

# **DOMESTIC VIOLENCE IN TAJKISTAN**

**THE ADVOCATES FOR HUMAN RIGHTS**

**MINNEAPOLIS**

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- Investigates and exposes human rights violations internationally and in the United States;

- Represents immigrants and refugees who are victims of human rights abuses;

- Trains and assists groups that protect human rights;

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The Advocates for Human Rights

650 South Third Avenue, Suite 550

Minneapolis, MN 55402

612-341-3302

[hrights@advrights.org](mailto:hrights@advrights.org)

[www.theadvocatesforhumanrights.org](http://www.theadvocatesforhumanrights.org)

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### DEDICATION

*This report is dedicated to the women of Tajikistan.*

**The opinions, findings and conclusions or recommendations expressed herein are those of the Authors and do not necessarily reflect those of SDC Tajikistan.**



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## I. PREFACE

*This is my life. When he is drunk, he beats me. When he is sober, he beats me. I go out to help the neighbors, he beats me.*<sup>1</sup>

Violence against women is an epidemic and violates the fundamental human rights of women around the world. Domestic violence, in particular, has been found to be a pervasive problem in every country in which it has been studied. Incidents of domestic violence transcend culture, class, education and income.<sup>2</sup>

The United Nations recognizes that domestic violence violates the fundamental human rights of women.<sup>3</sup> A woman's security of person and bodily integrity are basic human rights that her government is responsible for ensuring as a part of its responsibility for protecting everyone who lives within its borders from human rights abuses. Further, the government has an obligation to provide an effective remedy if these rights are violated.

Domestic violence is a serious problem in Tajikistan. In November 2005 and April 2006, The Advocates for Human Rights ("The Advocates") sent delegations to Tajikistan to investigate the government and community response to domestic violence. The delegations visited Dushanbe, Khatlon Oblast, Sughd

Oblast, and the Regions of Republican Subordination. The delegations conducted over one hundred interviews of domestic violence survivors, national and local government representatives, judges, prosecutors, members of the militia,<sup>4</sup> doctors, religious leaders, attorneys, representatives of non-governmental organizations, representatives of international organizations, academics and a journalist. As the basis of its research methodology, The Advocates follows the United Nations' international human rights standards. In conducting this research, the delegations principally used the following United Nations definition of domestic violence:

*Domestic violence can be defined as the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. The violence can take the form of pushing, hitting, choking, slapping, kicking, burning or stabbing.*<sup>5</sup>

The Advocates also collected information about violence by other family members, psychological abuse, and economic coercion suffered by women, to the extent it was available.

### A. SUMMARY OF FINDINGS

Domestic violence is a widespread problem in Tajikistan. Husbands and their families routinely subject women to violence and abuse. Despite the seriousness and prevalence of the problem, the government of Tajikistan does not take adequate steps

<sup>1</sup> Interview with Non-gov't Org., in Taj. (Nov. 1, 2005).

<sup>2</sup> Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. GAOR, 48<sup>th</sup> Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993); C. BELLAMY, THE STATE OF THE WORLD'S CHILDREN 2001, United Nations Children's Fund at 35 (2001), <http://www.unicef.org/sowc01/pdf/fullsowc.pdf>.

<sup>3</sup> The Vienna Declaration and Programme of Action, in 1993, marked the first official recognition by the United Nations that violence against women is a human rights abuse. The Vienna Declaration and Programme of Action, U.N. DOC. A/CONF. 157/24 (1993). The Vienna Declaration calls for a declaration by the United Nations General Assembly condemning all forms of violence against women. *Id.* The Declaration on the Elimination of Violence Against Women, adopted by the General Assembly in December 1993, includes in its definition of violence against women "physical, sexual and psychological abuse occurring in the family." G.A. Resolution 48/104 *supra* note 2.

<sup>4</sup> Law enforcement officers in Tajikistan are called "militia." See the Glossary, *infra* App. B.

<sup>5</sup> For this report, The Advocates defines domestic violence as violence against women. This definition reflects research finding women to be the most common victims of family-based violence. See UNITED NATIONS CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, STRATEGIES FOR CONFRONTING DOMESTIC VIOLENCE: A RESOURCE MANUAL, at 7, U.N. Doc. ST/CSDHA/20 (1993).

to address or redress domestic violence. Throughout society, including every phase of the legal process, victims are encouraged to modify their behavior and to reconcile with their abusers to “save the family.” This pressure is reinforced by the lack of adequate housing and the economic dependence of women on their abusers. Victims who do seek justice or try to separate from their abusers are treated with indifference and hostility or are blamed for the violence.

When responding to domestic violence, the militia, instead of enforcing the criminal code, act as mediators and rarely remove the batterer from the home, thus compromising the safety of the victim. Perpetrators of domestic violence are generally not prosecuted in the Tajik criminal justice system. Under the criminal procedure code, most domestic assaults fall outside the purview of the public prosecutor. Domestic violence victims are left to pursue prosecutions privately. Few cases are brought to court, and the majority of those that are, are eventually abandoned after repeated pressure to reconcile. Unless and until domestic violence escalates to a fatality, or near-fatality, the Tajik state considers domestic violence a family matter and rarely intervenes to stop it.

As a member of the United Nations, Tajikistan has an obligation to adhere to internationally recognized human rights norms. Tajikistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women<sup>6</sup> (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> Still, Tajikistan has failed to respond

adequately to the widespread abuse against women in their homes and is therefore not in compliance with its treaty obligations as outlined below:

1. Violence against Tajik women is a violation of their fundamental right to security of person as guaranteed in the Universal Declaration of Human Rights<sup>8</sup> and to freedom from torture and cruel and inhuman or degrading treatment as guaranteed in the ICCPR;
2. Tajik victims of domestic violence have been denied their right to an effective and adequate remedy. By failing to provide effective prosecution for crimes of domestic violence and failing to adequately enforce criminal laws on behalf of domestic violence victims, Tajikistan is violating the right to a remedy guaranteed under the Universal Declaration of Human Rights and the ICCPR; and
3. The Tajik government is not in compliance with CEDAW, including General Recommendations 12 and 19 of the Committee on the Elimination of Discrimination against Women,<sup>9</sup> and the Declaration on the Elimination of Violence

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR 34<sup>th</sup> Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, (1981), <http://www1.umn.edu/humanrts/instree/e1cedaw.htm> (last accessed 1 February 2006).

<sup>7</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR 21<sup>st</sup> Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), <http://www1.umn.edu/humanrts/instree/>

b3ccpr.htm (last accessed 1 February 2006). Tajikistan's ratification entered into force on Apr. 4, 1999.

<sup>8</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR 3d Sess., (Resolutions, part 1), at 71, U.N. Doc. A/810 (1948), <http://www1.umn.edu/humanrts/instree/b1udhr.htm> (last accessed 1 February 2006). The Universal Declaration was adopted and proclaimed by the United Nations General Assembly (of which Tajikistan is a member) in 1948.

<sup>9</sup> Report on the Committee on the Elimination of Discrimination against Women: General Recommendation No. 12, Violence against Women (8<sup>th</sup> Sess. 1989), adopted 3 Mar. 1989, U.N. GAOR, 44<sup>th</sup> Sess., Supp. No. 38, U.N. Doc. A/44/38 (1990); Report of the Committee on the Elimination of Discrimination against Women: General Recommendation No. 19, Violence against Women (11<sup>th</sup> Sess. 1992), adopted 30 Jan. 1992, U.N. GAOR, 47<sup>th</sup> Sess., Supp. No. 38, U.N. Doc. A/47/38 (1993).



against Women.<sup>10</sup> These violations include the following:

- a. Tajikistan has not met its obligation to protect women from violence;
- b. Tajikistan has not met its obligation to ensure that women who are victims of violence are provided with health and social services, facilities and programs and other support structures to promote their safety and rehabilitation; and
- c. Tajikistan has not met its obligation to develop comprehensive legal, political, administrative and cultural programs to prevent violence against women.

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<sup>10</sup> G.A. Res. 48/104, *supra* note 2.



## II. DOMESTIC VIOLENCE IN TAJIKISTAN

### A. HISTORY AND BACKGROUND

Tajikistan is located in the southeastern part of Central Asia. Bordered by Kyrgyzstan and Uzbekistan in the north and northwest respectively, China to the east, and Afghanistan to the south, over ninety percent of Tajikistan's land is mountainous. Most of the country's population lives in three major river valleys. Dushanbe, the capital, is its largest city.<sup>11</sup>

Tajik people are of Persian descent.<sup>12</sup> The ancient Tajiks, farmers of fertile river valleys, were subjected to numerous invasions over the centuries.<sup>13</sup> Beginning in the 7<sup>th</sup> century, Arabs conquered what is now Tajikistan.<sup>14</sup> Despite initial resistance, most of the people became followers of Islam, and since that time Tajikistan has remained primarily Sunni Muslim.<sup>15</sup> Turkic dynasties ruled Tajikistan from the 11<sup>th</sup> to the 13<sup>th</sup> centuries.<sup>16</sup> Beginning in the 13<sup>th</sup> century, Mongol invaders conquered vast areas of Central Asia.<sup>17</sup> The Mongols were followed by the Turkish conqueror Tamerlane, who ceded power to Turkic-speaking Uzbeks in the 15<sup>th</sup> century.<sup>18</sup> The historical rivalry between Uzbekistan and Tajikistan continues to this day and plays a role in current border disputes.<sup>19</sup> From

<sup>11</sup> In 2006, the Tajik population was estimated at 7,320,815. See <http://www.infoplease.com/ipa/A0108024.html>, (last accessed February 14, 2007). In 2005, the population of Dushanbe was estimated to be between one and 1.5 million. See RAFIS ABAZOV, TAJIKISTAN 17 (Marshall Cavendish Benchmark 2006).

