

MONGOLIA

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Joint Stakeholder Report submitted by

THE NATIONAL CENTER AGAINST VIOLENCE and MEN AND HEALTHY FAMILIES

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I. BACKGROUND INFORMATION

1. **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 has addressed domestic violence and sexual abuse against women and children in Mongolia by establishing a nationwide system of prevention and protection. Through community development and engagement, NCAV strives to hold the government accountable for the delivery of safe and equitable support services to survivors of domestic violence and sexual abuse. It achieves its goals in 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, shelters, etc.);
- Developing a network of national and international organizations working on the same issue.

2. NCAV and a partner organization published *Implementation of Domestic Violence Legislation in Mongolia* in January, 2014, attached as Annex 1 to this stakeholder report. The two organizations conducted fact-finding in 2013, traveling to seven cities in Mongolia and conducting 137 interviews with members of parliament, ministry officials, non-governmental organizations (NGOs), victims, social workers, police, judges, prosecutors, lawyers, governors, and healthcare workers. The monitoring report contains findings and recommendations representing the results of these interviews, the authors' observations, and secondary research. The report was presented at a meeting in the Mongolian parliament building attended by members of parliament, government officials and representatives of civil society. This joint stakeholder report is based on the findings and recommendations of the monitoring report.

3. **Men and Healthy Families** is a Mongolian NGO that was established in 2005. It conducts training for activists on a human rights approach to gender-based violence. It contributes to efforts to combat domestic violence by changing social norms and addressing the power imbalance between women and men. It works with domestic violence perpetrators who abuse alcohol. Men and Healthy Families has participated in many initiatives that promote men's participation in ending violence against women.

4. Domestic violence is a widespread problem in Mongolia. NCAV estimates that one in three Mongolian women was a victim of domestic violence in 2010.¹ Although national statistics on domestic violence in Mongolia are not readily available, local police departments report that a high percentage of the calls they receive are related to domestic violence. For example, one police station reported an average of 63 domestic violence calls per week.² 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-related offenses.³

5. Domestic violence constitutes a violation of human rights. Domestic violence violates a woman's rights to freedom from discrimination, equal protection before the law, liberty and security of person, equality before the courts and equality with men before the law, recognition as a person before the law, and freedom from torture. In addition, when a state fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that state has not acted with due diligence to prevent, investigate and punish violations of women's rights.

6. This joint stakeholder report addresses Mongolia's compliance with its international human rights obligations in the context of domestic violence. The Mongolian government has taken some positive steps to address domestic violence. Most significantly, it enacted the Law to Combat Domestic Violence (LCDV) in 2004. Additional efforts are necessary, however, for Mongolia to fulfill its obligation to address domestic violence. This report sets forth the challenges that remain and provides recommendations for further domestic legislative and policy reforms to be considered during the second Universal Periodic Review of Mongolia.

II. LEGAL FRAMEWORK

A. *Scope of International Obligations*

7. Following its first Universal Periodic Review, the government of Mongolia accepted recommendations to strengthen its response to domestic violence and mistreatment of women generally. These

¹ National Center Against Violence, The Advocates for Human Rights, *Implementation of Mongolia's Domestic Violence Legislation*, p. 5 (2014), http://www.stopvaw.org/new_report_monitoring_the_implementation_of_mongolia_s_domestic_violence_legislation.html.

² *Ibid.*, p. 5.

³ *Ibid.*, p. 1.

recommendations focused on strengthening existing legal protections and enhancing enforcement of existing laws and adopting amendments to clarify the LCDV.⁴

8. In 2011, the Committee Against Torture expressed concern about “reports that the incidence of violence, in particular domestic violence against women, rape and sexual harassment remains high”⁵ and recommended that the Mongolian government take specific measures to “fully combat violence against women.”⁶ The Human Rights Committee made similar findings and recommendations in its 2011 review of Mongolia under the International Covenant on Civil and Political Rights.⁷ In its Concluding

⁴ Report of the Working Group on the Universal Periodic Review (January 4, 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/27/PDF/G1110027.pdf?OpenElement>:

84.47. Strengthen existing legal protections and enhance enforcement to combat discrimination against and mistreatment of women and girls (United States):

...

84.59. Support the efforts to promote and protect the rights of vulnerable groups such as children, women, disabled persons and the elderly (Cuba);

...

