## WAYS FOR PREVENTION OF DOMESTIC VIOLENCE

/Handbook/

#### CONTENTS

•	Preface	250
•	Introduction	252
•	Historical tradition of Family and tendency of its development in Mongolia	253
•	Domestic violence in Mongolia and ways for eliminate it	263
•	For Issues on Domestic and Household violence, its legal regulation,	
	present situation as well as improvement of legislation	273
•	Domestic violence in foreign states and its situation of its legal regulation	
	/Comparative analysis/	278
72	nex 1.	
WI	Laws Against Domestic Violence in some States of the World	
•	Model legislation on domestic violence. UN Recommendations	286
•	Law of Ukraine on the prevention of domestic violence	297
•	The Domestic violence act of Malaysia	305
•	Domestic /Household/ violence Intervention Project	
	(Duluth, Minnesota, of USA)	313
72	nex 2.	
М	<del></del>	
יוא	Documents of the International conference on	
AI.		
ΔIJ	Documents of the International conference on "Concepts of the Law Against <b>Domestic Violence"</b>	
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and	
	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence	319
	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence Law of Mongolia against domestic and household violence (Draft)	321
	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence	321
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence Law of Mongolia against domestic and household violence (Draft)	321
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence  Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts	321 328
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence  Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts  Some issues on terms of the Law against domestic and household violence	321 328
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts Some issues on terms of the Law against domestic and household violence Preliminary investigation, Inquest and Prosecutor's supervision for	321 328 333
	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence  Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts  Some issues on terms of the Law against domestic and household violence  Preliminary investigation, Inquest and Prosecutor's supervision for  Violent crime against Family member in Mongolia	321 328 333 338
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence  Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts  Some issues on terms of the Law against domestic and household violence  Preliminary investigation, Inquest and Prosecutor's supervision for  Violent crime against Family member in Mongolia  Legislative system and domestic violence	321 328 333 338 343
•	Documents of the International conference on "Concepts of the Law Against Domestic Violence"  Memorandum on Establishment of the Central Asian Forum against Domestic and Household violence  Law of Mongolia against domestic and household violence (Draft)  Concepts of the Law on combat domestic and household violence role by the Courts  Some issues on terms of the Law against domestic and household violence  Preliminary investigation, Inquest and Prosecutor's supervision for  Violent crime against Family member in Mongolia  Legislative system and domestic violence  Life free of Violence	321 328 333 338 343 349

#### **PREFACE**

We have proclaimed in our Constitution the mission on creation of a humane and democratic civil society in our Mongolia. In the era of globalization and information, preference of human development and creation of the favorable and peaceful environment for children growth as well as provision of all the condition for children's development should be not only one of the well-thought state policy but also integral part of the day-to-day activity of all the social institutes and all the social sphere.

Mongolian people speak that "After complete arrangement of the individual / private matters, arrange your family and then your state". With this phrase, it is very clearly defined who must make own contribution on the development of the society; how and in which stages can individuals must govern this process.

The family is first environment of the human development. But it is accepted worldwide that infringement one's rights and legal interest freedom; and cause physical, psychological, sexual and economical violence and pressure by one member of the family, become a negative act with a great damage. And it is observed that in the most cases victims of such kind of negative acts are mainly women and children; and it is frequently mentioned in the official documents of the international organizations that this is one of the most common forms of the violence against women.

Domestic violence is widely distributed in Mongolia. And the fact that 43.7% of the crimes are committed in the domestic and household sphere, proves that environment of the crimes is becoming secret and they are being committed in the limited household sphere. It is notable that we cannot officially say the realistic statistics of domestic violence, which has been known by legal and supervisory bodies, perpetrated in latent form and continued.

Non-governmental organizations which carry out in direction of women and human rigths, have been taken various measures such as studying on domestic violence, providing victims of violence with the required services, give them free-of-charge psychological and legal advises, development of the draft law against domestic violence, get advise from the international experts and organize training.

All the crimes caused by domestic violence are solved like as other kinds of crimes according to the Criminal and Criminal procedural laws. But this fact is not meeting the specifics of domestic violence such as it is committed between people who have mutual psychological and economical dependence; victims reside together with violators and are under violators' domination; violence is regularly repeated and interval between regularity is close; it is committed in hidden form for a long time. Thus, responsibility and measures which are being imposed to violators do not refund victims' loss, but affect negatively them.

Therefore, it is important to disseminate information on international practice on combat domestic violence; trends; other states' situation on combat it including adoption of the related laws and carrying out activities to the state decision-makers, local administration, non-governmental organizations and public. The International conference on "Concept of the law against domestic violence" was successfully organized jointly by the MWLA and NCAV with financial support of the Soros foundation in 9th-11th December 2002 in Ulaanbaatar as well as, as result

250 dets commet domeste welingelets commet domeste wellowered and the commet domeste wello

ATO AT EXEL OF "ADDRESSY FOR TO COLOR AT SECRET OF "ADDRESSY FOR TO COLOR ATO AT EXEL OF "ADDRESSY FOR TO COLOR ATO ATO AT EXEL OF "ADDRESSY FOR TO COLOR ATO ATO AT EXEL OF "ADDRESSY FOR TO COLOR ATO AT EXEL OF "ADDRESSY FOR TO COLOR ATO AT EXEL OF "ADDRESSY F

of this, Central Asian Forum on combat domestic violence was established.

If this publication which we are offering for You, contained Domestic violence and international practice on combat it /comparative analysis/; Present situation of the Legislation of Mongolia, factors of tradition and customs; Situation of Domestic violence in Mongolia and ways to eliminate it; papers which were held at the International conference; Documents of the International organizations and Laws against domestic violence of other states in Mongolian, English and Russian languages; creates for You a new idea even as a drop on what about state and non-governmental organizations as well as public should pay their attention; which kind of decisions should be issued and which kind of activities must be carried out; our goal will be fulfilled.

We greatly appreciate Soros foundation that granted financial support for publishing this book; especially Mr. Stephan D. Vance and all the people who involved compiling essays and papers.

#### **D.ALTANTSETSEG**

President, Mongolian Women Lawyers' Association

D.DUGERJAV

Executive director, Mongolian Women Lawyers' Association

Professor, Cardidate of the Sciences,

Institute of Finance and Economy

J.ALTANTSETSEG

President, National Center Against Violence

D.ENKHJARGAL

Executive director, National Center Against Violence

LETS COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC VERLINCELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S

#### INTRODUCTION

Merit of the human birth is to initiate own family, give birth and rear own children and educate them as good persons with a higher dignity.

The purpose and duties of everybody is to keep own sacred home without any offence and keep own closest persons without lack of love and care.

But these pure and precious relation in the family are cracked and furthermore quite lot cases of inflicting harm for their psychology and health are being considered as one of the large social problems for not only individuals but also the whole society.

It is already time to pay attention for that these facts cause a great damafe and are becoming a biggest infringement of human rights as well as there are opportunities in the subsequent occurrence of dangerous crimes.

Worldwide gives especial attention to this question in particular to its legal regulation and it is called up by the Branch session of the Tasking force of UNO to adopt special legislation against domestic violence and enacted the Model legislation.

It is considered according to the unofficial research, a form of domestic violence is being dominated in one of each three families in Mongolia.

Thus, Mongolian Women Lawyers' Association has started working out a special law against domestic violence since 1995 and is cooperating with the non-governmental organizations and related state authorities on this issue.

As today, paying special attention by the government on this issue and establishment working group headed by the Vice speaker of the Parliament which will bring on consideration by the Parliament developing the draft law against domestic violence show that real result of this issue is very close.

It was very significant that Mongolian Women Lawyers' Association has organized an International conference under a topic on improvement of the legislation against domestic violence in December 2002 in these conditions and discussed concepts of the law, present situation of domestic violence and ways to eliminate it.

So we are offering to You the book with the purpose of a wide dissemination of information connected with this issue to citizens, public and heads of the government as well as to draw their attention.

We hope that this publication will give the certain concept about the importance of combat domestic violence and which kinds of problems must be solved in the nearest periods.

B.DOLGOR

Member of the Parliament of Mongolia,

Head of the Group of the Women Parliamentarians

Member of the Working group on development of the draft law

against domestic violence

252

## HISTORICAL TRADITION OF FAMILY AND TENDENCY OF ITS DEVELOPMENT IN MONGOLIA ...

Connection of State is family

Connection of Relatives is parents

Although some questions such as what is the family, what is the meaning of living as family and which is influence of family on social and human development are like as simple, but up to now there is no common term and concept on the family. Thus probably they are not simple questions. There are some interesting conclusions by our scholars and researches on this issue, but the situation that issue on family has been surveyed separately in macro level can be caused due to unreliable and unreasonable policy by State.

#### On the term:

In the view of our historical sources, it is mentioned as "oruke ger" in the sources of period after XIII century mentioned and as only "erugeten ger" in the "Secrets of the Mongolian history". The family is explained at first as family and at second as near in the Brief glossary of the Mongolian language".

May be the word is named not only the smoke hole cover of the felt ger but also the upper crater of the dug out / mud hut where ancient people were lived. Because even now crater of any hole is being named as "crater of land", "mountain crater" and "whirlpool".

In the view of creations by scholars who researched archives and registering tools of XYII-XIX centuries, there is not mentioned as "family"; but "family member", "number of family members"

The understanding as "family" is mainly used for official use. The Family law has been readopted / redrawn in 1999 25 years after its first adoption. Changes which arisen in marriage and family relation in last years, for instance, joint and common property of family members, legal registration /guarantee/ of marriage, dissolution of marriage, adoption of child and decision of common dispute in family are legalized in this law. But there are not few problems are being faced for families, and man can says that these problems are still waiting for proper decisions from researchers specialized on family study.

Basically, there is no problem for common use of the concept on family. But, for instance, if we translate the Russian word "semiya" and English word "family" in Mongolian language as "ger bul", it cannot express all the specifics of Mongolian families. And sometimes understandings "family members" or "members of family" are more appropriate. Here, it is comprehensible that the understanding "crater of ger" doesn't relate to the word origin from ancient times' cave. Anyway it is still being reflected to Mongolian household life. Especially, it included the meaning of conducting of agriculture and interest in having a few cattle for private use in the period of socialism. If we consider all these arguments and the terms "crater of ger", family, family members and members of family" should be defined in common manner. /P.Uwsh, H.GUndsambuu/

LETS COMMAND FORMSTER WELFIXELETS COMMAND COMMENTER WELFIXELETS COMM

#### Concepts on the family

Concept on the family is considered by researchers as follows:

- joined on the basis of intellectual connection, not of parental, relative or economical / financial arguments /T.Afanasiev/
  - caused by private and intellectual use as well as societal necessity /A.G.Harchev/
- relied on common situations of household life, responsibility to be taken for each other for / on morality and morals as well as mutual assistance /Sh.Sukhee/ and
- Form of relation between family members and relatives included parents and children /T.Namjil/

It is defined in our Family law that "Family is connection for the whole life by to legal age reached a man and a woman who are living together being registered in the State authority based on principles of free, voluntary and equal right and preferring love".

I would like to define as follows: "Family is a unrepeatable and specific relation which includes all the social relation, relied on "correlation" between people who are independent psychologically relatively and economically".

Origin and development of family /Asia, Central Asia, State of Mongolia/

Historically, since the ancient times, Mongolian people like as nationalities of many countries of the world had conducted registration of relatives starting from petroglyph aspiring to recognize their relatives and origin as well as keep their blood-relationship purely.

Family is getting as a form of social organization of relation between family members and relatives which involved parents and children and mainly relied on sexual relation. Essence of the family is to strengthen sexual relation, birth giving and educating children and keep elders. If the essence is lost, family even exists but it will be insignificant for the essence.

There is tradition of marriage ceremony in the states of the world. This fact not only expresses public recognition of married couples but also accept social responsibility by the couples. And this is guaranteeing their rights to care for each other jointly create, possess and dispose their properties and the responsibility is joint duty to guard as well as care for their children and elders.

Joint living by grandparents, parents, children, grandchildren and great grandchildren in other words, life by 3-4 households as a family in accordance with Oriental patriarchy can be named as great / large family.

Family with many members — as named by F. Engels as "patriarchal family unity" is developed in Mongolia, Buryat, Yakut and Korea. Basic characteristics of such kind of family is that a family involves several families or origins with their children by /one/ a father and all they live under one roof, jointly conduct agriculture and eat as well as dress from common reserve".

Researchers consider that process of "small family" arising from the large family is started before a thousand years B.C.

Ancient finding such as big and small gers at the lower slope of a wooded hillock in the cave painting of Tsagaan gol, Gobi-Altai aimag creates hypothesis that small family separated from the large family might initiate camp of gers.

254 JUTS COMING COMING COMING COMING COMING VALUE CULTS COMING COMING COMING VALUE CULTS COMING COMI

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF

Mr.Tseveendorj, scholar consider that "Separate families are arisen among Chandmani people, but connection of tribe is considerable strong" and Mrs. E.A.Novogorodova accounts that "There was a period of transition that small families were separated from large families."

Large family was named differently in Mongolia, Buryat, Yakut, Korea and Japan, but structure and activity of them were the same.

Family with many members was headed by the eldest man mainly father and the father, was assignee /proxy/ owner of all the real estate and good of the family, actually only he enjoys the rights to dispose the properties. All members of the family must be governed by him unconditionally. Head of the household distributes all the works / duties in the family such as animal husbandry, agriculture and etc.

For economical works, the eldest son will substitute his father who disabled and became elder, but the father will remain as head of the household /From works by Dr. S.Namjil/

#### Civilization

Before 1921 tools for forming family relation, morality, customs and consciousness in Mongolia before the Revolution was expressed by the specifics of social relation of the nomadic livestock forming.

Mongolia was a State where nomadic civilization is dominated and conducts livestock farming. Since 1611, being enslaved by Manchu state where Buddhism religion is reigned for over 240 years, became as considerable obstacle for development /raise of population. Age of women's marriage and birth giving was 15-54. At that time, one of every 4 men were getting as monks and on in average 8-10 children were born, but only two of them had have probability to stay alive, in other words, higher rate of mothers' death was explained by women's health in the historical sources.

In the society of Mongolia before socialism there were exact labor organization for men and women, domination of patriarchy and second position taking by women in the most sections of societal, economical and political life. Women's participation in public life was weaker and men were dominating at the decision making level. Many men were being blessed and Buddhism was taking an important place in societal life. This effected obviously in decrease of birth giving and population. At this time, population had almost not increased and there were only 600 thousand peoples. Women's responsibility was limited only in the range of family, relatives and as mother.

Period after the People's Revolution and Period of Socialism / 1921-1989/

The People's revolution which reached a victory in Mongolia in 1921 brought considerable change in Mongolian women's situation.

Since the period of socialism, family relation is completely changed and new style of living. But elimination of traditions and customs under the name of remnant of the old society, change of family labor organization and losing of unity of rights and duties have had started.

Under the influence of liberalization from Manchu's oppression and Russian Proletariat's revolution in 1911, Mongolia is transferred / moved from feudalism to socialist system passing over capitalism. From the beginning of this period, European culture which was named as socialist has been started to disseminate in Mongolia and brought serious innovation /reform/ to development of population and family. And since this time having by women one

255

ETS COMMOTORNETS VARIFICATES COMMOTORNETS VARIFICATES COMMOTORNETS VARIFICATES COMMOTORNETS VARIFICATES COMMOTORNETS VARIFICATES COMMOTORNETS VARIFICATES CO

husband, having by men one wife, marriage on the voluntary basis and being educated and worked by both of men and women without discrimination have had been legitimized firstly among Asian states.

In 1935-1944, population of Mongolia was about 750000, yearly over 80000 men were forced to serve in the Army and about 40% of all the men were disciple in the monastery not getting / being married. And at that time, about 30-40% of the all adult women were not married.

Since 1960 resolute measures which were taken by the government for improvement of the situation of population societal and economical have had resulted to decrease number of unmarried people and to stabilize gender proportion in concrete level /limit/.

In the purpose of support of reproduction and at the same time allowance of possibility to educate as well as work, the Government has had regulated for establishment of a number of nursing homes and kindergarten and working by women 45 days after their birth giving.

This period is named as "explosion period" of population's growth of Mongolia on in average, 5 children were born in a family.

A number of women have had worked in sectors of production, service, education and society. For instance: they were worked as teacher, doctor, seller and factory workers. Today women are taking place of about 80% of the above-mentioned sectors and men who are remained 10-20% of them have position in the governance at decision making level.

#### Socialist feminism

#### Period of transition /after 1990/

Since 1990, in other word in last 10 years, our state is developing transferring to the open system of democracy and market. Since this time women have started to freely express their opinion under concepts of human rights, freedom as well as equal participation by men and women.

In comparison men and women, educating by women is taking place of 65-70%, but in the view of the summary of population census in 2000, employment by women couldn't exceed employment by men. This fact proves that chance to be employed for higher-educated women is less than men's chance /possibility.

State policy on support of women's reproduction has been changed and many nursing homes are closed. Although this change legalized their rights to care for their children until the children reach up to two years' age and it effects well / positively in grow and educate their children healthy, but there are many families who have not possibility to care them at home depending on financial situation. This fact is getting as one of population is decreasing and age of marriage is becoming elder.

In the conclusion of this situation, late marriage by men in last years might be caused due to in one hand many reasons such as preparation for marriage, provide financial needs, educating in the present market situation and in another hand it could be caused due to change arise in youth's duty and responsibility, consciousness as well as cleverness for living.

And marriage dissolution of middle-aged people is taking the highest rate than other aged people and this fact is drawing more attention. This fact is explained by some researchers that women's position in the society, financial independence from husband

256 JUTS CORRAY DOMESTIC VALENCELLET'S COMBAT COMMISTIC VALENCELLET'S COMBAT COMBATIC VALENCELLET'S COMBATIC VALENCELLE

and level of education became better / higher and by another researchers named such reasons as no family labor judgment and being less experienced in the market economy suffering with psychological crisis and becoming an alcoholic. In the view of the registration on marriage dissolution in Ulaanbaatar, 45.7% of them explained that family uncomfortable relation or violence caused and there was no another choice / way to get dissolved. Said in detail, in the most cases, it is caused due to women's tolerance with pledge their life and health as well as alternate choice including difficult financial situation and having no own home which imposed for them. Considering in public level, generally women are still economically dependant from their husband. Depending on living style and civilization level, people of America and Europe are relatively less dependent economically than our Mongolian families.

In last years, strategy to connect the policy on family with policy on population and accommodation dwelling is being followed by the Government and a working group was established by the President and is working.

And issue on family included in the National program "Provision of gender equality" as separate paragraph /article and it is in the stage of implementation.

But in this National program to be implemented / followed during 20 years, mentioned that head of family will be husband and traditional duties by husbands and wives will be kept continuously. So this paragraph became a document which violated trend to make equal balance family or reproduction responsibilities reflected / pointed out at international standard and many gender specialists and non-governmental public organizations expressed their controversial opinion but they remained as minority.

Traditional customs of any state exists as unwritten / ungratified law in people's life. This systematic cycle /regularity/ of social process influences to develop habits and skills for people. Now it would like to introduce you some idioms and legislation reflected this issue.

Family standard by women and men

- It is written in ancient edification books that State uses learning by men and Family uses learning by women.
  - Irresolute men should be named as not men, but women Resolute men should be named as not men but jewel

/Man with two different soul - not the man/

- Kettle can broken down, but only within the fireplace.
- Married couples beat until bleeding and embrace each other strongly.
- Spouses do not need a mediator. and etc.

These national wisdoms affect the people to consider domestic violence at the level of simple and slight dispute between married couples, their private or internal issue.

- If hill was not created, how can magpie stay on there?
- Women get beating due to themselves.
- Wives and goats have to get beating once a month. They know well the reason of this kind of beating. /Kunz/

257

TS CORMITORISTE VALUELLES CORRO TORISTE VALUELLES CORROS CORROST VALUELLES CORROSTORISTE VALUELLES COR

- Bad wife is evil in the house.

Wet dung is evil in the fire

- Men who have a good wives do not suffer
- Beautiful woman who is familiar in public cannot be a good wife.
- Danger of wives who underrate their husbands

River water overflew from its bank

- Son-in-law who resides in the house of parents-in-law and God which is put on the chest are the same.
  - There is no place to put his saddle for a son in-law who resides in the house of parents-in-law
  - If a wife can be a good wife, she will not become a maid

#### The best wife:

Harmonies like as a sister

Consensus like as a lover

Helping like as a mother

Serving like as a slave

Respecting like as a original idol.

- If a child gets beating, his or her misfortune is ridden off.
- Ears of disobedient children locate in their hips
- Even animals can grow their off-spring

Only man can govern his actions

Thought that they can beat the closest persons, come to minds of children.

Due to social stereotype that women get beating by their husband because of the careless, women are forced to accuse themselves and keep the problems as secret.

- Bird is bird, but it feeds own nestlings.
  - Tough a husband is a bad one, he can keep his wife.
- Even a man is a powerless one, he is always above the woman,
  - Even a saddle is an old one, it is always on the back of horse.
- Women's hair is long, but mind is short.
- Women and antelopes have no a native land.
- Guests visit a family respecting husband's dignity but after visit the guest assess the family on tasty of wive's tea. So honor of the given family depends on this.
- Women are in charge of the detailed and internal of her family and men are in charge of the outside heavy works and etc.

Women bear higher responsibility for her family and as a mother, but all these duties are not assessed by the given family and also the society. And role by husbands are appreciated

258uets combut domeste: valincellets combut d

ATO A EXISED OF ADDRESS PROTECTION TO ALTON A TO A FEEL OF ADDRESS PROTEON TO ALTON A FEEL OF ADDRESS PROTEON AND A FEEL OF ADDRESS PROTEON ON A TON A FEEL OF A T

more. Researchers unanimously agree that men enjoy more rights and bear lesser responsibility than women. By the research conducted among the training participants, it is proved that in the most cases 90% of the women and only 10% of the men are engaged in a household works and growth as well as education of children.

Even for now there is still a trend that women entrust their fate to their husbands, give the decision making rights to their husband and be under forever dependence because of they think that with marriage women will have life guarantee.

Education and bringing up

Boys and girls are teached from childhood as follows:

- The man does not cry.
- If someone beat you, give it the same response.
- Women should be soft, tidy and skillful for household works.

Girls are involved in the serving labors and boys are in the technical labors during the lesson "Smartness on livelihood" at the Secondary school.

Women takes place of 70-75% in the colledges and universities, boys raise livestock just after graduation of 8<sup>th</sup> grade. These trends on making boys as a owner of property and girls as owner a education and culture, are also connected with the social stereotype on gender that boys are strong gender, they can live even doing physical works, therefore they should become owners of property.

Historical tendency on the legislation, 12<sup>th</sup>-13<sup>th</sup> Century

## The law "Ikh zasag" were applied in the period of the great conquest by Ghengis Khaan /13th century/

Rules on family are 5 articles in the law

- 1. If someone leaded a dissolute life, he or she shall be executed not depending he ir she was married
- 2 Men can be married as they please
- 3 When a father die, his sons solve fate of his wives. They can get married with their father's other wives except their mother or distribute them to other persons. So, they can get married with sisters one after another or at the same time.
- 4. In the beginning of each year, everybody should show their daughters to the national emblem and prepare to select them for the boys.

It is specified that the following actions are strictly forbidden for ceremony of bride-price because due to them family will become worse, state will be wiped out and defeated for wars:

- boys didn't listen to their fathers' edification
- younger brothers didn't listen to elders' edification
- husband jaloused his wife
- wife protested her husband
- esteemed lords met cordially their relatives and discriminated outsiders

LITS COMBAT COMB

- saved private property and misused state property
- if select way of deceit, it will become robbery

In the view of these, strength of family is considered as important, but also considered wives as inheritable property, serving maid for her family and husband. I think that all these factors affected to form the concept among population that if wife deceives her husband, she must be penalized.

17<sup>th</sup> - 19<sup>th</sup> Century

#### The law "Khalkh juram" was applied

#### when Mongolia was under colonization by Manchu for 240 years

It was considered as depravity and punished by fine as "Depravity by lords with lords' wives; lords with servant's wives; servants with servants' wives; depravity with initiative by women shall be punished by fine".

Relatioship of origin was strongly reflected in marriage and family relation.

- If servant arrange engagement for lord's daughter, he should deliver white camel with silver peg, white horse with sable fleshy tumor, wodka full of a silver cup, pearl without hole and wodka.
  - If ask for lord's daughter, he should deliver silver cup, pearl and wodka.
  - If servant ask for servant's daughter, he should deliver worka, sheep guts, horns and hoof.

In the view of these, cost of arranging engagement for women depends on their rank and it can be considered as evidence of women were assessed as property from the view of subjects.

Family law of 1929

State of Mongolia was sovereigned under influence of the Proletarian revolution in Russia in 1921 and victory of the National revolution. The first Constitution was adopted in 1924 and 29 clauses about Family were reflected in the Civil law. This law is being considered as the first law which created the legal environment of family.

- Marriage is performed by everybody who reached to 18 years' age on the basis of agreement by the couples without discrimination for origin, religion and being clergy.

Contrary causes for getting marriage:

- having double wives or husbands by one of the couples is forbidden; and having one wife is legitimized
  - marriage between relatives is forbidden.

This clause on equal rights for marriage is the first not only in Mongolia but also in Central Asia.

And also it is significant for keeping the genetic fund of the population in purety.

The Family law of 1973

Socialist view and trend are contained in this law.

- Marriage and material and immaterial private relation of the family members

260ets comut domeste valincelles comut do

ATO A FEELD OF -ANDOESEYED/OF OVI COLUMN DA FEELD OF -ANDOESEYED/OF OV

are protected by the law; it has been carried out the important role to reduce equality in the family

- Everybody including both of men and women has the rights to be educated and work.

Quite lot nursing houses, kindergartens and secondary schools were established job positions have been provided in order to involve women to the society.

The new Family law was adopted in 1999. The following items were involved for the marriage conditions:

- marriage with foreigners is legitimized
- rights and duties of the married couples
- no violence for each other in any form
- conduct registration of relatives

Dissolution of a marriage in the judicial manner

- If serious damage for life and health of the family members as well as children's education might be caused or it is defined that the above-mentioned damages are already caused due to regular violence and pressure by one of the married couples, action of conciliation is not be taken and marriage is dissolved according to the clause 14.2 of this law.
- If it is defined that fixing amounts of joint property to be distributed to a family member is considered health of the married couples and children's interests; and joint property is misused and hidden as well as marriage is dissolved due to his guilty actions; the court settle the case according to the paragraph 3, article 98 of the Civil law.

Some comments proposed by the National center against violence for the first time including a category "violence" through the Member of the Parliament and all these are supported. These facts proved that law arise from the real life.

Concluding from all these, if strengh of the family were guaranteed in more extent by the previous laws which regulated family relation, the Family law of 1999 become brand-new for that it considered safety of the family members as important.

#### Conclusions

- Women take place of 80-85% in the sector of education due to some concepts that women's main duty is to bring up and educate her children
- Although there are clauses of the law proclaimed women's rights, but there is no clause of the law directed to properly solve issues on domestic violence
- For today, there is no structure in the state authorities which carries out on the issues of gender and domestic violence
- 90% of the lawmakers are men, thus they cannot consider sensitively women's issues.
- Legislation of Mongolia bases on men's traditional view, feeling and experience, therefore many many women and children suffer.
- There is no service of social welfare for protecting and assisting women who suffer from domestic violence
- Legal authorities cannot carry out on this issue in a great scope due to no special law on

261

domestic violence and traditional view affects on solving such kind of problems more sttronger than the current legislation.

S.BAASANBAT

National center against violence

262 LIPS COMBAT COMBAT

## DOMESTIC VIOLENCE IN MONGOLIA AND WAYS FOR ELIMINATE IT

#### 1. Present situation of damestic violence in Mongolia

Domestic violence including being presumptuous, causing physical, psychological, sexual and economical damage, abusing and forcing is existing realistically in the society and breaching interest of the certain part of the society. Because of damestic violence is inseparable linked with human private life and private secrets, it is very complicated and sensitive issue.

Domestic violence is common even in Mongolia and increase of crimes and offences which are being committed in domestic and household range in last years, proves that environment of crime perpetrating is becoming unrevealed and it is being acted in the family limited sphere. Domestic violence is the most sensitive social issue because it causes a great loss for interest of women and children. It is notable that we cannot officially say the realistic statistics of domestic violence which has been known by legal and supervisory bodies, perpetrated in latent form and continued.

In the view of the research "Violence against women and legal environment, Mongolia" carried out by UNIFEM, as situation in Ulaanbaatar for last three years, 326 cases were solved by the Capital and districts' courts of application by 1037 women and girls to the forensic medicine due to suffering from domestic violence and getting rape. For arguments of domestic violence, 51.2% is caused by family quarrel, 24,8% - jealousy and 40,3% - alcoholism.

Mainly perpetrators of domestic violence are men and victims are In the view of the research on crimes which are committed in the family sphere, violators are husbands /64,1% /, former husbands /2,8%/, partners residing together /3,4%/, boyfriends /17,1%/ and fathers /4,9%/. For last three years, 64-58% of perpetrators of domestic violence are husband which is taking place of the most percentage. And index of parents' suffering from their children's violence and oppression has relatively higher percentage.

As age, 25-39 aged persons are taking place of the most percentage /44,2%/, and 25-29 aged persons - 20,9%, 30-34 aged persons - 23,3% respectively. In the view of the less percentage by above 40 aged persons, it cannot be concluded that violators are mainly middle-aged persons. But against the phrases "with aging men become more clever and quiet", there is observed the trend on growth of percentage for above 25 aged persons. By the educational level, 33,4% of perpetrators of domestic violence has incomplete secondary education and 31,6% - complete secondary education. Even among the people who have higher education, there are quite lot cases of oppressing family members, beating and detention of wives in the realistic life. In the view of the research, more than half of the victims of domestic violence is violator's wives and 10% - their mothers.

Crimes such as physical aggression, bodily injury and murder by perpetrators of domestic violence for their mothers, daughters, girlfriends and sisters are taking place of 57.4% of all the criminal cases. It is notable that all women who suffer from domestic violence get

psychological damage behind of the physical oppression. Even there are crimes such as in-

COMMOTORMENT VALUELLES COMMOTORMENT VALUELLES

citement of their wives to suicide due to threat their wives, girlfriends and daughters to kill or cause a great damage as well as cruel treatment.

By the research on punishment imposed to perpetrators of domestic violence carried out in Ulaanbaatar, if consider the situation of punishment for domestic violence acting, above 50% of the violators were punishment by the imprisonment for period for 0-2 years and 0,3% of them were punished by the corrective labor. Trend on increase of numbers of persons who were punished by the imprisonment in period for above 6 years, is connected with increase of serious crimes in the family sphere, in other words, putting their wives to death and causing a great damage in last years.

Domestic violence and regular oppression affect women to offend. During the joint day organized by the Women Lawyers' Association jointly with the Women's jail in 2002, three of five women have got legal advice, are being imprisoned for period above 15 years due to no abstaining from violence and oppression by their partners residing together and murdered them. They were spoken that all of them have 3 - 5 children, have no own dwelling and relatives; some of their children are sick, invalid or have mental disorder.

#### 2. Legal bodies' attitude on damestic violence

In the view of the survey which was held among some lawyers about whether issues on violence in the family specific relation are regulated by the Criminal and Criminal procedural laws or not, 82,2% of them consider that it is insufficient.

Victims of domestic violence are different than victims of other crimes as their joint living with the violators as well as regular communication and relation, which are conditions for more suffering from oppression. Even the victims encouraged to apply to the legal bodies about violence and pressure by the family member, finally with no way they are obliged to conciliate with violators due to violator's promise of no repeating this kind of violence, threat and considering their livelihood, life as well as children's fate and inability to pay for forensic medicine's service. One of the reasons of being dismissed of most of the cases connected with domestic violence is a paragraph of the Criminal procedural law in which specified that if victim conciliate with violator the criminal case will be dismissed.

