; the Women's Institute presently focuses on gender violence issues not included in Act 1/2004.

Organic Act 1/2004 of 28 December on Measures for Comprehensive Protection against Gender Violence adopts a comprehensive approach to gender violence, amending several articles of the Spanish Penal Code, Code of Criminal Procedure, Employment Act, Workers' By-laws, Organic Act on Judiciary Power, Act on Civil Service Reform and General Social Security Act.

Under this act, gender violence is defined to be violence inflicted on women by their present or former spouses or men with whom they maintain or have maintained an emotional relationship, whether or not in a common dwelling.

The core objectives of the organic act are:

- To draw attention to the fact that gender violence is not a problem confined to the private sphere but stands as a symbol of the inequality persisting in society, constituting a clear violation of basic rights such as freedom, equality, life, integrity and non-discrimination upheld by the Constitution.
- To proclaim that public authorities must not remain indifferent to gender violence. On the contrary, under the terms of the Spanish Constitution they are obliged to take positive action to guarantee such rights, removing any obstacles that prevent full exercise thereof.
- Lastly, to stress that eradication of this violence calls for a new scale of values based on the respect for basic rights and liberties and equality between men and women, as well as the observance of democratic principles such as tolerance and freedom.

This is the first organic act to include provisions on prevention and awareness-raising as well as the respective civil and criminal measures.

The three areas targeted by prevention, awareness-raising and detection are education, advertising and health care. Advertising found to be illegal for its degrading portrayal of women can be suspended, for instance. In the educational sphere, the emphasis is on teacher training and equality in educational materials, while in health care the focus is on specific training to ensure early detection and the adoption of appropriate medical action.

The organic act acknowledges the specific rights of gender violence victims, such as the right to information, a comprehensive package of social measures and legal counsel, as well as a range of employment and Social Security benefits. Absence from work can be justified, for instance, and victims' positions can be held open even when employment has to be suspended. Employers, in turn, qualify for subsidies when they temporarily replace workers suffering gender violence. Public housing and homes for the elderly are also provided.

The act amends the Code of Criminal Procedures, providing for harsher punishment when violence is inflicted on the perpetrator's spouse or former spouse; and specific courts have been created to handle cases of violence against women. Such courts rule on both criminal and any related civil causes. In addition, an office for the public prosecution of violence against women has been instituted.

1.1 LETTER OF LAW – DEFINITIONS:

CIVIL LAW

The Spanish Civil Code, which dates from 1889, comprises the basis for private law. The Civil Code remained essentially unchanged until the current Constitution came into effect in 1978, with the first reforms coming in 1981 to adapt its contents to the constitutional principle of equality for all.

The changes in certain aspects of separation and divorce introduced under **Act 15/2005 of 8 July**³ were designed to ensure that freedom, the highest value in our body of law, is suitably reflected in marriage.

³ **Act 15/2005 of 8 July amending the Civil Code and Rules of Civil Law Procedure respecting separation and divorce** (Official State Journal 09/07/2005).

Under this act separation or divorce is no longer contingent upon the existence of certain causes; divorce is not subject to prior legal or *de facto* separation; mutual agreement is furthered between the parties and their freedom to exercise their family responsibilities is enhanced. Account is always taken of the interests of minors and shared custody – where an agreement is reached, or exceptionally, established by the judge, but never where there is a history of gender violence – is expressly regulated for these intents and purposes.

In addition, this act amends certain other provisions. **Articles 81** and **86** explicitly address the right to seek separation or divorce with no need to observe the three-statutory three-month “cool off” period when the applicant spouse’s or his/her children’s life, physical integrity, freedom, moral integrity or sexual health is in jeopardy.

Article 104:

The spouse seeking annulment, separation or divorce may apply for implementation of the measures stipulated in the two preceding articles (mainly referred to the custody of children, the use of the family house and other communal properties).

Such measures shall remain in effect only if the respective application is lodged with the court with jurisdiction in the case within thirty days of their initial adoption.

Article 105:

Departure or absence by a spouse from the family abode for justifiable reason does not constitute desertion, providing the application stipulated in the preceding article is filed within thirty days.

Article 170:

This article provides that parents may be deprived of full or partial custody by the court on the grounds of their failure to fulfil their inherent duties, or as part of a criminal sentence or divorce ruling.

CRIMINAL LAW

Several amendments have been made to the 1995 Penal Code to update and adapt its provisions to present realities and needs. *Organic Act 15/2003 of 25 November*⁴ introduces amendments both in the general and specific sections of the Code.

In the reform relating to the specific part of the Penal Code, the act addresses offences against sexual rights and integrity and facilitates punishability, providing for more severe penalties for child molesting and the use of pornography.

The Penal Code was amended in 2003 and 2004 under the following legislation:

- Act 27/2003 of 31 July on Court Orders for the Protection of Domestic Violence Victims.
- Organic Act 1/2004 of 28 December on Measures for Comprehensive Protection against Gender Violence

1.2 DOMESTIC VIOLENCE

As explained in the Introduction, gender violence is defined in Organic Act 1/2004 to be violence inflicted on women by their present or former spouses or men with whom they maintain or have maintained an emotional relationship, whether or not in a common dwelling.

Pursuant to the latest amendments to the **Code of Criminal Procedure**, addressed in Act 38/2002 of 24 October, new procedures were instituted for the rapid trial of perpetrators of certain offences:

Article 795:

2.a This article covers the following offences:

a) Infliction of bodily injury, coercion, intimidation or routine mental or physical violence on the persons stipulated in Article 153 of the Penal Code (i.e., spouse, former spouse, anyone involved or having

⁴ *Organic Act 15/2003 of 25 November, amending Organic Act 10/1995 of 23 November, on the Penal Code* (Official State Journal 26/11/2003).

been involved in a similar sentimental relationship with the perpetrator; the perpetrator's own or his/her spouse's or partner's children, wards, parents or disabled individuals living with the perpetrator or under his/her protection, tutelage, guardianship, fosterage or effective custody).

The procedural reforms introduced by this legislation include measures to shorten proceedings and thereby ensure speedy legal remedies for victims, based primarily on a rapid trial in magistrate's court. The intention is to prevent "secondary victimization", a situation arising when courts fail to provide victims with remedies able to palliate their situation.

As noted in the Stated Purpose of the Act, these new provisions, which will go hand-in-hand with the necessary human and material resources, stem from a determination to change judicial practice, as well as the public perception that criminal prosecution is sluggish and delinquents enjoy apparent impunity.

Act 27/2003 and Organic Act 1/2004, amending the provisions of the 1995 **Penal Code** and the Rules of Civil Law Procedures on protection of abuse victims, introduce changes in a number of articles:

Article 153: (amended by Act 27/2003 and Organic Act 1/2004):

Organic Act 1/2004: Any person who, using whatsoever means or procedures, causes mental harm or physical injury not defined as an offence in this Code, or strikes or abuses a person who is or has been his wife or a woman with whom he has or has had a similar relationship, whether or not in the same dwelling, or a particularly vulnerable person living with the perpetrator, shall be punished with six months to one year imprisonment or thirty-one to eighty days of community service and shall, in any event, be deprived of the right to have or carry weapons for from one year and one day to three years; and when the Judge or Court deems it to be in the interest of the minor or incapacitated person concerned, the perpetrator shall likewise be deprived of parental authority, guardianship, custody or fosterage for a period of up to five years.

2. If the victim of the offence stipulated in the preceding paragraph is among the persons listed in article 173.2, excluding the persons specified in the preceding paragraph of this article, the perpetrator shall be imprisoned for from three months to one year, or sentenced to thirty-one to eighty days of community service and shall, in any event, be deprived of the right to have or carry weapons for from one year and one day to three years; and, when the Judge or Court deems it to be in the interest of the minor or person with disabilities concerned, the perpetrator shall likewise be deprived of parental authority, guardianship, custody or fosterage for a period of six months to three years.

3. When the offence is perpetrated in the presence of minors, involves the use of weapons, takes place in the shared home or the home of the victim, entails violation of any of the punishments stipulated in Article 48 hereunder or of any similar interim or security measure, the range for punishment envisaged in paragraphs 1 and 2 shall be narrowed to the upper half of the interval specified.

4. Notwithstanding the provisions of the preceding paragraphs, in light of the author's personal circumstances or the circumstances surrounding the crime, the judge or court may deliver the next lower sentence for reasons duly substantiated in the verdict.

The provisions governing protection orders are laid down in Act 27/2003 of 31 July on Court Orders for the Protection of Domestic Violence Victims.

1. The examining magistrate shall issue a protection order for victims of domestic violence where the victim is at objective risk, calling for the adoption of any of the protective measures regulated under the terms of this article, where there are sound indications that an offence or misdemeanour has been committed against the life, physical or moral integrity, sexual rights, freedom or safety of any of the persons mentioned in Article 153 of the Penal Code.

2. The protection order shall be granted by the magistrate *ex officio* or at the request of the victim, a person related thereto in any of the ways stipulated in the preceding paragraph, or the public prosecutor.

Without prejudice to their general duty, pursuant to Article 262 of this act, to report instances of the events mentioned in the preceding paragraph, public or private social service institutions or bodies becoming aware thereof must immediately notify the duty magistrate or the public prosecutor, with a view to instituting proceedings for the adoption of a protection order.

3. Protection orders may be applied for directly from the courts, the public prosecutor, law enforcement authorities, victim support offices or social services under the aegis of any level of government.

Such application must be immediately referred to the competent magistrate. Where regional jurisdiction is unclear, proceedings for adopting the protection order must be initiated and resolved by the magistrate with whom the application is lodged, without prejudice to subsequent transfer of the case to the magistrate ultimately found to have jurisdiction. The above-mentioned social services and institutions shall assist the domestic violence victims for whom they provide support to apply for a protection order. To this end, they shall furnish such victims with information, forms and, as appropriate, Internet or similar communication with the courts and the public prosecutor.

4. Upon receipt of an application for a protection order under the circumstances mentioned in paragraph 1 of this article, the duty magistrate shall convene the victim and his/her legal representative, the applicant and the perpetrator accompanied, as appropriate, by legal counsel, to an emergency hearing. The public prosecutor shall likewise be convened. Where appropriate, such hearing may be conducted in conjunction with the hearing stipulated in Article 504 bis 2; the hearing provided for under Article 798 for cases handled in accordance with the procedures laid down in the present act, Book IV, Title III; or, as appropriate, summary trial proceedings. When, exceptionally, the hearing cannot be held during the duty shift, the magistrate with whom the application is lodged shall convene it in the shortest possible time. In any event the hearing must be held within no more than 72 hours from the time the application is filed. During the hearing, the duty magistrate shall adopt any necessary measures to prevent confrontations between perpetrator and victim, the victim's children or any other family members. Consequently, he/she shall arrange for the parties to testify separately. After the hearing, the duty magistrate shall pass judgement as appropriate with respect to the application for the protection order as well as the content and duration of the measures involved. Without prejudice thereto, the duty magistrate may adopt the measures stipulated in Article 544 bis at any time during the proceedings.

5. Protection orders afford victims of the circumstances mentioned in paragraph 1 comprehensive protection that shall include the interim civil and penal measures laid down in this article and any other social support and protection measures established by law. The protection order may be enforced by any authority or level of government.

6. Interim penal measures may consist in any stipulated in the legislation on criminal procedure. The requirements, content and duration of such measures shall be as generally established hereunder. They shall be adopted by the examining magistrate depending on the victim's need for comprehensive and immediate protection.

7. Civil measures must be applied for by the victim, his/her legal representative or the public prosecutor when there are minor or disabled children, providing they have not been previously granted by a civil court of law and without prejudice to the measures stipulated in Article 158 of the Civil Code. Such measures may consist in the attribution of the use of the family dwelling, custody arrangements, visits, communication and time spent with the children, alimony and any other provision deemed to be suitable to save minors from danger or harm.

Article 617 - Offences against persons:

1. Any person who, via whatsoever means or procedure, causes another harm of a nature not defined as an offence in this Code shall be punished with six- to twelve-day house arrest or a one- to two-month fine.

2. Any person who strikes or inflicts physical abuse on another without causing injury shall be punished with two- to six-day house arrest or a 10- to 30-day fine.

Article 620: (article amended by Organic Act 1/2004):

"Ten- to twenty-day fines shall be decreed for:

1. Use of a weapon or perilous instrument by way of intimidation on a minor scale or resorting to such means during a fight for reasons other than self-defence, except where the action itself constitutes an offence.

2. Minor intimidation, coercion, insult or unjustified humiliation, except where the action itself constitutes an offence.

The behaviour described in items 1 and 2 above shall be prosecuted only if charges are brought by the aggrieved party or his/her legal representative.

When, in the cases described in item 2 of this article, the victim is one of the persons stipulated in Article 173.2, the punishment shall consist in four- to eight-day house arrest at an address other than and at a distance from the victim's address, or five to ten days of community service. In such cases, there shall be no need for charges as stipulated in the preceding paragraph of this article, except in the event of claims for damages."

OTHER FORMS OF FAMILY VIOLENCE

Removal of Minors

Organic Act 9/2002 of 10 December amending Organic Act 10/1995 of 23 November on the Penal and Civil Codes with respect to *removal of minors*, establishes the removal of children by parents or other family members up to the second degree of kinship as a specific offence.

Pursuant to the Stated Purpose of the Act:

Among other important innovations, the 1995 Penal Code eliminated the removal of minors under the age of seven as a specific offence. Similarly, it established harsher penalties for the illegal detention or kidnapping of minors and people with disabilities. Nonetheless, where a minor is removed by one of the parents or one of the parents refuses to return a minor to the legal custodian, whether that be the other parent, another person or an institution (where in the minor's interest), the penal response must be clearly differentiated from the punishment in place for general violation of the law; at the same time, anticipatory civil measures must be taken to prevent the illegal removal or retention of minors.

Article 225 bis:

For the purposes of this article, removal is defined as follows:

- 1 Taking minors from their place of residence without the consent of the parent with whom they live or of the persons or institutions entrusted with their custody or guardianship.
- 2 Retaining a minor in serious breach of a duty established by a court or administrative order.

Violations of custody arrangements for minor children as established by the court or administrative authorities also constitute misdemeanours.

Article 622:

Parents who, while not committing a family offence or other manner of disobedience, nonetheless infringe the custody arrangements established by the court or administrative authorities shall be punished with a one- to two-month fine.

1.3 RAPE/SEXUAL ABUSE

Art. 178 - Sexual Assault:

Any person who infringes the sexual rights of another through violence or intimidation shall be punished with one to four years' imprisonment for sexual assault.

Article 179 Rape:

The new Penal Code amends the wording of **Article 179** on sexual assault:

"When sexual assault consists in penile/vaginal, /anal or /oral intercourse or the insertion of body parts or objects in vagina or anus, the perpetrator shall be punished as a rapist with six to twelve years imprisonment."

Article 180:

Assault committed as defined in Article 178 shall be punished with four to ten years imprisonment and the offences defined in Article 179 with twelve to fifteen years imprisonment where any of the following circumstances is present:

1. When the violence or intimidation is particularly degrading or humiliating.
2. When the offence is committed by two or more perpetrators, acting jointly.
3. When the victim is especially vulnerable due to age, disease or personal background, and necessarily when the victim is under 13 years of age.
4. When the offence is committed from a position of superiority or kinship: biological or adoptive ascendant relative, descendant relative, sibling or other kin.
5. When the perpetrator deploys arms or other equally intimidating means able to cause death or injury as provided in articles 149 and 150 of this Code, without prejudice to punishment for death or injury, as appropriate.

If two or more of the above circumstances concur, the range for punishment shall be narrowed to the upper half of the interval specified in this article.

SEXUAL ABUSE

Article 181:

Any person who, in the absence of violence or intimidation, infringes the sexual rights or jeopardizes the sexual health of another without his/her consent, shall be punished with one to three years imprisonment or an 18- to 24-month fine for sexual abuse.

For the purposes of the preceding paragraph, non-consented sexual abuse shall be defined to mean sexual abuse of persons under the age of 13, unconscious or with a mental disability.

The same punishment shall be applied when advantage is taken of a position of manifest superiority that diminishes the victim's freedom.

If two or more of the above circumstances concur, the range for punishment shall be narrowed to the upper half of the interval specified in this article.

Article 182:

Paragraph 1 of **Article 182** of the new Penal Code has been amended and now reads as follows:

"In all the instances set out in the preceding article, when sexual assault consists in penile/vaginal, /anal or /oral intercourse or the insertion of body parts or objects in vagina or anus, the perpetrator shall be punished with four to ten years imprisonment."

1.4 CHILD SEXUAL ABUSE/INCEST

Article 181:

Any person who, in the absence of violence or intimidation, infringes the sexual rights or jeopardizes the sexual health of another without his/her consent, shall be punished with one to three years imprisonment or an 18- to 24-month fine for sexual abuse.

For the purposes of the preceding paragraph, non-consented sexual abuse shall be defined to mean sexual abuse of persons under the age of 13, unconscious or with a mental disability.

The same punishment shall be applied when advantage is taken of a position of manifest superiority that diminishes the victim's freedom.

If two or more of the above circumstances concur, the range for punishment shall be narrowed to the upper half of the interval specified in this article.

Article 182:

Paragraph 1 of **Article 182** of the new Penal Code has been amended and now reads as follows:

"In all the instances set out in the preceding article, when sexual assault consists in penile/vaginal, /anal or /oral intercourse or the insertion of body parts or objects in vagina or anus, the perpetrator shall be punished with four to ten years imprisonment."

Article 183:

Article 183 of the new Penal Code, worded as shown below, provides for harsher penalties where deceit, minor or particularly vulnerable victims, or abuse of a position of superiority is involved.

“When abuse consists in penile/vaginal, /anal or /oral sexual intercourse or the insertion of body parts or objects in vagina or anus, punishment shall be two to six years imprisonment.” In the presence of the circumstances stipulated in Article 180.1, items 3.a or 4.a of this Code, the range for punishment shall be narrowed to the upper half of the above interval.”

1.5 SEXUAL HARASSMENT**Article 184:**

The punishment for sexual harassment has likewise been lengthened in the new Penal Code, with a new wording for **Article 184**, as follows:

“1. Any person who continuously and routinely solicits sexual favours for him/herself or for a third party in the context of employment, schooling or service provision, objectively and seriously intimidating the victim, or placing him/her in a hostile or humiliating situation, shall be punished for sexual harassment consisting in three to five months imprisonment or a six- to ten-month fine (previously the penalty was six to nine weekend arrests or a three- to six-month fine).

2. If sexual harassment is perpetrated by a hierarchical superior in an occupational or academic relationship, or if the victim is explicitly or tacitly given to understand that his/her legitimate expectations in the context of that relationship are in jeopardy, punishment shall be five to seven months imprisonment or a ten- to fourteen-month fine (previously 12 to 24 weekend arrests or a six- to twelve-month fine).

3. When the victim is especially vulnerable for reasons of age, disease or personal background, punishment shall be five to seven months imprisonment or a ten- to fourteen-month fine under the circumstances stipulated in paragraph 1, and six months to one year imprisonment in the cases described in paragraph 2 of this article.” (previously, 12 to 24 weekend arrests in the former and six months to one year imprisonment in the latter).

EXHIBITIONISM AND SEXUAL PROVOCATION.

Article 185:

Further protection for minors and people with disabilities is provided in **Article 185** on exhibitionism and sexual provocation, amending the fine with a new wording as follows:

“Any person who performs or causes others to perform obscene exhibitionism in the presence of minors or people with disabilities, shall be punished with six months to one year imprisonment or a 12- to 24-month fine.” (the former version provided for a six- to twelve month fine)

Article 186:

Article 186 has been amended in much the same manner:

“Any person who directly sells, distributes or exhibits pornographic material to minors or people with disabilities shall be punished with six months to one year imprisonment or a 12- to 24-month fine” (formerly six to twelve months).

1.6 PORNOGRAPHY**Article 189:**

The following shall be sentenced to one to four years imprisonment:

- a) Any person who uses minors or people with disabilities in or in connection with public or private exhibitionism or pornography or to produce any manner of pornographic material, regardless of the medium, or who finances any of these activities

- b) Any person who produces, sells, distributes or exhibits or facilitates the production, sale, distribution or exhibition of pornographic material in any medium whose preparation involves minors or people with disabilities or who holds such material, even where of foreign or unknown origin, in his/her possession for such purposes.

Any person in possession of pornographic material portraying minors or people with disabilities for his/her own use shall be punished with three months to one year imprisonment or a six-month to two-year fine.

Punishment of the next highest degree shall be applied when the perpetrator is a member of an organisation or association, regardless of how transient, that engages in such activities.

1.7 PROSTITUTION

Article 187:

Any person who induces, fosters, promotes or facilitates the prostitution of a minor or person with disabilities shall be punished with one to four years imprisonment and a 12- to 24-month fine.

Any person who performs such actions from a position of authority, as an agent thereof or as a public official shall be subject to the punishment ranging in the upper half only of the above interval and shall be fully disqualified for public employment for six to twelve years.

Punishment of the next highest degree in each respective case shall be applied when the perpetrator is a member of an organisation or association, regardless of how transient, that engages in such activities.

Article 188:

Any person who uses violence, intimidation or deceit or abuses a situation of superiority or the victim's need or vulnerability to induce a person of full legal age to engage in or continue to engage in prostitution shall be punished with two to four years imprisonment and a 12- to 24-month fine.

Any person who uses violence, intimidation or deceit or abuses a position of superiority or the victim's neediness or vulnerability to directly or indirectly induce others to enter, remain on or leave Spanish soil for purposes of sexual exploitation shall likewise be subject to the above punishment.

Any person who performs such actions from a position of authority, as an agent thereof or as a public official shall be subject to punishment ranging in the upper half only of the above interval and shall be fully disqualified for public employment for six to twelve years.