<sup>12</sup> ABAZOV, *supra* note 11.

<sup>13</sup> STEPHEN K. BATALDEN & SANDRA L. BATALDEN, THE NEWLY INDEPENDENT STATES OF EURASIA: HANDBOOK OF FORMER SOVIET REPUBLICS 165-66 (Oryx 2d ed. 1997).

<sup>14</sup> *Id.*

<sup>15</sup> ABAZOV, *supra* note 11, at 25.

<sup>16</sup> BATALDEN, *supra* note 13, at 166.

<sup>17</sup> COLLEEN O'DEA, THE GROWTH AND INFLUENCE OF ISLAM IN THE NATIONS OF ASIA AND CENTRAL ASIA 37-39 (Masoncrest Publishers 2006).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

the 1500s, the people of Tajikistan and Uzbekistan have been ethnically mixed, and many people speak both languages.<sup>20</sup> In the mid-19<sup>th</sup> century, Russian invaders took over various parts of what is now modern Tajikistan, first making them protectorates, and eventually adding them to Soviet territory.<sup>21</sup>

### B. TAJIKISTAN UNDER SOVIET RULE

Many Tajiks resisted Russian domination and Communist rule. Despite armed revolts, the Tajik demand for independence was rejected by the Soviets. Tajikistan was fully incorporated into the Soviet Union occurred in 1929.<sup>22</sup> Although the Russians established cotton plantations and factories and constructed railroads, most Tajiks maintained traditional lifestyles in small villages.<sup>23</sup> The Russians drew a border that placed many different ethnic groups inside Tajikistan. Today, Kyrgyzs, Uzbeks, Turks and Kazakhs live within Tajikistan, as do many smaller ethnic groups.<sup>24</sup> Language and cultural traditions vary among these groups. However, these ethnic groups predominantly share a Muslim religion.<sup>25</sup>

In the 1930s and 1940s, the Soviets, over the violent objection of local Tajiks, collectivized the production of cotton. The Tajiks' objections precipitated a series of ruthless purges of ethnic Tajiks in the Communist Party, during which an estimated 10,000 people were killed.<sup>26</sup> From that time on, the Russians assumed most of the control of the Communist Party in

<sup>20</sup> TAJIKISTAN 19 (Mary M. Rodgers et al. eds., Lerner Publications Co., 1993).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> ABAZOV, *supra* note 11, at 29-30.

<sup>24</sup> BATALDEN, *supra* note 13, at 166.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Tajikistan, and Russians held other high-level positions in both production and politics. Furthermore, the Russians were able to exclude many Tajiks from positions of power by requiring a working knowledge of Russian for promotion in many fields and within the Communist Party.<sup>27</sup>

The Soviet authorities enforced a number of large-scale migrations within Tajikistan. For example, peasants from remote mountainous areas were forced to move to the southern plains in an effort to support the cotton monoculture.<sup>28</sup> These migrations produced tensions in society that were amplified as the economy grew worse, setting the stage for civil war.<sup>29</sup> Between 1959 and 1979, the population of Tajikistan increased by more than one hundred percent. The Soviet Union did not provide adequate funds to support this rapid increase in population growth.<sup>30</sup> Advancements occurred in the level of education, however. Tajikistan had countrywide literacy by the 1990s.<sup>31</sup>

The Soviet plan for reordering and modernizing Tajik society extended beyond economics and into the private sphere. As Muslims, women in Tajikistan had traditionally been veiled. The Soviet strategy included outlawing this practice. In 1927, the Communists promoted a mass unveiling campaign of Asian

women.<sup>32</sup> The women of Tajikistan reacted by removing their veils and covering their heads with brightly patterned kerchiefs, which many wear to this day. The Soviet government also criminalized other Islamic customs, such as paying a bride price or *Qalim*, forced marriage, and polygamy, as a means of emancipating women and encouraging their participation in the economy and the Communist Party.<sup>33</sup> Yet, many scholars have noted that women still married in their mid-teens in arranged marriages, bride prices were paid and polygamy existed *de facto*. There was also a continued societal expectation that women have large families.<sup>34</sup>

During Soviet times, great strides were made in health care, economic opportunities and education for women.<sup>35</sup> Generous maternity leaves and free day care allowed women to take part in the labor market.<sup>36</sup> A large range of social benefits was available to individuals who were disabled or elderly.<sup>37</sup> Cash benefits were also widely offered to families, as were many “benefits-in-kind.”<sup>38</sup> Almost every household could access at least one benefit program.<sup>39</sup> A quota system under the Soviets guaranteed women a certain number of places in higher government.<sup>40</sup> Now, without

<sup>27</sup> *Id.*, at 166; Rodgers, *supra* note 20, at 50.

<sup>28</sup> SHIRIN AKINER, TAJIKISTAN: DISINTEGRATION OR RECONCILIATION? 22-23 (The Royal Institute of International Affairs 2001).

<sup>29</sup> *Id.* at 24-25.

<sup>30</sup> In 1985, the Union statistics office calculated the percent of modern health and sanitary improvements in new rural homes in its republics, and Tajikistan was rated lowest with only four percent of its new rural homes possessing a sewage system, running water, and heat. Seventy-two percent of new homes in Tajikistan at that time had none of the three improvements measured. MONICA WHITLOCK, LAND BEYOND THE RIVER: THE UNTOLD STORY OF CENTRAL ASIA 141 (St. Thomas Press 2002).

<sup>31</sup> Combined Initial, Second and Third Periodic Report of States: Tajikistan, for the United Nations Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/TJK/1-3, at 24 (2005) (hereinafter referred to as the “CEDAW Report”).

<sup>32</sup> OLIVER ROY, THE NEW CENTRAL ASIA: THE CREATION OF NATIONS 79 (New York Univ. Press 2005).

<sup>33</sup> *Id.*

<sup>34</sup> High rates of infant mortality and maternal death continued. Cynthia Werner, Women, Marriage, and the Nation-State, 63-65 in THE TRANSFORMATION OF CENTRAL ASIA: STATES AND SOCIETIES FROM SOVIET RULE TO INDEPENDENCE, (Pauline Jones Luong, ed., Cornell Univ. 2004). See also CEDAW Report, *supra* note 31, at 43.

<sup>35</sup> ABAZOV, *supra* note 11, at 75.

<sup>36</sup> JANE FALKINGHAM, WOMEN AND GENDER RELATIONS IN TAJIKISTAN: COUNTY BRIEFING PAPER 8-9 (Asian Development Bank 2000).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at xvii. “Benefits-in-kind” included free child care, free recreational facilities, residential and utility subsidies, free or low-cost holiday sites, and maternity leaves.

<sup>39</sup> *Id.*

<sup>40</sup> ABAZOV, *supra* note 11, at 75. “Quotas ensured ‘equal’ representation between the genders in the machinery of

quotas, women's participation in governmental decision-making bodies has fallen in the post-Soviet era.<sup>41</sup> To address this problem, a recent state program on improving the role of women in society incorporated strategies to increase the numbers of women in government.<sup>42</sup>

## C. POST-SOVIET TRANSITION AND CURRENT CONDITIONS

### 1. THE CIVIL WAR

At the time of its independence from the Soviet Union in 1991, Tajikistan was the poorest of all of the Soviet Republics.<sup>43</sup> Independence was followed by civil war, which lasted from 1992 to 1997. Civil war greatly complicated Tajikistan's economic and social development.<sup>44</sup> The human and economic cost of the war was devastating. It is estimated that 60,000 people were killed,<sup>45</sup> 55,000 were orphaned and 20,000 were

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government...However in reality men dominated the key decision making positions." FALKINGHAM, *supra* note 36, at 25.

<sup>41</sup> FALKINGHAM, *supra* note 36, at 25-27.

<sup>42</sup> "Guidelines for a State policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001-2010," which was the result of a Presidential Decree on December 3, 1999. See CEDAW Report, *supra* note 31, at 19.

<sup>43</sup> The poverty of Tajikistan is in part a reflection of the Soviet Union's desire to reap its cotton and aluminum resources in exchange for state subsidies, which were withdrawn in 1991 at the breakup of the Soviet Union. COUNTRY GOVERNANCE ASSESSMENT OF THE REPUBLIC OF TAJIKISTAN 1-2 (Asian Development Bank 2004). Despite the level of poverty, at that time life expectancy at birth was seventy years in Tajikistan, and ninety-eight percent of the population was literate. FALKINGHAM, *supra* note 36, at 5.