Lawyers participated in the survey answered to the question "How much percent of the cases which they decide are being dismissed by the above-mentioned reason?" as follows: 38,8% of them - most of the cases, 39.1% - half of the cases and 22.2% - 20-50% of the cases.

Withdrawal of application by victims, on the one hand, makes non-effective many works implemented by police departments and legal-supervisory bodies and spend strength and technical reserve in vain. Depending on this, there is trend on slipping out of control of ignoring issues on domestic violence by some officials of the legal bodies. There is a lack of the legal mechanism of participation by the authorities /with granting rights by the prosecutor or legislation, non-governmental organization/ which have duties to combat domestic violence on final decision of the cases, even victims gave deposition about no complaining, considering specifics of domestic violence.

Although crime of domestic violence is mainly a criminal case which must be classified by the clauses such as assault or torment, but at the end of preliminary investigation and examination it is being classified like as causing a light damage and 80-90% of all the cases are being dismissed with the reason such as reconciliation by victim and violator. In case of classification

264 ats computables valuelles computables where using the computables computables computables computables valuelles valuelles

like as causing a great damage, even both parties have conciliated, the case is not being dismissed, but due to pressure, victims concede and put all the guilt on themselves saying that "this kind of event was not happened", "I myself fell down from the ladder" and "I hidden beating by an unfamiliar person in the street and defamed my husband".

Because of a trend on dismissing of the cases of domestic violence is being dominated among some officials of the legal and supervisory bodies, lawyer consider from the position of conciliation at the first stage and advice that "you have to agree with each other" and "if no other way, you can get marriage dissolution by the court" as well as object to institute criminal proceedings.

72.2% of the lawyers involved to the research answered "Yes" to the question "Does the long term for considering a case affect on withdrawal of application by victims, conciliation with violators and no again applying to the legal and supervisory bodies?"

In the view of the research carried out among some lawyers, 81.2% of them consider that for perpetrators who offended due to regular pressure and violence for a long period, the case should be reflected as extenuating circumstances in the legislation.

One of the ways to create a trend to the positive attitude on the issue is training qualified lawyers who work at the issues on violence. It will be useful for realistic decision of the disputes within the spheres of family, public, market and governmental institution in conformity with international norms on human rights.

45,5% of the lawyers who involved to the research answered that "it is necessary to have the lawyers who specialized in this direction" and 34,4% of them - "it is possible".

Collection of evidence is not sufficient for proving that victims were under regular violence and pressure. Because of domestic violence is being committed mainly evening and nighttime, at home, dwelling and in latent environment almost without the witnesses, there are mainly no witnesses. And possibility to collect by victims, evidences is insufficient. For instance, when victims apply to the forensic medicine to get defined degree of damage, there is necessary to have a resolution by the Police department. This fact makes quite lot troubles and requires expenses from the victims. And also reference by the family doctor by which fact of domestic violence acting could by clarified, is not being considered as an evidence.

80% of the lawyers answered to the question "How proper is punishment which are being imposed to perpetrators of crimes and offences against their family members?" that "Improper in some cases and non-effective".

Fine imposed to violators according to the Law on Administrative responsibility double penalizes their family members because the family members pay all the expenses for period of arrest and they are in financial difficulty. Arrest for a short period does not affect on reduce of violence, but even makes sharper the problem. There are many cases that after enduring the punishment imposed by the courts, violator threat, menace, cause psychological damage and physical violence victims. Because the current measures cannot influence in violator's behavior and consciousness in realistic manner, but even creates their threat and dislike.

84.4% of the participants in the research consider that activity on psychological advocacy on violators' consciousness and behavior must be reflected in the legislation.

No concrete reflection and continual making unclear of the issues on domestic violence in the

reports and information by the Police departments and legal-supervisory bodies is requiring to make reform in the legal bodies' attitude on this issue. It will not be unjust to say that statistical data on domestic violence is not being provided officially at the same level of the administrative offences due to mainly usage of the legal terms or phrases "disordered others' peace and assaulted in small manner" and "no performance and protest of police officer's requirements" and on writing original situation in the certain manner in the most cases of application by victims to the police departments on domestic violence.

The considerable concrete and realistic works have been carried out by the non-governmental organizations jointly with Police departments, Prosecutor's offices, Courts and Bar associations in direction of implementation of some projects, organizing training and seminars. Listening to the opinions and impressions of the people who involved to the above-mentioned works, it is observed that some certain information on worldwide combat domestic violence, some concrete steps in some countries, adoption and implementation of laws and specialized research are not being obtained by legal bodies and officials; their attention was not concentrated on this issue and haven't felt significance of the specific methodic and condition for combat domestic violence until coming to their mind. I remember, after a training in which the experienced officials of a Prosecutor's office of USA were invited, a lawyer said that "Hobby to research in detail issues on domestic violence is completely restored. Unfortunately, I have too many works to do". We can say that some of the police officials who have been worked on the project which were being implemented by the non-governmental organizations for many years are already qualified very well.

Acceptance of necessity on a special law with regulation which meet the specifics of domestic violence by the lawyers, shows that conclusion on all the realistic situation is already made.

3 Steps which are being taken by the governmental and non-governmental organizations on combat datestic violence, their positive and weak parties

Existence of the negative action - domestic violence is recognized in public and could draw policymakers' attention as result of raising a problem on what is domestic violence, and ways to combat it; organizing periodical training, disseminating information and at the first turn expand activity of the centers which render realistic assistance to victims of violence by mainly the women's non-governmental organizations since 1990s when human rights, democracy and freedom are accepted.

Working group on developing the Draft law against domestic violence headed by Ts.Byambadorj, Vice-Speaker of the Parliament was established by the Parliament in December 2002 and in process of working. This fact does not prove yet that Members of the Parliament are ready to adopt the law, but it is an expression of being supported of this issue up to level of establishing a Tasking force.

National program on Improvement of Women's status is being implemented by the Government and there is specified that issues on violence against women are the main problem to be solved.

Implementation of the Government's program is less than expected level, and there is no program on reducing domestic violence, financial support for the non-governmental organizations which carry out on this issue, is insufficient.

Nobody will have doubt that state authorities have all the power and advantage such as adop-

266 JUTS CORRAY DOMESTIC VALENCELLE'S COMBAT COMMESTIC VALENCELLE'S COMBAT DOMESTIC VALENCELLE'S COMBAT

tion of a law on prevention and combat domestic violence as well as distribute from the financial reserve, in the more large level. But it is appropriate to consider from many sides in order not to adopt laws and decisions which are impossible to be implemented.

Nobody will dispute on that the main initiatives are being provided by the non-governmental organizations for combat domestic violence in Mongolia. MWLA, NCAV and other women's non-governmental organizations have been taken periodical measures such as studying this issue, conducting training and advertisement, providing victims of violence with temporary refuges, give them psychological and legal advises, advocacy on violators' behavior and development of the draft law against domestic violence.

The International conference on "Concept of the law against domestic violence" was jointly organized by the MWLA and NCAV with financial support of the Soros foundation in 9<sup>th</sup>-11<sup>th</sup> December 2002 in Ulaanbaatar and Central Asian Forum on combat domestic violence was established. It became a big step on establishment of the non-governmental organizations' network at the regional level. This Forum's objective is to make own contribution in creation of social and legal environment directed to prevent and protect from domestic and household violence collaborating by individuals and public organizations for the same purpose. Non-governmental organizations are working in direction to disseminate information on the international conference and involve more non-governmental organizations to this regional network on combat domestic violence.

Some situations such as more ability by the non-governmental organizations which carry out on the voluntary basis to serve and influence to victims of violence and on the another hand interest by the international donor bodies in funding issues on combat domestic violence considering it as important, are advantages of the activity of the non-governmental organizations which combat domestic violence.

But due to lack of financial source of the non-governmental organizations, they cannot work at the local level and because of insufficiency of support by the state authorities and appropriate legal regulation, it is impossible to completely solve the issue. Non-governmental organizations' activity cannot go ahead from providing victims of violence with refuges for a few days; give free-of-charge legal and psychological advises. Even these kinds of our service are not sufficient for everybody who is victim of violence.

4. Way to create legal environment to combat domestic violence, necessity on adoption of a new law its purview

Above 90% of the legislative organs consist of men. In the view of the research, most of the men consider that domestic violence is women's issue or internal problem of families.

Thus, it is necessary to take steps on advocacy directed to disseminate real information on domestic violence to public and lawmakers; getting accepted that domestic violence is an action unacceptable in the environment where the future citizens are growing, serious infringement of human rights and crime.

It is required to conduct realistic advertisement with preventive significance on domestic violence through mass media and at the same time to form a mind or psychology in public that this kind of issue must be solved with adoption of the independent law.

It is important to pay attention by not only non-governmental organizations but also state authorities to organize various training for judges, police officers, officials of the prosecutor's

offices and advocates; disseminate information on theoretical and research materials about domestic violence, international trend and some countries where law against domestic violence was adopted and is being implemented.

On the another hand, issue on increase of women's percentage among lawmakers is also important.

It is impossible to prevent and eliminate this kind of the social negative action within the framework of the current legal regulation and creation of the legal environment with the regulation which meet the essence and specifics of the action must be one of the actual issues of the state policy.

There are following requirements on adoption of the new law on combat domestic violence:

- 1. It is noted by the Session No.52 of the Human rights Committee of the UNO that "No taking substantial measures on reducing domestic violence and having inactive position by any State and government is expression of the acceptance and promotion of the ignoring human rights in family sphere" and reminded that rights of women and children are being infringed in Mongolia after consideration by the related bodies of UNO, presentation by the Government of Mongolia on implementation of the Convention on elimination of all forms of discrimination against Women.
- 2 Solving any case caused by domestic violence according to the Criminal and Criminal procedural laws like as other crimes, are not meeting the following speficies:
- it is committed between people who have mutual psychological and economical dependence
- victim resides together with violator and is under violator's domination
- violence is regularly repeated and interval of the regularity is close
- it is committed in hidden form and for a long period

And even these kinds of steps are not making amends for victims, but it is affecting negatively.

3 In the view of the research carried out by the National center against violence among 5000 children on influence of domestic violence in the children's mind and how they evaluate this, 43,8% of them answered that there is regular quarrel in their families; 6% - parents constantly humiliate each other and expel from home, 5% - they beat holding knife, 1,5% - they break their properties.

And in the view of the survey on situation, form, reason and condition of domestic violence, women who are taking place of 40% of the research participants answered to the question "From whose violence do you suffer in the most cases?" as follows: 15,5% of them - husband, 4% - parents and 3 % - mother-in-law. Men who are taking place of 37.4% of the research participants answered to the above-mentioned question as follows: 16% of them - wives and parents-in-law and relatives. This fact shows that even men become victims of domestic violence.

58.6% of men and 62.4% of women answered to the question "What kind of steps should be taken by the government in direction to reduce violence?" that "Development of the special law is preferable than other steps".

And in the view of the research carried out by MWLA involving officials of governmental and

268 LITS CORRAT DORSTE: VALINCELLET'S CORRAT

non-governmental organizations as well as private enterprises and elders, 98,8% of them consider that domestic violence is existing in our society" and 97,1% - "It should have an independent law".

Shortly concluding, so necessity on adoption of an independent law against domestic violence is meeting the reminding by the international organization, home legal system and citizen's opinion.

Some activities such as developing and advertising a draft law against domestic violence; get recommendations by the international experts, arrange discussion among the lawyers; conduct survey on adoption of the law and organizing an international conference on concept of the law have been effectively carried out by the MWLA and NCAV.

When we worked out the Draft law against domestic violence, we have based on the following concepts:

- 1. We considered the issue from the view that domestic violence is an infringement of the human rights. Although range of a family is the most initial and essential environment of the human life, but there suffering from the closest persons' regular physical and psychological pressure, causing damage and being in danger to life situation only can be considered as a form of breaches of the several kinds of human rights. Thus, the most important requirement is to make healthy the family relation as environment, which breaches human rights in a great degree.
- 2 The principle that domestic violence is a legal offence, criminal case and administrative offence, thus it is obliged to bear responsibility. Issue on crimes and offences in the family sphere and responsibility to be imposed for them are involved to the range of the general legal regulation; and has no certain regulation. Thus, possibility to bear proper and effective responsibility for them is being delayed. Therefore, it is important to fix a proper form of the responsibility which meet the each action and private status of violators; can positively influence to eliminate violence and restore normal life of the family.
- 3 Attention should be paid to the situation that all forms of domestic violence cause a great damage for social healthy. There are common cases such as from causing damage up to suffering from mental disorder due to regular domestic violence and pressure and they result to become impossible to be treated and also to spend a lot of expenses for treatment. Thus, prevention of domestic violence and revealing as well as elimination at its less level are being required by the society.
- 4. Domestic violence is committed not only between spouses but also other members of family, relatives, especially children and partners residing together and even divorced couples. Therefore it is necessary to correctly define the range of the persons who suffer from domestic violence.
- 5 In order to implement the legislation against domestic violence in realistic manner, it is necessary to create the regulation with the certain specifics directed to conduct operatively and properly activities of law-enforcement bodies including police departments and courts. It is important to legitimize rules of the related proceedings in detail considering the above-mentioned situation and working out comments on reform to be entered into the other laws together.
- 6. Endeavor and active participation of all the citizens as well as governmental and non-gov-

NELLET'S CORROL TORRISTE VICINISTEL'S CORROL TORRISTE. VICINISTEL'S CORROL TORRISTE. VICINISTELLET'S CORROL TORRISTEL VICINISTELLET'S CORROL TORRISTEL VICINISTELLET'S CORROL TORRISTEL VICINISTELLET'S CORROL TORRISTELLET'S CORROL TORRISTELLET'

ernmental organizations which carry out to ensure human rights are significant for prevention and revealing domestic violence. Thus, some rights to conduct the certain activities such as giving information on violence is committed, applying on bearing responsibility for violators and putting control under the decisions should be granted for them.

- 7. There is necessity on creation of the regulation directed to grant possibility to properly choose from the several versions when the courts issue a protection order for victims in order to fix a form of responsibility. For instance, a violator's restriction order can be issued, it will oblige violators to reside separately from victims and close possibility to act violence again. During this period, he will correct his behavior, get advice, involve to the training and at the same time perform his duty on giving aliments to his child or children. And also we consider that decision on involving violator to the forced training must be issued by the courts.
- 5. Activities to be carried out in direction of ensuring its implementation before and after adoption of the law

The following activities should be carried out before adoption of the law:

- 1. Carry out various researches:
- With the purpose of demonstrating how is the issue on domestic violence being decided within the framework of the current legal regulation, collect documents which shown situation of offences caused by domestic violence, responsibility imposed for them, situation of dying and causing heavy, middle heavy and light damage due to domestic violence as well as refunding of loss on the basis of sentences and administrative resolutions
- Conduct a survey on the current legal system among the victims of violence and make analyze
- Summarize police officers' opinion on critical parties of the current legislation and improvement of it; during this activity, get their opinion on possibility of implementation of the law against domestic violence in remote and local areas where infrastructure is developed at bad level and consider for improvement of the draft law
- Collect statistical data on victims of domestic violence from the forensic medicine and traumatic hospital
- Conduct a survey among the Members of the Parliament and watch their position on the law against domestic violence such as supporting, protesting or doubting. To define reason of protesting and doubting by them and develop tactics of advocacy activity considering the survey results
- Work out and disseminate the related information on the basis of the surveys
- Arrange various activity of advocacy in order to get adopted the law against domestic violence /private and group meetings, advocacy through mass media, show statistical facts and involve non-governmental organizations and police departments to activity of advocacy/
- Arrange press conference on the draft law and explain contents, concepts and significance of the law
- It is necessary to carry out activity of advocacy directed to increase of knowledge of public

270 LETS COMING DOMESTIC VALENCELLETS COMING

#### and journalists

- Conduct comparative analyze directed to estimate expense caused by the domestic violence for the citizens as well as governments and expense which will be required after adoption of the law against domestic violence; and evaluate

#### Measures to be taken after adoption of the law:

- 1. to constantly perform monitoring and evaluation to implementation of the law against domestic violence; and involve non-governmental organizations to this activity
- 2 serious attention by the state administrative central authorities which are in charge of education and jurisprudence should be paid to propagandize the law and enter to the official curriculum and appropriate steps should be taken.
- 3 to widely use mass media of /publication, radio and TB broadcasting/ to advertise about domestic violence and the law
- 4. carry out advertising works in direction to change attitude to consider domestic violence
- 5 to not consider from the position that it is impossible to implement in the current social and economical situation, but from the view of that norms of human rights are becoming illegally
- 6 to create a system with which crimes and offences could be solved in quick and operative manner during considering activity of cases caused by domestic violence
- 7. to train or prepare qualified judges and special police divisions specialized on the issues of domestic violence
- 8 to ensure the violators a condition for conduct forced and voluntary training directed to improve their knowledge on human rights issues and change their behavior.
- 9. To working out the national and pilot programs directed to prevent and reduce domestic violence at the national and local levels; and to make advocacy on creation of the system with which proper installment will be granted from the Governmental and local administrative authorities to involve the non-governmental organizations to their implementation on the basis of mutual agreement.
- 10. to increase number of centers which provide victims of damestic violence legal advice and protect them /especially in the local areas/
- 11. to establish men's team and clubs which will be advocate on the violators and provided them with legal and psychological advises
- 12. to establish the qualified divisions and sections in the State structure which will be solely in charge of the issues of domestic violence and specialized on this issue
- 13. to reflect information and data on domestic violence in the official statistical reports and conduct surveys
- 14. to join and connect efforts and activity of the non-governmental organizations in combat domestic violence as well as expand their collaboration.
- 15. to enter the issue on domestic violence as independent topic of the curriculum of the universities and institutes where specialists of the legal jurisprudence are being trained

LETS COMMUNICATES WARRELITS COMMUNICATES COM

ATO AT EPELE OF ADDRESS PROVINC ON TOUR AS A FEBEL OF ADDRESS PROVINC ON TOUR AS A FEBEL OF ADDRESS PROVINC ON TOUR AND A FEBEL OF ADDR

and to create the mechanism on train the qualified cadres on this direction

- 16. to working out commentary explained difference of violence and customs; and then to disseminate in public
- 17. to join to the international and regional networks in direction of combat domestic violence.

These activities and steps to be carried out before and after adoption of the law against domestic violence can be formularized and summarized in such manner, but it is not a ready recipe or doctrine. The people and organizations could take any measures on the basis of their reserves and this recommendation will be only a drop to be contributed in the ocean.

#### D. DUGERJAV

Executive director of the Mongolian Women Lawyers' Association Professor, Candidate of the Sciences,
Institute of Finance and Economy

#### Used materials

- 1. Statistical data on Violence against Women, NCAV, 2001
- 2 "Violence against Women and legal environment, Mongolia", UNIFEM, Ulaanbaatar, 2002
- 3 "Human rights and Development" magazine, 2001, 03
- 3. "Human rights and Gender", NCAV, 2001
- 4. "Concept of the Law on Combat Domestic and Household violence; and Role by the Courts", P.Tsetsgee
- 5. Collection of the legislation of Mongolia

272 Lits cord domste velicelits cord domst

# FOR ISSUES ON DOMESTIC AND HOUSEHOLD VIOLENCE, ITS LEGAL REGULATION, PRESENT SITUATION AS WELL AS IMPROVEMENT OF LEGISLATION

1. Human rights are rights that arise thanks to human birth and granted to everybody. State and Government of each country that acceded to and ratified the Human rights Treaties, undertakes to protect human rights and take fruitful measures for it.

Essence of human rights issues bases upon basic principle that everybody is equal for social relation depending on his/her age, sex, race, language, nationality, religion and political views.

Human rights concepts and legal understandings on human rights are still being reformed and perfected during social development. It is accepted at the international level that due to various arguments, human rights are often being infringed and its most popular form is violence of any form including incest and domestic violence that is happened between family members and closest relatives.

According to the research results carried out by some non-governmental organizations, violence against women i.e. domestic violence is being increased.

Although there are some social arguments of increase of violence acts happened between family members and relatives, for instance, poverty, unemployment, imbalance of gender proportion for training, tradition and education. Due to consideration by victims of domestic and household violence that inequality is the main reason of violence, legal protection /regulation/ is being viewed as important in the international level. /the words "gender and sex" are translated into Mongolian by the same word, but they include different understandings. The word "gender" expresses difference of social duty and responsibility of men and women and meaning of the word is always being enriched. And the word "sex" is relatively immutable understanding that expresses biological difference between men and women.

Last years, the term "domestic violence" is getting as relatively familiar to Mongolian people and citizens and state officials are discussing and writing about it much more.

Not only these but even non-governmental organizations that carry out various activities are having increased interests to implement projects and act on domestic violence.

Consideration of the social psychology that domestic violence is internal matter between individuals and it only occurs in life of people who are poor and has the lowest or worst livelihood is being changed. It will not be unjust to consider that the change is result of effort and endeavor and activities of women non-governmental organizations. Any form of domestic and household violence creates regular danger and trouble and constantly disturbs to human development and training, active participation in social life, living in safe environment and protecting health.

Domestic violence is a social problem involved multilateral matters of society, economy,

273

IS COMMITMENT VALUELLES COMMITMENT WARRIES COMMITMENT COMMITMENT WARRIES COMMITMENT WARRIES COMMITMENT WARRIES COMMITMENT WARRI

development, education, health, mentality and human rights. So initiative and participation of state and government and fruitful legal regulation are important for solving the problem. Mongolia has acceded to about 30 Nos. Human rights international treaties. Approval and ratification of the international treaties by any country, means the country is undertaking to reform its internal legislation in conformity with the international standard.

Inclusion as a separate article of "Human rights and freedom" into the Constitution of Mongolia, can be considered that agreeable condition is met to provide equal rights for men and women in the frame of political, economical and social life. But it is notable that domestic and household environment is getting as place of serious human rights infringement.

Legal bodies and authorities are getting to accept that domestic and household violence is increasing. Increase of crime of violence at the domestic environment can be connected with no legal condition for combat domestic and household violence.

Due to regular continuation and great damage for individuals, families and society, domestic violence is getting to be considered as a form of modern slavery worldwide.

In the view from the research carried out by the National center against violence, perpetrators of crimes committed within the range of family were mostly husband and wives former and present, partners living together, boy- and girlfriends and father. The violators aggressed to their family members' freedom and made heavy, middle heavy and light damages; and victims of the crimes were mainly women and children. And even there are not few cases of putting to death.

About 60% of imprisonment imposed to violators are up to 2 years. And quite lot crimes were dismissed. Domestic violence and regular pressure are becoming a reason for women to offend /make damage for their husbands, putting to death and etc/.

2 Let us consider now regulation of relation connected with damestic violence and its protection according to our legislation.

It is specified in the 16<sup>th</sup> clause of the Constitution of Mongolia that "The man has the rights to life, get protection for their health, life in safe environment and inviolability". And also specified in the above-mentioned clause that equal rights if family members; if rights and freedom given by the laws and international treaties, to complain to the court to be protected these rights and to get compensation for loss caused illegally by others.

The term "domestic violence" has been used for first time in the Family law adopted in 1999 and there specified that married couples are obliged to not use any form of violence against each other. And also the following cases are legitimized as follows: if it is defined that due to regular violence and pressure by one of the married couples, life and health of family members as well as children's education might be suffered from a great damage or already suffered, conciliating measures will not be taken by the courts and marriage will be directly dissolved.

The some paragraphs such as "during dissolution, it is defined that action of violence has been used as basis of considering to fix aliments and divide properties; working capability is lost due to domestic violence within a year after marriage dissolution, former /divorced/ husband or wife should be keep" became a new regulation with characters of prevention, elimination and protection of domestic violence. And before marriage dissolution or within a year after mar-

274 JETS CORRAY DOMESTIC VALUE LEET'S COMBAT COMMISTIC VALUE LEET'S COMBAT DOMESTIC VALUE LEET'S COMBAT

riage dissolution, it is defined that working capability is fully lost due to domestic violence, he or she has the rights to be kept by former husband or wife /Article No. 37 of the Family law/. If family members residing together and other members suffered for health and lost working capability due to domestic violence, loss will be refunded according to the Article No. 52 of the Civil law "Duty sounding in tort".

In judicial practice, material damage caused due to domestic and household violence is being refunded by violators, issues on laying and compensation of immaterial damage caused by psychological violence are not legitimized.

New paragraph "oblige married couples to reside separately" in the Article No. 129 "Preventing measures for considering cases connected with family" of the Law on civil jurisdiction is a decisive regulation for solving issue on isolation of violators. This paragraph will be implemented only in case of institution of action on marriage dissolution and there is specified that "Parents have equal rights and duties on wardship and keep their children as well as protection of children's rights according to the Law on Children's rights and Family law".

And it is forbidden to make damage by parents for children's health, education of psychology and morality, to behave cruelly for their children and to use illegally their rights to be parents as well as condition of no suffering by children from violence are guaranteed.

It is specified that parental rights will be deprived by the court for the period up to 6 months for people who regular and intentional causing deficiency by dwelling, clothes and foods for children; illegally used of children's work; compelled children to panhandle and vagrancy as well as discriminated children.

Forms of domestic violence such as beating, abuse, defame, threat, assault, cause great heavy, heavy and easy damages, torment, incitement to suicide, leave in situation dangerous to life, put to death and rape are considered as crimes and clearly specified in the Criminal law.

But in case of perpetration of the above-mentioned crimes between blood and bone-relatives, there are no clauses to aggravate especially as subjects. For instance, only crime of rape is regulated in the Criminal law, but incest or rape which is committed between relatives is not specially regulated. This kind of crime is decided as a crime of rape.

International organizations of Human rights consider critically this practice and say that they must be considered separately for subjects. Really, violence within range of family has regular and continued characters between blood and bone relatives in hidden form and if there is no serious case happened, it will not be revealed, therefore issues on aggravation of responsibilities to be imposed for violators can be specified separately in the current legislation which can be resulted to prevent of committing of crime connected with violence in such kind of range.

Mainly victims of domestic and household violence have suffered physically from light damage or haven't been caused by damage and it is acted in hidden form and insufficient for evidence. So violators do not bear responsibility or conciliate with victims.

Thus, it is required to have legal regulation of protecting victims of crimes which are committed in the domestic and household sphere. Issue on protection of victims are considered as important in the UNO Model legislation on Domestic violence.

In some cases, during preliminary investigation and examination due to no isolation of perpetrators of domestic violence and their pressure, victims change their deposition. For instance,

275

S COMMUTABERS WEIGHES COMMUTAMENT WEIGHES COMMUTAMENT WEIGHEST COMMUTAMENT WEIGHT WEIG

in Govi-Altai aimag, due to no isolation at examination's stage of Ch.Batbayar who connected to crime of repeated rape of his own daughter, 13-year's aged since 1998, he oppressed victim "Kh" and get giving deposition that "We have made sexual intercourse on the basis of mutual consent".

On the another hand, due to some arguments such as together residing by victim and violator; closest relationship; reconciliation under repeated oppression with no way, there requirements on protection of victim of domestic violence are being arisen.

This situation is also connected with standard of obligatory bearing of responsibility by violator. Carry Wales, Deputy prosecutor of San-Diego, California mentioned about installment with amount of about 800.000.000 US\$ is granted from the State budget to the Ministry of Justice of USA for implementation of the Law against domestic violence.

There are various conflicts with household character in each family. All of them are not considered as domestic violence. Only physical, psychological and sexual violent actions of one of them, which are being committed against own family members on the purpose of fix own power ignoring closest persons' rights, legal rights and interests are being considered as domestic violence.

Man cannot understand that victims of domestic violence are only wives and women. In the view of the research carried out by the National center against violence, children, elders and men also become victims.

For now, there is no state where issues on domestic violence are fully resolved and perfect legal environment was created.

We consider that it is necessary to have a law against domestic violence which met the specifics of relation between blood and bone relatives and has specific regulation directed to protect human rights within this range, in other words, met the international standard.

Relations connected with domestic violence, which are not regulated can be resolved with adoption of a Law against domestic violence. This kind of law can be involved quite lot issues as follows:

- Detailed regulation of rule for isolating violators and protecting victims
- Reason for isolating violators
- Rights and duties of Police officers and social divisions in direction of prevention and elimination of domestic violence

Factors which will not be considered for bearing responsibilities by violators:

- Application by victims about no complain will not be as a reason for dismissing the case
- Violator's promises /I am regretting and I will not do again violent actions and etc./
- To not require obligatory suffering from damage for evidence
- Consideration that violator is able to bear responsibility for his health and age
- Reflection of information on crimes connected with domestic violence in the statistical data of legal bodies
- Allowance of budget with the purpose of positive decision on domestic violence

276 JETS COMING DOMESTIC VIZINCELLETS COMING

ATH A FERSE OF -ENDOGRAPHENTS OFF OUR ATH A FERSE OF -ENDOGRAPHENT OFF OUR ATH A FERSE OFF OUR ATT A FERSE OUR ATT A F

- Involve violators in /behavior correcting/ forced training for the certain period
- Issues on insurance /If somebody who suffered from domestic violence is insured, to get compensation by insurance/
- Rule for forcing to work isolated violator in order to get performed his duty on aliments for his children
- Institute proceedings not only with complaints by victims but also with information by citizens and organizations
- To legalize competency of the National center against violence and rule on its activity.

#### P.TSETSGEE

Director of the Research center of the Supreme Court

Member of the Tasking force of working out

the draft law against damestic violence

ITS COMMUTIONESTE: WEINTELLIT'S COMMUTIONISTE: WEINTELLIT'

## DOMESTIC VIOLENCE IN FOREIGN STATES AND ITS SITUATION OF ITS LEGAL REGULATION

/Comparative analysis/

In Western Democracies the silence with regard to domestic violence stopped, and its inclusion into political agendas started in the 70s as a result of feminists' movements and the efforts of women who had suffered from domestic violence.

By the 90s, the governments of the whole world started acknowledging domestic violence as a serious social problem and started seeking ways to resolve it. Those efforts resulted in a number of international UN documents explicating the term "violence against women".

Numerous studies on domestic violence which have been implemented In many countries of the world and statistical data prove that in most of the cases, women become victims of domestic violence.

For instance, in United Kingdom up to 25% of crimes against individuals refer to domestic violence. Furthermore, it was revealed that 90% of all police calls concerned males' aggression toward women residing together with them.

Violence against women and young girls in the most serious abuse of women's rights and human rights in general. In all such cases it results in suffering, despair, break ups of families, mental and psychological diseases, and ultimately this violence has a negative social and economic impact on the whole society. Domestic violence requires an urgent intervention and continuous attention on the part of the society.

