Comments of The National Coalition for Legislating the Protection of Women from Domestic Violence on the changes below introduced by a parliamentary subcommittee:

The Bill was amended to include all family members, and is no longer specific to women.

Upon its amendment in the subcommittee, the Bill is now titled as follows:

"The Law on the Protection of **Women** and Other Family Members from Domestic Violence**"**

The word "women" in the title is misleading, if anything, as it gives people the impression that the Committee has fulfilled its duty to protect women. But since women's protection is limited to the title and does not apply to the content, it jeopardizes any efficient protection of women.

We stick to the title and the content of the Bill namely "***the Protection of Women from Domestic Violence***", since the protection mechanisms provided for in the text have resulted from a study that establishes the needs of women and the necessity to remove the obstacles they encounter, should they decide to lodge complaints. **We suggest as well that the section on penalties be referred to the Penal Code as established in the main Bill, especially that the Penal Code is of a general nature. In fact, should any person become the victim of a punishable crime, he/she shall be entitled to lodge a complaint as provided for in the Penal Code.**

Amending Article 3-a Paragraph 4-5 on forcing a wife into sexual intercourse as follows:

4-a

Whoever shall, with the purpose of claiming his/her marital right to intercourse, or because of the same, intentionally beat his spouse or harm the same, is punished pursuant to Articles 554-559 of the Penal Code.

The repeated beating and harm may result in the imposition of a more severe sanction pursuant to Article 257 of the Penal Code.

The plaintiff's withdrawal shall suspend the civil party's petition in the cases subject to Articles 554 and 555 of the Penal Code.

The provisions governing a relapse or a repeated offense shall remain enforced, provided the conditions relevant thereto are found.

4-b

Whoever shall, with the purpose of claiming his/her marital right to intercourse, or because of the same, threaten his spouse, is punished pursuant to Articles 573-578 of the Penal Code.

The repeated threat may result in the imposition of a more severe sanction pursuant to Article 257 of the Penal Code.

The plaintiff's withdrawal shall suspend the civil party's petition in the cases subject to Articles 577 and 578 of the Penal Code.

The provisions governing a relapse or a repeated offense shall remain enforced, provided the conditions relevant thereto are found.

The aforementioned text is unnecessary since the Penal Code criminalizes such beating and harming under any circumstances. Pursuant to the enforced Penal Code, a woman having endured hurting or beating during sexual intercourse with the spouse or before the same may lodge a relevant complaint as established in Articles 554 and subsequent articles of the Penal Code.

Our request is to criminalize any violation of the body's sanctity and the act of coercion per se. In fact, criminalizing coercion per se carries a moral value regardless the means used to force the woman into sexual intercourse. The current text is meant to circumvent the law; either the act of forcing a person into sexual intercourse is forbidden or it is authorized and legalized. In sum, if the act of coercion is a crime per se, then why not criminalize it overtly without attempting to get around the text by criminalizing what is already a crime.

Article 16 (now article 12) stipulates the following:

> The protection order is a temporary measure initiated by the relevant legal authority pursuant to the provisions of the present law with regards the cases of domestic violence.
>
> The protection order is aimed at protecting the victim, her children and the descendents living with her and exposed to threat, the social workers, the witnesses or whoever provides the victim with assistance in order to stop the violence or the threat to repeat the same. ***Pursuant to the present law, Children shall mean those who are in the custody of the victim as established in the applicable personal status laws***".

The provisions on custody apply only the couple is divorced or separated.

Moreover, relying on the provisions of custody, to involve or not children in protection shall cause discrimination between boys and girls within the family itself. In fact the age of custody varies between boys and girls in the same denomination; in other terms, though they both live with the mother when violence is committed one of them will be included in the protection and the other won't. Moreover, the implementation of the provision on children is discriminatory since the custody age varies between the different religious denominations.

Pursuant to Law number 422 on the Protection of Young Persons and as per the provisions of the Convention on the Rights of Children a protected child is a human being below the age of eighteen years. The drafting of Article 12 above goes beyond the said Law and causes confusion in the implementation of the Article which will delay the issuing of the protection related decision.

In the event of a conflict between two custody related sentences, the designated judge shall suspend the case until the conflict is solved by the Court of Cassation.

Moreover, the present text excludes children from the scope of protection when custody does not belong to the mother, according to the personal status laws. This means that a child who pays a visit to a noncustodial mother shall not be protected if during his/her stay the mother incurs her husband's violence.

The decision to protect must include all those who are present with the mother or live with her when she incurs violence including children because they will be exposed to violence or will bear witness to the same. Moreover, we cannot go below the limits set by the Law on Young Persons. We know that the law upsets religious courts who try to seize the opportunity and win back what they lost in the Law.

Article 17 (Now Article 13) on issuing the protection order stipulates the following:

The protection request shall be filed before the Investigating Magistrate to whom the case is entrusted or before the competent Penal Court. In the last case, it shall be examined in the deliberation room.

Under all circumstances, an urgent request may be lodged before the Judge in Chambers.

… In the cases established in both the first and second paragraphs, the decision shall be made within no more than forty eight hours.

The Bill, as submitted by the Cabinet, stipulates that the protection seeker shall lodge a request before the Public Prosecution because it was found that when violence occurs women seek the help of the public prosecution either directly or via police stations as public prosecution is the fastest and least expensive refuge.

Restricting the mandate to the Judge in Chambers or the Investigating Magistrate means that women will incur a financial burden because lodging a complaint directly before the judge is very costly and in both cases women should be assisted by an attorney at law.

Moreover, the Judge in Chambers is not available after working hours or on holidays; therefore violence could exacerbate or lead to homicide before a woman can seek a protection order.

In addition to all of the above, no one can guarantee that the Judge in Chambers will make a decision within 48 hours as established in the law.

For this purpose, we see it more appropriate to keep the Public Prosecutor in charge of issuing protection orders; that is if we are really keen on providing women with efficient and fast protection.