<sup>44</sup> The war began when the government, a product of the long-term political dominance of one region, then called Leninabad, refused to honor its agreement to form a coalition government with the democratic opposition. Werner, *supra* note 34, at 16. This refusal led to the collapse of the existing government. Tensions between clans and differences between numerous other political factions such as Islamist and anti-Communist groups erupted, and the ensuing war saw assassinations, lootings, rape, torture and massacres, especially in the southern part of Tajikistan. See also, ROY *supra* note 32, at 139-142.

<sup>45</sup> WHITLOCK, *supra* note 30.

left widowed.<sup>46</sup> Many educated Russians left the country and thousands of Tajiks fled across the border into Afghanistan.<sup>47</sup>

During the war, uncontrolled fighting occurred in the streets, and the level of violence against women increased. The effects of the civil war vary dramatically within the various regions of Tajikistan.<sup>48</sup> The Sugd Oblast in the north of the country was relatively isolated from the economic and political effects of the war. The Khatlon Oblast was significantly more affected as it experienced the most concentrated levels of fighting.<sup>49</sup> Several interviewees reported that many women and girls were kidnapped and raped, and as a result, women were afraid to go outside.<sup>50</sup> Parents, fearful for the safety of their daughters, withdrew them from school, and have only recently allowed the girls to return.<sup>51</sup> A physician described some of the long-term consequences for Tajik women and girls:

*There is a lasting effect on girls who were pulled into the cars and raped. That was not so long ago. They fear even now to walk on the street if a car might be stopping, especially at night. A girl can be afraid to have contact with more than a few males at a time. The most lasting effect is that parents are afraid to let their daughters go.*<sup>52</sup>

Women today continue to experience the physical and psychological effects of the civil war.<sup>53</sup>

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<sup>46</sup> FALKINGHAM, *supra* note 36.

<sup>47</sup> BATALDEN, *supra* note 13, at 172.

<sup>48</sup> See generally, Commitment to Protect Journalists, Europe and Central Asia 2001: Tajikistan (2001) <http://www.cpj.org/attacks01/europe01/tajik.html>; WomenWarPeace, Tajikistan (2005) <http://www.womenwarpeace.org/tajikistan/tajikistan.htm>.

<sup>49</sup> See generally, Commitment to Protect Journalists, *supra* note 48; WomenWarPeace, *supra* note 48.

<sup>50</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>51</sup> Interview with School Official, in Taj. (Nov. 14, 2005).

<sup>52</sup> Interview with Physician, in Taj. (Nov. 5, 2005). The powerful military commanders, he explained, were "unpunishable." They would cut the ear of a girl with gonorrhoea, and shave her head as a mark of shame. *Id.*

<sup>53</sup> FALKINGHAM, *supra* note 36. "There has been little recognition of the long-term physical and psychological impacts of the war

*Five years ago, in the outskirts of Dushanbe, a husband discovered that his wife was not a virgin. ... She was sent back. ... But then, they realized that during the civil war she had been raped at the age of 13 or 14 years ...nothing changed...Society just rejects her. There is shame, and she was sent back to her family.*<sup>54</sup>

A high-level government official linked the violence of the war to domestic violence:

*During the civil war, when there was economic collapse there was hunger, and at that time there was violence against women. You must understand that where there is a war there will be an increase in domestic violence. We have recorded a lot of women's suicides during that period. Women were victims of rape, tortures; they were the targets of these things.*<sup>55</sup>

## 2. CURRENT CONDITIONS AND ECONOMY

President Emomali Rahmonov, the leader of Tajikistan since 1994, is working to unify Tajikistan after the civil war. The President has been criticized for controlling opposition and quashing dissent.<sup>56</sup> In June 2003, a number of amendments were made to the Constitution of Tajikistan that makes Rahmonov eligible to remain in office until 2020.<sup>57</sup> Opposition parties face formidably high registration fees,<sup>58</sup> and opposition party leaders have had charges brought against them for such things as treason, banditry, and terrorist acts.<sup>59</sup> Freedom of

information has been restricted by making operations and licensure difficult for independent newspapers, television and radio stations, and, in some cases, by intimidation and attacks on journalists.<sup>60</sup>

Most people in Tajikistan are Muslim and view Islam as a part of their cultural heritage. Support for Islamic religious values has risen in recent years.<sup>61</sup> Islamic political parties have not, to date, received widespread support in Tajikistan, perhaps due to the suppression and marginalization of their leaders.<sup>62</sup> Further, no consensus exists about whether a religious party should play an important role in politics.<sup>63</sup>

Tajikistan continues to face unrelenting poverty and high rates of unemployment. A recent government report stated: "The problems facing Tajikistan are serious economic and social difficulties. Poverty remains the most serious of the problems that are having a considerable effect on the status of women and children, who remain socially vulnerable."<sup>64</sup>

The civil war weakened an already troubled infrastructure and crippled the government's ability to address it. Independent Tajikistan is even poorer than when it was the least developed Soviet state. By 2003 estimates, sixty-four percent of Tajiks live below the poverty line.<sup>65</sup> Social institutions for public welfare have all but disappeared in post-Soviet times, and no new

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on the population. Tajikistan still lacks trained personnel in trauma counseling and there has been no large-scale effort as has been seen elsewhere in the post-conflict situations." *Id.*, at xii.

<sup>54</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>55</sup> Interview with Gov't Official, in Taj. (Apr. 18, 2006); FALKINGHAM, *supra* note 36, at xii.

<sup>56</sup> See Library of Congress, Country Profile: Tajikistan 12 (Library of Cong.- Fed. Research Div. Oct. 2004); Freedom House, Tajikistan, FREEDOM HOUSE REPORT (Aug. 2004) [www.freedomhouse.org/research/freeworld/2004/countryratings/Tajikistan.htm](http://www.freedomhouse.org/research/freeworld/2004/countryratings/Tajikistan.htm).

<sup>57</sup> US Dept. of State, 2004 Country Report on Human Rights Practices in Tajikistan (2005).

<sup>58</sup> *Id.*

<sup>59</sup> International Helsinki Federation, Tajikistan: Extract from the International Helsinki Federation for Human Rights Report on

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Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004) (2005).

<sup>60</sup> *Id.*

<sup>61</sup> AKINER, *supra*, note 28, at 66.

<sup>62</sup> International Helsinki Foundation, *supra* note 59.

<sup>63</sup> AKINER, *supra*, note 28.

<sup>64</sup> CEDAW Report, *supra* note 31, at 2.

<sup>65</sup> Republic of Tajikistan Poverty Assessment Update, WORLD BANK, Rep. No: 30853-TJ, at 3 (Jan. 6, 2005) [http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2005/03/25/000011823\\_20050325151619/Original/308530TJ0whit e0cover0P07911701public1.doc](http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2005/03/25/000011823_20050325151619/Original/308530TJ0whit e0cover0P07911701public1.doc) (last accessed January 10, 2007).

entities have emerged to replace their services.<sup>66</sup> Government support to the few places that still exist is often in-kind, such as free or subsidized office space.<sup>67</sup> Many of these institutions rely on funding from external sources such as international organizations.<sup>68</sup> A few social welfare programs offer assistance in the form of child and large family subsidies.<sup>69</sup> In 1999, however, less than one percent of households received any benefit from a program for low-income families.<sup>70</sup>

Tajikistan's topography<sup>71</sup> and poverty isolate it from the world. Industrial production has not recovered since the civil war, and most of the civic and environmental maintenance that had been accomplished during the Soviet years has now ceased.<sup>72</sup> Cotton production in Tajikistan, once the third largest in the Soviet Union, dropped to one-quarter of that level by the mid-1990s.<sup>73</sup> Industrial production declined by fifty percent.<sup>74</sup> Poor water quality and a lack of technology affect both rural and urban areas.<sup>75</sup>

In the fifteen years since independence, the participation of women in the economy has declined. Industries that traditionally employed a larger proportion of women, such as the textile industry, have

<sup>66</sup> CHILD AND FAMILY WELFARE IN TAJIKISTAN: THE MAIN TRENDS AND INDICATORS 22 (UNICEF 2000). In 1990, social stipends constituted 12 to 14% of family income; by 1999, however, this amount had dropped to 1.5 to 4%.

<sup>67</sup> Interview with Non-gov't Org., in Taj. (Nov. 11, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>68</sup> International Helsinki Foundation, *supra* note 59, at 23.

<sup>69</sup> *Id.*

<sup>70</sup> FALKINGHAM, *supra* note 36.

<sup>71</sup> Approximately 93% of Tajikistan is mountainous. Its transportation system has deteriorated due to low investment in the infrastructure and insufficient maintenance. The northern and southern areas of the country are not well-connected by modern ground transportation systems.

<sup>72</sup> Library of Congress, *supra* note 56. Public buildings and roads are poorly maintained, and the water has been polluted in both rural and urban areas. *Id.*, and see BATALDEN, *supra* note 13, at 171.