Situation of distribution of violence against waren worldwide

- According to the World Bank mortality rate assessment, in industrially developed countries among women who die at the age between 15 and 44 years old, rape and domestic violence cause 19% of deaths. It means that every fifth women dies as a result of violence related injuries and diseases.
- 40% of women in USA suffer from abuse and 29% of women in Japan are victims of physical violence by partners reside together.
- According to the research carried out in England in October 2000, the police are being called due to domestic violence in each 60 seconds there. The police answers for 1300 calls daily or above 570000 yearly due to domestic violence.
- In the view of the first state cross-examination on domestic violence carried out in Japan last year, above 14% of the women have been beaten by men who reside together until they require medical aids. By the information of the Reuters agency, Counseling council of Gender development call Ioshiro Mori, Prime Minister of Japan for taking new steps on elimination of domestic violence and punish perpetrators. The Council introduced the Prime Minister the report in which mentioned that domestic violence is unpardonable act must be punished. And by the report, it is called police departments and state offices for fix cases of domestic violence more attentively, inform about them and render equal assis-

278uits combut comestic velenceles's combut comestic velence less combut combut comestic velence less combut comestic velence less combut comestic velence less combut combut comestic velence less combut combu

#### tance to victims.

- In India and Sri-Lanka more than 5000 women are murder victims due to dowry.
- 90000 Indian women have participated in the sociological cross-examination carried out in India. About 56% of them consider that domestic violence can be justified in some concrete situations. Generally, at least one of 6 situation which can be happened causes: badly care for their children, unsuccessfully conduct their household, to be accused on betraying for their husbands, small dowry, express disrespect for their couple's parents and bad preparation of foods.
- Tun, 30-aged official from Siani city stated that her boss proposed to "spend their time well together" in a hotel not once and "touches her body" often reminding that it is possible to increase her salary and progress her position. The trial has been made a great sensation among mass media of China and people of China are divided into two parts such as men "pained" for accused and women who support brave Tun. In such situation, the judge has shown the most reality and recommitted the claim by the basis that evidences are not enough, but obliged the boss to beg apologize from his official. But "ruining reputation" is the most dangerous. This is one of the most serious and severe punishments. And furthermore, there is no clause in the legislation of China except a determination "sexual harassment".
- In Russia, one of the conference participants, an experienced attorney with vast experience in working with non-governmental organizations and in conducting training courses for legal staff spoke about the following case from her practice. At one of the workshops in a remote Russian province a case example was analyzed. A husband having come home from his work went to bed and his wife woke him up. The angry husband beat his wife. According to most of the legal staff, the wife "provoked" her husband. "If she hadn't bothered her sleeping husband with her questions, he wouldn't have beaten her!" Meanwhile the situation can be described in another way. The wife could have lots of reasons to wake up her husband. In any case, the husband had a choice - to use violence or not. He could have behaved in that situation in a nonaggressive manner, but it was aggression that he chose. One thing is clear - no pretext justifies using violence. Violence is unacceptable under any circumstances, and no arguments in favor of provocation have any justification. One should see the core of the problem. "Provocation" as a principle should not be considered in cases of domestic violence, and there is no more dangerous situation than implicating victims for provoking violence.
- According to statistical data, 60 million women die annually as a result of different forms of violence.

It might be mentioned by the way, not only women but also men become as victim of domestic violence. Let us consider an example:

In appearance, a strong man complained to his wife and tried to convince that there is no way for him except forcing for keep order in his family. As stated by him, his wife requires him to perform his husband's duty quickly and high quality and then makes karate for him as well as abuse. Police officials made a preventive discussion with this strong woman, but Elena Afanasieva noted that this kind of means would be never resulted. Domestic violence in Mexico is a normal case. Actually up to now, accordingly women were becoming as victim of domestic

LITS COMBAT DOMESTI: WILDCREETS COMBAT DOMESTI: WELFICELITS COMBAT DOMESTI: WELFICELIT

violence. But now, according to the statistical data, there are more many cases that women are combating to protect their own interest and rights arming by rolling pin, frying pan and other simple instruments.

Violence against women is a serious problem that is not considered a violation of human rights or a crime. For instance, in Russia around 14000 women die as a result of domestic violence every year. By comparison, in Afghanistan 13000 Russian soldiers died over a period of ten years of war. In 1997 in Lithuania 63% of women above 16 years of age became victims of physical or sexual violence. In Tajikistan more than half of the female population is subjected to domestic violence and approximately 47% of women were raped by their husbands.

According to UN data, every fifth women was or is a victim of domestic violence. International organizations' statistical data show that domestic violence is widespread and women run equal or even greater risk of violence at home than they do in the street.

Unfortunately domestic violence has no geographical borders. The fact that there is one of the most important measures become to coordinate efforts to eradicate that social evil named as violence.

As of today over 40 countries have some laws prohibiting domestic violence. The experience in different countries demonstrates a big variety in resolving this problem in a legal way. However there are the following lessons extracted from the international practice:

- A separate law is more effective. There is an opinion that in the countries where laws do not work and there is a big gap between the de-jure and de-facto situation, it makes no sense to create another "non-working" law. Nevertheless international practice shows that even a "symbolic" availability of a law gas a positive impact by creating an environment of intolerance and condemnation with regard to domestic violence. Thus a separate law is helpful as it recognized this problem and shows to victim of domestic violence how to tackle it.
- Before a separate law is developed and enacted there are lots of opportunities to make changes and amendments in the current legislation. With this regard in the CIS countries there are legal instruments inherited from the past, for instance, an administrative arrest that, according to international experts, with its skillful application can reduce domestic violence. Given intensive training of legal bodies and judicial system staff in combination with a wide informative campaign that can give an opportunity of an immediate putting into custody and isolation of a wrongdoer. In addition, there is a tradition of public indictment that can be used for prosecuting cases relating to domestic violence.

Professor Liz Kelly from the Union for Violence Study with regard to Children and Women under the Department of Environmental and Social Studies of the North London University notes that laws differ from each other by virtue of whom they target. For instance, she writes that:

- Some laws are limited to civil and legal measures allowing for the application of security orders for the first offence /Finland, Spain/ or allow for measures limiting communication by persons guilty of domestic violence with their children /New Zealand/.
- Other laws have expanded opportunities for allowing the application of security orders and the empowering of authorities /Austria, Ireland/.

280 LITS COMBAT DOMESTIC VALENCELLET'S COMBAT DOMESTIC VALENCELLET

- Some laws have combined civil and procedural and criminal procedural measures / Cyprus, Mexico, Nicaragua, and some USA States/.
- Some laws have introduced new crimes and changed punishment for crimes committed in families /Belgium, France, Spain and Sweden/.
- Some laws are "integrated laws", that envisage both making changes and amendments to a law and deeming the state itself responsible in terms of allocating funds for setting up relief services and implementing projects on tracking and preventing violence funded by a state /Cyprus, Austria, Denmark, Finland, Sweden/.

Among the countries that have expanded civil and legal opportunities, Professor Kelly emphasized two in particular. According to Kelly, New Zealand and Austria have the most "advanced" laws on human violence. Further, she states that the Austrian law gives the police full authority to take the guilty persons out of a situation of violence for a period of up to 10 days if there is a good basis for proving that a crime was committed and that it could be repeated. After this time, women have the right to appeal to the court for prolongation of the term. (That law envisages implementing projects on preventing violence where the victims can get psychological counseling, and where men can undergo rehabilitative courses during their compulsory absence from home). The New Zealand Law is remarkable in terms of its requirement to prohibit any communication between an aggressor and his victim and an aggressor and his children unless a court makes a decision that such communication is safe for the latter. Other countries, such as Belgium /1997/, France /1994/, and Spain /1999/ envisage severe punishment for domestic violence.

Now let us discuss on the present situation of combat domestic violence in the States who are members of CIS.

LEGAL REFORM IN NEWLY INDEPENDENT STATES AND REGULATION OF A PROBLEM OF DOMESTIC VIOLENCE

Although the countries that comprised the former USSR had different historical evolvement, traditional religion, culture and level of economic development, their legal systems were forcefully unified according to the socialist and communist ideology which produced, to certain extent, a positive effect. Equally with men, women in these countries actively participated in social life and enjoyed equal political and economic rights. Because their rights to education and to labour and fare wages were guaranteed and provided by the government, women had a relatively high status in families. For instance, women of Central Asia who were predestinated even to hide their faces and banned to participate in social life, emancipated and besides keeping families they contributed a lot into social construction and succeeded in educational, cultural and scientific arena.

After collapse of Soviet Union, Georgia, Tajikistan, Turkmenistan, Armenia and many other many countries of the region suffered of civil war and unrest, social and economic conditions worsened notably and this became a heavy hit for women. From one side, because the overall employment decreased and labour rillations turned to be regulated by market principles, unemployment and low-paid employment among women increased dramatically. This phenomenon is called feminization of unemployment (awviring many other social despair, despacotion). From the other side, negative processes in society such as social despair, alcoholism and high criminal rates caused increased occurrence of domestic violence.

LITS COMBAT COMB

At this time there are many common issues in the situation of women of Newly Independent States and Mongolia:

- Women make a great portion of labour force, but only few of them reach well paid or upper managerial, decision making positions. For example in Ukraine 70 percent of staff on low to mid levels public servants are women.
- Relatively high educational level of women and girls. In Georgia, for instance, 70-80 percent of college students are girls. The numbers for Mongolian college students are similar. In Uzbekistan and Belorussia 58 percent of people with high education are women as well.
- The problem of domestic violence is not regulated by the State policies and programs like many other sensitive social issues and not openly discussed in media.

Although there are no statistical date and thorough research mat}rials, the results of surveys done by non-governmental organizations in 9 Newly InKependent States allow to conclude that domestic violence is ""a wide sprad phenomenon" in those countries. For example, during Russia's decade-long war in Afghanistan total 13 thou\$and 6ussian soldiers lost their lives while 14 thousand Russian women die every year as a victim of domestic violence.

National legal environment plays an impor"ant role in figting against domestic violence and for this reason during the transitional years! the Newly IndepXndent States have been coordinating this issues through the legal reform framework.

Some countries are implementing special policy and programs on provision of women's equity in sMciety ib the frame of legal reforms and coordination of social problems. For instance, according to the degree of the President of Georgia, the National Program on the Advancement of Georgian Women was adopted i 1998. The Concept paper on the status of women that was adopted by the U-bekistan's Mijisterial Councilshas defined the state policy guidelines regarding women in Uzbekistan. I8 Kyrgyzstan, a "National Program on Promoting the Status of Women" is being implemented, and within the frame of this program, the State Commission in charge of the family, women and youth issues was formed according to the decree of the President of Kyrgizstan. This commission performs its activity in coordination with other 9 relevant Ministries, local governments, NGOs' and international donor organizations. There is a Bureau on Women and Families in Tajikistan, working under the Government and implementing the National Program 2001–20020 on providing men and women with equity and opportunities. In fact, such kind of short term programs, policies and action guidelines are considered more effective and result-oriented.

As of countries with the civil law system, a legal basis regulating domestic violence in newly independent countries is similar to Mongolian. The issues related to domestic violence in those countries is coordinated by laws and codes such as the Civil Code, Family Code or Marriage Law, Criminal Code, Criminal Procedures Code and Law on the Administration Responsibilities. Although in these laws the issues may seem to be are regulated in a complex way in conformity with other legal standards, it has weaker points in terms of lacking a concrete definition for domestic violence and its direct coordination. Republic of Ukraine is only state among newly independent countries that adopted special law on domestic violence. It also adopted Law on Household /home/ violence in November 2001. There are 4 categories of home violence were defined in this law, namely: physical, sexual, economical and psychological violence. Moreover, related measures, role of governmental and non-governmental

282 LITS COMEN COMENT C

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATIO

organizations like police and care centers for preventing domestic violence and as well as these institution's activity and financing also were indicated in this law. Even though this law was adopted newly and it is still early to conclude on positive or negative impact of its application in practice, the existence of such law aimed at the coordinating domestic violence is considered essential to influence in the psychology of society.

Lining with the Ukraine's example, Kazakhstan prepared a Bill on Eliminating and Preventing Home Violence, Kyrgizstan developed a draft law on social and legal protection against domestic violence, Russia - a Bill on Ensuring Equity, Freedoms and Opportunities for Men and Women and in Moldova such a draft is on the way as well.

The current laws and bills against domestic violence contain various types of actions that can be enforced by several subjects and it can be seen that domestic violence cases are attempted to be regulated not brining the case to a level of criminal or administrative charges. For example:

- police reprimend;
- taking a victim or perpetrator into custody or registration by police;
- court verdict with reprimand;
- restrictive order by police or prosecutor limiting or banning certain actions from the side of violator;
  - -resolution of the court, police or prosecutor taking a victim into custody.

Introducing such kind of legal measures in conformity with the Mongolian unique circumstances could be suitable for sound addressing of domestic violence. The above mentioned draft laws categorized different types of violence by its subject (violence between spouses, of parent against a child, adult members of the family toward elderly, in-laws against daughter-in-law, etc.) that takes them country-specific. Besides national laws and regulations, the international treaties which the country ratified or joined, and various cooperation programs play a significant role in dealing with the issues concerning domestic violence. For instance, countries like Belorussia, Ukraine and Armenia launched a joint with the UNDP program "Gender and Development" according to which they conduct effective and efficient activities regarding raising public awareness on domestic violence and update relevant laws and regulations.

Another good example is the legal reform in newly independent Baltic countries. Consistent with a purpose of joining the European Union, Latvia, Estonia and Lithuania conducted legal reform and implementing human rights guarantee and standard that was approved and maintained by the EU. The result of these activities received very good evaluation as "noticeable progress has been achieved" in the reports made by the European Human Right Commission and the Europarliament. The practice of Lithuanian Human Rights Ombudsman who monitors domestic violence at the same time and it has very good results.

Summing up, since the collapse of the Soviet Unions, domestic violence has increased noticeably in the Newly Independent States necessitated particularly by the social and economic implications. These countries are undertaking legal reforms and structural changes in order to resolve this complicated issue, and some of those countries of the region have achieved positive results. Moreover, an international cooperation is intensifying in this regard. However, the steps to address domestic violence in the national legislation are remaining to be slow and still in a pilot or draft form.

LITS COMBAT COMBINE WALRCELLT'S COMBAT COMBINE W

History of actions in democratic countries of Europe ensuring women's equity and against domestic violence had 3 phases. During the 1980's creation of a legal environment against domestic violence was started as a result of a wide range campaign and struggle covering the whole Europe organized by feminist organizations in many European countries during the 1970's, and only in 1990s equal opportunities for men and women became somewhat real and women's rights received due recognition. This is why it can be expected that realization of equal opportunities for women, creation of a proper legal environment functioning against domestic violence and wider awareness of the public about this issue would take some time because the reliance on a totalitarian regime was common in the mentality of the population of the former Soviet and the current experience of chancing it still has a short history.

#### KH. OYUNTSETSEG

Former Executive Director of Mongolian Women Lawyers' Association,

Member of the Governing Board of Mongolian Women Lawyers' Association

#### Reference literature

- 1. Annual Report on Equal Opportunities for Women and Men in the European Union 2000, Report from the Commission to the Council, the European Parliament
- 2. International Helsinki Federation for Human Rights (IHF) launched on 9 November 2000 a 552-page report entitled "Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States
- 3. Закон о бытовом насилии, Республика Украйна
- 4. Законопроект о бытовом насилии, Республика Казахстан
- 5. Законопроект о социально-правовой защите от насилия в семье, Республика Киргизстан
- 6. Практическое руководство по законодательным мерам для преодоления домашнего насилия, Региональная информационная кампания ЮНИФЕМ
- 7. Региональные доклады /Армения, Беларусь, рузия, Киргизия, Таджикистан, Узбекистан/ Региональная информационная кампания ЮНИФЕМ
- 8. Аннет Хуланд, Western standards for post-communist women? Equal Opportunities for Women and Men Magazine no.1 / December 2001

284 JUTS CORRAY DOMESTIC VALUACELLET'S COMBAT COMMISTIC VALUACELLET'S COMBAT DOMESTIC VALUACELLE

# Annex I

# Laws Against Domestic Violence in some States of the World

#### MODEL LEGISLATION ON DOMESTIC VIOLENCE

#### UN Recommendations

The model law was developed to overcome the drawbacks of the current criminal and civil legislation and/or improve the current domestic violence laws. It is envisaged for legal bodies and organizations promoting adoption of the gender specific and comprehensive domestic violence legislation.

#### PART I

#### GOALS.

#### THE DOMESTIC VIOLENCE LAW GOALS

- 1. To promote observation of international standards in the sphere of human rights, in particular, those that have been formulated in the UN Declaration on eradicating violence against Women. We define violence against Women as "any violent act committed on the basis of gender that causes or can cause physical, sexual, or psychological damage or sufferings to women. Included are threats of committing such acts/compulsion into acts unwanted by the victim, or arbitrary deprivation of freedom, be it in social or personal life."
- 2 To acknowledge that violence committed on the basis of gender against Women house-hold members or women having close relations with the offender is domestic violence.
- 3 To acknowledge that domestic violence is a serious crime against a person and society that cannot be forgiven and accepted.
- 4. To establish the fact that legislation prohibiting violence against Women household members or women having close relations with offenders is legislation that protects victims of violence and prevents further violence.
- 5. To provide the maximum amount of legal protection to victims of violence.
- 6 To create a wide range of flexible, urgent measures meeting the needs of victim of violence including measures envisaged by the criminal and civil legislation to punish and prevent domestic violence and ensure protection to the victim of violence.
- 7. To ensure indiscriminate application of the criminal legislation to keep perpetrators from violating the law and to punish persons committing violence against Women female household members or women having close relations with offenders.
- 8 To create units, programs, services, protocols and obligations including but not limited to the following: refuges, counseling services, employment programs for victims of domestic violence.
- 9. To set up various legally sanctioned support services including but not limited to the following ones:
  - a) programs promoting the prevention and eradication of domestic violence including work on forming public opinion and raising public awareness in the sphere of domestic violence;

286 JUTS CORRAY DOMESTIC VALENCELLET'S COMBAT COMMESTIC VALENCELLET'S COMBAT COMBATIC VALENCELLET'S COMBATIC VALENCELLET'S COMBAT COMBATIC VALENCELLET'S COMBATIC VALENCELLET'S COMBA

- b) emergency assistance services for victims of various types of domestic violence and their families;
- c) support programs meeting the specific needs of victims of violence and their families;
- d) educational programs, counseling and psychological correction for offenders, victims of violence and other family members, including children.
- 10. To expand opportunities of legal bodies to help victims of violence, ensuring that the law is observed in cases of domestic violence and further abuse is prevented.
- 11. To train judges, prosecutors, police officers, and social workers for effective action in situations where victims of violence need guardianship for children, economic support, and security; and to train judges, prosecutors, police officers, and social workers for effective action for cases where victims have special needs related to disability.
- 12. To train consultants to give assistance to the police, courts, victims of violence, and to conduct rehabilitative work with persons who committed acts of violence.
- 13. To raise the public's awareness of the facts and causes of domestic violence and encourage public participation in eradicating this evil.

#### PART II.

#### MAIN NOTIONS

We are insistently calling upon all countries to establish expanded definitions of domestic violence - definitions that comply with international standards and definitions whose scope covers all relations in a given family, protecting all of them from domestic violence.

- A. The range of relations subjected to the regulation.
- 1. The following relations have been included into the sphere of actions involving domestic violence: wives, partners living together, former wives or partners, partners not Jiving together, relatives (including but not limited to sisters, daughters, mothers), maids and their family members.
- 2 States should not allow religious or cultural customs to prevent any woman from getting full protection (all women should get full protection) within the framework of this law.
- 3. There should be no constraints on a woman wishing to file a case in the court against her spouse or any other person whom she has close relations with.
- 4. Countries should give full support within the framework of this law to women who do not have the citizenship of the country and ensure responsibility of men not being citizens of the country under this law.
- B. Violent actions in a family.

All violent actions of a physical, psychological, and sexual nature against Women committed on the basis of gender by a person or persons that have family or close relations, from verbal offences and threats to hard physical beatings, abductions, threats of injury, intimidation, compulsion, verbal offence, violent or illegal intrusion into an accommodation, setting fires to and destroying property, sexual violence, rape in marriage, violence related to dowry or ransom for a bride, injuries of sexual organs, violence related to exploitation through prostitution, violence with regard to maids, and attempts to commit such acts, should be considered as

LETS COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC VERLINCELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S

"damestic violence."

#### PART III.

#### MECHANISM FOR SUBMITTING COMPLAINTS

The Law should envisage a procedure for registering complaints with regard to domestic violence to the police or for filing cases in a court, by victims of violence, their family members, witnesses to violence, persons having close relations with victims, persons who have given refuge to victims of violence, government agencies and medical institutions, social services, and -centers for assistance to victim of violence.

#### A. Police officers' obligations

- 5. Police officers should respond to each request for help and protection in cases of domestic violence.
- 6. Police officers have no right to consider applications and facts related to abuse by family members as less important than applications and facts related to similar abuse and violations by outsiders.
- 7. Police officers should personally come to the place where:
  - a) an applicant informs them that violence is likely to happen or is becoming more serious;
  - b) an applicant informs them that there is a security order and it may be violated;
  - c) an applicant informs them that domestic violence took place in the past.
  - 8 Police should act immediately even if an applicant is not a victim of violence but a witness to violence, friend or relative, or representative of a health service or relief center for assistance to victims of violence.
- 9. In the course of actions responding to applications and facts the police officers should do the following:
  - a question parties and witnesses including children in separate rooms to ensure that they speak freely;
  - b. write a complaint in detail;
  - c give counseling to a victim of violence with regard to her rights (Section C);
  - d make and register a report on domestic violence as it is required by a law (Section D);
  - e. provide or organize transportation of a victim to the nearest hospital or medical institution for medical treatment and take evidence if it is required or asked for;
  - f provide or organize transportation of a victim, her children or dependants to a secure place or refuge if it is required or asked for;
  - g provide or organize transportation of a victim to her place of accommodation to collect her personal belongings;
  - h. ensure protection for a person who informed authorities of a case of violence;
  - i arrange for an offender to leave home, and if it is not possible and a victim is under a threat of violence, to put an offender into custody.

288ues combit domeste valincelles combit domeste

### B. Alternative procedures to file complaints

- 1. A victim, witness, or applicant may register a complaint on domestic violence with the appropriate organs of justice:
  - a about the place of an offender's residence;
  - b about the place of a victim's residence;
  - c about the place of an incident;
  - d about the place of temporary victim's residence.
- 2 A victim may have a complaint of domestic violence registered at a government or private medical institution that will direct it to the regional police station concerning the whereabouts of a location of a medical institution.
- 3 A relative, friend or a person whom a victim has asked for help, may have a domestic violence complaint registered with the police. A complaint should be appropriately investigated.
- 4 Neither filing a complaint nor initiating criminal/civil judicial procedures should be contingent on receipt of a document of the victim's medical examination.

#### C. Victims' Rights

This Section is aimed at acquainting a victim with the means of legal protection that she has access to at the initial stage of filing a complaint. It also identifies the police and organization of judges' obligations with regard to a victim.

- A police officer should communicate with a victim using the language that she understands and tell her his/her name and ID card number. The Law requires that the police inform a victim and a person/persons who committed a crime that domestic violence is a crime.
- 2. A police officer should take a victim or provide her transportation to a medical institution where any bodily injuries can be treated.
- 3. Should a victim wish to leave her home, a police officer should take her or provide for her transportation to a safe place or refuge.
- 4 A police officer should take all measures to ensure that a victim and her dependants are jn a safe place.
- 5 A police officer should explain to a victim the available legal procedures using language that she understands. This document should identify the following:
  - a The Law envisages that a victim may file a request for an urgent temporary limitation order; and/or a court order prohibiting further violence with regard to a victim, her dependants, other household members or persons whom she has asked for help or refuge;
  - b a temporary limitation order and/or court order should protect a victim's property or family common property;
  - c a court order may envisage that an offender should leave his home;
  - d in a case when violence took place at night at weekends or holiday days, a victim

should be informed about urgent measures needed to get a limitation order;

- e. a victim has no need to hire an attorney to get a temporary limitation order and/or court order;
- f Court employees should provide all required forms and non-legal help to persons who ask for an urgent temporary limitation order and/or court order; a victim should be given counseling how to appeal to a court in order to get a court order;
- g the police should hand an urgent limitation order to an offender.

#### D. A police report on danestic violence

- 1. A police employee in response to a call with regard to a domestic violence case should make a report on domestic violence that should become part of a file. A copy of the report should be submitted to a respective justice body and appropriate court.
- 2 A domestic violence report form should be signed by a police commission. It should include the following data (but not be limited to them):
  - a status of the parties' relations;
  - b parties gender;
  - c information on parties' employment and education;
  - d time and date of the filing of a complaint;
  - e. time when a police employee started a complaint investigation;
  - f whether children were involved or present during a violence act;
  - g the abuse type and extent;
  - h. the number and types of weapons used;
  - i the time required for investigating a case and actions undertaken by a police employee;
  - j the date of issue and the term of validity of any previous urgent temporary order or court order relating to parties;
  - k any other data required for a full analysis of that circumstances resulting in a domestic violence case that was filed.
- 3 The police commission's obligation is to collect report data on domestic violence and send an annual report to the ministry/department of justice for women's affairs or to the Parliament.
- 4. An annual report should include the following information (but not be limited to it):
  - a The total number of reports received;
  - b The number of applications from victims of violence of both genders;
  - c the number of applications for which an investigation was conducted;
  - d the average time spent on the investigation of one application;
  - e the type of actions undertaken by the police including the number of arrests.

290 LETS COMMUT COMMUT

#### SECTION IV.

#### JUDICIAL OFFICERS' OBLIGATIONS

# A. An Urgent Temporary Limitation Order

An urgent temporary limitation order may be issued upon an application from a victim of violence in cases where a victim is afraid for her safety or an offender makes a decision not to appear in court or hides himself. An urgent order may contain a preliminary direction against further violence and/or warning to an offender/defendant on the inadmissibility of the victim's prosecution and interference into the use of property by a plaintiff, including their common property.

Apart from the victim of violence, other persons should have an opportunity to apply for an urgent temporary limitation order. A victim may have no access to legal protection. Witnesses or persons who have proposed their help to a victim may be under a threat of violence.

- 1. When there is a serious threat to the life, health, and well-being of a victim of violence and she is unlikely to find safety before the issue of a court order, a victim/plaintiff, her relative, or a social worker can apply to the court or other official for urgent help in the form of an urgent temporary limitation order. The order should be issued within 24 hours after the violence took place.
- 2 During the term of validity for an urgent temporary limitation order, a court decision may be made for the purpose of:
  - a obliging an offender to leave home;
  - b regulating an offender's access to children;
  - c holding an offender from contacts with a victim at work and other places she frequently visits;
  - d obliging an offender to pay the cost of a victim's medical treatment;
  - e. limiting the use of common property by only one person;
  - f if an offender violates a limitation order he can be put into custody and be subjected to prosecution.
  - g informing a victim that, regardless of the use of a limitation order, under domestic violence legislation she can apply to an attorney and file a criminal case in court against an offender;
  - h. informing a victim that, regardless of the use of a limitation order, under domestic violence legislation and in any such case where a criminal case is pending, she herself may start a civil process and file papers for a divorce, separate accommodation, reimbursement of expenses and compensation; she may demand that the parties fulfill their obligations to inform the court of all civil court processes, court processes for minors, and/or a criminal court relating to either of the parties.
- 3 Urgent measures may envisage that an urgent temporary limitation order will retain its validity before the issue of a court order and that should take place not later than 28 days after an urgent limitation order has gone into effect.
- 4. A victim should be informed of the following:

LETS COMBAT DOMESTE, WELLWELLET'S COMBAT DOME

- a Regardless of the use of an urgent limitation order, under domestic violence legislation she may apply for an additional court order to protect herself from further violence or a renewal of the court order, and/or she may appeal to an attorney to file a criminal case against an offender;
- b an application for an urgent security order does not mean that she has no access to other measures envisaged in civil legislation, such as a demand for separate accommodation, a divorce, and reimbursement of damage;
- c After notifying a plaintiff 24 hours in advance\* a defendant may apply for a cancellation or modification of a temporary limitation order.
- 5. The result of non-compliance to an urgent limitation order shall be an indictment for contempt of court, a fine or imprisonment.

# B. Security Orders

- 1. An application for a security order may be done by a victim herself, her relative, a social worker or person who is helping her.
- 2. An application for a security order may be done during or before the expiry of an urgent limitation orders' term of validity or in any case, regardless of such orders.
- 3. The validity of temporary or urgent orders will be suspended after the issue of a court security order.
- 4. Security orders should protect a victim of violence, her relatives, a social worker, or a person who is helping a victim from further violence and the threat of violence.
- 5. Judges should conduct hearings within 10 days from the filing of a complaint and the application for a security order.
- 6. Judges should observe victims' rights in terms of protecting them from violence.
- 7. A court order may envisage any of the following measures or all of them:
  - a to restrain an offender/defendant from causing further damage to a victim/plaintiff, her dependants, other relatives, and persons who are helping her;
  - h to order a defendant to leave home regardless of who owns it;
  - c to order that a defendant provide access to the use of a car and/or other personal property to a plaintiff;
  - d to regulate a defendant's access to children;
  - e. to hold a defendant from contacts from a plaintiff at work and other places frequently visited by her;
  - f if a defendant uses or owns a weapon the defendant should be prohibited from purchasing, using, or owning a firearm or any other type of weapon identified by the court;
  - g to order that a defendant pay the cost of a plaintiffs medical treatment, counseling or stay at a refuge;
  - h. to prohibit the use of common property by only one person;
  - i to inform a plaintiff and defendant that if a defendant violates a security order he may be taken into custody with or without notification and be subjected to criminal prosecu-

292 LITS CORRAY DOMESTIC VALUACELLET'S CORRAY COMMISTIC VALUACELLET'S COMBAT COMBATIC VALUACELLET'S COMBATIC VALUACELLE

tion and punishment;

- j to inform a plaintiff that regardless of the use of a security order, under domestic violence legislation she may appeal to an attorney for filing a criminal case against a defendant;
- k to inform a plaintiff that regardless of the use of a security order, under domestic violence legislation she may start a civil court process and file papers for a divorce, separate accommodation, and reimbursement of damage or compensations;
- l to conduct a closed hearing in order to protect the parties' private life.
- 8 According to that procedure, the burden of proving that domestic violence did not take place lies on the defendant.
- 9. Judges should order that copies of security/limitation orders be sent to the police of the districts where a plaintiff arid persons who are protected by the order live, within 24 hours from the date of its issue.
- 10. The police and courts should carry out monitoring of the security orders' observation. A security order violation is a crime. A fine, indictment of contempt of court and imprisonment shall be the result of non-compliance to a security order.
- 11. In a case in which a plaintiff takes a written oath that she has no funds to pay the cost of an urgent limitation or security order, such orders shall be issued free.
- 12. If the claims for a security order are not justified, the court may oblige a plaintiff to pay the cost and reimburse the expenses.

#### SECTION V.

#### A CRIMINAL PROCESS

A criminal investigation may be started simultaneously with an issue of a security order.

- 1. A General Prosecutor of the Minister of Justice should develop, approve and enact written instructions for officials investigating domestic violence cases.
- 2. If in a domestic violence case the court declines the charge of a criminal offence, special reasons for such a denial to file should be registered in the court file.
- 3 In suits related to domestic violence a prosecutor should identify that the charge refers to domestic violence,
- 4. A victim's evidence should be sufficient for indictment. A complaint cannot be declined on the basis that the evidence has not been supported by anything else.
- 5. While giving a sentence with regard to a crime related to domestic violence, a court decision should identify the consequences of considering the sentence.
- 6. In the course of a court process a defendant should have no uncontrolled contacts with a plaintiff.
- 7. An issue of a limitation or security order can serve as a substantial circumstance in any criminal investigation.
- 8 Depending on the nature of a crime and the time when a plaintiff is charged for domestic violence for the first time, a sentence can be a conditional one with compulsory counseling

LITS COMBUTIONESTE VALINCELETS COMBUTIONESTE VERINCELETS COMBUTIONESTE

- and an issue of a security order, only with a victim's consent.
- 9. While giving a sentence for a crime related to domestic violence, the court can decide on a term of imprisonment and a term of compulsory rehabilitation.
- 10. More severe punishment is to be recommended in cases of repeated domestic violence, offences under especially grave circumstances, and in instances when a weapon is used.
- 11. Counseling should not be recommended instead of punishment in case of especially grave circumstances.
- 12. Clear guidelines should be approved for giving a sentence.

#### SECTION VI.

#### A CIVIL PROCESS

- 1. During a civil process related to a divorce, separate accommodation or payment of compensation and a security orders can be issued.
- 2 Security orders are issued in addition to a civil process, and not instead of it. '3. Security and limitation orders can be issued independently of each other and independent of an application for a divorce and separate accommodation.
- 3. An issue of a limitation order or security order can be represented as a significant circumstance in any further civil process.

#### SECTION VII.

#### PROVIDING RELIEF

# A. Urgent Relief

- 1. A state should give urgent or emergency relief that comprises the following:
  - a Crisis services during 72 hours;
  - b immediate transportation from the victim's home to a medical center or refuge;
  - c urgent legal counseling and further direction to appropriate agencies;
  - d counseling in a crisis situation in order to ensure support and assure security;
  - e confidentiality in treating victim of violence and their families.