If the intention of the aforementioned behaviour is to initiate a minor or a person with disabilities in prostitution or ensure their ongoing engagement therein, the perpetrator shall be punished with the penalty immediately higher than specified in the preceding paragraphs.

The aforesaid punishments shall be applied as appropriate, without prejudice to possible punishment for sexual assault or abuse committed against victims.

Article 189:

In connection with offences relating to prostitution and child molesting, the present Act amends **Article 189**, which now reads as follows:

“1. The following shall be sentenced to one to four years imprisonment (formerly one to three):

a) Any person who uses minors or people with disabilities in or in connection with public or private exhibitionism or pornography or to produce any manner of pornographic material, regardless of the medium, or who finances any of these activities.

b) Any person who produces, sells, distributes or exhibits or facilitates the production, sale, distribution or exhibition of pornographic material in any medium whose preparation involves minors or people with disabilities or who holds such material, even where of foreign or unknown origin, in his/her possession for such purposes.

2. Any person in possession of pornographic material portraying minors or people with disabilities for his/her own use shall be punished with three months to one year imprisonment or a six-month to two-year fine.

3. Any person behaving as stipulated in paragraph 1 of this article shall be punished with four to eight years imprisonment, given any of the following circumstances:

- a) When minors under the age of 13 are involved.
- b) When the situation created is particularly degrading or humiliating.
- c) When the incidents are particularly serious in terms of the economic value of the pornographic material.
- d) When the pornographic material portrays children or people with disabilities as victims of physical or sexual violence.
- e) When the perpetrator is a member of an organization or association, regardless of how transient, engaging in such activities.
- f) When the perpetrator is an ascendant relative, tutor, care-giver, guardian, teacher or any other person with *de facto* or legal responsibility for the minor or person with disabilities.

4. Any person obliging minors or persons with disabilities to participate in sexual behaviour detrimental to the evolution or development of their personalities shall be punished with six months to one year imprisonment.

5. Persons lawfully vested with authority, guardianship, tutelage or fosterage of a minor or person with disabilities who, aware that their ward is subject to prostitution or sexual abuse, fail to make every effort to bring a halt to such a state of affairs or to report it to the competent authorities accordingly if they lack the resources to provide due custody, shall be punished with three to six months imprisonment or a six- to twelve-month fine.

6. The public prosecutor shall institute action as appropriate to deprive persons engaging in any of the behaviours described in the preceding paragraph of their parental authority or guardianship, tutelage or fosterage.

7. Any person who produces, sells, distributes, exhibits or uses any means whatsoever to circulate pornographic material not directly involving minors or people with disabilities, but in which their altered or modified voice or image is used, shall be punished with three months to one year imprisonment or a six-month to two-year fine.

8. In the circumstances described in the preceding paragraphs, the measures provided in Article 129 of this Code may be applied when the perpetrator is a member of a corporation, organization or association, regardless of how transient, engaging in such activities.”

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

The amendments laid down in *Organic Act 11/2003 of 29 September*⁵ define any form of female genital mutilation to be a single offence. To this end, **Article 149**, paragraph 2 of the Penal Code was amended to read as follows:

“Any person inflicting any of the various types of genital mutilation on another shall be punished with six to twelve years imprisonment.”

Organic Act 3/2005 of 8 July amending Organic Act 6/1985 of 1 July on Judiciary Power, on the persecution of female genital mutilation outside Spanish soil, in turn, makes such persecution possible, on the grounds that this practice, traditional in some of the countries of origin of Spain’s immigrant population, constitutes a violation of human rights and violence against women.

Consequently, this Act empowers Spanish authorities to pursue female genital mutilation even when the offence is committed abroad.

⁵ Organic Act 11/2003 of 29 September on Specific Measures relating to Law and Order, Domestic Violence and Social Integration of Foreigners.

1.10 INTERNATIONAL CONVENTIONS

Spain has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Spain has ratified the following international conventions on the protection of women's human rights, among others:

- Convention on the Elimination of all Forms of Discrimination Against Women (ratified 1983);
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (ratified 1962);
- Convention Against Torture and Other Cruel or Degrading Treatment or Punishment (ratified 1987);
- Optional Protocol for the Convention on the Elimination of all Forms of Discrimination Against Women (ratified 14 March 2000).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment approved in New York on 18 December 2002 and ratified in Madrid on 3 March 2006.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Pregnant women are protected against abortion without their consent under **Article 144** of the **Penal Code**:

"Any person performing an abortion without the woman's consent shall be punished with four to eight years imprisonment and special disqualification to practise any health care profession or render services of whatsoever nature in public or private gynaecological clinics, establishments or surgeries for three to ten years.

The same punishment shall be applied to any person who performs an abortion when consent is extorted by violence, intimidation or deceit."

Protection against negligence is provided for in **Article 146**, as follows:

"Any person causing an abortion as a result of gross negligence shall be punished with three to five months imprisonment or a six- to ten-month fine.

When the abortion is the result of professional negligence, the perpetrator shall be disqualified, in addition, to practise the profession, trade or position for one to three years.

Pregnant women shall not be penalized by virtue of this precept."

The Penal Code likewise provides for independent physical protection of the foetus in **Articles 157 and 158**:

Article 157

Any person who by whatsoever means or procedure causes injury or illness to a foetus that severely harms its normal development or results in a serious physical or mental disorder, shall be punished with one to four years imprisonment and disqualified to practise any health care profession or render services of whatsoever nature in public or private gynaecological clinics, establishments or surgeries for two to eight years.

Article 158

Any person causing the harm described in the preceding article as a result of gross negligence shall be punished with three to five months imprisonment or a six- to ten-month fine.

When professional negligence is involved in the events described in the preceding article, the penalty shall include disqualification to practise the respective profession, trade or position for six months to two years.

Pregnant women shall not be penalized by virtue of this precept.

The decision to proceed with an abortion is decriminalized for rape victims pursuant to Article 417 bis of the 1973 Penal Code⁶.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF THE LEGISLATION

3.1 SUPPORT/PROTECTION

FOURTH PLAN FOR EQUAL OPPORTUNITIES FOR WOMEN AND MEN 2003-2006

This multi-disciplinary scheme attempts to remedy the possible shortcomings of previous plans and cover equality in all the various aspects of public and private life.

To this end, the areas targeted are as follows:

- Inclusion of the gender perspective in public policy,
- Furtherance of equality in public life,
- Participation in decision-making,
- Enhancement of women's quality of life,
- Equality in the civil domain,
- Furtherance of the teaching of egalitarian values,
- Reconciliation of working and family or private life,
- Cooperation among the various levels of government to achieve the above objectives.

APPLICATION OF THE MEASURES IN ORGANIC ACT 1/2004 AGAINST VIOLENCE

a. Awareness and Prevention

A National Plan for the Awareness and Prevention of Gender Violence has been drafted. Four ministries, violence experts, associations and victims participated in preparing this plan, which is described in a subsequent section.

b. Education and Training

Changes have been introduced in the curricula for all stages of schooling to include equality and peaceful conflict-solving; moreover, a new subject, "Citizenship", has been included in secondary education.

Training is provided for all professionals dealing with violence: police force, judicial authorities, attorneys, prosecutors, health care professionals, social workers and public officials in general.

Participation in school councils. Three new seats have been created on the National School Council, occupied by Women's NGOs, women of renowned prestige and the Women's Institute.

c. Social Measures

Right to comprehensive assistance.

Telephone hot line.

Fund in the Social Security Institute's General Treasury to cover 100% of employers' social security fees when they conclude employment contracts to temporarily replace female violence victims.

⁶ Article in the former 1973 Penal Code in effect since the entry into force of the 1995 Code.

Preference for violence victims in the National Employment Plan for Public Service Employment.
One-off subsidy for gender violence victims with no income and particularly low employability.

Preference in access to public housing and homes for the elderly.

d. Health

A Health Observatory has been created and is being rolled out to enhance awareness and training in the health care context.

A Gender Violence Commission has been created under the aegis of the National Health System's Nation-wide Council.

e. Legislation and Legal Practice

Legal counsel for victims.

Creation of specific gender violence courts.

Creation of specialized prosecutors' offices.

Institution of a public prosecutor's office for violence against Women.

PLAN FOR THE PREVENTION AND AWARENESS OF GENDER VIOLENCE

The Spanish Council of Ministers approved a National Plan for the Prevention and Awareness of Gender Violence on 15 December 2006. This plan was drafted by the Government's Special Bureau for Violence against Women and the Nation-wide Observatory on Violence against Women, in conjunction with local and regional governments.

The Plan, which has a budgetary allocation of 48 million euros, pursues two objectives:

1. To improve the Spanish Government's response to the gender violence issue.
2. To seek to change the model for social relations between men and women (appeals to citizenship, personal autonomy and empowerment).

The Plan carries over one hundred measures in the following areas: Justice, Protection, Health, Social Services, Information, Education and Communication. The most prominent of the measures include: the creation of 42 new courts in 2007 specializing in violence against women (in addition to the 42 existing facilities); the institution of 42 new public prosecutors' offices; enlistment of more specialized police officers (222 new officers in 2007); establishment of a nation-wide, 24-hour hot line (to date, this service has been provided by local and regional authorities).

The following strategies are deployed to obtain the desired results: research, professional specialization, mobilization, coordination and evaluation.

The Plan draws from public authorities, local governments, experts, NGOs and society at large to achieve its goals.

3.2 EXPECTED REFORMS

BILL FOR EFFECTIVE EQUALITY BETWEEN WOMEN AND MEN

Although at present no more than a bill outstanding parliamentary approval (nonetheless approved at this writing by the Labour and Social Affairs Commission), the Bill on Effective Equality between Women and Men merits some mention, for its foreseeable impact on the Spanish body of law.

As noted above, the purpose of the Act, pursuant to Articles 9.2 and 14 of the Spanish Constitution, is to ensure the materialization of equal opportunities between women and men. In particular, it pursues the elimination of discrimination against women in all areas of life, especially in the political, civil, occupational, economic, social and cultural domains, to build a more democratic, fair and solidary society (Article 1.1).

To this end, it establishes the principles governing public action, regulates natural and corporate persons' public and private rights and duties and lays down measures designed to eliminate and correct all forms of discrimination on the grounds of sex in the public and private sectors (Article 1.2).

This means that all people residing on Spanish soil are entitled to the rights deriving from the principle of equal treatment and the prohibition of discrimination on the grounds of sex; by the same token, all natural, and public or private corporate persons in Spain, regardless of their nationality, must fulfil the duties and abide by the measures adopted (Article 2).

In this vein, the Bill on the Effective Equality of Women and Men regulates, among others:

- I. The principle of equality and protection against discrimination.
- II. Public equality policies.
- III. The principle of equality and the media.
- IV. The right to equal opportunities at the workplace.
- V. The principle of equality in public employment.
- VI. Equal treatment in the access to goods and services and the supply thereof.
- VII. Equality in corporate social responsibility.
- VIII. Organizational provisions.

Specifically, Article 7 introduces a novelty in the Spanish body of law in connection with violence against women, addressing and defining sexual harassment and harassment on the grounds of sex.

According to this definition, sexual harassment consists in “*any verbal or physical behaviour of a sexual nature, the intention or effect of which is a violation of human dignity, particularly in the context of an intimidating, degrading or offensive environment*” while “*any behaviour based on a person’s sex, the intention or effect of which is a violation of his or her dignity or the creation of an intimidating, degrading or offensive environment*” constitutes harassment on the grounds of sex.

The bill adds that both types of conduct shall be viewed as discrimination, and where a right or expectation thereof derives from circumstances constituting sexual harassment or harassment on the grounds of sex, such situations shall be regarded to be discriminatory on the grounds of sex and subject to the respective consequences.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

SWEDEN

Information taken from the National Report by the Government of Sweden for the Fourth World Conference on women, Beijing 1995, prepared by the Ministry of Health and Social Affairs. The Division for Gender Equality at the Ministry of Industry, Employment and Communications updated the information in **January 2001, February 2003 and September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

Intense action has been taken in Sweden to combat men's violence against women. Despite the many measures that have been implemented, the number of reports of violent crimes against women has increased, and research continues to indicate that unreported violence remains extensive. It is recognised in Sweden that crime involving men's violence against women is complex, as its root causes and mechanisms are closely related to the lack of equality between women and men in society, as well as between individual women and men. Men's violence against women is both an expression of this uneven distribution of power and also a means to uphold this gender-based power structure.

1.1 LETTER OF LAW – DEFINITIONS

The Government submitted a Bill on Violence against Women (Government Bill 1997/98:55) in 1998. The "Riksdag" (parliament) adopted the Bill the same year. The Bill was a direct result of the work of the Commission of Inquiry into Prostitution and the Commission on Violence against Women. The Bill dealt with a number of issues and had three essential points of departure: improving existing legislation, launching additional preventive measures and offering women subjected to violence better treatment than earlier. In total, the Government allocated SEK 41 million in 1998 to implement and to carry out the measures and law amendments.

The legislative changes proposed in the Bill came into force on 1 July 1998. The prohibition of the purchase of sexual services came into force on 1 January 1999. Below is a summary of the Bill on legislative and other measures to counteract violence against women.

In April 2005 a new legislation on sexual crimes came into force (Law 2005:90; Government Bill 2004/05:45) and at the same time the Act prohibiting the Purchase of Sexual Services was revoked and replaced together with the other sexual crimes in Chapter 6 of the Penal Code.

GROSS VIOLATION OF A WOMAN'S INTEGRITY

In 1998 a new offence, *gross violation of a woman's integrity*, was introduced into the Penal Code. It deals with repeated punishable acts directed by men against women who have or have had a close relationship with the perpetrator. "Gross violation of a woman's integrity" means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be sentenced for gross violation of the woman's integrity, instead of for each single offence he has committed. A necessary condition for sentencing for the offence is that the acts were part of a repeated violation of the woman's integrity and were intended to damage seriously her self-confidence. The crime makes it possible for the courts to increase the penal value of these offences in situations where they are part of a process that constitutes a violation of integrity, which is often the case in domestic violence. It will thus also be possible to take the entire situation of the abused woman into account. The penalty is imprisonment for at least six months and at most six years. The new crime does not exclude the possibility of the perpetrator simultaneously being indicted for, for instance, aggravated assault or rape. Since the entry into force of the new provision, a number of judgments have been pronounced on the basis of the provision.

In light of the fact that the legislation now has been in force for several years the Government intends to evaluate the legislation and look into how to further strengthen the protection of women against violence. The further details for such an evaluation is now taken under consideration by the Ministry of Justice.

In 1988, the Restraining Orders Act came into force, to provide protection for women who are threatened, persecuted or harassed. Orders prohibit men from contacting or visiting women when there is a risk of persecution, harassment or other criminal action. The penalty for violation of the order is a fine or 1 year of imprisonment.

1.2 DOMESTIC VIOLENCE

In Sweden the reported cases of assaults on women have increased with 20 per cent in the last ten years. This increase is probably mainly due to the fact that women are more likely to report the abuse than before. But according to the National Council for Crime Prevention a part of the increase is probably also due to an increase. A little more than 24 000 cases of assaults on women were reported in 2005. Statistics shows that in approximately 75 per cent of the cases the women are acquainted with the offender.

1.3 RAPE/SEXUAL ASSAULT

There has been a particular increase in the number of reported sexual crimes in recent years. They increased by 45% in the period 1994-2004. In the year of 2005 11700 sexual crimes were reported, of which 3 800 were rapes. This is an increase with 44% compared to the year before. With respect to rape, it is the number of rapes committed indoors that has increased. In all likelihood it is primarily cases of rape by a person known to the victim that have increased most.

As mentioned in section 1.1 new legislation on sexual crimes came into force in April 2005. The purpose of the new sexual legislation in Chapter 6 in the Penal Code is to further strengthen and make clear the absolute right of every individual to personal and sexual integrity and sexual self-determination and to highlight and strengthen in different ways protection for children and young people from sexual violations.

The provision on rape has been broadened by lowering the requirement of force. In order to be convicted for rape it is sufficient, under the new legislation if the offender has forced the victim to engage in another sexual act through assault, violence or the threat of a criminal act. This means that with regard to the requirement of violence, less grievous forms of violence will be sufficient. As to the degree of threat, it is no longer required that the threat be of the kind that constitutes a threat of imminent violence endangering life or health or some other more significant interest. Instead, a lesser degree of threat can suffice for liability for rape.

Under the new legislation the provision on rape has been broadened to also include cases of sexual exploitation. Such cases would be, for example, if a person engages with another person in sexual intercourse or some other sexual act by inappropriately exploiting the victim who- due to for example mental disturbance or intoxication is in a helpless state. This means that acts previously defined as sexual exploitation may now be regarded as rape.

Rape in marriage is included in the legal definition of rape.

Neglecting to report or otherwise reveal gross sexual offences (rape, aggravated rape, and aggravated sexual exploitation of a minor or grave procuring) are punishable offences.

1.4 CHILD SEXUAL ABUSE/INCEST

Chapter 6 in the Swedish Penal Code deals with sex crimes perpetrated against both children and adults but since April 2005 special penal provisions for crimes against children have been introduced. The right to sexual self-determination is gained at the age of 15.

RAPE OF A CHILD

The legislation includes a new penal provision on rape of a child aimed at the most serious sexual crimes against children. Under this provision, the use of violence or threats is no longer a requirement for the crime to be applicable. A person who engages in sexual intercourse, or some other sexual act that constitutes a serious violation, with a child under the age of 15 is convicted of rape of a child whether or not violence or threats have been used. The provision also covers cases where youths

between the ages of 15 and 18 are exploited by people with whom they have a close relationship or other people who have special responsibility for them. The penalty is at least two and at most six years imprisonment or, for a gross crime, at least four and at most ten years' imprisonment.

SEXUAL EXPLOITATION OF A CHILD

The crime of *sexual exploitation of a child* is also new. It regulates cases of rape of a child that are less serious in view of the circumstances of the crime. The penalty is at most four years' imprisonment. The intention is that this provision is to be applied restrictively.

SEXUAL ABUSE OF A CHILD

A new provision on *sexual abuse of a child* imposes criminal liability on a person who, with a child, engages in other sexual acts than those provided for in the penal provisions on rape of a child and sexual exploitation of a child. Such acts could e.g. include masturbation of the perpetrator or fondling of the child's genitals. The penalty is at most two years' imprisonment or at least six months and at most six years if the crime is gross.

SEXUAL INTERCOURSE WITH AN OFFSPRING OR A SIBLING

A person, committing *sexual intercourse with an offspring* can be sentenced to imprisonment for at most two years. A person committing *sexual intercourse with a sibling* can be sentenced to imprisonment for at most one year.

SEXUAL MOLESTATION

The penal provision on *sexual molestation* imposes penalties on inter alia a person who sexually touches a child less than 15 years of age otherwise than as defined by the concept "sexual act". Under the legislation, a sentence for sexual molestation shall also be imposed on a person who exposes himself or herself in such a manner as to cause discomfort, or who by word or deed molests a person in such a manner as to violate that person's sexual integrity. The penalty for sexual molestation is fine or imprisonment for at most two years.

EXPLOITATION OF A CHILD FOR SEXUAL POSING

The legislation in chapter 6 includes a new special provision to protect children from exploitation for sexual posing. The crime, termed *exploitation of a child for sexual posing*, includes acts in which a person promotes or exploits a child less than 15 years of age to perform or take part in sexual posing. It also includes acts committed against a child over the age of 15 but under the age of 18 if the posing is by its nature likely to damage the child's health or development. The punishment in a normal case is a fine or imprisonment for at most two years. For a gross crime the punishment is imprisonment for at least six months and at most six years. The gross crime encompasses, for example, systematic exploitation of minors for sexual posing.

PURCHASE OF A SEXUAL ACT FROM A CHILD

The ban on purchasing sexual acts from children has been strengthened by extending the penal provision to include purchases of sexual acts from children in situations other than pure prostitution. A person who induces a child under 18 years to undertake or endure a sexual act in return for payment can be sentenced to pay a fine or to imprisonment for at most two years

The use of Internet and other communication technologies has made it easier for offenders to reach children and has exposed children to new forms of grooming for sexual abuse. In order to improve the knowledge of the problem, to access how the criminal legislation can be applied under these circumstances and to consider the need for new measures. The minister of justice has commissioned the National Council for Crime Prevention and the Chief Public Prosecutor to evaluate these issues.

1.5 SEXUAL HARASSMENT

In Sweden, the Equal Opportunity Act contains provisions concerning equality between women and men in working life. This Act is made up of two parts. The first part consists of provisions that make it incumbent upon an employer to take certain active measures in order to promote equality at the work

place. The employer, who does not comply, runs the risk of being ordered to do so under the penalty of a fine. The other part of the Act consists of several provisions prohibiting discrimination based on sex. The Equal Opportunities Ombudsman has the task of overseeing the compliance with the Act and can also bring cases of discrimination to the Labour Court.

By means of Bill 1997/98:55, present rules concerning sexual harassment have been strengthened. A new definition was inserted in the Act:

Sexual harassment means such unwanted conduct based on sex or unwanted conduct of a sexual nature, that violates the integrity of the employee in work.

The Act was also improved so that it becomes fully evident that every employer is obliged to take active measures to prevent and hinder an employee from being exposed to sexual harassment. The employer must make clear in a general staff policy statement that sexual harassment involving employees cannot in any way be tolerated. This policy must be made known to the employees. It is equally important that routines are devised for dealing with alleged or factual sexual harassment. The employer who receives information that an employee has been exposed to sexual harassment by another employee must investigate the circumstances surrounding the alleged harassment. The employer who does not fulfil his or her obligations runs the risk of having to do so under the penalty of a fine.

In cases where the employer is the one sexually harassing an employee, the rules in the Penal Code concerning molestation or sexual molestation are applicable.

The *Act on Equal Treatment of Students at Universities* (SFS 2001:1286) entered into force in 2002. The Equal Treatment Act is intended to promote equal rights for students and applicants and to combat discrimination on grounds of gender, ethnicity, religion or other belief, sexual orientation and disabilities.

