



Implementation of Mongolia's Domestic Violence Legislation



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A Human Rights Report

The Advocates for Human Rights
Minneapolis, Minnesota USA

National Center Against Violence
Ulaanbaatar, Mongolia

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The mission of The Advocates for Human Rights is to implement international human rights standards in order to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities. The Advocates has produced more than 75 reports documenting human rights practices in more than 25 countries, and works with partners overseas and in the United States to restore and protect human rights. The Advocates for Human Rights hold Special Consultative Status with the United Nations.

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The National Center Against Violence (NCAV) is a pioneer NGO in Mongolia combating domestic and sexual violence against women and children by addressing the prevention and protection of its victims. Since 1995, NCAV's goal is to combat domestic violence and sexual abuse against women and children in Mongolia through the establishment of a nationwide system of prevention and protection. Through community development and engagement, NCAV strives to hold the State accountable for the delivery of safe and equitable support services to survivors of domestic violence and sexual abuse. This is achieved through the following ways:

- ❖ Raising public awareness of the issue of domestic violence against women and children
- ❖ Advocating changes in the formal and non formal educational system in order to include gender-based concepts and trainings in prevention of violence
- ❖ Building a legal framework that eliminates and prevents violence, notably with an independent law criminalizing domestic violence
- ❖ Contributing to the development of a social protection system that supports women overcoming the consequences of violence (legal assistance, psychological counseling, shelter house etc.)
- ❖ Developing our network of national and international organizations working on the same issue.

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This report is dedicated to the women of Mongolia.

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Domestic violence devastates the lives of millions of women around the world each year. Violence directed against women by intimate partners, including current or former spouses or boyfriends, has serious physical, emotional, social, and financial effects on women, children, families, and communities. This violence impairs the fundamental rights of women to life, liberty, and security of person, as well as their rights to equality, freedom from discrimination, and to be free from torture. Although these rights are protected by international treaties,¹ domestic violence continues to be tragically common around the world, and according to the United Nations, as many as 70% of women are victims of violence at some point in their lives.²

These alarming global statistics are reflected in Mongolia, where the National Center Against Violence (NCAV) estimates that one in three Mongolian women was a victim of domestic violence in 2010.³ Although national statistics on domestic violence in Mongolia are not readily available, local police departments reported that a high percentage of the calls received are related to domestic violence. For example, one police station reported an average of 63 domestic violence calls per week.⁴ The prevalence of domestic violence is also evident in statistics on punitive detention. In 2007, approximately one-half of all administrative detainees and one-quarter of criminal detainees were held for domestic violence offenses.⁵

NCAV and The Advocates for Human Rights carried out fact-finding in Mongolia to monitor the government's implementation of domestic violence legislation. The authors conducted two monitoring missions in January and March 2013. They traveled to seven cities in Mongolia and conducted 137 interviews with ministry officials, non-governmental organizations (NGOs), victims, social workers, police, judges, prosecutors, lawyers, governors, and healthcare workers. The findings and recommendations presented in this report represent the results of these interviews, the authors' observations, and secondary research.

In 2004, the Mongolian government took an important step towards ending domestic violence by enacting the Law to Combat Domestic Violence (LCDV). The adoption of the LCDV represented a significant step toward protecting domestic violence victims and holding offenders accountable. By passing this domestic violence law, the Mongolian government has demonstrated its commitment to combating domestic violence. The government should be commended and further encouraged to serve as a model for the region by ensuring effective implementation of the LCDV.

The LCDV contains many provisions that are critical to protecting Mongolian women from domestic violence, including provisions for restraining orders. The restraining order provisions include important measures focused on victim safety such as eviction of the perpetrator and prohibitions against approaching a victim; possession, use, and disposal of jointly owned properties; and contact with minor

¹ See Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Social, Economic, and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture.

² UNITED NATIONS SECRETARY-GENERAL, VIOLENCE AGAINST WOMEN FACT SHEET (2011), available at http://www.un.org/en/women/endviolence/pdf/pressmaterials/unite_the_situation_en.pdf.

³ *Violence against Women in Mongolia*, THE ADVOCATES FOR HUMAN RIGHTS (Mar. 22, 2013), <http://www.stopvaw.org/Mongolia>.

⁴ Interview with Police, City D, January 23, 2013, 1500.

⁵ NCAV report, Current Situation of Domestic Violence (on file with the authors).

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children. The law gives police, social welfare workers, and soum and bag governors,⁶ among others, specific duties with respect to combating domestic violence. It also allows a judge to order the perpetrator into behavior programs and addiction treatment. The law authorizes a judge to issue a restraining order for up to one year.

In spite of the progress that the LCDV represented, implementation of the law has been hindered by lack of direction regarding responsibility for carrying out specific provisions of the act, lack of harmonization between the LCDV and related legislation, scarce resources, and lack of education about the act. These challenges have become evident in the small number of restraining orders that have been issued since the law's enactment. According to NCAV, only a few restraining orders have been issued in Mongolia since the LCDV took effect in 2005, with the majority issued in the capital of Ulaanbaatar. Several interviewees outside of the capital reported that there had never been a restraining order issued in their location.

Several barriers impede the issuance of restraining orders in Mongolia. First, a pervasive lack of knowledge about domestic violence and the LCDV prevents women from coming forward to seek orders. Many victims view the domestic violence they suffer as normal and are unaware of the remedies available to them through the LCDV. Often government actors share and perpetuate these attitudes. Some police, prosecutors, judges, and social workers do not know about the LCDV and hold harmful attitudes that promote preservation of the family over protection of domestic violence victims. Thus, instead of availing themselves of the LCDV's remedies, many women turn to shelters or divorce to escape the violence. There is also widespread misperception that alcohol abuse and dependency is a main cause of domestic violence in Mongolia. This perception manifests itself in the government response, where the legal and justice system prioritizes addressing alcoholism over violence.

Even when women are aware of and try to obtain remedies through the LCDV, legal and procedural hurdles make the process difficult, if not impossible. Although not legally mandated, many courts require a risk assessment form showing a sufficient level of danger before they will issue a restraining order. Obtaining a risk assessment is not straightforward, however, as it requires both a police officer and social worker to complete this form, and these actors do not always cooperate nor do they punctually complete the form. In addition, courts typically require forensic documentation of the victim's injuries to merit a restraining order. Victims must overcome long distances, fees for the forensic evaluation, referral requirements, and limited operational hours—while their injuries are still fresh—to obtain this certificate. Where free or low-cost legal services are absent—which is the case in most of Mongolia—victims must navigate this arduous process by themselves. As a result, their chances of success in obtaining a restraining order are low to non-existent. For women living in rural areas far from government services, the distance poses even greater burdens for them to obtain the needed documentation.

Even when a restraining order is issued, lack of harmonization of the LCDV with related laws seriously hinders its implementation and enforcement. The LCDV does not explicitly direct any authority, such as the Court Order Implementation Agency (COIA), to serve and inform the perpetrator of the order and, in cases of eviction, remove him from the home. Although the COIA is charged with implementing court decisions, in the absence of a specific directive regarding restraining orders, its implementation of such

⁶ "Mongolia consists of 21 provinces and the capital city. Each province is further subdivided into 'soum,' and each 'soum' is subdivided into the lowest administrative unit, the 'bag.'" Odgerel Tseveen & Battsetseg Ganbold, *The Mongolian Legal System and Laws: a Brief Overview*, GLOBALEX (Jan. 2006), <http://www.nyulawglobal.org/globalex/mongolia.htm>.

orders has been inconsistent at best. Only when a COIA official personally takes the initiative to serve and execute restraining orders does the agency play any role in implementing the orders. This practice is rare, however, and most officials have never implemented a restraining order.

The LCDV also fails to clearly assign responsibility for enforcing restraining orders, nor does it specify the consequences of a violation. The LCDV fails to specifically criminalize the violation of restraining orders and only states that a person who violates the order is subject to liability as stipulated by law. Although the Criminal Code makes it a violation to disobey a court decision, many government officials do not recognize that this provision applies to restraining orders. As a result of the vague language in the LCDV, the failure to recognize the applicability of the criminal provision, and the lack of assigned responsibility for enforcement, many restraining orders are never enforced. Perpetrators repeatedly violate their orders without consequence. This lack of enforcement and failure to impose sanctions for violating a restraining order is a key problem in the government's response to domestic violence. Police officers tend to issue warnings or simply fail to respond when a perpetrator violates a restraining order. Without enforcement and proper sanctions, victims remain in danger, and restraining orders are nothing more than a piece of paper that perpetrators are free to ignore.

In addition, the criminal system response in Mongolia fails to hold offenders accountable because current penal legislation does not directly address domestic violence, and government actors do not prioritize pursuing domestic violence offenses. The Mongolian government typically applies the Administrative Penalty Law rather than the Criminal Code in dealing with domestic violence offenders. Both the administrative and criminal laws lack specific provisions on domestic violence, so law enforcement personnel turn to other provisions that either carry inappropriate punishments or are fraught with evidentiary and procedural obstacles in both law and practice. Police officers most often rely on the intoxication and hooliganism provisions of the Administrative Penalty Law. These punishments, however, impose only short-term detentions or fines that potentially punish victims. Moreover, police do not always impose even these weak punishments because they defer to victims' requests not to punish the perpetrator.

In the absence of criminal domestic violence provisions, police and prosecutors rely on general criminal assault provisions, such as infliction of bodily injury and torture. Before police will refer domestic violence cases to the prosecutor for such criminal-level prosecution, the victim must produce forensic documentation showing that her injuries are serious enough to merit criminal charges. But, as mentioned above, obtaining a forensic certificate can be an onerous ordeal. Even if the victim obtains forensic documentation and the prosecutor brings charges against the perpetrator, the prosecutor may still close the case if the victim and perpetrator reconcile or the victim requests that the case be dropped. As with restraining orders, victims' economic dependency on the perpetrators and their vulnerability to coercion and further violence often deters them from cooperating with a criminal prosecution. In those cases where prosecution leads to a conviction, sentences are too lenient to effectively end the violence when the perpetrator is released.

The futility of restraining orders and the lack of an effective criminal justice response lead victims to seek alternatives to be safe. Many women see divorce as a primary, and often the only, solution to domestic violence. Mongolia's Family Law, however, poses several barriers for a woman seeking relief through a divorce. First, divorce is not available to women who are pregnant or have a child under the age of one year. Second, the cost of filing for divorce is prohibitive for many women. Finally, the Family Law authorizes judges to impose a three-month reconciliation period between couples before granting a divorce. Although the law eliminates the reconciliation period where there is a threat to life, judges do not consistently screen for domestic violence nor do they always discover it when they do screen. Even when

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domestic violence is reported, some judges still impose a reconciliation period. The reconciliation period creates serious safety concerns for victims, especially when the victim does not have a restraining order. Women have been threatened, abused, or even killed by their abusers during the reconciliation period.

Although shelters are referenced throughout the LCDV and are an essential component of any system to combat domestic violence, they are rarely available in Mongolia. There is currently only one fully functioning shelter with 20 beds. Four other shelters have closed due to lack of funding. Moreover, the need for shelters in rural areas of Mongolia is particularly acute, where women are often forced to travel great distances to seek safety. Without the protection of shelters, perpetrators in Mongolia have easily stalked, threatened, hurt, and even killed victims who were trying to escape.

In addition to a lack of shelters, victims in Mongolia do not have access to a number of other essential social services and support, largely due to a lack of funding. Social workers, police, and legal aid providers reported heavy caseloads that prevented them from adequately addressing the needs of domestic violence victims. These needs are particularly severe in rural areas. Government actors frequently do not place a high priority on their responsibilities under the LCDV roles for combating domestic violence. For example, the LCDV directs social workers to work with families and conduct risk assessments. Their job descriptions, however, often fail to include these responsibilities, and social workers instead find themselves addressing domestic violence issues on their own time and outside of their job mandate. Local and regional governors are also responsible for combating domestic violence under the LCDV, but domestic violence is also a low priority for them, and they have few resources to work with. Volunteers, such as NCAV's regional coordinators, often step in to provide much-needed counseling and support services.

In conclusion, although the government of Mongolia has taken critical steps to combat domestic violence, monitoring revealed that the government must take additional measures to more fully achieve victim safety and to ensure offender accountability. These measures are addressed in the Recommendations section on page 60, and the government should give urgent attention to the Priority Recommendations. The authors commend the state, the many government actors, and especially NGOs working together to protect victims and hold offenders accountable. We urge the government of Mongolia to execute the recommendations presented by this report and to continue this vital work.

INTRODUCTION

The beating was the worst thing that ever happened to me. It was like beating an animal. People beat their animals. But even when they beat animals, they wouldn't treat them as badly as he treated me because they own them and care for them. This was worse than an animal beating. He pulled my hair and strangled me so I couldn't breathe. He beat me and kicked me. I was in bed for two days. In 2007, he gave me a heavy beating. . . . He hit my head against the wall. . . . He was beating me, I was using self-defense, but of course, he is much bigger than me so even though I fought back, I couldn't defend myself. He started dominating and beat me badly. He did every kind of beating you could imagine—he hit and kicked and pulled my hair, anything you can think of for beating. Then, I called the police.⁷

Eight years after the passage of Mongolia's 2004 Law to Combat Domestic Violence (LCDV), domestic violence remains a serious problem. Although the LCDV authorizes courts to issue a civil protection order, one of the most important tools for protecting women from violence, very few restraining orders have been issued.⁸ Moreover, police officers report receiving a high volume of domestic violence calls. One khoroo⁹ police station reported an average of 63 domestic violence calls per week.¹⁰ In a recent address to the United Nations Commission on the Status of Women, the Mongolian Minister for Population Development and Social Protection noted that criminal cases stemming from domestic violence constitute six percent of total crimes in the country.¹¹ The National Center Against Violence (NCAV) has stated that one in three Mongolian women are victims of domestic violence.¹²

Passage of the LCDV represented an important first step in recognizing domestic violence as a societal problem in Mongolia. It was also a step toward satisfying Mongolia's responsibilities in relation to violence against women as required by international law.¹³ The State Secretary of the Ministry of Justice said:

It was a huge achievement at the time. It helped enlighten people—and opened the eyes of law enforcement. It played a great role in that context. It was a taboo issue at the time—so a real victory. It brought a new concept/mechanism to the system.¹⁴

⁷ Interview with Victim, City F, March 22, 2013, 1400. This victim's story is described on pages 5, 10, 29, 44, 49.

⁸ Email from NGO to Helen Rubenstein (July 16, 2013) (on file with authors). No official statistics are available regarding the number of restraining orders that have been issued.

⁹ "The capital city, Ulaanbaatar is divided into nine districts, further subdivided into a number of 'khoroo.'" Odgerel Tseveen & Battsetseg Ganbold, *The Mongolian Legal System and Laws: a Brief Overview*, GLOBALEX (Jan. 2006), <http://www.nyulawglobal.org/globalex/mongolia.htm>.

¹⁰ Interview with Police, City D, January 23, 2013, 1500.

¹¹ *Statement by H.E. Mr. Sodnomzundui Erden*, Minister for Population Development and Social Protection of Mongolia at the 57th Commission on the Status of Women, 2 (Mar. 6, 2013), available at <http://www.un.org/womenwatch/daw/csw/csw57/generaldiscussion/memberstates/mongolia.pdf>.

¹² National Center against Violence, General Overview of and Legislative Environment for Domestic Violence in Mongolia, available at http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/dvfactsheetenglish__2_.pdf.

¹³ As a member of the United Nations, Mongolia is bound by the Charter of the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Provisions of the Universal Declaration of Human Rights and other human rights instruments such as the Declaration on the Elimination of Violence against Women and the Vienna Declaration and Programme of Action obligate Mongolia to respect and protect human rights. Mongolia has ratified the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These international instruments condemn and seek to eliminate violence against women as they obligate states to pursue appropriate means to prevent and protect women from violence, punish perpetrators and compensate victims. The 1992 Constitution of Mongolia provides that once Mongolia ratifies and becomes a party to international treaties they become effective as domestic legislation without any further action.

¹⁴ Interview with Ministry of Justice, Ulaanbaatar, January 29, 2013, 1400.

Notably, the law directs judges to issue restraining orders to protect victims of domestic violence.¹⁵ It also gives police officers, social welfare workers, and soum and bag governors, among others, specific duties with respect to combating domestic violence. Police are required to accept and file complaints, visit the site of incidents of domestic violence, interrogate offenders and witnesses, impose administrative penalties, charge offenders with criminal violations, and find safety for women.¹⁶ Social workers are charged with conducting risk assessments and perpetrator training programs, providing victim services in collaboration with non-governmental organizations (NGOs), carrying out training and awareness-raising activities, and contributing to a domestic violence information network.¹⁷ Soum and bag governors are directed to take urgent measures to eliminate or prevent domestic violence, including investigating acts of violence and taking measures to keep women safe.¹⁸

The effectiveness of the LCDV is hindered, however, by deficiencies in the structure of the law and in its implementation. As the chairperson of the training and methodology program at the National Human Rights Commission of Mongolia explained, “The adopted law is very generic and many necessary procedures were omitted.”¹⁹ Failure to include critical provisions seriously compromises the effective implementation of the law. Equally important, necessary changes have not been made to related laws, even though some of those laws are specifically referenced in the legislation.²⁰

Criminal legislation is also insufficient to hold offenders accountable and protect victims. Penal laws do not explicitly criminalize domestic violence, and the laws that are used to punish offenders impose weak punishments and are subject to procedural barriers that impede prosecution. In the absence of adequate protection through a restraining order or from the criminal justice system, women in Mongolia turn to shelters and divorce for refuge. Some women harm themselves or their perpetrators in a desperate effort to escape the violence.

Although the framework for potential remedies exists in the Mongolian legal system through the LCDV, Criminal Code, Administrative Penalty Law, and Family Law, each mode of protection has gaps that prevent it from being fully effective. Such gaps have left many women in Mongolia vulnerable to continued domestic violence, with some victims even losing their lives.

One victim, “Bolormaa,”²¹ pursued or considered pursuing each of the identified methods of protection—a restraining order, the criminal/administrative penalty system, divorce, and shelter care—yet each path failed to protect her. Her story illuminates the struggle of many other domestic violence victims in Mongolia:

Bolormaa lived with her husband and suffered abuse for 30 years. He threatened that if she ever told anyone about the violence, he would kill her and their five children. He chased his wife and children out of their home in the middle of winter without shoes or clothes. He broke several of his wife’s ribs, her collarbone, her forearm, and her shoulder. He stabbed one daughter with a scissors and cut another daughter with an axe. The violence happened almost every day.

¹⁵ Law to Combat Domestic Violence, Article 17.

¹⁶ *Id.*, Article 9.

¹⁷ *Id.* Article 10.

¹⁸ *Id.* Article 14.

¹⁹ Interview with National Human Rights Commission of Mongolia, Ulaanbaatar, January 22, 2013, 1000.

²⁰ Law to Combat Domestic Violence, Article 2.1, states:

Laws and legislation to combat domestic violence shall consist of the Constitution of Mongolia, Civil Law, Criminal Code, Law on Family, Law on Protection of Children’s Rights, this law and other legislative acts issued in conformity therewith.

²¹ “Bolormaa” is not the victim’s real name, but a fictional name to protect her identity.

The criminal law system failed to help her. Bolormaa lodged complaints with the police but they failed to respond. Even with the severity of the violence, “No police officer asked me what happened . . . to me and my girls. Nobody asked me about our situation. Bolormaa said that the punishments are weak, often just warnings or a night in the sobering unit. Her husband often became more aggressive after returning from the sobering unit because he was angry with her for calling the police.

Yet, Bolormaa continued to hope that the police would protect her. The happiest year of her life was when a police investigator took an interest in her family and regularly checked in with them. However, when that inspector was replaced, the new officer was not as sympathetic and the violence resumed. The new officer told her the violence was her fault, making her feel so ashamed that she never sought help from that officer again.

In addition to the criminal justice system, other methods of protection also failed to keep Bolormaa safe. She considered seeking a restraining order but was concerned that it would only provide limited or short-term protection. She did not attempt to get a divorce because her husband threatened, “If you want to be separated from me, you’ll have to be killed. You can’t separate through the court.” Nevertheless, she continues to consider divorce as a last resort.

Bolormaa explained that she would really like to go to a shelter and believes it would make her safer, but there is no shelter in her area. For now she is staying with one of her children, even though her husband can easily find her. She explained, “I am sure he will come out and come to my daughter’s house. I’m sure he will find me again.” She fears that any changes to the LCDV and methods of protection will come too late for her. She said, “I will probably just end up like this, but I want to help other women.”²²

Many other women in Mongolia share Bolormaa’s experience. They have found the police to be unresponsive and the criminal and administrative systems ineffective because of weak punishments, insurmountable evidentiary burdens, procedural barriers, and the use of warnings in place of actual consequences for violent conduct. Many barriers prevent women from getting restraining orders. Even when a victim is successful in obtaining an order, the implementation and enforcement are so weak that she may be in greater danger from a vengeful abuser. The protection of shelters is largely an illusion. There are currently only 20 shelter beds in the entire country of 2.8 million people, all of them in one shelter in the capital city of Ulaanbaatar. In addition, divorce may not offer an effective escape from the violence.

Despite the gaps in the current protections from domestic violence, there is hope for women in Mongolia. As the State Secretary of Mongolia’s Ministry of Justice explained:

We have a real breeding ground to introduce really good, comprehensive policy. The current law dealt with the concept—identified the issues. In this amendment, the focus is to institutionalize—strengthen the institution. Be clearer and establish real rules.²³

In June 2011, the Minister of Justice and Internal Affairs established a government working group charged with developing amendments to the LCDV.²⁴ The working group is comprised of various stakeholders, including representatives of NGOs, the government, and academics. Mongolia is to be commended not only for bringing together a working group to propose amendments to the LCDV, but for

²² Interview with Victim, City B, January 31, 2013, 1500.

²³ Interview with State Secretary, Ministry of Justice, Ulaanbaatar, January 29, 2013, 1400.

²⁴ Order 102, Establishing the Working Group.

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undertaking major legal reform to harmonize all of the related laws including the Criminal Code, Criminal Procedure Code, and Family Law.²⁵

To monitor the government's response to domestic violence and the implementation of these laws and policies, The Advocates for Human Rights carried out fact-finding in Mongolia in January and March 2013. The authors conducted 137 interviews with government actors, NGOs, and victims in various regions throughout Mongolia. This report presents these findings and makes recommendations based on international legal human rights standards with a view to increasing victim safety and promoting offender accountability. Specifically, this report examines Mongolia's implementation of protection for victims of domestic violence and accountability for perpetrators through each of the following mechanisms:

- Restraining orders and other aspects of the Law to Combat Domestic Violence
- Criminal and administrative remedies
- Divorce
- Shelters and other social services

As the report demonstrates, each of these mechanisms currently provides some protection for victims and accountability for perpetrators, but much remains to be done. The report concludes with recommendations to improve Mongolia's implementation of its legal structure for combating and preventing domestic violence.

²⁵ Interview with State Secretary, Ministry of Justice, Ulaanbaatar, January 29, 2013, 1400; Interview with State Court Judge, City D, January 30, 2013, 1400; Interview with Secretariat, Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400 ("[T]here is a need to ensure coordination among existing laws").

THE LAW TO COMBAT DOMESTIC VIOLENCE AND CIVIL RESTRAINING ORDERS

Civil protection orders are among the most important tools for protecting women from violence. Although the LCDV authorizes courts to issue civil restraining orders, very few restraining orders have been issued in Mongolia since the law took effect in 2005.²⁶ The low number stands in stark contrast to the magnitude of domestic violence in Mongolia and to the high number of calls to police.²⁷ In one case, a court denied an applicant's request for a restraining order because her risk assessment form had been filled out by a social worker instead of a police officer.²⁸ Following the court's refusal to issue the order, the perpetrator waited outside the victim's home, stabbed her ten times, and killed her.²⁹

Because most restraining orders have been issued in Ulaanbaatar, the disparity between the few orders issued and the high number of domestic calls received by police is even greater in the countryside.³⁰ In fact, several interviewees reported that there had never been a restraining order issued in their location.³¹

BARRIERS TO OBTAINING A RESTRAINING ORDER

Victims face overwhelming barriers to obtaining restraining orders. These barriers take a variety of forms. While some victims are unaware that restraining orders are available to protect them, others are discouraged by the attitudes of first responders and service providers, as well as burdensome evidentiary requirements. Economic dependence and concerns with confidentiality also dissuade women from seeking restraining orders against their abusers. Finally, lack of effective protection simply makes some victims too frightened to seek an order.

Lack of Awareness by Victims and the General Public

Many victims reported that they did not seek a restraining order because they lacked knowledge about the remedy and, more basically, their right to be free from violence. The LCDV charges social workers with conducting training and awareness-raising activities directed at domestic violence prevention.³² Yet, many victims delay seeking help because they do not know what protections are available or how to

²⁶ Email from NGO to Helen Rubenstein (July 16, 2013) (on file with authors).

²⁷ One police station reported an average of 63 domestic violence calls per week. Interview with Police, City D, January 23, 2013, 1500. Several officers reported receiving at least two or three calls on domestic violence per week. Interview with Police, City B, January 30, 2013, 1500; Interview with Police, City G, March 22, 2013, 1500; Interview with Police, City A, March 22, 2013, 1430.

²⁸ Interview with Social Worker, City D, January 21, 2013, 1000. The Risk Assessment form provides questions designed to elicit information about the situation of domestic violence and the level of risk and lethality. The form asks important risk questions about several indicators, such as the presence of weapons, threats of murder, stalking, sexual violence, and isolation of the victim, among others. The questions are scored, allowing the evaluator to categorize the level of risk as low, medium, and high and provides the suggested response to each situation. See Appendix D for the Risk Assessment form.

²⁹ Interview with Lawyer, City D, January 30, 2013, 1000. See also Interview with Psychologist, City D, March 26, 2013, 1130: In order to file for a restraining order and it to be accepted, there has to be a complaint petition from the victim and also a risk assessment from a group of governors, doctors, police, and social workers to use as evidence. At the time she wanted a restraining order, but the police weren't coordinating with the team. No one was cooperating with each other, so eventually she gave up. . . . This time when she came here, he strangled her and beat up her child and kicked them out of the house.

³⁰ Interview with Acting Executive Director, Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000; Interview with Lawyer, City D, January 23, 2013, 1200.

³¹ Interview with School Social Worker, City B, January 29, 2013, 1045; Interview with NGO, City E, March 18, 2013, 1100; Interview with NGO, City B, February 1, 2013, 900.

³² Law to Combat Domestic Violence, Article 10.1.3.

access them. A few victims revealed they had never heard of a restraining order.³³ A victim, whose husband had beaten her and her children for 30 years, stated that although she eventually learned about restraining orders from NCAV, “No police officer, no lawyers told me about this before.”³⁴ Because the victim was unaware of the protections of a restraining order and her husband threatened to kill her if she left, she stayed in the relationship even after the perpetrator broke her forearm, collarbone, and shoulder, and injured her children by cutting and stabbing them.³⁵

A woman described an incident of the long-term, severe violence she endured:

He beat me for seven days. He knocked my head into the wall. Then he took off his belt and was whipping me with it, and he pulled my hair. Then I passed out, but he poured water on my face to wake me up and started beating me again. Then I passed out again, and he took me into the bathroom and put my face into water in the sink. While he was carrying me to the bathroom, he was pulling my hair to force me to stand up and dragging me. I sent the kids to my brother’s house to keep them safe, so it was only my husband and me at the time of the beating. . . . It was impossible to call the police or hospital or my relatives because I was locked in a room, and also I couldn’t move because the beating had been so bad.³⁶

After years of serious violence and threats of murder, the police finally intervened and charged him with a crime. The woman never applied for a restraining order to protect herself through the years of violence, and it is unclear whether she knew this option was available to her.³⁷

Some Mongolian victims may be unaware not only of the availability of restraining orders or even that they are experiencing domestic violence, a violation of their rights which may be a punishable crime.³⁸ As one victim described, “I thought these things were normal. I thought it happened in every family and every couple. There were a lot of times he was slapping and kicking and hurting me, but I thought it was okay.”³⁹ Perpetrators similarly justify their abusive behavior and view it as acceptable.⁴⁰ A husband testified in a divorce hearing, “I have no problems with domestic violence. . . . I have beaten her less than ten times. . . . She was drunk. That was the reason for the last beating.”⁴¹

Victims’ lack of awareness of their rights and the restraining order remedy reflects the broader problem of the public’s lack of knowledge about the existence and nature of domestic violence and how to address it.

Lack of Knowledge, Poor Attitudes, and Insufficient Training of Government Officials

Although the LCDV creates responsibilities for various government actors in connection with restraining orders,⁴² many officials lack the knowledge or commitment to provide domestic violence victims with the protections to which they are legally entitled. Interviewees consistently reiterated the need for training at

³³ Interview with Victim, City A, March 21, 2013, 1400 (“At the time, I didn’t know about the law. I didn’t know what to do or how to protect myself.”). Interview with Victim, City D, January 21, 2013, 1600.

³⁴ Interview with Victim, City B, January 31, 2013, 1530. This victim’s story is described on pages 10, 19, 20, 28, 29 and 53.

³⁵ *Id.* See also Interview with Lawyer, City D, January 28, 2013, 1000 (A client remained in a violent relationship for eight years before seeking a restraining order because the victim did not know who to contact for help with the restraining order).

³⁶ Interview with Victim, City F, March 22, 2013, 1400. This victim’s story is described on pages 5, 10, 29, 44, 49.

³⁷ *Id.*

³⁸ Interview with NGO, City E, March 18, 2013, 1100; Interview with Victim, City B, January 29, 2013, 1500 [This victim’s story is described on pages 10, 16, 18, 20, 51, 54 and 55]; Interview with Victim, City A, March 21, 2013, 1400.

³⁹ Interview with Victim, City B, January 29, 2013, 1500. This victim’s story is described on pages 10, 16, 18, 20, 51, 54 and 55.

⁴⁰ Divorce Hearing, City D, March 29, 2013, 1000.

⁴¹ *Id.*

⁴² Law to Combat Domestic Violence, Article 9.1.2 (Police are required “to explain to victims about their rights and procedures to file a petition requesting a restraining order”), Article 9.1.9 (Police are required “to file a petition requesting [a] restraining order”).

all levels of government on the nature of domestic violence and the provisions in the LCDV, including the provisions on restraining orders.⁴³

One way to address these problems and directly benefit victims is through multi-disciplinary teams. Some local government officials and NGOs have piloted a multidisciplinary team approach.⁴⁴ One bag governor described the successful use of a team approach:

Our bag initiated and established a team, like the multidisciplinary team, but on a voluntary basis. . . . We have about ten members, which include bag inspectors and social workers and some other voluntary community members. . . . We can see the effectiveness of this team when responding to domestic violence cases. There were three cases in which they could help and had quite a good outcome. They also helped two other perpetrators attend alcohol treatment, and now they are doing well. So five families were helped in total.⁴⁵

Despite the initiative displayed by this team approach, some team members do not give meetings a high priority. A child protection worker described the challenges in scheduling regular meetings:

The reason [the multidisciplinary approach has not been successful] is because of frequent changes in the government and frequent rotations of staff in police departments and schools. The team is unstable for this reason, and we have no responsible person in charge of handling the situation. It's more on a basis of social responsibility.⁴⁶

Lack of Knowledge

Throughout the country, lack of knowledge by police officers, social workers, and court personnel⁴⁷ prevents victims from requesting and obtaining restraining orders. As one police officer explained, "In reality, so many people don't know about the provisions on domestic violence. For example the restraining order—I am just hearing about this restraining order for the first time today."⁴⁸ A social worker described how she had attempted to get information about restraining orders from her co-workers, but of the 15 social workers in her office, no one had ever tried to obtain one.⁴⁹ Another social worker

⁴³ Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400; Interview with NGO, City B, February 1, 2013, 900; Interview with School Social Worker, City A, March 21, 2013, 1000; Interview with NGO, City A, March 22, 2013, 1000; Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Social Worker, City D, January 21, 2013, 1000; Interview with Acting Executive Director, Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000; Interview with Police Psychologist, City E, March 18, 2013, 1200.

⁴⁴ Interview with Police 1, City D, March 25, 2013, 1000 (Members of the team are a "school social worker, family doctor, the khoroo governor, police officer. If there's a case, the person who is in charge of the case, they are also involved").

⁴⁵ Interview with Bag Governor, City B, January 30, 2013, 1400.

⁴⁶ Interview with Child Authority Center, City E, March 18, 2013, 1230.

⁴⁷ Interview with Social Worker, City D, January 21, 2013, 1000; Interview with NGO, City E, March 19, 2013, 1100; Interview with Social Worker, City D, January 24, 2013, 1600; Interview with NGO, City F, March 21, 2013, 900; Interview with Police, City G, March 22, 2013, 1500; Interview with Social Worker, City D, March 26, 2013, 1000; Interview with Police 2, City D, March 25, 2013, 1200; Interview with Court Secretary, City E, March 19, 2013, 1730 ("I've never heard about these [restraining] orders from the court. I know from the court we have restraint of parental rights, but not between adults."); Interview with Bag Governor 2, City E, March 19, 2013, 930; Interview with Bag Governor 1, City E, March 19, 2013, 930; Interview with Lawyer, City D, January 23, 2013, 1200.

⁴⁸ Interview with Police 2, City D, March 25, 2013, 1200.

⁴⁹ Interview with Social Worker, City D, January 24, 2013, 1600.

explained, “The barriers [to getting a restraining order] come from the court. The court will say there is no ground for a restraining order and return the victim back to get more evidence.”⁵⁰

The following example illustrates how lack of knowledge by each of the official sectors charged with helping a victim resulted in failure to assist her. An advocate assisted the victim in completing an application for a restraining order, but lack of knowledge by police, social workers, and the judge stymied her efforts:

I helped her with the papers about the law, but when she finished the papers, she sent [them] to the court. The police, social workers, and judge didn’t know what to do. The judge said the police and social worker needed to go to the family and find evidence. And the social worker and police didn’t have training, so they didn’t know how to evaluate the case.⁵¹

A lawyer explained how she tried to overcome a judge’s lack of knowledge in her efforts to obtain a restraining order for her client:

On the court’s side, it has not become a common practice yet for courts to issue restraining orders. So in some cases, we even had to bring the laws to the court to show the judge the provision we were applying under because they did not know of the law. We brought the law physically to the court.⁵²

Some government actors fail to recognize that certain dangerous forms of domestic violence may fall within the scope of the LCDV.⁵³ They overlook acts of stalking and harassment. A judge stated there had been no restraining orders issued based on stalking.⁵⁴ A woman who was threatened and stalked was denied a restraining order. Later, her husband murdered her.⁵⁵ Another woman desired a restraining order because she hoped that the police would respond faster if she had an order instead of regarding it as just a “husband-and-wife problem.”⁵⁶ In the absence of such protection, she described her daily fear of her husband, who continually texted her death threats:

I am afraid almost every day. The day before yesterday, he came to my house and knocked on the door. We locked the door and didn’t answer. Then he called, but we didn’t answer, so he texted saying he was going to make me pick up. Then he thought we were going to call the police, so he ran away. I am always afraid what will happen today or tomorrow. I have a lot of medical problems from emotional stress. I have headaches and have lost weight. I am studying now for a master’s degree as a lawyer, but sometimes I am too afraid to go to school. Even at work, my mind is not here because he is always texting, saying “I am going to kill you and don’t forget that I am still here and I am alive and I’m going to kill you.” I am afraid walking home from work because there is only one way, so I don’t walk at night. I am afraid he will come in the car and put me in it and take me. I am afraid he will kill me.⁵⁷

⁵⁰ Interview with Social Worker, City D, January 21, 2013, 1000.