84.74. Take effective measures to combat domestic violence (Azerbaijan);

...

84.76. Give high priority to the enforcement of the Law on Fighting against Domestic Violence in order to ensure that victims have access to adequate means of protection and compensation (Portugal);

84.77. Take measures to guarantee effective access for women victims of gender-based violence to justice, redress and protection (Brazil):

84.68. Adopt the necessary measures and introduce the necessary amendments to the 2005 law on gender violence to ensure its effectiveness and to clearly define the sentences for offenders (Spain).

⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/MNG/CO/1, p. 8 (January 20, 2011), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMNG%2fCO%2f1&Lang=en.

⁶ *Ibid*:

The State party should fully combat violence against women, in particular rape, domestic violence and sexual harassment. It should also criminalize marital rape and sexual harassment. In addition, it should ensure that public officials are fully familiar with applicable relevant legal provisions, and sensitized to all forms of violence against women and adequately respond to them. The State party should also ensure that all women who are victims of violence have access to immediate means of redress and protection, including protecting orders, access to safe shelters, medical examination and rehabilitation assistance in all parts of the country. Perpetrators of violence against women should be duly prosecuted and, if found guilty, convicted and sentenced with appropriate penalties.

⁷ International Covenant on Civil and Political Rights, CCPR/CMNG/CO/5, p. 5 (May 2, 2011), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMNG%2fCO%2f5&Lang=en:

The Committee notes with regret the high level of domestic violence against women in the State party and the low number of cases dealt with by the judicial system. The Committee is also concerned that marital rape is not criminalized under the Criminal Code (arts. 7, 29 and 14).

The State party should extend and intensify its strategies of information and prevention of domestic violence against women through information campaigns and the promotion of judicial prosecution of the cases. Specific measures should be taken to facilitate the access

Observations to Mongolia's most recent review, the CEDAW Committee urged the State party to give high priority to implementing the LCDV.⁸

B. Domestic Legal Framework

9. Mongolia's adoption of the LCDV in 2004 represented a significant step by the government toward protecting domestic violence victims and holding offenders accountable. The LCDV contains many provisions that are critical to protecting Mongolian women from domestic violence, including provisions for restraining orders.⁹ 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 are evident from 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.¹⁰

of the victims of domestic violence to justice and their protection throughout the legal processes, and to guarantee a specialized professional attention to these cases by the police, the lawyers and the judiciary. The State party should also adopt, without delay, the necessary legislation to criminalize marital rape.

⁸ Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/MNG/CO/7, p. 6 (Nov. 7, 2008),

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMNG%2fCO%2f7&Lang=en:

26. The Committee urges the State party to place high priority on the implementation of the Law on Fighting against Domestic Violence and to make it widely known to public officials and society at large, in the context of the National Programme on Fighting against Domestic Violence. The Committee calls upon the State party to ensure that all women who are victims of domestic violence, including rural women, have access to immediate means of redress and protection, including protection orders, access to safe shelters and medical and rehabilitation assistance in all parts of the country. It urges the State party to ensure that public officials, especially law enforcement personnel, the judiciary, health-care providers and social workers, are fully familiar with applicable legal provisions, and are sensitized to all forms of violence against women and adequately respond to them. It urges the State party to conduct research on the prevalence, causes and consequences of domestic violence to provide the basis for comprehensive and targeted intervention and to include the results of such research in its next periodic report. The Committee recommends that the State party enhance its action on violence against women beyond domestic violence to all forms of violence against women, in the light of the Committee's general recommendation 19, and in this connection, reiterates its previous recommendation to the State party in respect of the criminalization of marital rape.

⁹ LCDV, Art. 17. Often referred to as civil protection orders, the LCDV uses the term restraining order.

¹⁰ National Center Against Violence, *Implementation of Mongolia's Domestic Violence Legislation*, p. 9.