The law applies to higher education provided at higher education institutions run by the State, a municipality or a county council and to private education providers who are accredited to issue certain degrees. The provisions of the law prohibit direct and indirect discrimination, harassment and instructions to discriminate. Nor may higher education institutions subject a student or applicant to reprisals because he or she has lodged a complaint against the institution for discrimination or has participated in an investigation under the law.

The law states that higher education institutions shall within the framework of their activities pursue goal-oriented efforts to actively promote equal rights. Higher education institutions shall take measures to prevent and remedy harassment of students and applicants. Higher education institutions shall also prepare an annual plan that shall contain an overview of the measures required to promote students' equal rights and to prevent and remedy harassment. They have a duty to investigate the circumstances surrounding complaints of harassment and take the measures that can reasonably be demanded to prevent continued harassment. Violations of the prohibition of discrimination may result in liability for damages. U/UH

1.6 PORNOGRAPHY

CHILD PORNOGRAPHY

On January 1, 1999 new legislation on extended criminal liability for association with child pornography entered into force. Only ordinary statute law (mainly the Penal Code, Chapter 16, Section 10a) is now applicable to child pornography. Virtually all association with child pornography images, including possession, constitutes a criminal offence. The legislation applies to all kinds of media and therefore also to the electronic environment. In addition, import and export of child pornography are prohibited. On 1 April 2005 the maximum penalty for gross child pornography crimes was increased from four to six years' imprisonment.

In August 2005 the Government appointed a committee to review the criminal legislation on child pornography, aimed to make the combat against child pornography more efficient and to strengthen the position of those children who are victims of such crimes.

1.7 PROSTITUTION

Since April 2005 The Act Prohibiting the Purchase of Sexual Services (1998:408) has been revoked and replaced with a new penal provision on the purchase of sexual services in Chapter 6 of the Penal Code.

The provision prohibits obtaining sexual services for payment. This has raised considerable interest abroad as it outlaws the act of buying sex and penalises the buyer but not the seller. The punishment for purchase of sexual service is a fine or imprisonment for up to six months. Attempted offences are also punishable. The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, in so-called massage-institutes, et cetera. The Government considers that it is not reasonable to punish the person who sells sexual services. In the majority of cases this person is the weaker party who is exploited by the buyer. It is also important to motivate women in prostitution to seek help to leave prostitution. They should not run the risk of punishment because they have been victims of prostitution. By the prohibition of purchase of sexual services, the Swedish Government believes that prostitution and its damaging effects can be counteracted more effectively than hitherto. The prohibition should be seen as a supplementary element in the efforts to reduce prostitution and not as a substitute for broader social endeavours. Since April 2005 the provision also apply to a person who takes advantage of a sexual service paid for by another person. Thus it also covers cases, for example, in which a business contact provides and pays to use women in prostitution.

A person who promotes or improperly financially exploits a person's engagement in casual sexual relations in return for payment shall be sentenced for procuring to imprisonment for at most four years. The penalty for gross procuring is imprisonment for at least two and at most eight years. In assessing whether the crime is gross, special consideration shall be given to whether the crime has concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of another person.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

There is no special legislation for obscene phone calls or telephone sex but the rules in the Penal Code concerning molestation or sexual molestation could be applicable.

1.9 FEMALE GENITAL MUTILATION

Female genital mutilation is prohibited and has been punishable in Sweden, under a special act of law, since 1982. The law has been amended twice since, the last time in 1999.

Section 1 of the Act Prohibiting Genital Mutilation of Women (1982:316) states that all incisions into the female outer genitals with the aim of mutilating or bringing about other lasting changes to the genitals are prohibited. The prohibition applies whether or not consent has been given. The act of genital mutilation may not be performed even if the woman - or guardian in the case of children - has explicitly requested measures of this kind. The aim of the legislation is to prevent the occurrence of female genital mutilation. A parallel purpose is to take a stand against the attitude towards women that is expressed through this practice. Incision refers to all kind of measures ranging from comprehensive intervention to minor incisions. Thus all forms of incision are prohibited.

A person who fails to comply with the prohibition may be sentenced to a maximum of four-years' imprisonment. For gross offences, i.e. in cases where the incision has put the woman's life at risk, caused serious illness or otherwise involved particularly ruthless behaviour, the punishment is imprisonment of a minimum of two years and a maximum of ten years. Attempting, preparing or conspiring to commit the offence, or neglecting to report impending genital mutilation is also punishable. The offence of genital mutilation is exempted from the principle of dual criminality. A person who violates this law in another country can consequently be sentenced in a Swedish court of law.

1.10 INTERNATIONAL CONVENTIONS

Sweden has participated actively in the elaboration of the UN Declaration on Violence against Women and attaches great importance to its implementation.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

ATTEMPT, PREPARATION, CONSPIRACY AND COMPLICITY

Attempt, preparation and conspiracy to commit a sexual crime are criminalised in some cases. Complicity is also criminalised.

LIMITATION PERIOD

The limitation period is in general counted from when the crime is committed, but for some sexual crimes against children the statutory limitation period has been extended so that it does not begin to run until the child turns or would have turned 18 years of age. (Penal Code, Chapter 35, Section 4).

CRIMES COMMITTED ABROAD

Usually double criminality is a requirement to sentence offenders for crimes committed abroad, but since April 2005 double criminality is no longer a requirement to sentence offenders for serious sexual crimes committed abroad against children under 18 years of age.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SUPPORT/PROTECTION

Sweden has made great efforts in order to fight men's violence against women and increase the support to the victims. In order to strengthen the support to women exposed to violence and their children the Government have decided to invest approximately SEK 100 million each year during 2006-2008. During 2006 a total sum of 77,5 million was divided to the local municipalities and voluntary organisations in order to stimulate the development of support and help. The Government also support local non-profit women's refuges and other voluntary organisations working with measures in order to fight men's violence against women with annual organisational support via the state budget. During 2006 a total amount of SEK 16 million was divided.

In June 2006 the inquiry on Social Services Support to Women Exposed to Violence presented the report "Taking Responsibility for its Assistance – Social Services Support for Women Exposed to Violence" (SOU 2006:65) to the Government. The proposals of the Inquiry include more distinct legislation and several tools to strengthen the support given by the social services to women exposed to violence. The proposals have potential to make a great difference for women exposed to violence. The report is now on a formal circulation for comments.

It is also important to improve the knowledge and the National Board of Health and Social Welfare has therefore been assigned to carry out a national study on useful methods and effective work by the social services in this field.

PREVENTIVE MEASURES

In June 2003 the Swedish government adopted a National Action Plan to prevent female genital mutilation. The overall goals of the plan are that genital mutilation of girls living in Sweden shall cease and that those girls and women in Sweden who have already been genitally mutilated receive adequate support.

THE PROSECUTION AUTHORITY EFFORT TO COMBAT VIOLENCE AGAINST WOMEN

The Swedish Prosecution Authority works continually to increase the efforts when it comes to combat crimes against women and children, especially violent crimes and sex crimes. The last decade the Prosecution Authority and its prosecutors have went through a great development. Several measures have been established to combat crimes against women and children. Focus has been placed on issues concerning:

- training and education,
- improved investigation methods,
- cooperation with the Police,
- cooperation with social services, health and medical care and voluntary organizations,

- increased knowledge of the mechanisms of violence and
- increased support to the victims.

All public prosecutors get education in the area of crimes against women. Furthermore, at all public prosecutor offices in Sweden, there are now special expert prosecutors for crimes against women and children. These prosecutors have special skills and experience for that task and they get special training for the task. At the three international prosecutor offices work prosecutors who are experts in combating crimes with international connections, for example trafficking in women and children.

The prosecutors work closely together with the police during the investigations concerning crimes against women and children. Some prosecution offices and police authorities have created special teams in order to combat crimes against women and children even more effectively.

Since 2005 there are special units called Prosecution Development Centres within the Swedish Prosecution Authority. One of the Centres works with violent crimes and sex crimes. The Prosecution Development Centre's task is to undertake methodological and legal development within that area. Legal follow-up and inspection are also conducted. The creation of the Development Centres further improves the combat of crimes against women.

In February 2003 the Prosecutor-General decided upon guidelines and an action plan for the work concerning victims of crime. These documents regulate, for example, issues concerning treatment and support of crime victims. Special attention shall be shown to women who have been victims of violent crimes.

In May 2006 the Prosecution Authority has compiled a new manual (handbook) concerning investigations of crimes against children. The manual consists of guidelines on several areas, for example questioning of the children, cooperation between authorities and support for the victims.

THE POLICE EFFORT TO COMBAT VIOLENCE AGAINST WOMEN

The police authorities' 2003 annual reports to the National Police Board showed that a number of police authorities performed risk and threat assessments in some form or another, usually on the basis of the SARA-model and with the assistance of their crime intelligence units. In addition to having improved their routines for the provision of assistance and support to particularly exposed individuals, the police authorities have also appointed special victim support officers and arranged training in crime victim matters for their staff. They have also developed their co-operation with other local stakeholders, such as municipal agencies and various non-government organisations.

The National Police Board report to the Ministry of Justice concerning restraining orders shows that there is room for improvement in this area, particularly when it comes to various routines that will improve the police authorities' follow-up of cases involving restraining orders, e.g. routines to keep track of individuals protected by a restraining order or the grounds on which such an order was denied. The National Police Board is of the opinion that the police authorities should include such routines in their local service regulations, which should also stress the importance of co-operation with the local public prosecutor's office and the social services, as well as the provision of relevant information to the parties concerned.

The National Police Board has also compiled a handbook concerning routines and guidelines for risk- and threat assessments. The National Police Board 2007- 009 planning directives comprise the Board's expansion on the government's overall goals and guidelines. The directives state that violent crimes including crimes against women are a priority. The measures taken by the police regarding domestic violence and related crimes must increase both in quantity and quality.

Several police districts have created special units that work specifically against men's violence against women, including special units that work against prostitution and trafficking in human beings.

VIOLENCE AGAINST WOMEN AND PROSTITUTION

The National Board of Health and Welfare was charged with undertaking development work on questions concerning violence against women and prostitution. This was intended to facilitate the expansion of competence and improvement of methods within the social and health care services. This task included the initiation and support of collaborative projects, the dissemination of information and closely following international developments. For the above-mentioned tasks, the Board was allocated extra funds for the period 1998-2000. After 2000, the tasks became part of the Board's routine work.

FEMALE GENITAL MUTILATION

The National Board of Health and Welfare was in December 2003 assigned to implement the National Action Plan to prevent female genital mutilation (FGM). Between December 2003 and June 2006 the Board has carried out different forms of measures to inform and increase knowledge about preventive work against FGM. One of the activities is the establishment of a resource centre comprising a databank of good examples and experience from preventive work at national and international levels. The Board has also developed and distributed information about FGM to those professions being affected, among them the police, prosecutors, and those working within schools, social services, and health care and with reception of refugees. A declaration has been signed by representatives of a number of (religious) communities taking exception to all forms of female genital mutilation and showing their support for the national action plan. The Board will continue its preventive work and the government will carefully follow developments within this area.

VIOLENCE AGAINST MIGRANT WOMEN

The Aliens Act (2005:716) comprises specific rules in order to protect migrant women against men's violence. If there is reason to believe that an applicant for a residence permit, who intends to marry or enter into a cohabitee relationship with someone in Sweden, will be subjected to violence, the application should be rejected. The application should be rejected whether or not the relationship appears to be serious.

A special provision concerns violence against women who have been granted a temporary residence permit. According to the general rule, an alien who has been granted such a temporary permit may only be granted a new temporary or permanent residence permit if the relationship continues. However, it is possible to deviate from this rule if the relationship has ended primarily because the alien or the alien's child has been subjected to violence.

IMPROVING THE QUALITY OF THE OFFICIAL CRIME STATISTICS

The statistics in Sweden concerning violence against women is under constant development. It is the National Crime Prevention Council that is responsible for producing and disseminating crime statistics. In the matter of assault it is possible to identify offences that have been committed by a person acquainted with the woman. The meaning of the term 'acquainted' is fairly vague, however. The perpetrator may, for example, be a female friend or a male work colleague. In 2005 about 24 000 cases of assault against a women were reported to the police. In more than 70 percent of these cases the woman and the perpetrator were acquainted. In approximately two third of these cases, i. e. 11 000 offences, the offender is a present or former male partner. It is possible to discern the sex of victims concerning cases of assault and when it comes to the crime gross violation of a woman's integrity we automatically know the sex of perpetrator, the victim and their relationship.

The Government has also charged the Office of the Prosecutor-General to present regular reports on the number of restraining orders issued and to make suggestions as to how such statistics can be coordinated with statistics on breaches of restraining orders.

Official crime statistics on reported offences can never give a complete picture of the scope of violence against women. Therefore, the Crime Victims Compensation and Support Authority has received the financial means for conducting a special research study, directed specifically at investigating the occurrence of non-reported violence against women, for an assessment of the true nature of this form of criminality and the resources necessary to halt it. The study called Captured queen was based on the answers from 7000 randomly chosen women in Sweden and was completed in 2001. The study showed that 25 percent of the women had experienced physical violence on the part of a man. Five percent had been subjected to physical violence in the last year. 34 percent, had been subjected to sexual violence by a man. Seven per cent have had such experiences in the last year. 18 percent had experience of being threatened by a man. Four percent of the women had been threatened in the last year. These figures intend experiences since turning fifteen.

GROSS VIOLATION OF A WOMAN'S INTEGRITY

In 2005 about 2,150 offences regarding gross violation of woman's integrity were recorded by the police. Offences recorded by the police as assault by an acquaintance often represent incidents of violence that are committed by a current or former partner, and that also constitute part of a repetitive

pattern of victimisation. Of all the cases of gross violation of a woman's integrity reported in 2005, approximately one third percent resulted in prosecutions.

IMPROVED WAYS AND MEANS OF SUPPORTING WOMEN VICTIMS

In recent years the National Police Board (NPB) has been very active in developing victim support routines and spreading knowledge about crime victim issues. One result of this long-term work is a national strategy for victim support work in the police service devised by the NPB at the request of the government. The strategy, which takes as starting point basic human rights, should be seen as an attempt to focus efforts in an efficient and effective manner so that they will have an impact on the day-to-day work of the police. The strategy lays down some basic elements in the victim support provided by the police, viz. cooperation with other local stakeholders, active management of police investigations, the provision of relevant information to crime victims and a clear distribution of responsibility for victim support within each police authority. In addition, the police authorities must be able to launch and perform ongoing risk and threat assessments round the clock.

The National Police Board has in its planning directives translated the government's overall goals for the police service into strategic objectives both for the Board and for the police authorities in areas where the police need to improve their work. One such objective is that the police, unless this is obviously unnecessary, should contact victims of a violent crime or an invasive theft offence no later than two weeks after they have reported the crime to the police. Another is to achieve a reduction in crime through systematic improvements in the support given to crime victims, e.g. crime prevention information and advice.

New legislation concerning legal certificates came into force in January 2006 (SFS 2005:225). According to the new legislation the National board of Forensic Medicine shall have the main responsibility for issuing legal certificates. The legislation prescribes, as a main rule, that a legal certificate shall only be issued by doctors that have special competence in issuing such certificates. The Legal certificates shall therefore normally be issued by doctors from the National board of Forensic Medicine or by doctors that are contracted by that agency. The purpose of the reform is to increase the quality of the legal certificate to ameliorate the support for, among others, female victims in the criminal procedure.

National centre for Battered and Raped Women (Rikskvinnocentrum, RKC) was established in 1994 as a joint venture by the Government and the Uppsala County Council. It is an expert unit within the health and medical services for women who have been subjected to battering and sexual assaults. Since 2002 RKC which is located at Uppsala University Hospital, is a self-contained clinic. Physicians, midwives, medical workers and administrators work at the Centre.

In the Government directives RKC has been commissioned to

- offer services to patients with availability day and night
- develop methods for care and treatment of women who have been subjected to battering and rape,
- function as a consulting resource for other medical departments in the country,
- educate medical staff and other categories of staff who are liable to meet women subjected to violence,
- carry on research within the faculty of medicine and actively follow research and development work concerning sexualized violence.

The centre is financed by Uppsala County Council and the Swedish Government.

WOMEN'S EMERGENCY SHELTERS

There are presently approximately 150 local women's emergency shelters. They constitute a significant form of protection and help for women subjected to violence and their children. The shelters are mainly organised in two national umbrella organisations. Some shelters are organised by the municipalities. The national umbrella organisations receive annual organisational support via the state budget.

Within the Swedish five-year programme to combat "violence and oppression in the name of honour" the county administrative boards in Stockholm County, Västra Götaland County and Skåne County have received funding for sheltered housing. The latest report shows a total amount of 105 places of emergency shelters. It is mainly young girls/women (18-24 years old) that live in those shelters.

CRIME VICTIMS COMPENSATION AND SUPPORT AUTHORITY / COMPENSATION TO VICTIMS

The Crime Victim Compensation and Support Authority is responsible for assessing state compensation and for administering the Fund for Victims of Crime and acting as an expert centre.

A victim of a crime may be entitled to financial compensation from the Crime victim Compensation and Support Authority, particularly if you have suffered bodily injury. The conditions are that the offender is unable to pay the damages for your injury and that the victim is not covered by an insurance. A victim may receive compensation also if the perpetrator is unknown.

The Crime Victim Fund was established in 1994. It is funded primarily by a fee of 500 SEK (approx. 54 Euro) paid by offenders convicted for an offence punishable by a prison sentence. The aim of the fund is to provide financial support to research, education and information concerning crime victims. The fund generates approximately 30 million SEK every year. The Government has stipulated for several years that projects focusing on violence against women should be given priority. Many victim support centres receive their main funding through the Crime Victim Fund.

The dissemination of information to crime victims on criminal injuries compensation is a statutory duty for the Authority. The Authority also plays an important role as a centre of expertise. It possesses a vast knowledge of information on victims of crime and especially in the area of men's violence against women.

WITNESS SUPPORT SERVICE

There is a witness support service established at almost all District and Regional Courts in Sweden. This is a non-profit service and in most places it is carried out by the victim support centres. The main task of the witness support service person is to help witnesses and injured parties in the waiting room and to assist with information and support before and after the trial.

NON- GOVERNMENTAL ORGANISATIONS

A number of non-governmental organisations offer crime victim support such as victim support centres and women's/men's refuges. 110 of these centres for victim support have joined the Swedish Association for Victim Support.

INCREASED PROTECTION OF PERSECUTED AND THREATENED PERSONS

The Government has recently decided to appoint a special investigator with the aim to present proposals on how to improve the protection of threatened persons. Many of them are women subjected to the threats and persecutions of a spouse or former spouse or partner. The special investigator will particularly look at the use of restraining orders and the possibility to use electronic monitoring.

METHODS OF TREATMENT FOR MEN SENTENCED FOR VIOLENT OFFENCES AGAINST WOMEN

The Swedish Prison and Probation Service has for a number of years been developing local programmes aiming at the treatment of men. In the context of National Programmes, the Swedish Prison and Probation Service has developed evidence-based programmes for special target groups. The group programme IDAP (Integrated Domestic Abuse Programme) is one programme and the target group is men using violence or other forms of control behaviour against their partner. The IDAP is based on cognitive behaviour programme and it complies with the criteria of the Swedish Accreditation Panel.

IDAP and other national programmes e.g. such as " ROS "focusing on sex offenders, are implemented in several prison institutions in Sweden. Prison and Probation staff is educated and trained in matters relating to domestic abuse.

A report *Men's violence – children's experiences* was turned over to the minister for gender equality in august 2007. The commission for this report was the result of an agreement between the Minister for gender equality and the two supporting parties, the Left party and the Green party. The commission was to map existing work, both in municipalities and organisations, concerning violent men but also concerning children experiencing men's violence against women. The investigator was further commissioned to suggest ways in which this work could be coordinated and developed. The report is being processed within the Government's office.

The Government's ambition is that in some cases restraining orders will be able to be combined with electronic monitoring. The National Police Board has therefore been instructed to investigate various technical solutions that could be used for this purpose. The findings are to be presented by 31 December 2006.

In recent years, several men's organisations have been created in Sweden for the purpose of helping and supporting men in danger of committing or having committed violent crimes against women. Of these, emergency centres run for violent men, and a Male Network against Male Violence, may be mentioned. The Emergency centres for violent men receives subsidy through the National Board of Health and Social Welfare.

EDUCATION AND DEBATE

Regarding higher education amendments to the Degree Ordinance (Higher Education Ordinance (SFS 1993:100), appendix 2) have been made in 2006 for a majority of the professional degrees, stating objectives for the students related to human rights. In addition, for certain professional degrees the student shall have acquired knowledge more explicitly related to gender in order to obtain a degree. The degree description for the teaching degree was changed in 2005 to reflect the requirement that students must be able to communicate and apply applicable regulations aimed at preventing and fighting discrimination and other degrading treatment of children and pupils.

Organisations working on behalf of immigrant women have received financial support for projects and other efforts in this field.

Organisations working on behalf of disabled women have also received financial support for projects and other efforts in this field.

WEBSITE

The Government has set up a website on issues related to violence against women (<http://www.regeringen.se/sb/d/3208>). The website is administered by the Division for Gender Equality at the Ministry of Industry, Employment and Communications.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** and **1.4** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

SWITZERLAND

The information concerning legislation on violence is drawn from the report “Great achievements – small changes? The situation of women in Switzerland” (*Des acquis – mais peu de changements? La situation des femmes en Suisse*), published by the Federal Commission for Women’s Issues. The information was supplemented by the Federal Office for Equality between Women and Men in **November 2000**, in **February 2003** and in **August 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

The subject of violence against women was generally taboo until the feminist movement put a name to it in the 1970s. The first studies concerned ill treatment by spouses. Subsequent work by the feminist movement gradually shed light on other forms of violence: rape, sexual abuse of children, sexual harassment at work and sexual assault during medical treatment; pornography, prostitution and sexist advertising were also defined as violence against women.