⁵¹ Interview with NGO, City F, March 21, 2013, 900.

⁵² Interview with Lawyer, City D, January 23, 2013, 1200.

⁵³ Law to Combat Domestic Violence, Article 6.1.

⁵⁴ Interview with Judge, City D, January 29, 2013, 1100.

⁵⁵ Interview with Lawyer, City D, January 30, 2013, 1100. See *also* Interview with Social Worker, City D, January 21, 2013, 1000 (stating she does not believe there are any protections available for stalking).

⁵⁶ Interview with Victim, City F, March 22, 2013, 900. This victim’s story is described on pages 12, 13, 17, 28, 35, 36 and 54.

⁵⁷ *Id.*

The lack of restraining order protection against stalking is exacerbated by an inadequate criminal response to stalking and harassment, as discussed in the section on Barriers to Administrative and Criminal Prosecutions.⁵⁸

Poor Attitudes

In addition to public officials' lack of knowledge, poor attitudes toward domestic violence impede victims' ability to obtain restraining orders.⁵⁹ These attitudes frequently stem from the belief that domestic violence is a private matter to be handled within the family. A victim said that when her husband threatened to kill her, police officers recommended a civil complaint⁶⁰ instead of a restraining order or criminal charges because the husband made the threat inside of the home.⁶¹

Often police and social workers treat domestic violence cases as trivial and less important than other cases. A social worker reported:

The attitudes at the khoroo level need to change, as they think it is a family issue and the parties should just resolve it. Even though the law states that police officers and social workers at the khoroo level have responsibilities to make a report and file an assessment, when I talk to khoroo level workers, they cite their heavy workload. They say they have a lot of cases that are more important or more severe than these domestic violence cases. So they place more focus on those other cases. The same happens with khoroo social workers.⁶²

These poor attitudes can hinder or even cut short a police response. In one case, the police refused a victim's request to assist with a restraining order. The perpetrator had severely injured the victim:

He beat her up with everything he can grab, either a big pipe or wooden sticks or rocks or bricks, whatever he can grab. So she lives in a soum, that's why when it happens, she comes on a horse to get counseling. . . . One time he grabbed a wooden stick 4 feet by 4 inches and beat her up. . . . She became unconscious. When she fell he said, "Just die." He used a lot of weapons, even knives (she had stab wounds and cuts). This required stitches. The doctor even was shocked, asking, "How could you live under these circumstances? How could you survive? If I were you, I would die already." She doesn't have any small places without bruises—she got beaten up everywhere. One time, she had two bones broken in her arm.⁶³

Despite this evidence, the police interviewed the perpetrator for a few days, let him go, and did not take any further action toward obtaining a restraining order. The victim eventually had to move to a new city to escape the perpetrator.⁶⁴

⁵⁸ See Barriers to Administrative and Criminal Prosecutions, page 28.

⁵⁹ See, e.g., Interview with Victim, City F, March 22, 2013, 900 [This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54]; Interview with Social Worker, City D, January 21, 2013, 1000; Interview with NGO, City B, February 1, 2013, 900; Interview with NGO, City E, March 18, 2013, 1100.

⁶⁰ Under the Civil Code, a victim may approach the court to make a personal complaint regarding property issues, child maintenance, property damages, or compensation for injuries. The judge issues a decision on the complaint based on the Civil Procedure Code. If the victim requests a restraining order after filing the complaint, the court can decide on both the civil complaint and restraining order. Email from NGO to Helen Rubenstein (July 16, 2013) (on file with authors).

⁶¹ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54.

⁶² Interview with Social Worker, City D, January 21, 2013, 1000. See also Interview with NGO, City B, February 1, 2013, 900 ("In many cases, the police say they have other serious cases. They are always complaining about the workload and that they have more serious things happening. They say, 'This is just a family issue and solve it on your own, I have more serious crimes.'").

⁶³ Interview with NGO, City E, March 18, 2013, 1100.

⁶⁴ *Id.*

Systems actors are also subjected to peer pressure to avoid assisting with domestic violence cases. An attorney told a social worker that if she pursued a restraining order for a victim, the judge would blame her for causing trouble in the family and she would be responsible if the couple divorced.⁶⁵ An advocate reported similar blame by the police, who said that the advocate and the victim were wrong to seek a restraining order. Although that advocate eventually secured a restraining order with the help of another police officer, the officer's colleagues ostracized him because "men are supposed to protect men."⁶⁶ The treatment of this officer by his peers caused other police officers in the area to be wary of assisting with restraining orders.⁶⁷ Similarly, other advocates reported that khoroo level police and social workers refused to cooperate with gathering evidence for a restraining order because "it is foreign legislation."⁶⁸

Insufficient Training

Lack of systematic, continuous training is a significant contributor to government officials' inadequate knowledge and poor attitudes about domestic violence in general and restraining orders in particular.⁶⁹ The need for training is exacerbated by the high turnover in many government positions. A representative of the Ministry of Population Development and Social Welfare estimated that 90 percent of governors are new to their positions.⁷⁰ A representative of the Commission on Gender Equality noted, "There is a high turnover in government positions. With elections every four years, staff changes. So there is a need for ongoing training and heightened consistency in training."⁷¹

Regular training is needed for social workers,⁷² police,⁷³ judges,⁷⁴ prosecutors,⁷⁵ health care providers,⁷⁶ lawyers,⁷⁷ and local governors.⁷⁸ Judges and prosecutors also requested training for themselves.⁷⁹ As one judge explained, "That kind of training could help us and give us the tools and knowledge to deal with these cases and help the women."⁸⁰

While the Human Rights Commission and NCAV conduct some training sessions for service providers and the general public, inadequate staffing and absence of funding limit the availability of these

⁶⁵ Interview with Social Worker, City D, January 24, 2013, 1600.

⁶⁶ Interview with NGO, City A, March 22, 2013, 1000.

⁶⁷ *Id.*

⁶⁸ Interview with NGO Shelter, City D, January 31, 2013, 900.

⁶⁹ Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400; Interview with NGO, City B, February 1, 2013, 900; Interview with School Social Worker, City A, March 21, 2013, 1000; Interview with NGO, City A, March 22, 2013, 1000.

⁷⁰ Interview with the Ministry of Population Development and Social Welfare, Ulaanbaatar, January 22, 2013, 1430.

⁷¹ Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400.

⁷² Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Social Worker, City D, January 21, 2013, 1000; Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400.

⁷³ Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000; Interview with Police Psychologist, City E, March 18, 2013, 1200; Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Social Worker, City D, January 21, 2013, 1000; Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400.

⁷⁴ Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000; Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400.

⁷⁵ Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000; Interview with Police Psychologist, City E, March 18, 2013, 1200.

⁷⁶ Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400.

⁷⁷ *Id.*

⁷⁸ Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000.

⁷⁹ Interview with Judges, City B, January 28, 2013, 900; Interview with Prosecutor 1, City E, March 18, 2013, 930.

⁸⁰ Interview with Judges, City B, January 28, 2013, 900.

trainings.⁸¹ The Acting Director of the Human Rights Commission explained that with only four staff members in the Education Department, it is unable to reach many of the remote provinces.⁸²

Those who have an opportunity to attend trainings find them useful.⁸³ A social worker explained:

In most cases, those trainings are very useful because they provide addresses of organizations that are offering services to victims and even to the perpetrators. Because we graduated from the university as general practitioner social workers, we don't have any specialized background on specifically how to work with the victims, so that is why these kinds of specialized trainings are useful.⁸⁴

Another social worker reported that training on roles and responsibilities of police and social workers under the LCDV led to an increase in domestic violence referrals. The social worker also noticed an improvement in the attitudes of health care providers toward domestic violence victims, saying that after doctors received training they were less likely to treat domestic violence as a family matter that is inappropriate for intervention.⁸⁵ An advocate who conducts trainings reported that many police officers who attend the training say they are just hearing about the LCDV for the first time and that these trainings are very helpful in improving their knowledge and attitude.⁸⁶

Evidentiary Barriers

Although the LCDV does not require applicants for restraining orders to produce any specific evidence of domestic violence, Mongolia officials impose onerous evidentiary requirements on them.⁸⁷ Generally, victims' own reports of domestic violence are not sufficient. The difficult process of gathering evidence and applying for a restraining order⁸⁸ contributes to the low number of orders that have been issued. Victims may be expected to meet with doctors, social workers, police officers, and lawyers to obtain the necessary documentation.⁸⁹

Additionally, different courts appear to have inconsistent requirements regarding the evidence necessary to obtain a restraining order, leading to confusion and uncertainty. In some cases a risk assessment⁹⁰ is sufficient if the level of threat is high enough. If the threat level is not sufficiently high, the court will require a forensic medical examination.⁹¹ Other courts require a police report and a medical report or a multidisciplinary team assessment.⁹²

⁸¹ Interview with Commission on Gender Equality, Ulaanbaatar, January 21, 2013, 1400; Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000.

⁸² Interview with Human Rights Commission, Ulaanbaatar, January 22, 2013, 1000.

⁸³ Interview with Social Worker, City D, January 24, 2013, 1600; Interview with Social Worker, City D, January 21, 2013, 1000.

⁸⁴ Interview with Social Worker, City D, January 24, 2013, 1600.

⁸⁵ Interview with Social Worker, City D, January 21, 2013, 1000.

⁸⁶ Interview with NGO, City B, February 1, 2013, 900.

⁸⁷ Interview with Lawyer, City D, January 23, 2013, 1200; Interview with Judge, City C, March 18, 2013, 1400; Interview with NGO, City F, March 21, 2013, 900.

⁸⁸ Interview with Nurse, City D, January 21, 2013, 1000; Interview with NGO, City D, February 1, 2013, 1000.

⁸⁹ Interview with Lawyer, City D, January 23, 2013, 1200. See also Interview with Psychologist, City D, March 26, 2013, 1130; Interview with Lawyer, City D, January 28, 2013, 1000.

⁹⁰ See description of risk assessment form at footnote 28.

⁹¹ Interview with Psychologist, City D, March 26, 2013, 1130.

⁹² Interview with Lawyer, City D, January 28, 2013, 1000; Email from NGO to Helen Rubenstein (July 13, 2013) (on file with authors). Although there is no law requiring a medical examination for a restraining order, some courts require it. When a police or social worker applies for a restraining order on behalf of a victim, court practice is not to require a medical examination.

Some victims, especially those in rural areas, face insurmountable barriers to gathering the necessary evidence.⁹³ An attorney explained:

[T]hey have to come to the provincial capital to seek a restraining order. To come to seek the order, it is maybe 200 kilometers, and sometimes this involves multiple visits. Then she also needs some kind of help to come here [to Legal Services], but if the police department does not provide this help, then she has to seek another person. Or she could seek an advocate's help, but most of them are located [at the aimag⁹⁴ center] and not at the soum level.⁹⁵

Risk Assessments

Although the LCDV does not explicitly require victims to provide a risk assessment to obtain a restraining order, many courts require this evidence. The LCDV does, however, charge police and social workers to work together to conduct risk assessments.⁹⁶ It is difficult for a victim to obtain an adequate risk assessment if officials do not cooperate with each other.⁹⁷ As noted above, some police and social workers give low priority to domestic violence cases,⁹⁸ causing dangerous delays when a victim requests a risk assessment to be able to apply for a restraining order.

Forensic Evidence

Even though not required by law, many Mongolian courts require a forensic medical examination before issuing a restraining order.⁹⁹ In practice, victims must visit a forensic doctor because documentation of injuries must be conducted by an expert to be admissible in court.¹⁰⁰ Victims may also be unable to gather physical evidence for a restraining order if they have no obvious injuries, such as cases where the perpetrator has threatened to kill the victim or her bruises have faded.¹⁰¹ A victim said that she regretted not having gone to the forensic doctor while her bruises were fresh because lack of forensic certification made it more difficult to take action against the perpetrator.¹⁰² In another case, a victim of domestic violence needed documentation of her bruises and severe head injuries that caused her to lose consciousness. She had to travel to the forensic hospital several times because the doctor was always too busy to see her.¹⁰³

Where they exist, One Stop Service Centers¹⁰⁴ can facilitate the forensic process by providing victims with referrals to forensic doctors. Although the One Stop Service Center in Ulaanbaatar is supposed to

⁹³ Interview with Judge, City C, March 18, 2013, 1400; Interview with NGO, City F, March 21, 2013, 900.

⁹⁴ An aimag is a province in Mongolia. There are 21 provinces, or aimags, in Mongolia. See Tumen, Dashtseveg, "Linguistic, Cultural and Morphological Characteristics of Mongolian Populations," *Senri Ethnological Studies* 66: 309–324 (2004), available at http://ir.minpaku.ac.jp/dspace/bitstream/10502/1052/1/SES66_023.pdf.

⁹⁵ Interview with Legal Affairs Division, City G, March 21, 2013, 1000.

⁹⁶ Article 10.1.1.

⁹⁷ The Law to Combat Domestic Violence charges social workers to conduct risk assessments in collaboration with police officer. See Article 10.1.1.

⁹⁸ See Lack of Knowledge, Poor Attitudes, and Insufficient Training of Government Officials, page 10.

⁹⁹ Email from NGO to Helen Rubenstein (July 13, 2013) (on file with authors).

¹⁰⁰ Interview with Lawyer, City D, January 23, 2013, 1200; Email from NGO to Helen Rubenstein (July 13, 2013) (on file with authors).

¹⁰¹ Interview with Lawyer, City D, January 23, 2013, 1200; Interview with Psychologist, City D, March 26, 2013, 1130.

¹⁰² Interview with Victim, City B, January 29, 2013, 1500. This victim's story is described on pages 10, 16, 18, 20, 51, 54 and 55.

¹⁰³ Interview with Nurse, City D, January 21, 2013, 1000.

¹⁰⁴ One Stop Service Centers are located in a hospital and are open 24 hours a day. They are staffed by a nurse and a social worker. Interview with Nurse, City -, January 21, 2012.

make this documentation process easier for victims, the center is not fully staffed, and staff expressed a desire for an on-site forensic doctor.¹⁰⁵

Factors such as distance, cost, and operational hours pose additional barriers for victims seeking forensic documentation.¹⁰⁶ Rural women in particular may have to travel long distances, and the cost of transportation may be beyond their means.¹⁰⁷ They may have to walk or use public transportation, which itself may put them at risk for further harm.¹⁰⁸ Even if there is a local forensic doctor, women may travel to a doctor in another city to protect their privacy.¹⁰⁹

In addition to the costs a victim may incur in traveling to the doctor, she will also have to pay 5,000 tugriks (approximately a day's pay)¹¹⁰ for the forensic evaluation.¹¹¹ A prosecutor suggested the victim could take pictures herself and get witness corroboration for the trial, but admitted that a forensic certificate is generally needed.¹¹² For further discussion on the barriers to forensic certificates, see *Barriers to Administrative and Criminal Prosecutions* at 28.

Lack of Legal Assistance

Legal assistance is essential for victims who are attempting to navigate the evidentiary requirements for a restraining order. Advocates could not recall any cases where a victim successfully obtained an order by herself and said that it would be very difficult to do so without legal assistance.¹¹³

A victim who is currently studying for a law degree explained, "Even someone like me who knows the law doesn't know what to do."¹¹⁴ Yet in many areas of the country, access to legal services is limited or non-existent.¹¹⁵ This is especially true in rural areas, as interviews revealed a lack of legal services at the soum level.¹¹⁶ Although some NGOs like NCAV strive to provide legal assistance in many provinces of Mongolia, lack of government funding limits their ability to meet domestic violence victims' need for legal services.¹¹⁷ An attorney explained, "There are no legal aid services or NCAV there [in the soum]. There is

¹⁰⁵ Interview with Social Worker, City D, January 21, 2013, 1000; Interview with Nurse, City D, January 21, 2013, 1000 (They also need an on-site psychologist and lawyer).

¹⁰⁶ Some interviewees expressed concern about the quality of their evaluation. Forensic doctors do not have a standard form to document domestic violence injuries; one doctor explained they start with a "blank form." Interview with Forensic Doctor, City A, March 22, 2013, 1130. In addition, the evaluation may not accurately reflect the true level of injury. A victim described how her ex-husband, his sister, and his sister-in-law were beating her up together, two at a time. The forensic doctor initially concluded that she had severe head injuries and high-level pressure in her head; later, the doctor changed the assessment to light injury and said the problem was not severe. Interview with Victim, City E, March 19, 2013, 1530.

¹⁰⁷ Interview with Social Workers, City D, March 27, 2013, 1400.

¹⁰⁸ Interview with Nurse, City D, January 21, 2013, 1000.

¹⁰⁹ Interview with NGO, City A, March 22, 2013, 1000.

¹¹⁰ The legal minimum wage is 140,400 tugrik (approximately 100 USD) per month. U.S. Dep't of State, 2012 Human Rights Report: Mongolia (Apr. 19, 2013), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204222>.

¹¹¹ Interview with Forensic Doctor, City A, March 22, 2013, 1130 (explaining that the fee can be waived if the governor verifies that the victim has no income).

¹¹² Interview with Prosecutor, City G, March 21, 2013, 1430. See also Interview with soum Judge 2, City D, March 28, 2013, 1000 (explaining that victims who cannot afford to go to the forensic doctor must take pictures themselves).

¹¹³ Interview with Lawyer, City D, January 24, 2013, 1000; Interview with Lawyer, City D, January 23, 2013, 1200. See also Interview with Lawyer, City D, January 24, 2013, 1000.

¹¹⁴ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54.

¹¹⁵ Interview with Social Worker, City D, January 21, 2013, 1000.

¹¹⁶ *Id.*; Interview with Prosecutor, City A, March 21, 2013, 1700; Interview with Legal Affairs Division, City G, March 21, 2013, 1000;

Interview with Lawyer, City C, March 18, 2013, 900.

¹¹⁷ See *Victim Services*, page 55.

no service to go out to the rural areas.”¹¹⁸ An attorney from a rural province reported that most of her clients do not have transportation so they walk or hitchhike to their appointments, with one client traveling over seven hours to reach the lawyer’s office.¹¹⁹

Economic Security Concerns

Financial dependence on perpetrators prevents many victims from seeking restraining orders or causes them to withdraw their petitions.¹²⁰ Throughout Mongolia, many victims are unemployed and rely entirely on the perpetrator for support.¹²¹ As a social welfare officer explained, “I think unemployment is a big issue in Mongolia. This creates economic dependence on the husbands. This puts women in a vulnerable place.”¹²² The financial impediment is especially difficult for women with children or those who do not have relatives to support them.¹²³ A victim told a social worker that without savings or the education to find employment, she could not separate from her husband because, even though it would be best for her, she could not support her children.¹²⁴

In addition to a lack of financial independence, fees associated with obtaining a restraining order discourage victims. A fee of 250 tugriks (0.15 USD) was reported for court application forms¹²⁵ and 2,000 tugriks (1.19 USD) per page for copies of police records.¹²⁶ Once the restraining order is issued, there is also a fee of about 50,000 tugriks (30 USD), or approximately 10 days’ wages, to the Court Order Implementing Agency to execute the restraining order for expenses, such as fuel for the agency’s vehicles.¹²⁷

The financial obstacles a victim faces when she considers seeking a restraining order and separating from the perpetrator led several interviewees to suggest the need for economic assistance programs for victims who lack an independent source of income.¹²⁸ Although Mongolia provides economic subsidies for certain groups, no specific economic assistance programs exist for domestic violence victims.¹²⁹ A victim explained that her financial dependence on her husband prevented her from leaving, so a program to help her find work or provide an economic subsidy would help.¹³⁰

¹¹⁸ Interview with Lawyer, City C, March 18, 2013, 900.

¹¹⁹ *Id.* See also Interview with Judge, City F, March 22, 2013, 1100 (describing how a woman hitchhiked to a court over 200 kilometers away after police repeatedly ignored her calls for help when her husband beat her in the face and head).

¹²⁰ Interview with Social Worker, City D, January 23, 2013, 1000; Interview with Lawyer, City D, January 24, 2013, 1000; Interview with Social Workers, City B, January 30, 2013, 1000; Interview with NGO, City B, February 1, 2013, 900 (describing six or seven such cases).

¹²¹ Interview with Social Workers, City B, January 30, 2013, 1000.

¹²² Interview with Social Welfare Office, City D, January 24, 2013, 1400. See also Interview with Social Workers, City B, January 30, 2013, 1000.

¹²³ Interview with Social Worker, City D, January 23, 2013, 1000; Interview with Lawyer, City D, January 24, 2013, 1000. See also Interview with Victim, City D, March 25, 2013, 1430 (“I don’t have parents. My parents died when I was young. All of my relatives, like my siblings, live separately or in the countryside, so I had no one to protect me. Since I was unemployed, I didn’t have any way to make money and was living off his salary. That is why I had to be his slave.”).

¹²⁴ Interview with Social Workers, City B, January 30, 2013, 1000.

¹²⁵ Interview with Lawyer, City D, January 23, 2013, 1200.

¹²⁶ Interview with Lawyer, City D, January 28, 2013, 1000. The minimum wage in Mongolia is less than 5,000 tugriks (3 USD) per day. See footnote 111.

¹²⁷ Interview with Lawyer, City D, January 28, 2013, 1000. See Poor Implementation of Restraining Orders for a discussion of the role of the Court Order Implementing Agency, page 22.

¹²⁸ Interview with Victim, City B, January 29, 2013, 1500. This victim’s story is described on pages 10, 16, 18, 20, 51, 54 and 55; Interview with Social Worker, City D, January 24, 2013, 1600.

¹²⁹ Interview with Social Welfare Office, City D, January 24, 2013, 1400 (stating that, for example, social welfare payments are available for the disabled, those receiving a pension, and the unemployed).

¹³⁰ Interview with Victim, City B, January 29, 2013, 1500. This victim’s story is described on pages 10, 16, 18, 20, 51, 54 and 55.

Confidentiality Concerns

Concerns about confidentiality sometimes discourage victims from seeking the assistance that could lead to obtaining restraining orders. They fear that if the domestic violence becomes publicly known, their safety will be at additional risk and their reputations will suffer.¹³¹

An attorney who provides free legal assistance described how victims are reluctant to seek legal advice during her yearly visits to rural soums because they do not want to be seen coming or going from the lawyer's office.¹³² The same was said about victims traveling to or from the police station.¹³³ If a victim's husband heard she was visiting these places, her safety could be in jeopardy. A victim explained:

I need a person who I can trust and talk with privately in a secure place. I need to make sure she won't talk after that room. That could be a social worker or NCAV, someone to talk privately with me.¹³⁴

Many service providers do not have private space to meet with victims.¹³⁵ A police psychologist reported that he had recently received a private room through a grant from an NGO,¹³⁶ an exception to the norm. An advocate recounted one victim's experience going to a social worker:

There are long lines. Clients are crying. . . . There is no private room, no confidentiality. A social worker [over]heard the case story, and when the woman left, the social worker shared the story all around the khoroo. The woman's risk increased, but she was unable to access a restraining order because the social worker rejected her request to fill out the forms. Now, the victim can never go back to that khoroo. . . . Because of the loss of confidentiality, she lost trust. Now she doesn't want to talk to anyone.¹³⁷

A social worker reported that when her khoroo office changed from private meeting rooms to an open "window service" format, the number of domestic violence victims she saw decreased by nearly 75 percent.¹³⁸ The authors of this report observed the layout of the window service, consisting of one large room where the social workers and clients talk through a row of open windows. The window row format provides no privacy, forcing victims to sit next to other clients who can overhear their stories.¹³⁹

A bag governor described how people walking in and out of the room frequently interrupt his discussions with victims, making it very difficult to conduct interviews.¹⁴⁰ Most governors and many police interviewed

¹³¹ Interview with Lawyer, City C, March 18, 2013, 900; Interview with Prosecutor, City C, March 19, 2013, 1400; Interview with Victim, City C, March 19, 2013, 1600; Interview with NGO, City A, March 22, 2013, 1000; Interview with NGO Shelter Workers, City D, January 31, 2013, 900; Interview with Victim, City D, March 25, 2013, 1430.

¹³² Interview with Lawyer, City C, March 18, 2013, 900.

¹³³ Interview with NGO, City A, March 22, 2013, 1000.

¹³⁴ Interview with Victim, City C, March 19, 2013, 1600. See also Interview with Victim, City B, January 31, 2013, 1530 ("There is no room and no privacy. That is why I get very ashamed to talk about this problem in front of other people.") [This victim's story is described on pages 10, 19, 20, 28, 29 and 53].

¹³⁵ Interview with Police Psychologist, City E, March 18, 2013, 1200; Interview with Social Worker, City D, January 24, 2013, 1600; Interview with Bag Governor 2, City E, March 19, 2013, 930; Interview with Public Affairs Officer, City G, March 21, 2013, 1530; Interview with Social Worker, City D, March 27, 2013, 1200.

¹³⁶ Interview with Police Psychologist, City E, March 18, 2013, 1200.

¹³⁷ Interview with NGO Shelter Workers, City D, January 31, 2013, 900.

¹³⁸ Interview with Social Worker, City D, January 24, 2013, 1600.

¹³⁹ *Id.*

¹⁴⁰ Interview with Bag Governor 2, City E, March 19, 2013, 930.

for this report share office space, and the authors experienced common interruptions in these offices as other staff came and left or held simultaneous meetings.¹⁴¹

Concerns about mandatory reporting requirements¹⁴² may also discourage victims from seeking assistance from doctors, social workers, and other service providers. Many interviewees favored maintaining or expanding obligations to report domestic violence because of concerns that victims may otherwise have no access to assistance.¹⁴³ Mandatory reporting, however, may increase the danger to victims if perpetrators become more violent when they learn that the victim has discussed the violence.¹⁴⁴ As one doctor explained, fear that doctors will report the violence to the police may keep women from seeking medical treatment for their injuries.¹⁴⁵

The LCDV mandates that doctors and public school and kindergarten teachers report domestic violence and potential violence to the police and local authorities.¹⁴⁶ Other service providers also report violence to the police without a legal mandate.¹⁴⁷ Mandatory reporting or any reporting of violence to police by service providers without a victim's consent can lead to greater risk to the victim and discourage victims from seeking necessary services.¹⁴⁸ For example, a victim reported that her husband threatened to kill her and her children after learning she had met with a social worker and the social worker had contacted the police.¹⁴⁹

Fear of Seeking Restraining Orders

Fear that seeking a restraining order will only lead to greater violence discourages some victims from seeking this protection.¹⁵⁰ A social worker stated, "The restraining order has no guarantee about further violence. Even if it is written, there is no guarantee that the perpetrator will not go and see the victim, beat her, and commit more violence."¹⁵¹ Another social worker recalled a woman's fear that the police would not adequately enforce protection:

¹⁴¹ Interview with Bag Social Workers, City B, January 31, 2013, 1400 (describing how social workers share an "office with a big team, and many people come and go, so there's no privacy").

¹⁴² Law to Combat Domestic Violence, Article 13.

¹⁴³ Interview with Ministry of Justice, Ulaanbaatar, January 31, 2013, 1400; Interview with Ministry of Justice, Ulaanbaatar, January 29, 2013, 1400; Interview with Lawyer, City D, January 24, 2013, 1000; Interview with Judge, City D, January 30, 2013, 1600; Interview with Social Workers, City B, January 30, 2013, 1000; Interview with School Social Worker, City B, January 29, 2013, 1045.

¹⁴⁴ *Documentation and Reporting*, THE ADVOCATES FOR HUMAN RIGHTS (February 1, 2006), http://stopvaw.org/Documentation_and_Reporting.html.

¹⁴⁵ Interview with Doctor Social Worker, City C, March 18, 2013, 1600.

¹⁴⁶ Article 13.1.

¹⁴⁷ Interview with Doctor, City G, March 21, 2013, 1630; Interview with School Social Worker, City B, January 29, 2013, 1045; Interview with Child Authority Center, City E, March 18, 2013, 1230. Some of these interviewees work with children who are experiencing physical abuse, in which case mandatory reporting is recommended for this vulnerable population.

¹⁴⁸ Mandatory reporting is advised, however, in cases of violence involving vulnerable populations such as individuals with intellectual disabilities and children.

¹⁴⁹ Interview with School Social Worker, City B, January 29, 1045. See also Interview with Victim, City B, January 29, 2013, 1500 [This victim's story is described on pages 10, 16, 18, 20, 51, 54 and 55]; Interview with Victim, City B, January 31, 2013, 1530 (describing victims who reported that perpetrators said they would kill them if anyone found out about the violence) [This victim's story is described on pages 10, 19, 20, 28, 29 and 53].

¹⁵⁰ Interview with Advocate, City B, January 28, 2013, 1400 (describing a victim whose husband threatened her and was initially interested in a restraining order until she learned that the court would order her husband to leave the house. At that point, she became too afraid to apply because she thought the perpetrator might become more violent if he learned of the court order and would hurt her once the restraining order was issued.); Interview with Legal Affairs Division, City G, March 21, 2013, 1000 (describing a victim who was afraid that if a restraining order was granted, "her husband would act severely and she was afraid for her future"); See also Interview with Lawyer, City D, January 23, 2013, 1200 (stating that the potential for escalated violence as result of applying for a restraining order can render a victim's situation more challenging).

¹⁵¹ Interview with Social Workers, City D, March 27, 2013, 1400.

There was one case with some obvious evidence that the victim had physical and psychological violence, and when I did an assessment, I also found some evidence of sexual violence and marital rape. In that particular case, the victim had a fractured leg. She also had scars on her arms from previous violence. The victim was crying during the interview and seemed very stressed and had difficulty remembering and expressed a lot of fear. . . . She did not get a restraining order even though we had given her the information—the victim had decided not to apply because she was afraid of her husband. The Law to Combat Domestic Violence says the khoroo police officer has to be involved to file a petition, and the khoroo police officers do not often get involved in those cases. So, she was afraid to apply by herself and afraid that she would not get help from police.¹⁵²

The risk to a woman who applies for a restraining order increases when courts delay a hearing. Despite the LCDV's requirement that restraining orders be issued within 24 hours,¹⁵³ an attorney reported that even emergency cases often have to wait five to seven days for a hearing.¹⁵⁴

Even advocates seeking to protect victims question the risk in obtaining a restraining order. An advocate was concerned that the perpetrator might injure the victim after a restraining order was issued, saying, "I did an analysis before even talking about the restraining order, because if we evict him and the police do not protect the victim's safety, I was worried that he would kill her after he is evicted."¹⁵⁵ Such fears are justified, as several interviewees reported that perpetrators have injured victims during or after applying for a restraining order.¹⁵⁶

Fear of violence during the restraining order process contributes to the high proportion of victims who withdraw their complaints. An advocate knew of six or seven women who had begun the process for a restraining order, but all withdrew their applications because they feared that continuing would make their situations worse.¹⁵⁷ A social worker discussed a case where a victim had filed a restraining order petition with the court:

I learned that the perpetrator threatened her and beat her into withdrawing the application from the court. . . . The victim was saying that she received continuous physical violence, kicking, pinching, and beating. The perpetrator even threw knives directly at her and threatened to kill the victim with a big knife.¹⁵⁸

This type of violence sometimes occurs even when court staff or advocates are present. An attorney recounted how a perpetrator tried to hit the victim during a meeting in the judge's office. That perpetrator later came to the advocate's office, threatening to kill both the advocate and the victim, but the police were still reluctant to provide any kind of security or enforcement.¹⁵⁹

¹⁵² Interview with Social Worker, City D, January 21, 2013, 1000.

¹⁵³ Article 17.2.

¹⁵⁴ Interview with Lawyer, City D, January 23, 2013, 1200.

¹⁵⁵ Interview with NGO, City E, March 18, 2013, 1100.

¹⁵⁶ Interview with Lawyer, City D, January 28, 2013, 1000; Interview with Social Worker, City D, January 21, 2013, 1000. *See also* Lack of Consequences for Violations of Restraining Orders, page 25.

¹⁵⁷ Interview with NGO, City B, February 1, 2013, 900.

¹⁵⁸ Interview with School Social Worker, City B, January 29, 1045.

¹⁵⁹ Interview with Lawyer, City D, January 28, 2013, 1000.

LACK OF IMPLEMENTATION, MONITORING, AND ENFORCEMENT OF RESTRAINING ORDERS

Even for victims who overcome the many obstacles to obtain a restraining order, the order may not provide the protection that it appears to promise. Although the LCDV directs courts to issue the restraining order¹⁶⁰ and sets forth the restrictions that the court can order,¹⁶¹ the law does not require any entity to implement, monitor, or enforce the order. As the Acting Executive Director of the National Human Rights Commission of Mongolia explained:

Even though victims can get restraining orders, it is missing who will monitor and enforce the restraining orders after. . . . I have heard from many women who have gotten restraining orders that it has not been effective because of the enforcement problems. They say “the court order is just on paper” and doesn’t affect their lives or help them get protection from the perpetrator.¹⁶²

Others echoed this sentiment, saying that the order does not provide protection in practice¹⁶³ and that the restraining orders are futile.¹⁶⁴ A social worker explained:

There was one time I was more interested personally to learn more about the restraining order and what steps we need to take to obtain it. I met one social worker who was saying that it was almost useless. That was the response I got. . . . I met one lawyer and I was asking how we obtain it. That lawyer said, “It’s useless. Don’t waste your time because it’s not effective.”¹⁶⁵

Poor Implementation of Restraining Orders

The failure of the restraining order to protect victims begins with the lack of implementation—the government’s failure to inform the perpetrator that the order has been issued and to execute the order’s remedies. Implementation requires serving the order on the perpetrator and, if eviction is a term of the order, removing him from the home. Yet, several victims reported that perpetrators were never informed of the restraining order or evicted from the residence.¹⁶⁶ The Acting Director for the Human Rights Commission recounted, “I have never seen that situation where someone went to the home and made the person leave.”¹⁶⁷

In one case, the perpetrator was given the restraining order, but the eviction was never implemented. The violence was severe, and the victim’s broken bones took one year to heal. The woman recalled:

Then my husband got angry and started hitting me in the head. When he hit me with his hand, it was so hard, strong like a man’s hand. He hit me three or four times in the same place and made it swollen and even my skull hurt. My arms and legs were covered in thick bruises. He only used his hands. He also kicked me in my lower back so many times. I had

¹⁶⁰ Article 17.