<sup>73</sup> BATALDEN, *supra* note 13, at 167.

<sup>74</sup> *Id.* at 168.

<sup>75</sup> *Id.*

been adversely affected by the transition to a market economy.<sup>76</sup> Even for men, jobs are so scarce that an estimated 750,000 men have left for employment in Russia.<sup>77</sup>

Public education costs<sup>78</sup> are high enough that families cannot afford to educate all of their children and many send only their sons to school. The result is an increasing education gap between boys and girls.<sup>79</sup> "In general-education schools, there are only sixty-three girls for every one hundred boys, whereas there were one hundred-four girls for every one hundred boys in 1990."<sup>80</sup> When it became independent, Tajikistan had

<sup>76</sup> *The transition to a market economy changed the nature of employment of women in the state sector. Sectors in which, traditionally, most women had worked began to receive less funding. Women account for the majority of the unemployed right now and if they do have jobs, the jobs are in low-paying sectors.*

CEDAW Report, *supra* note 31, at 35.

<sup>77</sup> Rachel Ellison, Tough Life for Tajikistan Women (BBC News, Jul. 26, 2005) [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/programmes/from\\_our\\_own\\_corre...7/26/2005](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/programmes/from_our_own_corre...7/26/2005).

<sup>78</sup> Although school tuition is free, this includes the cost of clothing for school, backpack, books and other school supplies. See FALKINGHAM, *supra* note 36, at 55.

<sup>79</sup> *Id.*, at 58-59. An educator reported that "Until the 4<sup>th</sup> grade there are equal amounts of girls and boys in schools but after that the ratio declines...After the 4<sup>th</sup> grade, girls look after the house, younger siblings, and prepare for family life." Interview with Non-gov't Org., in Taj. (Apr. 17, 2006). Indeed, during the 2003-2004 school year, in grades 1-4, 48.2% of the students were girls, but in the same school year, in grades 10 and 11, only 39.3% of the students were girls. CEDAW Report, *supra* note 31, at 25. And, despite a quota system which the President created in 1997 to encourage rural Tajik girls to seek admittance to higher-learning institutions, the gender gap in education has widened: the percentage of girls in higher education decreased from 34% in 1991-92 to 24.67% in 2003-2004. *Id.* at 28.

<sup>80</sup> CEDAW Report, *supra* note 31, at 29. In its concluding comments on Tajikistan, the CEDAW Committee remarked "there is a noted rate of non-attendance by girl children at the primary school level, there is a sharp decline in the enrollment of girls at the secondary school level... [and] high dropout rates of girls." Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Tajikistan, U.N. CEDAW, 37th Sess., at 6, U.N. Doc. CEDAW/C/TJK/CO/3 (February 2007) (Advance unedited version, hereinafter Concluding Comments) <http://www.un.org/womenwatch/daw/cedaw/cedaw37/concludingcommentsAU/Tajikistan.pdf>.

close to universal literacy, and the current deterioration in education mainly impacts girls.<sup>81</sup>

Tajik families have traditionally been large, but since 1991, the birth rate has fallen to 3.26. The life expectancy rate has dropped to almost sixty-five years in 2005.<sup>82</sup> Many of the health indicators for women are also regressing.<sup>83</sup>

Tajikistan's progression to a market economy is impeded by corruption. Bribes are often a key part of the income of government employees. The wages of most workers have declined in the past five years, and only a small number of government employees can rely completely on wages. In 2003, the average wage of a public sector employee was ten US dollars per month, well below a sustainable wage.<sup>84</sup>

Interviews revealed that, due to the difficult economic situation and high rate of unemployment in Tajikistan, many men have migrated to work in Russia. The men's absence often leaves their wives and children vulnerable to abuse from relatives and financially insecure. It is not uncommon now for a man to start a new family in Russia, severing ties to, and financial support for, his first family in Tajikistan. One program coordinator estimated that between 650,000 to 1 million Tajik men are working in Russia, and for the most part, will remain there.<sup>85</sup> A lawyer reported that a likely cause of domestic violence is the "large amount of males who leave to work in Russia."<sup>86</sup> "These are the families that relatives attack," said a member of a non-governmental organization staff. "...it is very

complicated. The husband calls once a year and [threatens] her: 'If I come back and hear [that you have been unfaithful, or disobeyed my mother] I will divorce you.'<sup>87</sup> "When a woman is left with her parents-in-law and her husband's brothers, they try to control her", explained another women's center trainer.<sup>88</sup>

#### D. EVIDENCE OF DOMESTIC VIOLENCE

*A woman had four children. She lived in a nearby village. She did not cook dinner on time when the husband went to the field to work so the husband beat her...when she was baking bread he stabbed her with a sickle eight times. He came from the back while she was baking and stabbed her...there was blood all over the bread and the oven. She fell to the ground and he was kicking her and trying to get the sickle out...the children went to an orphanage and the villagers paid for the funeral...there were earlier cases where he had beat her.<sup>89</sup>*

*He was constantly getting drunk and then beating her and she couldn't stand it anymore and she came to me with bruises and so we locked him up for fifteen days with the militia and then he came out and he promised never to hurt her again...she wanted to save the family, the father of her children...Even after telling him this is not right and this is the mother of your child...it was drink, beat, drink, beat, for many times...<sup>90</sup>*

##### 1. PREVALENCE OF DOMESTIC VIOLENCE

Many interviewees reported that domestic violence is endemic to Tajik society. A high-ranking official stated that "not a single day goes by where a woman does not come to the [militia] with a complaint about being assaulted by a man."<sup>91</sup> A gynecologist reported that they see domestic violence "very often, every day...we see the injuries, bruises and other injuries. Some

<sup>81</sup> FALKINGHAM, *supra* note 36, at xv.

<sup>82</sup> In 2005, the life expectancy in Tajikistan was 64.9 years. See [www.infoplease.com/ipa/A0934746.html](http://www.infoplease.com/ipa/A0934746.html). (last accessed February 11, 2007).

<sup>83</sup> FALKINGHAM, *supra* note 36, at 68-69.

<sup>84</sup> Library of Congress, *supra* note 56.

<sup>85</sup> Interview with Gov't Official, in Taj. (Nov. 9, 2005).

<sup>86</sup> Interview with Lawyer, in Taj. (Nov. 1, 2005).

<sup>87</sup> Interview with Non-gov't Org., in Taj. (Oct. 31, 2005).

<sup>88</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>89</sup> Interview with Gov't Official, in Taj. (Nov. 12, 2005).

<sup>90</sup> Interview with Physician, in Taj. (Nov. 7, 2005).

<sup>91</sup> Interview with Gov't Official, in Taj. (Nov. 6, 2005).



speak about it, others keep it to themselves.”<sup>92</sup> A religious elder reported that in his opinion, one out of every five or six families in Tajikistan experiences domestic violence.<sup>93</sup> “In ninety-nine percent of families, domestic violence occurs, in different forms,” opined a non-governmental organization lawyer.<sup>94</sup>

In 1999, the World Health Organization surveyed nine hundred women and girls in three districts in Tajikistan. The results of the survey indicated that of women aged fifteen and older, fifty percent experienced violence from family members. Additionally, over fifty percent of the respondents reported some form of psychological abuse by a husband or family member.<sup>95</sup>

In August 2005, a social scientist conducted a survey on domestic violence in the Khatlon Oblast of Tajikistan. The report documented interviews with six hundred people, both women and men. In this survey, (the “Khatlon survey”), over one-third of the women responded that their husbands had beaten them. The survey noted that married women can experience “a layering of multiple forms of violence.” Seventy-five percent of the women who reported that their mothers-in-law beat them also reported that their husbands had beaten them as well.<sup>96</sup> Finally, the study concluded that there were “no significant differences across districts, age groups, levels of education or work status in

regards to whether a woman had ever been hit/beat[en] by her husband or mother-in-law.”<sup>97</sup>

The Khatlon survey found that women and men largely agreed that it was justifiable to beat a woman who had “talked back,” disobeyed, left the house without permission, had not prepared dinner on time, or had not cared for the children properly.<sup>98</sup> Not only did a husband have this right, but a mother-in-law did as well. These results did not vary between women who were highly educated or worked outside the home, and with those who did not.<sup>99</sup>

Some evidence suggests that domestic violence is more prevalent in rural areas. The World Health Organization’s 1999 study reported a disparity in rates of violence between the geographic regions.<sup>100</sup> The study found that women in Khatlon experience more physical, sexual and psychological violence than women in the other regions.<sup>101</sup>

Government employees, including a prosecutor and militia officials, frequently reported that they did not keep records on domestic violence.<sup>102</sup> One official,

<sup>97</sup> *Id.*, at 28.

<sup>98</sup> *Id.*, at 14.

<sup>99</sup> The survey did find a difference between educated and uneducated women in the acceptance of psychological abuse. *See Id.*

<sup>100</sup> In that study, 59% of women in Khatlon reported experiencing violence from a family member, as did 58% of women in RRS (Regions of Republican Subordination), 48% of women in Leninabad and 27% of women in Dushanbe. WHO Study, *supra* note 95, at 17.