As demonstrated by one of the first studies in the field (“Leaving is not enough” (*Partir ne suffit pas*)), published by Mr PLETSCHER in 1977), men frequently resort to violence and women feel guilty; violence against women takes place in all social classes and for men it is a way of exercising power and control in a patriarchal society.

In the mid-1970s, the feminist movement set up organisations to help battered women and their children, such as refuges and crisis centres for rape victims, and launched education campaigns. To begin with, women’s organisations were alone in their fight against male violence. It was not until 1987 that the trade unions acknowledged the problem of sexual harassment at work.

In 1982 a report by the Federal Commission for Women’s Issues, entitled “Violence against Women in Switzerland”, stated that there were no reliable statistics concerning the frequency of violence against women. It called for a national enquiry but there was no response until the early 1990s when a number of research projects were commissioned. In the 1990s there was a slight increase in the number of grants allocated to the running and setting up of women’s refuges. Rape crisis centres began to offer more specialist services and self-defence courses mushroomed. The fact that these services are publicly funded means that the authorities and the general public are obliged to acknowledge the problem; all requests for assistance now give rise to debates in the cantons on the issue of violence against women. Nevertheless, there is a great risk that, by providing such services, the wider aim of creating a society in which there is no violence against women will be forgotten. The need for prevention must be recognised.

There is no significant statistical data or any institutionalised national report on violence against women in Switzerland. It is therefore difficult to provide precise information on the actual situation. In a representative survey conducted by Lausanne University, 26.6% of the women interviewed in 2003 said that they had, in the course of their adult life, been subjected to physical violence or threats by either someone they knew or by a stranger. 25.2% had been victims of sexual violence, and 10.7% of these cases had concerned rape or attempted rape. 39.4 % of the women interviewed had been affected by physical or sexual violence at least once in their adult life. 9.8% said they had been subjected to physical violence or threats by their partner or a former partner and 3.6% had been subjected to sexual violence by a former partner.¹⁴

Despite twenty years’ work by the feminist movement to make people aware of violence against women, prejudices and myths are being dispelled only very slowly; there is still a widespread belief that women are, by nature, masochists and enjoy violence. Violent men are always considered to be sadists, who react impulsively to their sexual urges, rather than ordinary men. Men are still reluctant to accept responsibility for the violence they perpetrate and there are very few services offering help to

¹⁴Martin Killias/Mathieu Simonin/Jacqueline De Puy, Violence experienced by women in Switzerland over their lifespan: Results of the International Violence against Women Survey (IVAWS), Berne 2005.

violent men. The reaction to the misleading assertion that “there are also battered men” has been far more positive.

1.1 LETTER OF LAW – DEFINITIONS:

Violence against women comes under the headings “Offences against the Person” (Swiss Criminal Code (SCC), Article 111 ff) and “Sex Offences” (SCC, Article 187 ff). The provisions on sex offences were amended in 1992.

THE LAW ON ASSISTANCE FOR VICTIMS

In 1984, a new Article 64b (now Article 124) was added to the Constitution, requiring the Confederation and cantons to provide assistance to persons who have suffered physical, psychological or sexual harm. The Assistance to Victims of Offences Act (LAVI), which came into force in 1993, provides for assistance in the form of advice, protection and the defence of the victim’s rights in criminal proceedings, as well as compensation and non-pecuniary damages. Such assistance is available to anyone who has suffered direct physical, sexual or psychological harm as the result of an offence, whether or not the perpetrator has been identified and whether or not that person’s behaviour was blameworthy. Victim assistance was not specifically designed for women, the aim of the Act being to improve the position of victims, particularly of victims of sexual violence, in criminal proceedings. It is the only means of ensuring that victims are more willing to report offences.

Under the title “*Protection of the rights of victims in criminal proceedings*” (*Protection et droits de la victime dans la procédure pénale*), the Act requires the authorities to protect a victim’s privacy and reputation at all stages of the proceedings. Victims, who have a limited right to remain silent so as to protect their privacy, may refuse to testify on matters concerning their private life. Victims have a right for their identity not to be made public. If the offence is a sexual one, the victim has the right for the case to be heard in camera. Cases are heard in camera wherever the overriding interests of the victim so require. Furthermore, the authorities avoid placing the accused in the presence of the victim if the latter so requests.

A confrontation may only be ordered where the accused’s right to be heard or the overriding interests of the criminal proceedings makes this absolutely necessary. Victims of sexual offences may ask to be questioned by someone of the same sex (LAVI, Article 6, paragraph 3) and request that the court which hears the case should include at least one person of their own sex (LAVI, Article 10). A study on the effectiveness of the LAVI, conducted by Geneva University at the request of the Federal Office of Justice, found that some provisions of the Act had improved the position of victims while others, particularly the right to refuse to testify, were double-edged since they often proved contrary to the victim’s interests.

Under certain conditions, all victims of offences committed in Switzerland may request compensation and non-pecuniary damages from the relevant cantonal department.

Compensation (between 500 and 100,000 Swiss francs) is calculated according to the harm suffered and the victim’s income. Non-pecuniary damages, on the other hand, are not dependent on income and are paid if the victim has been the subject of a serious offence and special circumstances so warrant (see LAVI, Article 12, paragraph 2).

The Assistance to Victims of Offences Act requires the cantons to make at least one *advice centre* available to victims of offences. Advice centres provide victims with immediate medical, psychological, social, material and legal assistance and, where necessary, continue to do so for a relatively a prolonged period. The services provided directly by advice centres and the immediate assistance provided by third parties are free of charge. Where the personal situation of victims so warrants, the centres also pay other expenses (lawyers’ fees, for example). Women victims of violence account for the great majority of persons applying for assistance. In 1997 and 1998, 76% of those who received assistance from the cantonal advice centres were women. In most cases (around three-quarters) they were victims of sex offences or bodily injury. Thirteen advice centres in nine cantons cater specially for women and children who have been the victims of sexual assault.

ADVISORY SERVICES

The cantons are obliged to set up advisory services, which provide medical, social, material and legal assistance on a 24-hour basis; these services may be delegated to existing centres. The women concerned are entitled to immediate assistance in an advisory centre of their choice (help with finding

temporary accommodation, assistance in paying the down-payment on hospital charges, etc). Women may also ask for therapy, legal advice and support in legal proceedings; if the victim can afford to cover the costs herself, then she must do so.

IMPROVEMENTS IN POLICE ENQUIRIES AND LEGAL PROCEDURES

- victims are entitled to apply for compensation; compensation is, however, not granted unless formally requested;
- a person of their choice may accompany them to all hearings;
- they may ask to be heard by a woman;
- they may refuse to answer personal questions (for example, concerning their past sex life);
- they are only confronted with the perpetrator of the violence during the hearing if the latter's right to an *inter partes* hearing so requires (some cantons, for example Zurich, have extended this provision to include the possibility that the woman may refuse to confront her assailant);
- they may submit civil claims in criminal proceedings (for example for damages and compensation for non-pecuniary damage);
- they may be represented by a lawyer whose fees may, in some cantons, be paid by the court, irrespective of the victim's income;
- they may ask for the proceedings to be held in camera.

DAMAGES AND COMPENSATION FOR NON-PECUNIARY DAMAGE

The law on the financial assistance that the cantons must give to victims stipulates that women with a very low income must receive full compensation for the injury suffered. Irrespective of the victim's income, the cantonal victim aid centre must grant her financial compensation for the injury suffered, if it is serious and the circumstances justify such compensation. This system makes up, to a certain extent, for the inflexibility of the system of compensation depending on income. Once the compensation has been paid, the victim aid centre endeavours to get it back from the offender.

Women who are victims of violence must, however, show great perseverance in asserting their rights. These innovatory measures have been neither uniformly applied nor uniformly integrated into the courts' daily practice. The cantons are responsible for the application of this law and there is every reason to believe that the way in which it is applied varies considerably from one canton to the next. It may well take several years before these protective measures are effectively applied throughout Switzerland, particularly in view of budgetary restrictions.

1.2 DOMESTIC VIOLENCE

In 1997 the Swiss Conference of Gender Equality Delegates launched a wide-ranging national information campaign to draw attention to the problem of violence in the home, entitled "Putting an end to violence against women in the home". The focus of this campaign was on the very widespread violence perpetrated by men against women, in both married and unmarried couples. A large number of regional and local events took place during the campaign and a telephone hotline provided information and advice to the public, 7 days a week, in three languages.

Projects have been set up in several cantons to counter domestic violence, protect victims and bring their assailants to court. The project groups are generally made up of male and female representatives of the police, the courts, the social welfare authorities, migrants' organisations, services providing advice and assistance to women and equality offices.

Legal provisions for combating domestic violence have been introduced in the cantons. The cantons of St-Gallen and Appenzell Outer Rhodes were the first to incorporate in their legislation relating to the police a provision authorising them to remove perpetrators of domestic violence from the dwelling they share with the victim immediately, without any judicial proceedings, for a period of 10 days (which can be extended to a maximum of 20 days). The removal must subsequently be confirmed by the judge responsible for issuing arrest warrants. These provisions have been in force since 1 January 2003. Most of the other cantons have followed this example and introduced similar regulations or are currently discussing the possibility of introducing them. Removing perpetrators of domestic violence from the shared dwelling (and prohibiting them from returning) is not the same as **depriving them of their liberty**, which is a more serious interference in the personal freedom of the persons concerned and is subject to stricter conditions. The law relating to the police in the St-Gallen canton stipulates

that a person may be held in custody (for up to 24 hours) if they pose a serious and immediate threat to themselves or to another person and if this threat cannot be dealt with in any other way. The detention judge may extend the custody for up to eight days, but only if another person is at risk. Perpetrators of domestic violence may not be held in custody for a longer period of time unless the conditions of detention on remand (which are set out in the cantonal codes of criminal procedure) are met.

At federal level too, civil law provisions have been adopted to protect women against violence. In the summer of 2001, the National Council approved a parliamentary initiative on protection against violence in the family and violence perpetrated by a spouse or partner, calling for the drafting of a federal law protecting women victims of violence by making it possible to order the immediate expulsion from the home of violent persons and prohibit them from entering it for a given period. As a result the Civil Code was amended and the provisions concerning the protection of individuals (Art. 28 Civil Code) were supplemented by general measures against violence, threats or harassment as well as specific measures concerning domestic violence. The legislation concerns not only domestic violence but also other forms of violence such as stalking. The measures that may be ordered by the courts are, in particular, prohibiting the person accused of such acts from coming within a certain distance of the victim's home or banning them from certain places or from getting in touch with the victim. If the victim and the perpetrator of the violence share the same dwelling, the court may also order the latter's removal from the dwelling for a specific period of time. Appropriate compensation may be given to cover exclusive occupation of the dwelling. The court may also, with the agreement of the landlord, assign the rights and obligations arising from the tenancy contract to the victim. The cantons are obliged to specify the department responsible for deciding whether a person should be removed from a shared dwelling in the event of a crisis. This law was enacted by parliament on 23 June 2006. The date for its entry into force has not yet been set.

1.3 RAPE/SEXUAL ASSAULT

Rape and compulsory sex violate women's sexual integrity. Since 1991 and the amendments to the Criminal Code provisions on sex offences, marital rape has been considered a criminal offence. This provision came into force in 1992. The amendments improved the position of women in a number of respects. Rape within marriage was made an offence but criminal proceedings may be brought only at the victim's request. This situation was the result of a compromise agreed on by Parliament. The distinction between simple rape and aggravated rape has been abolished, enabling women to avoid the difficulty of providing the evidence required for aggravated rape and the humiliation involved. The penalties for certain offences have been substantially reduced. Feminists are opposed to this as they consider it incompatible with the improvement of the legal protection of sexual self-determination.

The Swiss Criminal Code (SCC) was amended on 1 April 2004 and now stipulates that physical injury inflicted without aggravating circumstances, repeated assault, threats, sexual duress (Art. 189 SCC) and rape (Art. 190 SCC) between spouses or partners must be prosecuted as a matter of course. In the past these offences were only prosecuted if the following three conditions were met: an official complaint had to be lodged with the prosecuting authorities, the perpetrator had to be the victim's spouse and the couple had to be living together. Sexual duress and rape were already offences which were automatically prosecuted in cases which involved unmarried partners (or married couples who were separated). Physical injury inflicted without aggravating circumstances (Art. 123 SCC), repeated assault (Art. 126, 2. b and c SCC) and threats (Art. 180, 2 SCC), which were all offences for which an official complaint had to be lodged, are now also offences in respect of which proceedings are automatically instituted if they are committed by spouses or partners. Criminal proceedings are also automatically instituted in the case of acts of violence between heterosexual or homosexual partners living together on a permanent basis, and for a period of one year after their separation. Criminal proceedings are automatically instituted in the event of acts of violence between spouses, even if the spouses each have their own home or are living separately, for a period of one year after their divorce.

The relevant authorities may provisionally suspend criminal proceedings concerning physical injury inflicted without aggravating circumstances, repeated assault or threats between spouses or partners if the victim so requests or if he/she agrees to a proposal for suspension of the proceedings presented by the relevant authorities (new Art. 66ter.1. a – b SCC). The same applies to acts of coercion (Art. 181 SCC) committed between spouses or partners. The proceedings may be suspended in order to protect certain interests of the victim. This possibility does not however exist in the event of sexual duress or rape. The proceedings may be set in motion again if the victim revokes his/her agreement to the provisional suspension of the proceedings in writing or orally within six months (Art. 66 ter.2 SCC).

If the victim does not revoke his/her agreement within six months, the relevant authorities may order the final suspension of the proceedings (Art. 66. 3 SCC).

1.4 CHILD SEXUAL ABUSE/INCEST

With respect to the limitation period for sex offences concerning children, in October 2001 Parliament introduced completely new rules on limitation: the limitation period for criminal proceedings in the case of the most serious offences (those punishable by life imprisonment) is now 30 years; it is 15 years for offences punishable by a sentence of more than three years' imprisonment, and seven years for other offences. The limitation period for criminal proceedings in the case of sex offences concerning children under 16 and dependent minors, as well as offences against the person of children under 16, runs until the victim is 25 in all cases.

The sexual exploitation of children and the sexual abuse of children are offences under Articles 187 and 188 of the SCC. Furthermore, Article 197(3) prohibits "hard-core" pornography: anyone who manufactures or disseminates depictions of, *inter alia*, sexual acts with children or acts of violence is liable to imprisonment or a fine. Amendment of this article will also make the possession of such depictions an offence (with respect to violence against children and the sexual exploitation of children and adolescents, see Switzerland's initial report on the implementation of the Convention on the Rights of the Child). The debates in Parliament on the reform of the general section of the Criminal Code also concern a new Article 5, which would enable persons accused of committing serious sexual offences against children abroad to be prosecuted in Switzerland, regardless of the nationality or domicile of the offender and the victim, wherever the offences are committed and whatever the legislation applicable in the country concerned.

The new provisions of the Criminal Code concerning sex offences no longer consider "juvenile sex" to be an offence, stating that to have sexual relations with a minor of under sixteen years of age is not a punishable offence provided that the difference in age between the two parties is no more than three years.

Under the new legislation on sex offences, homosexual relations are dealt with in the same way as heterosexual relations.

Self-help groups of victims of abuse and women working in women's welfare services have raised the problem of sexual exploitation and this has led to the setting up of counselling services and of LIMITA, the Swiss association for the prevention of sexual exploitation. This organisation, like other specialist groups, objects to the term "sexual abuse" because it implies that there is a concept of "sexual use". It uses the following definition of sexual exploitation:

"Sexual exploitation means that an adult abuses his/her authority and takes advantage of a child's inexperience, trust and dependence to satisfy his/her own sexual needs. It is mainly characterised by the obligation on the child to keep it secret, which condemns the child to silence and renders him/her powerless and completely helpless."

A refuge for young girls and women between fourteen and twenty-one years of age who are victims of sexual exploitation was opened in Zurich in 1994. The refuge is a place where they can rest and find protection, medical care and advice. A travelling exhibition entitled "False security: the sexual exploitation of girls" passed through various towns in the French and German-speaking parts of Switzerland. It has provided valuable information and encouraged the setting up of support networks.

1.5 SEXUAL HARASSMENT

According to the surveys commissioned in 1993 by the Federal Office for Equality between Women and Men and the Geneva Office for Equal Rights for Men and Women, 59% of the women interviewed said they had been sexually harassed in their workplace.

Article 4 of the law on equality between women and men, which came into force on 1 July 1996, explicitly stipulates that sexual harassment in the workplace is a form of discrimination and, as such, is illegal. Employers who tolerate this type of harassment are adopting a discriminatory attitude. They are obliged by law to prevent such behaviour and to ensure that there is no sexual harassment on their premises. If not, they may be sentenced to pay compensation to the employee concerned, unless they can prove that they have taken the steps that experience has proven to be appropriate to the circumstances and that can be reasonably expected, with a view to preventing or putting a stop to

such practices. Exploitation of a relationship of dependency – at work for example – is more severely punished than previously.

1.6 PORNOGRAPHY

Advertising continues to be sexist; there is an increasing amount of violence against women in television serials and detective films; and the growth of the pornography business and the increasingly frequent use of children in pornographic productions are alarming.

The new legislation on sex offences makes a distinction between hard and soft pornography. Obscene publications are no longer forbidden. Hard pornography, i.e. publications concerning sexual activities involving children, animals, human excrement or entailing violence is strictly illegal. Other pornographic representations are only considered a punishable offence if shown to children or to non-consenting adults.

However, the distinction between hard and soft pornography ignores the fact that both of these forms of pornography are equally degrading for women. By reducing women to the status of goods or objects, sexist representations, which can be found in both forms of pornography, are degrading and humiliating.

1.7 PROSTITUTION

A study by the Federal Office of Public Health in 1988 showed that between 200,000 and 280,000 men, i.e. 10 to 15% of the male population aged between 20 and 64, had had recourse to the services of a prostitute at least once.

Prostitution is legal in Switzerland but can only be practised under certain conditions and is forbidden in some cantons. In big cities, soliciting is authorised in certain districts far from the city centre and residential areas. There are no laws prohibiting men from seeking the services of prostitutes. Women who solicit in authorised areas must register with the police vice squad. The police claim that this measure is designed to protect the prostitutes but Xenia (one of the advisory services for women working in connection with prostitution) believes that it creates an obstacle for women who wish to give up prostitution.

Prostitutes are stigmatised and unfairly treated: the tax authorities consider them to be self-employed workers and therefore surcharge them, with the result that many prostitutes have debts with the tax authorities; nor can they obtain sickness, unemployment or old-age insurance. Many of them depend on procurers, who oblige them to hand over their earnings. They consume fairly large amounts of alcohol and medicine and are often compulsive buyers. Prostitutes do not, however, take any risks where STDs are concerned.

A distinction is made between conventional prostitution and prostitution for the purpose of obtaining drugs, in that the latter arises from a dependency on drugs. Drug-addicted prostitutes usually work outside authorised areas; they get into clients' cars and are therefore completely at their mercy, thus running the risk of being raped, beaten or robbed. As they are heavily dependent on drugs, they are often exploited by men who insist on having sexual relations without condoms. As drug-related and soliciting activities are illegal, they rarely report violent clients to the police. In Zurich there is a mobile refuge, the "Flora Dora" bus that tours the city from Tuesday to Sunday, from 9 pm to 1 am. It seeks out drug-addicted prostitutes, outside the authorised areas, and provides them with condoms, advice, etc. As two-thirds of them regularly use these services, they gradually come to trust the staff working on the bus, who gathers information, among other things, on violent customers, sometimes making it possible for the police to identify and arrest them.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Under Article 179^{septies} of the Swiss Criminal Code (wrongful use of a telecommunications facility), criminal proceedings may be instituted on grounds of harassment by telephone. The new Art.28b of the Swiss Civil Code (see above under 1.2) will in future also afford some protection. Nevertheless, both of these legal instruments require that the harasser be known to the victim.

1.9 FEMALE GENITAL MUTILATION

Under Swiss criminal law, *sexual mutilation* is considered to be serious bodily harm (Art. 122 SCC), and criminal proceedings are automatically instituted.

1.10 INTERNATIONAL CONVENTIONS

Switzerland has ratified the following international conventions:

- the Convention of 20 November 1989 on the rights of the child - on 24.2.1997;
- the Convention of 18 December 1979 on the elimination of all forms of discrimination against women - on 27.3.1997;
- the Statute of Rome of the International Criminal Court concluded on 17 July 1998 - on 12.10.2001.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

The rules in Switzerland governing termination of pregnancy have changed since 1 October 2002. Termination of pregnancy is not considered a criminal offence if it is carried out at the written request of the pregnant woman during the first twelve weeks after the beginning of her last period. The woman concerned must argue, as justification for the abortion, that the birth would cause undue suffering (Art. 119. 2, SCC).

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Every year since 1984 national statistics have been compiled on convictions for offences under the Criminal Code. Convictions under Articles 187 to 200 of the SCC are recorded under the heading "Offences against sexual integrity". In 2004, there were 133 convictions for sexual duress (Art. 189 SCC) and 86 convictions for rape (Art. 190 SCC).

3.0 EFFECTIVENESS OF LEGISLATION

On 15 February 2006, the Federal Council approved the assessment report on the effectiveness of the law on equality between women and men. The assessment showed that the lifting of the taboo on sexual harassment had been a success. A relatively large number of proceedings have been instituted on grounds of sexual harassment and those concerned are aware that employers have a responsibility to do something about sexual harassment. However, preventive measures against sexual harassment have only been introduced in large companies and public administrations.