10. In May 2014, a working group appointed by the government of Mongolia issued a draft revised version of the LCDV.¹¹ On June 13, 2014 the draft law was introduced in the parliament and is scheduled to be discussed during the autumn 2014 session. That draft addresses some of the problems with the current version of the LCDV but fails to address other important gaps and weaknesses. Most important, the draft explicitly directs responsibility for implementation of the law.¹² Another significant improvement is that it broadens the scope of persons subject to the law to include divorced persons and persons who have never been married.¹³

11. At the same time, some provisions of the draft have the potential to place victims of domestic violence in greater danger. Among the most troubling proposals are the elimination of the civil protection order and an extremely broad provision mandating reporting of domestic violence to the police.¹⁴ This requirement, which applies to all citizens and legal entities, increases the risk to victims. They may be caught off guard if perpetrators become even more angry and abusive when they learn that police have been notified. Indeed, the broad notification requirement may discourage victims from seeking help, even from close relatives. In fact, victims themselves may be held liable if they fail to report their own abuse.

12. Mongolia also lacks an effective administrative and criminal response to domestic violence. Because administrative and criminal laws lack specific provisions addressing domestic violence, law enforcement personnel turn to other provisions that either carry inappropriate punishments or are fraught with evidentiary and procedural obstacles. Police officers most often rely on intoxication and hooliganism provisions of the Administrative Penalty Law. 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.¹⁵

II. Compliance With International Human Rights Obligations: Barriers That Allow Domestic Violence In Mongolia to Continue

13. **Multiple barriers impede efforts to combat domestic violence in Mongolia.** A pervasive lack of knowledge about domestic violence and the LCDV prevents women from seeking its protections. Many victims view the domestic violence they suffer as normal and are unaware of the remedies available to them through the LCDV.¹⁶ Some police, prosecutors, judges, and social workers do not know about the LCDV and hold harmful attitudes that promote preservation of the family over women's safety.¹⁷ As a result, instead of availing themselves of the LCDV's remedies, many women turn to divorce to escape

¹¹ Law on Combatting Domestic Violence (Revised version), attached as Annex 2.

¹² *Ibid.*, see e.g., Art. 8 and 9.

¹³ *Ibid.*, Art. 3.2.

¹⁴ *Ibid.*, Art. 21.

¹⁵ National Center Against Violence, *Implementation of Mongolia's Domestic Violence Legislation*, p. 41 - 43.

¹⁶ *Ibid.*, p. 9 - 10.

¹⁷ *Ibid.*, p. 10 - 15.

the violence.¹⁸ 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 systems prioritize addressing alcoholism over violence.¹⁹

14. Even when women are aware of and attempt to obtain restraining orders, legal and procedural hurdles make the process difficult, if not impossible. Although not legally mandated, a risk assessment form is often required, and judges often refuse to issue a restraining order unless the victim shows a sufficient level of danger. Obtaining a risk assessment is not straightforward, however, as both a police officer and social worker must complete the form, and these actors do not always cooperate or complete the form in a timely manner.²⁰ Courts also typically require forensic documentation of the victim's injuries before issuing 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.²¹ Because free or low-cost legal services are inadequate or non-existent throughout Mongolia, victims must navigate this arduous process on their own. As a result, their chances of success in obtaining a restraining order are poor. For women living in rural areas far from government services, the distance poses even greater burdens for them to obtain the needed documentation.²²

15. Even when a restraining order is issued, it is not implemented or enforced. Lack of harmonization of the LCDV with related laws seriously hinders its implementation and enforcement. The LCDV does not explicitly direct any government agency to serve the restraining order on the perpetrator and, in cases of eviction, remove him from the home. Although the Court Order Implementation Agency (COIA) is charged with implementing court decisions, in the absence of a specific directive regarding restraining orders, its implementation of such 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 COIA officials have never implemented a restraining order.²³

16. The LCDV also fails to clearly assign responsibility for enforcing restraining orders, and it does not specify the consequences of a violation. The LCDV fails to specifically criminalize the violation of restraining orders. 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 apply the provision in the Criminal Code that imposes penalties for disobeying a court decision, and the lack of assigned responsibility for enforcement, many restraining orders are never enforced. Perpetrators repeatedly violate their orders without consequence.

¹⁸ *Ibid.*, p. 46.

¹⁹ *Ibid.*, p. 30 - 31.

²⁰ *Ibid.*, p. 16.

²¹ *Ibid.*, p. 16 - 17.

²² *Ibid.*, p. 17 - 18.

²³ *Ibid.*, p. 22 - 24.