¹⁶¹ Article 16.

¹⁶² Interview with National Human Rights Commission of Mongolia, Ulaanbaatar, January 22, 2013, 1000; Interview with Nurse, City D, January 21, 2013, 1000.

¹⁶³ Interview with Lawyer, City D, January 23, 2013, 1200; Interview with Social Worker, City D, January 24, 2013, 1600; Interview with Advocate, City B, January 28, 2013, 1400; Interview with Lawyer, City F, March 21, 2013, 1800.

¹⁶⁴ Interview with Lawyer, City D, January 23, 2013, 1200; Interview with Lawyer, City D, January 24, 2013, 1000; Interview with Lawyer, City D, January 28, 2013, 1000; Interview with Judge, City G, March 22, 2013, 1100.

¹⁶⁵ Interview with Social Worker, City D, January 24, 2013, 1600.

¹⁶⁶ See, e.g., Interview with Victim, City D, March 25, 2013, 1430; see also Interview with District Judge, City G, March 22, 2013, 1100 (The violator tries to find the victim “again and again” and returns to the home).

¹⁶⁷ Interview with National Human Rights Commission of Mongolia, Ulaanbaatar, January 22, 2013, 1000.

so much pain but never went to the forensic doctor, just the normal doctor to check it out. This would happen at least once every two or three weeks. . . . Our house is located within a hasha (fence), and one time my mother-in-law was saying so many bad things about me that eventually it made my husband get angry and kick me out of the ger.¹⁶⁸ I had to spend the night in the little toilet because it was too cold outside. That was the worst experience. I never called the police because of my child. I never went to the doctor or hospital because of my reputation, so I just hid my injuries.¹⁶⁹

After she obtained the restraining order, the victim said, “My husband never left the house. There is a law that within three days of the restraining order that the perpetrator has to move out and clean the house and make it ready for the victim, but he just never did it.”¹⁷⁰

Because the COIA is charged with implementing all civil and criminal court decisions,¹⁷¹ it is the logical entity to implement domestic abuse restraining orders. However, neither the LCDV nor the Court Order Implementing Act directs the COIA to do so.¹⁷² Accordingly, the director of the COIA stated that the law should be clarified by adding a provision requiring the agency to give notice of the restraining order to the perpetrator.¹⁷³

Because of the lack of clear direction under the law, most COIA officers have never handled a restraining order. The director of the agency stated that he has never seen a domestic violence order in his office.¹⁷⁴ Another COIA official stated that he has “executed many cases, but none relating to restraining orders.”¹⁷⁵ He stated, “I am not familiar with the related law and with restraining orders themselves.”¹⁷⁶

Without clear guidance in the law regarding responsibility for implementation, some courts and branches of the COIA require victims to bear the burden of implementation.¹⁷⁷ An attorney reported:

Sometimes [the court] even gives the victim a copy of the order and tells the victim to go to the Court Order Implementing Agency to get it enforced. . . . It should come directly from the court, but because they considered it a civil case, they told the victim to ask for enforcement herself.¹⁷⁸

¹⁶⁸ A ger is the traditional dwelling of nomads in Mongolia. *A House to Go*, THE MONGOLIAN YURT (2011), <http://www.mongolyurt.com/>.

¹⁶⁹ Interview with Victim, City D, March 25, 2013, 1430. Gers are round, with a hole in the center for ventilation. They are made of a wooden lattice covered with wool felt, and can be taken down and moved quite easily. “What is a Ger?” About.com Asian History, <http://asianhistory.about.com/od/glossaryfj/g/GlosGer.htm>.

¹⁷⁰ Interview with Victim, City D, March 25, 2013, 1430. See also Interview with Lawyer, City D, January 23, 2013, 1200 (“They give the perpetrator the order, the perpetrator goes back home, and then instead the victim goes to the shelter”).

¹⁷¹ Interview with Court Order Implementing Agency, City D, January 28, 2013, 1600.

¹⁷² Interview with State Court Judge, City D, January 30, 2013, 1400 (“The court decision implementation agency should be in charge of enforcing orders but the implementing agency is not currently charged with enforcement. There should be a separate chapter in the implementation law. Then they will start enforcing.”).

¹⁷³ Interview with Court Order Implementing Agency, City D, January 28, 2013, 1600. See also Interview with State Court Judge, City D, January 30, 2013, 1400 (responding to whether police or the Court Order Implementation Agency is the best entity for enforcement authority: “The court implementing agency. But there should be an additional role for police when repeated violations result in a crime. That should be put in law.”); Interview with Family and Child Development Center, City B, January 30, 2013, 900 (“There is a court order implementation agency here that should do this. I think we need to increase their roles and responsibilities in terms of implementation of court orders.”).

¹⁷⁴ Interview with Court Order Implementing Agency, City D, January 28, 2013, 1600.

¹⁷⁵ Interview with Court Order Implementing Agency, City G, March 22, 2013, 1200.

¹⁷⁶ *Id.*

¹⁷⁷ Some victims simply take on implementation of the order themselves. See Interview with Lawyer, City D, January 23, 2013, 1200 (“The implementation is the key – there were many conditions in the order that were never fulfilled. He was supposed to pay her some money and never did. That created some problems because the victim was trying to get the money herself by showing the perpetrator the order.”).

¹⁷⁸ Interview with Lawyer, City D, January 23, 2013, 1200.

Victims are sometimes asked to pay fees for implementation, such as 50,000 tugrik (30 USD, approximately 10 days' wages), to cover the costs of the COIA officer implementing an eviction.¹⁷⁹

It appears that the only time the COIA implements restraining orders is when an official of the agency takes personal responsibility to carry out the order. In an example that could serve as a model for future implementation, a COIA officer described the initiatives she took to keep a woman and her child safe after a court issued a restraining order prohibiting access to the victim. She researched places where the woman could relocate temporarily. The officer also reached out to the police to inform them about the restraining order, after which they requested the husband to come to the station to sign a guarantee that he would not harm the COIA official, his wife, or child. When the husband violated the order, the COIA officer called the police, who told the perpetrator they would detain him.¹⁸⁰

Some police officers also take the initiative to implement restraining orders.¹⁸¹ A victim described her husband's response when a police officer participated in notifying him of the restraining order:

He was shocked and scared and his body was shaking. A police officer and social worker told him. When my mother-in-law and husband were both in the house, they arrived and they delivered [the restraining order] to both people. When they showed them the order, they made sure they understood the restrictions about the three months.¹⁸²

Inadequate Monitoring of Restraining Orders

Like the legal vacuum surrounding implementation of restraining orders, the law establishes no responsibility or authority for monitoring compliance with the orders. As an attorney explained, "In some cases, the court implementing officer comes to the house and requests the perpetrator to leave, but nothing happens after that. No one monitors if the perpetrator comes back home. It is only symbolic."¹⁸³ While affirmative tracking of every perpetrator's compliance with every restraining order may be impractical, government officials should, at a minimum, be aware of the order and have procedures to enforce it. Perpetrators should know that they will suffer consequences if they violate an order.

One of the most important components of monitoring is clear coordination and information sharing among all relevant agencies once a restraining order has been issued. Currently, police officers are frequently unaware that a restraining order has been issued in their jurisdiction.¹⁸⁴ An officer explained, "To my knowledge, we have never received a copy of the court order. We just learn about it through the victim."¹⁸⁵ If police are unaware of the court order, they cannot monitor its compliance or take action if it is violated. Some governors ask perpetrators to check in with them,¹⁸⁶ but this effort is similarly limited if the governors are not informed when a restraining order is issued. One bag governor, for example, did not

¹⁷⁹ Interview with Lawyer, City D, January 28, 2013, 1000.

¹⁸⁰ Interview with Court Order Implementing Agency 2, City D, March 27, 2013, 1000.

¹⁸¹ A representative of the COIA reported that the government is currently in the process of creating a marshals division to handle restraining order cases and other matters to protect the rights and safety of victims and judges. Under this system, judges will issue the orders and the marshals division will implement them. Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000.

¹⁸² Interview with Victim, City D, March 25, 2013, 1430.

¹⁸³ Interview with Lawyer, City D, January 23, 2013, 1200.

¹⁸⁴ Interview with Child Police Officer, City F, March 21, 2013, 1230.

¹⁸⁵ Interview with Khoroo Police Officer, City D, January 23, 2013, 1500.

¹⁸⁶ Interview with Bag Governor, City B, January 30, 2013, 1400.

know if anyone in his jurisdiction had been prosecuted for domestic violence or whether any victims had tried to get restraining orders.¹⁸⁷

Use of electronic monitoring devices is currently being considered as a monitoring technique in Mongolia.¹⁸⁸ Such technology can provide victims with greater safety and improve the likelihood that perpetrators will comply with orders, provided that it is used as part of a larger community response. Effective implementation of an electronic monitoring strategy requires careful attention to several factors. It is most important to ensure that electronic devices are adequately monitored and that police respond quickly when the alarm is activated. A timely response may be particularly difficult in rural areas where police have to travel great distances.¹⁸⁹ Unless a timely response can be ensured, use of electronic monitoring devices will only give victims a false sense of security and increase their risk of harm.

Lack of Consequences for Restraining Order Violations

The LCDV fails to explicitly state the consequences for violating a restraining order. It also fails to designate an entity responsible for imposing sanctions if a perpetrator violates the terms of the restraining order. Without appropriate enforcement, perpetrators are free to violate restraining orders with impunity.

The LCDV states that violations are “subject to liability stipulated in legislation,”¹⁹⁰ but it does not identify the applicable legislation. Nevertheless, Criminal Code Article 258, which makes it a crime to fail to obey a court order,¹⁹¹ offers a viable legal response to violations of restraining orders. However, there is a lack of consensus as to whether Article 258 applies to restraining orders. Some interviewees acknowledged that Article 258 applies to violations of restraining orders,¹⁹² while others claimed that there is no legal basis for taking action in the case of a restraining order violation.¹⁹³

Despite recognition by some law enforcement personnel of the applicability of Article 258,¹⁹⁴ the authors heard of no case in which a perpetrator who violated a restraining order was charged under that provision. Nonetheless, a COIA officer described how she would handle a restraining order violation by apparently relying on Article 258:

The law says already that if a person disobeys the order of the court then he will be arrested. We have to report it to the police department and then they will make the arrest. . . . [I]t is up to the police whether they are going to make an arrest or not. . . . In our law, the Court Order Implementation Agency doesn't have a right to detain him. In order not to lose him again, we

¹⁸⁷ Interview with Bag Governor 2, City E, March 19, 2013, 930.

¹⁸⁸ Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000.

¹⁸⁹ Interview with Ministry of Justice, Ulaanbaatar, January 31, 2013, 1400 (Electronic monitoring devices are only efficient in urban areas, not rural areas).

¹⁹⁰ Article 19.1 of the Law to Combat Domestic Violence only states: “Person violating the Law against domestic violence shall be subject to liability stipulated in legislation considering nature of social harm, action or inaction, state of offence and extent of damages.”

¹⁹¹ Article 258.1 of the Criminal Code:

Intentional disobedience or prevention of execution of a sentencing judgment, court decision, ruling or a judge's ruling that has become final shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labor, incarceration for a term or 1 to 3 months or imprisonment for a term of up to 2 years.

¹⁹² Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000; *see generally* Interview with Police, City D, January 23, 2013, 1500.

¹⁹³ Interview with District Court Judge, City G, March 22, 2013, 1100; Interview with Police, City E, March 19, 2013, 1530.

¹⁹⁴ Interview with Police, City D, January 23, 2013, 1500; Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000.

have to take the step right away to transfer him to the police department and they will move on from there.¹⁹⁵

A lawyer described a case in which a victim of decade-long violence successfully obtained a restraining order. She experienced physical trauma, including internal injuries requiring an operation because her digestive system had failed:

The perpetrator attempted to put the six-month-old son's head on the stove/fire. The victim had been under frequent threats. There were many emergency calls. For example, he sprayed petrol over the ger—he told her this through the mobile. . . . She called the police and threatened the police officer to remind them of their role. She had to tell them they would be liable for such cases. So, the police officer came and prevented him from setting the ger on fire. . . . He again threatened violence. . . . After frequent calls, police officers got fed up – and stopped returning her calls. So, on her way to the police—running there—she broke her leg.¹⁹⁶

Although the restraining order was issued for the maximum term, and the COIA removed him from the home initially, the perpetrator repeatedly violated the order. The lawyer further explained:

He repeatedly came back. The very night of the removal, he came back. . . . Two or three days later, he was drinking. The threats resumed, and he was violent again. She then called the police.¹⁹⁷

When the police arrived, instead of arresting the perpetrator for violating the restraining order, they merely warned him and detained him overnight. The perpetrator continued to violate the order by threatening the victim and damaging her property without any consequences.¹⁹⁸

Another lawyer explained how a victim was initially happy to receive a restraining order, but became afraid again when the perpetrator repeatedly violated the order without consequences. The lawyer reported that the victim “would not apply for a restraining order again because nothing happens in reality.”¹⁹⁹ The lawyer referred to this case as “the first and last restraining order” in that province because, after observing the lack of enforcement, no victims or police have been interested in applying for one since.²⁰⁰

In some cases, police responses reveal a misunderstanding about what constitutes a violation or even indifference. One police officer stated he did not have authority to enforce the LCDV unless the victim's life or health was in danger.²⁰¹ In another case, the police participated in notifying the perpetrator of the restraining order but failed to help the victim when he refused to leave the house:

My husband never left the house. . . . I told the khoroo police officer. But the police didn't do anything about it. I was hoping he would help me to kick him out, but the police didn't take it seriously.²⁰²

¹⁹⁵ Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000.

¹⁹⁶ Interview with Lawyer, City D, January 28, 2013, 1000.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* In another case, the perpetrator returned shortly after being removed by the COIA and threatened and beat the victim.

Although the police detained him for the night and reminded him about the restraining order, he continued to violate the restraining order without any real consequences. *Id.*

¹⁹⁹ Interview with Judge, City F, March 21, 2013, 1800.

²⁰⁰ *Id.*

²⁰¹ Interview with Soum Police, City E, March 19, 2013, 1530.

²⁰² Interview with Victim, City D, March 25, 2013, 1430.

Whenever the victim asked the police officer to remove the perpetrator, the officer would make excuses. The victim reported:

Eventually [the officer] just avoided me. . . . I actually told [the social worker]. She told the same police officer, and he made up some story about how he was too busy with family problems, saying he couldn't do it right now.²⁰³

In other cases, police simply fail to actively pursue the perpetrator when they learn of violations. An NGO described a client who had two or three restraining orders issued:

There were constant threats and beatings. Two or three times, she had to have operations. On one occasion, the man poured boiling water onto her body. . . . There was no monitoring of the order. . . . As long as the man was detained, there were no problems. The problems occurred when he was released. There were no visits to ensure implementation. She reported repeated violations to the police. They ignored the complaints—or when they did appear, he would run from the scene. The police would say [to her], "If you find him, we will arrest him."²⁰⁴

Without recognition of the applicability of Article 258 and clear direction regarding responsibility for enforcing orders, obtaining a restraining order will continue to be an exercise in futility for many victims.

²⁰³ *Id.*

²⁰⁴ Interview with NGO 1, City D, January 31, 2013, 900.

BARRIERS TO ADMINISTRATIVE AND CRIMINAL PROSECUTIONS

He was blaming me. He said, “I don’t think this is your husband’s fault. It’s your fault. You’re an old woman now. Why are you causing this problem with your husband?” It was very shameful for me, so that is why I never tried to seek assistance from that police officer again.²⁰⁵

Numerous barriers prevent effective criminal or administrative prosecution of domestic violence cases. As with restraining orders, police, prosecutors, and judges do not have sufficient knowledge about domestic violence dynamics. They also lack the laws, policies, and resources to respond appropriately or the commitment to enforce women’s right to be free from violence.

Although prosecutors and judges have important roles to play, police assume the largest responsibility for holding domestic violence offenders accountable for domestic violence in the criminal and administrative system in Mongolia. Police play a primary role throughout many stages of a domestic violence case, including initial charging decisions.²⁰⁶ As a first responder and gatekeeper to criminal prosecution, police handle the majority of cases because few domestic violence cases reach prosecutors and judges.²⁰⁷ Therefore, police knowledge and attitudes are critical to the progress of a case. Prosecutors, on the other hand, only become involved when the police refer cases to them. They then oversee charging decisions and prepare cases for criminal prosecution.

Judges’ participation in criminal and administrative cases arises after prosecutors bring charges. Their role is to decide whether to impose administrative detentions and hear criminal cases. For a number of reasons, cases frequently do not reach judges. Examples of those reasons are that the victim opposes prosecution, the perpetrator admits guilt or undergoes treatment, the police issue a warning, or the prosecutor decides to charge the case under the administrative law rather than the criminal law.²⁰⁸ As with civil restraining orders, poor police attitudes can hinder an effective penal response, whether making an arrest or bringing an administrative or criminal charge.²⁰⁹ The authors heard many examples of police officers failing to carry out arrests because of their misperceptions.²¹⁰ In one case, a perpetrator had abused his wife for many years. He threw furniture at her, bruising her face. Despite the fact that

²⁰⁵ Interview with Victim, City B, January 31, 2013, 1530. This victim’s story is described on pages 10, 19, 20, 28, 29 and 53.

²⁰⁶ Officers go to the scenes of domestic violence and they take complaints at the police station. They participate in documenting the abuse, handle and execute administrative punishments, and make charging decisions.

²⁰⁷ See Charging Decisions, page 35 and Reconciliation and Withdrawal of Complaints, page 38 .

²⁰⁸ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁰⁹ Other reasons cited are that police “don’t know what to do with domestic violence,” “do not have the skills to talk to women,” or perceive domestic violence to be a “house problem or husband-and-wife problem.” Interview with Victim, City F, March 22, 2013, 900 [This victim’s story is described on pages 12, 13, 17, 28, 35, 36 and 54]. Police also refer to irrelevant personal characteristics as reasons why they do not believe domestic violence is happening, such as the parties being too old, the perpetrator’s reputation, or his physical appearance. Interview with Doctor Social Worker, City C, March 18, 2013, 1600; Interview with NGO, City A, March 22, 2013, 1000; Interview with Police 1, City D, March 25, 2013, 1200. Some police officers consider it the responsibility of the woman to keep peace in the house. They say “not to fight when [her husband] comes into the home drunk, and don’t argue, and keep things soft and gentle.” Interview with Health Care Worker, City E, March 18, 2013, 1330. See Lack of Knowledge, Poor Attitudes, and Insufficient Training of Government Officials, page 10.

²¹⁰ Best practice arrest standards promote policies that allow police officers to make arrests based on the presence of evidence (such as damaged property, visible injuries, or a frightened woman) that would lead to the conclusion that an assault had occurred. Police should be able to make the arrest without witnessing the crime. *Law Enforcement Reform Efforts*, THE ADVOCATES FOR HUMAN RIGHTS (Feb. 3, 2009), http://www.stopvaw.org/Law_Enforcement_Reform_Efforts.

“every police officer who works in the khoroo, everyone knows about this family,”²¹¹ the police officer questioned the victim’s desire to have the perpetrator arrested. Although the officer arrested him for short periods under the Administrative Penalty Law, she remarked:

When I see the perpetrator, he is physically too skinny. If I see him, I wouldn’t say he is that wild person. . . . I suggested to the victim, “Why do you have to have him arrested? Why don’t you take him home without arrest?” From the bottom of my heart, I didn’t want to arrest him because he looked so poor, physically skinny and tiny, so I didn’t really believe that he was capable of domestic violence.²¹²

Other irrelevant factors, such as the victim’s wishes and the perpetrator’s sobriety, also stop police from making arrests. In one case, a police officer failed to arrest a perpetrator because he was sober and the victim did not want to press charges. Instead of arresting the perpetrator, the police told him he should refrain from beating his wife because a holiday was approaching.²¹³

In many cases, police choose to preserve the family over protecting victims and holding perpetrators accountable.²¹⁴ An officer, recalling seeing a woman’s bruised eye one week before her wedding, asked himself, “Should I arrest and put him in jail or just drop the case?” Because of the couple’s impending marriage and their child-in-common, he dropped the case.²¹⁵

Other challenges also hinder an effective police response. Officials outside of Ulaanbaatar cited the need for transportation to reach rural victims.²¹⁶ A police officer reported:

There is no car for police who work in the soum bag, so the police use the governor’s car. If the governor is out, we have to borrow a car from someone nearby, so it is very difficult to get there. It would take maybe 30 to 40 minutes to get there if we had a car.²¹⁷

The problem of lack of vehicles is compounded by difficult terrain, making it very hard for police to reach rural victims.²¹⁸ An advocate explained that victims stopped reporting domestic violence to the police because of their unreliable response as a result of transportation problems:

Even if they call the soum police, the police don’t have transportation – maybe just one motorcycle that might not have gas. They don’t have services such as an ambulance or 911. To get here, the women walk, and sometimes they can get a car along the way. . . . Most of the cases are 200 km from the aimag²¹⁹ and 50 km from the soum center. In the summertime, even if victims have a big injury . . . they just go to an empty place and sleep outside.²²⁰

Domestic violence perpetrators can be penalized under specific provisions of both the Administrative Penalty Law and the Criminal Code. None of those provisions, however, refer specifically to domestic

²¹¹ Interview with Police 1, City D, March 25, 2013, 1200.

²¹² *Id.*

²¹³ Interview with Victim, City F, March 22, 2013, 1400. This victim’s story is described on pages 5, 10, 29, 44, 49.

²¹⁴ Interview with Police, City E, March 19, 2013, 1430.

²¹⁵ *Id.*

²¹⁶ Interview with Bag Governor 1, City E, March 19, 2013, 930.

²¹⁷ Interview with Police, City C, March 20, 2013, 1000.

²¹⁸ These issues also hinder victims from reaching other services. See *Barriers to Obtaining a Restraining Order*, page 9.

²¹⁹ The main town of the province.

²²⁰ Interview with NGO, City F, March 21, 2013, 900. One victim explained that because it was too difficult to access medical services, her injuries, including broken ribs, healed without treatment. When asked about accessing other services such as legal aid or the police, she said, “You’re just helpless. You just stay home.” Interview with Victim, City B, January 31, 2013, 1530. This victim’s story is described on pages 10, 19, 20, 28, 29 and 53.

violence, and they have generally been ineffective in holding perpetrators accountable. As mentioned above, police do not always make an arrest even when there is evidence that an assault has occurred. If the perpetrator receives a fine under the Administrative Penalty Law, it is the victim who is punished when the money comes from joint household resources. Prison sentences are not always imposed in cases of serious violence and, when they are, they are generally too short in relation to the degree of violence.

ADMINISTRATIVE PENALTY LAW

In the majority of domestic violence cases, perpetrators go unpunished. But when the legal system takes action to hold perpetrators accountable, it most often relies on the Administrative Penalty Law. The sanctions of the Administrative Penalty Law typically applied in domestic violence cases are for intoxication by alcohol²²¹ and hooliganism.²²² These penalties are more lenient than the punishments available under the Criminal Code. Police apply the intoxication by alcohol provision to remove the perpetrator to a sobering unit.²²³ They can also charge a perpetrator with hooliganism for violating the public order even if he is sober.²²⁴ Neither provision, however, is effective in stopping domestic violence.

Administrative Penalty Law: Alcohol Intoxication

“Most [domestic violence] cases are because of alcohol or drunken people.”²²⁵ Interviewees overwhelmingly stated that alcohol abuse and dependency is one of the main causes of domestic violence in Mongolia. This perception is evident in the government response, which prioritizes addressing alcoholism over stopping violence. By relying on the prevailing myth that alcohol and drugs are the major causes of domestic abuse, the government undermines the safety of victims and subverts accountability and treatment for violent offenders. Some perpetrators rely on alcohol abuse as an excuse for becoming violent.

One officer from the police sobering unit acknowledged that the majority or “almost all” of the cases in their sobering unit are related to domestic violence.²²⁶ Another officer described a typical scenario involving the sobering unit:

We get [to the scene of the violence] and if the husband is drunk, we put him in a sobering unit. And the next day when he is sober, we bring administrative law charges against him, and we also take an application from the victim, who can be anyone. And we give this to the court and usually they give seven to ten days of prison.²²⁷

The legal system’s focus on alcohol sets a harmful precedent for ignoring sober but dangerous perpetrators. When asked what would happen in a situation where a husband fractures his wife’s bones and knocks her unconscious, a prosecutor responded that if he was drunk, he would be arrested and

²²¹ Administrative Penalty Code, Article 22 (Intoxicated by alcohol):

The repeated drunk tank of intoxication by alcohol shall be punishable by detention for more than 7 to 30 days.

²²² Administrative Penalty Code, Article 21 (Hooliganism):

Violation of public order in street, square, apartment, public transportation, entertainment and other social places with creation of quarrel, argument, physical violence (fight), provocation, threats which led to disturb peaceful life, disrespect of society and public services shall be punishable by a fine equal to 15,000 tugriks or by detention for more than 7 to 30 days.

²²³ Interview with Bag Police, City B, January 30, 2013, 1500; Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²²⁴ Interview with Judge, City F, March 22, 2013, 1100; Interview with Police, City C, March 18, 2013, 1100.

²²⁵ Interview with Soum Judge, City E, March 18, 2013, 1530.

²²⁶ Interview with Police Sobering Unit, City F, March 21, 2013, 1100.

²²⁷ Interview with Police 1, City D, March 25, 2013, 1000.

placed in the sobering unit immediately. But “if he’s sober, then until the case number is given, he will be free.”²²⁸

An NGO worker recalled a case in which she advised her friend to telephone the police department for help:

She wanted to leave the house, but the perpetrator held a knife and stood at the door and said he would kill her in front of two kids. When she called the number, the police asked if he was sober or drunk. Then the police said, “Oh, if he is sober just reconcile and go to sleep.”²²⁹

Police failure to respond, as in this case, not only allows the perpetrator to act with impunity but also deters victims from seeking help in the future. The woman later told the NGO worker that “the number did not work and the police will not protect me. This [telephone] number is a lie.”²³⁰

Relying on alcohol use as a reason to detain an offender also runs the risk of leaving behind a dangerous abuser when the sobering units are full or unavailable.²³¹ A shelter psychologist described one of her client’s experiences:

Last time she came there were a lot of bruises on her body, but not this time. There is a history of broken bones. When he came home drunk, she would try to escape and he would tie her hand and legs and he would put her into one of the holes to the water pipes in the street that were open and kept her down there for days.... He uses sharp objects to cut her. She showed me her legs, and there are so many scars.²³²

Despite this violence and constant threats to kill the victim, whenever she called the police they told her “they couldn’t help and that the sobering units were already full. So they just left him at home.”²³³

Although the issue of alcohol abuse is intertwined with domestic violence, addressing alcoholism does not solve the problem of domestic violence.²³⁴

Administrative Penalty Law: Hooliganism

Even though police commonly use the administrative hooliganism provision²³⁵ to punish domestic violence,²³⁶ this weak remedy leaves victims without protection and allows perpetrators to act with impunity. In practice, the penalties for hooliganism do little to deter violence, as police resort to short-term detentions and fines that at times have the effect of punishing victims. As a result of this weak response, perpetrators reoffend and proceed through Mongolia’s administrative penalty system multiple times.

²²⁸ Interview with Prosecutor, City A, March 21, 2013, 1700.

²²⁹ Interview with NGO, City E, March 18, 2013, 1100.

²³⁰ *Id.*

²³¹ Interview with NGO, City F, March 21, 2013, 900 (Most soums lack a sobering unit, so the perpetrator is tied up somewhere in the soum police station); Interview with Judge, City F, March 22, 2013, 1100.

²³² Interview with Shelter Psychologist, City D, March 26, 2013, 1130.

²³³ *Id.*

²³⁴ *Evolution of Theories of Violence*, THE ADVOCATES FOR HUMAN RIGHTS (Feb. 1, 2006),

http://www.stopvaw.org/Evolution_of_Theories_of_Violence.

²³⁵ Article 21.

²³⁶ Interview with Judge, City C, March 18, 2013, 1400; Interview with Judge, City F, March 22, 2013, 1100; Interview with Police Dispatcher, City F, March 21, 2013, 1330; Interview with Lawyer, City E, March 19, 2013, 1430. However, as with criminal minor injuries, administrative offenses can be closed upon reconciliation. Article 43.1 of the Administrative Procedure Law states: “Plaintiff, defendant may end the dispute by reconciliation made through changing demand of the claim on mutual concession or by choosing the options for fulfilling demand of the claim.” Once parties formally reconcile under this provision, the courts are barred from reexamining the case again. Administrative Procedure Code, Article 43.4.

A police officer stated that there is no legal requirement for a victim to file a complaint if there is other evidence to bring hooliganism charges,²³⁷ but a victim's desire for an arrest or charges heavily influences the police decision to impose administrative punishments. Victims may request that charges be dropped for reasons unrelated to the perpetrator's guilt such as pressure, fear, or not wanting to be responsible for sending the perpetrator to jail.²³⁸ To adequately protect victims, charging decisions should be governed by the strength of the charges, not by victims' wishes.

If the victim requests that the perpetrator not be punished, police will resort to a warning or no action at all.²³⁹ In one case, the husband physically abused his wife two or three times a month, causing light bruises. After an argument, the husband chased her in his car with their five-year-old child inside and hit her, causing light injuries. Although the victim's bruises were visible, the officer let the perpetrator off with a warning because the victim did not want to press charges. The police officer explained, "Because it had been repeated many times, I thought a lighter warning might help resolve the problem."²⁴⁰ Even police officers acknowledged the futility of such warnings. An officer lamented:

When we give the perpetrator reminders, they say they never will do it again, but it is always just a lie, and they do it again. So many times I remind them, and they just never change. This is very frustrating.²⁴¹

Ineffectiveness of Administrative Penalties

Police and judges expressed frustration over the Administrative Penalty Law's lack of effectiveness.²⁴² The short-term detention and fines associated with the administrative law do not stop or prevent domestic violence.

Administrative punishments allow for detention of seven to 30 days,²⁴³ but domestic violence cases cycle through the administrative system repeatedly as the violence continues. A victim recalled that when her husband was "drunk or screaming and yelling and beating me up, the neighbors would call and then he would go to the sobering unit and then you have to pay the fine, and then when he came back, he would just drink more."²⁴⁴ A police officer described an offender who beat his wife "all the time," gave her black eyes, broke her ribs, and even broke her hip with a chair.²⁴⁵ He estimated this offender had been in detention 20 times for hooliganism and intoxication.²⁴⁶ Judges also described the futility of these short-term detentions. One judge stated that she did not like the 30-day detention under the Administrative Law "because when they get out, they go and do the same thing again."²⁴⁷

²³⁷ Interview with Police, City B, January 30, 2013, 1500.

²³⁸ Interview with Police, City D, January 28, 2013, 800; Interview with Ministry of Justice Legal Department, City B, January 31, 2013, 1000.

²³⁹ Interview with Police, City E, March 19, 2013, 1430; Interview with Soum Police, City E, March 19, 2013, 1530; Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁴⁰ Interview with Police 2, City D, March 25, 2013, 1000.

²⁴¹ Interview with Police, City E, March 19, 2013, 1430.

²⁴² See, e.g., Interview with Police, City F, March 21, 2013, 1230; Interview with Judge, City F, March 22, 2013, 1100; Interview with Police Dispatcher, City F, March 21, 2013, 1330. See also Interview with Police, City G, March 21, 2013, 1200.

²⁴³ See Footnotes 222-223.

²⁴⁴ Interview with Health Care Worker, City E, March 18, 2013, 1330.

²⁴⁵ Interview with Police, City F, March 21, 2013, 1230. One officer described how she detained a perpetrator 12 times for throwing objects at his wife. Even upon the twelfth time, she detained him for only seven days. Interview with Police 1, City D, March 25, 2013, 1200.

²⁴⁶ Interview with Police, City F, March 21, 2013, 1230.

²⁴⁷ Interview with Judge, City F, March 22, 2013, 1100.

Domestic violence perpetrators may be subject to two types of financial penalties under the Administrative Penalty Law: a sobering unit fee and a hooliganism fine. As with short-term detention, these fines do not demonstrably deter violence. A police officer summarized the most common types of cases he sees:

The perpetrator gets drunk and comes home and is giving a hard time to the wife, asking for money to drink and being jealous. He beats her. This happens all the time.... Every time the husband hits the wife, he comes to the police station and pays the penalty and is released. Then it happens again, [he] comes to the station, pays, and is released. Again and again.²⁴⁸

Administrative fines—whether from the sobering unit fee or from a hooliganism fine—often punish the victim when she is forced to pay it herself or it comes out of shared household resources.²⁴⁹ A lawyer stated, “It is hard to say who has the punishment: the person paying for the sobering unit or the one going into the sobering unit.”²⁵⁰ This financial penalty deters victims from calling the police. As one social worker summarized,

She had to pay for the sobering unit fee. This is why she doesn’t call the police often. So the violence is still going on right now. Their case is never closed. It just goes on and on.²⁵¹

CRIMINAL LAW

Criminal prosecution of domestic violence cases is fraught with obstacles, including government reticence to pursue these cases, unrealistic evidentiary requirements, and a reconciliation loophole. For a case to be charged and prosecuted criminally, a number of conditions must be satisfied. First, a forensic certificate must show that the victim suffered medium to severe injuries.²⁵² Second, the police inspector must decide whether to charge the case criminally. Third, that decision must be confirmed by the prosecutor.²⁵³ In most cases a victim complaint is required to proceed with the criminal prosecution.²⁵⁴ Finally, if the victim reconciles with her abuser, which she is encouraged to do, the case is dropped. All these requirements place a heavy burden on the victim and result in inadequate access to effective criminal remedies.