<sup>101</sup> *Id.*

<sup>102</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005). And, in its Combined Initial, Second and Third Periodic Report of States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Tajik government reported that: “Under consideration at the moment is the question of upgrading statistical reports on offences committed against women, which will help monitoring and further adoption of preventive measures to suppress such offences.” CEDAW Report, *supra* note 31, at 8. In fact, one of the goals of a new Coordinating Council to be implemented in Tajikistan is to “develop a way to keep statistics on domestic violence. “Now,” one interviewee stated, “there are no statistics.” Interview with Non-gov’t Org., in Taj. (Apr. 17, 2006).

<sup>92</sup> Interview with Physician, in Taj. (Nov. 9, 2005).

<sup>93</sup> Interview with Religious Elder, in Taj. (Nov. 10, 2005).

<sup>94</sup> Interview with Lawyer, in Taj. (Nov. 9, 2005).

<sup>95</sup> VIOLENCE AGAINST WOMEN: REPORT ON THE 1999 WHO PILOT SURVEY IN TAJIKISTAN 15 (World Health Org. 2000) (hereinafter WHO Study). And, a non-governmental organization reported that they conducted sociological research in the late 1990s in Tajikistan which indicated that 60% of women are victims of domestic violence. Interview with Non-gov’t Org., in Taj. (Nov. 9, 2005).

<sup>96</sup> ROBIN N. HAARR, VIOLENCE AGAINST WOMEN IN MARRIAGE: A GENERAL POPULATION STUDY IN KHATLON OBLAST, TAJIKISTAN 28 (2005) available at [http://www.swisscoop.kg/ressources/resource\\_en\\_63978.pdf?userhash=d440cb093320f49f7f1a0474a44c4fa3](http://www.swisscoop.kg/ressources/resource_en_63978.pdf?userhash=d440cb093320f49f7f1a0474a44c4fa3). This study focused on abuse from a husband and a mother-in-law. *See Id.*, at 3-4.

reporting that cases of domestic violence were rare, asserted that they only had “single [non-repeat] cases of family scandals,”<sup>103</sup> so they did not find it necessary to keep records.<sup>104</sup> And, when asked how accessible the records of repeat violence were to the media or other independent organizations, a forensic doctor replied, “I think no one needs this kind of numbers, no one cares, no one has come to us for this information.”<sup>105</sup>

Interviews revealed that many government officials denied the existence of a problem that others felt was overwhelmingly present in Tajik society. One interviewee working on the issue of domestic violence explained:

*In 2001, this project began...The first year there were a lot of problems. It is very hard to speak of domestic violence...After two or three meetings, they called me into the mayor's office...They said, "Why are you speaking of violence? There is no violence! Change that word. What man killed his wife? There is no problem here...Why are you teaching our wives these things?"*<sup>106</sup>

The Advocates interviewed a small number of officials who acknowledged that domestic violence exists even though no government statistics confirm the problem. Some spoke openly about the lack of an effective government response to domestic violence in Tajikistan. A high-ranking government employee stated:

*There is almost no government funding [for domestic violence]...We have no such statistics...the government obliges us to keep statistics, but there is no funding and no one will talk about it...Many experts come and talk about domestic violence, but there are no programs*

<sup>103</sup> For a discussion of the use of the term “family scandal,” see *infra* 15.

<sup>104</sup> Interview with Militia Officer, in Taj. (Nov. 8, 2005).

<sup>105</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>106</sup> Interview with Non-gov't Org., in Taj. (Oct. 31, 2005).

*about what to do and when we propose methods there is no movement on them.*<sup>107</sup>

## 2. DOMESTIC VIOLENCE VICTIMS' EXCLUSION FROM GOVERNMENT SYSTEMS AND SERVICES

Most domestic violence victims do not seek help from the legal system in Tajikistan in part because many do not know that it is a crime for a family member to beat them.<sup>108</sup> Interviews revealed that when they seek help for domestic violence, women face hostility and disbelief from government officials and others. Sources revealed that women often believe that reporting the abuse would be futile. Shame and a desire to preserve the family are also major causes of underreporting.

*Women are afraid to come forward about domestic violence because they are afraid of getting divorced, of being kicked out of the house with the children, because they might be left with nothing. It is some kind of norm here to beat your wife. If she isn't doing something well enough or makes a small mistake, they feel they should beat her...Very few women come forward to a women's center seeking help from a domestic violence situation because they are afraid.*<sup>109</sup>

Many government representatives stated that few cases of domestic violence are reported. A city official stated that, “We have an advocacy organization, and they have rarely received reports of domestic violence.”<sup>110</sup> “We have no cases,” reported one prosecutor.<sup>111</sup> A city court judge reportedly has not had a case of domestic violence in three years,<sup>112</sup> and a school director believed that there were no cases of domestic violence in his town because “people here have more knowledge.”<sup>113</sup> “Very few of our cases

<sup>107</sup> Interview with Gov't Official, in Taj. (Apr. 20, 2006).

<sup>108</sup> For a discussion of domestic violence under the criminal code, see *infra* Section III(A)(2)(a) Laws, at 31.

<sup>109</sup> Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

<sup>110</sup> Interview with Local Gov't Official, in Taj. (Nov. 1, 2005).

<sup>111</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

<sup>112</sup> Interview with Judge, in Taj. (Nov. 2, 2005).

<sup>113</sup> Interview with School Officials, in Taj. (Nov. 14, 2005).

involve domestic violence issues,” stated a judge.<sup>114</sup> A forensic doctor said that his Center saw “few, very few” victims of domestic violence each month.<sup>115</sup>

In contrast to the government officials’ estimates of low levels of reported domestic violence, interviewees stated that for many women in Tajikistan, beatings are a part of ordinary life.<sup>116</sup> Interviews revealed that some women are seeking help from their families and from many community-based sources: the mahallah, the mullah, the khukumat, the jamoat, medical or forensic doctors, women’s centers or local non-governmental organizations, the courts, lawyers or militia.<sup>117</sup> One domestic violence hotline for women in Tajikistan now receives 2,000 calls per year.<sup>118</sup> The Khatlon survey found that among women who reported domestic violence, they most frequently told their families (82%), then their friends (32%), and then reported to government or community officials.<sup>119</sup>

A lack of knowledge about women’s rights and resources prevents many women from reporting the violence. One non-governmental service organization

<sup>114</sup> Interview with Judge, in Taj. (Nov. 2, 2005).

<sup>115</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>116</sup> Interview with Non-gov’t Org., in Taj. (Oct. 31, 2005).

<sup>117</sup> For definitions of Mahallah, Mullah, Khukumat, and Jamoat, see the Glossary, *infra* App. B.

<sup>118</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>119</sup> HAARR, *supra* note 96, at 27. Of the women who sought help from government or community resources, 8.5% went to a medical doctor, 5.8% to a forensic doctor, 5.5% to the militia, 4.3% to a lawyer, 4.5% to the courts, 4.3% to the mahallah, 2% to the Women’s Committee, and 2.5% to the local non-governmental organization. The Khatlon survey not only asked about help-seeking behaviors generally, it asked women who had been beaten in the last 12 months to report where they sought help. The study also specifically addressed whether or not women who experienced abuse from their mothers-in-law sought help. Consistent with those who were abused by their husbands, few sought assistance. For those who did seek help, medical doctors were their first recourse, and then the courts, police, and mahallah. It is significant to note that, although the sample was relatively small, 100% of the women who were abused by their mothers-in-law within the last 12 months sought help from each of the government and community services. See *id.*, at 35- 37.

explained, “...we have people from all over and they don’t know their rights. No matter if they are from the regions or wherever, they don’t know where they can go for help.”<sup>120</sup>

A common phrase used to describe domestic violence is “the family scandal.”<sup>121</sup> A social scientist explained that using this terminology implies a sense of shared responsibility for the behavior, or even that the victim is solely responsible for the violence.<sup>122</sup> In addition, labeling the violence a “family scandal” implies that it is a private matter, outside of the law, and trivializes the abuse.

Sources reported that women’s sense of shame is a another cause of underreporting. A trainer at a women’s center noted, “They think it is confidential and personal, so they keep the violence inside. It’s always the woman’s fault, everyone blames the woman.”<sup>123</sup> Despite difficult conditions, many women do not report domestic violence to preserve family honor. A doctor explained that pregnant women seek medical help after a beating to make sure the baby is unharmed, not for treatment of their own injuries. “She is often reluctant to discuss what happened because there is a lot of shame around domestic violence, and it is seen also as shameful to complain about it.”<sup>124</sup> A psychologist told this story:

*One woman’s husband came home drunk every day and beat her. ...I told her that maybe she should turn to the militia or the prosecutor...and the woman said...we will not turn to the militia, the*

<sup>120</sup> Interview with Non-gov’t Org., in Taj. (Nov. 11, 2005).

<sup>121</sup> Judges defined a “family scandal” as all events within the boundaries of the family that end up with low-level or minor level injuries, and humiliation or moral suppression. Interview with Judge, in Taj. (Nov. 5, 2005); interview with Judge, in Taj. (Nov. 8, 2005).