The prohibition of all forms of sexual harassment at work is, undeniably, the best known provision of the law on equality. Nevertheless, the assessment report revealed that two thirds of companies had not introduced any measures to prevent sexual harassment at work. In all the surveys conducted, sexual harassment was the second most frequent form of discrimination mentioned, after unequal pay. The conciliation services receive more complaints concerning sexual harassment than unequal pay and more agreements reached in conciliation proceedings concern sexual harassment than any other type of discrimination. Very few of the decisions handed down by the courts in cases concerning sexual harassment concern the public sector, whereas it is the most frequent type of discrimination dealt with by the courts in respect of the private sector (40.2%). The fact that easing of the burden of proof does not apply to cases of sexual harassment has no statistical impact. The decisions of tribunals were, admittedly, less frequently in favour of the employee. However, even greater disparities are found in situations governed by the same burden of proof rules. The representatives of workers' organisations believe that the fact that no measures have been taken to ease the burden of proof poses a problem. Complaints on ground of sexual harassment are, as a rule, followed by a dismissal. In cases of sexual harassment at the workplace in both the public and private sectors, employment contracts have been terminated in 90% of the cases brought before the courts. Qualitative analyses show that it is only in exceptional cases that the persons concerned continue to work at the same place and that they do not wish to do so either. Sexual harassment is also clearly the cause of serious health problems, but many women do not institute proceedings because they are afraid of losing their job.

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See Section 1.5 above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See Section 1.4 above.

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA ”

The information was provided by the Ministry of Foreign Affairs in **November 2000** and updated by the Ministry of Labour and Social Policy – Unit for the Promotion of Gender Equality in **May 2003**, then in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

A significant segment of the reform of the criminal legislation is the incrimination of domestic violence. According to article 122 paragraph 19 of the Law on Modifications and Amendments of the Criminal Code adopted in March 2004, family violence is defined as torture, rude offending, imperilment of the security, physical injuries, sexual or another mental or physical violence which causes sense of insecurity, imperilment or fear, towards husband/wife, parents or children or other persons which are in marriage or illegitimate union or in a common household, also towards ex husband/wife or persons which together have a child or persons which have close personal relations.

Acts related to domestic violence are included in these criminal acts: article 123: murder, article 125: homicide in the hit of the moment, article 130: bodily injury, article 131: serious bodily injury, article 139: coercion, article 140: illegal deprivation of liberty, article 144: endangering the security of another, article 191: intermediation in conducting prostitution and article 188: sexual assault of children.

1.2 DOMESTIC VIOLENCE

The priority goals in the National Plan for Gender Equality are: to identify the dimensions and gravity of the problem, and to create legal and institutional prerequisites for prevention and elimination of **violence against women**.

In this sense, in the year 2000, the Institute for Sociological, Political and Juridical Researches, upon a request of the non-governmental organisation "Emancipation, Solidarity and Equality" (ESE), implemented a research on the violence against women in the Republic of Macedonia. The research was conducted using a sample of 850 interviewed females of full age, which is more than 0,1% of the total female population in the country.

The results have shown large incidence of violence against women. Namely, 61,5% of the interviewees stated that they had had personal experience with some form of psychological violence. 23, 9% of them stated that they had been victims of physical violence, at the smallest number (5.0%) stated that their sexual integrity had been violated.

These and other practical findings resulting from the activities of the non-governmental sector in the Republic of Macedonia were an additional argument for the need of urgent change of the society's treatment of this phenomenon, through creating legal and institutional prerequisites for prevention and elimination of violence against women.

In this sense, an important segment in the reform of the criminal legislation was the introduction of domestic violence as separate incrimination.

The amendments to the Law on Family of June 2004 introduced for the first time the treatment of family violence in the Macedonian civil legislation.

Namely, pursuant to the provisions of the Law, it is established that the state provides protection of the marriage and the family from broken relations and violence in the marriage or in the family. Any type of violence in the marriage and in the family is prohibited.

The law also defines measures for protection from family violence.

For the purposes of implementation of the Law, the Ministry of Labour and Social Policy opened four daily centres for victims of family violence, as special organizational units within the respective centres

for social work. For development of this form of protection, the Programme foresees expansion of the network.

The Law on Family also regulates the institution of a procedure of judicial protection, regardless of whether there is a criminal procedure instituted against the perpetrator of family violence. For this purpose, the Centre for Social Work has the competence to lodge a petition to the court to initiate a procedure for interim measure for protection from family violence with the obligation to mandatory lodge such request to the court on behalf minors and incompetent persons. The request on behalf of persons of full age and competent persons is submitted only with *consent* by the victim of family violence.

The law also regulates the procedure of pronouncing the interim measures for protection from family violence, the composition of the trial chamber, the course of the hearing, and the legal remedies against the court's decision.

One of the strategic priorities of the Ministry of Labour and Social Policy is continuous training for acquiring necessary knowledge and skills to recognize violence and to render assistance to family violence victims.

In this sense, within the framework of the ongoing cooperation with the UNICEF office in Skopje, between November 2004 and May 2005, a cross-sectoral training was organized on the topic "Working with victims of family violence in the community". Within two cycles of this training, training covered a total of 86 professionals from various backgrounds: social protection, healthcare, justice system, and the non-governmental sector."

At the same time, in June 2005, a month-long National Campaign on Dealing with Family Violence was implemented, in order to strengthen the trust in the state institutions of the potential victims of family violence, recognize the problem of family violence, stimulate, and encourage family violence victims to take action and to ask for help. The campaign was aimed at the general public, with a special emphasis of women and children, as the most common victims of family violence, but also to the media, in order to raise awareness about the presence of family violence.

Also, in cooperation with the non-governmental organization Association of Women of the Republic of Macedonia, a national SOS hotline was opened for the victims of family violence; it is a 24/7 service for information and assistance to the victims of family violence. This line receives the average of 120 phone calls per month.

According to the statistical data, 448 domestic violence criminal acts have been registered in 2004 and 2005, of which 149 criminal acts in 2004 and 299 in 2005.

1.3 RAPE/SEXUAL ASSAULT

RAPE AND SEXUAL ASSAULT IN MARRIAGE

With the changes and amendments of Criminal Code in 2004, paragraph 5 of Article 186 has been deleted. The other following paragraphs are still valid:

- (1) A person who by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be punished with imprisonment of one to ten years.
- (2) If because of the crime from item 1 a severe body injury, death or other severe consequences were caused, or the crime was perpetrated by several persons or in an especially cruel and degrading manner, the offender shall be punished with imprisonment of at least four years.
- (3) A person that forces another to intercourse with a serious threat that he shall disclose something about this person or about another close to this person, that would harm his honour and reputation, or which would cause some other big evil, shall be punished with imprisonment of six months to five years.
- (4) The person who in the cases from items 1, 2 and 3 commits only some other sexual act, shall be punished for the crime from item 1 - with imprisonment of six months to five years, for the crime from item 2 – with imprisonment of one to ten years, and for the crime from item 3 – with imprisonment of three months to three years.

1.4 CHILD SEXUAL ABUSE/INCEST

In the following criminal offences, amendments from 2004 are marked with bold and italic:

Article 188 - Sexual attack upon a child:

(1) A person who commits statutory rape or some other sexual act upon a child shall be punished with imprisonment of six months to five years.

*(2) For the rape of a child or for some other sexual act upon a child, by misusing his mental illness, mental disorder, helplessness, retarded mental development or some other state, because of which the child is incapable of resistance, the offender shall be punished with imprisonment of at least **four** years.*

(3) If the crime from items 1 and 2 is committed by a teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person, by misusing his position or while performing family violence, he shall be punished with imprisonment of at least five years.

(4) If because of the crimes from items 1 and 2 a severe body injury, death or some other severe consequences were caused, or the crime was perpetrated by several persons, or in an especially cruel and degrading manner, the offender shall be punished with imprisonment of at least five years.

Article 189 – Statutory rape with misuse of position

(2) A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual act upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished with imprisonment of one to five years."

Article 190 – Satisfying sexual passions in front of another:

"A person who performs a sexual act in front of a child, or who induces a child to perform such an act in front of him or in front of another, shall be punished with a fine, or with imprisonment of up to three years."

Article 191 – Mediation in conducting prostitution

See below Section 1.7.

Article 192 – Procuring and enabling sexual acts:

(1) "A person who procures a juvenile to sexual acts shall be punished with imprisonment of three months to five years.

(2) A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment of three months to three years."

Article 193 – Showing pornographic materials to a child:

(1) "A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic content to a child, or shows him a pornographic performance, shall be punished with a fine, or with imprisonment of up to one year."

Article 194 – Incest:

(1) A person who commits statutory rape upon a blood relation of the first line or with a brother, respectively sister, shall be punished with a fine, or with imprisonment of up to one year.

*(2) A blood relation in the first line or a brother, respectively sister, who commits statutory rape or some other sexual act upon a minor, shall be punished with imprisonment **from one to ten** years.*

(3) If the crime stipulated in paragraph (1) is performed with a minor, the perpetrator shall be sentenced to imprisonment of at least four years.

See also below Article 189, under Section 1.5, and Article 191, under Section 1.7.

1.5 SEXUAL HARASSMENT

According to the amendments of Criminal Code from 2004, in the criminal offence of Article 189: **Statutory rape with misuse of position**, the changes and amendments are marked with italic and bold:

*"(1) A person who by misusing his position induces another, who is subordinated or dependent **or with the same objective abuses, intimidates or acts in a way that humiliated the human dignity and the human person** in relation to him, to intercourse or to some other sexual, act shall be punished with imprisonment of three months to three years.*

(2) A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual act upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished with imprisonment of one to five years."

1.6 PORNOGRAPHY

In the amendments of Criminal Code from 2004, there are not modifications and amendments in the criminal offence of Article 193

1.7 PROSTITUTION

According to the amendments of Criminal Code in 2004, in the criminal offence of Article 191: **Mediation in conducting prostitution**, the changes and amendments are marked with italic and bold;

" (1) A person who recruits, instigates, stimulates or entices another to prostitution, or a person who in any kind of way participates in handing over another to someone for performing prostitution, shall be punished with imprisonment of six months to five years.

(2) A person who because of profit enables another to use sexual services shall be punished with a fine, or with imprisonment of up to one year.

(3) A person who because of profit, by using force or by serious threat to use force, forces or by deceit induces another to give sexual services, shall be punished with imprisonment of six months to five years.

(4) If the crime from items 1, 2 and 3 is committed with a juvenile, the offender shall be punished with imprisonment of six months to five years.

(5) If the crime from items 1, 2 and 3 is committed with a child, the offender shall be punished with imprisonment of one to five years.

*(6) A person who organizes the crimes from items 1 to 5 **or the activities that this person will commit while performing family violence** shall be punished with imprisonment of one to ten years."*

1.8 OBSCENE PHONES CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

On the basis of the Decision of the government in 1993, the Republic of Macedonia as a Member State of the United Nations, acceded, *inter alia*, to the following international human rights documents:

- Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted on 21 March 1956;
- Convention on the Elimination of Traffic in Women and Children, adopted on 30 September 1921 and the Protocol thereto, adopted on 12 November 1947;
- International Covenant on Civil and Political Rights, adopted on 19 December 1966.

- International Covenant on Economic, Social and Cultural Rights, adopted on 19 December 1966.

Additional international conventions were signed:

- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, ratified on 24 June 2003;
- UN Convention against Transnational Organized Crime (Palermo Convention), as well as the Protocol against Trafficking in Women and Children, the Protocol against Smuggling of Migrants by Land, Sea and Air, adopted in November 2000;
- Council of Europe Convention on Action against Trafficking in Human Beings, opened for signature in May 2005.

In accordance with article 118 of the Constitution, the international agreements ratified in accordance with the Constitution are part of the domestic legal order and cannot be changed by law.

1.11 PROTECTION OF PREGNANCY/ PREGNANT WOMEN

There are not changes and amendments in criminal offence in Article 129.

The criminal offence *Unlawful Interruption of Pregnancy* is provided for in Art. 129 of the Penal Code, Chapter XIV – Criminal Offences against Life and Body:

(1) "A person who in contrary to regulations about the interruption of a pregnancy, with the consent from a pregnant woman performs, starts to perform or helps in performing an interruption of a pregnancy, shall be punished with imprisonment of three months to three years.

(2) A person who is engaged in performing the crime from item 1 shall be punished with imprisonment of one to five years.

(3) A person who, without the consent from a pregnant woman, performs or starts to perform an interruption of a pregnancy shall be punished with imprisonment of one to five years.

(4) If because of the crime from items 1, 2 and 3, a major deterioration of the health or the death of the pregnant woman sets in, the offender shall be punished for the crime from item 1 with imprisonment of six months to five years, and for the crime from items 2 and 3, with imprisonment of at least one year."

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

No information provided.

3.0 EFFECTIVENESS OF LEGISLATION

The domestic violence in Republic of Macedonia is no longer a taboo, considering the data on increased reported cases of domestic violence at the SOS phone lines, which can be seen in the light of the increased conscience for combating domestic violence.

3.1 SUPPORT/PROTECTION

There are no specific protection measures for women in the Right for Maintenance between Spouses of the Family Law.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

TURKEY

Information provided by the General Directorate on the Status of Women in **October 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

According to Turkish Constitution, everybody has equal right before law. Besides all fundamental laws (Civil Code, Criminal Code, Criminal Procedure Code, Labor Law) men and women has equal rights before law.

Articles 10 and 41 of the Constitution of the Turkish Republic include provisions regarding the equality of women and men. The provision, "Women and men have equal rights. The state is liable to ensure the realization of this equity" has been added to Article 10 of the Constitution. The provision, "Family is the foundation of the society", has been expanded to continue as "and it is based on equality between the spouses", in article 41 of the Constitution.

In article 90 of the Constitution; the provision, "With regard to the settlement of disputes between international conventions concerning basic rights and freedoms, which were made effective according to respective procedures, and laws due to inclusion of different provisions by such laws on different subjects, provisions of international conventions shall prevail." has been added as the last paragraph. Thus, this provision gives priority to international documents concerning basic rights and freedoms, including CEDAW, over all acts is a notable development.

Violence against women in the society or at home is a crime according to the new Turkish Criminal Code (TCC) that was adopted at the Turkish Grand National Assembly in 2004 and entered into force on January 1, 2005. Women who suffer from such violence may apply to the Public Prosecutor's Office in order for the crime to be prosecuted and punished. (Further detailed information with this regard has been given in the coming sections.)

Municipalities have also been vested with the authority to provide services to women who suffer from violence with the Municipality Law No 5257. The obligation to open guest houses (shelters) has been introduced for Metropolitan Municipalities and municipalities, the population of which exceeds 50,000. In this manner, improvement of protective and preventive services provided to women who suffer from violence will have been possible.

Provisions regarding domestic violence are included in the Law no 4320 on the Protection of the Family that was enacted in 1998. The Law provides for the protection judgment covering the precautions to be taken by the Family Court Judge in order to protect the maltreated party, upon the application by women and children, who are exposed to violence, either in person or through written notification to the Chief Public Prosecutor's Office or upon the application of any other person, who is aware of such domestic violence to the police and stipulates the punishment to be given in case such judgment is not complied with. This matter is not subject to complaint and the punishment to be applied is three to six months.

The New Labor Law, which became effective on June 10, 2003, has also adopted the principle, stating that no discrimination may be made in terms of human rights, in the employer and worker relationship for any reason whatsoever, including genders. In addition, it includes a provision stipulating that, if a worker in a place of employment suffers from sexual assault by another worker or third persons and necessary measures were not taken even though the employer was informed about the situation, the worker would be entitled to immediately terminate his/her contract based on rightful grounds.

Further relevant legislation will be dealt with in the following sub sections.

1.2 DOMESTIC VIOLENCE

The Law of the Protection of Family aims to protect family and provides some provisions in order to protect family members who is subjected to violence in the family. Besides, in the New Turkish Criminal Code, violence against women is addressed in different articles.

The *Law for the Protection of the Family* has introduced important measures for the protection of women and children against domestic violence. New measures have been taken for the prevention of the disintegration of the family as a social unit and for the protection of family members against violence and maltreatment. Thus, it has become possible to apply intermediary measures or punitive action, instead of filing for divorce to resolve problems that arise within the family. This law is expected to contribute significantly to the reduction of domestic violence in Turkey.

According to the *Law for the Protection of the Family* Article 1:

In case where either of the spouses, or any of the children, or any of the family members who reside in the shared home, notify that they have been subjected to domestic violence, or when the Chief Public Prosecutor notifies thereof, the Family Court, considering the content of the matter, can of its own motion rule for one or several of the following measures, or similar measures as it deems appropriate.

The Spouse at fault:

- a) Shall not engage in any behavior that may intimidate or that may be inclined towards violence against the spouse, or the children, or the family members that reside in the shared home.
- b) Shall be dismissed from the shared home. The shared home shall be appropriated for the other spouse and the children, and the spouse at fault shall be banned from approaching the shared home where the spouse and the children reside, and the workplace of the spouse.
- c) Shall not damage the belongings of the other spouse, or the children, or the family members that reside in the shared home.
- d) Shall not harass the other spouse, the children or the family members who reside in the shared home, through the use of communication devices.
- e) Shall hand over any weapon or any device of like nature to the law enforcement authorities.
- f) Shall not come into or near the shared home under the influence of alcohol or narcotics and shall not use any such substances within the confines of the shared home.

The period provided for the application of the above ruling shall not exceed six months. The spouse at fault shall be warned that non-compliance with the measures ruled in the decision shall result in arrest or punishment restricting personal liberty.

The judge shall rule for the alimony in consideration of the life standards of the aggrieved.

Domestic violence is classified as “violence against the person”. In addition, there are some articles in TCC:

In sub-clause (a) of paragraph (2) under causing intentional injury in article 86 of the Turkish Criminal Code, the punishment to be given without being subject to complaint if the intentional injury crime is committed against a parent, spouse or brother, shall be increased to imprisonment from 2 to 5 years.

In article 232 under the heading crimes against the family order, included in section 8 of the Turkish Criminal Code, maltreatment of any person among those living together in the same house has been punished. 1) Anyone who maltreats any other person who lives in the same dwelling shall be sentenced to imprisonment from 2 months to 1 year. (2) Anyone who abuses the discipline authority on someone under his/her guidance, or obliged to raise, to get educated, care, preserve or to teach a profession or craft gained from the disciplining right shall be sentenced to imprisonment of up to 1 year.

According to article 96 on torment, “Any person who causes suffering of another person by his acts is sentenced to imprisonment of 2 to 5 years”. In case of commission of offenses against a child who cannot protect himself due to physical or spiritual disability, or against a pregnant woman, or against antecedents or descendents or father/mother or spouse, then the offender is sentenced to imprisonment of 3 to 8 years.

REPORTED CASES OF DOMESTIC VIOLENCE

Distribution of Legal Cases Regarding the Law No: 4320 on Protection of Family¹

	Number of Cases	Number of Claimants	Number of Defendants
2002	4114	4343	4325
2003	6147	6570	6542
2004	8276	8698	8700
2005	8966	9500	9610

Distribution of Legal Cases Concluded regard the Law No. 4320 on Protection of Family

	Number of Cases	Number of Claimants	Number of Defendants
2002	4248	4461	4595
2003	6375	6709	6807
2004	8221	8738	8643
2005	9132	9648	9617

(Numbers include cases. that transfer from previous years.)

RAPE IN MARRIAGE

It has been stated that if the sexual assault were committed against the spouse, then the realisation of an investigation and prosecution would depend on the complaint of the victim. (TCC 102 3/c) This provision has introduced a penal sanction on behaviors that are committed against the spouse and that constitute the qualified condition of the sexual assault crime (the act shall be sentenced to imprisonment from 7 to 12 years) however, realisation of an investigation and prosecution has been subjected to the complaint of the maltreated spouse.

1.3 RAPE/SEXUAL ASSAULT

Sexual crimes have been evaluated as crimes against sexual immunity in section six under the heading of crimes against individuals in the 2nd part of the TCC. The concepts of forced rape and attempt to forced rape have been removed and replaced by the concepts of sexual assault and sexual abuse of children.

LEGAL DEFINITION OF RAPE

Sexual assault has been provided for in article 102 of the TCC. The crime of sexual assault has been defined as, "The person who violates the physical immunity by way of sexual behaviors, shall be sentenced to two to seven years of imprisonment upon the complaint of the victim." in the first paragraph of article 102.

In the 2nd paragraph of this article, committing sexual assault by forcing an organ or another material into the body has been defined as the qualified condition of this crime and the punishment to be given for it has been increased. In the 3rd paragraph of this article, heavy conditions of the sexual assault crime were stipulated and the punishment to be given has been increased if;

the physical and mental health of the victim was caused to deteriorate as a result of a sexual assault crime, as described in sub-clause,

¹ Source: Ministry of Justice

the crime was committed by taking unfair advantage of the influence acquired through public duty or service relation, as described in sub-clause,

the crime was committed against a person to whom the offender is related by blood or marriage up to third degree, as described in sub-clause,

the crime was committed with the use of a weapon or together with more than one person, as described in sub-clause.

OTHER SEXUAL OFFENCES

Crimes of torture and torment have been regulated under the heading of Torture and Torment. Within these articles, the obligations arising from the international agreements to which Turkey is party have been taken into consideration. In the article, major elements which require more aggravated sentences has been brought in case of a crime committed to child, pregnant or person who can not defend herself/himself in terms of physical or psychological.

According to TCC Article 94 on torture, "Any public officer who applies acts incompatible with human dignity and causes severe bodily or mental pain, or loss of consciousness or ability to act or humiliation shall be sentenced to imprisonment of 2 to 12 years." In case of engagement in any act defined as sexual harassment, the offender is sentenced to imprisonment of 10 to 15 years.

According to article 77, among the other crimes against humanity, for those who perpetrates the acts of making persons subject to torture or inhuman treatments, sexual assault, forced impregnation, forced prostitution; aggravated life long sentence is given.

1.4 CHILD SEXUAL ABUSE/INCEST

LEGAL DEFINITION

Sexual abuse of children has been provided for in article 103 of the TCC. Persons who sexually abuse children have been sentenced from 3 to 8 years.