Forensic Certificate Requirement

The requirement of a forensic certificate poses an overwhelming obstacle to many victims who seek justice through the Mongolian legal system.²⁵⁵ The Criminal Procedure Code requires forensic documentation to determine the degree and character of bodily injuries and interviews confirmed that

²⁴⁸ Interview with Police, City C, March 18, 2013, 1100. See also Interview with Police, City G, March 21, 2013, 1200 (stating, “In today’s law, you can drink and spend a 5,000 Tugrik fine and then be free”).

²⁴⁹ Interview with Police, City E, March 19, 2013, 1430; Interview with Police Dispatcher, City F, March 21, 2013, 1330; Interview with Lawyer, City C, March 19, 2013, 900; Interview with Police, City G, March 21, 2013, 1200; Interview with Lawyer, City C, March 18, 2013, 900; Interview with Social Worker, City E, March 18, 2013, 1200; Interview with Social Worker, City D, March 27, 2013, 1200; Interview with Doctor Social Worker, City C, March 18, 2013, 1600; Interview with Legal Services, City E, March 21, 2013, 1000; Interview with Police Sobering Unit, City F, March 21, 2013, 1100.

²⁵⁰ Interview with Lawyer, City C, March 18, 2013, 900.

²⁵¹ Interview with Social Worker, City D, March 27, 2013, 1200.

²⁵² Criminal Procedure Code, Arts. 156, 165.1.2; Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁵³ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁵⁴ *Id.*

²⁵⁵ See Evidentiary Barriers section in Restraining Orders, page 15.

criminal cases are not prosecuted without certification of the victim's injuries by a forensic doctor.²⁵⁶ Thus, the forensic doctor plays a pivotal role in determining the injury classification and level of crime for charging purposes.²⁵⁷ One police officer explained this practice, which is to first require an application from the victim, then send the victim to obtain certification from the doctor. The officer stressed, "We must get certification. It's mandatory in any cases of injury, any threats to health, we will refer to the forensic doctor."²⁵⁸

As discussed in the section on civil restraining orders above, victims face multiple obstacles in obtaining a forensic certificate.²⁵⁹ In addition to the logistical barriers, legal system actors do not consistently facilitate victims' access to forensic doctors. First, the victim must secure a referral to the forensic doctor from the police or a One Stop Service Center.²⁶⁰ Sometimes victims have to make multiple trips to the police or the One Stop Service Center to obtain the referral.²⁶¹ The referral process is made even more onerous when a police officer does not perceive injuries to be serious enough to merit a forensic examination. A victim described the police response when her husband broke her nose: "The police did not tell me about the forensic doctor. They told me my nose was okay, and the injury was minor."²⁶²

Even when a victim obtains the referral form, access to the forensic doctor can still be difficult. A long-time victim of domestic violence obtained a referral to the forensic hospital from a One Stop Service Center. After being turned away from the forensic hospital many times, she was only able to get an appointment and obtain forensic evidence when the nurse at the One Stop Service Center called the forensic hospital on her behalf.²⁶³

Forensic doctors are not available around the clock to evaluate injuries caused by domestic violence. A doctor stated that her office is only open from 8:00 am to 2:00 pm on weekdays. If the forensic office is closed, a general doctor cannot do the evaluation. The victim must wait for the forensic doctor's office to reopen.²⁶⁴

If a victim does not want to or is unable to obtain a forensic certificate for any of the reasons described above and in the Restraining Order section, criminal prosecution is unlikely. When asked whether administrative or criminal charges can be brought if the victim does not want to go to the forensic hospital, a police officer responded, "In that situation, we cannot do anything."²⁶⁵

²⁵⁶ Criminal Procedure Code, Article 156.1.2; Interview with Police, City A, March 21, 2013, 1130; Interview with Police, City E, March 19, 2013, 1230; Interview with Judge, City E, March 18, 2013, 1600; Interview with Police 1, City D, March 25, 2013, 1200 (stressing the importance of forensic documentation as evidence); Interview with Police, 1, City D, March 25, 2013, 1000; Interview with Prosecuting Lawyer, City B, January 28, 2013, 1540 (Mild injuries will be pursued as an administrative case; medium- and high-level injuries will be pursued as a criminal case); Interview with Prosecutor, City E, March 21, 2013, 1430.

²⁵⁷ Criminal Procedure Code, Article 156.1.2. See *also* Interview with Police, City A, March 21, 2013, 1130; Interview with Judge, City E, March 18, 2013, 900; Interview with Police 1, City D, March 25, 2013, 1000.

²⁵⁸ Interview with Police 1, City D, March 25, 2013, 1000.

²⁵⁹ See Civil Restraining Orders, page 9.

²⁶⁰ Interview with Police, City A, March 22, 2013, 1430; Interview with Forensic Doctor, City A, March 22, 2013, 1130. Technically, the forensic doctor is expected to come to the One Stop Service Center, but one interviewee reported this does not happen in practice. Interview with Nurse, City D, January 21, 2013, 1000. See discussion of One Stop Service Centers in Lack of Awareness by Victims and the General Public, page ____.

²⁶¹ Interview with Nurse, City D, January 21, 2013, 1000.

²⁶² Interview with Victim, City E, March 22, 2013, 1530.

²⁶³ Interview with Nurse, City D, January 21, 2013, 1000. See *also* Evidentiary Barriers, page 15.

²⁶⁴ Interview with Forensic Doctor, City A, March 22, 2013, 1130.

²⁶⁵ Interview with Police, City B, January 30, 2013, 1500.

Charging Decisions: Administrative, Criminal, or No Charges

Police play an initial and important role in charging decisions. Although forensic doctors classify the level of injury for charging and evidentiary purposes, police are the gatekeepers who refer victims to forensic doctors in the first place, and they decide whether to refer a case to the prosecutor for criminal prosecution or apply administrative sanctions. In deciding whether to bring charges of domestic violence under the Administrative Penalty Law or the Criminal Code, police often follow the dangerous practice of relying on visible injuries to make their decision. This charging method does not take into account minor or hidden injuries, such as sexual violence,²⁶⁶ or a history of repeated violence.²⁶⁷ Sometimes, police decide not to bring charges of any kind despite evidence of domestic violence.

Whereas criminal charges are dependent on injury classification,²⁶⁸ injuries are not required to bring administrative charges.²⁶⁹ Yet, police are sometimes reluctant to pursue even administrative charges if the victim has no visible injuries or even light injuries. One officer acknowledged that if there are light injuries, police encourage reconciliation.²⁷⁰ After visiting the police station, one victim reported:

They said if there are injuries, we will do a criminal or administrative case against him, but so far I have not had bad enough injuries. The police won't do anything unless I have injuries.²⁷¹

Instead of responding to all cases regardless of the injury level, some officers rely on a dangerous assumption that the worst cases will emerge on their own. Police explained that there are often cases where they:

Want to keep it down because it happened in the family and don't want to disclose it to the public. . . . Most of the time, [victims] will withdraw their own application from the police station. And if it's a worse case, [victims] will continue with the investigation.²⁷²

One victim's experience summarized the bottom line when police told her, "It is not our problem, just domestic violence in the house."²⁷³

Even in domestic violence cases with serious injuries, the government relies on the Administrative Penalty Law more often than the Criminal Code. In fact, police infrequently refer cases to prosecutors for criminal charges.²⁷⁴ One police officer estimated that she referred only six or seven cases to the prosecutor over two years' time.²⁷⁵

Although the Administrative Law is intended to address cases with lighter injuries, the authors heard of instances where it was used in cases involving serious injuries. A social worker described how a perpetrator was charged with administrative hooliganism and detained for 21 days after publicly beating his wife, who had just moved out:

²⁶⁶ Interview with NGO, City F, March 21, 2013, 900 (describing a woman whose injuries were not heavy enough to trigger a police response even though she experienced marital rape).

²⁶⁷ If there is a history of violence, the government can pursue that offense through Article 100 (Torture) of the Criminal Code.

²⁶⁸ Criminal Procedure Code, Arts. 156, 165.1.2.

²⁶⁹ Interview with Police Dispatcher, City F, March 21, 2013, 1330.

²⁷⁰ Interview with Police Investigator, City E, March 19, 2013, 1230.

²⁷¹ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54.

²⁷² Interview with Police, City E, March 22, 2013, 1400.

²⁷³ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54.

²⁷⁴ Interview with Police Investigator, City E, March 19, 2013, 1230.

²⁷⁵ *Id.*

He pulled her hair, slapped and kicked her, and also pushed her and kicked her, and she was pregnant at the time...she was about two months' pregnant. Her nose was broken, her eyes were swollen and bruised, and she was also limping. When he beat her on the street, he threatened her for having escaped him so much that he was going to stalk and beat her the next day, too.²⁷⁶

It is a dangerous reality in Mongolia that threats to kill may also only result in administrative charges. In one case, a victim's coworkers noted she had bruises on her hands and often wore sunglasses presumably to cover up black eyes. Every time the perpetrator spoke to her, he threatened her, "Because you put me in a difficult situation, I'm going to kill you and I'm going to make your life difficult and get you fired." As the bruises became increasingly frequent, police charged him under the administrative law and sought a seven to 21-day detention or fine.²⁷⁷

Even a history of violence may not be enough to trigger a criminal charge.²⁷⁸ A victim suffered nine years of abuse at the hands of her husband who threatened to kill her:

He didn't use a weapon, but he would just take things that were close by and throw them at me and beat me with his hands. I usually just had light injuries with bruises. . . . He would say that he was going to kill me and say to remember that he was always going to follow me. He would also call me and say inappropriate words, words used to make me afraid that he was going to kill me. The first time I called the police, he was drunk, so the police came and put him in a sobering unit. The next day I withdrew my [complaint] because we were living together, so I thought he would change, and it has been so long like this. It usually happens a couple of times. I don't remember how many times I called the police.²⁷⁹

Even though the perpetrator in this case moved out more than a year before the interview, he still continued the violence and even kidnapped his wife and locked her in his home. The only charges the state ever brought against him were administrative.²⁸⁰

As with decisions on bringing administrative charges, a victim's wishes can also influence whether the police charge an offense administratively or criminally.²⁸¹ When asked what happens if the victim says that she does not want a criminal case, a police officer responded, "If the victim says no, that means no."²⁸²

Even after a criminal case is initiated, it can be reduced to an administrative charge if the victim has no complaint, the perpetrator accepts his guilt, and the parties reconcile.²⁸³ A prosecutor confirmed, "Even in

²⁷⁶ Interview with Social Worker, City D, March 27, 2013, 1200.

²⁷⁷ Interview with Police, City A, March 22, 2013, 1430.

²⁷⁸ A history of violence can be prosecuted under Article 100 (Torture) of the Criminal Code.

²⁷⁹ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 5, 10, 29, 44, 49.

²⁸⁰ *Id.*

²⁸¹ See, e.g., Interview with Judge, City C, March 18, 2013, 1400 (stating that "the victim tells police whether to use criminal or administrative provisions"); Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54.

²⁸² Interview with Police 1, City D, March 25, 2013, 1000. See also Interview with Juvenile Police Inspector, City E, March 21, 2013, 1100 ("She has three children, and every time he comes home drunk he kicks them out onto the street. Upon request from the wife's side, it was dissolved to an administrative punishment. The wife requested from me that if the husband was sent to punishment, there will be no financial resource."). See Administrative Penalty Law: Hooliganism, page 31.

²⁸³ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540. The victim must not have reconciled under threat or intimidation by the perpetrator. Interview with Prosecutor, City D, February 1, 2013, 1400.

severe cases, if the victim says she has no complaint, it has to automatically go to the administrative court.”²⁸⁴

Prosecutors’ Refusal to Pursue Criminal Prosecution

Even when police recommend a domestic violence case for criminal prosecution, prosecutors may be unwilling to pursue it.²⁸⁵ Prosecutors may reject a case for a number of reasons. For example, if the injuries are too light, the prosecutors can close the criminal case.²⁸⁶ In one case, a husband beat his wife using a knife. Although the forensic doctor classified the injury as light, the police officer still opted to refer it on to the prosecutor because the couple did not reconcile. The prosecutor viewed the case as a minor offense and declined to prosecute. Eventually, the couple divorced.²⁸⁷

Stalking is not prosecuted because it is not a crime under the Mongolian Criminal Code. Criminalizing stalking would not only protect women from their abusers, it would also protect service providers at risk for helping victims.²⁸⁸ One husband beat his pregnant wife in the street; he pulled his wife’s hair, slapped and kicked her, broke her nose, and bruised her eyes. He threatened his wife for fleeing him and threatened to stalk and beat her again the next day. A social worker recalled:

He was stalking her again on her way from work to the house and police officers were with her and arrested him. From the bus station that she got off at to her relative’s house, there is a very narrow street and he was waiting for her there. He would do this frequently.²⁸⁹

The victim’s petition alleged he both beat and stalked her. The police charged him with administrative hooliganism and detained him for 21 days. It is not clear, nor is it legally mandated, whether he would have been sentenced for the act of stalking alone.²⁹⁰

Like police, some prosecutors’ misperceptions about domestic violence injuries and attitudes that prioritize family preservation influence their response to cases. A prosecutor acknowledged he encourages women not to fight with their husbands because if it happens enough, the male breadwinner will go to jail.²⁹¹ He explained:

The most important issue is the man’s supporting the family. . . . [Dropping a case] is just a reminder that if this happens many times, your husband will go to jail, so you should keep your family in order.²⁹²

Another prosecuting attorney blamed women for provoking the violence:

It seemed that the wives triggered the conflicts. The defendants said they had constant verbal abuse from their wives. They were also demanding so much that the husbands had to commit theft. Those cases were quite evident among the defendants I’ve worked with.²⁹³

²⁸⁴ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁸⁵ Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Prosecutor 2, City E, March 18, 2013, 900 (If the prosecutor disagrees with the police recommendation, the case is sent back to the police for further investigation).

²⁸⁶ Interview with Soum Judge, City E, March 18, 2013, 1530.

²⁸⁷ Interview with Police, City E, March 22, 2013, 1500.

²⁸⁸ One NGO reported that two of its employees experienced stalking by their clients’ abusers. Interview with NGO, City D, February 1, 2013, 1030.

²⁸⁹ Interview with Social Worker, City D, March 27, 2013, 1200.

²⁹⁰ *Id.*

²⁹¹ Interview with Prosecutor 1, City E, March 18, 2013, 930.

²⁹² *Id.*

One prosecutor stated that heavy violence usually occurs only between men. The prosecutor reported she had not seen any cases where the husband had badly beaten his wife, and she did not think cases of that level existed in Mongolia. But she also recalled a woman whose abuser hit her in the face twice and bruised both her eyes badly. She concluded that she was not in danger, and it was merely an argument because they had both been drinking.²⁹⁴

As noted above, insufficient evidence, particularly lack of a forensic certificate, is another reason that prosecutors refuse to prosecute. A prosecutor explained, “Even if she testifies that it happened many times but can’t provide any evidence, we can’t run it as a criminal trial.”²⁹⁵

Finally, as with the police, victims who do not want their perpetrators to be prosecuted often influence prosecutors’ decisions.²⁹⁶ This practice does not recognize that the victim may be responding to intimidation or fear of retaliation when the perpetrator gets out of jail. For example, a victim whose husband beat her and her daughter recalled how prosecutors failed to open a criminal case after she told them she had no complaints. She explained:

If I said that I had a complaint, he would be arrested and jailed more than six months because it was a minor case. First, I didn’t want him to go to jail. Second, I was scared. If he goes for six months, the time goes fast. What if he gets out and does something to me? I was really scared.²⁹⁷

A police officer summarized that very few domestic violence cases are criminal because “Mongolians don’t want to send the husband to jail.”²⁹⁸

Reconciliation and Withdrawal of Complaints

Mongolian police, prosecutors, and judges promote reconciliation between victims and perpetrators and withdraw cases when reconciliation occurs. This dangerous practice sends the message to victims, perpetrators, and the community that domestic violence is not a serious offense. Indeed, interviews with state actors suggest that reconciliation is the preferred outcome. A prosecutor stated, “In all of my eight cases in the soum, they were reconciled. So, [there’s been] no case where I was frustrated.”²⁹⁹ Reconciliation is extremely common in domestic violence cases.³⁰⁰ A police officer estimated that eight of ten victims reconcile with the offender.³⁰¹ Another officer stated:

²⁹³ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

²⁹⁷ Interview with Victim, City A, March 22, 2013, 1530.

²⁹⁸ Interview with Police Sobering Unit, City F, March 21, 2013, 1100.

²⁹⁹ Interview with Prosecutor, City E, March 18, 2013, 930. See also Interview with Prosecutor, City E, March 21, 2013, 1430 (explaining that if both parties have reconciled, he would not continue prosecuting); Interview with Prosecutor 1, City E, March 18, 2013, 930 (explaining that if the parties want to reconcile, “we just have to grant the request”).

³⁰⁰ Interview with Prosecutor 1, City E, March 18, 2013, 930; Interview with Police, City A, March 22, 2013, 1430; Interview with Police 2, City D, March 25, 2013, 1000; Interview with Police, City A, March 21, 2013, 1130; Interview with Police 1, City D, March 25, 2013, 1200; Interview with Police 1, City D, March 25, 2013, 1000; Interview with Police, City G, March 22, 2013, 1500; Interview with Juvenile Police Inspector, City G, March 21, 2013, 1100; Interview with Police, City E, March 19, 2013, 1230; Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Prosecutor, City C, March 19, 2013, 1400; Interview with Judge, City C, March 18, 2013, 1400; Interview with Soum Judge, City E, March 18, 2013, 1530; Interview with Prosecutor 2, City E, March 18, 2013, 930; Interview with Prosecutor, City E, March 18, 2013, 900; Interview with Prosecutor, City G, March 21, 2013, 1430; Interview with Soum Police, City E, March 19, 2013, 1530.

³⁰¹ Interview with Police 1, City D, March 25, 2013, 1200.

[The] ideal would be that they get punishment each time, but it's very rare for the full resolution of this type of crime here. Most of the time the victim reconciles or withdraws her statement.³⁰²

In addition to encouragement by state actors, a victim may reconcile with the perpetrator because, among other reasons, of her economic dependency,³⁰³ desire for her children to have a father,³⁰⁴ reluctance to punish her husband,³⁰⁵ and fear of retribution.³⁰⁶

Under the Criminal Code and Criminal Procedure Code, reconciliation between the offender and victim of a "minor" crime will end the case and absolve the offender of wrongdoing.³⁰⁷ Technically, these provisions apply only to those domestic violence cases that are charged under the light injury provision of the Criminal Code.³⁰⁸ However, because of barriers related to documentation, medium and heavy injuries may be misclassified and charged as light injuries and therefore dismissed if the victim and perpetrator reconcile.

Some police officers stated that they close only light-injury cases upon reconciliation but proceed in cases involving more serious injuries such as broken bones, even without the victim's cooperation.³⁰⁹ Yet, the authors also heard of cases where, following reconciliation between the victim and perpetrator, police and prosecutors withdrew cases involving serious injuries, weapons, or a criminal history. A victim stated that her husband, who had a criminal record of assault against another man, broke her nose. Yet, when prosecutors questioned her and she told them she had no complaints, they dropped the case.³¹⁰

Police and prosecutors have even dropped cases in which the perpetrator used a weapon. For example, a husband beat his wife with a stove poker. Upon examination, a forensic doctor classified the resulting bruises as minor injuries. When the couple reconciled, the police discharged the case.³¹¹ In another case, a boyfriend hit his girlfriend in the head with a piece of wood because she was talking with a friend outside a party. The victim called the police, but later the man's parents stated that the couple wanted to drop the case. A judge talked with the girl and concluded, "Since it's a small case, we don't really have to continue prosecuting."³¹²

Although some interviewees stressed that reconciliation can only be used to drop a case for first time offenders,³¹³ other interviews revealed a different result. A brother recounted that his sister reconciled with her abuser multiple times after being beaten. The case was never prosecuted:

³⁰² Interview with Police, City E, March 19, 2013, 1230.

³⁰³ *Id.*; Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Juvenile Police Inspector, City G, March 21, 2013, 1100; Interview with Soum Police, City E, March 19, 2013, 1500.

³⁰⁴ Interview with Prosecutor, City C, March 19, 2013, 1400; Interview with Social Worker, City D, March 27, 2013, 1400; Interview with School Social Worker, City E, March 18, 2013, 1100.

³⁰⁵ Interview with Judge, City C, March 18, 2013, 1400.

³⁰⁶ Interview with Victim, City A, March 22, 2013, 1530.

³⁰⁷ Article 25.1 of the Criminal Procedure Code states: "If victims of minor crimes provided for by the Criminal Law of Mongolia reconcile with the accused or defendant, the case shall be terminated." Article 69.1 of the Criminal Code states: "A culprit who has committed for the first time a minor or a less serious crime, reconciled with the victim, and redressed the damage caused may be renounced."

³⁰⁸ Article 99.

³⁰⁹ Interview with Soum Police, City E, March 19, 2013, 1530.

³¹⁰ Interview with Victim, City A, March 22, 2013, 1530.

³¹¹ Interview with Police 2, City D, March 25, 2013, 1200.

³¹² Interview with Soum Judge, City E, March 18, 2013, 1530.

³¹³ See generally Interview with Soum Police, City E, March 19, 2013, 1530. This may be because interviewees are assuming that repeat violence will be prosecuted as torture, which is not subject to dismissal based on reconciliation as a heavy crime.

My eldest sister got married at 18. Throughout marriage, she faced domestic violence on a daily basis. Until now, it's been 23 years that she's been facing domestic violence at home. In my family, we have four boys. When the husband of my eldest sister beat her, we four boys would go there and punish the husband by beating him. . . . We went through many police investigations. We went through court. They had three children. We sent so many matters to the police. But my eldest sister insisted on withdrawing the cases every time. I would say at a minimum, there were seven to nine times she withdrew. So we used to use this shelter; at the final stage, we decided to use divorce and the law enforcement agencies to resolve this matter.³¹⁴

He finished by saying that his sister was ultimately forced to leave the country and seek asylum in Belgium.³¹⁵

Victims are often coerced into withdrawing complaints.³¹⁶ A prosecutor explained that they are required to find out whether a victim is requesting that a case be dropped because of perpetrator threats.³¹⁷ However, the authors heard of cases that were withdrawn even when perpetrators threatened victims. In one case, a man beat his wife and stepdaughter to convince them to withdraw a complaint that a neighbor raped the girl. The girl withdrew the complaint, saying she was in love with her rapist.³¹⁸ Perpetrators also apply more insidious pressure to compel victims to drop their complaints. A perpetrator facing criminal charges for breaking his wife's hips tried to get her to withdraw the complaint by repeatedly visiting her parents and telling them he would not pay back money he owed them if he went to jail.³¹⁹

Victims may also be influenced to withdraw their complaints because of lack of protection during criminal proceedings.³²⁰ A prosecutor observed, "People are scared; victims are scared. And so within a few days they withdraw the complaint."³²¹ Another prosecutor explained:

We don't have the law to protect victims' safety. The victims get intimidated to give certain testimony. So this will be a big problem for Mongolia. We do not have any protection for the victim—this is why the victims don't want to testify and then a week later, they say different things. It is a problem to prosecute cases. This is a very important element: to have a protection plan so the victims will testify more truthfully and will be encouraged. While the prosecution process is going on, I would like the victims in a shelter or in kinship care because I always suspect that the perpetrator threatens the victim to withdraw a case.³²²

Requirement of Victim Testimony

In Mongolia, few domestic violence prosecutions proceed without the testimony of the victim.³²³ Particularly in cases involving light injuries and no criminal history, a victim's refusal to testify can lead to withdrawal of the case.³²⁴

³¹⁴ Interview with Social Workers, City D, March 27, 2013, 1400.

³¹⁵ *Id.*

³¹⁶ Interview with Child Rights Worker, March 22, 2013, 930; Interview with Social Worker, City E, March 18, 2013, 1200; Interview with Shelter Psychologist, City D, March 26, 2013, 1130.

³¹⁷ Interview with Prosecuting Attorney, City B, January 28, 2013, 1540.

³¹⁸ Interview with Social Worker, City E, March 18, 2013, 1200.

³¹⁹ Interview with Shelter Psychologist, City D, March 26, 2013, 1130.

³²⁰ Interview with Lawyer, City C, March 18, 2013, 900; Interview with Prosecutor, City D, March 28, 2013, 1400; Interview with Prosecutor, City G, March 21, 2013, 1430.

³²¹ Interview with Prosecutor, City D, March 28, 2013, 1400. See also Interview with Prosecutor, City F, March 22, 2013, 1630 (stated that offenders make threats outside the courtroom).

³²² Interview with Prosecutor 1, City E, March 18, 2013, 930.

³²³ *Id.*; Interview with Prosecutor, City G, March 21, 2013, 1430.

³²⁴ Interview with Judge, City E, March 18, 2013, 1600.

When a victim testifies against her perpetrator, the prosecution can result in an effective punishment. In one case in which the victim testified, a perpetrator was convicted of intentional infliction of a minor bodily injury³²⁵ and imprisoned for three months. A police officer involved in the case explained:

When she just stepped into the door he slapped her and she fell down onto the floor. He slapped her three or four times until she couldn't defend herself, and she was unconscious. Then he started cutting her clothes with a paper knife and said, "Now since you don't have clothes, you will never go out again." She lost consciousness in this case. During the investigation, when we asked his friends and colleagues about the violence, they all responded there had been domestic violence before.... She cooperated with us really well. She filed a complaint and after that, she gave us all of the testimony and statements and came to us whenever we needed her. Eventually the case was transferred to a judge.³²⁶

The officer explained that following the conviction the violence stopped: "There was no more violence, and today the victim is living happily by herself...she looked really nice and stress-free and happy."³²⁷

A prosecutor described prosecuting a case using other evidence when victim testimony was unavailable. But he clarified that the victim generally must testify or else it is "very difficult" to prosecute the case.³²⁸ Another police officer stated, "Most people refuse to be witnesses."³²⁹

Criminal Provisions

Although several provisions of the Criminal Code can be used to prosecute domestic violence cases, none of those provisions explicitly address domestic violence. Even when the conduct in domestic violence cases fits the language of the law, legal professionals apply the Criminal Code provisions infrequently. When charges are brought under the Criminal Code, there are significant obstacles to obtaining a conviction and appropriate punishment.

The section of the Criminal Code cited most often in criminal domestic violence cases is the torture provision, which refers to "systematic battery" and similar actions.³³⁰ The torture provision allows prosecutors to bring criminal charges in cases involving light injuries when there has been a pattern of such conduct, even if the couple has reconciled.³³¹ Nonetheless, it is often difficult for prosecutors to marshal sufficient evidence of the pattern to obtain a conviction.³³² In particular, lack of forensic medical evidence can defeat a torture prosecution. Because victims may not seek help or obtain injury documentation each time the violence occurs, prosecutors may be unable to meet the requirement of proving a history of violence.³³³ A prosecutor explained:

In torture, it is about things without injuries, like if at night he is pinching her, no big injuries but over time, little by little. We've had some domestic violence cases like this, but they are

³²⁵ Criminal Code, Article 99.1.

³²⁶ Interview with Police, City A, March 22, 2013, 1430.

³²⁷ *Id.*

³²⁸ Interview with Prosecutor 1, City E, March 18, 2013, 930.

³²⁹ Interview with Police 1, City D, March 25, 2013, 1200.

³³⁰ Criminal Code, Article 100 states: "Systematic battery or other actions having the nature of torture if they have not entailed the consequences specified in Articles 96 and 98 of this Code shall be punishable by incarceration for a period of more than 3 to 6 months or by imprisonment for a term of up to 2 years."

³³¹ Interview with Lawyer, City D, January 24, 2013, 1000.

³³² Interview with Judge, City F, March 22, 2013, 1100; Interview with Prosecutor, City A, March 21, 2013, 1700.

³³³ Interview with Prosecutor, City D, March 28, 2013, 1400 (stating, "[t]here were no medical reports because it was all in the past").

difficult to prove. Most of the torture cases are victims who come to me and talk about previous past incidents, [for example], he used to pinch me or used to do violence or used to curse me, and it was all in the past. So it is hard to prove it because the victims are talking about the past.³³⁴

Occasionally, however, a determined prosecutor can obtain a conviction for torture when all of the required evidence is available, even when the couple has reconciled. In one case, a husband had abused his wife and stepchildren for eight years. Police officers arrived to see the violence happening, and the victim obtained a forensic certificate showing that the violence was physical and repeated. The victim also obtained a restraining order, but after the order expired, the perpetrator returned home and the violence resumed:

Again, it was repeated physical violence with bruises. Then they initiated a criminal case, and he was arrested for a few weeks. The earlier civil case was forwarded to the criminal case, and that is why he was arrested and charged. She had a serious injury to her eye. Her bruises were light, but the eye injury was serious. She was not blinded, but the bruising was worse than the bruises on her body. And because it was repeated, it was considered more serious. So even though the court decided the injuries were light, because it was repeated, it was enough.... They used the torture provision and intentional harm of the victim's body provision. In that case, the perpetrator was sentenced even though the victim said she had no complaints. We had forensic evidence and testimony from the children and victim's family, and the injuries were severe. The perpetrator also accepted his guilt.³³⁵

Based on the forensic certificate, the restraining order, testimony from the victim's family, and, perhaps most persuasive, an admission of guilt, the perpetrator was sentenced to 18 months' imprisonment for torture, even though the couple had reconciled.³³⁶

This result is not always the case, however, as a prosecutor described a case with a less favorable outcome. The victim filed a complaint regarding her own repeated abuse only after her husband beat her father, her brother, and her brother-in-law:

She said he always beat her the whole time they were together, and she was so scared. One time he even beat her while she was pregnant and she miscarried the baby.... He was somehow very physically strong, and he beat up some guy in the street and went to the jail for ten years.... He beats her because he says she is married to someone who knows what jail feels like.... For the three victims, I charged him with [criminal] hooliganism. For the beating of her, she said she miscarried after a beating, but the doctor's report didn't say the cause of the miscarriage, so I couldn't really prove it. The perpetrator was always caring in front of others, but at home he would torture her and punch her in places that other people wouldn't see. That is why I brought two cases to the judge: one for hooliganism with the relatives and one for torture with her. The first judge gave punishment for the two cases and the appeals court actually approved the first judge's order. When we went to the highest court, they said there was not enough evidence of the torture so they dropped that case . . . they said "it's just not enough proof."³³⁷

³³⁴ *Id.*

³³⁵ Interview with Lawyer, City D, January 24, 2013, 1000.

³³⁶ *Id.*

³³⁷ Interview with Prosecutor, City D, March 28, 2013, 1400.

Although the prosecutor had the victim's testimony, statements from the victim's friends who saw the bruises, and the perpetrator's arrest and sobering unit detention records,³³⁸ the court deemed this evidence was inadequate because there was no medical report.³³⁹

In addition to the torture provision, prosecutors may bring charges of intentional infliction of severe bodily injury,³⁴⁰ infliction of severe bodily injury by negligence,³⁴¹ intentional infliction of less severe bodily injury,³⁴² intentional infliction of minor bodily injury,³⁴³ and criminal hooliganism³⁴⁴ in domestic violence cases. Like torture, however, these charges are also subject to evidentiary obstacles. A prosecutor explained that where there is a record of the victim's call to the police station, they would still need to produce witnesses or other evidence. He explained, "Even if she testifies that it happened many times but can't provide any evidence, we can't run it as a criminal trial."³⁴⁵

Criminal Sentences

Even when prosecutors overcome all of the evidentiary hurdles to obtain a conviction, criminal sentences are often too lenient in domestic violence cases. According to a police officer, "I don't think anyone gets high punishment."³⁴⁶ In particular, victims remain subject to continuing abuse when convicted perpetrators of serious violence go free without serving any prison time under the conditional sentence provision of the Criminal Code.³⁴⁷ In one case, a husband who cut his wife's chest with a knife was convicted of infliction of injury by negligence and received a one-year conditional, or probationary, sentence.³⁴⁸

Although torture (Article 100) is the most commonly used criminal code provision in domestic violence cases, the highest punishment a court can impose is two years' imprisonment. In one case of torture, the perpetrator received only an 18-month sentence despite serious violence perpetrated against his wife and son:

He kicked her out, made her sleep outside. He threw things at her and beat her naked on a bed without a mattress. He made her 10- or 11-year-old son strip naked and burned him on the stove. He put a wooden device used to catch horses around the son's neck attached it to the motorcycle and dragged him behind it. He made the son stand naked and threatened to castrate him. He was always threatening to kill the wife. The bed where he beat her has iron springs. He made her sit there naked and beat her. The iron springs made a pattern on her body.... The wife was 37 years old, but she looked much older in court.³⁴⁹

Even convictions for severe, long-term domestic violence receive short punishments. A police officer described a conviction with a short sentence under the criminal hooliganism provision:

At the beginning, he hit her everywhere, but now he found out about the law to protect victims, so he stopped hitting where people can see. And especially when she sleeps, he pinches her...he also strangled her a couple of times with the clothes around her neck.... We

³³⁸ The sobering unit records did not document any abuse, only his erratic behavior and yelling. *Id.*

³³⁹ *Id.*

³⁴⁰ Criminal Code, Article 96.

³⁴¹ *Id.* Article 97.

³⁴² *Id.* Article 98.

³⁴³ *Id.* Article 99.

³⁴⁴ *Id.* Article 181.

³⁴⁵ Interview with Prosecutor, City G, March 21, 2013, 1430.

³⁴⁶ Interview with Police, City E, March 19, 2013, 1230.

³⁴⁷ Criminal Code, Article 61.

³⁴⁸ Interview with Police, City C, March 20, 2013, 1000.