<sup>122</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005).

<sup>123</sup> Interview with Non-gov’t Org., in Taj. (Nov. 10, 2005).

<sup>124</sup> Interview with Physicians, in Taj. (Nov. 4, 2005).

*prosecutor or the courts, because he is the father of my children, and I will be ashamed.*<sup>125</sup>

Interviewees explained that the desire to preserve the family is also a major cause of underreporting.<sup>126</sup> A lawyer said, “There are people who are afraid of their husbands, and afraid of the consequences. She hopes all will be okay and that she will get back together with her husband. They reach a point where they are afraid to go further.”<sup>127</sup> The consequences of telling anyone, even a family member, may be severe.

In addition, interviewees explained that women believe that reporting the abuse would be futile. Officials do not pursue their cases seriously, or the judges or their families will pressure them to reconcile. “Many victims tell us the same thing. Victims who come to see us tell us that they went many times to the militia or the investigator, but they dropped the case. As advocates, we tell them, we will place the claim for you, but most women say it is hopeless. We say, ‘You have the right.’ But they do not believe anything good will happen,” reported an advocate at a women’s center.<sup>128</sup> The chief militia officer of a large region expressed a related concern, “We have had no repetitive cases this year. Maybe they don’t report again because of our inefficiency, or maybe the violence is stopping.”<sup>129</sup>

Interviewees reported that women must also consider the economic consequences when deciding whether to report abuse:

*Sometimes when there is a beating and the militia acts, the women do not realize their husband will be imprisoned, and then she is sorry. She does not want the husband to be in prison,<sup>130</sup> she just wants to scare the husband. If the husband goes to prison, she loses material support.<sup>131</sup>*

### 3. SUICIDE

Interviewees reported that suicide as a result of physical, psychological and economic violence is common in Tajikistan. Suicides by women are often a reaction to domestic violence, societal pressures, cruelty from relatives-in-law, and polygamous or forced marriages.

*“A husband used to come home drunk and beat her and ask her why she went to the neighbor’s. He would not let her leave the house. So one day he found her at the neighbor’s and beat her. She... jumped from the second floor. Just jumped. She did not want to live.”<sup>132</sup>*

*“I worked in the Burn Center- that is the most common method of suicide due to violence... You only see their eyes, and that is all. Their skin is black, and there is a smell. You remember this the*

<sup>125</sup> Interview with Non-gov’t Org., in Taj. (Nov. 11, 2005).

<sup>126</sup> A domestic violence victim expressed similar reasons for not reporting violence by her husband. The woman, who was also a volunteer at a women’s center, said that her husband recently returned from Russia with a second wife. He had left her with six children. They all lived together. He beat her but she never went to the police. After a severe beating during which she received significant head injuries, the doctor told her to go to a forensic doctor to record all of the injuries and to send the information to the court for a case. She said, “No, why do I need this? I need to preserve my family.” Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>127</sup> Interview with Lawyer, in Taj. (Oct. 31, 2005).

<sup>128</sup> Interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>129</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005).

<sup>130</sup> The situation in Tajikistan’s men’s prison is also a concern for battered women. Because domestic violence is not generally criminally prosecuted until a high level of injury or death occurs, the penalties for conviction can be severe. The lack of an effective government response to domestic violence not only contributes to the escalation of domestic violence, but also forces battered women to choose between long-term incarceration for the batterer or no justice.

*One reason women are so reluctant to file a claim is because the penalty for beating is five or more years. This is too high. Women do not want their husbands sent to prison for five years. We need a smaller punishment and then women will come forward. Even animals cannot live in the conditions of prison in this country. It is a huge responsibility to cause someone to go and live in these conditions.*

Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>131</sup> Interview with Gov’t Official, in Taj. (Nov. 6, 2005).

<sup>132</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

*rest of your life. They suffer for two or three days, and then they die.*<sup>133</sup>

Interviews revealed that suicide by self-immolation, hanging, drinking poison, swallowing pills, or drowning, is a serious problem in Tajikistan. Country-wide statistics for Tajikistan are difficult to obtain. One non-governmental organization conducting research found that in the first six months of 2004 there were one hundred thirty-two suicides, sixty-seven of them women.<sup>134</sup> Eight of these were self-burning cases.<sup>135</sup> While countrywide statistics on suicide are not available, researchers who have reviewed government records and knowledgeable governmental officials are clear that suicide is an ongoing problem.<sup>136</sup> A recent report of attempted suicides by self-burning documented between fifteen and twenty cases at the Dushanbe Burn Center in the first five months of 2004.<sup>137</sup> One prosecutor said that in the first nine months of 2005, there were six suicides and fifty-four cases of attempted suicide.<sup>138</sup> A khukumat official said that her district had a record of about thirteen attempted suicides in the last six months, due to physical or psychological violence from a family member.<sup>139</sup> Statistics underreport the frequency of

suicide, especially if it cannot be easily detected, because families rarely request an autopsy. An autopsy will occur only if it is “very obviously a crime.”<sup>140</sup>

An experienced burn unit doctor stated that suicides have decreased somewhat from Soviet times. They have gone from ten to twelve cases per year to one to two cases at his unit.<sup>141</sup> One non-governmental staff person stated that the reduction in self-burning cases in government burn units may be due to public perception that medical relief is unavailable due to shortages in medical supplies.<sup>142</sup> However, there has also been a government campaign to discourage self-burning, and burn units have participated in training campaigns with women’s crisis centers to reduce the incidents.<sup>143</sup> “In virtually all of the self-burning cases ... almost always the cause is the husband and the mother-in-law and the rest of the husband’s family,” the doctor reported.<sup>144</sup> Doctors are required to report suspected self-burnings to the militia, who open a file and conduct an investigation. “Usually, the women at first hide the real reason for the suicide attempt. Then, because they think they are dying, they tell the truth.

<sup>133</sup> Interview with Physician, in Taj. (Nov. 5, 2005).

<sup>134</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005). As of 2005, the population of the Sughd region was estimated at 2 million. See ABOLREZA ABASSIAN, TAJIKISTAN: MARKET POLICY FOR EMERGENCY FOOD SECURITY ASSESSMENTS DECEMBER 2005 24 (U.N. World Food Prog. 2005).

<sup>135</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005).

<sup>136</sup> *Id.*

<sup>137</sup> The report stated that 45 women who attempted suicide by burning came to the Burn Center in 2001, 60 came in 2002, and 48 came in 2003. The study evaluated the response of the health care system and concluded that the perceived reasons women commit suicide are: domestic violence, polygamy, financial problems of husbands, problems with relatives-in-law and adultery. Social strictures and a lack of hope for the future were also cited. See Alisher Lytypov & Irene Jillson, Women, Suicide and Culture in Tajikistan: Identifying and Addressing Correlated Factors, Address at the Am. Pub. Healthy Soc’y’s 133<sup>rd</sup> Mtg. (Dec. 2005).

<sup>138</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>139</sup> Interview with Local Gov’t Official, in Taj. (Nov. 8, 2005).

<sup>140</sup> Interview with Gov’t Official, in Taj. (Apr. 20, 2006).

<sup>141</sup> Interview with Physician, in Taj. (Nov. 5, 2005).

<sup>142</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>143</sup> *Id.*

<sup>144</sup> Interview with Physician, in Taj. (Nov. 5, 2005). A judge described the reasons for a suicide that occurred in 2004:

*[A woman] married after her first year in the university. Her husband was her neighbor in the village. Her husband’s family made obstacles to prevent her from going to university or studying. They forced her to do distance learning. After the second year of studies, they said no distance learning and forced her to stop. They systematically pressured her. The husband was always beating her and when the husband’s family separated them, the husband began to cheat on her and systematically torture her again...the way he tortured her was low-level injuries...driving to suicide did not mean he hit her all of the time. You limit her freedom and psychologically interfere with her mind. All of this leads to suicide.*

Interview with Judge, in Taj. (Nov. 5, 2005).