# B. Non-Urgent Relief

- 1. A state should give relief comprising the following:
  - a providing services promoting long-term rehabilitation of victims of violence through a system of consultation/counseling and retraining for employment; and providing childrane services;
  - b providing services promoting long-term behavior modification of persons who have committed violence, through a system of consultation/counseling;
  - c special programs on domestic violence that are implemented independently of social relief programs;
  - d providing for cooperation and coordination of government, public and private services, and federal and local programs.

294 JUES COMBUT DOMESTIC VALINCELLE'S COMBUT

# C. Training of police officers

- 1. The Ministry/Department managing the police should develop and revise training programs for police officers in order to acquaint them with the following:
  - a the nature, spread, causes, and consequences of domestic violence;
  - b legal rights and means of legal protection that victim of violence have access to;
  - c services and opportunities that victim of violence and offenders have access to;
  - d police officers' obligation to make arrests and provide for protection and help;
  - e methods for investigating cases related to domestic violence that lead to the least chance that the possibility of the police officers' own rights will be violated and provide for a victim's and her dependants' security.
- 2 Each police officer should be trained on how to act in cases of domestic violence.
- 3. For work in complicated cases special units that have undergone special in-depth training should be established.
- 4. Specialists in the sphere of education, psychologists, and victim of violence should participate in the programs for the police in order to provide their "sensitivity" and attention to those issues.

#### D. Training of officials in the judicial bodies

- 1. Continuous ongoing programs for training officials on cases of domestic violence should be created. Training should include guidelines on the following issues:
  - a the nature, the spread, the causes, and the consequences of domestic violence;
  - b a procedure for the issue of urgent limitation orders;
  - c a procedure for the issue of security orders;
  - d instructions that should be given to victims on accessible means for judicial and legal protection;
  - e guidelines for sentencing.
- 2. Training should include a basic course with a compulsory number of hours and an annual review course with a compulsory number of hours.
- 3. Family courts should be established for which in-depth and special training on domestic violence should be provided.

# E. Training of Consultants

- 1. A state should provide for training of consultants to help the police, court, victim of violence, and offenders.
- 2 The Law should stipulate that counseling programs for persons who have committed a crime should be implemented as additional work and not as an alternative to the criminal legislation system.
- 3 The objective of counseling programs:
  - a To help a person who has committed violence to become aware of his responsibility

LETS COMMUTIONESTE VALUETELETS COMMUTIONESTE WEINTELETS COMMUTIONESTE VALUETELETS COMMUTICAL VALUETE COMMUTICAL VAL

and take responsibility for not committing violence in the future;

- b To inform a person who has committed violence of the illegal nature of domestic violence.
- 4 Financing counseling programs for persons who have committed violence should not be funded by relief programs for victim of violence.
- 5. The Law should provide for but insist on compulsory counseling for victim of violence. Counseling should include the following:
  - a should be free;

should help a victim of violence to acquire strength, to develop short-term and long-term strategies for protection against violence, and to resume a normal life style.

296 JETS COMMUT DOMESTIC VOLUMENLIT'S COMMUT

#### THE LAW OF UKRAINE

#### ON THE PREVENTION OF DOMESTIC VIOLENCE

(Vedamosti of the Verkhovnaya Rada (WR), 2002, # 10, p. 70)

This Law specifies the legal and organizational fundamentals of the prevention of domestic violence and the organs and agencies authorized to implement measures on the prevention of domestic violence.

#### SECTION I.

#### GENERAL PROVISIONS

#### Article 1. Definition of terms

For the purpose of this Law the terms used herein have the following meanings: domestic violence is any intentional act of a physical, sexual, psychological, and economic nature undertaken by a member of a family with respect to another member of the family, if such an act violates the constitutional rights and freedoms of a member of a family as an individual or citizen and causes him or her moral damage or injury to his or her physical and mental health;

Physical Domestic Violence involves intentional battery of a family member by another member; inflicting body injuries that can cause or has caused the death of a victim or causes damage to his or her honor and dignity;

Sexual domestic violence is an illegal encroachment by a member of a family on the sexual inviolability of another member of the family, including acts of a sexual character with respect to an individual under legal age;

Psychological damestic violence is violence connected with the acts of a member of a family effecting the psyche of another member of the family by way of verbal insult, threat, persecution or intimidation that deliberately cause lack of emotional confidence or inability to defend oneself, or inflict psychic damage;

Economic domestic violence involves one family member intentionally depriving another member of housing, food, clothing and other pieces of property or resources to which the aggrieved is entitled under the current law. The deprivation may cause the aggrieved death and bring about physical and mental impairment;

A victim of domestic violence is a member of a family who has suffered from physical, sexual, psychological, or economic violence due to the actions of another family member;

The prevention of domestic violence is a system of social and specific measures targeted at eliminating, the causes and conditions conducive to domestic violence, putting an end to the domestic violence that is beginning or has already begun, bringing the persons to justice who are guilty of committing violence in the family, and also providing medical and social rehabilitation to a victim of domestic violence;

A real threat of committing domestic violence is the threat of committing intentional acts by a member of a family with respect to another member of the family specified in the second

COMMOTORMENT VALUELLES COMMOTORMENT VALUELLES

paragraph of this Article, provided there are real grounds to apply it;

A protection order is a special form of direct response by the district police inspectors, the criminal police in charge of minors' affairs, and protection services for victims of domestic violence, according to which the person who has committed domestic violence is prohibited from becoming involved in Certain acts with respect to the victim of violence;

Victim-like behavior related to domestic violence is the behavior of a victim of domestic violence that provokes domestic violence.

# Article 2. Legislation on the prevention of domestic violence

The legislation on the prevention of domestic violence is part of the Constitution of the Ukraine, of this - the Law at hand, and other normative and legal acts regulating the prevention of domestic violence.

**Article 3.** The bodies and departments that are authorized to implement measures on domestic violence

- 1. Measures on domestic violence within the limits of power granted to them shall be implemented by:
- 1) a specially authorized body of the executive power on the issues of domestic violence;
- 2) district police inspectors and criminal police in charge of minors;
- 3) guardianship and trusteeship organs;
- 4) specialized agencies of domestic violence;
- 5) Crisis monitoring centers for victim of domestic violence and members of the family with respect to whom there exists a real threat of domestic violence (further crisis monitoring centers);
- 6) Medical and social centers for rehabilitation of victims of domestic violence.
- 2 Organs of the executive power, organs of local self-management, enterprises, agencies and organizations irrespective of the form of ownership\* associations of citizens, and selected individuals all can also help carry out measures targeted at preventing domestic violence.

#### Article 4. The bases for implementing measures on domestic violence

1. The bases for implementing measures on domestic violence are:

A victim of domestic violence's claim or that of a member of the family for whom there exits a real threat of domestic violence;

An oral form of application made by a victim of domestic violence or a member of the family for taking measures to prevent domestic violence, if the information or the claim has not been received personally from the victim;

Receipt of information either on instances of domestic violence committed or on a real threat to commit it with respect to a minor or a defenseless member of a family.

- 2 A claim and information about instances (or an instance) of an act or acts of domestic violence or a real threat to commit such violence are received at the victim's place of residence by the bodies specified in Items 1 and 2 of section 1, Article 3 of this Law.
- 3. The organ that has received a claim or has been informed about either domestic violence committed or a real threat to commit such violence looks into the claim or into the information and

298uets combat domestie: voluncellets combat domestie: wellincellets combat domestie: wellincellets combat domestie: voluncellets combat domestie: volunc

shall take measures within the limits of its authority specified by the law on domestic violence.

4. The order of dealing with claims and information on either domestic violence committed or a real threat to commit it shall be confirmed by the Cabinet of Ministers of the Ukraine.

#### SECTION II.

#### ORGANS AND DEPARTMENTS AUTHORIZED

#### TO IMPLEMENT MEASURES ON DOMESTIC VIOLENCE

**Article 5.** The authorities of a specially authorized organ of the executive power on the issues of domestic violence

A specially authorized organ of the executive power on the issues of domestic violence shall:

- participate in the development and implementation of the state policy concerning domestic violence;
- coordinate the activities of district police inspectors and the criminal police in charge of minors' affairs and quardianship and trustee bodies related to the issues of domestic violence;
- determine the regions' needs in the creation of specialized departments for victims of domestic violence;
- implement the collection and generalization of data on domestic violence according to the current law;
- organize and conduct sociological, psychological and criminological research on domestic violence;
- render methodological and practical assistance and consultation to organs of the executive power and organs of local self-management on the issues of domestic violence, irrespective of the forms of ownership, the associations of the citizens, or the selected citizens themselves;
- for members in a family in which there is the possibility of a real threat of violence or in families in which domestic violence has already been committed, to organize and conduct educational and explanatory work for these members on their rights, on the measures they may take, and about the services which they can take advantage of;
- to appeal to central and local organs of the executive power and organs of local self-management to provide victim of domestic violence with due assistance;
- accept and review claims and information on acts of domestic violence already having been committed and claims or information on any real threat to commit such acts;
- send victims of domestic violence and members of the family for whom there exists a real threat of violence to specialized institutions for victims of domestic violence.
- **Article 6.** Offices (Authority) of district police inspectors and the criminal police in charge of minors' affairs related to the prevention of domestic violence
- 1. district police inspectors and the criminal police department in charge of minors' affairs related to the prevention of domestic violence shall:
- reveal the causes and conditions leading to domestic violence and, within the limits of their authority, take measures to eliminate them;
  - write down the names of violence-prone persons on the domestic-violence-prevention

list, and with these persons conduct educational and preventive work;

- meet with the families whose members are included in the domestic-violence-prevention list and conduct explanatory work with them;
- give an official warning to members of the family about intolerance to domestic violence and inadmissibility of victim-like behavior;
- accept and consider, within the limits of their power specified by the law, claims and information on domestic violence or on a real threat to use such violence;
- notify members of the family, in which there exists a real threat of domestic violence or in which domestic violence has already taken place, about their rights and the measures and services that they can take advantage of; send the victims of domestic violence to victims' specialized institutions;
  - issue protection orders in cases specified in this Law;
  - see to the execution of prevention orders;
- interact with a specially authorized organ of the executive power on the issues of domestic violence and with the guardianship and trusteeship organs and specialized institutions of victims of domestic violence on the questions concerning the prevention of domestic violence;
- provide authorized organs at their request with information on the prevention of domestic violence;
  - exercise other authority specified by legislation.
- 2. The authority of the criminal police in charge of minors' affairs cover cases for victims of domestic violence or for those for whom there exists a real threat of domestic violence, and covers cases involving a person who has committed domestic violence and who is under the age of 18.
- **Article 7.** Authorities of guardianship and trusteeship organs with respect to domestic violence

Organs of guardianship and trusteeship shall:

- provide minors with assistance to restore their rights and to protect their legal interests; minors refers to those individuals who have parents and live in families; to those orphan children who have lost their parents' care and are being brought up in the families of guardians (trustees), in foster families, or in family-type children's homes; and to those members of families regarded as incapable under the court's ruling in a case where domestic violence has been committed and where against them there exists a further real threat;
- represent in court the interests of minors and those members in families deemed incapable who have fallen victim to damestic violence; exercise other authorities specified by legislature with respect to damestic violence.

# Article 8. Crisis monitoring centers

1. Crisis monitoring centers are set up by local state administrative bodies permitted and specially authorized to operate by an organ of the executive power in order to address issues of domestic-violence and prevent said violence in accordance with the social needs of the

300 LITS CORRAY DOMESTIC VALUACELLET'S CORRAY COMMISTIC WALKACELLET'S COMMIST COMMISTIC VALUACELLET'S COMMIST COMMISTIC VALUACELLET'S COMMIST COMMISTIC VALUACELLET'S COMMISTI

AND AS EXECUTED IN COLUMN TO AS EXECUTED IN CO

region.

2 Crisis monitoring centers can also be set up by organs of local-self management, enterprises, institutions, organizations, charity funds, citizen's associations and selected citizens in cooperation with a specially authorized organ of the executive power that deals with issues for preventing domestic violence registered in the order specified by the law at hand.

- 3. Crises monitoring center employees shall:
  - accommodate family members who can fall or have fallen victim to domestic violation;
- organize the rendering of necessary psychological, educational, medical, or legal assistance to family members who can fall or have fallen victim to domestic violence;
- in accordance with their resources, provide refuge for a temporary stay to family members who can fall or have fallen victim to domestic violence;
- notify family members in case of an imminent real threat of domestic violence .or, if it has already been committed, notify them about the rights, measures and services which they can take advantage of;
- notify district police inspectors or the criminal police in charge of minors' affairs about the potential threat for domestic violence that have been disclosed or about the facts of an act that has already been committed;
- examine and generalize the causes and conditions of specific occurrences of domestic violation;
- provide authorized organs with information on the issues for the prevention of domestic violence at their request;
- interact with the mass media and public organizations to conduct educational work on issues for preventing domestic violence.
- 4 Crisis monitoring centers are non-profit organizations enjoying the rights of a legal person. They have their own forms on which is written their own name along with a seal of the inscription of the State coat of arms of the Ukraine.

# Article 9. Centers for medical and social rehabilitation of victim of domestic violence

- 1. Centers for medical and social rehabilitation of victims of domestic violence are created in accordance with the legislation that regulates the creation of health care institutions. Centers for medical and social rehabilitation of victims of domestic violence can be set up in the system of currently existing institutions of health care.
- 2 At these centers victims are placed (according to their consent or request) on the basis of a decision made by the center's medical commission. With respect to minors, it is necessary to get the permission of one of the parents, of persons who have adopted (the victim), or a quardian or a trustee, or of the organ of quardianship and trusteeship.
- 3 Victims of domestic violence stay at the center for medical and social rehabilitation during the period required for their treatment and psychological and social rehabilitation. At their request, victims of domestic violence can undergo treatment and psychological and social outpatient rehabilitation.
- 4. Employees of the center for medical and social rehabilitation of victims of domestic vio-

HETS COMBAN DOMESTE: WALNCELLET'S COMBAN DOME

#### lence shall:

- render victims of domestic violence initial medical aid and psychological assistance and selected kinds of psychiatric help on the bases and in the order specified in the Law of the Ukraine "On psychiatric assistance," and other laws;
  - if necessary send victims of domestic violence to get further appropriate treatment;
  - organize and render legal counseling to victim of domestic violence;
- notify district police inspectors or the criminal police in charge of minors' affairs about the violence committed;
- at the request of authorized organs, provide information on the issues of preventing domestic violence.

#### SECTION III.

# SPECIAL MEASURES ON THE PREVENTION OF DOMESTIC VIOLENCE

Article 10. Official warning of the impermissible nature of domestic violence

- 1. A member of the family who has committed domestic violence shall be officially warned about the unacceptability of domestic violence by the district police inspectors or the criminal police in the event that there is no indication of a crime. In such a case, he or she is to be notified with a written note.
- 2 An official warning about the unacceptability of domestic violence may be made to a responsible person who has reached the age of 16 by the time of the issuance of the warning.
- 3 In an instance when domestic violence has been committed and after which time an official warning has been made about the unacceptability of domestic violence, a protection order may be issued with respect to this person in accordance with the stipulations of this Law.
- Article 11. Official warning about the unacceptability of victim-like behavior with respect to domestic violence

In the case of systematic (three or more cases) victim-like behavior of a family member, the consequences of which lead to a situation which may result in an instance of domestic violence, the district police inspectors or the criminal police shall make an official warning about the unacceptability of victim-like behavior, for which the person shall be notified by way of a written note.

- **Article 12.** Prevention registration and the striking off of family members from the registration (i.e., family members who have committed domestic violence)
- 1. Members of the family who have been officially warned about the unacceptability of domestic violence shall be registered by district police inspectors or the criminal police in charge of minors' affairs.
- 2 Striking off of family members from the prevention register who have committed domestic violence shall be carried out by the organs which registered the person, provided this person has not committed a single act of domestic violence following the last act of violence.
- 3 The order of prevention registration and the order of striking off from the prevention register of family members who have been officially warned about the unacceptability of domestic violence shall be confirmed by the Ministry of Internal Affairs of the Ukraine

302 LITS COMBAT DOMESTIC VOLUMENTLY SCHMAN COMBISTIC VARIANCE LIT'S COMBAT DOMESTIC VARIANCE LIT'S COMBAT DOMESTIC VOLUMERILIT'S COMBAT DOMESTIC VOLUMERICA DOMESTI

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATIO

#### Article 13. Protection order

- 1. A district police inspector or an employee of the criminal police in charge of minors' affairs in cooperation with the head of the analogous organ of internal affairs and the prosecutor can issue a protection order with respect to a person who has committed domestic violence. This person will have been officially warned about the unacceptability of violence to the family.
- 2 A protection order is not subject to negotiation in case there are indications of violence in the acts of the person who has committed domestic violence.
- 3 A protection order may be issued to a responsible person already having reached the age of 16 before the moment of the protection order's issuance.
- 4 A Protection order may prohibit the person who has been issued a protection order from committing a certain act (acts) with respect to a victim of domestic violence, namely:
  - committing specific acts of domestic violence;
  - receiving information about the place of stay of a victim of domestic violence;
- searching for a victim of domestic violence if a victim of domestic violence is staying at a place on his/her own and this place is not known to the person who has committed domestic violence;
- visiting a victim of domestic violence if he or she is not temporarily staying at the place of joint residence with members of the family;
- engaging in telephone negotiations with a victim of domestic violence. 5The restrictions mentioned in part 4 of this Article are set for the period that starts thirty days from the day of the coordinating of the protection order with the prosecutor.
- **Article 14.** Collection of means for the maintenance of victims of domestic violence in specialized institutions of victims of domestic violence

The decision to collect the means to compensate expenses from the persons who have committed domestic violence or to provide for the maintenance of these victims in specialized institutions for these victims shall be made by the court under the established order by legislation. This legislation follows the claim of the administration of specialized institutions for victims of domestic violence.

#### SECTION IV.

#### RESPONSIBILITY FOR COMMITTING DOMESTIC VIOLENCE

Article 15. Responsibility for committing domestic violence

Family members who have committed domestic violence shall bear criminal, administrative or civil and legal responsibility in accordance with legislation.

# SECTION V.

FINANCING ORGANS AND INSTITUTIONS WHICH ARE AURTHORIZEO TO IMPLIMENT MEASURES ON THE PREVENTION OF DOMESTIC VIOLENCE

Article 16. Sources of financing organs authorized to implement measures on domestic violence prevention and specialized institutions of victims of domestic violence

UTS COMMUTIONESSE VALUETELITS COMMUTIONESSE

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATIO

- 1. Financing of the organs and institutions for the prevention of domestic violence that are part of the system of organs of the executive power or organs of local self-management shall be realized from the budget of the respective level.
- 2 Financing specialized institutions for victims of domestic violence established by enterprises, institutions, organizations, charity funds, citizens' associations or selected individuals shall be realized from their own resources.
- 3 Specialized institutions for victims of domestic violence are entitled to bring forward a regressive claim for reimbursing victims of domestic violence for resources of the victim's maintenance to the persons who have committed domestic violence.

#### SECTION VI.

# PROTECTION OF FAMILY MEMBERS' RIGHTS WHILE IMPLEMENTING MEASURES ON THE PREVENTION OF DOMESTIC VIOLENCE

**Article 17.** Protection of family members' rights while implementing measures on domestic violence prevention

- 1. The State shall guarantee protection of the rights and legal interests of family members with respect to whom measures for prevention of domestic violence are undertaken.
- 2 Official functionaries and employees implementing domestic violence prevention measures shall not disclose information about the personal and family life of victims, which will have been disclosed to these functionaries and employees as a result of fulfilling their work-related responsibilities.

#### SECTION VII.

#### FINAL PROVISIONS

- 1. This law shall become effective three months from the date of its publication.
- 2 The Cabinet of the Ministers of Ukraine within one month from the date of this law becoming effective shall:
- prepare and submit to the consideration of Verkhovnaya Rada of the Ukraine motions concerning the bringing of the Ukraine laws in conformity with this Law;
  - bring their normative and legal acts in conformity with this Law;
  - in accordance with their competence secure the adoption of normative and legal acts;
- provide central and local bodies of the executive power the means to review and cancel their normative and legal acts that contradict this Law.

#### President of Ukraine

L.Kuchma

Kiev, November 15 (listopad) 2001 (let), # 2789 - III

304 JUTS CORRAY DOMESTIC VALUE LUT'S COMBAT COMMISTIC VALUE LUT'S COMBAT DOMESTIC VALU

305

#### THE DOMESTIC VIOLENCE ACT OF MALAYSIA, 1994

An Act to provide for legal protection in situations of domestic violence and matters incidental thereto.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

# PART 1: PRELIMINARY

# 1. Short title, interpretation and commencement

- (1) This Act may be cited as the Domestic Violence Act 1994 and shall come into force on such a date as the Minister may, by notification in the Gazette, appoint.
- (2) This Act shall apply to all persons in Malaysia.

# 2. Interpretation

In this Act, unless the context otherwise requires-

"alternative residence" means the premises or accommodation which the victim is or has been compelled to seek or move into as a result of domestic violence;

"child" means a person below the age of 18 years who is living as a member of the offender's family or of the family of the offender's spouse or former spouse, as the case may be;-

"court" means-

- (a) in respect of criminal proceedings involving allegations of domestic violence, the court competent to try the actual offence with which the accused is charged;
- (b) in respect of civil proceedings for compensation under section 10, the court competent to hear such claims in tort;

"damestic violence" means the commission of any of the following acts:

- (a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (b) causing physical injury to the victim by force or threat to engage in any conduct or act which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim's own will; or
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim,

by a person against-

- (1) his or her spouse
- (2) his or her own former spouse
- (3) a child

TS CORRECTIONERS VEHICLES CORRECTED SCHOOL TOMESTS VEHICLES CORRECTED SCHOOL TOMESTS

AND A EBEG OF ABDOGREGATION OFF ONLY AND A EBEG OF ABDOGRAGATION OFF ONLY AND A EBEG OF A EBEG OFF ONLY AND A

- (3) an incapacitated adult; or
- (5) any other member of the family;

"enforcement officer" means a police officer or a welfare officer from the Department of Social Welfare;

"incapacitated adult" means a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age, who is living as a member of the offender's family;

"Minister" means the Minister charged with the responsibility for social welfare;

"other member of the family" means-

- (a)
- (i) an adult son or daughter; or
- (ii) a father or mother, of the offender; or
- (b)
- (i) a brother or sister; or
- (ii) any other relative,

of the offender who in the opinion of the court should, in the circumstances of the family, be regarded as a member of the family;

"protected person" means a person who is protected under a protection order;

"protection order" means an order issued under Part 2;

"relative" means a person who is related through the full-blood or half-blood, or through marriage or adoption, including de facto adoption;

"safe place" or "shelter" means any home or institution maintained or managed by the Department of Social Welfare or by any other agency or voluntary organization approved by the Minister for the purpose of this Act or any other suitable place the occupier of which is willing temporarily to receive the victim;

"shared residence" means the premises at which the parties, are or have been , living together as members of the same household;

"spouse" includes de facto spouse, that is to say, a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnization and registration of marriages;

"victim" means victim of domestic violence.

# 3. This Act is to be read together with Penal Code

The provisions of this Act shall be read together with the Provisions of the Penal Code.

#### PART II.

# PROTECTION ORDER

306 DETS COMMUT COMMUT

### 4. Interim protection order

- (1) The court may during the pendency of investigations relating to the commission of an offence involving domestic violence, issue an interim protection order prohibiting the person against whom the order is made from using domestic violence against his or her spouse or former spouse or a child or an incapacitated adult or any member of the family, as the case may be, as specified in the order.
- (2) An interim protection order shall cease to have effect upon the completion of the investigations.

#### 5. Protection order

- (1) The court may, in proceedings involving a complaint of domestic violence, issue any one or more of the following protection orders:
- (a) A protection order restraining the person against whom the order is made from using domestic violence against the complainant;
- (b) A protection order restraining the person against whom the order is made from using domestic violence against the child;
- (c) A protection order restraining the person against whom the order is made from using the domestic violence against the incapacitated adult.
- (2) The court in making a protection order under paragraph (1)(a) or (b) or (c) may include a provision that the person against whom the order is made may not incite any other person to commit violence against the protected persons or person.

#### 6. Orders that may be included in protection order

- (1) A protection order issued under section 5 may, where the court is satisfied on a balance of probabilities that it is necessary for the protection and personal safety of the complainant or the child or the incapacitated adult, as the case may be, provide for any one or more of the following orders:
- (a) subject to subsection (4), the granting of the right of exclusive occupation to any protected person of the shared residence or a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;
- (b) prohibiting or restraining the person against whom the order is made from entering any protected person's place of residence or shared residence or alternative residence, as the case may be, or from entering any protected person's place of employment or school or other institution or from making personal contact with any protected person other than in the presence of an enforcement officer for the purpose of collecting the protected person's or persons' personal belongings;
- (c) requiring the person against whom the order is made to permit any protected person to enter the shared residence, or to enter the residence of the person against whom the order is made, accompanied by any enforcement officer for the purpose of collecting the protected person's or persons belongings;
- (d) requiring the person against whom the order is made to avoid making written or tele-

HETS COMBAN DOMESTE: WALNCELLET'S COMBAN DOME

phone communication with any protected person and specifying the limited circumstances in which such communication is permitted;

- (e) requiring the person against whom the order is made to permit any protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person or persons;
- (f) the giving of any such direction as is necessary and incidental for the proper carrying into the effect of any order made under any of the above mentioned paragraphs,

to have effect for such period, not exceeding twelve months from the date of the commencement of such orders, as may be specified in the protection order.

- (2) Any one or more of the orders under subsection (1) may be-
- (a) Made or made anew, upon the contravention of a protection order, in accordance with section 9; or
- (b) Extended for a further period, not exceeding twelve months from the date of the expiration of the original order, where the court is satisfied that, notwithstanding that there had been no actual contravention of the order, such extension is necessary for the protection and personal safety of the protected person or persons:

Provided that the extension of an order under this paragraph shall no be made more than once.

- (3) Except so far as the exercise by the person against whom the order is made of a right to occupy the shared residence, or to enter the alternative residence, is suspended or restricted, or prohibited or restrained, by virtue of an order under paragraph (1)(a) or (b), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in the said premises.
- (4) The court shall not make an order excluding the person against whom the order is made from the whole of a shared residence that is solely or jointly owned or leased by him unless it is satisfied that there is no other way to secure the personal safety of any protected person for the time being, and such order, where made, shall, in the case where the shared residence is solely owned or leased by the person against whom the order is made, or may in the case where the shared residence is jointly owned or leased by the parties, be-
- (a) Revoked if a suitable alternative residence is found for the protected person or persons; or
- (b) Revoked or modified upon the court being otherwise satisfied that it is no longer necessary for securing the personal safety of the protected person or persons.
- (5) In paragraph (4)(b), "modified" means modifying an order excluding the person against whom the order is made from the whole of the shared residence into an order excluding him from such part of the shared residence as is specified in the order.

#### 7. Powers of arrest

- (1) Where the court is satisfied that the person against whom a protection order or interim protection order is made is likely to cause actual physical injury to the protected person or persons, the court may attach a power of arrest to such protection order, as the case may be.
- (2) If a power of arrest is attached by virtue of subsection (1), a police officer may arrest without warrant the person against whom the order is made when he has reasonable cause to believe

308 UETS COMBUT DOMESTIE VALINCELLETS COMBUT

ATO A EXISED OF ADDRESS PROTECTION TO ALTON A TO A FEEL OF ADDRESS PROTEON TO ALTON A FEEL OF ADDRESS PROTEON AND A FEEL OF ADDRESS PROTEON ON A TO A FEEL OF A FEEL OF

that the person is in breach of the order issued under subsection 4(1) or 5(1) or of an order included in a protection order as falls within paragraph 6(1)(a) or (b), by reason of that person's use of violence or, as the case may be, of his entry into any place prohibited under the order.

- (3) Where a power of arrest is attached to a protection order or interim protection order and the person against whom the order is made is arrested under subsection (2)-
- (a) He shall be brought before a judge within twenty-four hours of his arrest; and
- (b) He shall not be realized within that period except on the direction of the judge.

But nothing in this section shall authorize his continued detention under this subsection after the expiry of that period.

(4) In this section "judge" includes Magistrate.

# 8. Contravention of protection order

- (1) Any person who willfully contravenes a protection order or any provision thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.
- (2) Any person who willfully contravenes a protection order by using violence on a protected person shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or both.
- (3) Any person who is convicted for a second or subsequent violation of a protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.
- (4) For the purposes of this section a "protection order" includes an interim protection order.

# 9. Making or renewing orders upon contravention of protection order

Where a person against whom a protection order has been made contravenes the protection order, the court may in addition to any penalty provided for under section 8, make or make anew, as the case may be, any one or more of the orders under subsection 6(1), to commence from such date as is specified in such new order.

#### PART III.

# COMPENSATION AND COUNSELLING

### 10. Compensation

- (1) Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.
- (2) The court hearing a claim for such compensation may take into account-
- (a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;
- (b) the cost of medical treatment for such injuries;
- (c) any loss of earnings arising there from;

HIS COMMITOMENTE WEINTELITS COMMITOMENTE WEINTELITS COMMITOMENTE. WEINTELITS COMMITOMENTE WEINTELITS COMMITOMENT WEI

- (d) the amount or value of the property taken or destroyed or damaged;
- (e) necessary and reasonable expenses incurred by or on behalf of the victim is compelled to separate or be separated from the defendant due to the domestic violence, such as-
- (i) lodging expenses to be contributed to a safe place or shelter;
- (ii) transport and moving expenses;
- (iii) the expenses required in setting up a separate household which, subject to subsection
- (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, as the court considers just and reasonably necessary.
- (3) In considering any necessary and reasonable expenses that may be taken into account under subparagraph (2)(e), the court may also take into account-
- (a) The financial position of the victim as well as that of the defendant;
- (b) The relationship that exist between the parties and the reasonableness of requiring the defendant to make or contribute towards such payments;
- (c) The possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under the relevant laws relating to the financial provision of spouses or former spouses and other dependants.

#### 11. Counseling, etc

- (1) The court may, in any proceedings in which a protection order is sought, instead of or in addition to the issuing of the protection order, make one or both of the following orders:
- (a) That the parties concerned be referred to a conciliatory body;
- (b) That one or more of the parties to the dispute be referred to rehabilitation therapy, psychotherapy or such other suitable reconciliatory counseling.
- (2) The court hearing a claim for compensation under section 10 may also make one or both of the orders under paragraph (1)(a) or (b).
- (3) When considering any questions relating to the making of an order under subsection (1) the court may, whenever it is practicable, take the advice of social welfare officer or other trained or experienced person.
- (4) In this section "conciliatory body" includes bodies providing counseling services set up under the Department of Social Welfare and, in the case where the parties are Muslims, also includes those set up under the Islamic Religious Affairs Department concerned.

#### PART IV.

# PROCEDURE ON PROTECTION ORDERS

### 12. When interim protection order may be sought

An interim protection order may be sought pending investigations by the police following an information relating to the commission of the offence involving domestic violence.

# 13. When protection order may be sought

A protection order may be sought during any criminal proceedings under the Penal Code

310 Lets coming coming coming coming coming variablelets coming coming variablelets coming co

ATO A EXISED OF ADDRESS PROTECTION TO ALTON A TO A FEEL OF ADDRESS PROTEON TO ALTON A FEEL OF ADDRESS PROTEON AND A FEEL OF ADDRESS PROTEON ON A TO A FEEL OF A FEEL OF

where the accused is charged with an offence committed under circumstances that falls within the definition of "domestic violence", -

- (a) As condition of the accused's release on bail or at any other stage of the proceedings; or
- (b) Upon the compounding of such offence under section 260 of the Criminal Procedure Code.

# 14. Filling in complaints

A complaint pursuant to this Act may be filed in any district where-

- (a) The complainant resides;
- (b) The offender resides.
- (c) The alleged violence occurred; or
- (d) The victim is temporarily located,

and shall be heard by the court as soon as practicable.