³⁴⁹ Interview with Judge, City F, March 22, 2013, 1100.

couldn't see injuries from strangulation because he used clothes to do it. . . . I transferred the case to judges . . . he was in jail for one year under [the criminal hooliganism provision].³⁵⁰

When the perpetrator was released after his prison term, he continued his violence against the victim:

He was not charged again. . . . The perpetrator will never change his attitude. She is now probably ashamed of calling the police and has not called again. When we see each other in the street, she is ashamed. I can see it.³⁵¹

SUICIDE ATTEMPTS AND SELF DEFENSE

When women cannot obtain the protection they need and their abusers remain free to continue the violence, some women take action to stop the violence.³⁵² In some cases, women try to take their own lives before their husbands can do further harm to them. One woman recounted how her terror of her husband led her to stab herself:

He brought out a switchblade knife, said "I'm going to kill you. I'm going to finish you right here. You left me in [city], so I have nothing left to lose. I have no babies, no wife, and no purpose to live. This is the end here. I'm going to cut you up and leave you here and no one will find you. This is where you and I are going to end. I will cut your body into pieces and put it in the ground and no one will ever find you. I think our lives will be short like this." Then he started beating me very severely. He was hitting me with wood and anything he could find. He kicked me and hit me and did all possible types of beating. I fell down, and he started jumping up and down on my back. I knew he was going to kill me, so I thought it would be better to kill myself rather than his torture. So I took the knife and stabbed myself trying to kill myself. He said, "That's nothing. Don't pretend that something happened." He didn't do anything to help. He just stood there. I lost a lot of blood, and white stuff was coming out from my stomach. I fell down then.³⁵³

In other cases, women kill their husbands as a last resort. Approximately 103 women are in prison for murdering their perpetrators.³⁵⁴ A woman endured ten years of violence from the beginning of her marriage. She finally shot her husband out of fear that he was going to beat her yet again.³⁵⁵ The prosecutor described the case:

While he was beating her, he was using stones and did big damage to one of her fingers. There was a lot of blood and everything. He let her go home . . . but he told her that by the time he got back, she should pack her things and leave the house. Since he said that, the wife decided to leave. . . . They were almost 100 km from the aimag center. . . . She took the gun with her and walked 6-7 km. When we asked her why she took the guns, she said it was to protect herself from wolves and animals The husband took a horse and went the way she had gone [in pursuit]. When she saw him coming, she thought he was coming to beat her again, so she told him that if he came any closer she would shoot him, giving a warning. After the warning, he stopped and got off the horse and started walking right towards her. The

³⁵⁰ Interview with Police, City E, March 19, 2013, 1430.

³⁵¹ *Id.*

³⁵² Article 40.1 of the Criminal Code addresses self-defense and states that any action committed out of self-defense is not considered a crime.

³⁵³ Interview with Victim, City F, March 22, 2013, 1400. This victim's story is described on pages 5, 10, 29, 44, 49.

³⁵⁴ Eighty-eight percent of the women incarcerated committed the murder due to long-term violence and threats. Thirty percent of the women incarcerated had approached police and requested a divorce from the court. Email from NGO to Helen Rubenstein (July 16, 2013) (on file with authors) (citing "The circumstances and reason of offenders who are serving in a prison due to murder crime," National Human Rights Commission, 2012).

³⁵⁵ Interview with Prosecutor, City F, March 22, 2013, 1630.

warnings were not affecting him, so she shot the gun in the air one time. Still he wasn't listening and was coming towards her, so she shot at him.³⁵⁶

The husband survived, and the police investigated. The victim was convicted of attempted murder in a "state of sudden strong emotions"³⁵⁷ and sentenced to two years' probation. The prosecutor recalled, "The reason she shot him was based on this constant beating, and she thought if she didn't shoot him, he would take her to the house and beat her again."³⁵⁸

In another case a woman reported her husband to the police three or four times for violence spanning a decade. The police brought charges and punishments only under the Administrative Law—fines, sobering unit stays, and short-term detentions. Eventually, "the victim's only solution was to kill the perpetrator....So you can see the administrative charges were not effective, and the woman ended up in prison instead."³⁵⁹

³⁵⁶ *Id.*

³⁵⁷ Criminal Code, Article 93.

³⁵⁸ Interview with Prosecutor, City F, March 22, 2013, 1630.

³⁵⁹ Interview with Prosecuting Lawyer, City B, January 28, 2013, 1540 (The victim received the minimum sentence of 10 years' imprisonment).

DIVORCE

Perhaps because of the ineffectiveness of other legal protections,³⁶⁰ divorce is frequently seen as the only escape from domestic violence. A judge stated, “In many cases, we believe that divorce is the main solution to violence cases.”³⁶¹ Others share the view that women choose divorce because they frequently see it as the only way out of abusive relationships.³⁶² Another judge reported that out of the 45 divorce cases seen in a year, approximately 80 percent of those involved domestic violence.³⁶³

A legal services provider reported that severe injuries from domestic violence were more likely to result in a divorce application than a police investigation. An advocate stated, “The best decision is to get a divorce, and after that they [victims] get a better life.”³⁶⁴ Unfortunately, violence often does not end with divorce, and there are many issues within the divorce process that diminish its capacity to protect victims.

BARRIERS TO DIVORCE

The divorce process does not provide immediate relief, and it is not available to everyone. A typical divorce takes three to five weeks,³⁶⁵ not including the reconciliation period that frequently accompanies divorce proceedings. Although the law permits judges to grant a divorce immediately in cases of domestic violence,³⁶⁶ they do not usually do so.³⁶⁷ Therefore, in most cases, divorce is not final for several months.

Divorce is not available to everyone. A divorce is not permitted if the wife is pregnant or has a child younger than one year old.³⁶⁸ The cost of a divorce may be prohibitive for some victims. The application fee is 70,200 tugrik (approximately 44 USD).³⁶⁹ The court charges an additional fee if the victim seeks alimony or wants property divided.³⁷⁰ Although there are mechanisms for paying over time or eliminating fees where applicants have insufficient funds,³⁷¹ victims and social service providers have limited knowledge of these options. A victim reported that it would take years for her to save enough money to apply for a divorce:

Ever since July, I’ve wanted to get a divorce, but I have to pay a filing fee ... I don’t have that money. [If I did have the money], I would have [requested a divorce] right away after he broke my nose.³⁷²

³⁶⁰ See Civil Restraining Orders, page 9; Barriers to Administrative, page 28; Criminal Prosecutions, page 37; and Lack of Shelters and Inadequate Support Services, page 51.

³⁶¹ Interview with Soum Judges, City B, January 28, 2013, 900.

³⁶² Interview with Soum Judge 2, City D, March 28, 2013, 1000.

³⁶³ Interview with Judge, City C, March 18, 2013, 1400.

³⁶⁴ Interview with NGO, City C, March 18, 2013, 1730.

³⁶⁵ Interview with Court Secretary, City G, March 19, 2013, 1720.

³⁶⁶ Family Law, Article 14.4.

³⁶⁷ Interview with Victim, City A, March 22, 2013, 1530; Interview with Judge, City E, March 18, 2013, 1530.

³⁶⁸ Family Law, Article 12.2; Divorce Hearing, City D, March 29, 2013, 1000.

³⁶⁹ Interview with Court Secretary, City G, March 19, 2013, 1720; Interview with Judge, City A, March 21, 2013, 1530.

³⁷⁰ Interview with Soum Judge, City A, March 21, 2013, 1530.

³⁷¹ Interview with Soum Judge, City E, March 18, 2013, 1530. Interview with Civil Judge, City A, March 21, 2013, 1530. Articles

41.1.5 and 41.1.6 of the Law on Stamp and Duties provides that the fee may be waived for an applicant who cannot afford the fees.

³⁷² Interview with Victim, City A, March 22, 2013, 1530.

Despite this victim's economic barriers to divorce, a social worker neglected to inform her of alternative payment options.³⁷³

DANGEROUS RECONCILIATION PERIODS DURING DIVORCE

The Family Law of Mongolia gives courts discretion to order a three-month reconciliation period for couples seeking divorce.³⁷⁴ In practice, most judges impose the three month reconciliation period,³⁷⁵ putting victims of domestic violence in further danger by extending the parties' interactions.³⁷⁶ Although judges have discretion regarding whether to order a reconciliation period in any divorce case, and the Family Law explicitly allows judges to waive the reconciliation period in cases of domestic violence,³⁷⁷ many judges consider the reconciliation period mandatory.³⁷⁸ A victim who twice tried to divorce her abuser described the judges' reactions to her report of domestic violence and her fear during the reconciliation period:

Of course I told them [about the violence] all the time, both times. I told them all, but they said, "you don't have enough evidence." . . . They don't believe I was facing any domestic violence. In the courtroom, my husband said, "My wife has another one. She's having an affair, and that's why she wants a divorce and is making up all these lies." Because I didn't have enough evidence [of the violence], the judges thought I was making it up. Both times, the reconciliation period was three months I think that it's just not right that judges are saying that because you don't have enough evidence, they give us reconciliation. I always get upset at that. I was also watching on TV, and there was a case where the judge was giving reconciliation for three months to one couple, and during those three months, the perpetrator killed the victim. So I was really worried about that case. I thought, "What if I didn't escape that day he broke my nose? What if he killed me?" . . . Reconciliation is not right. Judges just don't know what danger they put us in.³⁷⁹

This practice perpetuates the perception among victims that "judges only work for reconciliation"³⁸⁰ and reflects the Mongolian legal system's goals of preserving the family.³⁸¹ As mentioned above, the law precludes women from divorcing their husbands if they are pregnant or have a child less than one year of age.³⁸² A judge reported:

³⁷³ *Id.*

³⁷⁴ Family Law, Article 14.2 ("If it is necessary, the court has discretion to put in abeyance the hearing till three months, all measures shall be taken to conciliate the parties thereafter.").

³⁷⁵ Family Law, Article 14.2.

³⁷⁶ See Interview with Court Secretary, City G, March 19, 2013, 1730; Interview with Bag Social Worker, City B, January 31, 2013, 1400.

³⁷⁷ Family Law, Article 14.4 ("If it has been upheld that there is a real threat to the lives of family members, welfare of children, or threats have occurred, the court shall dissolve the marriage without taking conciliating measures defined in 14.2 of this law.")

³⁷⁸ See Interview with Lawyer, City G, March 19, 2013, 1430 (The judge ordered reconciliation in every divorce case she handled, including in cases of domestic violence); Interview with Police Child Investigator, City C, March 19, 2013, 1100 (The parties were sent to reconciliation though the judge knew that the husband had slapped the wife); Interview with Civil Judge, City A, March 21, 2013, 1530 (Because the judge did not want the parties to get divorced she ordered them into reconciliation despite knowing there was extensive domestic violence in the relationship).

³⁷⁹ *Id.*

³⁸⁰ Interview with Victim, City A, March 22, 2013, 1530.

³⁸¹ Family Law, Article 14.2; Interview with Civil Judge, City A, March 21, 2013, 1530 ("Our judicial system morally pushes on the reconciliation.").

³⁸² Family Law, Article 12.2; Divorce Hearing, City D, March 29, 2013, 1000.

[Reconciliation is] required. In the law, it says that we have to reconcile the families. We have to take all opportunities to reconcile the families. It says it in the law. So as a result, instead of divorce, there is a lot of reconciliation happening.³⁸³

Judges often hope that counseling during the reconciliation period will change the perpetrator's behavior so that the parties will be able to stay together.³⁸⁴ As a result, judges often resolve conflicts in testimony regarding whether there has been domestic violence in the marriage in favor in the party who wants to reconcile. A judge reported that the victim's testimony alone is not sufficient to waive the reconciliation period:

In our law it says if there is not enough evidence or proof from the victim's side, and if both parties don't agree to the divorce, then by the law we have to give them three months reconciliation time. So it doesn't really matter which party I believe. I just follow the law. So if the defendant says they don't ever beat their wife and refuses the divorce, then we have to follow the law.³⁸⁵

The failure by some judges to trust the testimony of victims creates a high evidentiary standard for waiving the reconciliation period. Judges typically require a forensic report, which can be difficult for victims to get, before considering domestic violence in the context of a divorce.³⁸⁶ Courts have also required assessments from social workers to consider domestic violence.³⁸⁷ Even with a forensic report, courts often do not consider minor injuries such as bruises sufficient evidence to immediately grant a divorce or waive reconciliation.³⁸⁸

Judges who fail to screen for domestic violence in divorce cases also do not take it into account in ordering a reconciliation period. A judge admitted that unless domestic violence is specifically addressed in a divorce petition, she would not screen for domestic violence.³⁸⁹

VIOLENCE DURING AND AFTER DIVORCE

Divorce is not an effective way to end domestic violence. In many cases, restraining orders are necessary during the divorce process because the violence may escalate when the perpetrator learns that the victim is planning to divorce him. Victims are in serious danger if they are unaware of their ability to obtain a restraining order or the order is ineffective.³⁹⁰ For example, one victim reported violence after her husband learned she was seeking a divorce:

Now I wanted to get a divorce. . . . [One day] he showed up at my job and asked to see the kids. I don't know how he found me. I didn't even know he was in [this town]. I told him, "No more chances. Get out of my life." He was following behind me for a week, but I didn't know it. I think he was trying to find me alone. . . . [One night] I was walking from my work to my house, which are very close. It was midnight and he came and hit me on the head. I fell over, and then he stabbed me in my face with a scissors and cut my neck with a knife. There was blood all over my

³⁸³ Interview with Soum Judge, City E, March 18, 2013, 1530. See also Interview with Court Secretary, City G, March 19, 2013, 1730; Family Law, Article 14.2.

³⁸⁴ Interview with Soum Judge, City B, January 28, 2013, 900.

³⁸⁵ Interview with District Judge 1, City D, March 28, 2013, 1000.

³⁸⁶ Interview with Nurse, City D, January 21, 2013, 1000. See Civil Restraining Orders, page 9, and Barriers to Administrative and Criminal Prosecution, page 28.

³⁸⁷ Interview with Khoroo Social Worker, City D, January 23, 2013, 1000.

³⁸⁸ Interview with Civil Judge, City A, March 21, 2013, 1530.

³⁸⁹ Interview with Soum Judge, City B, January 28, 2013, 900.

³⁹⁰ For further discussion on the barriers to obtaining restraining orders and lack of implementation, see Civil Restraining Orders, page 9.

face because the stab was very deep. He took me then to a mountain house and sexually abused me and put me in a basement. I didn't know where I was, but it seemed as though he had prepared it ahead of time. There was only a small window to get in and out. He kept me in the basement two days and two nights, sexually abusing me and with no food or water.³⁹¹

In another case, a woman was killed after telling her abusive husband she was going to divorce him:

The wife wanted to divorce when he was in jail because she didn't want to live with someone who had been in jail. All the time, the husband warned that if she divorced him, he would kill her. . . . Ten days before this happened, she decided to divorce. She was staying at a friend's house all day, and then at night went to her mother's house. . . . At nighttime, he came to the mother's ger and he jumped in [the window]. He knew how to open the house. He killed her in front of the mother and three kids with a knife.³⁹²

In one promising story, a COIA officer described the measures he took to implement a restraining order issued in connection with a divorce:

I have received one [restraining order] once before. The perpetrator was a very violent person, always drunk, and when he's drunk, he always beats the victim up. He was also very jealous and always demanded unwanted sex from the victim. So the restraining order was to keep them separated while their divorce was at court and keep the perpetrator away from the children during the process. . . . At the time of the restraining order, our duty was to keep him away from the victims. So we called him to the office with his brother and father and told them that if they don't keep their son/brother away from the victims, he will be charged under the Criminal Code. Since he received the order and signed on the order, the perpetrator never showed up again.³⁹³

However, few people know that a restraining order is available in the divorce process or if they are aware of it, they fail to request it.³⁹⁴ If a victim does not request the restraining order, courts cannot unilaterally issue the order.³⁹⁵

Continuation of violence after divorce is also common, sometimes escalating because the perpetrator is angry with the victim for divorcing him. For example, a judge reported:

After the divorce, the perpetrator drank a lot. He would drink and come to the victim's house and beat her because he was upset for her making a big deal about the violence [during the divorce].³⁹⁶

Sometimes the violence after divorce can be severe, as another judge described:

³⁹¹ Interview with Victim, City F, March 22, 2013, 1400. This victim's story is described on pages 5, 10, 29, 44, 49.

³⁹² Interview with Lawyer, City C, March 18, 2013, Lawyer, 900.

³⁹³ Interview with Court Order Implementing Agency 1, City D, March 27, 2013, 1000.

³⁹⁴ Interview with District Judge 1, City D, March 28, 2013, 1000; See Civil Restraining Orders, page 9; Interview with District Judge, City G, March 22, 2013, 1100.

³⁹⁵ Interview with Soum Judge, City B, January 28, 2013, 900.

³⁹⁶ Interview with District Judge 1, City D, March 28, 2013, 1000. See also Interview with NGO, City B, January 28, 2013, 1400 (The ex-husband would come to the house and the victim "was pinched or beaten. The perpetrator was verbally abusing her a lot. The perpetrator was abusing his children a lot, too. . . . [O]ne time he was threatening her and the children at the same time with a knife.").

The domestic violence often continues after the divorce. . . . After they were divorced, he put her in the car. He drove to a place he prepared and stripped her naked and kept her there for five to six hours and tried to rape her. She made loud noises so he wasn't able to rape her. She ran away naked at midnight and saved her life.³⁹⁷

One victim explained that after she separated from her husband, he came to her house at least four times, always breaking her door. On each occasion the police and the courts did nothing.³⁹⁸ Because the LCDV applies only to family members, relatives and persons who reside together,³⁹⁹ it is unclear whether a victim can seek a restraining order after a divorce. A judge stated, "Because it has never been in our practice, we believe [getting a restraining order after divorce] is theoretically possible, but...we are not sure if the victim would be eligible to file a petition or not."⁴⁰⁰

³⁹⁷ Interview with Judge, City F, March 22, 2013, 1100.

³⁹⁸ Interview with NGO, City E, March 18, 2013, 1100.

³⁹⁹ Law on Combating Domestic Violence, Article 3.

⁴⁰⁰ Interview with Soum Judges, City B, January 28, 2013, 900.

LACK OF SHELTERS AND INADEQUATE SUPPORT SERVICES

SHELTER NEEDS

One of the most immediate forms of protection a government can offer domestic violence victims is a safe place to go when she escapes. Although domestic violence shelters provide a temporary solution, the respite they create from violence enables many women to begin making long-term plans and stay safe during legal proceedings. A victim explained, “With all of the depression and other things I was going through, I was not able to think and make a decision.”⁴⁰¹ The victim reported, however, that her time in a shelter not only helped her to stay safe during that period, but that the counseling she received there also helped her regain her self-confidence and begin the process of leaving the perpetrator.⁴⁰² Another victim, who was severely beaten and raped by her husband for more than 15 years before escaping to the NCAV shelter, said about the shelter and its staff, “They helped me to survive and be stronger and confident in myself. Without that I probably could not have survived.”⁴⁰³

Lack of Capacity and Funding

Although the LCDV refers in several places to placing a domestic violence victim in a shelter,⁴⁰⁴ in reality, shelter care is rarely available in Mongolia. The law does not explicitly require the establishment or funding of shelters.⁴⁰⁵ Shelters that do exist are funded by foundations, the Social Welfare Agency, and fundraising efforts by the NGOs. Many have been forced to close due to a lack of financial resources, and the shelters that remain have the capacity to serve a small percentage of the victims who need their services. There is only one full-functioning shelter for women in Mongolia. It is located in Ulaanbaatar,⁴⁰⁶ operated by NCAV.⁴⁰⁷ The shelter has 20 beds and is frequently full, especially in the winter. When the shelter is full, victims who have the financial means are encouraged to go to a hotel, but those without sufficient money sometimes have to return home.⁴⁰⁸ In addition to the NCAV shelter, the One Stop Service Center in Ulaanbaatar provides emergency services and allows domestic violence victims to stay for up to 72 hours.⁴⁰⁹ Because the One Stop Service Center has no food budget, if victims need shelter for more than the 72 hours, they must go to the NCAV shelter or find other accommodations.⁴¹⁰

Shelters Closed Because of Lack of Funding

Reportedly at least four shelters previously operated in Mongolia in addition to the NCAV shelter in Ulaanbaatar, but those were all forced to close because of lack of resources.⁴¹¹ From June 2009 to

⁴⁰¹ Interview with Victim, City B, January 29, 2013, 1500. This victim’s story is described on pages 10, 16, 18, 20, 51, 54 and 55.

⁴⁰² *Id.*

⁴⁰³ Interview with Victim, City D, January 21, 2013, 1600.

⁴⁰⁴ Law to Combat Domestic Violence, Arts. 5.1.3, 9.1.4, 15.1.1, 16.1.2.

⁴⁰⁵ The Law to Combat Domestic Violence only states that the government is “to allocate resources from the state budget to cover the expenses required for implementation of the programmes stated in provision 7.1.1 of this Law and introduce the budget proposal to the State Great Hural” and define the minimum requirements for a shelter. Arts. 7.1.2 and 7.2.2.

⁴⁰⁶ Interview with NGO, City D, February 1, 2013, 1000. While at the shelter, NCAV provides victims with basic social services such as counseling. Interview with Lawyer, City D, January 30, 2013, 1200. It should be noted that there is an additional shelter for girls operated by Desert Rose, but as this shelter does not serve women over the age of 20, it is not available to most victims of domestic violence. Interview with NGO, City D, January 29, 2013, 900.

⁴⁰⁷ The shelter is funded by Social Welfare Agency, Foundation Dufresne, Gauthier Foundation, and the fundraising activities of NCAV. Email from NGO to Helen Rubenstein (July 16, 2013) (on file with authors).

⁴⁰⁸ Interview with NGO, City D, February 1, 2013, 1000.

⁴⁰⁹ Interview with Nurse, City D, January 21, 2013, 1000; Interview with Social Worker, City D, January 21, 2013, 1000.

⁴¹⁰ Interview with Nurse, City D, January 21, 2013, 1000; Interview with Social Worker, City D, January 21, 2013, 1000.

⁴¹¹ Interview with NGO, City C, March 18, 2013, 1730; Interview with the Ministry of Population Development and Social Welfare, Ulaanbaatar, January 22, 2013, 1430; Interview with NGO, City D, February 1, 2013, 1000.

October 2010, a shelter operated in a government building in one province, with rent paid by the government. It had four double beds, which could hold a total of eight women, who were allowed to stay for up to ten days. In 2010, however, the government sold the building, forcing the shelter to close.⁴¹² An advocate discussed the consequences of closing the shelter for the victim described earlier whose husband killed her in front of her mother and three children in her mother's ger:⁴¹³

This case happened after they closed the shelter. At that time, the wife knew there was a danger to her life. If there was a shelter, she could have hid there but since there wasn't, she went to her mother's house. The husband knew she was hiding at her mother's house, and he went there and killed her. . . . Since that case, we are still talking about how, if there was a shelter, this kind of thing wouldn't happen. . . . I so regret that many of these cases are happening, but even when we know of the danger, we cannot give much help.⁴¹⁴

Another interviewee remarked that the shelter was unlikely to re-open unless increased financial support is required by law.⁴¹⁵

Other shelters have also closed due to a lack of financial support, including shelters in at least two provinces that closed because there was no money to make necessary repairs to the buildings.⁴¹⁶ In one of these shelters, broken windows and doors had made the shelter uninhabitable during winter months. Because the shelter received no financial support from the government for repairs, food, or staff, the building has been temporarily rented to a commercial entity until the money can be raised to again use it as a shelter.⁴¹⁷

Efforts to create shelters in other areas of Mongolia have also stalled because of a lack of funding. In one rural province, an NCAV regional coordinator has been trying to raise money for a shelter. The regional coordinator obtained land near the police station on which to build the shelter in 2011 but has not been able to start construction due to a lack of financial support. The shelter has been discussed with the local government, but it is receiving very low priority.⁴¹⁸

As indicated above, many of the shelter costs are currently covered by NGOs instead of the government. For example, the government does not provide direct funding to the NCAV shelter, although the Ministry of Policy and Population Development sometimes authorizes reimbursement for the services provided.⁴¹⁹ The average stay authorized for Ministry reimbursement is only 14 to 22 days, after which time the victim must find accommodation with her family or friends.⁴²⁰ A Ministry representative acknowledged that the

⁴¹² Interview with NGO, City C, March 18, 2013, 1730.

⁴¹³ Page 49.

⁴¹⁴ Interview with Lawyer, City C, March 18, 2013, 900.

⁴¹⁵ *Id.*

⁴¹⁶ Interview with NGO, City B, February 1, 2013, 900; Interview with NGO, City D, February 1, 2013, 1000; Interview with Legal Affairs Division, City G, March 21, 2013, 1000; Interview with Public Affairs Officer, City G, March 21, 2013, 1530; Interview with Child Social Worker, City G, March 22, 2013, 930.

⁴¹⁷ Interview with Legal Affairs Division, City G, March 21, 2013, 1000; Interview with Police, City G, March 21, 2013, 1100; Interview with Child Social Worker, City G, March 22, 2013, 930.

⁴¹⁸ Interview with NGO, City F, March 21, 2013, 900.

⁴¹⁹ Interview with Social Welfare Office, City D, January 24, 2013, 1400; Interview with the Ministry of Population Development and Social Welfare, Ulaanbaatar, January 22, 2013, 1430.

⁴²⁰ Interview with Social Welfare Office, City D, January 24, 2013, 1400.

funding provided through this reimbursement system was not for basic operational costs and was probably insufficient.⁴²¹

Acute Need for Shelters in Rural Areas

Shelters are especially needed in remote areas of Mongolia. Some interviewees suggested that there be at least one shelter per aimag, while others noted the need for shelters at the soum level.⁴²² The need for shelters in the countryside is evident from the extreme efforts that some women take to reach the current shelters. A worker from the One Stop Service Center reported that some clients come to Ulaanbaatar from the countryside just to stay for the three days they are allowed.⁴²³ After the permitted stays at the One Stop Service Center and NCAV shelter, most women have no alternative except to go back to their violent relationships.⁴²⁴

An advocate from a rural shelter, which is now closed, reported women coming from long distances:

A lady came from 137 kilometers away and walked all the way to the shelter. They lived very far away from everything else, and when the husband drank he beat her. When he beat her, she always went and slept outside. . . . [T]he last time she came, the husband had beaten her so badly, he could have killed her. He hit her with a broken ger pole. Her back was all blue with bruises, and she was so afraid.⁴²⁵

At that time, the shelter was able to provide her with medical treatment and gave her a place to stay while she recovered and met with the police.⁴²⁶

Because there are no shelters currently operating outside of Ulaanbaatar, many women choose to stay with family or friends instead of traveling long distances to the one existing shelter.⁴²⁷ In many of these areas, however, the perpetrator knows the victim's friends and relatives, making it easy for the perpetrator to find the victim.⁴²⁸ In one case, a victim was staying with relatives after her perpetrator threatened to kill her and attacked her and her children with knives and an axe. She feared that her perpetrator would find her.⁴²⁹ When asked what would make her feel safer, she said:

I think at least the shelter, if there was a shelter where he could not find me. Today, maybe if I could stay in a shelter then he could not find me. . . . I need to somehow escape and go to places where he cannot find me.⁴³⁰

The lack of shelters is frustrating to service providers who feel they are currently unable to fulfill their mandate to protect women. The need for additional shelters in Mongolia was one of the most frequently cited issues in interviews.⁴³¹ As one social worker explained, when victims come to her, "[W]e just can't

⁴²¹ Interview with the Ministry of Population Development and Social Welfare, Ulaanbaatar, January 22, 2013. See also Interview with Social Welfare Office, City D, January 24, 2013, 1400.

⁴²² Interview with Legal Affairs Division, City G, March 21, 2013, 1000; Interview with Public Affairs Officer, City G, March 21, 2013, 1530.

⁴²³ Interview with Nurse, City D, January 21, 2013, 1000.

⁴²⁴ *Id.*

⁴²⁵ Interview with NGO, City C, March 18, 2013, 1730.

⁴²⁶ *Id.*

⁴²⁷ Interview with NGO, City B, February 1, 2013, 900.

⁴²⁸ *Id.*

⁴²⁹ Interview with Victim, City B, January 31, 2013, 1530. This victim's story is described on pages 10, 19, 20, 28, 29 and 53.

⁴³⁰ *Id.*

⁴³¹ Interview with School Social Worker, City B, January 29, 2013, 1045; Interview with Social Workers, City B, January 30, 2013, 1000; Interview with NGO, City B, February 1, 2013, 900; Interview with Bag Governor, City E, March 19, 2013, 930; Interview with

do anything about their safety. A couple days later, since we don't have a shelter, we have to just drop the case and let them go."⁴³²

Secure Shelters: A Source of Safety

In one area without a shelter, an advocate described the fatal consequences when a perpetrator found his victim:

There was a case where the woman was killed because the perpetrator was able to find her. They were not married, but she was his partner, and they were living together in an apartment. . . . In that case, what happened was the male partner was physically abusing her almost every day. When she came to NCAV, I advised her to not go back to the apartment but to go to a friend's house. At that time, when she came to NCAV, she came with just a sweater even though it was November. I asked why she didn't have a jacket, and she said her partner had burned all her clothes. . . . She was going to the friend's house, but eventually he found all of her friends' places. One day, they were both found dead—he killed her and then killed himself. That was a very sad case. Sometimes I think about it, and I believe that victim could have survived if there was a shelter.⁴³³

Some women also do not want to involve their friends or family, making the need for a shelter even more urgent. A victim whose husband threatened to kill her explained:

That [shelter] would be very helpful because once I know he is drunk, there is no place to go except my house. I don't really go to my relatives and tell my story because I don't want to tell them my personal life. So now I usually go the hotel when he is drunk. There is no place I can go except my house and the hotel.⁴³⁴

Having a shelter to keep victims safe would assist with criminal justice proceedings.⁴³⁵ A social worker⁴³⁶ and a police officer described how useful it would be to have a shelter during the investigation and court proceeding. The officer said, "Because there is no shelter to send the victims to, we just tell them to go to their family or their mothers—something to not stay at home."⁴³⁷ A prosecutor concurred with sending victims to a shelter during the prosecution process because he suspected perpetrators threatened victims into withdrawing the cases.⁴³⁸

NGO, City E, March 19, 2013, 1100; Interview with Police Officers, City E, March 19, 2013, 1430; Interview with Police, City A, March 21, 2013, 1130; Interview with Social Worker, City A, March 22, 2013, 900.

⁴³² Interview with Social Worker, City A, March 22, 2013, 900. See also Interview with NGO, City F, March 21, 2013, 900 ("Having a shelter is very important. At least one in every aimag. Even though the rural women, have transportation problems, they still come to the aimag center to ask for help, so if there was a shelter here, I could help them.").

⁴³³ Interview with NGO, City B, February 1, 2013, 900.

⁴³⁴ Interview with Victim, City F, March 22, 2013, 900. This victim's story is described on pages 12, 13, 17, 28, 35, 36 and 54. See also Interview with Victim, City B, January 29, 2013, 1500, ("We have nowhere to go. I guess worse-case scenario I would go to my mom's for a few days. But we have nowhere to go long-term. I sometimes feel so trapped.") This victim's story is described on pages 10, 16, 18, 20, 51, 54 and 55.

⁴³⁵ See Barriers to Criminal and Admin Proceedings, page 28.

⁴³⁶ Interview with School Social Worker, City B, January 29, 2013, 1045.

⁴³⁷ Interview with Police, City B, January 29, 2013, 1400.

⁴³⁸ Interview with Prosecutor 1, City E, March 18, 2013, 930.

SOCIAL SERVICES

In addition to shelters, the LCDV provides for a variety of other services intended to protect victims and hold offenders accountable.⁴³⁹ However, without funding and clear identification of who is responsible for providing these services, they exist more on paper than in reality.

Victim Services

The LCDV dictates that social services be provided to victims of domestic violence,⁴⁴⁰ but it fails to specify who is responsible for providing these services or require government financial support. The government relies almost exclusively on the NGO community to provide such services, often with little government funding.⁴⁴¹ For example, although NCAV strives to provide counseling at locations throughout the country, the NGO's services are limited by insufficient government support. NCAV volunteers who live outside of Ulaanbaatar work to protect victims of domestic violence in addition to their regular jobs and receive no compensation.⁴⁴² Victims who received individual counseling or attended support groups through NCAV reported that these services increased their self-confidence and were very useful.⁴⁴³ Relying solely on the NGO community to provide victim counseling, however, limits the availability and geographic reach of these services.⁴⁴⁴

Batterers' Intervention Programs

Although the LCDV includes multiple references to perpetrator behavior programs [commonly referred to as "Batterers' Intervention Programs"],⁴⁴⁵ few if any such programs currently exist in Mongolia. According to a social service provider, "There is no implementation system for enforcement of training required

⁴³⁹ See, e.g., Law to Combat Domestic Violence, Article 15 ("Ways of protecting victims, responsibilities of other bodies to ensure victim's confidentiality"), Article 17.5 ("Court decision stated in provision 17.1 of this Law shall not interfere in conducting investigation on administrative offences concerning domestic violence occurrence or initiating criminal case and instituting court proceedings of civil cases").

⁴⁴⁰ Article 15:

15.1. The following ways can be utilized to protect victim:

15.1.1. to place victim in shelter;

15.1.2. to place in temporary kinship care or group care;

15.1.3. to transfer to child care facilities or social welfare organizations if necessary;

15.1.4. to provide services as stated in provision 5.1.5. of this Law;

15.2. Victim is entitled to have legal assistance, file a claim for divorce, support, getting child alimony or compensation for material and non-material damages in accordance with laws and legislations.

15.3. Social worker and persons stated in article 12 of this Law shall not disclose victim's confidential information obtained during counseling.

15.4. Persons due to their official position having become aware of confidential information about shelter shall not disclose information about the shelter to others.

⁴⁴¹ Interview with Social Worker, City D, January 21, 2013, 1000.

⁴⁴² Interview with NGO, City D, February 1, 2013, 1030; Interview with NGO, City B, February 1, 2013, 900; Interview with NGO, City F, March 21, 2013, 900; Interview with NGO, City C, March 18, 2013, 1730.

⁴⁴³ Interview with Victim, City B, January 29, 2013, 1500. This victim's story is described on pages 10, 16, 18, 20, 51, 54 and 55.

⁴⁴⁴ Interview with Social Welfare Office, City D, January 24, 2013, 1400 (requesting on-site counseling at locations such as the One Stop Service Center in her geographic area).

⁴⁴⁵ Law to Combat Domestic Violence, Article 16.1.5 (provides for "mandatory training influencing perpetrator's behavior" as a term of a restraining order); Article 7.3.2 (State authorities are required "to approve and enable the implementation of mandatory training program aimed at influencing perpetrators' behavior").

under the law.”⁴⁴⁶ A district judge expressed her frustration with the lack of Batterers’ Intervention Programs:

The law says there is a perpetrator training program. But we don’t have that program right now. . . . We don’t have anybody to conduct the training or a place. When judges make a decision, it’s based on the law. [There should be] an agency or place where we can conduct training for a perpetrator.⁴⁴⁷

Where Batterers’ Intervention Programs have existed, they have been sponsored by NGOs such as NCAV and the Men’s Counseling Center.⁴⁴⁸ They take place on an ad hoc basis without support from the government, and participation by perpetrators has been voluntary, undercutting their effectiveness.⁴⁴⁹ An NCAV coordinator described her attempt to offer a Batterers’ Intervention Program:

In the beginning, I actually provided some training at the detention centers. I worked closely with the police officers and had a room to organize some sessions before the perpetrators left detention. But it had to be stopped because of funding issues. The police department was going to develop curriculum, but it has never happened.⁴⁵⁰

FAILURE BY GOVERNMENT OFFICIALS TO CARRY OUT THEIR ROLES

The LCDV designates important roles for certain government officials in addition to justice system personnel, including government social workers⁴⁵¹ and soum and bag governors,⁴⁵² in addressing domestic violence, but these roles are not given sufficiently high priority.