17. 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.²⁴

18. The legal system response in Mongolia fails to hold perpetrators of domestic violence accountable. Mongolia lacks criminal and administrative provisions that specifically address domestic violence and the legal system does not effectively apply general laws to address the problem.²⁵ In the majority of domestic violence cases, perpetrators go unpunished. When the legal system does take 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 alcohol intoxication and hooliganism. These penalties are more lenient than the punishments available under the Criminal Code. Police apply the intoxication provision to remove the perpetrator to a sobering unit. They can also charge a perpetrator with hooliganism for violating the public order even if he is sober. Neither provision, however, is effective in stopping domestic violence.²⁶

19. 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. Second, the police inspector must decide whether to charge the case criminally. Third, that decision must be confirmed by the prosecutor. In most cases a victim must register a complaint before a prosecutor will proceed with the criminal prosecution. Finally, if the victim reconciles with her abuser, which she is usually encouraged to do, the case is dropped. All of these requirements place a heavy burden on the victim and result in inadequate access to effective criminal remedies.²⁷

20. The futility of restraining orders and lack of an effective criminal justice response lead victims to seek divorce, an inadequate and often dangerous alternative. Many women see divorce as a primary, and often the only, solution to domestic violence.²⁸ Mongolia's Family Law, however, poses several barriers for a woman seeking relief through a divorce. Divorce is not available to women who are pregnant or have a child under the age of one year. The cost of filing for divorce is prohibitive for many women.²⁹

²⁴ *Ibid.*, p. 25 - 27.

²⁵ *Ibid.*, p. 29 - 30.

²⁶ *Ibid.*, p. 30.

²⁷ *Ibid.*, p. 33.

²⁸ *Ibid.*, p. 46.

²⁹ *Ibid.*, p. 46 - 47.

21. The Family Law also prioritizes reconciliation over divorce, creating serious safety concerns for victims.³⁰ The law authorizes judges to impose a three-month reconciliation period for couples before granting a divorce. Although the law does not require a reconciliation period where there is a threat to life, judges do not screen for domestic violence consistently nor do they always discover it when they do screen. Even when domestic violence is reported, some judges nevertheless 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, and even killed by their abusers during the reconciliation period.³¹ Although Mongolian victims of domestic violence turn to divorce because they are unable to obtain protection through civil restraining orders or criminal prosecution, the divorce process contains its own barriers to safety for victims.

22. **Services for victims are inadequate.** 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. The need for shelters in rural areas of Mongolia is especially 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.³²

23. Victims in Mongolia also lack 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 have heavy caseloads that prevent 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 for combating domestic violence.³³

24. For example, the LCDV directs social workers to work with families and conduct risk assessments. Social workers' job descriptions, however, often fail to include these responsibilities. Instead of incorporating these duties within their workday, social workers must address domestic violence issues on their own time and outside of their job mandate.³⁴ 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 assist them.³⁵ Volunteers, such as NCAV's regional coordinators, often step in to provide much-needed counseling and support services.³⁶ While this support is welcome, it is far from adequate to meet the needs of domestic violence victims.

III. RECOMMENDATIONS

³⁰ When courts promote reconciliation victims may be coerced into reconciling or face renewed violence from their abusers.

³¹ National Center Against Violence, *Implementation of Mongolia's Domestic Violence Legislation*, p. 47 - 48.

³² *Ibid.*, p. 51 - 54.

³³ *Ibid.*, p. 56.

³⁴ *Ibid.*, p. 56 - 57.

³⁵ *Ibid.*, p. 57 - 58.

³⁶ *Ibid.*, p. 55.

25. The National Center Against Violence and Men and Healthy Families offer the following recommendations for the government of Mongolia:

- Adopt all of the recommendations contained in *Implementation of Mongolia's Domestic Violence Legislation* at Annex 1.
- **Strengthen the LCDV** by making violation of a restraining order a crime, broadening the scope of coverage to include divorced persons and intimate partners who have never been married and explicitly directing responsibility for implementing the law.
- **Amend the Criminal Code** by making domestic violence a crime and requiring enhanced penalties for existing crimes when domestic violence is involved. In addition to a specific domestic violence assault crime, criminalize stalking, harassment, threatening behavior, strangulation, and marital rape.
- **Provide consistent and adequate funding** to combat domestic violence, including funding for law enforcement and legal system personnel, shelters, social services, a national hotline, and economic assistance for domestic violence victims.