They say, 'I am dying – it was my husband (or mother-in-law) who drove me to try to commit suicide.'<sup>145</sup>

The law in Tajikistan criminalizes “driving a person to suicide.”<sup>146</sup> A prosecutor described a situation leading to such a prosecution:

*The respondent was a major in the militia...He was sentenced to five years' imprisonment. He tortured her, limited her freedom, and did not allow her to go to the neighbors. He systematically beat her if she visited anyone, even relations. She left a letter as to why she committed suicide...I searched for this letter for three days and found it placed in a pillow. I was able to bring the husband to trial...She jumped into the river, and two men who tried to help her drowned as well.*<sup>147</sup>

Interviewees explained that societal pressures lead to suicide. A lawyer reported: “They try to quickly get their daughters married. There was a twenty-seven year old girl from the region, no one married her and the neighbors were laughing at her. She burned herself a month ago. Society makes fun of her because the first goal of the woman is to get married.”<sup>148</sup> Interviewees also explained that a woman must be a virgin upon marriage, or the husband feels justified in reacting negatively:

*A girl hanged herself on her wedding night – I think that maybe there was some sexual violence...After the wedding night, she had been kicked out of her husband's family's home. I think because there was no blood so they thought she was not a virgin – in Tajik culture, you need blood to show virginity...*<sup>149</sup>

A lawyer reported that forced marriages also cause the desperation that leads to suicide:

*In another case, the girl was forced to marry...She fought against it, but got married. She was writing in her diary, and everything she wrote was about how she turned to people for help, and she did not want to live with the man. This went on for two to three years, and she turned to everyone she could. She even wrote that she was looking for a suitable place to jump from. But, she came to stay at her parent's place and burned herself. This time, the prosecutors came, and the only thing she could say before she died was, 'My diary is there.' She defined as violators her parents, who made her get married. She had turned to the local authorities, the women's center of the khukumat. In the end, they told her that all men are men, and your husband is no worse than the rest. Her parents were too old to be judged, but there was shame for all the relatives.*<sup>150</sup>

Interviewees explained that some communities actively try to prevent suicide by young girls. A marriage registrar said that when there is a case of attempted suicide, one women's group sends a representative immediately to talk with the girl and her family.<sup>151</sup> Particularly in the case of younger women, however, some professionals discount women's reasons for suicide. “We had a sixteen year old who hanged herself. She got into a fight with her mother about a clothing scandal, and ‘don't leave the house without my permission.’... She was a spoiled child.”<sup>152</sup> A prosecutor reported, “These attempted suicides are a flexible issue – you cannot tell if it really is, because women act emotionally, to frighten the husband...”<sup>153</sup> “Even a simple scandal can end up like this,” said a judge. “The husband will defend his mother and he beats his wife up and she burns herself.”<sup>154</sup> A social scientist studying the issue disagreed that the issues behind suicides were trivial ones: “Many girls commit suicide or attempt suicide because of violence in the home from their husbands, mothers, fathers, mothers-

<sup>145</sup> Interview with Physican, in Taj. (Nov. 5, 2005). See *infra* 29 for a description of the crime of “Driving to Suicide.”

<sup>146</sup> TAJ. CRIMINAL CODE [TAJ. CRIM. C.] Art. 109. For a discussion, see *infra* 29. For statutory language, see *infra* App. A.

<sup>147</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>148</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>149</sup> Interview with Medical Clinic, in Taj. (Nov. 4, 2005).

<sup>150</sup> Interview with Non-gov't Org., in Taj. (Nov. 12, 2005).

<sup>151</sup> Interview with Local Gov't Official, in Taj. (Nov. 8, 2005).

<sup>152</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005).

<sup>153</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>154</sup> Interview with Judge, in Taj. (Nov. 1, 2005).

in-law, etc. and also from violence in the schools. There is a layering effect of the violence that makes it very complex.<sup>155</sup> Another government official agreed. “Women don’t burn for no reason. Usually it is a young woman who is beaten at home or ill-treated, or the mother-in-law is treating her badly...”<sup>156</sup>

Many interviewees described a connection between suicides and labor migration to Russia.<sup>157</sup> When men leave Tajikistan to work in Russia and do not send money back to their wives, mothers cannot feed their children, and the relatives with whom they live make their lives unbearable. A psychologist described the story of a woman who attempted suicide:

*She was eighteen years old. Her husband went to Russia, and her mother-in-law tortured her all the time. Before trying to kill herself, she went to her sister’s house to live. But the sister, in order not to break up the family, told her to go home and try to have a better relationship with the mother-in-law. She went home, and then went to her brother’s home. It could have been economic pressure, or else to preserve the family, but the brother said to go home to your mother-in-law. After that, she was desperate...she did not succeed in killing herself...there was no investigation after the attempt. The woman did not bring a claim to the police. No one did, it feels like shame and they are trying to hide it. She lives with her father now.*<sup>158</sup>

#### 4. VIOLENCE FROM RELATIVES-IN-LAW

*Women are victims of violence by their husbands and also other members of the family, such as the mother-in-law, older brothers of her husband, and their wives. There is often psychological violence and control. The husband’s family controls every aspect of a woman’s life: where she can go, if she can go out, who she may speak to, what she can*

*wear, her hair style, makeup, everything is controlled.*<sup>159</sup>

When a woman marries, she is likely to live with her husband’s family. Not only is this a cultural norm in Tajikistan, but many homes were damaged during the war, and those living in affected areas are even more likely to share their home with large numbers of extended family.<sup>160</sup> Numerous interviewees repeated the cultural expectation that women must be subservient to their relatives-in-law, in addition to their husbands. Close living quarters and their position of powerlessness leave women particularly vulnerable to abuse. For many, divorce, which is rare and considered a last resort, is seen as the only way to escape this abuse. A lawyer reported the experience of one of her clients:

*For the last ten years, she was systematically beaten – torture, domestic violence. Her teeth started to fall out. To prove it as domestic violence, we needed a forensic certificate and psychologist and neurologist certificates. The only way to help her is to get a divorce, alimony and living space for her. There is a big threat that he will do it again. He kicked her out and he has the kids. Her sisters-in-law are the main sources of the torture...They said, “We want to kick you out of the house with shame.”*<sup>161</sup>

One women’s center estimated that in one-third of the reported domestic violence cases they see each month, the perpetrators are the mothers-in-law. The trainers at the center reported the following example, which is typical of the cases they see:

*A man brought a Nikoh<sup>162</sup> wife home, and they had four children. He moved to Russia, and while he was there, the mother-in-law forced the wife to clean the home, prepare the food, and said to her*

<sup>155</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005).

<sup>156</sup> Interview with Gov’t Official, in Taj. (Nov. 8, 2005).

<sup>157</sup> Interview with Non-gov’t Org., in Taj. (Nov. 9, 2005).

<sup>158</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005).

<sup>159</sup> Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>160</sup> WHO Study, *supra* note 96, at 14.

<sup>161</sup> Interview with Lawyers, in Taj. (Apr. 17, 2006).

<sup>162</sup> A Nikoh marriage is an Islamic religious marriage. In practice, marriages that are not registered with the state are also called Nikoh marriages. See the Glossary, *infra* App. B.

constantly, “You are cheating on my son.” As a result, the husband telephoned the wife and told her to leave the house without the children. It is pitiful, because she married him at age sixteen. She was from a village and had no education. The mother-in-law and the son-in-law beat her once, and she had bruises and scrapes on her arms, but the psychological violence was every day.<sup>163</sup>

A women’s center employee explained that in Tajikistan, if there is a disagreement between a wife and the mother-in-law, the mother-in-law usually prevails. The mother-in-law often uses her elevated position in the family to control the woman’s life.<sup>164</sup> She may not like her daughter-in-law, or she may be angry at her for the couple’s infertility.<sup>165</sup> Sometimes the relatives go so far as to insist that the husband divorce the wife. A militia officer reported:

*The father is an old person who prays every day. He needs water to wash for his pre-prayer ritual. The young bride forgot to prepare his water for her father-in-law. He asked his son to divorce her because he was very angry. The son said he couldn’t, because they had children. The father-in-law said, “If you don’t divorce her, I will.”<sup>166</sup>*

Many women endure the abuse for years. A journalist described one victim:

*[A]fter the wedding, she was treated as a slave, not a bride. She cooked, cleaned, did laundry. She worked [outside the home] as well. During her job,*

<sup>163</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005). One women’s center offers classes on personal hygiene, breast feeding, and reproductive health matters. They have to walk to the homes of the young women and ask the mothers-in-law to let them come to class. The women can not leave the house without her permission. Interview with Non-gov’t Org., in Taj. (Nov. 10, 2005).

<sup>164</sup> *Our mentality is this: The boys being brought up are taught that the mother is superior to the wife. If there is a disagreement between the wife and the mother, the mother is right. The position and respect for the mother is greater than the position and respect for the wife. Women gain power in our society when children become adults. The mother’s word is accepted.*

Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>165</sup> Interview with Physician, in Taj. (Nov. 9, 2005); interview with Judge, in Taj. (Nov. 1, 2005).

<sup>166</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005).

*she kept getting calls from the family to come and serve guests, things like that. Eventually she gave birth to a boy. During the pregnancy, she was beaten. Two weeks after she gave birth, the mother-in-law said, “Go back to work and I will take care of the child”... After this, she had a second child. The same thing happened, she left it to the mother-in-law, and after ten years, when they did not stop humiliating her, she wanted to leave this hell she was living in. Her mother-in-law said, “You can not take the children, I raised them”... They ran back to the mother-in-law because they were more used to her. So now, she is staying home and bearing all of this.”<sup>167</sup>*

## 5. PSYCHOLOGICAL VIOLENCE

Sources reported that threats, constant criticism, and severe limitations on important areas of life, such as education, freedom of movement and family support, are forms of psychological violence that seriously affect the lives of women in Tajikistan.<sup>168</sup> Interviewees revealed that psychological violence is pervasive and extreme in Tajikistan, and that it is equal to, or even surpasses, physical violence in women’s lives. Psychological violence, damaging in itself, can lead to physical violence if not effectively addressed. A lawyer recounted the following:

*A husband was harassing and threatening his wife because he knew only physical injuries would get to the prosecutor. His wife turned to us. We went to the prosecutor, who checked it out, and agreed that he was threatening her and lowering her self-esteem, but nothing happened. Within one month,*

<sup>167</sup> Interview with Journalist, in Taj. (Nov. 11, 2005).