#### 15. Complaints on behalf of child or incapacitated adult

In the case of a child, or an incapacitated adult who is incapable of filling in a complaint, such a complaint may be filed by a guardian or relative or person responsible for the care of such child or incapacitated adult, as the case may be, or by an enforcement officer.

#### 16. Record of complaints and orders

The registry of the court shall maintain a record of all complaints filed pursuant to this Act, and all protection orders and interim protection orders issued by the court under this Act. The record shall contain-

- (a) The names, gender and relationship of the parties;
- (b) The domestic violence alleged, whether it involved any weapon, or resulted in personal injuries and whether the injuries inflicted required medical treatment;
- (c) The effective date and terms of each order issued.

#### 17. Proof of service of protection order

Within twenty-four hours of the issuance of a protection order or interim protection order, as the case may be, the Registrar of the court in which it is issued shall forward a copy of the order to the officer in charge of the police district where the offender resides. The police officer concerned shall file proof of service with the Registrar of the court within seven days of service.

#### PART V.

#### MISCELLANEOUS

# 18. Information on offences involving domestic violence

- (1) Any person who has reason to believe that an offence involving domestic violence is being or has been committed may give information in respect thereof to an enforcement officer.
- (2) No person who gives any such information in good faith shall incur any liability for defamation or otherwise in respect of the giving of such information.

#### 19. Duties of enforcement officers

(1) The duties of an enforcement officer shall include-

LITS COMBAT COMBINE WALRCELLT'S COMBAT COMBINE W

- (a) assisting a victim of domestic violence to file a complaint regarding the domestic violence;
- (b) providing or arranging transportation for the victim to an alternative residence or safe place or shelter if such transportation is required;
- (c) providing or arranging transportation for the victim if the nearest hospital or medical facility for treatment of injuries if such treatment is needed;
- (d) explaining to the victim the rights to protection against domestic violence;
- (e) accompanying the victim to the victim's residence or previous residence to collect personal belongings.
- (2) An enforcement officer who is also a police officer shall have the following additional duties:
- (a) Exercising the powers of arrest under this Act or any other written law;
- (b) Removing or supervising the removal of a person excluded from a shared residence where the court has issued an order under paragraph 6(1)(a).

#### 20. Regulations

- (1) The Minister may make regulations for the purpose of carrying into the effect the provisions of this Act.
- (2) Without prejudice to the generality of the subsection (1), such regulations may provide for-
- (a) the maintenance of a register of record by the courts on matters filed in pursuant to this Act;
- (b) the prescribed forms of any information, report, complaint, order or other document required pursuant to this Act;
- (c) the procedure in respect of the filing in of any document mentioned in paragraph (b);
- (d) the making of searches and the giving of certified copies of any document mentioned in paragraph (b);
- (e) the fixing of fees that may be charged for the purposes of this Act;
- (f) any other matter which under this Act is required or permitted to be prescribed.

312 LETS COMMUNICATION COMMUNI

# DOMESTIC /HOUSEHOLD/ VIOLENCE INTERVENTION PROJECT

/Duluth, Minnesota of USA/

#### Experts:

Michael Paymar: Member of the Representatives' Chamber of the Legislative Body in Minnesota. He is actively participating in the Violence Intervention project /Duluth/ since 1981. He has been published jointly with Ellen Pence several researches including "Education groups for men who batter: Duluth model" and "Domestic /Household/ violence: Law Enforcement response". He has 12 years' experience on working with the men who batter. Just a book "Violent no more: Helping men and Domestic violence" was published.

Loretta Frederic: Legal advisor of the Legal project for Women who are victims of domestic / household/ violence by the National Resource Center for specialists of the Criminal law center. The main purpose of the center is amendment to and monitoring of the implementation of the Legislation on cases, which relate to domestic violence.

Elizabeth Duban: She works as an advocate of the Women's program "Human rights defenders" in Minnesota. She has participated in some researches including "Selling women to use for domestic violence and sexual slavery" in Armenia, Ukraine and Uzbek and "Social and economical research on women and children" in Mexico. She is co-author of two papers on domestic violence in Armenia and Uzbek as well as a work "Issues on non-reduce of infants' death in Mexico is evidence of infringement of human rights". She have worked in the International human rights center of the Legal faculty of the North Western University and carried out some researched on various topics in the framework of protecting human rights.

The Domestic Violence Intervention Project (DAIP)

Domestic /Household/ violence Intervention project of Duluth, Minnesota is a comprehensive community-based and multi-sided social program for intervention in domestic abuse cases which is recognized as one of the leaders carrying out in the framework of the protest violence. It attempts to coordinate the response of the many agencies and practitioners who respond to domestic violence cases in our community. The project involves information centers, policies, prosecutor's offices, police offices, testing offices, care centers for women, health defense offices, courts and several agencies on the councils for protecting psychological health. And also it involves documents on reception of the project, papers, tests, checklists and bar associations as well as other public organizations which carry out on documentation of other materials, procedures, policy and training programs.

In 1981, nine city, county, and private agencies in Duluth, Minnesota adopted policies and procedures which coordinated their intervention in domestic assault cases. These measures focus on protecting victims from continued acts of violence by combining legal sanctions, non-violence classes, and when necessary, incarceration to end the violence.

After DAIP's affection on reform of activities of police departments, courts and public organizations, many hundreds of victims could have possibility to free themselves from relation with use of violence. New side of the project is the Duluth model become an initiator of the feed-

LETS COMMATIONNESSE WALFIELETS COMMATIONNESSE: W

back by public for domestic /household/ violence. Population's feedback is very important, because the commission consisted of public representatives provides with documentation all cases of cruel violence and psychological assault and murder; and it can be prevented not with way to change victims' actions or perpetrators' actions, but with way to attitude and feedback by the public agencies and all the population on the perpetrators and their victims.

In the view of our working experiences, public commissions consistently point to five areas to improve the system's response to assault cases as follows:

A shift in the orientation of the system's response of placing the major responsibility of stopping the violence on the shoulders of the victim, to recognizing the role that community agencies must play in directly confronting the perpetrator.

- A need to be consistent in how practitioners in a given discipline respond, and the need to exchange the information and observations of the many people involved in a case for practitioners to make informed decisions.
- 2 A need to enhance practitioners' technical skills in working with assailants, victims and children.
- 3 A need to increase the understanding of human service and court agents of the complex set of economic, physical and psychological conditions that exist in relationships where there is violence.
- 4 A need to insure basic protective resources for victims of violence.

One of the main indices of the Duluth model is role by the groups on protecting women's rights during collaboration with organizations' administration, lawyers and politicians on monitoring of the implementation /trend or attitude/ of the criminal structure on elimination of domestic /household/ violence. The term "protection" in USA means speech on behalf of someone and expression of interest. Concepts on the protection bases on active action of the associations assisting for poor people, women's movements and movements on civil rights in 1960s. Women who suffer from violence by their closest persons cannot talk frankly and give the required depositions in each time. Women's organizations bear responsibility for speech on behalf of the victims of violence and also involved women who were victim of violence and could escape from violence. DAIP is a clear example of that women's organization can successfully cooperate with state administrative and other public organizations on granting protection for victims of violence; supervising and developing practice, procedure and process as well as policy which meet the basis goal.

The following principles are being followed by the public organizations during intervention on domestic /household/ violence last time:

- 1. Whenever possible, the burden of confronting abusers and placing restrictions on their behaviors should rest with the community, not the victim.
- 2 To make fundamental changes in a community's response to violence against women, individual practitioners must work cooperatively, guided by training, job descriptions, and standardized practices that are all oriented toward the desired changes.
- 3 Intervention must be responsive to the totality of harm done by the violence rather than be incident or punishment focused.
- 4. Protection of the victim must take priority when two intervention goals clash.

314 Juts comationess: velencelets comationess: velencelets comationess: velencelets comationess: velencelets comationess: velencelets comationess: velencelets comationess: velencelets

19 at 1 FPP 10 - Product Product of Coll Line at 1901 10 - Product of Coll

5. Intervention practices must reflect a basic understanding of and a commitment to accountability to the victim, whose life is most impacted by our individual and collective actions

Purpose of the intervention is - eliminate violence.

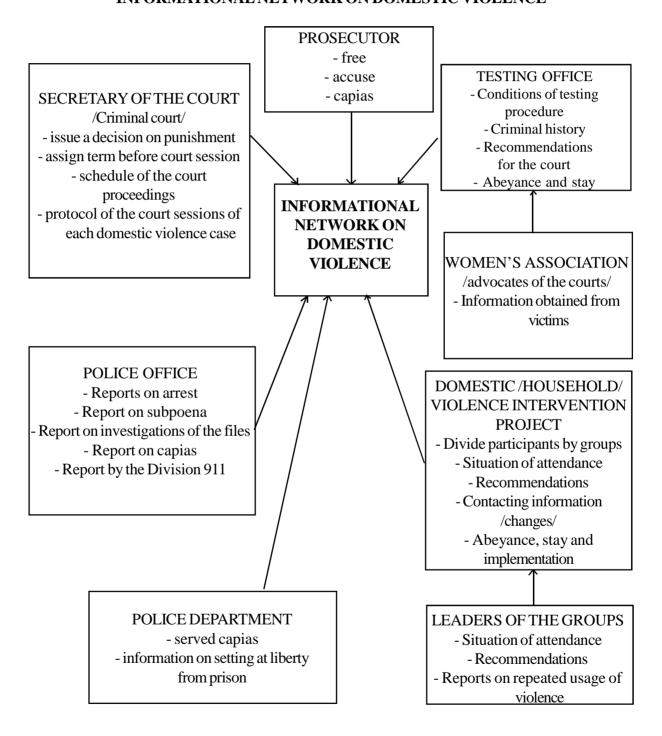
Attention of the intervention will be concentrated on protection of victims. During development of population's regulated response on violence, domestic violence intervention project aspirated to force violators bearing responsibility for their actions and prevention of beating and inquiring women. The main policy and direction of the Domestic /household/ violence intervention project are based on the theoretical basis of protecting women from violence, help executors of the judicial system to perform their duty and to refuse of widely distributed practice on accusing victims. During the past fifteen years, the National Training Project of the Domestic Violence Intervention Project has provided over 1,000 trainings and seminars in the U.S. and more than ten other countries. And also produced many manuals, videotapes, and other curriculum materials.

In 1988 the Harvard University School of Government and the Ford Foundation presented the City of Duluth and the Domestic Violence Intervention Project with the prestigious Innovations in State and Local Government Award.

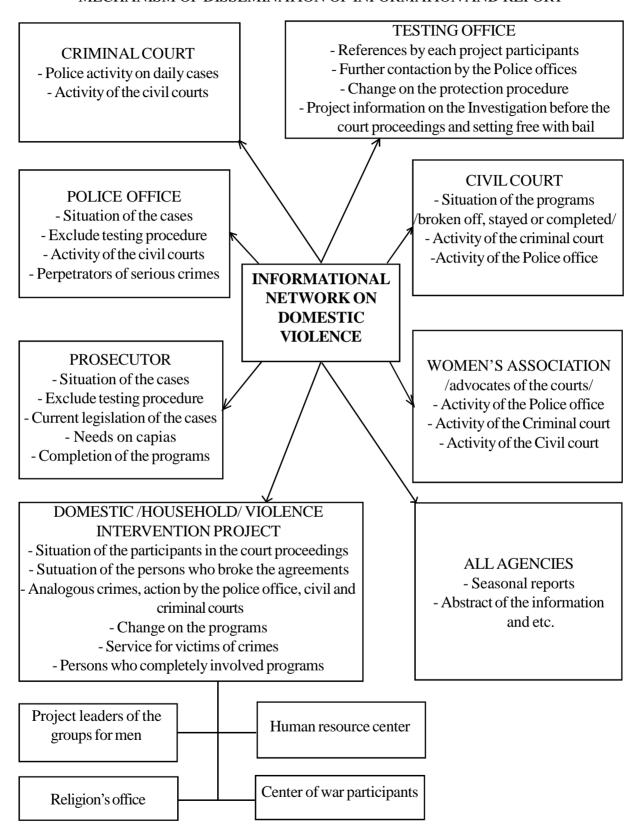
COMMUTAMENT WEIGHELITS WEIGHEL

315

# COLLECTION OF THE REQUIRED INFORMATION INFORMATIONAL NETWORK ON DOMESTIC VIOLENCE



#### MECHANISM OF DISSEMINATION OF INFORMATION AND REPORT



# Annex II

Documents of the
International conference on
"Concepts of the Law Against
Domestic Violence"

#### MEMORANDUM

## ON ESTABLISHMENT OF CENTRAL ASIAN FORUM AGAINST DOMESTIC AND HOUSEHOLD VIOLENCE

Ulaanbaatar

Dec 11, 2002

We, participants of the International Conference "Concepts of the Law against Domestic and Household Violence", organized by Mongolian Women Lawyers' Association (hereinafter referred as "MWLA") and National Center against Violence (hereinafter referred as "NCAV") with financial support by the Network of the Women's Programs under the Open Society Institute and Mongolian Open Society Institute, Soros Foundation in Ulaanbaatar, Mongolia,

- Agreed to establish CENTRAL ASIAN FORUM AGAINST DOMESTIC AND HOUSEHOLD VIOLENCE on the purpose of support for creation of the social-legal environment for protecting and preventing women from domestic and household violence by the way of jointly coordinated actions by the individuals and non-governmental organizations, on the occasion of the International Day on Human Rights,
- accepting that domestic and household violence as well as violence against women are breach of the basic human rights;
- taking into consideration that violence as well as one of the social problems has no limitation;
- considering the Model plan of the Strategy for developing a Draft law worked out by the
  participants of the Regional Conference of UNIFEM "Legitimize Domestic Violence into
  Legislation of Commonwealth of Independent States and States of Baltic" held in Almati in
  2002;
- calling up to concentrate common endeavors and coordinating actions for combat all forms
  of violence existing in the society.
- 2 All desired persons and organizations of the states in Central Asia, who accepted the purpose of the Forum, can become a member of the Forum.
- 3. Principles of the Forum's activity:
- Respecting independence of the Forum members;
- Democratic principles;
- Open and joint action;
- Solidarity.
- 4. Fundamental directions of the Forum activity:
  - Collecting and exchanging information on activities of the organizations participants
    of the Forum, directed to eliminate and protect from domestic and household violence;

HETS COMBAN DOMESTE: WALNCELLET'S COMBAN DOME

- 2 Share experience on the activities directed to eliminate and protect from domestic and household violence;
- 3. Coordinate actions for lobbying the draft law on elimination and protection from domestic and household violence;
- 4. Work out and implement joint projects and training;
- 5. Enhance the potentials of activity by the Forum members;
- 6. Coordinated speech and calling up not only at the regional level but also at the international level in case of necessity of joint speech.
- 5 Structure of the Forum activity: Activity of the Forum shall be settled by the Statute which will be adopted during the first Forum which is the Highest Organ of Governing. Annual Forum will be organized by the state-coordinator. The Forum shall elect a state-coordinator who must organize activity and convocation of the Forum.
- 6 Mongolian Women Lawyers Association (MWLA) and National Center against Violence (NCAV) will organize convocation of the First Forum representing Mongolia.

#### SIGNATURE BY PARTIES:

Ms. Julia Kostrikina, Lawyer, "Podrugi" Crisis Center, Kazakstan

Ms. Mairam Tilebalieva, President, "Association of the Crisis Centers", Kirgizstan

Ms.D.Altantstetseg, President, Women Lawyers' Association, Mongolia

Ms.J.Altantsetseg, President, National Center against Violence, Mongolia

Ms. Ichinnorov, Director, Lawyers' center for Support Judicial Reform, Mongolia

Mr. Amgalan, Director, Center of Gender Development, Mongolia

Ms.T.O.Azizova, League of the Women Lawyers, Tajikistan

Ms.Z.S.Akhunova, Director, Fergan Regional Center of Social and Legal protection for Women & Children, Uzbekistan

320 ETS COMINI DOMESTI: VELICELLE'S COMINI DOMESTI: VELICE

#### LAW OF MONGOLIA

## AGAINST DOMESTIC AND HOUSEHOLD VIOLENCE CHAPTER ONE

#### GENERAL PROVISIONS

#### Article 1. Purpose of the Law

1.1. Purpose of the law is to regulate relations arising in connection with the ensuring the gender equality in family and household relations, the prevention of domestic violence, its revealing and bringing to end, protection of victims' rights and imposition of liability on offenders.

#### Article 2. Legislation on combat domestic and household violence

- 2.1. The legislation on combat domestic violence shall consist of the Constitution, Criminal Law, Law on Administrative Liability, Law on Crime Prevention, Family Code, the present Law and other legislative acts adopted or enacted in conformity with thereof.
- 2.2. If an International convention of Mongolia enacted in other way, the provisions of the Convention shall prevail.

#### Article 3. Persons falling under the scope of the law

- 3.1. The following persons shall fall under the scope of the present law:
- 3.1.1. family members;
- 3.1.2. relatives;
- 3.1.3. partners living together.

#### Article 4. Principle of activity for combat domestic and household violence

- 4.1. Activity of combat domestic and household violence will be based on the following principles:
- rules of laws;
- respect human rights and freedom;
- support sustainable family and household relations;
- prevention from becoming a victim of domestic violence by one of family members, relatives and partners living together;
- a victim can appeal to an governmental and non-governmental organization for protection his or her rights;
- ensure the legal responsibility for whom committed act of violence by all means.

#### Article 5. Legal terms

- 5.1. The terms found in the present Law shall bear the following meaning:
- 5.1.1. "domestic and household violence" shall mean any act or inaction committed intentionally, to inflict physical, psychological, sexual, or material harm breaching rights and freedom ensured by the Constitution by persons specified in Article No.3 of the present Law

TO COMMOTORISMENT WALLIFICATION COMMOTORISMEN

against each other;

- 5.1.2. "a member of a family; a relative" shall be understood as persons specified in Clause No.3.1.4, 3.1.5. and 3.1.6 of the Family Code;
- 5.1.3. "partners living together" shall mean unmarried persons who live or lived together and who have connection of family status, labour and property, divorsed couples, house-helper, lodger, their born, adopted and stepchildren and relatives;
- 5.1.4. "physical abuse" shall mean an act of assault or battery causing any harm to one's health or death by persons specified in Article No.3 of the present Law for each other;
- 5.1.5. "psychological abuse" shall be understood as an act of putting a person in a state of repeated alert by means of threats, intimidation, coercion, stalking, humiliation, impairment of personal reputation, isolation from relatives and collective and other means by persons specified in Article No.3 of the present Law;
- 5.1.6. "sexual abuse" shall mean an act of entering into involuntary sexual intercourse by persons specified in Article No.3 of the present Law;
- 5.1.7. "possessive (economic) abuse" shall mean an act of putting pressure, limiting, interdicting and depriving the use of property on the occasion of possessive and financial advantage;
- 5.1.8. "crime of domestic and household violence" shall mean an act or inaction committed in the domestic and household range and stipulated in paragraph 5.1.1. above which is criminalized by the Criminal Code;
- 5.1.9. "social worker" shall be understood personnel of public service who has rights and duty to inform any governmental and non-governmental authorities on the purpose of investigate arising of threat of domestic and household violence or committed violence act and prevention real threat; and take measure allowed by the present Law;

#### CHAPTER TWO

#### PUBLIC SERVICE,

#### ITS STRUCTURE, ORGANIZATION AND MAIN FUNCTIONS

#### Article 6. Establishment of Public Service

6.1. Public service shall be established on the purpose of providing legal defense and assistance for victims who suffered and may have been suffered from domestic and household violence and its structure and number of staff will be ratified by Government.

#### Article 7. Main Functions of activity by Public Service

- 7.1. Public Service will organize and fulfill its activity with below-mentioned functions:
- 7.1.1. Provide with social service for victims of domestic and household violence, have exparte restraining order by court jointly Police Department;
- 7.1.2. Interrupt domestic and household violence on the basis of Court decision;
- 7.1.3. Organize works for prevention from domestic and household violence, cause participating by citizens and non-governmental organizations and cooperate with Police Department;
- 7.1.4. Determine reason and condition of domestic and household violence, collecting, re-

322 LITS CORRAY DOMESTIC VALUE LITS CORRAY COMMISTIC VALUE LITS COMBAT C

ATO AT EDED OF -EBROGESPEROTE OFF COLD AND AS EDED OF -EBROGESPEROTE OFF COLD AS EDUCATION AND AS EDED OF -EBROGESPEROTE OFF COLD AS EDUCATION AND ASSESTICATION AND ASSESTI

searching and analyzing information on committing of domestic and household violence.

#### CHAPTER THREE

## Participation by Governmental and Non-governmental organizations and citizens for Combat domestic and household violence, their rights and duties

#### Article 8. Rights and Duties of the Police

- 8.1. Except fulfill rights and duties specified in the Law, the following duties must be performed by the Police for prevention and interruption domestic violence.
- 8.1.1. Communication about an act of domestic and household violence has occurred, must be considered as exceptional by the police and the police shall be obliged to undertake promptly actions.
- 8.1.2. All measures for defending evidence must be taken promptly, evidence must be collected according to the Rule specified in the Law and by all means documented by the police.
- 8.1.3. Information source must be kept as a secret.
- 8.1.4. Measures specified in the Law must be taken for isolating offender from victim and exparte restraining order must be provided himself of jointly Public service officer.
- 8.1.5. The police shall provide the victim with legal advice on domestic and household violence and explain his/her rights.
- 8.1.6. The police shall give consultation aimed at influencing the personality of an offender.
- 8.1.7. The police must monitor fulfillment of the victim protection order, in case of infringing the protection order the police shall arrange arrest according to the administrative measure by Court.
- 8.1.8. The police shall research domestic and household violence occurred and their reasons and prepare annual report of statistics of the delinquencies and crimes.
- 8.1.9. The police shall organize training aimed at influencing the personality of offenders and involve non-governmental organizations into the kind of activity.

#### Article 9. Rights and Duties of the Prosecutor's Office

- 9.1. Except fulfill rights and duties specified in the Law, the following duties must be performed by the Prosecutor's Office for preventing and interrupting domestic violence.
- 9.1.1. to manitor for victim protection order is issued or not;
- 9.1.2. to pay his/her attention for not betraying personal secret about act of domestic and household violence is occurred and to not give permission to publish about the case.
- 9.2. The Prosecutor has the below-mentioned right.
- 9.2.1. If the Prosecutor considers that the Police officer hasn't performed his duty specified in the present Law s/he shall order the responsibility specified in the present Law providing Prosecutor's requirement.

#### Article 10. Rights and Duties of the Court

10.1. Except fulfill rights and duties specified in the Law, the following duties must be performed by the Court Prosecutor's Office for preventing and interrupting domestic violence.

LITS COMBAT LONGSTE: WELFIELLT'S COMBAT DOMSSTE: WELFIELLT'S COMBAT COMSTE: WELFIELLT'S COMBAT DOMSSTE: WELFIELLT'

- 10.1.1. to make decision on ex-parte restraining order on the basis of documents about domestic and household violence occurred and there is real danger that domestic and household danger might be occurred, collected by the Police;
- 10.1.2. In case of infringing the ex-parte restraining order, other coercive measures specified in the Administrative Law, under request by Police;
- 10.1.3. Prosecutor has the right to cancel ex-parte restraining order in the following cases:
- the offender showed that s/he is corrected
- under request by victim, his/her Legal Representative, Conservator, Guardian, Advocate and Public Service Officer.

#### Article 11. Rights and Duties of Non-governmental organization

- 11.1. Staff of the organization shall provide victim of domestic and household violence with psychological and first medical aid;
- 11.2. to provide victim of domestic and household violence with protection shelter;
- 11.3. to objectively research reason and outcome of domestic and household violence, make conclusion and cooperate with Public Service Officers and Polices;\
- 11.4. to organize training for public on prevention from domestic and household violence and protection of victims;
- 11.5. to provide information on registration of victims who are served by the Organization and Protection shelters and other related documents, under request by Qualified Authorities;
- 11.6. to give professional assistance to the Court, Prosecutor's Office and Police Department, to give consultation to the above-mentioned authorities and offenders and train and qualify Public Service officers.

#### Article 12. Common rights and Duties of citizens, Enterprises and Organizations

Citizens, enterprises and organizations have the rights and duties specified in the Paragraphs No.9 and 10 of the Law on Crime Prevention in case act of domestic and household violence occurred.

#### Article 13. Submission of a communication on domestic violence

- 13.1. Victims of damestic violence, members of their family, public service officers, citizens shall have the right to report about damestic violence.
- 13.2. Doctors and workers of medical institutions, who have provided a medical treatment to a victim of domestic violence shall have a duty to so report to the police, within 24 hours, provided the victim has given a consent.
- 13.3. Organizations for children shall inform a Secretariat of the pertinent soum and district Governor, the police and childcare organizations about the instances indicating about a child being subjected to domestic violence.
- 13.4. A communication about domestic violence may be submitted to the police of an area where an offender or victim resides permanently or temporarily, or where the violence took place, or where an organization which provides medical or other assistance is located, if a victim is sheltered there.

324 JUTS COMMITTORISTIC VOLUMENTI S COMITTORISTIC VOLUMENTI S COMITTORISTIC VOLUMENTI S COMITTORISTIC

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OUA ATO AT EDUCATION OFF OUR ATO AT EDUCATION OFF OUA ATO AT EDUCATION OFF OUR ATO ATTACATION OFF OUR A

13.5. Communication may be submitted in various forms, including orally, in writing, and by telephone.

#### CHAPTER FOUR

## The rights of Victim of domestic and household violence, forms of legal protection

#### Article 14. Victim's right

- 14.1. Victim of domestic and household violence has the rights to request to carry out the following activities:
- 14.1.1. to undertake all measures to interrupt violence and protect from causing further violence;
- 14.1.2. to be taken to a medical institution for medical treatment;
- 14.1.3. to be transferred to a safe place or organization providing assistance to the victims of domestic violence;
- 14.1.4. to get psychological assistance;
- 14.1.5. to have the offender arrested, to have an ex-parte restraining or protection order issued;
- 14.1.6. to have a lawsuit initiated against the offender;
- 14.1.7. to get a divorce or live separately;
- 14.1.8. to file a claim with a court for the compensation of material and psychological damages;
- 14.1.9. to file a claim with a court for the deprivation or restriction of parental rights and exaction of allowances and other expenses in accordance with the Family Code.

#### Article 15. Allowance of sanctuary

- 15.1. In case because of domestic and household violence somebody's life and health could have been damaged, sanctuary shall be allowed by Public service officer for days requested by the applicant, by non-governmental organization who has the rights to carry out social service for 10 days.
- 15.2. Sanctuary shall be allowed to non-ages without considering his/her motion according to the permission by his/er conservator and guardian.
- 15.3. At the term of sanctuary, the Public service officer shall take measures on eradicating danger situation for life and health of victim of domestic and household violence, jointly with Police Department in the current area.
- 15.4. Term of sanctuary can be extended by as well as term once or more than under request by victim.

#### Article 16. Ground for issuing of ex-parte restraining order

- 16.1. If offender every time has inhuman treatment and threaten for his/her family members, relatives and partners living together.
- 16.2. Attempted compulsion or compulsion into sexual intercourse unwanted by victim;
- 16.3. Isolated from society and collective, held under heavy psychological pressure;
- 16.4. Prejudiced intentionally evading from duty on aliment and damaged seriously for

325

TO CARLET MANY TO CARLET MANY WANT OF CARLET M

#### children's education;

- 16.5. Held victim in danger situation often or every time using alcoholic drinks and narcotic drugs;
- 16.6. Life and health of anyone of family members, relatives and partners living together might have been seriously damaged due to regular violence and pressure by violator.

### Article 17. Persons who have the rights to complain for having ex-parte restraining order:

- Victim;
- Legal representative, conservator and guardian of victim;
- Advocate of victim;
- Public service officer;
- Others

#### Article 18. Procedure of issuance ex-parte restraining order

- 18.1. Provided the victim has filed a complaint requesting the issuance of an ex-parte restraining order, such a complaint shall be examined by the Police and transferred with the concerned evidences to a court in area where victim resides.
- 18.2. A court shall issue an ex-parte restraining order against on offender after examination of complaint and the concerned evidence.
- 18.3. If suits for getting divorced, getting excepted from family member are not commenced by a victim and causes specified in the Article No... of the present Law are showed and a qualified body files a complaint ex-patre restraining order must be promptly issued for violator.
- 18.4. If suits for getting divorced, getting excepted from family member and restriction of parental rights are commenced by a victim, the court shall decide the special complain by order in the process of forum. In case the difference is being decided finally, the court shall specify type, term and procedure of exparte restraining in the order.
- 18.5. Ex-parte restraining order shall be issued for up to one month, ex-parte restraining direction shall be issued within term of adjudicating or for up to two months and ex-parte restraining act shall be issued for from 6 months up to 2 years.

#### Article 19. Type of measure of ex-parte restraining

- 19.1. The court shall issue ex-parte restraining order by the following type:
- 19.1.1. to oblige the offender to leave home, live separately and live in a place other than the home and work;
- 19.1.2. to fix procedure for access to his/her children or persons who have the rights to have tutor and to order aliment;
- 19.1.3. to prohibit the offender from contacting the victim;
- 19.1.4. to exact from the offender expenses pertaining to the victim's medical treatment;
- 19.1.5. to limit the possibility to dispose of common property;
- 19.1.6. to prohibit to continue and repeat causing any further acts of domestic and household

326 LITS CORRECT CORRECT VALUE CLIFFS CORRECT CORRE

AY A FEED O "ADDRESTED OF OUA AND A FEED O "ADDRESTED ON OUA A

#### violence;

- 19.1.7. to require the offender to attend compulsory training;
- 19.2. The court can administer several arrangements or measures specified in the present article at the same time.

#### Article 20. Liability to be imposed on law offenders

- 20.1. If officers specified in the Articles No.8, 9 and 10, who failed to fulfill their duties, they shall be held disciplinary sanction by the qualified functionary of the higher instance authority.
- 20.2. If doctors and officers of medical institutions failed to fulfill their duties specified in the present Law, the court shall fine them by 50000-150000\frac{\frac{1}{2}}{2}.
- 20.3. If citizens failed to fulfill their duties specified in the present Law, the qualified police officer shall fine them by 5000-10000\frac{\frac{1}{2}}{2} and the court shall fine them by 20000-100000\frac{\frac{1}{2}}{2}.
- 20.4. If organizations and legal units failed to fulfill their duties specified in the present Law, the court shall fine them by 150000-300000.
- 20.5. If violator breaches of an ex-parte restraining order, s/he shall be arrested according to the Law on Administrative Liability under request by Public service officer, Police officer and victim.
- 20.6. Regardless of the ex-parte restraining, in case of s/he is guilty, liability shall be imposed on the offender according the Criminal Code, Administrative Law and Civil Code.

#### CHAPTER FIVE

#### OTHERS

#### Article 21. Entrance of the present Law into Force

This law shall become effective on / from ... .

SIGNATURE

## CONCEPT OF THE LAW ON COMBAT DOMESTIC AND HOUSEHOLD VIOLENCE, ROLE BY THE COURTS

Clause "National wealth and basis of development of Mongolia is the "man" who has the creative power, intellectual ability and plenty of chances as well as skills. Significance of the development is to increase level of livelihood and culture of the man" are meeting the expression "Source of the social development is human development".

The most expensive thing of a society is the man. Thus, appropriate requirements on recognize essence of the man and to reform social mind on him, are being arisen. Therefore, it is proper to involve issues on combat domestic and household violence within the framework of the issues connected with protection by the Government human rights.

Requirements on proper recognizing various conflicted problems within the domestic and household range and regulate this kind of relations, is appropriately being arisen in connection with necessity on involving family environment to social sphere and ensure human rights exactly at that level in conformity with contents of national and international legislation which accepted that the man as the main part of the family, essential social unit, has the rights to be protected by the society and government.