The term **sexual abuse** means;

- a. any sexual act committed against children, who have not completed the age of fifteen or whose ability to perceive the legal meaning or consequences of the action has not been developed, even if they have completed the age of fifteen,
- b. sexual act committed against other children based on force, threat, fraud or any other reason affecting the will. In the 2nd paragraph of this article, committing sexual abuse by forcing an organ or another material into the body has been defined as the qualified condition of this crime and the punishment to be given for it has been increased 8-15 years. In the 3rd paragraph of this article, heavy conditions of the sexual abuse crime have been stipulated and the punishment to be given (the penalty shall be increased by one half) f;
- c. the abuse was committed by parents, second or third degree blood relative, step father, person adopting the child, guardian, trainer, teacher, caretaker, health service provider or other person, who have the obligation to protect and look after or by taking unfair advantage of the influence acquired through service relation as described in sub-clause (c) have been increased. In the subsequent paragraphs of this article, the qualified conditions of the crime have been determined and the punishments to be given have been increased.

1.5 SEXUAL HARASSMENT

LEGAL DEFINITIONS

Sexual harassment falls within the provisions of the TCC

Article 105 Sexual harassment

(1) A person who sexually harasses another shall be imprisoned of 3 months to 2 year or fined upon a complaint by the victim.

(2) In cases where these acts are committed through abuse of position of influence arising from a hierarchy, a relationship of service, training or education, or due to intra-family relations, or by taking

advantage of a shared workplace, the sentence imposed by the above paragraph shall be increased by one half.

Concept of sexual harassment at the workplace has been brought, qualified conditions of the crime of sexual harassment have been determined, accordingly commitment of sexual harassment against the individual through abusing the power of hierarchy and service relation or benefiting from the facility of working at the same place has been given higher sentences than the basic state of the crime. With this arrangement, sexual harassment crime has been regulated not only among the superiors but also co-workers.

With regard to this subject, the provisions included in the New Labor Law have been given in section 1.1 of this document.

1.6 PORNOGRAPHY

Pornography has been provided for in general under the heading Obscenity in article 226 of the TCC. It has been stipulated in this article that, a person who;

- gives a child products, which contain obscene image, writing or words or show him/her the contents of such products, or cause him/her read or listen to them, as described in paragraph (1)(a);
- who exhibits the contents of these products in places where children may be present or where they can be seen by children or openly show, read or say them or cause them to be read or said, as described in paragraph (1) (b);
- sells or rents these products in a way that their contents may be perceived, as described in paragraph (1) (c);
- presents these products for sale, sell or rent them in places other than those exclusive shopping places for such products, as described in paragraph (1) (d);
- gives or distributes these products with the sales of other goods and services, therefore, free of charge, as described in paragraph (1) (e);
- advertises these products, as described in paragraph (1) (f),

shall be imprisoned of 6 months to 2 years and fined.

It has also been stipulated in the same article that, persons who;

- publishes obscene image, writing or words through press and broadcasting or act as an agency in their publication, as described in paragraph (2), shall be imprisoned of 6 months to 3 years and fined.
- uses children in the production of goods containing obscene image, writing or words, as described in paragraph (3), shall be imprisoned of 5 to 10 years and fined.
- produces writings, sounds or images concerning sexual behaviors committed by using violence, on animals, on dead human bodies or in unnatural manners, bring them into the country, presents them to sale, sells, transfers, stores or keeps them, or presents them for the use of others, as described in paragraph (4), shall be imprisoned 1 to 4 years and fined.
- publishes the contents of goods specified in paragraphs (3) and (4) through press and broadcasting or act as an agency in their publication, or ensures that they are seen, listened to or read by children, as described in paragraph (5), shall be imprisoned of 6 months to 10 years and fined.

1.7 PROSTITUTION

Prostitution, or sex work, is legal in Turkey only if it is licensed. All provisions of the Criminal Code regulating sex work and the establishment of brothels define sex workers only as women. Women working in brothels are also covered by the social security system. Brothel owners are responsible for taking the necessary measures to prevent sexually transmitted diseases in accordance with the Public Health Law. While, sex work is legal, forcing women into prostitution and inciting and instigating prostitution is illegal.

THE CRIMINAL CODE ON PROSTITUTION

Prostitution has been provided for in general under the heading Prostitution in article 227 of the TCC. It has been stipulated in this article that, persons who;

- encourages children for prostitution, facilitate it, procure or shelter children for this purpose or act as an agent in the prostitution of children, as described in paragraph (1), shall be imprisoned of 4-to 10 years.
- encourages a person for prostitution, facilitate it, or act as an agent in or provide a place for prostitution, as described in paragraph (2) shall be imprisoned of 2-to 4 years.
- brings people into the country or help them go abroad for prostitution purposes, as described in paragraph (3),

shall be imprisoned of 2-to 4 years.

It has also been stipulated in the same article that, punishment to be given to persons who;

- drives a person to prostitution or ensure that the subject person is involved in prostitution by using force, threat or fraud, or by taking unfair advantage of his/her desperation, as described in paragraph (4), and
- if the crime was committed by the spouse, parent, step parent, brother, person adopting the child, guardian, trainer, teacher, caretaker, other persons who have the obligation to protect and look after or by taking unfair advantage of the influence acquired by service relation, as described in paragraph (5) would be increased half as much.

THE LAWS ON FOREIGN NATIONALS

According to the Turkish Passport Law 5682 (Article 8, paragraph 6) prostitutes, persons who make a living by marketing prostitutes, traffickers in women and all smugglers are not allowed to enter Turkey.

Law number 5683, on Travel and Residence of Foreign National in Turkey, authorises the Ministry of Internal Affairs to deport foreigners who are believed to be dangerous to public security and those who act in violation of political and administrative necessities. Article 7 of the same law, states that foreigners who behave in contradiction with social traditions and laws of Turkey will not be allowed to reside.

Therefore, a foreign national who engages in prostitution will not be punished when apprehended but will be subject to medical examination to determine the existence of sexually transmitted diseases, and then deported as prescribed by the law. Deportation is not possible in the case of foreign women who have obtained Turkish citizenship by way of marriage. In 2003, an amendment was made in Law number 4866 so it introduces a three-year waiting period before eligibility of citizenship for a foreign national marrying a Turkish citizen.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

Obscene phone calls are included in article 123 of TCC. According to this article, case of constant telephoning or making a noise with the sole purpose of disturbing tranquility and peace or acting against law with the same purpose, the perpetrator will be sentenced to imprisonment of 3 months to 1 year, upon the complaint of the injured party.

1.9 FEMALE GENITAL MUTILATION

No information available.

1.10 INTERNATIONAL CONVENTIONS

No information available.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

Protection of Pregnant women are included in article 99 of Section Five in the TCC. It has been stipulated in article 99 under the heading abortion that, the persons who;

- causes a woman to abort her child without her consent, as described in paragraph (1), shall be sent shall be sentenced to imprisonment of 5 to 10 years.
- causes a woman, whose pregnancy has exceeded ten weeks, to abort her child, even though there is no medical obligation and even if based on her consent, as described in paragraph (2), shall be sentenced to imprisonment of up to 1 year.

In addition, in sub-clause (e) of paragraph (1) in article 87 of the TCC, under the heading Causing Heavy Injury by Consequence, if the act of causing intentional injury was committed against a pregnant woman and resulted in the early delivery of the child, the punishment to be applied has been increased.

Again article 233 of the TCC provides for the violation of obligation arising from family law. In the 2nd paragraph of the article, the person, either married or not, who leaves his pregnant spouse, or the person with whom he lives together on a permanent basis and who was impregnated by him, in desperate state shall be sentenced to imprisonment of 3 months to 1 years.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

Today, violence against women is the most important problem in Turkey as in other parts of the world. Domestic violence is a major violation of women's human rights. Moreover domestic violence poses a major obstacle against women participation on equal footing in family and public life.

Contrary to the dimensions of the problem, violence against women still exists because of several reasons such as difficulties in effective implementation of legislation aiming at preventing violence against women, inadequate information and awareness of women about their rights, being a barrier for benefiting from current legislation, not developing interference methods taking into consideration the relation between cause and effect, the ongoing role of the media in regenerating and strengthening violence against women and other members of the society.

During 1990s, in order to prevent violence against women and protect women's human rights, many positive steps are taken and legal reforms are put into force on behalf of women with the co-ordination of public institutions and women NGOs. With regards to legal reforms see sections below.

3.1 SUPPORT/PROTECTION

There are 28 shelters that is called as 'guest house' providing services for the women exposed to violence and abused or women under risk are provided services. 17 of these guest houses are affiliated to The General Directorate of Social Services and Child Protection Agency (SHÇEK) Their total capacity is 325. The number of the beneficiaries in women is 5583 and in children 4266, since the opening of the Women Guest Houses affiliated to SHÇEK.

Additionally, "pursuant to the Charter on the Women Guest Houses, opened by the Public Institutions and Foundations and the Legal Person of Private Law" the two women guest houses were established to provide services, with the total capacity of 43.

Apart from these, the 9 foundations/ units/ departments belonging to private and other public, providing services for the women subjected to violence are available.

For the mentally handicapped women, who are exposed to all kinds of abuse and maltreatment, the Care and Rehabilitation Center for Grown-Up Mentally Handicapped Women was established by the state.

Since 1993, 61 "Community Centers" especially in gecekondu's districts render education, training, guidance and advisory services particularly for women and children, and 3 thousand persons on average benefit from these services in every month. Besides, in 28 "Family Counselling Centres", services for self-improvement and protective, preventive, informative, therapeutic and rehabilitative services are provided to the family members.

Municipalities are also entitled to give services to the victims of domestic violence by means of Municipalities Law. The new law adopted in 2004 introduces the responsibility of the metropolitan municipalities and the municipalities with more than 50.000 habitants to have women's shelter. The law also envisages the co-operation of public institutions and NGO's.

Services provided by the Southeastern Anatolia Project (GAP) Administration to the women living in the region are carried out through Multipurpose Community Centers (ÇATOM).

Ankara Bar Association Women's Information Center which was established in 1998 by the Ankara Bar Association, Women's Law Commission, all kinds of legal consultancy, psychological consultancy and guidance services are being provided, particularly in the subject of domestic violence. Besides, Istanbul Bar Association, Women's Law Commission, Women's Rights Implementation Center was established in 1999. This Center provides the women with legal consultancy.

Women's Center (KAMER) was established by the Consultancy Research Organization and Hand Craft Development Limited Company in 1998. Emergency Help Line, Employment Consultancy, Legal Consultancy and Psychological Consultancy services, which women who suffer from domestic violence can apply, provides services three days a week.

Violence against women hotline operating as free of charge has been conducted and served as the counseling center.

On the other hand interdisciplinary efforts have been accelerated in order to prevent suicide incidents among women which have been observed recently in some regions of Turkey. The Ministry of Health has been conducting a special training program on this issue for general physicians, psychologists and social service workers since 2004. Another program has been developed to provide psycho-social support in the emergency service for suicide attempts. In 31 provinces where suicide attempts are higher in proportion, special units have been set up in hospitals for prevention of such attempts.

CAMPAIGN FOR RAISING AWARENESS

"Stop Violence Against Women" campaign that has been carried out with in cooperation of GDSW and UNFPA since 2004, launched within the context of "25 November International Day of No Violence against Women". Its targeting of Turkish men was a key to its success. Among other superstars who embraced the campaign were the country's major league football players, who spread the message – 'Stop violence against women!' – during half-time and in film spots on television and in cinemas across the country. The Campaign launched in 2004 by the State Minister who is responsible from the women's issues. In 2005 polyphonic choir of the Ministry of Culture also joined the efforts to combat violence. The Campaign will continue raising awareness of the Turkish public especially men with various kind of activities and training programs. Besides, GDSW organized a competition about "Stop Violence Against Women" in order to encourage young journalist dealing with violence against women in cooperation with Turkish Journalist Federation with in the framework of this campaign.

In 2004 the newspaper of Turkey, Hürriyet, launched another campaign to prevent domestic violence in Turkey. The objective of "No to Domestic Violence" campaign was to contribute to prevent domestic violence and persuade the rest of the society to say "No to Domestic Violence!" Trained family counselors and psychologists visit areas of Istanbul in a specially prepared bus to have sessions about issues related to domestic violence including the legal rights of the abused parties. 10.000 women and men have already been reached and the training have been started in 8 more cities. Starting from 2005, another component was added to the campaign and a volunteers training of the trainers was started. The message of the campaign was communicated to the society through public service advertisements for TV and print, high-profile events, a web site, guidebooks, training materials, inserts, and posters. Besides Turkey, the campaign was launched in Germany where a sizeable Turkish community lives. German federal and state authorities as well as the Parliament of the European Union support these efforts. Hurriyet is also collaborating with UNFPA to organize international conferences on Domestic Violence and establishing the Corporate Alliance to end Domestic Violence.

TRAINING PROGRAMMES

Various in-service training programs on combating violence against women are given to the security forces and judiciary authorities who are the first to be contacted by women who suffer violence. Within this framework, the Ministry of Interior Affairs and the Ministry of Justice have conducted training programs for high level state administrators, security forces and members of the judiciary organ. Some examples of this kind of training programs as follow:

- For judges and public prosecutors "Violence Against Women in Society" symposium (2002);
- For judges and public prosecutors "Presentation and Implementation of New Civil Code" (2002), Human Rights Training Program (including CEDAW) (2004), "Presentation and

Implementaion of New Criminal Code” (2005), “Comparative Criminology with Experimental and Theoretical Dimensions: Domestic Violence Meeting” (2006)training programs.

- For judges and public prosecutors working in Family Courts, “Domestic Violence” (2006).
- For specialised intern medical doctors, “Reproduction Health Education”.
- SHCEK organised training programs on Gender Equality, Violence Against Women, Women’s Human Rights for staff of women guest houses and community centres with co-operation of GDSW, Universities, NGOs, Bars etc.
- In Police Academies and in-service training programs for police, “Human Rights Lecture” is obligatory.
- In December 2005, “Gender sensitivity and media training program” was conducted for 60 experts with the co operation of universities.
- For public officials and NGOs “Improving Women’s Rights: Fighting against domestic violence” TAIEX seminar organised by EU & EUSG in July 2006.
- Recently, with the collaboration of the Turkish Armed Forces training materials on gender equality and violence against women were prepared to be used in the lectures for the recruits. Moreover, visual materials on violence against women has been distributed in 600 garrisons in Turkey.

RECENT DEVELOPMENT

On 1 October 2005, the “Commission for the Investigation of the Causes of Honour Killings and Violence against Women and Children and For the Determination of Necessary Measures” had been established and the commission completed its report on 3 March 2006. The mentioned report puts forth the current situation in Turkey and in the world regarding the elimination of violence against women and children and also includes proposals for the solution. The report was approved and published in the official gazette on 4 July 2006 as circular of the Prime Ministry. This circular foresees that the relevant institutions will launch necessary studies in order to implement the “action plan” put forward in report of the commission and these institutions will report on the studies done to GDSW.

Within the framework of Prime Ministry’s circular dated 4th of July, 2006 and numbered 2006/17 on the violence against children and women and honour killings, the works have been launched under the coordination of the GDSW. The circular envisages in 2007 and 2008;

- National Action Plan on Combating Violence against Women
- Provincial meetings will be held on the raising awareness
- Informative films will be prepared and they will be used widely in media

3.2 PROPOSED REFORMS

Reforms proposed concerning domestic violence and the Law Amendment Draft towards expanding the scope of the Law no 4320 on the Protection of the Family was prepared by our General Directorate, the relevant public institutions and organizations and non-governmental organizations and it was sent to the Prime Ministry to be enacted. Following the transfer of the Law Draft to the Turkish Grand National Assembly and its negotiation, as well as its acceptance at the General Assembly, the process of legalization will have been completed

4.0 DOMESTIC VIOLENCE

See Section 1.2 above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See Section 1.3 above.

6.0 RAPE AND SEXUAL ASSAULT

See Section 1.3 above.

7.0 SEXUAL HARASSMENT

See **Section 1.3** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

See **Section 1.4** above.

UKRAINE

The information was updated according to comments and observations provided by the Ministry of Ukraine for Family, Youth and Sports in **September 2006**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS

The Constitution of Ukraine pawns legal basis for of the state activity in counteraction to violence against women. Article 21 of the Constitution states that all people are free and equal in their dignity and rights. Human rights and freedoms are inviolable and inalienable. Article 24 of the Constitution states, that the equality of rights of women and men is insured by granting women opportunities equal to those available to men in society, in political and cultural activities, in education and professional training, in employment and wages; by establishment of special benefits in the retirement regulations aimed at improvement of health and occupational safety of women; by creating conditions that allow women to combine employment with motherhood; by legislative protection as well as material and moral support of mothers and children, including paid maternity leave and other benefits for pregnant women and mothers. Legal equality is further reinforced by a variety of legislation, including the Civil and Criminal codes, the Labour Code and the Marriage and Family Code, as well as laws on education, social security insurance, labour protection and aid to families with dependent children.

In September 2001 the Ukrainian parliament adopted a new Criminal Code. On 15 November 2001 the parliament adopted a new Ukrainian Law on Prevention of Domestic Violence, which covers three main aspects: law enforcement, social assistance and health. The separate section of the new Criminal Code of Ukraine contains articles concerning crimes against sexual freedom and sexual inviolability of the person: 152 - "Rape", 153 – "Violent satisfaction of sexual passion a unnatural way", 154 – "Compulsion to the introduction into sexual intercourse", 155 - "Sexual relation with the person, who are not achieved sexual maturity ", 156 – " Depravity of minors ". Punishment for fulfilment of these crimes is directed, first of all, on protection of rights of women as they suffer from them more often.

1.2 DOMESTIC VIOLENCE

While the law recognizes that women have the right to live free from violence, in reality, women's human rights are not adequately protected during any step of the legal process. Most violence goes unreported and is assumed to be a family issue.

Because of the feeling of shame that follows any kind of domestic violence and due to certain traditions, women tend not to report incidents of violence against them. Therefore, the number of recorded offences is understated. This complicates the procedure of protecting women from domestic violence.

The majority of women do not yet consider violence against women a public problem, but rather a private problem and a result of either their own behaviour or an unsuccessful choice in partner.

The Ukrainian law on prevention of domestic violence came into force in March 2002. The law determines subjects of realisation of actions for prevention of violence, which are: an authorized body of the executive power on the prevention of the domestic violence; service of district militia officers and criminal juvenile militia; bodies of trusteeship and guardianship; specialized bodies for victims of domestic violence; crisis centres for victims of domestic violence and members of family who are under the threat of domestic violence; the centres of social rehabilitation of victims of domestic violence.

The Ministry of Ukraine for Family, Youth and Sports is an authorized executive body which coordinates activities of the abovementioned institutions. At regional and local level the Ministry's functions and tasks on prevention of domestic violence are exercised by departments and divisions on family, youth and sports. With the purpose of practical implementation of this Law the Ministry of

Ukraine for Family, Youth and Sports jointly with the Ministry of Interior and other ministries have developed the Regulations on consideration of applications and information concerning domestic violence or its real threat (2003), Joint Order of the State Committee for Family and Youth, Ministry of Interior, Ministry of Education, Ministry of Health concerning the Regulations on consideration of applications and information on cruel treatment of children or real threat of it (2004). This Regulations determines a mechanism of interaction of relevant units of ministries in preventing cruel treatment of children, physical, sexual, psychological violence and rendering emergency assistance to the children – victims of violence.

Now 22 crisis centers render social, psychological and legal assistance to victims of domestic violence and provide temporary shelter if needed. In 2006 a first center for medical and social rehabilitation of victims of domestic violence was established in Ukraine (in Sebastopol).

1.3 RAPE/SEXUAL ASSAULT

The new Criminal Code comprises the article 152 “Rape” and describes: “rape is punishable with imprisonment for period of 3 – 5 years”. If the same person has repeated the crime than “punishment is from 5 to 10 year of imprisonment”. A group of perpetrators or crime against minors will be imprisoned for a period of 7-15 years.

1.4 CHILD SEXUAL ABUSE/INCEST

No information provided.

1.5 SEXUAL HARASSMENT

Sexual harassment and coercion are widespread forms of violence against women, especially young women.

The Criminal Code provides criminal responsibility for “compelling a women or man into a sexual affairs with a person on whom she or he is materially dependent or subordinate to” (Article 154). For this crime, the punishment is a fine to 50 before the tax minimum wages or imprisonment up to 6 months. The same actions, in connection with threat of destruction or confiscation of its property or property of close relatives or disclosure of data, which dishonour her/him are punished by imprisonment up to 6 months, or by restriction of freedom for a period of up to 3 years.

1.6 PORNOGRAPHY

No information provided.

1.7 PROSTITUTION

Prostitution is a criminal offence in Ukraine. On September 1st, 2001 the article 303 on a criminal offence for the prostitution appeared in the New Criminal Code of Ukraine. Prostitution is found predominantly in major cities and recreational areas, as well as in areas of heavy industry and mining. Sexual service with the purpose of income generation is punishable with a fine of 50 to 500 before the tax minimum wages or up to 1 year of reformatory work (Article 303). Men who use the services of prostitutes are not mentioned in the Code.

The new Criminal Code contains notions “compelling or involvement in the engagement in prostitution” and punishment with a fine of 500 to 1000 before the tax minimum wages or by imprisonment for a period of 1 to 3 years. Involvement of a minor in prostitution is punishable with imprisonment for a period of 5 up to 7 years.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

No information provided.

1.10 INTERNATIONAL CONVENTIONS

Ukraine has ratified the following international instruments:

-
- Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others;
 - Convention on the elimination of all forms of discrimination against women and a number of conventions concerning the trade in slaves;
 - Convention on the Rights of the Child;
 - Convention for the Protection of Human Rights and Fundamental Freedoms
- and others international instruments.

In 2005 Ukraine signed the Council of Europe Convention on Action against Trafficking in Human Beings.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

No information provided.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

See **Section 1.2** above.