Social Workers

Although the LCDV explicitly requires social workers to “conduct family, environment, and risk assessments,”⁴⁵³ some social workers reported that they are not allowed to observe families for signs of domestic violence.⁴⁵⁴ Because there is no appropriate professional directive,⁴⁵⁵ some social workers act out of personal commitment and make domestic violence home visits in their free time instead of during working hours.⁴⁵⁶ A bag social worker said that the governors actively discourage her from working on domestic violence cases: “They will even say ‘Why do you spend such a big amount of time on this

⁴⁴⁶ Interview with Men’s Association Psychologist, City D, January 30, 2013, 900. See also Interview with Department of Policy Implementation and Coordination Population Development, Ministry of Population Development and Social Welfare, Ulaanbaatar, January 22, 2013, 1430 (“There are many different services available for victims of domestic violence, but I found there are not many programs, such as treatment programs for offenders to change their behavior. I have never heard of any programs or trainings.”); Interview with Child Authority Center, City E, March 18, 2013, 1230 (“I’ve only heard of such [perpetrator] training existing, but I have never known or seen it anywhere.”).

⁴⁴⁷ Interview with District Judge 1, City D, March 28, 2013, 1000.

⁴⁴⁸ Interview with Nurse, City D, January 21, 2013, 1000 (“There is only one time when this program is mandatory, and that is when it is part of a restraining order. So the lack of restraining orders means few men are required to participate. The detention center service is run by an NGO, Men’s Counseling Center. It provides support and counseling information to detainees who are involved in DV cases. I just heard that this year that this NGO was able to contract with the police because police find it effective or useful.”).

⁴⁴⁹ Interview with Lawyer, City D, January 24, 2013, 1000 (responding to the question if there are behavior programs: “I think there are some voluntary behavior treatment programs run by NGOs, usually group or individual counseling and support groups. I think those programs are very limited, maybe one or two. . . . Attendance is the problem though. It is quite different than mandated alcohol treatment where police sometimes do follow-up. But if it is a behavior program, nobody monitors that and I think perpetrators do not attend”).

⁴⁵⁰ Interview with NGO, City B, February 1, 2013, 900.

⁴⁵¹ Law to Combat Domestic Violence, Article 10.

⁴⁵² *Id.* Article 14.

⁴⁵³ *Id.* Article 10.1.1.

⁴⁵⁴ See, e.g., Interview with Social Worker, City D, January 24, 2013, 1600.

⁴⁵⁵ Interview with Social Worker, City D, January 24, 2013, 1600; Interview with Lawyer, City F, March 21, 2013, 1800.

⁴⁵⁶ Interview with Social Worker, City D, January 24, 2013, 1600.

case?’ So they will assign us some other kinds of responsibilities.”⁴⁵⁷ Social workers who were interviewed suggested that domestic violence be added specifically to their job descriptions and be taken into account during performance reviews.⁴⁵⁸

Funding limitations for domestic violence social services were especially noted at the khoroo or bag level, where many locations currently have no budget for these activities.⁴⁵⁹ Funding shortages are also apparent in inadequate staffing, and many social workers reported heavy caseloads that prevented them from addressing the needs of domestic violence victims.⁴⁶⁰

Soum and Bag Governors

Even though the law gives soum and bag governors specific responsibilities for combating domestic violence,⁴⁶¹ many governors do little to address the problem.⁴⁶² Bag governors should be responsive to cases of reported domestic violence in their territory,⁴⁶³ but inadequate resources and a low priority for domestic violence issues result in failure to carry out their responsibilities. For example, the LCDV charges bag governors with keeping records of the incidence of domestic violence, yet allocation of government resources suggests a priority on agricultural matters instead of domestic violence. A bag governor explained that he had difficulty visiting the nomadic families to check on domestic violence, yet the government provided annual transportation for him to visit families and collect statistics on the number of sheep lost during the winter.⁴⁶⁴ While governors should not be expected to know every family’s situation, they should know and implement their LCDV responsibilities for those families where domestic violence has been reported to the government or a restraining order sought.

⁴⁵⁷ Interview with Bag Social Workers, City B, January 31, 2013, 1400 (“Sometimes even when we go to the families and conduct interviews and case studies, in many cases, our bag governors blame us for doing this kind of work. . . . Sometimes even bag governors don’t allow us to go do case management and talk to families.”).

⁴⁵⁸ Interview with Social Worker, City D, January 23, 2013, 1000; Interview with Social Worker, City D, January 24, 2013, 1600; Interview with Lawyer, City F, March 21, 2013, 1800.

⁴⁵⁹ Interview with Social Worker, City D, January 21, 2013, 1000; Interview with Social Worker, City D, January 23, 2013, 1000; Interview with Advocate, City B, January 28, 2013, 1400; Interview with NGO Advocate, City E, March 19, 1100; Interview with Bag Coordinator, City G, March 22, 2013, 1400; Interview with Social Worker, City D, January 23, 2013, 1100; Interview with Bag Governor 1, City E, March 19, 2013, 930.

⁴⁶⁰ Interview with Social Worker, City D, January 23, 2013, 1000; Interview with Social Worker, City D, January 24, 2013, 1600; Interview with School Social Worker, City B, January 29, 2013, 1045; Interview with Social Worker, City A, March 22, 2013, 900.

⁴⁶¹ Law to Combat Domestic Violence, Article 14.1 states:

14.1. The Soum or Bag governors shall take the following responsibilities to stop and prevent potential domestic violence:

14.1.1. to request perpetrator to appear at local authority office in order to secure victim’s safety and warn perpetrator to stop violence;

14.1.2. If deemed necessary, to take measures to ensure safety of victim’s residency or, if possible, place victims in temporary kinship care;

14.1.3. to interview victim, perpetrator, and witness and keep records on domestic violence occurrence and to take other measures if necessary.

⁴⁶² Interview with Bag Governor, City B, January 30, 2013, 1400 (stating her response to domestic violence was inadequate); Interview with District Judge, City G, March 22, 2013, 1100 (“Generally as I’ve seen, the local governor’s office is not responsive. I think they don’t know what to do.”); Interview with Bag Police, City E, March 19, 2013, 1430 (in response to the question whether bag governors help address domestic violence issues: “if there are governors who are professionally trained and have knowledge of the law, but most don’t know about the law”); Interview with NGO Hotline staff person, City D, January 31, 2013, 900 (“Local governors, for the most part, have no idea of what their obligations are”); Interview with NGO, City B, February 1, 2013, 900 (“In practice, [bag and soum governors] are not doing much”).

⁴⁶³ Law to Combat Domestic Violence, Article 14.

⁴⁶⁴ Interview with Bag Governor 1, City E, March 19, 2013, 930.

Some governors see their role with regard to domestic violence as providing direction to the police and other service providers.⁴⁶⁵ According to one bag governor:

The main role [of the governor] is to provide guidance to the social workers and bag inspectors on how to detect [domestic violence] cases. Then, after detection, we guide the needs assessment and referrals. We also provide guidelines to the bag inspectors. From the bag level, our main role is to detect the cases and refer them to the next level of services.”⁴⁶⁶

Soum and bag governors are ineffective in carrying out their responsibilities under the LCDV because of lack of knowledge, poor attitudes, and lack of resources. As a result, they do not protect victims or hold perpetrators accountable for domestic violence.

⁴⁶⁵ Interview with Bag Governor, City B, January 30, 2013, 1400 (“Sometimes we refer the perpetrator to alcohol treatment programs because alcohol is often involved, and sometimes some trainings. If I suspect any criminal behavior, I involve the police officers to conduct more investigation. At the bag level, we do not have enough space to have services such as counseling.”).

⁴⁶⁶ Interview with Bag Governor, City B, January 30, 2013, 1400.

CONCLUSION

This report examines the laws and practices that constitute the Mongolian government's response to the serious and pervasive problem of domestic violence. By passing the Law to Combat Domestic Violence in 2004 and undertaking pending legal reform, the Mongolian government has demonstrated its commitment to combating domestic violence and should be commended for its efforts.

Enacting legislation to address domestic violence is an important first step in combating violence against women. As this report demonstrates, comprehensive and regular monitoring of how government actors respond to domestic violence is critical to identifying gaps and weaknesses in the laws and the government's response that undermines victim safety and offender accountability.

In Mongolia, there are serious gaps and weaknesses not only in the language of the laws but also in the implementation. Since the passage of the LCDV, very few restraining orders have been issued. Numerous obstacles, including a lack of knowledge by victims and government actors, evidentiary barriers, and victims' concerns about financial and personal security, impede the issuance of restraining orders. The lack of harmonization among laws and clear directives to implement and enforce restraining orders is of particular concern, leaving many state actors uncertain about their roles once a judge issues an order. Many women resort to divorce as a way to escape the abuse, a process that poses great challenges to victims' safety.

Many of the government actors mandated to respond to domestic violence, including police, social workers, prosecutors, judges, health care workers, and governors, demonstrated a lack of understanding of the dynamics of domestic violence and best practices, as well as lack of knowledge of their roles under the LCDV and other laws. The majority of interviewees reported a serious lack of training on these issues, which is critical to improving implementation of the laws and protecting victims.

The criminal justice system is also failing victims of domestic violence in Mongolia. Police rely on the sobering unit to detain intoxicated offenders instead of making arrests based on the likelihood that a crime has occurred. Most domestic violence cases, regardless of the severity of the crime, are handled through the administrative penalty system instead of the criminal system and result in only a fine or a brief detention. When police do refer cases for criminal-level prosecution, those proceedings are fraught with barriers that often stymie successful conviction of a perpetrator.

Finally, of great concern is the dearth of victim services. At the time of publication, there is only one shelter with 20 beds to serve a population of 2.8 million people. There is a serious lack of much-needed economic support to enable women to escape the violence. Inadequate support for shelters and for other services for domestic violence victims in Mongolia undermines victims' ability to find safety and security.

Research and practice from around the world shows that domestic violence laws and policies work best to protect victim safety when community and state agencies work together to communicate and collaborate in developing an effective, coordinated response to domestic violence. While Mongolia, with the leadership of NCAV, has begun to develop multidisciplinary teams, these initiatives must be fully developed and supported in all areas of the country, and all parties must be directed to participate and commit fully to the process.

Adequate funding from the Mongolian government is needed to implement all aspects of legislation and enable all actors to effectively respond to domestic violence. Such funding should be aimed at monitoring and implementing the LCDV and all civil and criminal legislation that address the fundamental right to be free from violence; supporting victim services including shelters; trainings; collection of comprehensive statistics on domestic violence; and public awareness.

In conclusion, the authors refer the Government of Mongolia to the following recommendations for addressing these and other challenges to promoting victim safety and offender accountability.

RECOMMENDATIONS

The following section sets forth priority recommendations, followed by recommendations to various sectors of Mongolian government and society. Priority recommendations are identified with ❖.

PRIORITY RECOMMENDATIONS

- ❖ Consider all recommendations in the **commentary to the Law to Combat Domestic Violence** when amending the law (Appendix C).
- ❖ Amend the definition of domestic violence in the LCDV to **include stalking, harassment, threats to commit physical violence and threats against a victim's family members**.
- ❖ Amend the LCDV to explicitly allow judges to issue **restraining orders based solely on victim testimony**. The law should allow either party to request a hearing at a later date, during which both parties may present evidence.
- ❖ Amend the LCDV to allow judges to order **financial support, child support, and temporary child custody** to victims. Permit judges to order perpetrators to **reimburse victims for damages** suffered as a result of the domestic violence, including medical expenses, lost wages, and damage to property.
- ❖ Amend the LCDV and criminal legislation to explicitly **state that forensic evidence is not required** to obtain a restraining order or for the prosecution or conviction of domestic violence crimes.
- ❖ Amend the law to provide for an immediate and direct criminal penalty in the event of a **violation of a restraining order**, including those violations in which no new violence has occurred.
- ❖ Clearly assign and define **responsibility for implementing and enforcing** restraining orders to police, Court Order Implementing Agency, and/or other agencies. These assignments should address initial notification to the respondent, execution of any restrictions such as eviction from the home, monitoring, and enforcement of violations.
- ❖ Amend the Criminal Code to **make domestic violence a crime** and require **enhanced penalties** for existing crimes when domestic violence is involved.
- ❖ Criminalize **stalking, harassment, and threatening behavior, and marital rape**.
- ❖ Eliminate provisions in penal laws that allow for a case to be closed upon **reconciliation** between an offender and victim in domestic violence cases.
- ❖ Eliminate **reconciliation** periods and restrictions regarding who is allowed to divorce.
- ❖ Require all agencies that respond to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative, victim-centered inter-agency approach.
- ❖ Adopt a **standard of arrest** that allows police to arrest and detain a suspect for domestic violence if police determine that an offense occurred even if they did not witness the violence. Apply this arrest standard to both criminal and administrative offenses.
- ❖ Require police to **conduct a complete investigation and gather and preserve all evidence** in domestic violence cases, including recording emergency calls, taking witness statements, and recording detailed descriptions of crime scenes, including taking photographs of relevant evidence such as injuries and the crime scene.
- ❖ Require police to refer all domestic violence cases in which the victim has sustained even minor bodily injuries or those that qualify under the torture statute to prosecutors for **criminal prosecution** instead of bringing administrative charges.
- ❖ Require police to **arrest and detain perpetrators for all violations** of restraining orders.
- ❖ Create and implement policies that require frontline police officers to aggressively protect victims and ensure perpetrator accountability by **detaining violent perpetrators** when it is likely they have committed a punishable offense, regardless of their sobriety.
- ❖ Mandate **regular communication and collaboration** on the national and local levels among all sectors that address domestic violence, including judicial, law enforcement, criminal justice, social welfare, health, educational, children and women's NGOs, and khoroo and soum-level multidisciplinary teams.

APPENDICES

- ❖ Require **regular training** on domestic violence for police, prosecutors, judges, social workers, and other government officials with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Mongolian laws relating to domestic violence and their implementation, and services for victims of domestic violence.
- ❖ Eliminate **mandatory reporting** of domestic violence except for cases where victims of domestic violence are especially vulnerable such as children and persons with intellectual disabilities.
- ❖ Establish and fund a free, 24-hour **nationwide hotline** for domestic violence victims staffed by personnel trained by NGOs that advocate for domestic violence victims.
- ❖ **Provide sufficient funding** to combat domestic violence, including sufficient law enforcement and legal system personnel; training for police, prosecutors and judges; and social services, including shelters, social workers, health care, legal services, and perpetrator training programs.
- ❖ Provide consistent and adequate **funding for shelters**, including support for operational costs, basic building maintenance, security, personnel, and related services with an aim to increasing the number of shelters throughout the country. United Nations' standards recommend that governments provide a shelter/safe space for every 10,000 members of the population, located in both rural and urban areas, which can accommodate victims and their children.
- ❖ **Provide sufficient funding** for economic assistance to domestic violence victims, including cash, housing, employment, vocational training, and food.
- ❖ Require the regular nationwide **collection, maintenance, and publication of statistics** on domestic violence. Statistical information should include the number of restraining orders requested and granted and the terms of the orders; the number and nature of restraining order violations; and criminal charges, convictions, and sentences for domestic violence, including charges for violating restraining orders. Statistics should be disaggregated by geographic location and sex and include information on the victim's relationship to the offender.
- ❖ Require the Ministry of Justice and Home Affairs to develop guidelines for **training of police, prosecutors, and judges** on the dynamics of domestic violence, the LCDV, and administrative and criminal violations resulting from domestic violence in consultation with NGOs serving domestic violence victims.
- ❖ Pursue criminal prosecution in cases that lack **forensic evidence**. Adopt practices that promote the collection of other kinds of evidence to prosecute domestic violence.
- ❖ Allow restraining **orders to be issued based solely on victim testimony**.
- ❖ Require all agencies involved in the response to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative inter-agency approach that is victim-centered.

PARLIAMENT

- ❖ Establish and fund a free, 24-hour **nationwide hotline** for domestic violence victims staffed by personnel trained by NGOs that advocate for domestic violence victims.
- ❖ **Provide sufficient funding** to combat domestic violence, including sufficient law enforcement and legal system personnel; training for police, prosecutors and judges; and social services, including shelters, social workers, health care, legal services, and perpetrator training programs.
- ❖ Provide consistent and adequate **funding for shelters**, including support for operational costs, basic building maintenance, security, personnel, and other related services with an aim to increasing the number of shelters throughout the country. United Nations' standards recommend that governments provide a shelter/safe space for every 10,000 members of the population, located in both rural and urban areas, which can accommodate victims and their children.
- ❖ **Provide sufficient funding** for economic assistance to domestic violence victims, including cash, housing, employment, vocational and job skills training, and food.
- ❖ Require the regular nationwide **collection, maintenance, and publication of statistics** on domestic violence. Statistical information should include the number of restraining orders requested and granted and the terms of the orders; the number and nature of restraining order violations; criminal charges, convictions, and sentences for domestic violence, including charges

for violating restraining orders. Statistics should be disaggregated by geographic location and sex and include information on the victim's relationship to the offender.

Law to Combat Domestic Violence

- ❖ Consider all recommendations in the **commentary to the Law to Combat Domestic Violence** when amending the law (Appendix C).
- ❖ Amend the definition of domestic violence in the LCDV to **include stalking, harassment, and threats to commit physical violence**.
- ❖ Amend the LCDV to explicitly allow judges to issue **restraining orders based solely on victim testimony**. The law should allow either party to request a hearing at a later date, during which both parties may present evidence.
- ❖ Amend the LCDV to allow judges to order **financial support, child support, and temporary child custody** to victims. Permit judges to order perpetrators to **reimburse victims for damages** suffered as a result of the domestic violence, including medical expenses, lost wages, and damage to property.
- ❖ Amend the LCDV to explicitly **state that forensic evidence is not required** to obtain a restraining order.
- ❖ Amend the law to provide for an immediate and direct criminal penalty in the event of a **violation of a restraining order**, including those violations in which no new violence has occurred.
- ❖ Eliminate **mandatory reporting** of domestic violence except for cases where victims are especially vulnerable, such as children and persons with intellectual disabilities.
- ❖ Clearly assign and define **responsibility for implementing and enforcing** restraining orders to police, Court Order Implementing Agency, and/or other agencies. These assignments should address initial notification to the respondent, execution of any restrictions such as eviction from the home, monitoring, and enforcement of violations.
- ❖ Require all agencies that respond to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative, victim-centered inter-agency approach.
- ❖ Mandate **regular communication and collaboration** on the national and local levels among all sectors that address domestic violence, including judicial, law enforcement, criminal justice, social welfare, health, educational, children and women's NGOs, and khoroo and soum-level multidisciplinary teams.
- Allow for **extensions of restraining orders** that permit orders to be in place permanently or continue in force until the court finds there is no longer any danger to the victim.
- Provide adequate funding and personnel for the implementation of **Batterers' Intervention Programs** and addiction treatment programs. Ensure that **priority is always given to funding for victim services and shelters** over perpetrator behavior and addiction treatment programs.
- Explicitly require **Batterers' Intervention Programs to comply with best practice standards** for these programs.

Divorce Legislation

- ❖ Eliminate **reconciliation** periods and restrictions regarding who is allowed to divorce.
- Eliminate **waiting periods that delay divorce** based on pregnancy or the age of a child.
- Eliminate **divorce filing fees** for victims of domestic violence based solely on the victim's statement alleging domestic violence.

Criminal Legislation

- ❖ Criminalize **stalking, harassment, threatening behavior, and marital rape**.
- ❖ Amend the Criminal Code to **make domestic violence a crime** and require **enhanced penalties** for existing crimes when domestic violence is involved.
- ❖ Amend criminal laws to explicitly **state that forensic evidence is not required** for the prosecution or conviction of domestic violence crimes.
- ❖ Eliminate provisions in penal laws that allow for a case to be closed upon **reconciliation** between an offender and victim in domestic violence cases.

- Create a **criminal domestic abuse restraining order** to protect victims during criminal proceedings. This order is separate from and independent of a civil restraining order as provided for by the LCDV.

MINISTRY OF JUSTICE

- ❖ Clearly assign and define **responsibility for implementing and enforcing** restraining orders to police, Court Order Implementing Agency, and/or other agencies. These assignments should address initial notification to the respondent, execution of any restrictions such as eviction from the home, monitoring, and enforcement of violations.
- ❖ Require all agencies that respond to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative, victim-centered inter-agency approach.
- ❖ Mandate **regular communication and collaboration** on the national and local levels among all sectors that address domestic violence, including judicial, law enforcement, criminal justice, social welfare, health, educational, children and women's NGOs, and khoroo and soum-level multidisciplinary teams.
- Develop guidelines for the **implementation of restraining orders** based on best practices. Require that orders be promptly implemented, including notifying the perpetrator of the restrictions and executing any restrictions such as eviction of the perpetrator.
- Establish an **electronic database** of all restraining orders, including the parties, the dates of the order, and the restrictions in the order. Make the database accessible to all law enforcement professionals throughout the country.
- Permit **electronic monitoring** only where the enforcing agency can make a timely response when the alarm is activated.
- Develop and implement **batterers' intervention programs** based on best practices with input from NGOs experienced in advocating for domestic violence victims.
- Expand the availability of **One Stop Service Centers**, especially in rural areas, and ensure that all centers are fully staffed with social workers, health care workers, counselors, governors, police, and legal assistance.

Education and Training

- ❖ Develop guidelines for **training of police, prosecutors, and judges** on the dynamics of domestic violence, the LCDV, and administrative and criminal violations resulting from domestic violence in consultation with NGOs serving domestic violence victims.
- Require **professional education programs**, including police academies, law schools and training for social workers and psychologists, to include units on domestic violence.
- **Develop and certify continuing education programs** on domestic violence in collaboration with stakeholders, including NGOs and victim advocates, and require police, prosecutors, and judges to regularly complete these programs.

Court Order Implementing Agency

- ❖ Require all Court Order Implementing Agency staff with duties related to domestic violence to undergo **regular training** on domestic violence. The training should be based on best practices and include the dynamics of domestic violence, Mongolian laws relating to domestic violence and their implementation, and services for victims of domestic violence.
- Require the Court Order Implementing Agency to implement restraining orders. Develop and carry out **clear protocols for implementing all remedies in a restraining order**, with definitions of the roles and responsibilities of agency officers.
- **Eliminate fees** paid by victims for implementation of restraining orders, including fees for fuel for agency vehicles.

Police

- ❖ Adopt a **standard of arrest** that allows police to arrest and detain a suspect for domestic violence if police determine that an offense occurred even if they did not witness the violence. Apply this arrest standard to both criminal and administrative offenses.
- ❖ Require police to **conduct a complete investigation and gather and preserve all evidence** in domestic violence cases, including recording emergency calls, taking witness statements, and recording detailed descriptions of crime scenes, including taking photographs of relevant evidence such as injuries and the crime scene.
- ❖ Require police to refer all domestic violence cases in which the victim has sustained even minor bodily injuries or those that qualify under the torture statute to prosecutors for **criminal prosecution** instead of bringing administrative charges.
- ❖ Require police to **arrest and detain perpetrators for all violations** of restraining orders.
- ❖ Create and implement policies that require frontline police officers to aggressively protect victims and ensure perpetrator accountability by **detaining violent perpetrators** when it is likely they have committed a punishable offense, regardless of their sobriety.
- ❖ Require **regular training** on domestic violence for all police officers with responsibility for domestic violence cases. The training should be based on best practices and include the dynamics of domestic violence, Mongolian laws relating to domestic violence and their implementation, and services for victims of domestic violence.
- Establish **specialized domestic violence police units** and dedicated police officers, including female officers, who have expertise on dynamics of domestic violence.
- **Give priority** to domestic violence cases, including responding promptly to requests for assistance.
- Allow police to **request a restraining order** on behalf of a victim with her consent.
- Include officers' appropriate and effective response to domestic violence and handling of restraining orders in police performance evaluations.
- Establish **private space** at police stations for meetings with domestic violence victims to ensure confidentiality.
- Provide **sufficient transportation** for police to reach rural victims.
- Require police to conduct a **risk assessment** in all cases involving domestic violence and establish protocols to protect the victim in high-risk cases.
- Require police to **inform victims of available protective measures**, including restraining orders, shelters, and legal and social services.
- Require police to apply administrative remedies in cases of hooliganism without consideration of whether the perpetrator is intoxicated.
- Participate in **multidisciplinary teams** that evaluate and improve systems' response to domestic violence.

Prosecutors

- ❖ Pursue criminal prosecution in cases that lack **forensic evidence**. Adopt practices that promote the collection of other kinds of evidence to prosecute domestic violence.
- ❖ Pursue prosecution of domestic violence cases even if the defendant and the victim have **reconciled**.
- ❖ Require prosecutors to receive **regular training** on all aspects of domestic violence, including the dynamics of domestic violence, sensitivity to victims, risk assessment, prosecution when victims recant, and promoting victim safety through regular communication of court processes.
- Require prosecutors to **aggressively prosecute cases** of criminal domestic violence, including those involving minor bodily injury and those that qualify as torture.
- Train and collaborate **with police on gathering evidence**.
- Give **high priority to domestic violence cases** and **expedite** the prosecution of these cases.
- Provide for protection of victims and accountability of perpetrators by **detaining violent perpetrators** until sentencing and **requesting protective measures** in all cases.

- Create and implement a policy that promotes **evidence-based prosecutions** in cases where the victim recants or chooses not to testify. In deciding whether to pursue prosecution in the case of a victim recantation, prosecutors should consider the totality of evidence that might support or corroborate the victim's statement. These considerations include a history of abuse and ensuring that the police have collected all available evidence.
- **Work with all community groups** that support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.
- Participate in **multidisciplinary teams** that evaluate and improve systems' response to domestic violence.

Judges and Courts

- ❖ Allow restraining **orders to be issued based solely on victim testimony**.
- ❖ Do not require a **forensic certificate** to issue a restraining order.
- ❖ Require judges and court personnel to receive **regular training** on all aspects of domestic violence, including the dynamics of domestic violence, sensitivity to victims, risk assessment, defensive injuries, and promoting victim safety through regular communication of court processes.
- ❖ Use judicial discretion where allowed to order **financial support, child support, and temporary child custody** to victims as well as reimbursement to victims for damages suffered as a result of the domestic violence, including medical expenses, lost wages, and damage to property.
- Ensure **security** during all proceedings involving parties who have experienced domestic violence by providing court escorts and security personnel for victims upon arrival, within, and upon departure from the courthouse; separate waiting rooms for victims and perpetrators; and penalties for perpetrators who seek to intimidate their victims in the courthouse.
- Establish **specialized courts on domestic violence** to expedite cases and ensure expert handling of domestic violence cases.
- **Require communication and information-sharing among all court personnel**, including judges handling restraining orders and criminal, administrative, and family law matters regarding the existence of protective measures that may affect child visitation and custody decisions in domestic violence cases.
- Participate in **multidisciplinary teams** that evaluate and improve systems' response to domestic violence.

Judges Adjudicating Restraining Orders

- **Eliminate fees** such as filing fees and fees for copies of documents for victims who are seeking restraining orders.
- **Give priority to restrictions that promote victim safety**, including eviction, prohibiting contact, and confiscating firearms.
- Establish the **specific minimum distance** that the perpetrator must maintain from the victim and her children in every restraining order. Include prohibitions against the perpetrator approaching the victim and her children at her place of work, the children's school, homes of friends and relatives, and other places they frequent.
- Order **programs for batterers** if doing so does not replace or take priority over protective measures that provide immediate protection to a victim and her children. When perpetrator training is ordered, it should be done in conjunction with other protective measures necessary to ensure victim safety.
- Issue restraining orders for the **maximum time** allowed under the law.
- Ensure that **urgent restraining orders** are issued immediately. Expedite all restraining order cases and issue decisions in a timely manner.
- Protect **confidentiality of victims' addresses**, including home address, work address, children's child care or school address, and all other information that could place victims at risk of repeated violence.

- Require prompt **delivery of restraining orders** to the agency designated to implement the order, the police, the victim, and any other person or entity entitled to receive notice of the order. Notify all monitoring and enforcing agencies of the issuance of all orders.

Judges Adjudicating Criminal Cases

- Do not **suspend sentences that place victims in danger of further harm**.
- Impose **serious consequences** for domestic violence including prison sentences in cases of severe domestic violence and protective measures and systems that monitor perpetrators during the criminal process to promote victim safety.
- Refrain from imposing **finances that punish victims** who share joint financial resources with their perpetrators.

Judges Adjudicating Divorce Cases

- **Expedite divorce proceedings** where domestic violence is involved.
- Eliminate **reconciliation periods** in divorce proceedings.
- **Protect victim safety in divorce proceedings** that involve domestic violence when making child custody determinations by prohibiting visitation or ordering supervised visitation.
- Eliminate **mediation** of disputes in cases involving domestic violence.
- Upon receipt of a divorce application, immediately impose **temporary restrictions limiting the perpetrator's ability to sell or transfer** marital or jointly-owned properties.
- **Waive court fees** for indigent victims.

MINISTRY OF HEALTH

- ❖ Require all agencies involved in the response to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative inter-agency approach that is victim-centered.
- ❖ Mandate **regular communication and collaboration** on the national and local levels among all sectors that address domestic violence, including judicial, law enforcement, criminal justice, social welfare, health, educational, children and women's NGOs, and khoroo and soum-level multidisciplinary teams.
- Ensure that **forensic services for victims are available** throughout the country and that they are adequately staffed and available 24 hours per day.
- **Create standards** for forensic doctors regarding assessment of injuries in domestic violence cases based on dynamics of domestic violence, including risks associated with low-level injuries, repeat violence, internal injuries that may not be observable without sophisticated diagnostic techniques, defensive injuries, and escalation of violence.
- **Expand the role of family doctors and nurses** in assessing and documenting domestic violence injuries.
- **Gather, maintain, and report statistics** on cases of domestic violence that receive health care services and calculate the health care costs of domestic violence.

MINISTRY OF POPULATION DEVELOPMENT AND SOCIAL WELFARE

- ❖ Require all agencies involved in the response to domestic violence to develop **formal and uniform policies** based on best practices and a collaborative inter-agency approach that is victim-centered.
- ❖ Mandate **regular communication and collaboration** on the national and local levels among all sectors that address domestic violence, including judicial, law enforcement, criminal justice, social welfare, health, educational, children and women's NGOs, and khoroo and soum-level multidisciplinary teams.

APPENDICES

- Give victims of domestic violence and their children priority access to **long-term, state-subsidized housing and economic aid**.
- Sponsor and fund programs aimed at **increasing employment and economic independence** for women and girls.
- **Create standards** for shelters based on best practices and with input from NGOs experienced in operating shelters.
- Add domestic violence services to **social worker job descriptions** and give priority to these responsibilities.
- **Increase funding and availability** of social services, including counseling and legal assistance.
- **Make social services available** throughout the country.

Social Workers

- ❖ Require social workers and other social service providers to **receive regular training** on all aspects of domestic violence, including the LCDV, dynamics of domestic violence, sensitivity to victims, the process for obtaining a restraining order, and availability of medical, legal and social services.
- Establish **private meeting spaces** at the offices of social workers and ensure confidentiality.
- Clearly **define social workers' job description**, responsibilities, and work performance evaluations to address the handling of domestic violence cases.
- Perform **risk assessments** based on best practices and the victim's history of domestic violence in all cases of domestic violence.
- Participate in **multidisciplinary teams** that evaluate and improve systems' response to domestic violence.

SOM AND BAG GOVERNORS

- ❖ Require governors to receive **regular training** on all aspects of domestic violence, including the Law to Combat Domestic Violence, dynamics of domestic violence, sensitivity to victims, process for obtaining a restraining order, and availability of medical, legal and social services.
- Provide governors with **sufficient resources** to address domestic violence and make it a priority for them to carry out their obligations under the LCDV.
- Establish **private meeting spaces** at the offices of governors and ensure confidentiality.
- Clearly define **governors' job description**, responsibilities, and work performance evaluations to address the handling of domestic violence cases and support of victims' safety.
- Participate in **multidisciplinary teams** that evaluate and improve systems' response to domestic violence.

HEALTH CARE WORKERS

- ❖ Refrain from **mandatory reporting** of domestic violence except for cases where the victim is especially vulnerable, such as children and persons with intellectual disabilities.
- Provide for prompt examination of victims **by a forensic doctor without a referral**.
- **Exercise diligence in identifying and documenting injuries** likely caused by domestic violence while respecting the victim's privacy and wishes about reporting.
- **Inform all victims of their rights** and provide referrals to available support organizations.

PUBLIC EDUCATION

- Develop **public education campaigns** on the dynamics of domestic violence and available remedies.
- **Work with organizations and government bodies** that support survivors of domestic violence to enhance community awareness of the state's commitment to end domestic violence.

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APPENDIX A. LAW TO COMBAT DOMESTIC VIOLENCE

CHAPTER ONE: GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of the law is to regulate all matters pertaining to protection of victim's human rights violation, ensuring victim's safety, holding perpetrators accountable, and regulating relations concerning participation of government and non-government organizations, citizens, economic entities and authorities in combating and preventing domestic violence.

Article 2. Laws and legislations combat domestic violence

2.1. Laws and legislations combat domestic violence shall consist of the Constitution of Mongolia¹, Civil Law², Criminal Code³, Law on Family⁴, Law on Protection of Children's Rights⁵, this law and other legislative acts issued in conformity there with.

2.2. If an international treaty of Mongolia provides otherwise than in this law, the provision of the international treaty shall prevail.

Article 3. Scope of the Law

3.1. This Law shall apply to family members and relatives stated in the Law on Family.

3.2. This Law shall apply to persons who are presently residing together but not officially registered at authorized public organization, likewise to persons who are in custody or care of family in accordance with the Law on Family.

Article 4. Principles of activities combat domestic violence

4.1. Activities aimed at combating domestic violence shall be based on the principle of respect of human rights, and freedom, respect of laws, violence prevention, and immediate response to violence, ensuring victim's safety and influencing perpetrator's behavior.

Article 5. Definitions

5.1. The terms used in this law shall have the following meanings:

5.1.1. "Domestic violence" means any act or failure to act by a person stated in the provision 3 of this Law with respect to another person that infringes upon latter's human rights and freedom, or any act that causes or contains a threat to cause harm;

5.1.2. "Potential violence" means any circumstances likely to lead to domestic violence occurrence or re-occurrence;

5.1.3. "Shelter" means a place which provides a temporary housing and services to victims of domestic violence or victims vulnerable to domestic violence, and victims' minors.