Needs on having a special law on combat domestic and household violence

Perpetrators of crimes connected with violence, for instance, intentional putting to death, cause heavy, middle heavy and light physical damage, beating and rape are punished according to the Criminal law and some offences with no criminal character such as initiating quarrel, provoking, threatening and disordering public peace in the streets, squares, dwellings, public transports, performance and service places as well as public places are punished by fine and arrest according to the Law on administrative responsibility.

The above-mentioned legal regulations not always completely provide and protect the "human rights to life, equal rights by men and women on family relation and inviolability" specified in the Article No. 16 of the Constitution of Mongolia.

In the view of the sociological researches carried out by the non-governmental organizations, there is a growth of household crimes with serious consequences, in other words, violence one of the family members, relatives and partners residing together; putting to death and making invalids.

This fact is only proved by the statistical data of the survey carried out in the framework only of the Capital court.

Generally, domestic violence is recognized by public worldwide as a most common form of human rights infringement. It is notable that if considering age and gender of victims of domestic and household violence, most of them are women, children and elders. Domestic and household violence is mainly committed in hidden form, on the one hand, victims keeps silence due to protecting by married couples, relatives and partners residing together each other's dignity, being worried and ashamed; on the another hand, offence and crimes connected with domestic and household violence are not being revealed and violators are not

328iits corru dorsit: velincelits corructions: velincelits corrections: velincelits corructions: velincelits c

bearing any responsibility due to non-knowledge by victims of violence way how to get protected their rights. And also gap in law affects on this situation.

We consider that it is time to change opinions of officers who are peace officers and in charge of combat crimes that issues connected with domestic violence are only internal issues between married couples and relatives, they have to agree themselves with each other; and to make understanding them that prevention of domestic violence is their duty; perpetrators of offences are obligatory to be punished; and domestic violence is crime breached human rights.

And also requirements on complete legitimization of issues on protecting rights of victims of violence; and to change social psychology which consider that domestic and household violence is happened only within the range of families with the lowest livelihood, local as well as remote districts' people.

For Mongolia, relation connected with domestic violence could not be legitimized completely, but besides above-mentioned, additional regulation on this kind of issues are provided with several paragraphs of other laws. The term "domestic violence" has been used for first time in the Family law adopted in 1999 and there specified that if it is defined that due to regular violence and pressure by one of the married couples, life and health of family members as well as children's education might be suffered from a great damage or already suffered, conciliating measures will not be taken by the courts and marriage will be directly dissolved.

It is specified that guilt of violator will be one of the factors to be considered for decision on children's wardship. We consider that these facts are expression of acceptance by the law-makers domestic violence's existence and legitimization of one of the ways to combat it.

The following preventive measures are legitimized during considering cases and disputes connected with family according to the Law on Civil jurisdiction which has been followed since  $1^{\rm st}$  September 2002 /Article 129/ as follows:

- Oblige spouses to live separately
- Get keeping for minor children and working incapable parents
- Leave minor children under wardship of one of their parents
- Forbid transferring the rights to dwelling, joint property and real estate to other persons; sell; present and dispose.

Although these paragraphs are progressive, but it is impossible to consider that issues on protecting rights of victims of violence are completely regulated.

Day to day, negative consequences of domestic violence is becoming more wider and getting with character involved the whole society.

In the view of the average of the crimes which are perpetrated in last years, 43,7% of them are committed in the domestic and household spheres. So environment of crimes are getting in hidden form and moved to limited household sphere. Due to these facts, case of perpetration of crimes between relatives is increased and women as well as children are suffering in a great degree. Victims suffer from physical, psychological and sexual abuse as well as oppression by the most closest persons of their family. Due to being afraid, ashamed, preferring their dignity and police department's attitude of the issue as internal family issue, consideration of these kinds of crimes are delayed and number of latent crimes are increased. Therefore, it is impossible to deny the real situation that they are making considerable obstacles in the real

LETS COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC VERLINCELLET'S COMMAT DOMESTIC WELFIXELLET'S COMMAT DOMESTIC WELFIXELLET'S

result of researches, drawing the government's attention and forming appropriate concept in the society.

The main reason of the strong existence of violence against women worldwide is explained by traditional wrong attitude in the society, women's economical dependence and lack of the legal documentation against violence.

The following characters are common in the countries where violence against women largely distributed: economical inequality of men and women; men's governance in their family and competence on making the main decision; common habits on decision of family conflicts with violent way; limited chance to marriage dissolution for women.

All the form of violence creates regular alarm, danger and loneliness; and establishes constant obstacle for women's developing and educating as well as active participation in the social life; living in safe environment and protecting their health.

Domestic and household violence is intentionally committed by the actions such as causing a great physical and psychological damage, putting under their domination and putting control; and it is performed by action and default.

Violence is not only issues of women, family or individuals, but also a social issue originated from unequal gender rights. It is required to consider the above-mentioned arguments to working out the policy on combat domestic violence.

Worldwide attitude that the main reason of violence against women is economical inequality, is considerably changed now and it is considered that the current legislation and moral norms should be accounted as most important; and trend of increase of legal regulation of this kind of relation must be drawn serious attention.

Domestic and household violence, as a social problem involved many-sided issues such as society, economy, development, education, health, mind and human rights, it is important for it, to let recognizing that government's active, initiative and participation is very significant, is common duty of the women's non-governmental organizations.

In conformity of the functional objective, Mongolian Women Lawyers' Association have made a conclusion on the above-mentioned situations and have started some works with recognizing characters which are useful for working out a Draft law against domestic violence since 1995 considering international standard, customs of native country and household specifics as well as worked out the first draft in 1997 and the second improved draft in 1999.

"Declaration on elimination of violence against women" was adopted by the General Assembly in 20<sup>th</sup> December 1993 as amendment to the Convention on "Elimination of all forms of discrimination against women" to which our Mongolia was acceded in 1981. This declaration consists of 5 fundamental articles and accepted humanity's safety, freedom, justice, equal rights, individual's dignity and their multi-sided needs as well as there specified that this declaration must be applied in all the countries.

When we were worked out the draft law, we have introduced with the experience of the countries where "Law against domestic violence" was adopted and is being implemented on the spot. And also UN Model legislation, papers of professional lecturers and other related documents are widely used. We have studied the laws against domestic violence of Germany, Australia, Philippines, California and states of Commonwealth of Independent states.

330 LITS CORRAY DOMESTIC VALUE CLUTS CORRAY COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMISTIC VALUE L

AND ACCESSED OF ACCESSESSION OF THE OLD AND ACCESSESSION OF THE OLD ASSOCIATION OF A CLOSED OF ACCESSESSION OF THE OLD AND ACCESSESSION OF THE OLD ACC

A question "Is it important for Mongolia to have the law against domestic violence" was also discussed and two kinds of researches were carried out.

In the view of the research carried out by the National center against violence among 7000 people, each eighth woman is suffering from physical violence, and every third of them - from psychological violence.

In the view of the research carried out by the Mongolian Women Lawyers' Association on responsibility to be imposed for violators, involved legal and supervisory bodies, implementing agencies, non-governmental organizations, staff of private enterprises and pensioners, 98,8% of them consider that domestic violence is existing in our society and 97,1% it should have a special law.

During working out the draft law, we didn't prefer the research data, but considered social necessity and life requirements.

We have worked out the draft law on the basis of the requirements on consist and implement legal guarantee for solving the issues on domestic violence using legal mechanism and eliminate it as well as protecting the citizens in accordance with the social development conforming with our international treaties, conventions and pacts; concept and content of our current legislation; reflecting changes in the social relation and reaching our legal regulation on protection of family to the international standard and level.

During development of the Draft law against Domestic violence of Mongolia, we have changed the name as "Law on combat Domestic and household violence" and re-worked out the draft in detail.

Chapter one "General provision" contains

- Purpose of the law
- Person who will be involved in the legislation and legal regulation on combat domestic and household violence
- Principle of activity on combat domestic and household violence; legal terms

#### Chapter two contains

- Public service, its activity's direction

#### Chapter three contains

- Participation, rights and duty of governmental and non-governmental organizations as well as citizens in combat domestic and household violence

#### Chapter four contains

- Rights of victims of domestic and household violence; legal forms of their protection

#### Chapter five contains

- Miscellaneous

Above all, we have expanded a range of the subjects, who will be involved in the regulation by the law and provided with criteria to be connected with family, economical and labor relation for the following subjects:

- member of family

- relatives
- partners residing together

Issues on rights, duty and participation of judicial authorities and non-governmental organizations are reflected in detail in the draft law.

It is specified that the restriction order should be issued by the courts in the following situations:

- In case of conflicts
- During consideration of case by the courts
- At the stages of final decision of cases and disputes.

In other words, obligatory instituting of actions on marriage dissolution will not be required.

Definition of domestic and household violence as a crime and legitimization of forms of violence are taken in attention. And also we consider that regulations connected with Public service and officials who have duties on combat domestic and household violence are reflected meeting the international standard.

In the view of the international standard, Law against domestic violence are recommended to meet the objective in the following direction:

- to protect safety of all victims suffered from domestic violence at the highest level of the legal protection
- to ensure possibility to use the Criminal legislation without discrimination during punishment of perpetrators offended violence against women
- to provide victims of violence with refuges and give advise as well as assist them
- to prevent and protect all the family members from violence
- to train judges, prosecutors, police officers and social workers to carry out effective activity in case of victims of domestic violence need to educate their children, get financial support and safety as well as in case of victims of violence have special needs including necessities connected with their invalidity
- to create circumstance for correcting violators.

We expect to hear from you valuable comments and recommendations on this draft law.

Thanks for Your attention.

#### P.TSETSGEE

Director of the Research center Supreme Court,

Member of the Governing Board,

Mongolian Women Lawyers' Association

Former Justice of the Supreme court

332 LITS COMMITTORISTIC VALUE ELLITS COMITTORISTIC VALUE ELLITS

#### SOME ISSUES ON TERMS

#### OF THE LAW AGAINST DOMESTIC AND HOUSEHOLD VIOLENCE

Last time we are using the term "Domestic Violence" and working out the draft law against Domestic Violence as well as having many discussions on lobbying it. Today's international conference shows clearly that this is not only specifics of our country and it is accepted world widely, the situation of that women and children are sorrowing due to violence of any form hiding from others in the most cases as well as their rights to life, to living in healthy and safety circumstance and inviolability are being breached, became a real social fact. Above all women are combating unifying their voices in order to create all-round condition for combat this real social fact.

I would like to exchange with you my opinions on how to define some terms to be used necessarily for Domestic violence issues, which are an integral part of it, with this presentation.

Generally, it is not so easy to make universal and proper concept on any fact and problems in the society from the one hand, but from the another hand we can define the given concept properly and acceptably; proper fundament will be provided for fulfill of our purpose making general acknowledgement of the problem and being felt for main point of the problem. Significance and importance consists of the above-mentioned issues.

Let us start from the law's name.

Up to now, we are using the name "Law against Domestic Violence" in many times' arrangement and official documents. I consider that because our purpose is work out of the draft law against Domestic violence very qualifiedly, it is necessary to analyze and compare some terms of other legislations. Several laws of Mongolia including Law against AIDS, Law on combat damages caused by smoking, Law on combat Indecency, Law on combat drunkenness and Crime prevention law are enacted and observed for combat and prevention of other similar facts to Domestic violence as social negative fact made alarm for the whole society and required concrete regulation from the State. By superficial view, it is possible to name as "Law against Domestic violence" and it is being heard like as "Law against AIDS".

Now let us analyze the name.

The terms are determined detailed in the Family law /1999/, which is connected most closely with the name chosen by us and has similar circumstance as a sector involves the society generally.

- "family" family members who live together, joined as result of marriage and are joined due to immaterial private and pecuniary rights and duty
- "family member" conjoint, their children, stepchildren, adopted children and relatives living with them;
- "conjoint" wife and husband joined on a basis of marriage and have mutually equal rights and duty;
- "blood-relatives" parents, grandparents, nieces, nephews, grandsons and granddaughters of conjoint as well as their children;

INT COMMUNICATION WARKELLETS COMMUNICATION WARKELLETS COMMUNICATION WARKELLETS COMMUNICATION WARKELLETS COMMUNICATION COMMUNICATION WARKELLETS COM

- "bone-relatives" - elder and younger brothers and sisters, aunts, uncles of conjoint and their children.

We can make two conclusions from here. Firstly, it is necessary to accept that family members defined by the Family law relate to provokers and victims of Domestic Violence. Secondly, we must accept that provokers and victims of Domestic violence are not only limited by sphere of above-mentioned family members, for example, house-helper, room-tenant, partners living together not married officially, victims of violence by divorced husband living together or separately, don't relate to the terms "family members". In other words, the word "Domestic violence" cannot define the victims of violence fully as we wanted.

Firstly, due to relation of word "Domestic violence" to only narrow sphere of "family" and no relation to other household spheres. I have a proposal to name the draft Law as "Law against Domestic and Household violence" or "Law on combat Domestic and Household violence". Secondly, during yesterday's discussion it is notified that the word "Domestic violence" reflected to our men's psychology heavily. Therefore, I think it is considerable to put into account the question "Generally it is possible to exclude the word "family"?". In other words, version of naming our law as "Law against Household violence" or "Law on combat Household violence" can be considered.

The social fact is accepted; draft law is being worked out and lobbied as ours in the states that were named as socialist like as Mongolia. It is very pleasant to have possibilities to learn from their experience in these days. For instance, the law is named as "Law on prevention and elimination of Household violence" in Republic of Kazakhstan, as "Law on social-legal protection against Family violence" in Kyrgyzstan and the "Law on prevention of Domestic violence" is adopted in Ukraine this year.

UNO worked out the "Model legislations on Domestic violence" as recommendation.

During preparation of this presentation, we have made acquaintance with other legislation of Mongolia, the draft law worked out by us, laws worked out by the international organizations as well as documents of trainings and seminars organized in our State before. Experience by Prosecutor's Office of San-Diego, California, USA on combat Domestic violence and Draft of Law against Domestic violence of Philippine can be mentioned as examples. It is notable that the issue named as "Practical method of legislation on overcoming Domestic violence" worked out by Mrs.Dono Abdurazakowa, Consultant of UNIFEM on July 2002 contains quite logical information.

I am going to exchange my opinions on defining terms related to the legislation against Domestic and Household violence with the second part of my presentation.

The term "Domestic and Household violence" is originated from concepts on discrimination of women, violence against women and sexual harassment.

As UNO defined "Any act of violence committed on the basis of sex that causes or may cause physical, sexual, or psychological damage or suffering to women or threats or committing such acts or compulsion or arbitrary deprivation of freedom, be it is social or private life." / Article 1 of the Declaration on Eradicating Violence against Women, adopted at the UN General Assembly in 1993/.

Violence against women is broken down into three levels:

1. Violence in a family or "domestic violence"

334 JUES COMBUT COMBUT

- 2 Violence at work and in a society
- 3 Violence on a state scale

Family violence is committed between family members and closest people; therefore, we are naming it as "domestic" or "family" violence. This form of violence is exposed by various forms and it is not only physical but also economical, psychological and sexual pressure and cruelty committed by family members or closest person against other members of the family.

Therefore, the term must be defined very properly with a way of legislating for combat Domestic and Household violence. Mrs. Abdurazakova mentioned that: "The definition should identify the following:

- Who is a victim and who is an offender?
- What type of behavior should be considered as "domestic violence"?

Definition of the term "domestic violence" is the first step on the way to study the problem that we are intending to resolve with the help of legal measures. The formulation of a correct definition is particularly important at the level of separate countries as a basis for acknowledging the problem and developing appropriate legal mechanisms to combat this social evil.

That is why the definition of domestic violence should be considered as an important political declaration determining to a great extent sustainability of legal measures. Thus a clear definition has a political and social significance because it allows us to understand the core of the problem and effectively resolve it by voicing that was not spoken of before.

While developing a definition it is important to take into account the international experience and use the following concept as a basis:

- Domestic violence takes place regardless of a social position and religious convictions.

  Both men and women may be victims of domestic violence. However the most part of cruel and recurrent attacks are committed by men with regard to their female partners.
- In comparison to men women are subjected to domestic violence more often than men; they are more often objects or recurrent victimization; they get more often body damages and need medical assistance as a result of it; they are threatened more often and they more often experience fear and worry because of that.
- In practical terms the implications of domestic violence with regard to accommodation, financial position and raising children are more serious for women than for men.

Furthermore, Done advised that "That is why acknowledgement and identification of the fact that those are women who are direct objects of domestic violence is an important part of this negative phenomenon. Where the legislation with regard to domestic violence is formulated in gender neutral terms and does not comprise an identification that women (and children) become its major victims, that legislation reflects the existing gender inequality in the society and does not meet the goals that is should achieve.

Another important condition for the enforcement of the law on domestic violence is defining which acts should be considered as criminal ones.

Let us consider some examples of definitions in different countries:

In UK defines domestic violence as any violence committed anywhere and whenever among

LITS COMMUTIONISTI: VALINCELIT'S COMMUTIONISTI: VALINCELIT

people who have or had close relations; it may take the form of physical, emotional and financial violence. Sexual violence is not mentioned.

In other countries, such as Cyprus and New Zealand, the definition of domestic violence also covers other members of a family and sexual violence.

In Kazakhstan the draft law on household violence considered now covers a wide range of family relations including those relatives who do not live under one roof.

The Kyrgyzstan law on combat domestic violence is recently adopted and defines the family "... persons who are married, have relative relations, both residing and not residing together". This law also covers a family based on non-registered marriage (actual marriage); persons who became relatives as a result of adoption, guardianship, residence of guardians and wards together.

According to the Ukrainian Law "On prevention violence in a family", "any deliberate physical, sexual, psychological and economical action by one family member with regard to another family member in cases where they violate constitutional rights and freedoms of a family member and a citizen and cause a moral damage to damage to his or her physical and psychological health. The Ukrainian Law is good because o gives for the first time definitions of a physical, psychological, and economical violence in a family.

Now let us consider about the main terms.

Domestic and household violence — any intentional act or failure to act of a physical, sexual, psychological and economic nature undertaken by a member of a family with respect to another member of the family, if such an act violates the constitutional rights and freedoms of a member of a family.

Range of family and household relation:

- Family members living together, partners living together on a basis of non-registered marriage, former conjoint. /It must be mentioned that the terms "family members and conjoint" will be defined similarly to the Family law of Mongolia/.
- And I have a proposal that the provision "concrete conditions can be involved to the range of family and household relation" can be included in the law and interpretation should be provided by the State Supreme Court. For instance, if women who is not a member of the family but works as a house-helper, lives together with the family members, probably she'll remain not relating to the violence at work. As our country, due to very bad supply of apartment, room-renters don't relate to family members, but specifics of that as they live together under one roof and it is not so rare they will become a victim of domestic and household violence. And also the State Supreme Court may provide with the interpretation for involving the situation of that family members and blood- and bone-relatives regularly press and violate each other, to this range.

Domestic and household violence is exposed by the forms of physical, psychological, economical and sexual violence. So I have the following proposals to how exactly define them.

Physical domestic violence involves intentional battery of a family member by another member; inflicting body injuries that can cause or has caused the death of a victim;

**Psychological domestic violence** is violence connected with the acts of a member of a family effecting the psyche or another member of the family by way of verbal insult, threat, persecution or intimidation that deliberately cause lack of emotional confidence or inability to defend oneself, or inflict psychic damage;

336 LITS CORRAY DORSTE: VALINCELLE'S CORRAY CORRESTE: VALINCELLE'S CORRESTE: VALI

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OUA ATO AT EDUCATION OFF OUR ATO AT EDUCATION OFF OUA ATO AT EDUCATION OFF OUR ATO ATTACATION OFF OUR A

**Economic domestic violence** involves one family member intentionally depriving another member of housing, food, clothing and other pieces of property or resources to which the aggrieved is entitled under the current law. The deprivation may cause the aggrieved death and bring about physical and mental impairment;

**Sexual domestic violence** is an illegal encroachment by a member of a family on the sexual inviolability of another member of the family, including acts of a sexual character with respect to an individual under legal age;

**Coercion** – rendering physical and psychological pressure in order to force a person into a situation harmful to his or her life and health. Forcing a person to agree to an infringement upon his or her sexual inviolability or sexual freedom, or forcing a person to commit wrongful acts or actions degrading his or her honor and dignity;

Threat by violence – an instance of bringing psychological pressure to bear on victims with the purpose of creating an air of danger that might spell harm for the life or physical and mental health of the victim or would mean a violation to the sexual inviolability or sexual freedom of the victim.

Victim of violence — a person injured by physical, psychological, sexual or economic violence in the domestic sphere. In the most cases, victims of domestic and household violence are women /children/. Therefore I am proposing that a separated precept "principles for combat Domestic violence" should be included and it must contain a principle "on protection of rights and legal interest of women and children in the first turn".

**Refuges** - noncommercial organizations providing temporary residence and giving to persons who have undergone violence the services necessary for their social adaptation and rehabilitation.

Physical domestic violence

**Protection order** – special forms of reacting to the facts of violence in the domestic sphere by means of which a person that has committed an act of domestic violence is prohibited from performing certain actions.

We included "limitation order" in the Draft law distributed to you. But during yesterday's discussion a lot of people approaced critically considering limitation is accounted as prioritet instead of concilation and protection of a family. Therefore, it seems that usage of the word "protection order" will be more acceptable. And according to the paragraph B.7, we consider that limitation for violation provoker can be one of many restriction which can be mentioned in the protection order.

I will pay a serious attention to any proposal and am ready to collaborate. Each word by You will be important and valuable for define concept of the Law and work out some projects on it.

Thank you for your attention.

D.DUGERJAV

Executive director, Mongolian Waren Lawyers' Association

Professor, Candidate of the Sciences,

Institute of Finance and Economy

# PRELIMINARY INVESTIGATION, INQUEST AND PROSECUTOR'S SUPERVISION FOR VIOLENT CRIME AGAINST FAMILY MEMBER IN MONGOLIA

Violence against family member is most common and stock than other offences as well as cruel action committed by one of the closest persons.

Regulation of the sensitive relation requires more troublesome and detailed regulation than other types of violence. In other words, domestic violence is differed from other types of violence that from one hand, although human rights are affected and injured from another hand, grueling from side of the State for violator reflects back to victim of violence.

Although, according to worldwide standard, high-developed states do not consider objection from complaint by victim, if violence is offended, it is considered as crime and sentenced. But as our country, due to no social environment / circumstance to accept the problem necessity to have legal regulation, conformed to our situation, granted chance for reconciliation it must cause no due to pressure or compulsion, due to will, reflected regulation of psychological and material indemnity occurred / caused because of violator's bad acts as well as educate, make understanding violator and segregate from victim. The following issues will be discussed completely:

- present approach and practice on solution of family member violence by police office and prosecutor's office
- progresses for combat domestic violence made by newly enacted Criminal law and Criminal procedure law
- situation of reflecting to Draft of law on combat domestic and household violence about it.

#### One. Present situation

Last years quantity of crimes is reduced but member of treason is increased by 15% than previous year and number of family member violence and crime offended in the household frame is taking place of 43.7% among all the crimes. The situation shows higher rate of commitment of this kind of crime. Violent crime is mainly committed in household limited frame and it is impossible to fix number of crimes dismissed by competent bodies or didn't apply to the related authorities. Increase of this kind of crime is caused by many factors from the another hand, nobody can deny certain connection with no legal environment for combat it.

As just present situation, you are aware that we have lots of specific events in the range of legal reform. This is start of use of newly acted Criminal law and Criminal procedure law being followed since  $1^{st}$  September 2002.

In the range of this transferring separate from style of the previous laws and unanimous use of new law is getting troublesome problem for lawyers. For instance, according to the old law, preliminary investigation agency passes case to investigation after initiation of criminal proceedings and examination as well as finalizing of preliminary investigating activity. Now according to the new law principal amendments are made that preliminary investigation for misdemeanor and light-capital offence; examination for capital and treason. In other words,

338 LITS CORRAY DOMESTIC VALUE LITS CORRAY COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMIST COMMISTIC VALUE LITS COMMISTIC VALUE LI

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OUA ATO AT EDUCATION OFF OUR ATO AT EDUCATION OFF OUA ATO AT EDUCATION OFF OUR ATO ATTACATION OFF OUR A

practice on passing from one to another is liquidated. Legal requirements are being arisen from here to qualify offences on the basis of real evidences.

Duties must be performed by legal authorities on complaint and information on crime directed in the Criminal procedure law as follows:

- "made complaint or informed by citizens on that crime is offended" according to the paragraph 166.1.1 of the Criminal procedural law;
- "head of the preliminary investigation and examination division or preliminary investigator, inspector, prosecutor are obliged to accept the complaint and information on that crime is offended or is being prepared or tried to be committed" according to the paragraph 170.1 of the Criminal procedural law;
- "complaint and information on crime should be considered and the question on excitation of criminal law should be solved" according to the paragraph 171.1 of the Criminal procedural law;
- "in each case of consideration of the complaints and information and direct revealing of characteristics of crimes by themselves, preliminary investigator, inspector or prosecutor should make one of the below-mentioned decisions and inform about it the bearer of complaint and information" according to the paragraph 172.1 of the Criminal procedural law:
- 172.1 excite criminal case
- 172.2 refuse excitation of criminal case
- 172.3 transfer the complaint and information to a place of residing.

In the view of the above-stated clauses, police department and prosecutor's office are obliged to accept and completely examine the complaint and information provided by victims of domestic violence or other persons according to the law.

Under the law, if the given actions are fixed as a crime, it should be excited as criminal case and adjusted; and if it is considered as an administrative violence, not as a crime, it should be punished according to the administrative law.

But in the present practice, Police department does not take in attention questions of violence committed in the sphere of a family /mainly wives were beaten and pressed by their husbands/. It depends on several reasons. In other words, it caused due to that police officers have insufficient understanding and knowledge on domestic violence, do not take into account damages might be caused by domestic violence, legal culture and consciousness of the given official is very low as well as there is not enough consideration by them because of volume of work on one preliminary investigator and inspector exceeds norm.

For instance, there are common cases of police officers on duty make feedback that "this is an issue between wives and husbands, thus you have to agree with each other and it is not required to spend time and money for such kind of insignificant case" instead to accept and start examination according to the law.

Besides it, common situation is existing that drunk husband take in sobering house and his wife comes to take away him with money, bearing material damage adding to psychological damage.

In cases of obvious physical damage, criminal case is excited, but violator is not examined separately from victim, together including one of them as suspect and another as victim. But this kind of crime could be considered as light, middle heavy and heavy crime according to the

HETS COMBAN DOMESTE: WALNCELLET'S COMBAN DOME

Criminal law and therefore if victim has not got an obvious great damage or has not died, it is impossible to detain and restrict. So due to no separation, possibility for reconciliation will be provided automatically. In another hand, most of the violation is not considered as a great damage, thus there are still cases of conciliated and ignored approach to problems. Although family members conciliate but in another hand, there are some negative actions including conciliation due to pressure and being forced.

In practice, there are observed the following common infringements at a stage of preliminary investigation and examination:

- 1. consider bother to make function and try to regulate making conciliation as possible as easier during investigation of domestic violence by family member /mainly women's rape by their husband/
- 2 abandon without sufficiently fixing reasons and arguments of crime committing
- 3 Preliminary investigator and inspector has no knowledge on domestic violence and consider that domestic violence is common social act.
- 4 Competent officials don't mutually discuss with victims and violators for correct, educate and make positive understanding them. In other words, because of preliminary investigators and inspectors act arrogantly to violators in connection with their advantage of official post, there are common cases of increase violator's feeling of hating victims.
- 5. No isolating victims from violators, result that victim goes on reconciliation with him without recovering from psychological pressure.

For Prosecutor's office, there are above-mentioned approached and besides them when the old law works prosecutor's supervision was established only after any steps are taken for offences. And also prosecutor only read case files about domestic violence committed, but they don't meet personally victims, listen to their opinion and do not supervise whether real situation is reflected in case file differently.

Two. New clauses of the Criminal and Criminal Procedural laws can be applied to combat domestic violence

- 1. According to the Criminal law:
- 71.1.1. If a crime offender was firstly committed a light crime or guilty person was voluntarily conciliated with victim and fully refunded loss as well as eliminated damage caused to victim, he can be released from criminal responsibilities.
- 2 According to the Criminal procedural law:
- 25.1. Victim of light crime directed in the Criminal law was conciliated with accused person, the case will be discarded.
- 25.2. In case of victims cannot protect own rights and legal interests due to victim of crime directed in the 25.1 of this law is under domination of accused person or another reasons, the case cannot be discarded and in this case the case will be transferred to court and considered in usual manner.

These clauses can be usefully applied for victims and in the first turn the case can be examined, amount of loss can be fixed and then get compensation as well as finally in case of that violator accepted his guilty and officially beg apologize, giving possibility to violators and

340 LITS CORRAY DORSTE: VALINCELLE'S CORRAY CORRESTE: VALINCELLE'S CORRAY COMBSTE: VALINCELLE'S CORRAY CORRESTE: VALINCELLE'S CORRES

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OUA ATO AT EDUCATION OFF OUR ATO AT EDUCATION OFF OUA ATO AT EDUCATION OFF OUR ATO ATTACATION OFF OUR A

condition of no re-perpetrating by them are allowed by the law.

• In another hand, in our present situation, if violator is punished not depending on victim's no complaint, the victim will suffer more loss than previous /such as victim's family members and relatives will have misunderstanding, worrying by them thinking that her husband is punished only on account of her guilty as well as danger of misunderstanding by her children/, voluntary conciliation is regulated by the law. According to the old law, there was case of conciliation between victim and violator, but the clause of the new law became as a more good regulation which will be applied only in case of loss is refunded and damage is eliminated.

Three. Reflection of role and function by Police office and Prosecutor's office in the draft law on combat domestic and household violence

#### 1. Duties of the Police office

The Police office is commonly obliged to struggle and reveal crimes, and perform function directed in the Criminal procedural law, Law on Police office, Crime prevention law and law on administrative responsibility as well as the following duties according to the draft law.

#### The rights and duties of Police office:

The Police office perform their rights and duties directed in the laws, and also bear the following duties for prevention and stop of domestic violence:

- Consider as peculiar a call about family members suffered domestic and household violence in family and react operatively and to take urgent measures.
- Operatively take all-round steps to strengthen material evidences, collect them a according to the rules directed in the related laws as well as necessarily attach needed documents.
- Keep as fiduciary source of the information.
- Isolate violators from victims under the law and have court decision on restriction order together with social worker or independently.
- Give a legal advice to victims about domestic and household violence as well as explain victim's rights.
- Give advice directed to influence on violator's behavior
- Put control under protection order for victims and in case of infringement of the court decision to get administrative punishment including arrest by court.
- Study arguments of committing of domestic violence and provide statistic data of offence and crimes each year.
- Conduct training directed to affect violator's behavior and involve non-governmental organizations in this kind of activity.

This is connected with social requirement on providing detailed regulation to eliminate offences in the present practices as above-stated.

#### 2. Functions of Prosecutor's office:

The Prosecutor's office performs its duties directed in the Criminal procedural law, Law on Prosecutor's office, Crime prevention law and law on administrative responsibility as well as the following duties according to the draft law.

LETS COMMATIONNESSE WALFIELETS COMMATIONNESSE: W

#### Rights and duties of the Prosecutor's office

Prosecutor's office perform its duties and rights directed in the laws and also has the following duties in case of domestic and household violence was committed:

- Put control under whether protection order was issued by the court for victims or not.
- Pay attention for keeping private secret in case of domestic and household violence was committed and not give permission to publish in mass media.

The Prosecutor's office has the following rights:

- If police officer is considered that hasn't performed his duties directed in the law, prosecutor will issue requirement and oblige responsibilities according to this law.

Finally, I would like to say that with adoption of the draft law domestic violence cannot be completely eliminated and it is the most important to make advocacy providing understanding competent officials of legal bodies, changing their attitude, training them to consider respectfully to the family which is sensitive and essential social relation as well as solving the related issues having feeling of gender and involve to such kind of training.