3.0 EFFECTIVENESS OF LEGISLATION

No information provided.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

No information provided.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

UNITED KINGDOM

Information provided by the Women's Unit of the Cabinet Office in **November 2000** and updated by the Women's Unit of the Department of Trade and Industry in **July 2003**.

1.0 LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

1.1 LETTER OF LAW – DEFINITIONS:

No information provided.

1.2 DOMESTIC VIOLENCE

There is no specific offence of domestic violence in criminal law. The following statutes are relevant:

- Offences against the Person Act 1861
- Public Order Act 1986
- Protection from Harassment Act 1997

Crimes of physical violence can include common assault (a common law offence) and statutory offences under the Offences Against the Person Act 1861. The maximum penalties for these offences range from 6 months (for common assault) to life (grievous bodily harm with intent).

The Protection from Harassment Act 1997 provides a criminal offence in England and Wales to cover courses of conduct which a person knows, or ought to have known, causes another to fear violence. The offence carries a penalty of a maximum of five years imprisonment and/or an unlimited fine.

For less extreme but still distressing behaviour, there is a second criminal offence in England and Wales of pursuing a course of conduct which a person knows, or ought to have known, causes another harassment. It will carry a penalty of a maximum of six months' imprisonment and/or a fine. There is also a restraining order, available from the criminal court, which prohibits further harassment or conduct, which causes fear of violence. A breach of a restraining order is a criminal offence, punishable by up to five years in prison. An injunction can also be sought in the civil court.

The Family Law Act 1996 provides protection to those experiencing domestic violence in a family relationship, by allowing them to apply for an injunction to protect them from violence. The Act runs parallel to divorce proceedings in the civil courts, enabling domestic violence proceedings to be issued alone, or together with divorce proceedings. County Courts and Magistrates Courts with family jurisdiction are able to hear cases.

The court will grant a non-molestation order if it considers that it should (on the balance of probabilities) be made for the benefit of the applicant or any relevant child, considering all the circumstances. The Act does not define molestation, to give the court the maximum discretion to decide when an order is appropriate. The Act also provides for the court to make an occupation order. This deal with the occupation of the home and can, for example, define occupation rights in the home, including exclusion of the respondent from the home or an area around it.

Where the court makes an occupation order or non-molestation order and it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child, and then the court must attach a power of arrest unless it is satisfied that the applicant or child will be adequately protected without such a power. These powers allow the police to immediately arrest the respondent if the provisions of the order have been breached, and bring them before the court. The court then has powers under the Contempt of Court Act 1981 to fine or imprison the respondent.

The Protection from Harassment Act 1997 provides protection to anyone suffering harassment, which may or may not amount to violence. Since the majority of the Act came into force on 16 June 1997, those suffering harassment can precede either by:

- Police involvement, because one of the wholly criminal offences in the Act established by Sections 2 and 4 - is alleged to have been committed;

- Way of a civil claim (with or without an injunction) under section 3.

Sub-sections 3(3)-(9) introduce the provision that the breach of a civil injunction granted under section 3(1) and (2) may be treated either as a civil contempt (with a maximum of 2 years imprisonment), or as a criminal offence (with a maximum, on indictment, or five years imprisonment). These provisions came into force on 1 September 1998.

SCOTLAND

The Scottish provisions in the Protection from Harassment Act 1997 provide that every individual has a right to be free from harassment and prohibit a person from pursuing a course of conduct which amounts to harassment of another. They also:

- Establish what is meant by 'harassment';
- Provide for an action of harassment in civil proceedings;
- Set out the defences to any action of harassment;
- Provide remedies available to the victim;
- Allow civil or criminal courts to make a 'non-harassment order';
- Provide that breach of a 'non-harassment order' is a criminal offence;
- Set out the penalties that can result from such a breach.

In an action of harassment a court may:

- Award damages, including for any anxiety caused by the harassment or financial loss resulting from it;
- Grant interdict or interim interdict;
- Protect the victim from further harassment, make a 'non-harassment order' to require the defender to refrain from any conduct specified in the order.

A criminal court, in addition to any sentence that it imposes, when considering the disposal of a person convicted of behaviour that amounts to harassment, may also make a 'non-harassment order'.

Breach of a 'non-harassment order' made either by a civil or criminal court in Scotland would be a criminal offence punishable on indictment by imprisonment for up to 5 years and/or an unlimited fine, or summarily by up to 6 months' imprisonment and/or up to a £5,000 fine.

The common law offence of breach of the peace covers behaviour causing, or likely to cause, annoyance, alarm or upset. It is a flexible and wide-ranging provision and maximum sentences for breach of the peace are limited only by the court in which a case is heard (life imprisonment is in theory available in the High Court and though we know of no example of its imposition, sentences as long as 8 years have been imposed).

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives the court power to grant an exclusion order to either of the spouses from the matrimonial home. The Act also gives the police powers to arrest, in certain circumstances, perpetrators of domestic violence. This Act has generally worked well but the *1992 Report on Family Law* by the Scottish Law Commission recommended widening its provisions to cover, for example cohabitants and former cohabitants. The Scottish Office consultation paper *Improving Scottish Family Law* (launched on 24 March 1999) seeks views and will consult in autumn 1999 on implementing the remaining provisions in the Scottish Law Commission report. Any legislation arising from the consultation will be a matter for the Scottish Parliament.

NORTHERN IRELAND

Although domestic violence is a crime and prosecution through the criminal courts is one of the sanctions available, many women, at least initially, require and seek the protection of the civil courts. In 1996, 2293 interim and 994 full personal protection orders were made, with almost identical numbers of interim and full exclusion orders (2290 and 993 respectively).

The Family Homes and Domestic Violence (Northern Ireland) Order 1998 came into effect in March 1999. The legislation was informed by recent research in England that highlighted the effects of domestic violence on children and the safety of child contact arrangements, where there has been a history of domestic violence to the mother. The Order puts Northern Ireland at the forefront in the UK and Europe in relation to anti-domestic violence legislation.

Civil Law Remedies - including economic situations for wife/cohabite after separation and divorce

ENGLAND AND WALES

When considering financial provision on divorce in England and Wales, the court is required to take into account all the circumstances of the case. These include the welfare of minors and the income, capital resources, age of both parties, length of the marriage and the financial and other contributions made by each of the parties. The court also looks at the needs and obligations of the parties in the foreseeable future. Conduct will be taken into account in cases where it would be inequitable to disregard it. This would allow the court to take account of violence by a party to the marriage. These principles apply equally to men and women. Each family is unique and, therefore, each case is different and thus the wide discretionary powers invested in the courts by the Matrimonial Causes Act 1973 are designed to permit the court to reach an equitable solution in individual cases.

SCOTLAND

In Scotland, the court is also required to take into account all the circumstances of the case in deciding a fair sharing of the net value of the "matrimonial property" (a concept not found in England and Wales). A fair share usually means an equal share. The fair share of the matrimonial property is usually accomplished by order of payment of a capital sum or the transfer of property from one party to the other. However, the court may take into account a number of principles and factors set out in the Family Law (Scotland) Act 1985 when considering making financial provision orders and may award a greater share to one of the parties. The principles and factors include the financial care of children by both parties, the age health and earning capacity of the party claiming financial provision, and whether one of the parties would be likely to suffer serious financial hardship as a result of the divorce.

Unlike in England and Wales, a court in Scotland would not take into account the conduct of either party unless it adversely affected the financial resources under consideration or it would be manifestly inequitable to leave conduct out of account when considering if one party has been substantially dependent on the financial support of the other or one party is likely to suffer serious financial hardship as a result of the divorce. This reflects recommendations by the Scottish Law Commission in its 1981 Report on Aliment and Financial Provision (Scot Law Com No. 67) to separate issues of "fault" leading to divorce from the consideration of the post-divorce financial situation.

1.3 RAPE/SEXUAL ASSAULT

DEFINITION

Sexual crime is defined as a crime against the person. In England and Wales rape is defined, under the Sexual Offences Amendment Act 1976 (as amended by the Criminal Justice and Public Order Act 1994) as sexual intercourse with a person who at the time of the intercourse does not consent to it, committed by a person who at the time either knows the other person does not consent, or is reckless regarding consent. No further definition of consent is given in statute law.

Sexual intercourse is defined as penile penetration of the vagina or anus. Penetration of other parts of the body and penetration using other objects are prosecuted as indecent assault. The maximum penalty for indecent assault is 10 years in England and Wales.

Rape is defined in Scots law as sexual intercourse with a woman achieved by the overcoming of her will. A man may not be raped as the sexual intercourse in rape is taken to be vaginal and for rape to take place penetration by the penis must take place. The length of sentence may be affected by the degree of force used and the age of the victim. The rule that a husband cannot be guilty of the rape of his wife no longer holds since 1989 when it was judged that social conditions had changed and that a husband could be guilty of raping his wife even if they were living together at the time of the offence.

SODOMY

In England and Wales "sodomy" without consent would be counted as rape under the definition. In Scotland sodomy and rape are both gender-specific, but sexual assault provides a wide-ranging common law charge.

RAPE IN MARRIAGE

Rape in marriage is in England and Wales specifically outlawed under the Sexual Offences Amendment Act 1976 as amended by the Criminal Justice and Public Order Act 1994. Rape in marriage was acknowledged in case law in 1991. The maximum penalty for rape is life imprisonment.

RAPE TRIAL

Technical evidence: No technical evidence is required by statute, but the level of evidence will depend on the circumstances of the individual case.

Cross examination of the victim's sexual history: At present such evidence may only be admitted with the permission of the court which must be satisfied that the evidence is both relevant and of such importance to the case for the defence that to exclude it would be unfair. However, there is a provision in the Youth Justice and Criminal Evidence Bill, currently being considered by Parliament, to further restrict the circumstances in which the court may allow previous sexual history evidence to be admitted.

Section 274 of the Criminal Procedure (Scotland) Act 1995 limits the extent to which a victim of certain sexual offences can be cross-examined about previous sexual history. In particular, the section does not allow questioning on sexual behaviour that is not part of the subject matter of the charge. Under section 275 of the same Act, questioning can be allowed by the court on application by the defence in rebuttal of prosecution evidence, if the sexual acts took place on the same occasion as the charge, or if it would be contrary to the interests of justice to exclude the questioning.

Court ruling on cases of rape: The Crown Court (England and Wales). In Scotland rape cases are dealt with in the High Court.

In England and Wales rape cases are always heard in the Crown Court, before a Judge selected to hear such cases. Membership reflects the principle of equal opportunities. Appointment is strictly on merit and assessments of suitability are made against the specific criteria for appointment. When appointing judges to sit in the Crown Court, the Lord Chancellor appoints those who appear to him to be the best qualified, regardless of gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability, except where the disability prevents the fulfilment of the physical requirements of the office.

Without prejudice to the overriding principle that all judicial appointments are made on merit, the Lord Chancellor encourages greater numbers of women and ethnic minority practitioners to apply. The team of officials he has established to concentrate on equal opportunities issues in judicial appointments are working with members of the Bar and solicitors to develop procedures. They regularly attend relevant meetings and conferences organised by both branches of the profession to provide information and encourage applicants.

Wherever possible, the requirements and procedures for appointment are applied flexibly. For example, it is now possible for those who have had a career break for family reasons to apply to undertake their sittings as Assistant Recorders, or in certain tribunals, in concentrated blocks, rather than their sittings being spread over a number of years as is usual. As a result, those who have taken a career break are now able to catch up with those who have not.

Upper age limits are also applied flexibly to provide opportunities for those who become lawyers later than usual or who have taken a career break. The Lord Chancellor personally investigates any claims of discrimination and he is looking to see whether there may be ways to improve the system of examining fully complaints from anyone who feels unfairly treated by the appointments process.

SANCTIONS

The maximum penalty is life imprisonment. Within the broad statutory limits set by Parliament sentences in individual cases are a matter for the courts alone, taking into account all the circumstances of the offence and the offender. In England and Wales in 1997, 91% of males convicted of rape of a female were sentenced to immediate custody. The average sentence was 77 months.

The English Court of Appeal has issued guidelines for sentencing in rape cases in the case of *R v. Billam* (1986). Under new powers in the Crime and Disorder Act 1998, the Court of Appeal will be required, whenever it is seized of an appeal against sentence, to decide whether it needs to frame a guideline or revise an existing guideline for the category of offence in question. The Home Secretary

will also have power to direct a new Sentencing Advisory Panel to provide views to the Court of Appeal on a particular category of offence (or the Panel itself may choose to do so). The Court would then be required to consider whether it should frame or revise a guideline when a suitable case arises.

1.4 CHILD SEXUAL ABUSE/INCEST

The age of consent is 16. Unlawful sexual intercourse with a girl under 13 carries a maximum penalty of life imprisonment. Unlawful sexual intercourse with a girl under 16 carries a maximum penalty of 2 years imprisonment. Indecent assault carries a maximum penalty of 10 years in England and Wales.

Incest with a girl under 13 carries a maximum penalty of life imprisonment. Incest with a girl under 16 carries a maximum penalty of 2 years imprisonment. Buggery with a child under 16 carries a maximum penalty of life imprisonment, and gross indecency with a child carries a maximum penalty of 10 years.

The age of consent for heterosexual intercourse is 16. Unlawful sexual intercourse with a girl under 13 carries a maximum penalty of life imprisonment under the Criminal Law (Consolidation) (Scotland) Act 1995. Intercourse or attempted intercourse with a girl under 16 carries a maximum penalty of 10 years imprisonment (increased under the Crime and Punishment (Scotland) Act 1997).

Incest offences are also set out in the Criminal Law (Consolidation) (Scotland) Act 1995. Certain relationships by adoption are also covered by the legislation as is intercourse with a step-child if the step-child is under 21 or has at any time prior to reaching the age of 18 lived in the same household and been treated as a child of the family. Any person over the age of 16 who is a member of the same household and in a position of trust with a child under 16 and has sexual intercourse with that child shall also be liable to an offence. A person found guilty of any of the above offences under this Act is liable for a sentence of up to life imprisonment if convicted on indictment and on summary conviction of up to 3 months.

SPECIFIC MEASURES AGAINST CHILD PROSTITUTION

Those who coerce a child into prostitution are committing a number of offences; those who have sex with a child under 16 are also usually breaking the law. The Government has recently issued draft guidance to ensure that children found in prostitution in England and Wales are treated as victims - it emphasises that children in prostitution are primarily the victims of coercion and abuse and that therefore the emphasis should be on the care and protection of young people. Those adults who exploit them, whether by pimping them or as clients, are child abusers. The draft guidance encourages the use of the full range of criminal offences against those who corrupt and abuse children. It is intended to be a practical guide, the purpose of which is to enable all agencies to develop effective local arrangements to work together to:

- Recognise the problem;
- Treat the child primarily as a victim of abuse;
- Safeguard children and promote their welfare;
- Work together to provide children with strategies to exit prostitution.

There is no guidance in Scotland where children who commit offences are dealt with by the welfare-oriented children's panel.

CHILDREN AS WITNESSES

The Criminal Justice Act 1988 (which applies in England and Wales) provides that a child's evidence shall be given unsworn in criminal proceedings, and that this evidence may corroborate evidence given by any other person. This puts the evidence given by child witnesses in exactly the same position as adult witnesses.

In cases of violence, cruelty or neglect, child witnesses under the age of 14 years may, with the permission of the court, give their evidence-in-chief in the form of a video-recorded interview and also be questioned during the trial by live TV link from a room outside the court room. The same provisions apply in sexual offence cases to child witnesses under 17 years of age. In addition, where a child is giving live evidence in a court room, the court has discretion to permit screens to be placed round the witness box to prevent the witness from viewing the defendant.

The law also prohibits defendants from personally cross-examining child witnesses. In addition, child witnesses can give evidence unsworn and uncorroborated. The media are not allowed to report the

name, address or school of the child witness or any other information which would lead to the identification of the child involved in the proceedings.

The report "*Speaking Up for Justice*" has recommended additional measures to assist child witnesses give their best evidence. These include proposals to make the measures available to all witnesses under 17 years, make it a presumption that child witnesses giving live evidence to the court should do so via live TV links, video-recorded pre-trial cross-examination and, where necessary, assistance with communication through an intermediary. These recommendations are all included in the Youth Justice and Criminal Evidence Bill, currently being considered by Parliament.

Under the Criminal Procedure (Scotland) Act 1995, children may, on application to the court and if the court agrees, give evidence on video to a commissioner, by live television link or from behind screens. Evidence is now routinely given by television link. Following guidance from the Lord Justice General in 1990, measures are also routinely taken to make the courtroom less intimidating, including the removal of wigs and gowns, positioning of the child at the well of the court rather than the witness box, permitting a relative or other supporting person to sit alongside the child while giving evidence, and clearing the court of all persons not directly involved in the proceedings. Following the recommendations of the Lord Advocates Working Group on Child Witness Support, which reported in 1999, the Scottish Executive has recently consulted on Draft Guidance on Investigative Interviewing and on Questioning Children in Court. Final guidance will be issued in the near future.

The Criminal Procedure (Scotland) Act 1995 also provides a general prohibition on any particulars calculated to lead to the identification of a witness under the age of 16, unless the only person under 16 is a simple witness whereby prohibition on identity would be as directed by the court. In addition, where proceedings involve a child witness and are in relation to certain types of offences such as crimes of indecency, the court can direct that those who are not directly involved or the press are excluded from court during the taking of evidence from the child witness.

THERAPEUTIC SUPPORT BETWEEN THE TIME OF REPORTING AND THE COURT CASE

There is currently no legal bar to children receiving therapeutic support before the court case, however it can lead to criticism by the defence of possible "coaching" of witnesses.

The view of the Crown Prosecution Service (CPS) is that decisions about the provision of therapy are not appropriate to be taken by prosecutors but can only be taken by those responsible for the welfare of the witness.

Because some forms of therapy, but not automatically all, may impact on the criminal case the CPS suggest that when pre-trial therapy is considered advice is sought from them about the likely effect of the proposed therapy on the evidence of the witness in the circumstances of that particular case. If the conclusion is that the proposed therapy may prejudice the criminal case, those responsible for the welfare of the witness, in consultation with the witness, should take this into account when deciding whether the therapy should be undertaken. It may still be in the best interests of the witness to proceed with the therapy.

The CPS have been co-ordinating the development of good practice guidance relating to pre-trial therapy for witnesses. This seeks to:

- Improve understanding of the difficulties;
- Clarify the roles of those involved of those involved in making decisions about pre-trial therapy;
- Provide guidance on the appropriateness of different therapeutic techniques;
- Set out a framework of good practice.

This guidance is currently the subject of a wide-ranging consultation exercise which will end on 30 April 1999.

The Scottish Executive has recently consulted on a Code of Practice on the Provision of Therapy to Child Witnesses prior to Court Proceedings which aims to improve understanding of the issues that arise in court proceedings with regard to the provision of therapy and clarify the roles and policies of those involved in making decisions about the provision of pre-trial therapy. A final Code of Practice will be published in the near future.

1.5 SEXUAL HARASSMENT

In the workplace, this is outlawed by the Sex Discrimination Act 1975. In other cases, the Protection from Harassment Act 1997 may apply - see **Section 1.2** above.

In Northern Ireland the Protection from Harassment (NI) Order 1997, in addition to creating a criminal offence of harassment, will also protect victims through the civil law when Article 5(3) to (9) comes into operation. The courts will be able to make an injunction preventing harassment, breach of which will be a criminal offence. The Order also empowers the civil courts to award damages to the victim for, among other things, any anxiety caused by the harassment and any financial loss resulting from it. These new remedies will be useful to women who are the victims of stalking, nuisance telephone calls etc. and will complement the domestic violence remedies available under the Family Homes and Domestic Violence (NI) Order 1998.

1.6 PORNOGRAPHY

The principal legal control in England and Wales is the Obscene Publications Act 1959 under which it is a criminal offence to publish any article whose effect, taken as a whole, is such, in the view of the court, to "deprave and corrupt" those who read, see or hear it. The maximum penalty for this offence is three years in prison. However, the Act also provides a "public good" defence under its provisions, if the publisher of the material concerned can show that the publication is in the interests of science, literature, art or learning, or other subjects of general concern. Child pornography is illegal under the Protection of Children Act 1978.

The Indecent Displays (Control) Act 1981 which applies across the UK makes it an offence to display any indecent matter which is exposed to view in a public place or where it can be seen from a public place. The Act does not define "indecent" and it is left to the courts to decide in each case whether the material in question is indecent or not. It does not include the inside contents of a publication as they are not considered in the public view.

In Scotland under common law a person who sells or exposes for sale indecent and obscene material may commit the offence of shameless indecency. In statute law, section 51 of the Civic Government (Scotland) Act 1982 makes it an offence to publish, sell or distribute obscene material. Offenders can be sentenced up to 2 years' imprisonment and an unlimited fine. The same Act also contains offences relating to the taking, possession and publication of indecent photographs or other graphic images of children.

1.7 PROSTITUTION

There is no specific offence of prostitution in the United Kingdom. However, the following activities are outlawed: brothel keeping, soliciting, loitering, living off immoral earnings, and kerb crawling (in Scotland the latter would be dealt with as a Breach of the Peace). In England and Wales, after 2 cautions for soliciting or loitering a woman can be charged as a "common prostitute". The introduction of prostitutes' cautions and the need to prove persistence in the offence of soliciting or loitering was a protection to women. It meant they could not be brought to court immediately but that they had to be given at least 2 cautions by the police. It is possible for a woman to appeal to the Chief of Police and the courts and to have such a caution expunged.

PROCURING

Section 22 of the Sexual Offences Act 1956 makes it an offence to procure a woman to become a prostitute in any part of the world, and the courts have held that the English courts have jurisdiction to try if any part of the offence occurs in England and Wales. Under section 23 of the same Act, "it is an offence for a person to procure a girl under the age of 21 to have unlawful sexual intercourse in any part of the world with a third person."