5.1.4. "Mandatory training aimed at influencing perpetrator's behavior" means a training programme conducted through a special curriculum designed at forming behavior resolving family problems with no use of violence.

¹ Constitution of Mongolia, in State Information Bulletin, n.1, 1992.

² Civil Law, in State Information Bulletin, n.7, 200.

³ Criminal Law in State Information Bulletin, n.8, 2002.

⁴ Law on Family in State Information Bulletin, n.8, 1999.

⁵ Law on Protection of Children's Rights in State Information Bulletin, n.8, 1996.

5.1.5. “Services offered to victims” means rehabilitation and crisis intervention, provision of necessary information and legal and psychological counseling;

5.1.6. “Restraining order” means enforcement measures taken against perpetrator directed at protecting victim’s safety.

Article 6. Forms of domestic violence

6.1. Domestic violence stipulated in this law may have forms of physical, psychological, sexual and economic violence.

CHAPTER TWO: RIGHTS AND RESPONSIBILITIES OF PARTIES INVOLVED IN ACTIVITIES FOR COMBATING AND PREVENTING DOMESTIC VIOLENCE

Article 7. Power of state authorities in combating and preventing domestic violence

7.1. The government shall exercise the power in combating and preventing domestic violence as follows:

7.1.1. to adopt and implement policy and programmes on combating and preventing domestic violence,

7.1.2. to allocate resources from the state budget to cover the expenses required for implementation of the programmes stated in provision 7.1.1. of this Law and introduce the budget proposal to the State Great Hural.

7.2. The state central authorities in charge of social welfare shall exercise the following power in combating and preventing domestic violence:

7.2.1. to implement state policy on combating and preventing domestic violence and organizing social services to victims,

7.2.2. to define the minimum requirements for a shelter.

7.3. The state central authorities in charge of justice and internal affairs shall exercise the following power in combating and preventing domestic violence:

7.3.1. to organize activities aimed at combating and preventing domestic violence as empowered in paragraph 3 of the article 7 of the “Law on Crime Prevention⁶”;

7.3.2. to approve and enable the implementation of mandatory training programme aimed at influencing perpetrator’s behavior jointly with the state central authority in charge of social welfare;

Article 8. Power of local self-governing organizations and local authorities in combating and preventing domestic violence

8.1. Local self-governing organizations and local authorities of all levels shall exercise the following power:

8.8.1. to organize the policy implementation on combating and preventing domestic violence at local level;

⁶ Law on Prevention from Crime in State Information Bulletin, n.1, 1998.

- 8.1.2. to plan and allocate special funds based on data and surveys from the local budget for covering expenses related to combating and preventing domestic violence;
- 8.1.3. to collaborate with law enforcement organizations and support non government organizations combating and preventing domestic violence;
- 8.1.4. other full power as stated in legislations.

Article 9. Responsibilities of police authorities in combating and preventing domestic violence

- 9.1. The police authority shall be responsible for preventing and combating domestic violence as follows:
- 9.1.1. to receive and file the complaints concerning domestic violence, visit the site of violence, interview victim, alleged perpetrator and witness, take notes and take other measures required;
 - 9.1.2. to explain victims about their rights and procedures to file a petition requesting restraining order as stated in this Law;
 - 9.1.3. to explain the alleged perpetrator of the possibility of administrative and criminal penalties;
 - 9.1.4. to place victim in hospital or shelter, if possible, temporary kinship care if deemed necessary;
 - 9.1.5. to detain perpetrator according to administrative procedures stated in legislations if deemed necessary;
 - 9.1.6. to take the person under the influence of excessive use of alcohol to the sobering unit;
 - 9.1.7. to report social worker to provide services to victim as stated in provision 5.1.5. of the Law;
 - 9.1.8. to file a petition requesting restraining order to the relevant authorities and officials in charge;
 - 9.1.9. other duties as stipulated in Legislations.

Article 10. Responsibilities of social worker for preventing and combating domestic violence

- 10.1. Social workers shall take the following responsibilities for preventing and combating domestic violence:
- 10.1.1. conduct of family, environment and risk assessment in collaboration with police officer;
 - 10.1.2. conduct of mandatory training programmes aimed at influencing a perpetrator's behavior jointly with the police in accordance with the programme stated in provision 7.3.2 of this Law;
 - 10.1.3. to conduct training and awareness raising activities directed at domestic violence prevention, and provide services to victims in collaboration with nongovernment organizations against domestic violence;
 - 10.1.4. to write reports on services provided to victims and contribute to the development of a domestic violence information network.

CHAPTER THREE: PARTICIPATION OF NONGOVERNMENT ORGANIZATIONS IN COMBATING DOMESTIC VIOLENCE

Article 11. Participation of nongovernment organizations in combating domestic violence

- 11.1. Nongovernment organizations can be contracted to provide victims with shelter, conduct mandatory training influencing perpetrator's behavior, other activities combating and preventing domestic violence in accordance with procedures stated in legislations.
- 11.2. Nongovernment organizations can conduct activities stated in provision 11.1 of this Law in line with objectives of the nongovernment organization's rules.

Article 12. Authorized representative

- 12.1. Nongovernment organizations against domestic violence may take actions on protection of human rights and interests of victim through an authorized representative.
- 12.2. Authorized representative shall have the following rights:
 - 12.2.1. to collaborate with government and non government organizations and other bodies in relation with protection of victim's rights and legal interests;
 - 12.2.2. to obtain information and conduct survey on domestic violence;
 - 12.2.3. to submit proposals on actions for combating domestic violence to relevant authorities.

CHAPTER FOUR: REPORTING DOMESTIC VIOLENCE AND CONDUCTING MEASURES AIMED AT STOPPING VIOLENCE

Article 13. Reporting domestic violence

13.1. While on duty, public school and kindergarten teachers and doctors shall be obliged to report domestic violence or potential violence to the police and local authorities.

13.2. Citizens, economic entities and organizations may report domestic violence or potential violence to the police and local authorities.

13.3. Bodies stated in provision 13.1 and 13.2 of this Law may report by means of telecommunication and post.

13.4. Information regarding domestic violence occurrence shall be received by local police authority of perpetrator's permanent or temporary residence and victim or of the place where domestic violence has taken place, or by police authority of respective territories if victim is placed at medical centre or shelter, if perpetrator is involved in mandatory training programme as stated in provision 5.1.4 of this Law. Measures as indicated in the Article 9 of this Law shall be taken by the police.

Article 14. Responsibilities of soum or bag governors for stopping domestic violence

14.1. The soum or bag governors shall take the following responsibilities to stop and prevent potential domestic violence:

14.1.1. to request perpetrator to appear at local authority office in order to secure victim's safety and warn perpetrator to stop violence;

14.1.2. if deemed necessary, to take measures to ensure safety of victim's residency or if possible place victims in temporary kinship care;

14.1.3. to interview victim, perpetrator and witness and keep records on domestic violence occurrence, and to take other measures if necessary.

Article 15. Ways of protecting victims, responsibilities of other bodies to ensure victim's confidentiality

15.1. The following ways can be utilized to protect victim:

15.1.1. to place victim in shelter;

15.1.2. to place in temporary kinship care or group care;

15.1.3. to transfer to child care facilities or social welfare organizations if necessary;

15.1.4. to provide services as stated in provision 5.1.5. of this Law; **15.2.** Victim is entitled to have legal assistance, file a claim for divorce, support, getting child alimony or compensation for material and non-material damages in accordance with laws and legislations.

15.3. Social worker and persons stated in article 12 of this Law shall not disclose victim's confidential information obtained during counseling.

15.4. Persons due to their official position having become aware of confidential information about shelter shall not disclose information about the shelter to others.

Article 16. Restraining order

16.1. The following measures may be taken to restrict perpetrator's rights:

16.1.1. to request perpetrator leave the household;

16.1.2. to prohibit access to victim in shelter or another places stated in provision 15.1.3. of this Law;

16.1.3. to prohibit possession, use and disposal of jointly owned properties;

16.1.4. to prohibit temporarily contact with minor children in custody;

16.1.5. to involve in mandatory training influencing perpetrator's behavior;

16.1.6. to involve in mandatory alcohol/substance abuse treatment or work in accordance with administrative procedures stated in legislations if necessary;

16.2. A person pressed with charges stated in provision 16.1 of this law shall not be freed from responsibilities to take care and support victim.

Article 17. Court decision on restraining order

- 17.1.** Court shall issue a decision on restraining order based on victim's complaint, request made by police officer, advocate or authorized representative and attached proof of evidence thereto in accordance with provision 82.1.8. of the "Law on Court Proceedings of Civil Cases."⁷
- 17.2.** Court shall issue a decision to take measures stated in provisions 16.1.1 - 16.1.5. of this Law within 24 hours upon victim's complaint on domestic violence in order to ensure victim's safety and health.
- 17.3.** Restraining order stated in provision 17.6 of this Law can be issued up to one year depending on actual circumstances.
- 17.4.** Parties have rights to appeal and file a complaint against the decision stated in provision 17.1. of this Law. This appeal shall not serve as justification for stopping actions taken for implementation of the decision thereto.
- 17.5.** Court decision stated in provision 17.1 of this Law shall not interfere in conducting investigation on administrative offences concerning domestic violence occurrence or, initiating criminal case and instituting court proceedings of civil cases.
- 17.6.** Court shall issue a decision stated in provision 17.1. of this Law taking into account the following circumstances:
- 17.6.1.** repeated cruelty, threat or use of force toward victim;
 - 17.6.2.** forced sexual relations or attempt of doing so;
 - 17.6.3.** isolation of a victim from relatives or colleagues, causing psychological damage;
 - 17.6.4.** intentional evasion from responsibilities to take care of the family or previous cases of serious damage to child's upbringing;
 - 17.6.5.** excessive use of alcohol or drug on constant or repeated basis causing fear and threat to victim;
 - 17.6.6.** persons stated in Article 3 of this Law may have threats to life and health because of domestic violence.

Article 18. Procedures on visitation

- 18.1.** If measures stated in provisions 16.1.2 and 16.1.6. of this Law have not been indicated in court decision, visitation with perpetrator can be arranged following social worker's approval upon request from victim or care-givers and guardian for minors and incapable victims when the court decision is valid.
- 18.2.** If measures stated in provisions 16.1.2 and 16.1.4 of this Law indicated in court decision, visitation to perpetrator can be arranged with minors in presence of the authorized representative following social worker's approval if necessary.
- 18.3.** Authorized police officer can arrange visitation stated in provisions 18.1. and 18.2. of this Law.

CHAPTER FIVE: MISCELLANEOUS

Article 19. Liability for violation of the Law against domestic violence

- 19.1.** Person violating the Law against domestic violence shall be subject to liability stipulated in legislation considering nature of social harm, action or inaction, state of offence and extent of damages.

Article 20. Entry into force

- 20.1.** This Law shall enter into force from 1 January 2005.

⁷ Law on Court Proceedings of Civil Cases in State Information Bulletin, n.8, 2002.

APPENDIX B. EXCERPTED LAWS

Criminal Code

Article 17. Classification of Crimes

17.1. Crimes shall be classified as follows according to the nature and degree of their social danger and gravity of the punishment to be imposed:

17.1.1. minor;

17.1.2. less serious;

17.1.3. serious;

17.1.4. grave.

17.2. Crimes punishable by a fine equal to 5 to 50 amounts of minimum salary, or 100 to 250 hours of forced labor or by incarceration for 1 to 3 months as specified in the Special Part of this Code shall be recognized minor crimes.

17.3. Crimes punishable by a fine equal to 51 to 250 amounts of minimum salary, by 100 to 250 hours of forced labor, by incarceration for 3 to 6 months, or imprisonment for up to 5 years as specified in the Special Part of this Code shall be recognized less serious crimes.

17.4. Crimes punishable by a fine equal to 251 to 500 amounts of minimum salary, by 100 to 250 hours of forced labor, or imprisonment for 6 to 10 years as specified in the Special Part of this Code shall be recognized serious crimes.

17.5. Crimes punishable by imprisonment of 11 to 15 years or in extraordinary cases of up to 25 years or by death penalty as specified in the Special Part of this Code shall be recognized grave crimes.

Article 22. Non-imputability

22.1. A person who at the time of committing a crime was in state of non-imputability, i.e., was unable to realize the socially dangerous nature of his/her act or omission or to control it shall not be subject to criminal liability. The court shall apply to such a person a compulsory measure of medical character specified in this Code.

22.2. A person who was imputable at the time of committing a crime but lost the ability to realize the socially dangerous nature of his/her act or omission or to control it due to a due to a chronic mental illness, temporary mental derangement, mental deficiency or another serious illness during the consideration of the case in court shall not be subject to criminal liability. A court shall apply to such a person compulsory measures of medical character and decide the matter of imposing punishment after his/her recovery.

Article 40. Self-defense

40.1. Any action, although having signs of an action specified in the Special Part of this Code, but committed in the circumstances of self-defense, i.e., to defend the interests of the state or society, own or others' right to life or inviolability of an individual, others rights and freedoms against a socially dangerous encroachment inflicting harm to the encroacher by committing an act specified in the Special Part of this Code shall not be considered crime.

40.2. Any individual shall have the right to self-defense irrespective of his/her official position, profession, duty assigned by law or official special training. The possibility for the defender to prevent the socially dangerous encroachment, to seek assistance from the state authorities, officials or others shall not affect the right to self-defense.

Article 46. Types of Punishment

46.1. Persons who have committed crimes shall be imposed the following punishment:

- 46.1.1.** a fine;
- 46.1.2.** deprivation of the right to hold specified positions and engage in specified business;
- 46.1.3.** confiscation of property;
- 46.1.4.** forced labor;
- 46.1.5.** incarceration;
- 46.1.6.** imprisonment;
- 46.1.7.** the death penalty.

46.2. A fine, forced labor, incarceration, imprisonment and death penalty shall be used as principal punishment; deprivation of the right to hold specified positions and engage in specified business and confiscation of property as supplemental punishment respectively.

Article 55. Circumstances Which Mitigate Responsibility

55.1. When imposing penalty the court shall recognize the following circumstances as mitigating liability:

- 55.1.1.** committing a minor or less serious crime for the first time due to accidental circumstances;
- 55.1.2.** prevention by the culprit of harmful consequences of the crime;
- 55.1.3.** voluntary compensation of the damage caused or the correction of the caused harm;
- 55.1.4.** committing a crime under a physical or mental coercion or owing to material or another dependence upon the victim;
- 55.1.5.** committing a crime under the influence of a strong emotional shock caused by illegal actions of the victim;
- 55.1.6.** committing a crime due to a coincidence of grave personal, family circumstances or those occurred to others;
- 55.1.7.** committing a crime by a person under the age of 18;
- 55.1.8.** committing a crime by a woman with a minor child or a pregnant woman;
- 55.1.9.** sincere repentance, surrender or active assistance in the detection of the offender or property gained by way of crime;
- 55.1.10.** rendering medical and other aid immediately upon committing a crime against life or health.

55.2. If the circumstance mitigating liability specified in this article constitutes an element of a crime specified in the Special Part of this Code this shall not be taken into account when imposing penalty.

Article 56. Circumstances Which Aggravate Liability

56.1. When imposing penalty the court shall recognize the following circumstances as aggravating liability only:

- 56.1.1.** repeated commission of a crime;
- 56.1.2.** committing a crime in a group;
- 56.1.3.** instigating to or involving of persons under legal age into committing a crime or causing committing a crime by inculpable person;
- 56.1.4.** infliction of grave consequences as a result of the crime;
- 56.1.5.** committing a crime in a most brutal way or with atrocity with respect to the victim;
- 56.1.6.** committing a crime in respect of a person under age, an aged person or a person being in a helpless condition as well as in respect of a person being materially or otherwise dependent on the culprit;
- 56.1.7.** committing a crime by taking advantage of the conditions of a social disaster or mass disorder;
- 56.1.8.** committing a crime against a person fulfilling an official or public duty, his/her immediate relatives;
- 56.1.9.** committing a crime in a generally dangerous manner or with use of firearms, explosives, poisonous substances, drugs and preparates or chemical substances;
- 56.1.10.** committing a crime in condition of drunkenness;

56.1.11. committing a crime with the purpose of concealing or facilitating another crime;

56.1.12. committing a crime repeatedly during the period of probation or before being deemed as having no criminal record.

56.2. If the circumstance aggravating liability specified in this article constitutes an element of a crime specified in the Special Part of this Code this shall not be taken into account when imposing the penalty.

Article 58. Imposing Penalty on Several Sentences

58.1. If a convict has committed another crime after a judgment was rendered and he/she has not completed serving the penalty, the court shall add, wholly or partially, the part of penalty to be served under the previous judgment to the penalty imposed by the new judgment.

58.2. When the penalties are summed up in the manner specified in paragraph 1 above, the total term of penalty may not exceed the maximum term established for the given kind of penalty.

58.3. When the penalties represented by imprisonment and incarceration are imposed cumulatively, 1 day of imprisonment shall be equal to 1 day of incarceration.

58.4. When the penalties represented by imprisonment and forced labor are imposed cumulatively, 24 hours of forced labor shall be equal to 1 day of imprisonment.

58.5. When the penalties represented by incarceration and forced labor are imposed cumulatively, 1 day of incarceration shall be equal to 24 hours of forced labor.

Article 59. Counting the Period of Detention

59.1. The court shall include the period of detention into the term of penalty. In case of imprisonment in prison the period of detention shall not be included into the term of penalty.

59.2. 1 day of detention shall be counted as 1 day of incarceration and as 24 hours of forced labor when including into the term of penalty.

59.3. If a detained person has been imposed a fine or deprivation of the right to hold specified positions or engage in specified business as the principal penalty the court may, taking into account the detention, commute the imposed penalty or consider the convict as served the penalty.

Article 60. Imposing Penalty for Preparation to or for an Attempted Crime

60.1. When imposing penalty for preparation to a crime or an attempted crime the court shall take into account the degree of realization of the malicious intent, completion of the attempt, nature of social danger of the prepared for or attempted crime and reasons for failure to bring the crime to completion.

60.2. The maximum amount of penalty for preparation to a crime may not exceed $\frac{1}{2}$ of the most severe type of penalty for the given completed crime.

60.3. The maximum amount of penalty for preparation to a crime may not exceed $\frac{2}{3}$ of the most severe type of penalty for the given completed crime specified in the Special Part of this Code.

60.4. The person who prepared to a crime or attempted a grave crime may not be imposed imprisonment for more than 15 years or the death penalty.

Article 61. Conditional Sentence

61.1. If, considering the nature and degree of social danger of the committed crime, character of the culprit who has been sentenced imprisonment for the first time for a less serious crime, and circumstances of the crime, in cases where he/she compensated for the damage or redressed the harm caused, the court deems that the sentence imposed does not need to be served in person it may impose the sentence conditionally and fix a probation for a period of up to 5 years. If the person sentenced conditionally does not commit a new crime during the probation period and has shown his/her reformation the sentencing judgment shall not be executed.

61.2. The procedure prescribed in paragraph 1 above shall not apply to the persons whose conviction has not expired.

61.3. If the person sentenced conditionally has committed a new crime during the period of probation, the court shall impose to him/her punishment in the rules prescribed in Article 58 of this Code.

Article 68. Remission of the Culprits Who Surrender Themselves

68.1. A culprit who has committed for the first time a minor or a less serious crime, compensated for or redressed the damage caused may be renounced.

Article 69. Remission by Reconciliation With the Victim

69.1. A culprit who has committed for the first time a minor or a less serious crime, reconciled with the victim and redressed the damage caused may be renounced.

Article 91. Murder

91.1. Murder without aggravating circumstances specified in paragraph 2 below shall be punishable by imprisonment for a period of 11 to 15 years.

91.2. Murder:

91.2.1. of lucrative motives;

91.2.2. of hooliganism;

91.2.3. out of revenge;

91.2.4. by order;

91.2.5. with the purpose of taking, selling or transplanting the victim's organs or tissues;

91.2.6. committed with a view of concealing or to facilitating another crime;

91.2.7. in the course of extortion of property or robbery;

91.2.8. in the course of kidnapping or taking a hostage;

91.2.9. committed by a recidivist;

91.2.10. committed repeatedly (Articles 93 of this Code shall not apply);

91.2.11. committed by a group, a group at an advance agreement, an organized group or a criminal organization;

91.2.12. committed in an especially brutal way;

91.2.13. committed in a commonly dangerous way;

91.2.14. of a knowingly pregnant woman;

91.2.15. of a person knowingly unable to defend himself/herself;

91.2.16. of two or more persons;

91.2.17. of a victim or his/her relative in connection with performing by the victim of his/her official or public duties

shall be punishable by imprisonment for a period of 15 to 25 years or the death penalty.

Article 93. Homicide in a state of sudden strong emotions

93.1. Homicide committed in a state of sudden strong emotions caused by a violence or a grave insult on the part of the victim, if such actions have entailed or could have entailed grave consequences for the culprit or his/her close people shall be punishable by imprisonment for a period of up to 5 years.

Article 94. Negligent homicide

94.1. Killing committed by negligence shall be punishable by imprisonment for a period of up to 4 years.

Article 95. Bringing to suicide

95.1. Bringing to suicide of the victim who is in a material dependence, subordination or another inferiority to the culprit through brutal treatment or systematic humiliation of his/her honor and dignity shall be punishable by imprisonment for a period of 2 to 5 years.

Article 96. Intentional infliction of a severe bodily injury

96.1. Intentional infliction of a severe injury that is, of a life-threatening injury or one which has entailed the loss of sight, hearing or any organ, or the loss by an organ of its functions, a mental illness or another

detriment to health which has entailed or which has been expressed in irreversible disfiguration of the face or interruption of pregnancy, or which has caused a permanent loss of the working ability shall be punishable by imprisonment for a period of more than 5 to 7 years.

96.2. The same crime committed:

96.2.1. with hooliganist motives;

96.2.2. by order;

96.2.3. by a recidivist;

96.2.4. repeatedly;

96.2.5. in a group, by a group at an advanced agreement or by a criminal organization;

96.2.6. in an especially brutal way;

96.2.7. in a commonly dangerous way;

96.2.8. by humiliating or torturing the victim;

96.2.9. against a person knowingly unable to defend oneself;

96.2.10. against two or more persons;

96.2.11. in connection with the performance by the victim of his/her official or public duties shall be punishable by imprisonment for a term of more than 7 to 10 years.

Article 97. Infliction of a severe bodily injury by negligence

97.1. Infliction of a severe bodily injury by negligence shall be punishable by imprisonment for a term of up to 2 years.

Article 98. Intentional infliction of a less severe bodily injury

98.1. Intentional infliction of a less severe bodily injury which has caused a long-term detriment of health or a loss of the working ability for not less than one third shall be punishable by 251 to 450 hours of forced labor or imprisonment for a term of up to 3 years.

98.2. The same crime committed repeatedly, in a group, by torturing the victim or by a recidivist shall be punishable by incarceration for a period of more than 3 to 6 months, or imprisonment for a term of more than 3 to 5 years.

Article 99. Intentional infliction of a minor bodily injury

99.1. Intentional infliction of a minor bodily injury, that is, the one that has caused a short term detriment to health or a slight loss of the working ability shall be punishable by a fine equal to 5 to 20 minimum salary amounts or by incarceration for a period of 1 to 3 months.

99.2. The same crime committed repeatedly or in a group shall be punishable by a fine equal to 51 to 100 minimum salary amounts, 251 to 350 hours of forced labor or by incarceration for a period of more than 3 to 6 months.

Article 100. Torture

100.1. Systematic battery or other actions having the nature of torture if they have not entailed the consequences specified in Articles 96 and 98 of this Code shall be punishable by incarceration for a period of more than 3 to 6 months or by imprisonment for a term of up to 2 years.

Article 117. Abandonment of a child

117.1. Abandonment of a born or adopted child shall be punishable by 251 to 300 hours of forced labor, or incarceration for a term of more than 3 to 6 months.

117.2. The same crime if it has entailed death of a child shall be punishable by imprisonment for a term of up to 5 years.

Article 118. Abuse of guardian's duties

118.1. Abuse of the guardian's duties by parents, custodians or guardians for lucrative purposes or leaving the person under guardianship without supervision or necessary help shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

Article 119. Neglect of the duty of custody of a child under the school age

119.1. Entailing a less severe or severe bodily injury to the victim by neglecting the duty of custody of a child under the school age by a person charged with such official duties, provided such neglect does not constitute a crime of malfeasance, shall be punishable by a fine equal to 51 to 150 amounts of minimum salary with or without the deprivation of the right to hold a specified position or to engage in a specified business for up to 2 years or by incarceration for a term of more than 3 to 6 months.

119.2. The same crime if it has entailed death of a child shall be punishable by imprisonment for a term of 2 to 5 years with the deprivation of the right to hold a specified position or to engage in a specified business for up to 2 years.

Article 125. Satisfaction of sexual desire in unnatural manner

125.1. Satisfaction of sexual desire in an unnatural manner by violence or threat of violence or by taking advantage of the helpless situation of the victim, as well as by humiliation shall be punishable by imprisonment for a term of 2 to 5 years.

Article 126. Rape

126.1. Sexual intercourse by physical violence, threat of violence or in other forms, or by taking advantage of helpless state of the victim, as well as by humiliating the victim shall be punishable by imprisonment for a term of up to 5 years.

126.2. The same crime committed:

126.2.1. by humiliating or torturing the victim;

126.2.3. inflicting a severe or a less severe bodily injury;

126.2.4. repeatedly;

126.2.5. rape of a person under the legal age;

126.2.5. in a group or by group at an advance agreement

shall be punishable by imprisonment for a term of more than 5 to 10 years.

126.2.3. The same crime committed by a recidivist, rape of a child under the age of 14, or rape entailing death of the victim or another grave harm shall be punishable by imprisonment for a term of more than 15 to 25 years or the death penalty.

Article 127. Forcing a woman into abortion

127.1. Forcing a woman into abortion shall be punishable by 251 to 400 hours of forced labor, incarceration for a term of 3 to 6 months or imprisonment for a term of up to 2 years.

Article 181. Hooliganism

181.1. Severe violation of public order by obvious disrespect towards society with use of violence or threat to use such shall be punishable by a fine equal to 51 to 100 amounts of minimum salary, 251 to 350 hours of forced labor, incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 3 years.

181.2. The same crime committed:

181.2.1. by acting in an especially brutal way;

181.2.2. by resisting a policeman, representative of the authorities or public on duty;

181.2.3. by a person who previously has been sentenced for the same crime;

181.2.4. repeatedly;

181.2.5. in a group

shall be punishable by imprisonment for a term of up to 5 years.

181.3. The same crime committed by a recidivist, with use of weaponry or other items used as weapons shall be punishable by imprisonment for a term of more than 5 to 10 years.

Article 245. Impeding inquiry, investigation and court trial proceedings

245.1. Intentional impeding inquiry, investigation and court trial proceedings shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 200 hours of forced labor or by incarceration for a term of 1 to 3 months.

245.2. The same crime committed by use of one's official position shall be punishable by a fine equal to 51 to 250 amounts of minimum salary, 300 to 500 hours of forced labor or by incarceration for a term of more than 3 to 6 months, or imprisonment for a term of up to 3 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

Article 246. Failure to report a crime

246.1. Failure to inform a relevant authority or official about a known to be prepared or committed murder (Article 91), intentional infliction of a severe bodily injury (Article 98), kidnapping (Article 108), taking of hostages (Article 112), (rape in aggravating circumstances (Article 126, paragraphs 2 and 3), theft in aggravating circumstances (Article 145, paragraphs 2, 3 and 4), taking away of other's property in aggravating circumstances (Article 146, paragraphs 2, 3 and 4), fraud in aggravating circumstances (Article 148, paragraphs 2, 3 and 4), misappropriation and embezzlement of other's property (Article 150, paragraphs 2 and 3), 147), robbery (Article 147), forgery of banknotes and securities (Article 176), banditry (Article 177), hijacking (Article 225), giving, accepting of a bribe or intermediation in bribery in aggravating circumstances (Article 268, paragraph 2, Article 269, paragraph 2) shall be punishable by a fine equal to 51 to 80 amounts of minimum salary, or by incarceration for a term of 1 to 3 months.

246.2. Failure to inform a relevant authority or official about a known to be prepared or committed high treason (Article 79), espionage (Article 80), act of terrorism against a state or public figure (Article 81), plot with a view to seize the state power (Article 82), sabotage (Article 84), ... (Article 85) shall be punishable by imprisonment for a term of 1 to 3 years.

Article 258. Failure to obey a court decision

258.1. Intentional disobedience or prevention of execution of a sentencing judgment, court decision, ruling or a judge's ruling that has become final shall be punishable by a fine equal to 5 to 50 amounts of minimum salary, 100 to 250 hours of forced labor, incarceration for a term or 1 to 3 months or imprisonment for a term of up to 2 years.

258.2. Intentional underreporting, concealment or transferring to others of property with the view of evasion of execution of a court decision shall be punishable by a fine equal to 51 to 250 amounts of minimum salary, 251 to 500 hours of forced labor, incarceration for a term or more than 3 to 6 months or imprisonment for a term of up to more than 2 to 4 years.

258.3. The same crime committed by a person who previously was sentenced for the same crime, by an organized group or a criminal organization shall be punishable by imprisonment for a term of up to more than 3 to 5 years.

Note: if the suspect, accused or convict in the crime specified in this article has obeyed the court decision, he/she shall be released from criminal liability.

CRIMINAL PROCEDURE CODE

Article 25. Termination when victim reconciles with accused or defendant

25.1. If victims of minor crimes provided for by the Criminal Law of Mongolia reconciles with the accused or defendant, the case shall be terminated.

25.2. In instances when the victims of cases provided by Article 25.1. of this Law are not able to defend their rights and legal interests, because of dependence on the accused, or for any other reasons the case

shall not be terminated and the case shall be transferred to court and the court shall review and resolve the case in the usual manner.

Article 147. Procedure for interrogating witness and victim

147.4. A witness or victim shall be explained their right not to give an aggravating testimony against themselves, or a member of family, their parents or children and if they chose not to exercise the right they shall be reminded of responsibility for refusing to give or evading from giving testimony or for giving deliberately false testimony.

Article 156. Obligatory expert examination

156.1. Expert examination shall be obligatory in following instances:

156.1.1. to establish the cause of death if it was occurred due to outside influence or is suspicious;

156.1.2. to determine degree and the character of bodily injuries;

156.1.3. to determine the mental state of a suspect, accused or defendant if a doubt arises of his/her ability to explain and to control his/her actions in the case;

156.1.4. to determine the mental state of a witness or victim, if a doubt arises of his/her ability to objectively reflect circumstances significant to the case and to give correct testimony;

156.1.5. to establish the age of a suspect, accused, defendant or victim if documents concerning their age are missing and establishment of their age is significant to the case;

156.1.6. to determine the age of accused in an especially grave crime.

Article 165. Supplementary and repeated expert examination

165.1. In the event of insufficient clarity or completeness of a conclusion or if there are circumstances requiring examination of new aspects of the examined issue a supplementary examination of an expert may be assigned to the same or another expert.

165.2. If the conclusion of an expert is groundless or its correctness is doubtful a repeated expert examination may be assigned to another expert.

165.3. In carrying out supplementary or repeated expert examination provided for in Articles 165.1., 165.2. of this Law, the rules set forth in Articles 155-157, 160 and 162 of this Law shall be observed.

Article 193. Full powers of procurator in executing supervision over an inquiry and investigation

193.1. In executing supervision over implementation of the laws in the inquiry and investigation actions the procurator shall exercise following full powers:

193.1.1. to review a case in order to establish if an initiation of a case has legal grounds and to annul the decree to initiate the case if he/she considers such action not having legal grounds;

193.1.2. to issue a decision to initiate a case and transfer to the inquiry or investigative agency for investigation according to the respective jurisdiction if he/she discovers signs of a crime;

193.1.3. to receive complaints and reports on a crime, to keep record of it and to supervise if the investigative actions are carried out within the scope of law;

193.1.4. to withdraw and review a case which is in the process of an inquiry or investigation from the inquiry or investigative agency upon receipt of complaints or request from participants of the case, for purposes of resolving them and based on this to issue a commission for an inquiry officer or investigator to carry out a particular procedural action and supervise its implementation;

193.1.5. within the limit of full powers granted by law, to supervise undercover operation executed for purposes of identifying a crime or a person who has committed a crime;

193.1.6. to take personal part in carrying out particular procedural actions by an inquiry officer or investigator, if considers necessary;

193.1.7. to carry out investigative actions as provided by this Law;

193.1.8. to give sanction on carrying out particular procedural actions by an inquiry officer or investigator in instances provided by this Law;

193.1.9. to extend inquiry or investigative period;

- 193.1.10.** to submit proposal to court on confining under guard of suspect or accused and on extending of confinement period;
- 193.1.11.** to resolve a request to challenge an inquiry officer, investigator or a procurator of lower instance;
- 193.1.12.** to review and resolve a complaint submitted to the Procurator's office concerning inquiry or investigative actions, or actions and decisions of an inquiry officer or investigator;
- 193.1.13.** to refer a case back and submit a written instruction on implementation of legal requirement during an inquiry or investigation;
- 193.1.14.** to resolve a proposal submitted by an inquiry officer or investigator on suspension, reopening, or termination of a case;
- 193.1.15.** to annul ungrounded decree of the inquiry officer or investigator on initiating, consolidation, or separation of a case and decide on further actions;
- 193.1.16.** to approve a decree issued by the inquiry officer or investigator in instances provided by this Law;
- 193.1.17.** to annul unlawful decision of the inquiry officer, investigator or procurator of lower instance;
- 193.1.18.** to give certain direction for carrying out supplementary investigation or refer a case back to the inquiry officer or investigator for supplementary investigation;
- 193.1.19.** to stop an inquiry officer or investigator who has violated a law during an inquiry or investigation for further investigation of that case;
- 193.1.20.** to transfer a case to court;
- 193.1.21.** to require any organization or official to provide free of charge data, study or documents necessary for an inquiry, investigation or supervision, to be presented with them on the spot, or to require to issue professional opinion or conclusion;
- 193.1.22.** to inspect inquiry or investigative actions fully or partially or withdraw a required case in order to provide opinion or evaluation on enforcement of law provisions during inquiry or investigation;
- 193.1.23.** to demand an administration of the inquiry or investigative agencies to ensure normal proceedings of the inquiry or investigation or to eliminate commonly occurred violation during an inquiry or investigation;
- 193.1.24.** to review compliance with law of resolutions and decisions issued by the administrations of inquiry or investigative agencies concerning an inquiry or investigation and to write a protest on resolutions or decisions issued in violation of law;
- 193.1.25.** to determine the jurisdiction for investigating a case;
- 193.1.26.** to store a file of criminal case in archives;
- 193.1.27.** other full powers set forth in this Law.