KH. BATCHIMEG

Supervisory prosecutor, State General Prosecutor's Office
Senior Legal advisor

342 LITS COMINI COMINIT COMINITAL CO

#### LEGISLATIVE SYSTEM AND DOMESTIC VIOLENCE

Let me extend my warmest greetings and highest assurance to You!

I would like to express my sincere pleasure to the participants for discussion of effectiveness of the legislative system by which crimes and offences connected with domestic violence are solved! We are going to see the problem "Human rights to safety in own family" on the spot and discuss all the problems connected with legal regulation of domestic violence for their arguments for these two days. I want to share with you those difficulties, deadlock which were occurred and conclusion which were made during performance of legal advice and assistance to people who were victim of domestic violence and pressure for contribution in exchange of our knowledge, experience and opinion on some proper version of legal regulation directed to provide necessity on safety by family members.

Above all, probably you agree with me that domestic violence is infringement of human rights, which occurs behind the locked doors. This negative act which is arising alarm in the society is connected with *natural* human rights such as rights to life, rights to living in safe environment and rights to inviolability. Therefore I would like to draw your attention to reflection of issues on rights of family members in our Constitution.

Issue on human rights was raised in the society of Mongolia differently. In the period of socialism, it was put, but not at the level of international standard. And issues on human rights and freedom was reflected as an article separately in the new Constitution of 1992 and proclaimed that "... establishing of a civil, humanitarian and democratic social society which esteems human rights and freedom will be our mission".

It is very clearly specified in the Constitution that a person has the rights to life, to be protected for healthy, to reside in safe environment and inviolability. And it is specified in detail on equal rights of family members in the clause of 16.11 of this law. Legal protection is guaranteed with the paragraph 16.14 that if a member of family considers that his or her rights and freedom given by the laws and international treaties of Mongolia agreements are broken somehow he or she has the right to complain to court to be protected the rights and freedom and to get compensation of damage caused illegally by other people. But the above-mentioned paragraph remains only as on a paper in the sphere of the family.

We successfully organized a seminar "Equality of Gender - Human rights" with financial support of the TACIS project in some aimags such as Bayankhonggor, Uburkhanggai, Selengge, Orkhon and Ulaanbaatar in June of the last year. The participants of the seminar have made a conclusion that "Issues on human rights and freedom are being not sufficiently realized in family and private life.

Our Constitution is being considered by the international human rights experts that it is most progressive relatively in other countries of Asia. But the reflection of these paragraphs of the Constitution in other branch laws and their implementation are already other questions. What is the reason of no implementation of the above-mentioned paragraph of the Constitution? Is it structure and system of legislative bodies or consciousness of the people or view and attitude of lawyers? Although it is comprehensible that each of them has influences on it in concrete level, but it is necessary to establish the basic reason.

ETS COMBAT DOMESTIC VELENCELLE'S COMBAT DOMES

The first instrument for stop any attack breached human rights and protect human rights is the legislative system. Therefore it is concluded that the main reasons of no implementation of the paragraph on equal rights in the sphere of the family can be searched from the legal system on this issue.

In order to make conclusion on legal mechanism to be applied for protect victims from aggression and pressure in their family, situation of protection of human necessity on safety should be analyzed in the Criminal and Criminal procedural laws which are the main instrument of protecting human rights and freedom from illegal aggression.

Unfortunately some lawyers consider that "Domestic violence is private and internal issue of the people's relation, but it is not a crime. It is a moral issue which should be regulated by the tradition not by the Criminal law. Thus, before analyzing the main laws, let is compare the essence of domestic violence with the basis characteristics which necessary will be for crime according to the theory of the Criminal law!

- 1. You know that one of the basic characteristics of crime is their performance by behavior forbidden by the criminal Code. It is specified in the Criminal law of Mongolia that danger for the society action aggressed against human life, healthy and freedom and specified in the Criminal code can be considered as a crime". So some common actions of domestic violence such as beating, abuse, defame, threat, assault, give a light, middle heavy and heavy damages, torment, incitement to suicide, leave in danger to life situation and murder are all forbidden by the Criminal law.
- 2 Second obligatory characteristics of crime is a darger to a society. Domestic violence happens constant, repeatedly and slipping out of control, therefore its danger and bad consequences are immeasurable. This criminal act is an evidence of several or regular activities of appearance of danger for the society human behavior, thus not depending on a place of committing, it leaves certain pain, sufferings, damage and trauma with physical and moral characters. In some cases, it results even in death. Besides, half of homeless children and women are escaped from domestic violence. This is only a part of bad consequences for individuals and it will not be limited only by them. Psychological damages are inexhaustible to enumerate and measure.

And children become not only witness but also victim of domestic violence. It influences in their education, formation of behavior and they are educated to forcedly get accepted their opinion for others and to resolve any problem by aggressive means. This chain which give birth for violators is transferred from generation to generation, from family in family and damage of domestic violence will not be measured by time, but with continual characteristics.

And domestic violence has a great damage for the society as it becomes basic of quite many negative actions such as increase of crimes, offences in the sphere of family and marriage dissolution; grow in number of family-headed women and children-orphans; escaping from family inconvenient environment and searching for freedom and mutual understanding from the street. Finally said, if we compare domestic violence with iceberg, we see only top of those consequences, which it bears.

3 You know that the third basic characteristics of crime is a being guilty by parties of a crime. And are violators guilty? Violators are capable to supervise themselves in other situations. In the most cases, their colleagues and other people speak good things about them. Why they lose control for themselves when they were drunk and came home, but they could

344 JUES COMBUT COMBUT

go without staggering? There are many cases of making anger by their colleagues or familiar persons, but they almost do not express their anger in aggressive manner. But why they act violence against for their closest persons? Because the motive of violence by them is that they keep people who are weaker than them or in any dependence on them under their domination and want to show that they are stronger than victims are. Purpose of their violence is at any cost to get accepted their opinion and to establish their power as well as control above them. Already motive and purpose of their violence is so clearly, thus they directly and intentionally on the basis of preliminary plan. Thus, domestic violence is repeated and with current of time the intervals between violent actions become shorter. With becoming shorter of this interval, their actions more aggressive and cruel. At the end, it eliminates only after death of one of the members of family.

4. 4<sup>th</sup> basic characteristics of crime is a punishment for their guilty. It is specified in the criminal law that criminal punishment must be imposed for the above-mentioned actions. But the people made violence dodge punishment without being punished for their illegal actions. They explain their illegal actions by anger, inebriation or due to victims and they remain without punishment. This situation is breaking the legal principle on equality for the laws. As is appropriate, they must bear the responsibilities for their violent actions choosing a way to breach and invade other people's rights although there were many other ways to resolve the problem.

In the view of all these facts, the most actions of domestic violence are crimes by blood and bone-relatives who connected with private precious relation, against their family members and children. According to the current Criminal code, there are enough many paragraphs for responding in case of forced and psychological pressures such as incitement to suicide, threat, defame and abuse. It is not specified that these paragraphs will not be applied in the sphere of family, thus it is visible that as rights and freedom of family members are guaranteed by the protection of the Criminal law.

Then why there are few cases of people who are victims of domestic violence applied to the Police departments and courts? What kind of difficulties are being faced in case of application by them? Why this kind of crimes and offences are being dismissed in the process of preliminary investigation and examination? In order find answers to these questions, let us consider conformity of implementation of the Criminal and Criminal procedural codes to real situations of family life.

Common actions of domestic violence are legitimized to institute proceedings by victim's complaint, but most of the victims cannot complain. Because a family is a connection which has mutual dependence psychologically and economically.

Violator is victim's closest person such as her children's father, husband, son, daughter-in-law, son-in-law, brothers and sisters as well as feeder, so in the most cases they do not wish to make them directly as offender. And they come to get help in order to stop violence. They use all their methods to stop violence and after the unsuccessful attempts they have to be protected their rights and interests as well as to get affection to violator's behavior and consciences. But the related paragraphs of the current Criminal law carries too general, only regulations to be applied for citizens. But do not meet specifics of family relation. Therefore, victims do not wish to apply to the legal bodies.

There are many arguments such as their financial dependence from violator and they do not cause be an orphan their children, but legal system which cannot stop domestic violence,

STORMERS VALUE CLUET CORNEL TORNESS VALUE CLUET CORNEL TORNESS CONNECTION VALUE CLUET CORNEL TORNESS CANNEL CLUET CORNEL TORNESS CANNEL VALUE CLUET CORNEL TORNESS CANNEL VALUE CLUET CORNEL TORNESS CANNEL CLUET CORNEL TORNESS CANNEL CLUET CORNEL TORNESS CANNEL CLUET CORNEL TORNESS CANNEL CLUET CORNEL CORNEL CANNEL CLUET CORNEL CORNEL CRUET CLUET CORNEL CORNEL CRUET CLUET CORNEL CRUET CLUET CRUET CLUET CRUET CLUET CRUET CLUET CRUET CLUET CRUET CRUET CLUET CRUET CLUET CRUET CRUE

punish guilty persons and prevent from further violence, is getting as the main reason. Thus, even victims suffer heavy damage, they almost do not apply to the legal bodies. So they cannot have possibility to be protected legally their infringed rights and freedom given by the Constitution.

In case of due to victim of crimes which will be instituted proceedings by victim's complaint, is under violator's domination or due to other arguments, they cannot protect their rights and legal interest, prosecutor has the right to institute the case without victim's complaint. Though it is specified in the law that in this case the crime cannot be dismissed due to conciliation between victim and offender, but this paragraph is not being implemented in all the cases. It is not clearly for prosecutors from where and which kind of rule they can obtain information. Even if these paragraphs get realization, if it is not specified the legal regulation for protection victims with specific characters, it will be not unjustly accused in the most cases.

#### What difficulties have the victims when they apply to legal bodies?

In case of the most part of the society considers that victims of domestic violence suffer due to their own guilt, application by them to be protected their interest requires higher encourage and risk of dignity. It is notable that victims of domestic violence apply to the legal bodies as final stage for them.

In cases of application by them, victims conciliate with no way with violators because of they ask with promise, threat that if she will not take back her application he will kill or make a great damage or victims are not able to pay for service by forensic medicine. It is one of forms of that victims put themselves in risky situation. It means danger for loss of the life is being threatening. Victims are still dying. There are specifics than victims of other kind of crimes that victim of domestic violence live together with violator and their relations remains constant. It needs at least one month until the case will be resolved and their dependence from the violators become one of the conditions of being under violator's pressure. Frequently victims take back their applications, complicate lawyers' work, brings to nothing all of their effort spent so much time, work and expense. Thus, this situation creates mind that "being engaged in family conflict is empty expenditure of time" legal officials are getting as no interested in participate in family cases. In the most cases a criminal case is instituted according to the paragraphs included assault or torment, but gradually strength of classification become loose and classified according to the paragraph 98 or make light damage as private relation and at the stage of preliminary investigation and examination 80-90% is be conciliated so finally case is dismissed. Cases which classified as a great damage is not dismissed by conciliation, but victims due to their being under pressure put all the guilt for themselves and says with no way that this kind of event has not been happened, I fell down myself from ladder, or I hidden my beating by unfamiliar person in the street and I defamed him. Thus crime is considered that there is no corpus delicti and dismissed.

On the other hand officials of law protecting bodies know that such kind of case will not be resolved in proper manner, therefore they try to reconcile both parties at the first stages. Most of the persons conducting inquiry ask that "will the case be continued?" Thus they work as a mediator and advice that "You have to agree with each other and at the end go to the court and get dissolved your marriage" as well as they evade instituting criminal proceedings.

In case of dismissing by conciliation, domestic violence is considered as small offence, dispute and small assault to be imposed with administrative punishment and punished by arrest or fine.

346 JUTS COMBAT COMBAT

Arrest for short time is not selected way to reduce violence and it is danger due to violence slips out of control. When violators come out from the jail after legal term, they bear a grudge and become insulted, thus open the door of legal bodies by another classification of crime.

For victims who are under other's pressure and have no power, competent authorities deem like as far, cold and inoperative. In the most cases, victims look at police officials like as powerful representative of violators and think that them will serve for violators. For them, a lot of difficulties will be faced when they apply to the court and finally they consider that police officers are not interested in participation to private issues. Women and children who are victims of violence are in deep psychological crisis due to pressure in their life. When they have to look for support from police officers or apply to the courts and to get legal protection, all events connected with these arguments deems for them awful in the most cases. If the given victim receive negative feeling from her relation with police officers and experience in the courts, there will be less probability for her to apply again to the legal bodies and ask support. And they will not be interested in applying with cassational appeal and they go back from the middle of their way. And they imagine themselves as powerless and like as no own goal and it is observed that they are in deep psychological stress. With applying to the legal bodies, victim receives more deeper pressure and go back leaning against large rocks. This situation become like as continuation of their several cases of being pressured in their family. Or it deems for them like as they joined to violence. For what do they apply to the legal bodies? They apply to be protected from domestic violence. But due to non-sensitive attitude by the system which is existing to protect them, some victims become hopeless and with no way come back to partners living together who keep them under their pressure or some victims live moving from one place to another place as style of rambler. This situation creates minds even for police officers like as victims spend their time in vain. Crimes and offences which are committed in the sphere of family have specifics than crimes which are perpetrated among people who have no any relationship. But not considering this specifics, if actions breached victim's rights has criminal characters it is being punished according to the Criminal law, if it has no criminal character, according to the Law on Administrative responsibility. If not mention some paragraphs which just entered into force in the Family law, there is no legal regulation as exactly meaning "domestic violence" and it is obliged to create instruments to eliminate violence in the national legislation. Our parliament declared with the Constitution that human rights will be esteemed, thus it is now just time to create legal system which is capable to stop domestic violence in actual time and adopt as well as implement a special law against domestic violence. Response of the Government is legal reform.

I think that legal system directed to eliminate and prevent of domestic violence should have the following directions:

- To stop bearing by victims consequences of fine and punishment imposed for forced crime or administrative offences
- To create the mechanism of the operative decision of issues on domestic violence in legal system
- Legal system for eliminating violence should be possible to be applied even when it is impossible to ensure strict requirements of evidence according to the Criminal law
- Requirements on being guaranteed of being protection by family member who is complainant from domestic violence should be considered as most important

INT COMMUNICATION WEIGHTELT'S COMMUNICATION WEIGHT WEIGHTELT'S COMMUNICATION WEIGHT WEIGHT

AY A FEED O "ADDRESTED OF OUA AND A FEED O "ADDRESTED ON OUA A

- Oblige to reflect content with other factors required to fully analyze reason and situation of domestic violence in the report of the Police office and data of the courts.

- Legitimize structure of Special police division to be arranged for collaborating with judge and court which will be functioned solely on family case as well as crimes and offences connected with domestic violence.
- It is required to be directed to specify in the related laws possibility for effective punishment on violators' behavior.

Finally, I would like to say that domestic violence covers all sectors of the society and issue which should be resolved considering from all aspects. It is impossible to completely eliminate it or fully support and protect victims. But judicial and legal system is a part with decisive responsibilities on provide service of assistance for victims of domestic violence and aggressive behavior. Reason of domestic violence is originated from wish to control other and get accepted their opinion to others, thus it will be a great impulse to social mind in case of adoption of the law. Because we all know that paragraphs of laws strongly affect on social psychology.

But efficiency of instruments on combat domestic violence will be seriously depended on attitude and activities of legal system including lawyers who are law applicators and law enforcement bodies. Thus we are calling You for:

- 1. Not to consider from the position that it is impossible to implement it in the present situation
- 2 To consider significance of the law not from the view of much expenditure, but from the view of its content.

A law is not obligatory to be the best or perfect, there is no chance for it. Therefore I wish in order that You, who have the same profession, paid your attention to requirements on special legitimization of any regulation as first step and to contribute with your opinion. I remember that once I read an essay in which it is written that a person who could find answer for the question "How can we regulate it in just manner?" can be named or considered as a lawyer. We are lawyers, thus I believe that when we define way to make proper legal regulation of domestic violence, we will consider this issue from the view of requirements of life and humanitarian side coming out of the boxed norms of the current legislation.

Thanks for Your attention.

D.ENKHJARGAL

Executive director, National Center Against Violence

348 LITS CORRAT DORSTE: VALINCELLE'S CORRAT DORSTE: VALINC

#### LIFE FREE OF VIOLENCE

Adoption of the Convention on Elimination of all form of discrimination against women by the General Assembly of UNO in 1993 became an important step to achieve the objective on ensure women's equal rights. After adoption of the convention, Republic of Tajikistan took the responsibility on detention or revealing violence against women and solution of this kind of issues.

One of the obstacles which are being faced in performance of women's rights and women's equal participation like as men in the social life is violence against women. Violence against women is a serious breach of women's rights and a great damage to their physical and psychological health.

Violence against women is not only women's problem. Above all, this is an issue of the society, unfortunately in which breach of women's rights to safety as individual, physical inviolability and having dignity has had a traditional character. Violence against women has some specifics, in other words it is necessary to take special measure.

Domestic violence is a specific topic. Unfortunately, home and family members cannot be constant peaceful environment for women. Children become witness in the families where are happened violence against women. Psychologists note that there is triple probability to do violent acts against wives by husbands who grew from the early childhood looking at their mother's suffering from beating.

Domestic violence makes quite lot negative consequences not only for people who are participated in such kind of event but also in the large range of their relatives and wholly in the society.

In last years, in the Republic of Tajikistan, various steps are being taken for raise domestic violence as special social issue. Several programs /seminars, training, round-table discussion, international conference/ directed to prevent of domestic violence and eliminate its consequences have been implemented with support of a lot of non-governmental organizations and international organizations.

For instance, a survey was conducted by the Research group of the National Task Force of Tajikistan on the purpose of define level of population's knowledge on domestic violence and sexual harassment at working /studying/ place against women and girls in the territory of our country.

Public survey was held in 15<sup>th</sup> November until 20<sup>th</sup> December 2001 by territorial entity with many stages using percentage method and selecting regionally. Percentage is made by the certain criteria /age, gender, aged above than 15, place of residence /town, village// and voted. When the survey was held in provinces, towns and districts considering population's entity by regions and places of residence in the Republic of Tajikistan, only 700 persons were participated in it.

In the view of the result of the survey, most of the participants /73.6%/ consider that domestic violence is existing in our country. 17.1% of them said that it is difficult to evaluate situation connected with domestic violence and 9.3% of them are sure that there is no domestic violence against women in our country.

All the social layers not depending on their age, gender, education, marital status, social status, profession and place of residence, are accepting existence of domestic violence against women,

A COMMOTIONETE WELFICIEST COMMOTIONETE WELFICE WELFICIEST COMMOTIONETE WELFICIEST COMMOTIONETE WELFICI

It is defined by the sociological data that there is some discrepancy of opinion by men and women on actions, which are named as violence. The following trends are revealed from the comparative analysis:

- in comparison with men, women suffer from any form of domestic violence in the most cases
- with low level of education by family members, suffering from any form of domestic violence are more
- in comparison with urban people, there are more reveal of domestic violence in local level.

Participants in the survey expressed their opinion about necessity on establishing divisions to help victims: crisis centers, refuge, temporary residing places, trust line as well as reflecting activity domestic violence and sexual harassment in mass media are considerable greatly appreciated. Letting population know about violence against women at the same level of crimes connected with human rights and breach of human rights will be useful to understand consciously and reveal economical and social consequences as well as arguments of violence.

Nowadays, in the Republic of Tajikistan, programs on reformation are being directed to change direction of social policy on family, ensure rights and social guarantees given to family, women, children and youth. Elimination of domestic violence and creation of system of taking measures by government on reintegration of violence's victims in social life, are being considered as the most important objective. National program on increasing women's position and duty in the society /1998-2005/ and Program "The main directions of the State policy on ensuring equal rights and equal chances of women and men in the Republic of Tajikistan" can be mentioned as examples.

Within the framework of the above-mentioned steps, issues on working out of a Draft law on domestic violence and analyzing on the current legislation of our country are being considered.

The Criminal law is being directed to not punish, but to correct. According to the Criminal law of the Republic of Tajikistan, responsibilities and punishment to be imposed for some crimes such as aggression to women's sexual freedom and sexual inviolability; rape; compulsion in sexual intercourse with non-ages; tormenting, beating and behaving cruelly by husband, and other relatives; incitement women to suicide with regular abuse their dignity. /Article No.109 of the Criminal law/

Age of marriage is defined as 17 according to the current legislation. But there are some cases to arrange marriage of non-aged girls. On the purpose of elimination of such kind of actions, responsibilities to be imposed for arrangement of non-nubile girls' marriage are specified in the Criminal law. /Article No. 167 of the Criminal law/

Only punishment is not enough to eliminate domestic violence. Important works must be carried out in the framework of prevention and correction. Only an Institute on Provision of social assistance for families was established. They single for combat domestic violence, thus normative-legal basis is necessary. Exactly for this, a law, which will create legislative-legal basis for social work on elimination of domestic violence, is necessary adding to the Criminal law.

In the Republic of Tajikistan, there is no a special law which regulates protection from domestic violence. Today women's non-governmental organizations are performing the first steps for creation of a special law directed to protect family members from domestic violence, with

350 LETS COMING DOMESTIC VALLINCELLETS COMING DOMESTIC VALLINCELLE

support of international organizations.

With adoption of a law on protection from domestic violence, combat violence against women will be reached to a new level.

T.O.AZIZOWA

Vice-Minister of Justice

Republic of Tajikistan,

Head of the Lawyers' Association, Tajikistan

LITS COMBAT COMBINE WALROCALITS COMBAT COMBINE WALROCALITY COMBAT COMBAT COMBINE WALROCALITY COMBAT COMBAT COMBINE WALROCALITY COMBAT COM

#### PRESENT SITUATION OF THE LEGISLATION IN KAZAKHSTAN

#### 1. Violence against woman - breach of human rights

Today new knowledge at sector of human rights is necessary as never before. It is necessary to reach to a wide audience of women International bill on human rights, Convention on elimination of all forms of discrimination against women, Convention on political rights of women and all international acts on marriage, family, children and youth above all.

In particular, it is saying in the clause 3 of the Declaration on elimination of discrimination against women that: all appropriate measures should be taken for the purposes of preparation of public opinion and direction of national aspirations to eliminate prejudice and abolition of customs and all other practice based on idea of inferiority of the women. What about is it saying? The presence of this clause – is evidence of that there are some countries in the world in which till now there is a wide discrimination concerning women. Though in the Universal declaration on human rights that is popular for all, confirm a principle on inadmission of discrimination and declared that all people are born as free and equal by own dignity and rights, and everybody must have all rights and all freedom proclaimed in it. Without any discrepancy including difference concerning gender.

Today it is well-known that violence against women admissable at all level is breach of the clause 3 and 5 of the Universal Declaration on human Rights. Let's consider this problem in wider aspect. Violence against women is breach of human rights and basic freedom of women, and also interferes or does not allow them to enjoy these rights and freedom. Violence against women is one of obstacles in ways of achievement of the purposes of equality, development and peace. Inability already for a long time to ensure protection and encouragement of such rights and freedom in case of violence against women – it is the problem, which brings anxiety to all states and must be solved.

In all societies, women or girls expose to physical, sexual and psychological violence, not depending on a level of their incomes, social status and cultural level. Lower social and economical status of women can become as reason and also consequence of violence against women.

By the data of Agency of Republic of Kazakhstan, 116996 Nos. crimes were registered in 2001.

From total sum:

crimes against the person - 8835

aberemurder and attempted assasination - 1583

intentional heavy harm to health - 1733

intentional average harm to health - 1411

intentional light harm to health - 301

battery - 1677

torture - 146

rape - 1155

352 LIT'S COMBUT DOMESTIC VILLINCELLE'S COMBUT DOMESTIC VILLINCELL

ATO A CEDED OF -ABDORDEFYEINF OFF OUT OUAL AND A CEDED OF -ABDORDEFYEINF OUT OUAL AND A CEDED OF -ABDORDEFYEINF OUT OUAL AND A CED OFF -ABDORDEFYE

By the data of General administration of Home affairs of Almati for 9 month of 2002, the following crimes are perpetrated against women:

aberemurder - 40

incitement to suicide - 1

intentional heavy harm to health - 25

intentional average harm to health - 32

intentional light harm to health - 18

battery - 1

torture - 4

rape - 130

violent actions of sexual character - 25

swindle

By the data of the Crisis centre "Podrugi" for January - September, 2002.

Women came to this center	number	<i>percentag</i> e
concerning physical violence	101	31
concerning economic violence	67	21
concerning sexual violence	13	4
concerning psychological violence	141	44
telephone call	322	64
total calls	501	
Who was violator	irdividuals	<i>percentage</i>
relatives	260	80
familiar persons	50	15
outsiders	12	5
Age of clients	irdividuals	<i>percentage</i>
15-18 years	22	7
18-30 years	130	40
30-40 years	97	30
40-50 years	50	16
more than 50	23	7
Consequences of violence for women's health		
Physically	80	25
Psychologically	236	75

LETS COMMATIONNESSE WALFIELETS COMMATIONNESSE: W

The term "violence against women" means "Any act of violence committed on the basis of a sexual attribute which causes or may cause physical, sexual and psychological harm or suffering for women, and also threat of committing such acts or compulsions or arbitrary deprivation of freedom, whether it be in social or private life". Accordingly violence against women covers the following cases, but is not limited to them:

- domestic physical, sexual and psychological violence, which takes place in family, including beating, forms of torture, despotism displayed by a husband, compulsion of young girls to have sexual intercourse, raping of wives by their husbands, abduction of women for the purpose of rape or marriage, compulsory pregnancy, or compulsory sterilization or compulsory abortion; Also included is a society's tacit or complaint observance of customs and traditions that support violence against women;
- physical, sexual and psychological violence for the part or with / by connivance of state, wherein it was gone on.

Breach of women's rights, existing in zones of the armed conflicts, in particular murders, regular rape, sexual enslavement and compulsory pregnancy relates to other acts of violence against women.

Violent acts and threat of committing such acts irrespective of, whether they are used in family, or in a community, state or with his(its) connivance, brings feeling of fear to women's life and by absence of safety is an obstacle for realization of their aspiration on achievement of equal rights and also development and peace. Fear of violence, including harassment is becoming a permanent obstacle for mobility of the women and limits access to resources and to the basic activities. Violence against women is connected with higher costs in the socio-economic sphere and in sphere public health services for each member of the society and also for whole society entirely. Violence against women is one of the key social mechanisms with assistance of which women are forced to take place subordinated position in comparison with men. In many cases, violence against women and girls is being gone in family or gets form of household violence and people often reconcile with such kinds of violence. Ignoring women by family members and others, and also cases of the severe relation from parts of spouse or persons who have been not connected by marriage, becomes rare as property of openness, and so it is difficult to reveal such kinds of cases. Even in case of that violence is informed, it often fails to protect a victim or to punish of the guilty persons. Violence against women is one of reveals which historically formed unequal competent relations between men and women, that has resulted in domination above women and discrimination concerning women for part of men, and also disturbs with all-round improvement of women's status. Violence against women during all of their life is caused mainly by cultural traditions, in particular by negative influence of the certain traditional methods or customs and all acts or extremism connected with various racial belonging, gender, language or religion that promotes to keep subordinated status of women in their family, in company and in the society.

Violence against women is being increased by social pressure, mainly feeling of shame that does not allow women to inform about certain acts, which are made relating to them, women's absence access to the juridicial information, help or protection, absence of laws which actually forbid violence against women, inability to reform existing the legislature, unsufficient efforts for part of governmental organizations for assist to distribute informa-

354 JUTS COMMUT COMMUT

ATO A FEELD OF -ANDOESEYED/OF OVI COLUMN DA FEELD OF -ANDOESEYED/OF OV

tion on the existing laws in force and elimination of reasons and consequences of violence. Scene of violence against women in MASS-MEDIA in particular representing rapes or sexual enslavement, and also usage of women and girls as objects sexual desire including pornography, is the factors promoting to keep such violence and negatively tells in the society entirely and for children and youth in particular.

Opponents of considering violence against women as breach of human rights confirm: in these cases, do not breach human rights in such manner. Relied on the rather indirect and limited interpretation on human rights, they declare: human rights concern only state and person, and at all of behaviour of the people in private life. At such approach, violence against women during the armed collisions falls under a category breach of human rights, and domestic violence – no, because offender is individual, but individual instead of state.

However rights of women become the integral part of international law in the field of human rights and violence against women is breach of human rights, therefore government and governmental organizations must undertake steps for combat violence, if it is perpetrated in the family sphere. State bears responsibility both for own actions and pwn non-feasance.

# 2. Importance of consideration of violence against women as breach of human rights

Consideration of domestic violence as breach of human rights gives to women great freedom of actions, assigns the responsibility to governmental and international organizations and deprive offenders of an opportunity to be justified and evade from responsibility. Now women can say that they have the rights to freedom from violence, and their voice can stimulate government for action. Government has to change its duty to respond for requirements by women to protect them from violence, to undertake steps for elimination of violent acts and to arrange to punish those who breaches human rights of women.

Topic of violence against woman - roughest breach of human rights and freedom - is often in the centre of discussion connected with women's problems.

In the countries Central and East Europe occur huge changes, some of them are positive, and some - painful.

# 3. Analysis of the legislation on violence against women

Legal assistance to persons who were victim of violence is provided within the framework of the current legislation and on its legal basis.

# 1. Constitution P.K. strengthens:

- "Nobody must be exposed by torture, violence, other cruel humiliating relation or penalization to humanitarian dignity" (paragraph 2, article 17)
- "Everyone has the rights to protect his or her rights and freedom by all ways which
  do not contradict to the current legislature including necessary protection" (paragraph
  1 article 13)
- Everybody has the rights to judicial protection of his or her rights and freedom (paragraph 2, article 13)
- 2. Declaration on elimination of violence against women

Article 3. Women have the equal rights to realization and protect all human rights and basic

LETS COMMOTORMENT, WELEFILLETS COMMOTORMENT WELLETS COMMOTORMEN

freedom in political, economical, social, cultural, civil and any other areas. These rights include, in particular:

- rightstolife
- rigths to equality
- rights to freedom and personal inviolability
- rights to not be exposed by discrimination in any form
- rights to fair and favorrable working conditions
- rights to the best achievable level of physical and mental health
- rights to not be exposed by torture and other cruel, inhuman or humiliating dignity of relation or penalization.

# Crimes caused by household violence

(Criminal code and Criminal procedure code of Republic of Kazakhstan)

Cases initiated by private complaints

Intentional infliction of slight bodily injury (Clause 105, Criminal code, RoK) If intentionally inflicted slight bodily injury resulted damage to health for temporary period and disabled in certain extent, shall be punished by fine in amount 50-100 monthly expenditure index or in amount of wages or other income by offender for period up to 3 months, or involving to public work for 180-240 hours, or corrective labour for period up to one year, or arrest for term up to three months.

Threat (Clause 112, Criminal code, RoK) – Threat for murder or causing serious bodily harm or rape or destruction of property by an arson, explosion or other dangerous to public ways; and there are sufficient bases for execution of the threat, shall be punished by arrest for the term of 4-6 months, or restriction of freedom for the term of till 2 years, or deprivation of freedom on the same term.

Compulsion to sexual intercourse, homosex, lesbian or other actions of sexual character (Clause 123) -Compulsion to sexual intercourse, homosex, lesbian and other actions of sexual character threatening oppression, threatening to destruct, damage and spoliate property and use victim's being under material and immaterial domination, shall be punished by fine in amount 200-500 monthly expenditure index or in amount of wages or other income by offender for period up to 2-5 months, or corrective labour for period up to 2 years, or arrest for term up to 6 months or imprisonment for term up to 2 years.

Insult (Clause 130) - humiliation of honour and dignity of other person in indecent form, shall be punished by fine in amount 100 monthly expenditure index or in amount of wages or other income by offender for period up to 1 month, or involving to public work for 120 hours or corrective labour for period up to 6 months.

Cases which is initiated by private complaints is instituted by victims' complaints applied to the court of place of crime was committed and will be lapsed by withdrawal by complaints of application.

Criminal case is initiated by victim's complaint in court in a place a crime was committed.