In Scotland, procuring is an offence under the Criminal Law (Consolidation) (Scotland) Act 1995.

PROVISIONS TO HELP THOSE EXPLOITED

Foreign women found working as prostitutes in the UK are not normally charged with any criminal offences.

Foreign women found working as prostitutes in the UK are removed under administrative powers as illegal entrants.

1.8 OBSCENE PHONE CALLS/TELEPHONE SEX

No information provided.

1.9 FEMALE GENITAL MUTILATION

Outlawed under the Prohibition of Female Circumcision Act 1985. This act creates a criminal offence for a person to carry out female genital mutilation, or to aid, abet, counsel or procure such an act. The maximum penalty for this offence is five years' imprisonment, an unlimited fine, or both.

A Private Members FGM Bill, supported by the Home Office, will repeal and re-enact the provisions of the Prohibition of Female Circumcision Act 1985 and give them extra-territorial effect, as recommended by an All Party Parliamentary Group (APPG) on Population, Development and Reproductive Health reporting in 2000. The extra-territorial provisions of the Bill can extend to permanent UK residents abroad as well as UK nationals.

In March the Bill passed the 1st of the various parliamentary stages through which the FGM Bill will have to pass before it becomes law. Assuming that it gets through, there will be an implementation period between the Bill receiving royal assent and the new law actually coming into force. We will use that period to ensure that law enforcement agencies, health professionals, social services and others involved in child protection issues, and of course the practicing communities themselves, are fully informed about the new law before it comes into force.

1.10 INTERNATIONAL CONVENTIONS

The UK has ratified the six core UN Human Rights instruments that are relevant to the issue of violence against women. They are the International Covenants on Civil and Political Rights, International Covenants on Economic, Social and Cultural Rights, and the Conventions on the Elimination of all forms of Discrimination Against Women, on the Conventions on the Elimination of all forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention against Torture and other Cruel, Inhumane and Degrading Treatment.

1.11 PROTECTION OF PREGNANCY/PREGNANT WOMEN

There are no special legal controls regarding pregnant women.

2.0 SENTENCING

2.1 SENTENCING DOMESTIC VIOLENCE

Sentencing is the responsibility of the judiciary rather than the Government. The maximum sentences for crimes of domestic violence depend on the substantive offences with which the assailant is charged and are no different from those which would apply had the incident taken place outside the domestic context. Within the broad statutory limits set by Parliament sentences in individual cases are a matter for the courts alone, taking into account all the circumstances of the offence and the offender.

In England and Wales, under the Crime (Sentences) Act 1997 those convicted for a second time of a serious violent or sexual offence are subject to an automatic life sentence.

3.0 EFFECTIVENESS OF LEGISLATION

3.1 SPECIAL PROVISIONS TO SUPPORT WOMEN AND GIRLS IN GIVING EVIDENCE

There are currently no special provisions for the support of women and girls, when they are giving their evidence. Witness support personnel are available for all witnesses, and there are special provisions for children giving evidence. Also see 3.3 below.

In Scotland, a start is to be made on the rollout of court based witness support programmes beyond current pilot areas. A consultation paper on vulnerable and intimidated witnesses, "*Towards a Just Conclusion*", was also published last year. Responses to the paper are now being considered with a view to producing detailed proposals in due course. The paper recommended that alternative ways of giving evidence already available for children, for example, Closed Circuit Television, should be extended to intimidated adults.

The Scottish Executive has recently consulted on proposals to establish a Child Witness Support Service to improve and integrate multi-agency support for child witnesses and victims prior to and during court proceedings and help them give their best evidence.

3.2 MAIN PROBLEMS AND NEW SOLUTIONS

LEGISLATION RELATING TO VIOLENCE

Existing violence legislation in England and Wales defines the seriousness of offences by the level of injuries sustained. This raises problems of evidence, and also fails to take account of the seriousness of some violent acts - such as attempted strangling - which may leave no visible marks on the victim. A consultation paper "*Violence: Reforming the Offences Against the Person Act 1861*" was therefore published in February 1998. The paper is based on the proposals in the Law Commission's Report No. 218 "*Offences Against the Person and General Principles*", and is considered by the Home Secretary to be a vitally important contribution to law reform.

The proposed new offences would be based on a combination of motivation and outcome. Hence the most serious offence is intentionally causing serious injury; the same injury caused recklessly, without the same intent, would be a less serious offence carrying a lower sentence. The existing offence of making threats to kill would also be extended to threats to cause serious injury and also to threats made to a second person to harm a third person.

A review of sexual offences in England and Wales is now underway. Its terms of reference are to recommend clear and coherent sex offences which protect individuals, especially children and the more vulnerable, from abuse and exploitation, to enable abusers to be appropriately punished and to be fair and non-discriminatory in accordance with the ECHR and Human Rights Act. The review is expected to report at the end of the year.

LOW REPORTING RATES

Other problems relate to low reporting rates and high attrition. On rape in particular, the Home Office have been studying the process of reported rapes to identify where and why cases are dropping out of the system. Work on this began in 1996. The study is divided into two stages - the first is a quantitative study examining cases initially recorded as rape since February 1996; the second part is a qualitative study of interviews with key criminal justice agents and court observation. An interim report, published in December 1997 set out the emerging findings near to the end of the quantitative stage. It provides information on where reported rape cases drop out before they reach court but the final report, which will be available in the summer of 1999 will identify why so many cases fail to result in a conviction. The findings of this report will be taken into account when the offence of rape is considered as part of the review of sexual offences and penalties.

It is clear that many cases (not just rape) are unsuccessful because witnesses are afraid to testify. On 10 June 1998 the Government therefore published "*Speaking up for Justice*", the report of the interdepartmental working group on vulnerable or intimidated witnesses. The report contains 78 recommendations which aim to improve the way in which vulnerable or intimidated witnesses (including women and girls) are treated, with the aim of improving their access to justice. A steering group has been set up to co-ordinate implementation of all the proposals. Those requiring primary legislation are currently before Parliament in the Youth Justice and Criminal Evidence Bill.

In particular, the report outlines a scheme which would identify a vulnerable or intimidated witness at an early stage in the police investigation and pick up on the individual needs of the witness. This would enable decisions to be taken on the appropriate methods of interview and investigation. The prosecution and defence would be able to apply to the court for one or more of a wide range of special measures to be made available to assist the witness give their best evidence during the trial. These include the use of live TV links so the witness does not have to give evidence in open court, screens round the witness box in the court room to protect the witness from viewing the defendant and clearing the public gallery while the witness gives evidence.

"*Speaking up for Justice*" stresses the likelihood of victims of rape as vulnerable witnesses due to the nature of the crime. Victims of domestic violence are also recognised as being a risk group likely to be intimidated witnesses due to their relationship to the defendant.

Northern Ireland

The Northern Ireland Strategy on Violence Against Women, which is currently being drafted, will complement the national document "Living Without Fear - an Integrated Approach to Tackling Violence against Women" being developed by the Women's Unit, and will address problems which are specific to Northern Ireland. It will also include current objectives and initiatives on tackling domestic violence.

DOMESTIC VIOLENCE

A Domestic Violence Regional Forum was established in September 1995. The Forum brings together the main statutory and voluntary interests, and provides the focal point for co-ordinating action to take forward the objectives set out in the policy framework. To date, the work of the Forum has included:

- Establishing local inter agency groups in each Health and Social Services Community Trust;
- Developing training and information programmes for professionals dealing with domestic violence;
- A pilot scheme for cautioning first time offenders;
- A treatment programme for perpetrators;
- A public awareness campaign, including television advertising;
- Action to improve the research and information base; and
- overseeing responses by the relevant agencies to the recommendations in a recent research report - "Taking Domestic Violence Seriously - Issues for the Civil and the Criminal Justice System" (McWilliams and Spence 1996).

Under the aegis of the Northern Ireland Regional Forum on Domestic Violence work continues to improve mechanisms for inter-agency co-ordination and enhance links with the voluntary sector. The Forum brings together all the major stakeholders. An inter-denominational sub-group is preparing a strategy information pack and guidelines on domestic violence, for use by clergy and parish workers.

The Northern Ireland Office (NIO) produced a publication called *Stopping Crime Starts with You*. This publication includes a section which provides useful and practical advice to women to help them protect themselves. The NIO have also produced a publication called *Six Steps to Protect Your Home* which includes practical advice on domestic security, and lists a number of helplines of organisations which can provide support. It was re-issued early in 1998.

Scotland

Responsibility for policies relating to violence lies with a wide range of Scottish Office Departments. There are also a number of other agencies which respond to victim's needs. Because of this and differences in Scottish law and culture, it was decided to develop a Scottish action plan on violence against women to deal with matters specifically within the control of Scottish Ministers which will become the responsibility of the Scottish Parliament in July 1999.

Preventing Violence Against Women: A Scottish Office Action Plan was published in November 1998 as a consultation document. It was widely circulated and set out a plan of action which will be refined into a strategic document in the light of responses received. The consultation period ended on 28 February and the responses are currently being analysed.

DOMESTIC VIOLENCE

In order to discover how the Scottish Office could best contribute to supporting victims, a study was commissioned to review the type of services available to abused women and their children. A report of this study was published in March 1998 under the title *Service Provision to Women Experiencing Domestic Violence in Scotland*. The report made 26 recommendations to the Scottish Office/Central Government and addressed a further 36 to service providers including local authority housing and social work departments, police forces, Health Boards, Scottish Women's Aid and the Benefits Agency.

The Scottish Office also published, in 1997, the result of a thematic inspection by HM Inspectorate of Constabulary of the police response to domestic violence. Entitled *Hitting Home* the report indicates that repeat victimisation is high and that demand from victims for police services has increased in recent years. Nevertheless, there has been great improvement in liaison with local authority services

and other agencies over the past 10 years and this report will help spread the existing good practice identified in a number of police forces.

A Scottish Partnership on Domestic Violence was set up in 1998. Its membership includes representative organisations who are actively involved in dealing with the various aspects of domestic violence. Its remit is to recommend:

- A strategy on domestic violence which takes into account the impact of domestic violence on children and young people; and the need for effective intervention strategies to prevent male violence against female partners and their children;
- Standards and levels of service for women experiencing domestic violence in order to encourage consistent service delivery throughout Scotland, having particular regard to the needs of women from rural areas, women from ethnic minorities and women with disabilities and taking into account the impact on children and young people affected;
- A framework for monitoring progress in dealing with domestic violence; and to -
- Cost all recommendations involving resources;
- Consider which recommendations should be given priority for action, taking into account of such factors as their impact, costs, the speed with which they can be implemented and local variations and needs and existing provision;
- Report to the Minister for Women's Issues by March 1999 setting out a detailed work-plan and time-scale for discharging the remit in full.

A workplan and timescale was accordingly submitted to ministers on 29 March and has been issued as a consultation document. Responses are requested by 30 June 1999.

LEGAL AID

The Scottish Office is committed to provide community legal services which will ensure that the legal aid system meets the needs and priorities of local communities. It has also undertaken to improve access to justice by making better use of the legal aid budget and ensuring value for money for the taxpayer and the customer. In its consultation paper *Access to Justice beyond the Year 2000* it discussed various possible models of community legal services that might be piloted using legal aid funds, and various ways of administering legal aid funds so as to promote access to justice for those of limited means. The consultation period ended in August 1998.

3.3 SPECIALIST POLICE UNITS

Following guidance issued to police forces in 1990 (England, Wales and Scotland) and 1991 (Northern Ireland), all UK police forces now have policy statements on domestic violence. As an operational matter, police organisational structures are the responsibility of local chief constables rather than central Government. However, long-standing guidance to the police emphasises the importance of dealing with domestic violence effectively; all police forces in the UK now have domestic violence policies; and most have specialist domestic violence officers, many of whom work in dedicated Domestic Violence Units.

January 1999 saw the publication of the Home Office-sponsored research study *Policing Domestic Violence: effective organisational structures* by Joyce PLOTNIKOFF and Richard WOOLFSON. Issues considered in this research included whether forces have specialist Domestic Violence Officers (DVOs) and/or Domestic Violence Units (DVUs), the scope of the role of DVOs and DVUs, the position of DVOs within the force, and how performance is monitored and information passed between front-line officers and DVOs.

A range of organisational structures was found, but no single structure emerged as less problematic than others: problems related less to the structure than to the status of domestic violence work within forces and the level of commitment from headquarters and divisional commanders. Line management of DVOs was often blurred, leaving them feeling isolated within the force structure. According to the study there was little systematic performance monitoring of the role of the DVO, and forces lacked a systematic approach to the management of information relating to domestic violence incidents.

A Thematic Report into domestic violence with Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecutions Inspectorate (HMCPi) will report on practice throughout the police

and court services will be published in the autumn. This will make recommendations into how those services can be improved.

Police Standards Unit at the Home Office is also undertaking a review of how data is defined and collected by the police forces of England and Wales, particularly the data on repeat victimisation. Domestic Violence has the highest rate of repeat victimisation of all crimes.

In addition to this 'Policing domestic violence - a modular training programme' is a national training product developed by Centrex . The programme is intended to provide a structured but flexible approach to the delivery of domestic violence training within the police service. The material is aimed at communications staff, front counter staff, probationer constables, constables with (2-30 years service), sergeants (patrol and custody) and domestic violence officers. Six modules have been produced: Understanding domestic violence; Dealing with reports of domestic violence, Professional responses to domestic violence; Domestic violence and children; Protecting victims and holding offenders accountable; Co-ordinating police activity in relation to domestic violence. The material has been developed with the assistance of the Women's Aid Federation of England and the NSPCC and has been widely circulated both within and outside the police service for comment and enhancement.

Under the lead of the Association of Chief Police Officers (ACPO) further work is also being developed in the areas of risk assessment, information sharing, interface between civil and criminal law and dealing with police perpetrators.

The thematic report "Hitting Home" identified weaknesses in the police response to domestic violence in Scotland. Not all forces have designated domestic violence staff and the report recommended that forces without such staff should consider the need for them in the light of the report. Further guidance on best practice for the police is being prepared.

3.4 VIOLENCE AGAINST WOMEN - AN OBSTACLE TO EQUALITY

Violence against women is recognised as a barrier to equality. The Government's vision is of a fair and equal society where everyone has the opportunity to participate fully. The Women's Unit, in Cabinet Office is working across Whitehall and in partnership with others, to act as a catalyst and co-ordinator in driving the Government's work on violence against women forward.

The Government is committed to putting in place adequate support systems and mechanisms to allow all women the opportunity to live their lives without fear and abuse.

In June 1999, the Home Office and the Women's Unit published a joint document "Living Without Fear" which sets out an integrated approach to tackling violence against women. It addresses all forms of violence against women, including domestic violence, sexual harassment, rape and sexual assault, violence at work and stalking. The document highlights concrete, practical examples from different organisations, agencies and local authorities, of how violence is being successfully tackled across the country. It focuses on the way different organisations and agencies work together to deliver better, quicker and more effective services for women who have experienced violence.

The UK Government has commissioned for the first time, a review of the economic and social costs of domestic violence. It will estimate the costs to those organisations dealing with the consequences of domestic violence – including social services, housing providers, health services and the voluntary sector. It will estimate costs to the criminal justice system, including the police and the courts.

The Adoption and Children Act has been amended to make clear that when a court is considering whether a child has suffered, or is likely to suffer, harm under the Children Act 1989, this harm includes harm a child may suffer as a result of witnessing the ill-treatment of another person.

The Crown Prosecution Service Policy on prosecuting cases of domestic violence has been revised, which sets out how the CPS deals with such cases. The CPS has also issued guidance to its prosecutors, which highlights relevant issues such as civil proceedings / additional barriers faced by members of minority communities / the effect on children and provides a useful checklist for the background information and evidence that prosecutors need from the police.

More recently, the Government has published and invited comments on a Criminal Justice White Paper - Justice for All. This paper sets out a range of proposals on domestic violence including sentencing, anonymity for victims in court, attaching a criminal offence to a non-molestation order, proposals to increase the interface between civil and criminal justice systems and putting murder reviews on a statutory footing. These proposals will be taken forward in a domestic violence

consultation paper in June 2003, setting out proposals on preventing domestic violence, which will be followed by a Domestic Violence Bill in the next available session of Parliament.

3.5 GENDER PERSECUTION AS GROUNDS FOR GRANTING REFUGEE STATUS

All asylum applications, whether from men or women, are considered without discrimination in accordance with the criteria set out in the 1951 United Nations Convention relating to the Status of Refugees. Gender is taken into account in the assessment of individual claims where this is relevant.

Gender related persecution which is committed by third parties and satisfies the criteria set out in the 1951 UN Convention may lead to the grant of asylum if it is knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection. Women (and men) who do not meet the requirements of the 1951 UN Convention may, nevertheless, be granted exceptional leave to remain in the UK if there are compelling humanitarian reasons why they should not be required to leave.

3.6 PROPOSED REFORMS

See **Section 3.3** above for the planned reforms to the Offences Against the Person Act 1861, the current review of sexual offences and other measures.

Some women's NGOs favour a change to the law to codify self-preservation as a defence against murder. However, the Government is not persuaded that this is necessary. The law on murder can already respond with flexibility to the particular circumstances of domestic violence victims. Self defence is a complete defence to a charge of murder which if successful, results in the acquittal of the defendant. Provocation is a partial defence to murder which reduces the offence to manslaughter. The other partial defence to murder, that of diminished responsibility, is also successfully pleaded in some domestic homicide cases. The judgments given in the cases of Ahluwalia and Humphries make it clear that the response to an act of provocation need not be instantaneous for the defence of provocation to succeed, and that the cumulative effect of prolonged abuse can be taken into account when assessing the impact of the final provoking incident.

There are a number of different strands of Government activity in relation to domestic violence, sex offences, and vulnerable and intimidated witnesses currently taking place within the Home Office. Further information will be available later in the year.

4.0 DOMESTIC VIOLENCE

See **Section 1.2** above.

5.0 RAPE AND SEXUAL ASSAULT IN MARRIAGE

See **Section 1.3** above.

6.0 RAPE AND SEXUAL ASSAULT

See **Section 1.3** above.

7.0 SEXUAL HARASSMENT

See **Section 1.5** above.

8.0 INCEST/SEXUAL ABUSE OF GIRLS

No information provided.

APPENDIX

Questionnaire on legislation in the field of violence against women (revised 2006)

1. LEGISLATION AND SANCTIONS RELATING TO VIOLENCE AGAINST WOMEN

- 1.1 Letter of Law – Definitions:
- 1.2 Domestic Violence
- 1.3 Rape/Sexual Assault
- 1.4 Child Sexual Abuse/Incest
- 1.5 Sexual Harassment
- 1.6 Pornography
- 1.7 Prostitution
- 1.8 Obscene Phone Calls/Telephone Sex
- 1.9 Female Genital Mutilation
- 1.10 International Conventions
- 1.11 Protection of Pregnancy/Pregnant Women

2. SENTENCING

- 2.1 Sentencing Domestic Violence

3. EFFECTIVENESS OF LEGISLATION

- 3.1 Role of NGOs in judicial proceedings
- 3.2 Are special provisions made to support women and girls giving evidence?
- 3.3 Main problems and new solutions
- 3.4 Special legislation addressing violence against women (treatment of women as a "special case" or as part of antidiscrimination legislation"?)
- 3.5 Criminal law/civil law
- 3.6 Specialist police units - country wide or patchy
- 3.7 Violence against women – an obstacle to equality?
- 3.8 Gender persecution as grounds for granting refugee status?
- 3.9 What good ideas have been suggested but not yet implemented?

4. DOMESTIC VIOLENCE

- 4.1 Are there specific laws to combat domestic violence?
- 4.2 Are current defences adequate when women kill abusive husbands/partners?
- 4.3 Is private violence punished in the same way as public violence?

5. RAPE AND SEXUAL ASSAULT IN MARRIAGE

- 5.1 Is rape in marriage outlawed and prosecuted in the same way as other forms of rape?
- 5.2 Are the sanctions for rape and rape in marriage the same?
- 5.3 Have any specific solutions been suggested for rape in marriage (restrictions and banning orders)?
- 5.4 Are there civil law remedies - including measures relating to the financial situations of wives/cohabiters after separation and divorce?
- 5.5 Is there special legislation to deal with rape in marriage?

6. RAPE AND SEXUAL ASSAULT

- 6.1 How is sexual crime defined?
 - crime against the person;
 - crime against individual freedom;
 - crime against morality/honour/society.
- 6.2 Does the definition of rape include all aspects of sexual violence (including sodomy for example)?
- 6.3 Are there differing degrees of rape/sexual harassment?
- 6.4 How is consent defined?
- 6.5 What kind of technical evidence is necessary in a rape trial?
- 6.6 Is cross-examination on the victim's sexual history authorised in rape trials and in what context?
- 6.7 Which court rules on cases of rape?
- 6.8 Does membership of this court reflect the principle of equal opportunities?
- 6.9 What sentences are usually applied to rapists?
- 6.10 Are female police officers present in all bodies charged with examining and prosecuting rape?
- 6.11 Have provisions been made for female forensic examiners?

7. SEXUAL HARASSMENT

- 7.1 Does your country have legislation to protect the dignity of women at work (violence against women)?
- 7.2 Are other forms of sexual violence legislated against?

8. INCEST/SEXUAL ABUSE OF GIRLS

- 8.1 What is the age limit between child and adult?
- 8.2 Does this correspond to the age of consent?
- 8.3 Is there specific legislation against child prostitution?
- 8.4 What other forms of sexual abuse are legislated against? -sexual harassment, female genital mutilation?
- 8.5 Are there provisions for the removal of abusers from households?
- 8.6 Are there difficulties regarding the credibility of children as witnesses?
- 8.7 Are there any special provisions for evidence giving by children?
- 8.8 Are children allowed to receive therapeutic support between the time of reporting and the court case?
- 8.9 Are any specific measures taken to combat organised/networked ritual abuse rings?