CIVIL CODE

Article 492. Liability for property acquired without legal justification

- 492.1.** The party that transferred property to the third party in the course of performing its obligations shall have the right to claim back that property in the following cases:
- 492.1.1.** if no liability arises between the recipient of the property and executor of the obligations, term of the obligation has expired or obligation becomes void;
- 492.1.2.** the principal has a serious dispute and not able to compensate the claim;
- 492.2.** The property transferred to other party cannot be claimed in the following cases:
- 492.2.1.** if the execution of the obligations is conventional and corresponds to moral norms;
- 492.2.2.** the term of liability has expired;
- 492.2.3.** as for the for void obligations, the claim for transferred property in the course of performing the contract about compensation on the debt contradicts the law;
- 492.2.4.** if one party has transferred property to another in the course of performing its obligations without knowing about the expiration of liability.
- 492.3.** The party that transferred property to third party with the purpose of compelling the latter action or inaction shall have the right to claim property in case the other party's action or inaction does not satisfy the expectations.
- 492.4.** It is not allowed to demand return of property in the following cases:

492.4.1. if the party that transferred property knew in advance about impossibility to achieve the purpose;
492.4.2. if the party that transferred property acts unfairly or restricting the other party actions;
492.5. The party that transferred property shall have the right to claim it back if the transfer was forced through by application of violence or threat except the lawful right of the party in possession of the property to own it.

Article 497. Liability grounds for caused damage

497.1. A legal person who caused damage to others' rights, life, health, dignity, business reputation or property deliberately or due to negligent action (inaction) shall compensate for that damage.
497.2. If the legal person proves that that damage did not occur as a result of his/her own fault, he or she shall be released from liability for the damage except as provided by law.
497.3. If several persons caused damage, persons who wrought direct damage, urged to, assisted, and benefited shall share the responsibility.

CIVIL PROCEDURE CODE

Article 129. Preliminary actions to review and resolve cases related to annulling a marriage

129.1. In resolving a case related to annulling a marriage a judge may issue an order to conduct following preliminary actions if he/she considers necessary:
129.1.1. to support an under age child and disable parents
129.1.2. to place an under age child with any one of the parents;
129.1.3. to instruct the married couple to live separately;
129.1.4. to make one of the married couple to support other;
129.1.5. to prohibit transfer, sale, gift and disposal of a home and other jointly owned property and immovable property;
129.1.6. to pay in advance certain portions of Court expenses and the state stamp duty;
129.1.7. to determine a time period for litigants to consolidation

FAMILY LAW

Article 3. The definitions of the law.

3.1.2. "Family" is family members who are related by property and personal rights and obligations created as a result of consummation of marriage.
3.1.8. "Children in difficult circumstances" are children provided under 2nd part, 15th article of "Children rights protection law".

Article 4. The principles of marriage and family relations.

4.4. The state shall protect the interests of families, mothers, infants and children.

Article 5. Protection of family rights and interests.

5.1. As stated in Law on court proceeding on civil cases, the court shall protect the rights of family.
5.2. The state administrative and social welfare institutions shall protect the rights of the family in accordance with the provisions of this law.

Article 10. Spouses' rights and obligations.

10.2. Spouses exercise same rights in planning family, residing, choosing a position and profession freely, having separate property, owning, occupying, employing, and disposing common property, and being compensated for mental and material damages caused by the wrong doer.

10.3. Spouses undertake same obligations in being truth to each others, growing children up, taking care of, respecting each others, maintaining and supporting each others and family members, creating necessary economical circumstance for a family, not violating each other's rights, not coercing each other, and recording cognomen's list.

Article 12. The procedure to divorce.

12.2. If the wife is pregnant and the child is under one year, it is forbidden to dissolve the marriage.

Article 14. The judicial procedure to divorce.

14.2. If it is necessary, the court have discretionary to put in abeyance the hearing till 3 months, all measures shall be taken to conciliate parties thereafter.

14.4. If it has been upheld that there is a real threat to lives of family members, welfare of children or it has occurred, the court shall dissolve the marriage without taking conciliating measures defined in 14.2 of this law

14.6. If spouses have not reached the agreement, defined in 14.5 of this law, the court have discretion to decide on whose custody to give children in, how to maintain them or a spouse who lost capacity to earn for living, and how to share their common owned property, considering children's age, parental prudence, economical circumstances and possibility, morality and whether any violence has occurred.

Article 25. To protect children's rights and interests.

25.4. If it was established that the interests of parents, custodians, and guardians are contradict to interests of children, then a Governor or Soum and district shall appoint a representative to protect interests of children

25.6. Employees of kinder-gardens, schools, medical organizations undertake a duty to gather and submit information on children as defined in 25.4 and 25.5 of this law to a Governors of Soum and district (residing)

25.8. The Governor of Soum and district, who received information defined in 25.6 and 25.7 of this law, undertake a duty to examine the life condition of the children and to establish whether there are parents or relatives to them or not within three days thereafter and if not, to protect their rights and interests

25.9. The Governor of Soum and district may register children in difficult circumstances and transfer them to families, which wish to bring them up

25.10. If there is no possibility of transference of children, defined 25.9 of this law, a Governor of Soum and district shall resolve issues whether to appoint a custodian or adopt or to transfer to children care institutions

Article 26. Rights and duties to bring up a child.

26.2. Parents undertake the following duties: [. . .]

26.2.4. To protect child rights and help fulfill his or her duties;

26.3. It is prohibited for the father and mother to damage his or her health, mentality, and morally be cruel towards them and use their right improper manners.

26.9. The parents who has damaged the interests of the child, shall undertake penalties according to law, and if it has been established that they have done actions defined in 30.1 of this law and have not bring up the child, the parents shall loose the parental right o the child.

Article 28. The consequences of parental rights limitation.

28.1. A person who has been limited the parental right shall loose the right to bring up, educate and educate the child personally and other rights related to the child given in the law

Article 30. Exclusion of parental right.

30.1. The court can decide to exclude the parental right, if parents have used wrongfully their parental rights/drop away a child, get lost on purpose, torture, sell, take in hostage, prostitute, use for greedy purpose, involve in illegal actions/treated violently with the child repeatedly, tried to involve into sexual intercourse or made sexual intercourse, put into mental heavy pressure, avoided to bring up the child on purpose, used alcoholic and toxic substances constantly.

Article 33. To protect parents' rights regarding child.

33.1. Parents exercise right to demand to return the child from person who has kidnapped.

Article 36. The duty of spouses to maintain each other.

36.2. If one of the spouses refused to implement the duty to maintain the other or the agreement to maintain each other have not been created, one who are in need can sue for maintenance in the court.

Article 37. Continuity of spouses' right to maintenance.

37.1. One of the spouses exercises right to maintenance (alimony) if he or she has lost the ability to earn for living before the divorce or nullification of the marriage, within one year after the divorce due to violence in the family life or conditions created before the actual divorce, unable to earn for living due to bringing up a child under three or disabled one, has reached pension age at the time of divorce or before the divorce.

ADMINISTRATIVE PENALTY LAW**Article 21. Hooliganism**

Violation of public order in street, square, apartment, public transportation, entertainment and other social places with creation quarrel argument, physical violence (fight), provocation, threats which led to disturb peaceful life, disrespect of society and public services shall be punishable by a fine equal to 15 000 tugrigs or by detain for term of more than 7 to 30 days. (Amended on April 17, 1995)

Article 22. Intoxicated by alcohol

The repeated drunk tank of intoxication by alcohol shall be punishable by a detain for term of more than 7 to 30 days. (Amended on April 17, 1995)

THE LAW ON CRIME PREVENTION**Article 7.3. Minister of Justice Powers**

7.3. The following full power of minister of justice shall implement:

7.3.1. coordination on organizing crime prevention and combating activities from the state administrative center, local administrative and court, procurator, and other law enforcement authorities;

7.3.2. within framework of power to do inspection and monitor prevention legislation and implementation of the government's decision;

7.3.3. develop plan, programme on crime prevention and combating measure at national level that are compromised by Court and Procurator authorities and submit to government;

7.3.4. present a recommendation on crime prevention and combating;

7.3.5. develop/promote cooperation with foreign country authorities on crime prevention and combating

7.3.6. study, survey on the cause of and condition of crime (criminology)

LAW OF MONGOLIA ON PROMOTION OF GENDER EQUALITY

Article 1. Purpose of the law.

1.1. The purpose of this law is to establish the legal basis for the creation of conditions to ensure gender equality in political, legal, economic, social, cultural and family relations, and to regulate relations related to their implementation.

Article 2. Legislation on gender equality.

2.2. If an international treaty ratified by Mongolia provides otherwise than this law, the provision of that international treaty shall take precedence.

Article 4. Definitions used in this law.

4.1.8. "Gender-based violence" as any action or inaction prompted by the victim's gender that inflicts or has the potential to inflict a physical, sexual, emotional, and economic damage to a victim;

Article 5. Principles and policy of gender equality.

5.1.2. Principle of non-discrimination: men and women shall be guaranteed enjoyment of human rights and freedoms without any discrimination or restriction on the basis of the differences in terms of their age, sex, vocation or rank, views, marital status or education.

5.1.5. Principle of gender sensitive data and information: The State shall ensure the availability and accessibility of sex disaggregated statistical data and other information.

Article 6. Prohibition of gender discrimination.

6.2. Gender based violence and sexual harassment shall be seen as constituting gender discrimination.

6.3. The policies and procedures for the prevention and elimination of gender based violence and for the protection of the rights of victims and witnesses shall be established by law.

Article 7. Special measures to ensure equality of men and women.

7.1. The state policy referred to in Article 5.2 of this law may involve special measures aimed at protecting maternity or establishing equality of men and women in social or family relations. These special measures shall not be considered as gender discrimination.

Article 18. Mandate of the National Committee on Gender with regard to promoting gender equality.

18.3. The National Committee on Gender shall have the following functions:

18.3.1. to coordinate and organize activities on the formulation, implementation, and monitoring of gender policies, programs and special measures;

18.3.2. to define economic and legal measures necessary for the implementation of the gender equality policy and to provide professional and technical guidance and advise in carrying out of these measures;

18.3.3. to review and to issue recommendations on the implementation and results of legislation, policies, programs and recommendations by international organizations pertaining to the promotion of gender equality;

18.3.4. to organize the formulation, implementation and oversight of policies, programs, projects and measures aiming at the strengthening of the national institutional capacity necessary for promotion of gender equality in public agencies and society in general;

18.3.5. to organize the preparation of the reports referred to in Article 15.1.4.a) of this law;

18.3.6. to review and comment on drafts of the report referred to in Articles 15.1.4.c) and 15.1.4.d) of this law;

- 18.3.7.** to review and comment on draft of the report referred to in Article 18.3.15 of this law;
- 18.3.8.** to coordinate establishment of a gender database and an integrated information network and to organize dissemination gender data and information;
- 18.3.9.** to ensure participation of the public, private sector and citizens in the promotion, strengthening and protection of gender equality;
- 18.3.10.** in cooperation with organizations of media, the public and private sector to organize activities that familiarize and propagate the gender equality legislation and policies to business organizations and the public and to report on outcomes of such activities;
- 18.3.11.** to review and to make recommendations on reports by its local branches;
- 18.3.12.** to nominate for awards economic entities, organizations and individuals that achieved outstanding results on gender equality;
- 18.3.13.** to have the structure, composition and statute of the National Committee on Gender and its Secretariat approved;
- 18.3.14.** to organize evaluation and assessment of implementation of the law on gender equality;
- 18.3.15.** to prepare and submit to the Government reports on the implementation and results of the gender equality policies, legislation and programs;
- 18.3.16.** to develop cooperation with international organizations and foreign countries in the sphere of gender equality;

Article 23. Filing of complaints on the violation of gender equality.

23.1. Any act of violation of provisions except Article 14 of this law shall form a basis to lodge a complaint with the National Human Rights Commission of Mongolia.

APPENDIX C. COMMENTS BY THE ADVOCATES FOR HUMAN RIGHTS ON MONGOLIA'S LAW TO COMBAT DOMESTIC VIOLENCE (2005)

The Advocates for Human Rights congratulates Mongolia for having undertaken the first difficult step of protecting its citizens from domestic violence by enacting the Law to Combat Domestic Violence (LCDV), which entered into force in January 2005. In doing so, Mongolia took an important step toward fulfilling its obligations under CEDAW and other international treaties. These obligations include guaranteeing an individual's right to be free from violence and a state's responsibility to protect individuals not only from violations of their rights by government entities, but also against acts of violence committed by private entities.

The Advocates especially commends Mongolia for including a restraining order (**Articles 16 & 17**) in the LCDV. The civil restraining order, also known as a protection order, is one of the best methods for keeping victims safe from domestic violence. The restraining order provision provide for significant and appropriate restrictions on the perpetrator's actions (**Article 16**). Some of its other strengths include requiring that orders be issued within 24 hours of the victim's complaint (**Section 17.2**), allowing the order to take effect while it is being appealed (**Section 17.4**) and not allowing the existence of a restraining order interfere with other, related actions (**Section 17.5**). The law includes a number of other important provisions including the broad scope of its coverage (**Article 3**) and identifying the roles and responsibilities of various government sectors and non-governmental organizations in combating domestic violence (**Articles 7, 8, 9, 10, 11, 14**).

Despite these commendable provisions, the LCDV and other provisions of Mongolian law can be strengthened to achieve the key goals of any domestic violence law—promoting victim safety and achieving offender accountability. Mongolian law should address these goals in several ways. At a minimum it should undertake the following improvements:

Civil:

- The victim's statement should be sufficient evidence for initial issuance of a restraining order with the opportunity for a hearing and further evidence at the request of either party.
- Violation of a restraining order should be a criminal violation even if the perpetrator has committed no additional violence.
- The law should clearly identify responsibility for implementation and enforcement of restraining orders.
- The law should provide for sufficient resources to prevent and combat domestic violence.

Criminal:

- The Criminal Code and Criminal Procedure Code should contain explicit language making domestic assault a crime, including assaults resulting in low-level injuries such as bruises, scrapes, cuts and burns.
- The law should include enhanced penalties for multiple violations of the order for protection and for repeated assaults. Repeated low level assaults should result in serious felony level sanctions.
- The law should include clear language that obligates law enforcement and prosecutors to pursue domestic violence cases.
- Persons who are convicted of a violation of a restraining order or another criminal domestic violence-related offense should be prohibited from possessing a pistol or a firearm.
- The law should permit the court to order a restraining order for the duration of a criminal case at its own discretion or on request by the prosecutor if it determines that such an order is necessary for the safety of the victim or her children.

Specific Comments on the Law on Protection from Domestic Violence

Article 1. Purpose of the Law

The Advocates commends Mongolia for highlighting victims' human rights, ensuring victim safety and holding perpetrators accountable. It is also significant that the purpose of the law recognizes that numerous sectors of society have responsibility for combating and preventing domestic violence.

Article 3. Scope of the Law

The Advocates commends Mongolia for including non-family members who are currently living together in the protections of the LCDV. This section should include a more specific listing of those parties to ensure that all relevant relationships are clearly addressed. Many acts of domestic violence occur in relationships in which the parties do not live together. The provision can be made more explicit as follows: *“Spouses or former spouses; parents and children; persons related by blood; relatives by marriage (in-laws); persons who are presently residing together or who have resided together in the past; persons who have a child in common regardless of whether they have been married or have lived together at any time; a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and persons involved in a current or previous significant romantic or sexual relationship.”*

Article 5. Definitions

5.1. Article 5.1. defining “domestic violence” is very broad. Drafters should consider limiting the definition of domestic violence to physical harm, bodily injury, the fear of imminent danger for his/her own or for a third party's life or health, stalking, harassment, and the use of coercive control (see commentary on Article 6.1 below).

Article 6. Forms of Domestic Violence

6.1. The Advocates recommends that the drafters delete “**psychological**” and “**economic**” violence from the forms of domestic violence. Including psychological violence in definitions of domestic violence in other countries has proven problematic and even dangerous for victims. Including these terms in the definition of domestic violence has in some cases had the unintended consequence of giving offenders the opportunity to claim psychological or economic abuse against the victims of their abuse. For example, an offender may claim that physical violence is an appropriate response because his wife allegedly insulted him verbally. Or, an angry or disgruntled violent abuser may seek a protection measure against his wife for using property owned by him. Often the result is that the victim is arrested instead of or in addition to the offender. Legal system intervention is not appropriate or practical in all family disagreements or arguments.

The Advocates recommends that instead of psychological and economic violence the drafters include the concept of **coercive control** (in addition to incidents and threats of physical and sexual violence) in the forms of “domestic violence.” Coercive control, for purposes of this law, should be defined as *“an act or a pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.”*

The Advocates welcomes the recognition of **sexual violence** as an important aspect of domestic violence, and commends the drafters for its inclusion in the law. We recommend the addition of the following language to this section: *“Marriage or other current or prior relationship shall not constitute a defense to a charge of sexual domestic violence under this legislation.”*

We further recommend that the drafters add a definition of **physical violence** to clarify that it refers to physical harm, bodily injury or assault or the infliction of fear of such harm. The definition should also include stalking and harassment.

Article 7. Power of state authorities in combating and preventing domestic violence

7.1.1. The Advocates recommends that the drafters more fully describe the duty “to adopt and implement policy and programs” to combat domestic violence. The description should identify the ministry or ministries responsible and the process and required outcomes for adopting and implementing the policies and programs. These duties should include identifying specific budgetary requirements for implementation of policies and programs including for law enforcement, training for legal professionals, shelters and other social services for victims, public awareness campaigns and monitoring effectiveness of the policies and programs. Creation of effective policies and programs requires more specific direction in the law, including a timeframe by which they be established.

Article 9. Responsibilities of police authorities in combating and preventing domestic violence

9.1.3. This section requiring police to “explain to the alleged perpetrator the *possibility* of administrative and criminal penalties [emphasis added]” permits police to give warnings to perpetrators. Warnings do not hold perpetrators accountable or communicate a message of zero tolerance for domestic violence. The Advocates recommends that this provision be deleted and that instead the law require police officers to arrest and detain an offender if there is evidence that it is likely that a crime has occurred even if the police officer did not witness the offense.

9.1.4. This section directs the police to place victims in a hospital, shelter or kinship care, if necessary. Instead of removing the victim from the home, the police should arrest and detain the perpetrator. The law should provide for police to place the victim in a hospital if required by her medical condition. It should only provide for them to place her in a shelter or kinship care if she wishes to go there.

9.1.5. The language “if deemed necessary” allows police too much discretion in making an arrest and should be omitted. Police should be authorized to detain a perpetrator as allowed by both the administrative and criminal laws. Ideally, laws should authorize police to make an evidence-based arrest. This evidence-based standard allows police to arrest and detain a suspect for domestic violence if police determine, based on evidence, there is probable cause that an offense occurred even if they did not witness the violence and regardless of the offender’s state of intoxication/sobriety.

9.1.6. The Advocates recommends that this section directing police to take persons under the influence of alcohol to the sobering unit be deleted. Because alcohol is not a cause of domestic violence police should first address the criminal violation. Excessive use of alcohol should be treated as a secondary matter to securing the victim’s safety and holding the perpetrator accountable.

9.1.8. This section directs the police to file a petition requesting a restraining order. While it is important for the law to direct the police to assist victims with their applications the decision to seek a restraining order should rest with the victim.

Article 10. Responsibilities of social workers in preventing and combating domestic violence

10.1.2. This section directs social workers to conduct mandatory training of perpetrators. We recommend that the law clearly state that such training should not be provided at the expense of funding services for victims. Where there are scarce resources, priority should be given to victim services.

Article 11. Participation of nongovernmental organizations in combating domestic violence

The Advocates for Human Rights commends the government of Mongolia for recognizing the role of nongovernmental organizations in preventing and combating domestic violence. The government should ensure sufficient funding for these organizations to be able to effectively carry out their role.

Article 12. Authorized representative

The Advocates for Human Rights for Human Rights also commends the government of Mongolia for recognizing the expertise of nongovernmental organizations and providing them with a role in setting policy for combating and preventing domestic violence.

Article 13. Reporting domestic violence

13.1. This section requires public school and kindergarten teachers and doctors to report domestic violence and potential violence to the police and local authorities. We recommend that the law not require mandatory reporting of domestic violence by service providers except for cases where victims are especially vulnerable, such as persons with intellectual disabilities or children are the subjects of physical violence. Mandatory reporting may increase victims' greater danger. In addition, fear that a doctor or other service provider will report suspected domestic violence may discourage victims from seeking needed services. Instead, the law should direct these actors to provide information and referrals to victims should they choose to report or seek further assistance.

Article 14. Responsibilities of Soum and Bag governors for stopping domestic violence

14.1.1. This section requires governors to request perpetrators to appear at local authority offices to secure victim safety and warn perpetrators. Like section 9.1.3, this provision provides for warnings. The law should provide that perpetrators who commit domestic violence should be arrested rather than warned.

14.1.2. This section provides for governors to ensure the safety of victims' residences or "if possible place victims in temporary kinship care." As with section 9.1.4, the law should require governors to place the victim in kinship care only if she chooses to go there.

Article 15. Ways of protecting victims, responsibilities of other bodies to ensure victim's confidentiality

15.3. and **15.4.** The Advocates commends the government of Mongolia for protecting victims' confidential information including whether she is in a shelter and the location of the shelter.

Article 16. Restraining order

Articles 16 and 17, relating to restraining orders, are the heart of the Law to Combat Domestic Violence. The Advocates applauds Mongolia for adopting these provisions. Nevertheless, there are several ways that they can be strengthened.

16.1.1. states that the order may "request" the perpetrator to leave the house.¹ Instead of requesting that he leave, the order should require him to leave. By requiring him to move out, the order will be enforceable if he fails to comply.

16.1.2. prohibits access to the victim in a shelter or other location. This language should be broadened to order the offender to stay away from the victim and her children (and other people if appropriate) and the places that they frequent, including shelters. We recommend that the language of this provision be strengthened by requiring that the addresses of shelters or other location where the victim and her children are staying be kept confidential.

16.1.5. and **16.1.6.** These sections provide for mandatory perpetrator behavior training and alcohol/substance abuse treatment. As with section 10.1.2, we recommend that the law clearly state that such training should not be provided at the expense of funding services for victims.

In addition, the law should be expanded to allow judges to order the following remedies in a restraining order:

- restrain the violent offender from causing further violence to the victim, her relatives or other relevant person;
- prohibit the violent offender from contacting the victim or from arranging for a third party to do so;
- provision for financial support which make it possible for a victim to live independently from the abuser;
- order the offender to provide temporary financial support of the children.

Where there are scarce resources, priority should be given to victim services.

¹ Use of the term "request" may be a translation error. If the original language "requires" the perpetrator to leave the household the commentary on this section is inapplicable.

Article 17. Court decision on restraining order

17.1. This section permits a court to issue a restraining order based on the victim's complaint, or request by a police officer, advocate or authorized representative. Except in the case of highly vulnerable victims the law should require the consent of the victim to issue a restraining order. This section also requires certain evidence for the order to be issued. The Advocates recommends that only the victim's statement that violence occurred be required for the court to initially issue a restraining order. The law should allow either party to request a hearing at a later date, during which both parties may present evidence.

The law should not limit requests to police, advocates and authorize representatives, but also allow a victim to be able make the request by herself.

17.2. The Advocates particularly applauds Mongolia for requiring restraining orders to be issued within 24 hours of a victim's complaint. The law can be strengthened by requiring restraining orders to be issued immediately and no later than 24 hours.

17.3. This section allows restraining orders to be issued for a period of up to one year. The Advocates recommends that the law be amended to allow restraining orders to be issued for longer periods (e.g., in Minnesota, US, protection orders may be issued for up to two years, "except when the court determines a longer period is appropriate"²) and extended beyond one year at the victim's request without an allegation of additional violence. In cases involving increased risk of danger to the victim, such as repeat domestic violence offenses or repeat violations of the restraining order, restraining orders should be left in place permanently. For example, in Minnesota, an order for protection may be issued for 50 years if the offender has committed three or more domestic violence offenses or three or more violations of a restraining order. Such restraining orders should only be terminated by a finding by the court based on clear evidence that there is no longer any danger to the victim.

17.4. The Advocates commends Mongolia for allowing restraining orders to take effect while they are being appealed.

17.5. The Advocates also commends Mongolia for not allowing the issuance of a restraining order to interfere with related criminal, administrative and civil proceedings.

17.6. This provision delineates certain aggravating circumstances including repeated cruelty, threat or use of force, forced sexual relations and isolation. However, it does not state how these circumstances affect restraining orders. We recommend that the law be amended to clarify the impact of these factors.

Article 19. Liability for violation of the law against domestic violence

19.1. This section states that violations of the law against domestic violence are subject to liability under other legislation. The law should explicitly state that the violation of a restraining order is a criminal offense. The LCDV could be strengthened significantly by identifying which laws are implicated by violation of the domestic violence law. For example, if violation of a restraining order constitutes a violation of Criminal Code Article 258 the domestic violence law should be amended to include that reference.

² Minnesota Statutes, secn. 518B, subd. 6(b).

APPENDIX D. ASSESSMENT FORM ON THE EVALUATION OF DOMESTIC VIOLENCE

UNOFFICIAL TRANSLATION
Joint Decree Ministry of Labour and Minister of Justice
September 21, 2009
Appendix # 1

ASSESSMENT FORM ON THE EVALUATION OF DOMESTIC VIOLENCE

A. GENERAL INFORMATION ABOUT SERVICE PROVIDER ORGANIZATION

1. Name of the Service Provider Organization
2. Registration Number
3. Date of the assessment Year/month/day
4. Social Worker's surname and name
5. Place of assessment
 - o Service providing organization
 - o Client's home
 - o Protection shelter
 - o Other.....
6. General conclusion on evaluation (This part shall filled in end of assessment)
 - o To provide immediate assistance on safety of client (coordination and connection with protection shelter, develop personal safety plan)
 - o To provide immediate assistance on safety of client by connecting them with legal assistance (assistance on legal counseling, organize exigent action of police officers, assist on providing security and safety, involve experts on evaluation and assessment, assist on lawyer's selection or authorized person)
 - o To ensure and connect to social services of organization
 - o To connect with other local social services
7. Level of client's risk (This part shall filled in end of assessment)
 - o High risk to client
 - o Average risk to client
 - o Low risk to client
8. General overview of assessment (This part shall include main content of expert's conclusion which consists suggestion/comments, and recommendations from assessment. In period of assessment identified evidence and information in connection to domestic abuse and violence should be attached very descriptively in general section or next orpage)

Joint Assessment's done by: Surname and Name
Signature Position Year/month/day

B. GENERAL INFORMATION ABOUT VICTIM AND ABUSER

B.1 Information about victim	B.2 Information about abuser
Surname Name Date of birth Resident address Contact address	Surname Name Date of birth Resident address Contact address
Family status	Family status
Employment	Employment
Living place: in apartment, ger and conditions	Living place: in apartment, ger and conditions
Defined issues, challenges and problems by victim	Define abuser connection on issues, challenges and problems which defined by victim
Observation note by social workers during the listening procedure of her/his problems	Observation note by social worker during the listening procedure on victim's testimony about abuser

C. SERVICE PROVIDING NOTES BY MULTIDISCIPLINARY JOINT TEAM

(This section shall be attached as notes of the Multidisciplinary joint team in end of assessment)

1. *Contact name and phone of police officer*
 Conclusion, suggestion
Signature and date

2. *Contact name and phone of family, household's hospital*
 Conclusion, suggestion
Signature and date

3. *Contact name and phone of school's social worker*
 Conclusion, suggestion
Signature and date

4. *Contact name and phone of khoroo's governor*
 Conclusion, suggestion
Signature and date

D. STORY OF FAMILY RELATION IN DOMESTIC VIOLENCE

1. Date of started to live together or Date of marriageYear/month/day
2. Period of living together
3. Violence startedYear/month
4. Type of violence in beginning and current type of violence act (physical, mental/psychological, sexual, economic or mixed).....
5. Form of violence, changes in repetition

- 6. Repetition in violence (period of transmission from one type of violence to another)
- 7. Latest violence
- 8. Violence identification's flow (argument, pressure, dependency, frighten, hazard, fight, unbalance in power and etc.)
- 9. Type of feeling and affects to victim before starting violence and after abuse
- 10. To prevent and stop the abuse and violence have the victim tried to connect with any kind of organization? If yes, organization's name, which received service
- 11. Observation note by social worker during the listening story of family relation in domestic violence

E. RISK ASSESSMENT LEVEL FOR DOMESTIC VIOLENCE VICTIM

I. Risk in connection to abuser's behavior and practice

- 1. Period and repetition of domestic violence and its timeframe that become is more close and slip out of control/under control
 - Yes
 - No

If yes, clarify timeline on period of repetition and how close in time to next violence and their ways of abuse.

- 2. Does the abuser threaten victim with weapon, knife or some other weapons
 - Yes
 - No

If yes, clarify type of weapon that used by abuser

- 3. Any kind of sexual violence and other type of sexual acts without consent of victim
 - Yes
 - No

- 4. Any type of harms or changes in body and organs of victim
 - Yes
 - No

If yes, clarify in which organ of body have changes and harms.....

- 5. Regularly under the pressure and threats of abuser
 - Yes
 - No

If yes, how it influencing to life and work of victim

- 6. Violation against child by abuser
 - Yes
 - No

If yes, please give detailed information on type of violence against child ...

7. Influence to economic independence and employment status by abuser

- Yes
- No

If yes, clarify how it influencing to victim's employment status and economic independence

8. Any action which create the barriers to sustain connection with other and made isolation from socializing

- Yes
- No

If yes, clarify how abuser makes isolation and making barrier on socializing

9. Any threats and coercion telling to victim of arrest

- Yes
- No

If yes, clarify the reasons why abuser telling to victims of threat and coercion in connection to arrest.

II. Social Risks

1. Regular financial barrier

- Yes
- No

If yes, clarify what kind of financial barrier victim is facing

2. Victim living in very isolated place with limited access to receive immediate assistance on law enforcement, social welfare and protection service organizations.

- Yes
- No

If yes, clarify where victim's location and reason why it is not able to receive those assistance

3. Any chronic disease or any type of disability of victim

- Yes
- No

If yes, clarify chronic disease or type of disability of victim

4. Non-availability services which is based on needs of victims to assist on social welfare, protection and social services in provincial level.

- Yes
- No

If yes, clarify reason why in this province do not have those services ...

- 5. Family relation with domestic violence is a “normal” family relation thinks people in that community, relatives, other member of family where exists domestic violence.
 - o Yes
 - o No

- 6. Reason of discrimination (by age, sex, ethnicity, education, employment status, health, religion, sexual orientation)
 - o Yes
 - o No

If yes, clarify the reason why victim was discriminated.....

II. Risk to be murdered

- 1. Abuser’s threatening a wife, a partner, children or themselves saying to them will be killed.
 - o Yes
 - o No
- 2. Abuser acting as owner of a victim, and threats a victim in case of divorcement she/he will be killed, also strongly beliefs to own thoughts and practiced.
 - o Yes
 - o No
- 3. Abuser possessed any type of weapons or previously threatened about weapons will be used against victim.
 - o Yes
 - o No
- 4. Victim is escaped from abuser, but abuser following or witch-hunt victims and threatening if victim will not return to home he/she will be killed
 - o Yes
 - o No
- 5. Abuser tools are hostage some one and threats to be killed or using a child to make connection with victim
 - o Yes
 - o No

F. SOCIAL WORKER – EXPERT’S CONCLUSION

1. General information about officer and its service provider organization

- 1. Name of service provider organization
- 2. Address of organization
- 3. Date of assessment Year/month/date
- 4. Assessment officer (Surname and Name)
- 5. Officer’s surname and name who has been involved in assessment process

2. General information about victim and abuser

3. *Story of family relation in domestic violence*
4. *Possible risks for victim from domestic violence*
5. *Risk assessment result for victims*
6. *Measurement direction on prevention, protection, and rehabilitation of victim*
7. *General conclusion, suggestion/comment and recommendation*

Social worker – expert’s signature. Year/month/day

G. Methodology on Assessing Risks of Danger’s Level for Victim

Respond “Yes” will be evaluated as 1 point; Respond “No” will be evaluated as 0 point.

1. Low Risk of Danger for victim

- 0-4 points: Risk in connection to behavior and acts of abuser
OR
- 0-3 points: Risk in connection to social environment

In above cases assessment have a low risk of danger for victim

In special case: Domestic violence with use of weapons involving knife, gun or other kind of it, and also violence with serious injury and distraction organ function of victim should not consider for victim as a low risks level of danger. In that case need to give an attention to study their risks which combined single or multiplies influences and with that it should be considered as a middle risk or higher risks of danger.

Measurement and responds: Victim’s proposal should be considered in first, and propose social welfare, protection and health treatment services to victim. Social worker and other members of the multidisciplinary team shall assist to victim on development own safety plan. In another hand, local social welfare organization’s officers shall ensure access to prevention services and establish prevention measurement plan for domestic violence to protect from violence (NCAV).

2. Medium Risk of Danger for victim

- 5-11 points: Combination of abuser's behavior, acts and social risks shall be considered as a medium risk of danger for victim

In special case: Domestic violence with use of weapons involving knife, gun or other kind of it, or victim who is diagnosed with chronic illness/decease or person with disability defined as a under dependency of abuser, or victim who is living in non accessible place for an emergency assistance of police, social protection and medical treatment should not be consider for victim as a medium risks level of danger. In that case need to give an attention to study their risks which combined single or multiplies influences and with that it should be considered as a high risk of danger.

Measurement and responds: In respect of victim's request is to return to home and live together with abuser, however local police and social service provider organization's workers have to take measures on monitoring victims condition (NCAV). In another hand may propose protection under close relative, relative and nearbourhood. Social worker and other members of the multidisciplinary team shall assist to victim on development own safety plan.

3. High Risk of Danger for victim

- Risk in combination of abuser's behavior, acts and social risk
OR
- 12 points and above: Risks with combination of all three level shall be considered as a high level or in danger risk

Measurement and responds: In that case victim should be under protection of third party and Request letter about restriction of rights for abuser must be send to court. Interest of victim/request of victim should be taken in to court. Protection plan for victim will be developed immediately and will be connected with social protection, and health organizations. (NCAV)

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