Judge issues the following resolutions within 3 days after considering application by com-

356uets combat domestie: volincellets combat domestie: verincellets combat domestie: verincellets combat domestie: volincellets combat domestie: volincel

ATO A EXECT OF ADDRESSIONS OF OUR ATO A EXECUTION OF

## plaints:

- on acceptance of complaint and initiate procedural proceedings
- on transferring complaint to investigating stage or court
- on objection of accept complaint for procedural proceedings.

The given complaint or his or her representative participates in court session as accuser. The case is lapsed by complaint's withdrawal.

Judge issues one of the following decisions after considering a case on private compalin:

- issue a resolution on punishment or absolution
- if applicator of private complain withdraws, the case is lapsed and proves conciliation
- send the case to the prosecutor for examination or preliminary investigation. In this case, court has the rights to decide itself preventive measure to be applied for accused person. The parties have the rights to file cassational appeal on the court decision on private complaint according to the term and rule specified by the Criminal law of the Republic of Kazakhstan.

Cases which are initiated by private and public complaints

Intentional causing serious bodily injury (Clause 103, part 1, Criminal law, RoK)

Intentional causing serious bodily injury resulted causing danger to life, making blind, dumb and deaf; deprived of any organ or function of any organ; damaging face with leave of unerasable traces; and causing other kinds of harms resulted causing danger to body, life or health; and it is clear for guilty person that victim has disabled in extent no less than 1/3 for a long period or professionally disabled completely or interruption of pregnancy, mental disorder and disease of narcoman or tocsicoman, shall be punished by imprisonment for a period up to 3-7 years.

Intentional inflicting lesser bodily injury (Clause 104, part 1, Criminal law, RoK)

Intentional inflicting lesser bodily injury resulted not to danger for life, and damages specified in the Clause 103 of the Criminal law of the Republic of Kazakhstan are not arisen, but disabled for a long period or in extent of no less than 1/3, shall be punished by arrest for a period up to 3-6 months or imprisonment for a period up to 3 years.

Rape (Clause 120, part 1, Criminal law, RoK) If acted sexual intercourse using force or threatening to use force or taking an opportunity victim's helpless situation, shall be punished by imprisonment for a period up to 3-5 years.

Violent actions of sexual character (Clause 121, part 1, Criminal law, RoK) If performed violent actions of sexual character threatening to homosex, lesbian or other actions of sexual character threatening to forcing use for victims or other persons or taking an opportunity victim's helpless situation, shall be punished by imprisonment for a period up to 3-5 years.

Cases initiated by private and public complaints is only instituted by victims' complaints and in cases of that accused person is bearing responsibility for the first time for misdemeanour or lesser crime and refunded loss caused for victim, parties are considered as conciliated and the case will be lapsed.

HETS COMBAN DOMESTE: WALRCELLET'S COMBAN DOME

- Victim issue application to the Police departments or Prosecutor's offices.
- Application should be considered within 3 days.
- Criminal case is inititated by the Police office or Prosecutor's office.

After transferring the case to the court, Investigating authorities study situation of crime was committed and in case of issuance of accusation, transfer the case to the Prosecutor's office. Prosecutor consider the case with accusation which received from the investigator and in case of approval of the accusation, transfer the case to the court by the resolution within no more than 10 days. Crime which is less danger to the society and without matter of aggravation is not be examinated, but only preliminarily investigated. Preliminary investigation takes place of up to 10 days, in some cases, this term can be extended till 30 days by forecasting to the prosecutor. After preliminary investigation, person conducting inquiry issues a resolution on accusation and deliver to the prosecutor. Prosecutor accuse in the court. Accused person has the rigths to be served by the advocate.

## Cases are initiated by public complaint

- 1. Murder (Clause 96, Criminal law, Republic of Kazakhstan)
- 2 Murder when was at serious hot blood (Clause 98, Criminal law, Republic of Kazakhstan)
- If murdered when was at serious hot blood due to violence, torment, abuse, illegal or indecent action /default/ by victim; and situation at hot blood due to serious stress for a long period caused by victim's regular illegal or indecent behavior, shall be punished by deprivation of freedom for a period till 3 years or arrest for a period till 6 months or imprisonment for a period till 3 years.
- Murdered persons of two or numbers more than two due to above-mentioned situation, shall be punished by imprisonment for a period till 5 years.
- 3. Incitement to suicide (Clause 102, Criminal law, Republic of Kazakhstan)
- Incitement to suicide or attempt of suicide threatening, cruel relation or abuse victim's dignity and advantage in several times, shall be punished by deprivation of freedom for a period till 3 years or imprisonment for the same period.
- The above-mentioned crime is perpetrated by person who is under guilty person's material or other domination, shall be punished by deprivation of freedom for a period till 5 years or imprisonment for the same period.
- 4. Beating (Clause 10, Criminal law, Republic of Kazakhstan)

Beated or caused bodily injury, but no consequence specified in the Clause 105 of the Criminal law of the Republic of Kazakhstan, shall be punished by fine in amount 100 monthly expenditure index or in amount of wages or other income by offender for period up to 1 month, or public labour for period up to 180 hours or corrective labour for period up to 6 months, or arrest for a month.

5. Torment (Clause 107, Criminal law, Republic of Kazakhstan)

Tormented psysically or psychologically beating in several times or acting other kinds of violence, but if no consequences specified in the Clauses 103 and 104 of the Criminal law of the

358 LITS CORRAY DORSTI: VALINCELLE'S CORRAY CORREST: WALRELLE'S CORRAY COMBSTIC WALRELLE'S CORRAY COMBSTIC VALINCELLE'S CORRAY CORREST: VALINCELLE'S C

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORD OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT

Republic of Kazakhstan, shall be punished by fine in amount 50-100 monthly expenditure index or in amount of wages or other income by offender for period up to 6 months, or arrest for a period up to 6 months or corrective labour for period up to 2 years or imprisonment for a the same period.

6. Assault (Clause 257, part 1, Criminal law, Republic of Kazakhstan)

Assaulted, in other words, forced use or threatened to use force for citizens obviously not disrespecting public, public nuisance greatly, destructed or damaged other's property and acted a great indecent action, shall be punished by public labour for a period up to 120-180 hours or corrective labour for period of 6 months up to 1 year or arrest for a period of 3-6 months or imprisonment for a period of 3 years.

Cases are initiated by public complaint are instituted by facts of crime, it is not be lapsed. It is not required victim's application to initiate criminal case. Criminal investigation is conducted by the related authorities. Before transferring a case to the court, preliminary investigation authoties study circumstance where a crime was committed and in case of issuance of the accusation, transfer the case to the prosecutor. The prosecutor consider the case with accusation received from the investigator and in case of approval of the accusation, transfer the accused person to the court by the resolution within a period no more than 10 days.

Prosecutor accuse in the court. The accused person has the rights to be served by the advocate.

Administrative violation caused by domestic violence

Administrative violations breached public order and morality.

Article 22 / Law on Administrative violation/

Clause 330. Petty assault

- Pettily assaulted, in other words, cursed at public places, abused and provoked citizens, contaminated dwelling and seats for public use and disrespected peoples, and performed other acts resulted disordering public order and citizens' peace, shall be punished by punished by fine in amount up to 3 monthly expenditure index or administrative arrest for a period up to 10 days.
- 2 If the above-mentioned crimes are repareted within a year after imposement of administrative punishment specified in the part 1 of the Clause, shall be punished by punished by fine in amount up to 5 monthly expenditure index or administrative arrest for a period up to 15 days.
- Receive information on violation /generally victims or neighbours inform/
- Arrival by Police officer at the place of crime
- Take minutes
- In order to evade violator to re-do illegal action, take under protection for a period up to 48 hours
- Just after taking minutes, deliver the court
- Consider a case by the court on a day of reception of the minutes by the judge. In case of tht violator is taken, in order to keep him there for 48 hours, the case connected with him is considered before the fixed term.
- Victim is not obliged to come to the court

LITS COMBATIONESTE WALNCELLE'S COMBATIONESTE

- The court issue a decision promptly. Copy of the court decision is served to violator and victim /under their request/. Punishment of administrative responsibility imposed by the court is arrest, copy of such kind of decision is immediately sent to the prosecutor.

The related authorities execute court decisions. Term of detention on remand will be accounted within the term of arrest /if punishment of administrative responsibility/. If punishment of administrative responsibility is fine, violator will transfer the amount to the State budget within 30 days after issuance of the court decision. In case of no payment of the fine, the court will issue a decision on forced payment of it.

# Clause 333. Disorder peace

If disordered citizen's peace and obstructed to normally rest at nighttime, shall be preliminarily reminded or shall be punished by fine in amount up to 2 monthly expenditure index.

- Inform on a violation /generally neighbours inform/
- Arrival by Police officer at the place of crime
- Police officer is not obliged to take minutes
- Police officer give remind directly at place of call or force to pay fine in amount up to a monthly expenditure index.
- Reception of the payment is served to violator.

How do we develop the draft law on household violence?

It is clarified that results of the international and Kazakhstan's researches of a number, gender conflicts between men and women, for instance, men's aspiration to prove their competence above women, and conficts between individuals base on generally their aspiration to forced oppression of another persons' wish due to someone's wish to dominate other persons, become basis of domestic or "household" violence.

The researches prove that most of the victims of domestic violence are women. For now the government's attitude on the issue of domestic violence is not clear. In the view of the government's initiative to take social measures for elimination of consequences of domestic violence, it deems that the government accepts existence of domestic violence in the society, but the government is not attempting to eliminate it completely or discuss it.

We think that it is necessary and important to create an institution of civil protection order which can be issued under request by victims of violence, their representatives or their legal advisors. Such kind of decision can be issued after the court proceedings on consideration of the cases.

It is required to grant free-of-charge TV broadcasting's time to transfer advertisement and program of social character on the issue of violence through mass media; to oblige mass media to disseminate free-of-charge information on assistance by Crisis centers and other centers supporting women and children on the issue of violence.

It is necessary to search for possibility to conduct forced training /training and seminar/ for the officials of the law protection bodies who directly engage in the issues connected with violence against women.

360 Lets coming coming coming coming coming variable lets coming coming variable lets coming coming

ATO A: CECES O "ABDIDECTROMY ON COLUMNO A: EBECE O" AND DESCRIPTION OF COLUMNO A: EBECE O" AND DESCRIPTION OF OUT ON A TO A: EBECE O" AND DESCRIPTION OF O

Not depending of areest of violator, the police officers must inform victims about the Crisis center in oral or written form, give telephone number, show address, and in case if that victims need to go away from the place of residence for temporary period, the police officer must propose to help them to find out a refuge from her family members, friends or refuges for victims of domestic violence. Under request by victims, the police officers must help them to get moved to the place of their residence or medical organizations or this kind of arrangement.

# Comments on the law against household violence

In order to effectively regulate the common relations at the sector of the legal protection on domestic violence, I propose to draw attention to the following important items during development of the draft law on "Household violence":

- When assess the violations at the family, exclude the concept "to have lesser significance not to cause danger for the public activity"; because sometimes law protection bodies object to initiate criminal case to victims based on this reason
- Fix administrative and criminal responsibility in the range of family-marriage relations
  - Classify kinds of domestic violence, make clear, define extent of responsibility to be imposed for the given crime
  - Consider administrative punishment to be applied for violators acted in the range of domestic and household relation; exclude punishment of fine; because in case of imposement of the punishment of fine for violators, mainly women and children suffer.
- Grant to victims the instruments or means of the procedural proceedings at the highest level which is necessary to protect by victims violated rights
- Fix administrative responsibility to officials for their objection to receive applications
  - Disseminate legal institution of the protection order. Designation of such kind of decision is to protect rights and legal interest of victims of domestic violence, and protection /prevention/ from further violence or danger and threat of violence.
- In case of infringement of the protection order by the violators, it should contain some certain limitations which must be imposed by the administrative and criminal responsibilities.
  - a/ the order forbid violators to cause again or further damage for victims. With revealing of facts of violence, preliminary reminds, applies administrative compulsory punishment /arrest/ or in case of repeated violence, punishment of criminal responsibility is imposed to violators.
  - b/ the order must limit victim's relationship with violators at home and public place. In case of infringement, punishment of criminal responsibility is imposed.
  - c/regulate violator's possibility to meet his children. If there is threat or danger for children to get caused by physical or psychological damage, some certain limitations are provided during violator's meeting with his children /deprive violator's rights to meet his children or arrange meeting getting attendance by the officials of the Crisis center's branches.
- Protection order can be issued to persons who gave their application on receiving the given order to the court at the place of their residence. If victims are unable to do this or under domination or by unable to enjoy themselves the rights by other reasons, any of

LITS COMMUTIONISTIC VALENCELET'S COMMUTICATION COMMUTICATI

victim of violence, witness of violence or victim's relatives can apply.

- Protection order must be issued for the certain term during existence of the real danger or threat to get repeated of violence, or terms might be not specified in the order.
- In order to make effective combat domestic violence, it is necessary to disseminate the statistical report by which everybody can obtain real information on the kinds, forms, reasons and character as well as consequences of violence from which women suffer.

KOSTRIKINA JULIA RASTYAMOVNA

"Podrugi" center, Republic of Kazakhstan

362 Lits combit domestic voluncellets comb

## ORIENTED FIGHT AGAINST DOMESTIC VIOLENCE

Women's movement was activated in Republic of Kirgizstan after World Conference held in Peking in 1995.

Government's also taking some concrete steps for improvement of women's status, holding duties and program that directed to solution of the given problems including violence against women.

#### Law-enforcement, bodies

Specialized curriculum was worked out and introduced for officers on duty at organizations of home affairs, on the basis of study of international experience. The curriculum was strengthened with methodical supplies and directed to train for more complex ensuring of protection for women, who especially were victim of domestic violence. At the final stage, there is preparation of the curriculum for students of Academy of Ministry of Home Affairs, that allows to institutionalize issues on train officials of the home affairs' organizations concerning violence against women. Analogous curriculum working out is started for officials of the Prosecutor's office. Entirely, taken steps are directed to create training system that involved all law-enforcement bodies of the Republic, for improvement of coordinated activities on elimination and prevention of violence against women.

Training for officials of the system of Home affairs Ministry is being performed by worked out curriculum, on the basis of the Memorandum on Cooperation, concluded with the Association "Diamond" in 1998. A lot of training were held for officials of Home affairs' organizations who work on duty and visit to places of accident/ event. During the training, they learned rules /procedures/ and methods for working with women who were victim of violence. It is notable that officials of the Home affairs' organizations were interested in issues on ensure protection for victim-women and by this way issues on fixing violence change of role by law-enforcement organizations for combat domestic violence and safety of victims have been paid into a great attention. The curriculum was strengthened with published methodical supplies for Home affairs' organizations "Violence against women: prevention and combat its consequence" and methodical supplies for Prosecutor's offices prepared for publication. Unfortunately, the curriculum was involved relatively small percent of officials of law-enforcement organizations and it demands to expand the program.

At the same time, activity of crisis centers and other law-enforcement women NGOs shows that situation for solution of the problem on domestic violence is being changed very slowly in the law-enforcement organizations and system of the criminal justice in the Republic. Apparently, it is caused by priorities of penalizing function at the activity by law-enforcement organizations, influence that is existing objectively in the society of gender stereotypes and also confirmation in the society of power image of life, in its consequence it will be common aggravation of economical situation in the republic.

And also co-operation with crisis centers of the republic is improved /thanks to/ by Home affairs' organization of the Republic and representatives of the non-governmental sectors are participating in training for officials of Home affairs' organizations.

LITS COMBATIONESTE: WALRCELIT'S COMBAT IDMESTE: WALRCELIT'

#### Courts

Court - it is a conservative system. When they consider a case that affects interest of women - victim of violence, women's psychological, emotional and finally physical situations are not taken into account by no means and only documents on paper that is confirming some conditions are taken for processing plus to the all, women-victim of domestic violence is unable a good advocate who is sensitive to problems on domestic violence. In connection with this, women cannot protect their interest and rights at the court. Such kind of practice brought to that women simply gave up to go to the law concerning domestic violence.

OIt is necessary to train judges, advocates, to inform them about specifics of the problem and above all to attract judges' and advocates' attention to partner cooperation with other structures and non-governmental organizations.

# System of health service

Violence makes especially serious damage to women's health.

49<sup>th</sup> World assembly adopted a resolutely on health service on May 1996, in which problem of violence is revealed as priority in the sphere of public health. In 1999, Demographic Fund of UNO declared elimination of violence against women as "first and foremost mission / task of public service".

Problem of domestic violence has a special medical-social significance.

Attention to problem of domestic violence against women and its medical-social aspect is being increased even in Kirgizstan.

Officials of public service realize their key role for combat violence, that, they do not possess /obtain/ methods for working with victims - how to help to women - victim of violence, where have to go, with whom have to co-operate and etc.

# Mass media

Problems of domestic violence are not enough mentioned at the mass media of Kirgizstan, publications about activity of crisis centers can be found only in the central newspapers, but they are fully absent at the local mass media. There is no one broadcast on this problem through TV, there is only rarely transferred some video-clips prepared by crisis centers on this topic. Entirely, there is obviously lack of educational posters, booklets, leaflets and other materials which would give idea about real situation connected with domestic violence, prevention measures and give assistance to women-victims of violence and other dependent members of the family.

# Local self-government

Project on organizing groups of self-support from more active and promoted women at local level, is started to be implemented in Kirgizstan.

Strategy for their co-operation with local law-enforcement bodies and authorities and representatives of aksakal justice and education as well as Public service system is being worked at.

### NGOs

Today women NGOs and crisis centers are working so much. Their initiative is directed to:

364 HETS COMMUT COMMUT

AY A FEED O "ADDRESTED OF OUA AND A FEED O "ADDRESTED ON OUA A

- improvement of national legislative basis
- practical support for women-victim of violence in crisis situation
- forming of public opinion of nought tolerance to violence against women
- increase of informationalization of population about problem of domestic violence, increase of functional literacy of women concerning their rights and etc.

Analyze of obtained success and failure shows that it is necessary to intensify role of NGO and civil society entirely for elimination all forms of violence against women including at the family sphere. Involving of grassroots to this process and cooperation of all partners on the problem are being started in Kirgizstan. For instance, Urban Kenish of deputes / delegates of town / city Bishkek adopted Resolution No. 84 in 10<sup>th</sup> October 2001 "About future development of joint activity /cooperation by Public counsel and judges aksakal of city on prevention of delicts and strengthening of peace keeping" in which noted that an important direction of this work is adjudication of family conflicts, taking concrete steps for penalize violators.

Work, carrying out jointly by NGOs and governmental structures in the sphere of elimination and prevention of violence against women, is promoting to increase not only confidence of women in ensure their safety but also forming stable negative attitude to any form of violence in the society including many men. It is especially strikingly revealed during collecting signatures by citizens of the Republic under draft of bill "About social-legal protection of domestic violence". The draft of bill is supported by 65% of women and 32% of men from signed people who live in all regions / provinces of Kirgizstan.

In spite of undertaking efforts, for part of government and for part of NGOs, domestic violence against women is remaining as before as a problem of public health and items of preoccupation by public of the country.

There are many problems to minimize, violence connected with uncoordinated actions of various state structures and NGOs. Above all, this non-humanitarian relation to victim and position of non-interference to facts of violence from part of officials of law-enforcement and supervisory bodies, medical, officials and officials of education system and public institutes /aksakal justice, Board of Elders and etc/ representatives of local executive authorities.

In connection with this a lot of NGOs and interested structures decided to create /establish working group and activate action to implement Duluth model of protection women of domestic violence in Kirgizstan and Central Asia.

By this way, each organization, entered in working group makes his /its contribution as experience, worked out program - module for training interested structures, methodical materials, technical resources and etc. For realization of concrete actions, participants of the seminar worked out a project.

Purpose of the project: Oriented and organized combat domestic violence by Duluth model of various interested governmental /State/ structures and NGOs.

TILEBALIEVA MAIRAM

President, Association of Crisis centers of Kirgizstan

# WAYS OF GETTING OVER GENDER STEREOTYPES IN COMBAT DOMESTIC VIOLENCE

Today the problem of gender inequality and domestic violence today is an actual problem in the worldwide. This problem in each country has own specificity. Each country has its own reasons for investigating these problems.

In Uzbekistan the problem of gender inequality and domestic violence has its historic and cultural roots. But no matter how far it goes back to the history on the present level of society development addressing this problem is rather crucial. To form a civil society it's first of all necessary to prepare social and cultural foundation. That's a man can live and create in civil society only when he realizes the necessity of this society.

Thus, a freely thinking man who appreciates and eager his freedom is an integral part of the civil society. A purpose why Moses led people across a desert for 40 years was to bring up a generation of free people that doesn't know what slavery is. And that's why we cannot speak about a generation of free citizens if our families still suffer from domestic violence and violation of human rights. A child that repeatedly experiences violence in his family gets used to it and nobody can give a guarantee that he'll be a grown-up he won't resort to violence in his own family. The stereotype "Aptitude to the violence as it is" determines his future social behavior. We cannot speak about society freedom when the rights of its female part are being violated.

In spite of equal rights provided to Uzbekistan women in the legislation, they don't feel it, they don't feel the state protection. First of all, it's prominent in taking women violence as a norm in all spheres of life such as family and lifestyle.

The Legislation of Uzbekistan has provisions called to defend women rights. The clause 18 bans any forms of discrimination by sex, nation, religion and alike. Men and women have equal rights – the 46<sup>th</sup> clause states. The 117 clause provides a right to elect and top be elected in governmental bodies, but observing the rights of its citizens the government should provide observation of the principle rights of women and their physical security at home. If these rights are violated, the government should react accordingly. However, Uzbekistan government doesn't admit the existence of the problem of woman violence and doesn't take suitable measures to address it.

The starting point and the most important for understanding actual situation (social status) of women of Uzbekistan is understanding the fact that they carry the burden of limitations set by the society, particularly religious, traditional directives, norms and negative gender stereotypes. All together these bias, social directives, stereotypes on one hand limit creative development of women and on the other hand they do not work on strengthening citizen peace and accordance, democracy, do not help civilization and new spiritual moral structure of life.

The modern Uzbekistan is one of the states of Central-Asian region, in which traditions of the past are still very strong. With disintegration of the Soviet Union, with crushing communistic ideas Uzbek society tries hardly to get back to the past, or using other words, to bring the past

366uts combit comeste velincelets combitations:

ATO AT EDED OF -PRODEET/FORDED OFF ON COLA TO AT EDED OF -PRODEET/FORDE OFF OND AND AT EDED OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORD OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT EDUCATION OF -PRODEET/FORDE OFF OND AT

back to the lives of the modern women.

The problem of gender inequality left to our country yet from times of Khan's rule has changed its shape for the 75 years of Soviet times. During this period active struggle for women emancipation was led but all this policy was led in spirit of totalitarian communistic regime. A major motivation of women's liberation was a fight with Islam as a rival ideology because of which woman's situation got even worse. Though woman and man's equality in the society was stated in the legislation the social—economic position of a woman was still on a lower step than a man's.

The lifestyle of our state is different from other countries, it is based on long time balanced traditions. Following these traditions a family hierarchy doesn't know the equality of a man and a woman, it puts a man over a woman. A man always takes the head position and a woman plays a role of a mother of his children, a role of a housewife, a role of a dumb doll in the theater of life. The stereotypes like "A woman is a step behind a man, she is something of minor importance", "A woman is a house and family keeper and that's the only responsibility she must have" are usually the causes of domestic conflicts. 18.7% of respondents of social research "Woman and right" by "Ijtimoiy fikr" Center don't consider violence against women violation of her human rights: every other of them thinks that a woman should be afraid of physical violence from her husband otherwise there will be no order inside the family. 46% of respondents states that "if a husband doesn't beat his wife, she may cheat on him and a daughter may become a prostitute".

Many gender stereotypes go far back to the history and they have division of labor in their basis. These stereotypes start at men's minds that tend to penetrate and evaluate the women's world on their own views (man's interests and needs). And what is unbelievable, women can and do share, support men's views.

It's not a secret that gender stereotypes form on the basis of a whole system of traditional views about women frequently obsolete and non-critical. The only way to break the traditional, old as well as modern gender stereotypes is to radically change men's attitude to women. It's important to underline that the stereotypes must be not changed but broken, because a huge world of views, positions, opinions, feelings stand for it and they are not changed voluntary.

The economic situation in the post-soviet countries – poverty of the population, underdevelopment and old-fashioned economy – strongly worsen the population's state of mind, which doesn't want to and cannot get over the stereotypes of gender inequality. The stereotypes of gender inequality provoke a number of serious problems, which negatively affect Uzbekistan and directly and indirectly impact the neighboring countries.

These problems, first of all, are the problems of women rights as human rights on prevention any sort of violence against women, woman's right for family planning and preserving reproductive health. The economic rights of women mean expansion her economic activity, opportunity to earn money for living for her family, and also women's ability to do business, to get the credits etc. Also gender motive provokes non-participation of women in political life of the society, in election process. These are the problems, which any society, any country has to face, but in Uzbekistan these problems have a unique shade, which gets mixed up on strong traditions of our region, on the mentality unable to quickly adapt to a changing society, on the stereotypes that are a part of the life itself.

The image of eastern woman always inspired admiration in people of different cultures, but

COMMOTORMENT VALUE CLUT I CLUT I COMMOTORMENT VALUE CLUT I CLUT I COMMOTORMENT VALUE CLUT I CLUT I

what is actually hidden behind her modesty and beauty, compliant character and obedience? Let's try to understand, to trace the way of woman's life here. A child, a girl is born in a family. From the very young age she is brought up in obedience and humility. She grows and the house work lies on her shoulders and her parents say it'll be useful in her own family in future. She grows older and her dream becomes to get married, and it becomes an aim of her parents. The girl dreams of a good husband and her parents only think of a good, respectful, rich family and make up a good marriage. The girl gets married and a bulk of duties at home of her husband family crushes upon her. She is responsible assigned to keep up the house, watch the livestock, to take care of her husband, his parents and children. In return she hears only her husband's reproaches, stands his rudeness and violence, sees dissatisfied and suspicious sights of his parents and the neighbors' talks.

Why does it happen this way? Because we were brought up this way, and we bring up our children alike. We live in inequality and keep living this way, we keep raising children on the same principles. Newspapers, magazines, TV channels abound articles and programs about importance of family traditions in the society, family patriarchate is shown as a basis of a happy marriage and family relationships, this is a solely acceptable form of the society. But a society – a modern, civilized society – cannot base on discrimination, violence, gender inequality, absence of rights.

Ignorance of rights, violence against woman - against her who is a mankind keeper, without which life will be impossible - is a behavior inappropriate in any society. And this is a sphere of activity, which requires much work to do by NGOs and also the community as a whole.

Therefore we try to carry out educational work among various groups of population: from most vulnerable, such as village women, to law-enforcement institutions, representatives of authority without whom any changes are impossible. Among the later we conduct explanatory work on importance of public changes. We try to explain that society needs changes as never before, because now the country is at that stage of development, when it needs to make a choice: to go forward or to stop and move in the opposite direction.

To make the mechanism of changes in public opinion work it is necessary to work in many directions. First, it is necessary to make woman overcome the feeling of dependence and submission, to make her rise her head and believe in herself, believe that means much for the society and the country. then it is necessary to work with men, to make them understand that a woman can and should become an integral and essential part of the society and to accept woman as equal to man. Besides it is necessary to work with the bodies of authority, which are the foundation of order and structure of the state. It depends on them how society accepts changes, how it follows the order, how it develops. It depends on them how laws particularly on human rights work and observed. And without their assistance all changes in the society just make no sense.

Speaking precisely noncommercial and nongovernmental organizations can make very much in this direction for example:

- To organize educational trainings (seminars) first of all for women. As one of the main causes of violence against women is that fact the women don't receive the needed knowledge, which would help them in self-defense against the violence. It includes knowledge of the existing laws, religious texts, international norms on human rights, and requirements put forward by

368 UETS COMBUT DOMESTIE VALINCELLETS COMBUT

other women in their communities, for protection of their rights. In this case, education in its broadest sense, including legal literacy and human rights education plays an important role.

- To organize meetings, round tables, conferences, briefings with participation of state structures, local communities, law-enforcement bodies and mass-media for coordination of efforts; to create groups of support on sites and in different regions.
- To share experience and information. In spite of the different means of getting over gender stereotypes different countries have the experience of each organization is unique and it is difficult to find a program of getting over gender stereotypes without any influence of external factors. Therefore we think that NGOs should participate in sharing information, be united for work over joint projects with purpose of addressing gender problems.
- To lead regular researches of the existing and arising gender problems. The results of the researches, works, experience leads to approaching appropriate structures with the concrete offers. We should develop special educational and training programs for children and youth, women and men.

The multiple educational programs, seminars, trainings which we hold are directed on illumination, explanation, propagation of new, modern, liberal and progressive values, bringing them to life of citizens of the country.

Feature of our educational programs is the work in small audience on the basis of interactive techniques, which are based on constant interaction with students, and technique of feedback. These methods of conducting lessons allow us to be closer to the target group, to better understand its needs, to reveal and understand problem arising, to find out needs of the audience.

The overall objective of the trainings, which we organize among women especially of village areas, is to change awareness of these women. It is necessary to show them that there is no point for them to live as 100 or 200 years ago, that they are the same people and citizens of the country as men, that they have equal rights with men, and they mustn't be afraid of those changes, which now take place in the society. To break the foundations and concepts reigning in the society is very difficult and it's more difficult to make women think, admit, give her an idea that she is a human being too and she is allowed and should make decisions instead of being in shadow of her husband. But this work is very important, because without it the country can stop developing. The foundations and traditions should not influence the development of the country, its progress. And the progress is achieved only by progressive views on life and the basis of the life is a family, family relationships.

What we do is very difficult. For many centuries ingenious minds of ??? mankind were not recognized by the contemporary society because they stood against its prejudices. Jordano Bruno was executed only because he tried to explain the natural state of celestial bodies, theory, which today we consider an axiom. Gender equality for some people today seems same nonsense as Brono's theory in his time. But today we live in the XXI century. Century in which information is transmitted worldwide with a speed of light and we are capable to struggle against the stereotypes of the past. For this purpose it is necessary to unite our forces and our resources in our common struggle.

Overcoming of gender inequality stereotypes is a very difficult task undertaken by non-gov-

ernmental organizations including our Centre for Social and Legal Support of Women and Teenagers "ISHONCH".

This is the sphere of activity in which our Centre works, in which we try to change something for good and this is that direction where we look for the allies and partners. That's why today we are here applying to you with an offer to unite, to unite our efforts and to direct them on struggle with the stereotypes, which still are frequent in our societies, and with which we cannot fight alone.

ZULFIA AHUNOVA

Director of ISHONCH Center, Republic of Uzbekistan

370 ets combit combit evelicelles combit combite velicelles combit

# ГЭР БЁЛИЙН ХЁЧИРХИЙЛЛЭЭС УРЬДЧИЛАН СЭРГИЙЛЭХ АРГА ЗАМ

ПУТИ ПРЕДУПРЕЖДЕНИЯ ДОМАШНЕГО НАСИЛИЯ

WAYS FOR PREVENTION OF DOMESTIC VIOLENCE

МОНГОЛЫН НЭЭЛТТЭЙ НИЙГЭМ ХЁРЭЭЛЭН МОНГОЛЫН ХУУЛЬЧ ЭМЭГТЭЙЧЁЁДИЙН ХОЛБОО ХЁЧИРХИЙЛЛИЙН ЭСРЭГ ЁНДЭСНИЙ ТЄВ

ФОНД СОРОСА АССОЦИАЦИЯ ЖЕНЩИН ЮРИСТОВ МОНГОЛИИ НАЦИОНАЛЬНЫЙ ЦЕНТР ПРОТИВ НАСИЛИЯ

SOROS FOUNDATION
MONGOLIAN WOMEN LAWYER'S ASSOCIATION
NATIONAL CENTRE AGAINST VIOLENCE

Chief editor P.Tsetsgee

Designed by Kh. Amar