<sup>168</sup> For information on the use of threats, intimidation, emotional abuse, and isolation in domestic violence, please see the “Power and Control Wheel” developed by the Domestic Abuse Intervention Project of Duluth, MN. See generally, <http://www.duluth-model.org>. Men who believe that they have the right to control women in their relationships believe that they have the right to use force to ensure that control. See ANNE L. GANLEY & SUSAN SCHECHTER, DOMESTIC VIOLENCE: A NATIONAL CURRICULUM FOR FAMILY PRESERVATION PRACTITIONERS 17-18 (1995).



*the husband had killed the wife. Now he is locked up, but it could have been prevented.*<sup>169</sup>

Interviewees reported that threats and constant criticism are only two of the many types of psychological violence women experience in Tajikistan. A girl may be restricted in her choice of her husband, continuing her education or choosing her clothes. Interviewees reported that many husbands in Tajikistan consider it their right to restrict the personal freedom of their wives to the extent of not allowing them to leave the home at all.<sup>170</sup> In the World Health Organization's 1999 study, ten percent of the respondents were not allowed to leave home to see a doctor.<sup>171</sup> A member of an association of professional women reported that it is common that "[i]f a woman spends one night outside of her home, the man will not accept her back."<sup>172</sup>

Many interviewees reported that women's position in Tajik society is becoming more restricted.<sup>173</sup> They attribute this change to a revival of traditional culture and values that subordinate women. For example, an urban, educated woman who was the head of a non-governmental organization and had conducted trainings on domestic violence would not travel 500 kilometers to lead another group, because her husband would not allow her to go.<sup>174</sup> Another trainer said a young woman who had been attending workshops at her center told her that this became very

<sup>169</sup> Interview with Non-gov't Org., in Taj. (Nov. 12, 2005).

<sup>170</sup> This restriction is reflected in the disparity described by one prosecutor in the government's response to missing persons reports:

*When there is an application for a "disappeared" person, if it is a man, we are not so concerned, because he can go out without permission of the family. If it is a woman, since they live in the family and do not go out without permission, we are concerned that something bad has happened to them, so we instigate a search or an investigation.*

Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>171</sup> WHO Study, *supra* note 96, at 21.

<sup>172</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005).

<sup>173</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>174</sup> Interview with Int'l Org., in Taj. (Nov. 14, 2005).

threatening to her husband.<sup>175</sup> "Women don't have the opportunity to choose their own way, where to go or what to do. Everyone is trying to control them, from the mother-in-law to the sons who grow up," reported an official of an international organization.<sup>176</sup>

## 6. WOMEN IN PRISONS

There are approximately 500 women in the women's prison in Tajikistan.<sup>177</sup> A former prison official reported that most of the women imprisoned for homicide had killed their husbands in self-defense.<sup>178</sup> In comparison, current prison officials reported that there were five or six prisoners who killed their husbands out of jealousy, but "no cases of killing the husband because of domestic violence."<sup>179</sup> A guard said that cases of women killing their husbands due to domestic violence are very rare, and women are hesitant to speak about it.<sup>180</sup>

The Advocates interviewed one prisoner whose story contained many of the elements common to abused Tajik women: years of repeated physical and sexual violence, a polygamous situation, many people in one home, unsuccessful and unsupported attempts to leave or to obtain a divorce, no resources for a lawyer, and an ineffective legal response. The woman was married to an alcoholic for seventeen years and had four children. Her husband beat her repeatedly, and she suffered two concussions. She reported that in the last year, it was impossible to bear. She refused his demands and he would beat her. She tried

<sup>175</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>176</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>177</sup> Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>178</sup> Interview with Gov't Official, in Taj. (Nov. 8, 2005).

<sup>179</sup> Interview with Prison Official, in Taj. (Nov. 15, 2005).

<sup>180</sup> *Id.*

unsuccessfully to divorce him three times. She stated, “Family problems were solved in the family.”<sup>181</sup>

Finally, she asked another man to kill her husband. She said, “I would not have had the physical strength to do it. I was afraid of him.” When asked if she had been acting in self-defense, the woman said no. Her sister hired an attorney for her, and her story of domestic violence was reported during the investigation. She was sentenced to fifteen years, the same sentence as the person who committed the murder received. When asked if she knew of any other women prisoners with similar stories, she said no one was interested. “We all talk in prison, but no one speaks about domestic violence. We try not to talk about it.”<sup>182</sup>

#### E. DOMESTIC VIOLENCE: CAUSES AND COMPLICATING FACTORS

In 1993, the United Nations General Assembly stated that “Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men...”<sup>183</sup>

Interviews revealed that domestic violence is accepted in Tajikistan’s culture. “When we ask what is the reason for [the abuse], the women will answer, ‘This is

my destiny, it is written on my forehead, this is my destiny.”<sup>184</sup> Sources reported a number of complicating factors: the view that abuse is a private matter; a pervasive silence about the abuse; priorities that place preserving the family above the safety of the woman; economic difficulties caused by a lack of education, the dire economic situation, and a lack of jobs, and the vulnerabilities of women in polygamous, forced, or unregistered marriages.<sup>185</sup>

The status of a woman in Tajik society is dependent upon her being married. A Tajik proverb states: “If a frog has a husband, she has respect in society.”<sup>186</sup>

Traditional gender roles require Tajik women to submit to violence within the family and to adjust their behavior to avoid conflict, instead of holding men accountable for their violence. The focus on the behavior of women instead of the batterer shifts responsibility from the batterer to the victim. This message is taught to girls at an early age. In describing the consultations she gives girls on “how to work around violence in the family,” a schoolteacher said, “If your husband is angry, then be more tender. Stay calm and he will become calm.”<sup>187</sup> According to a psychologist, women cannot even receive support from their own family. She explained that mothers

<sup>181</sup> Interview with Prisoner, in Taj. (Nov. 15, 2005).

<sup>182</sup> *Id.* In its concluding comments on Tajikistan, the CEDAW Committee expressed concern “about the resurgence of patriarchal attitudes subordinating women and of strong stereotypes regarding their roles.... These attitudes and stereotypes present a significant impediment to the implementation of the Convention and are a root cause of ... the continuing existence of polygamy [and] domestic violence.” Concluding Comments, *supra* note 80, at 4.

<sup>183</sup> G.A. Res. 48/104, *supra* note 2.

<sup>184</sup> Interview with Non-gov’t Org., in Taj. (Nov. 11, 2005).

<sup>185</sup> In 1999, the World Health Organization listed some of the causes of domestic violence in Tajikistan based upon extensive survey results: tradition, the low status of women in society, a lack of education, economic differences, the type of marriage, geographic area, having many children, housing challenges due to living with large groups of relatives, the disintegration of the family and cultural changes. See HAARR, *supra* note 96. To these, a social scientist added the following based upon a 2005 study in Tajikistan: the revival of traditional Tajik culture and societal values and the revival of Islam, increased poverty rates and unemployment rates in Tajikistan, and a lack of social services. *Id.*

<sup>186</sup> Interview with Non-gov’t Org., in Taj. (Apr. 19, 2006).

<sup>187</sup> Interview with School Official, in Taj. (Nov. 14, 2005).

commonly advise their daughters, “I experienced it, too, just sit and be strong.”<sup>188</sup>

Interviewees repeatedly referred to “the Tajik mentality” of silence about the abuse, in order to preserve the family. “The mentality in Tajikistan plays a significant role in the way people deal with domestic violence,” explained a high-ranking judicial official. “There is a Russian saying that people here use: ‘You shouldn’t take it out of the basement.’ Families don’t want others to know about their problems.”<sup>189</sup>

Alcohol use is often cited as a cause of domestic violence. A judge stated, “In my private legal practice I had some women asking for help from scandals at home, mostly because of their husband using alcohol.”<sup>190</sup> Several militia officers named alcohol as a main cause of domestic violence: “...it usually happens when he is drunk....[The militia] keep him until he is sober...family scandals were cases mostly where the husband is drunk and he beats her;”<sup>191</sup> “Usually there is violence where the husband is drinking;”<sup>192</sup> “Alcohol contributes to the occurrence of domestic violence. The government should reduce alcoholism as part of its efforts against domestic violence.”<sup>193</sup> The governmental response is often to address the alcohol use instead of the violence. Research indicates, however, that alcoholism does not cause domestic violence.<sup>194</sup> Alcohol abuse and domestic violence are overlapping widespread social problems.<sup>195</sup> Batterers

use violence both under the influence of alcohol and when sober.<sup>196</sup> However, incidents of abuse under the influence of alcohol have been shown to result in more severe injuries.<sup>197</sup> Alcoholism treatment does not end the violence; both problems must be addressed separately.<sup>198</sup>

Interviews revealed that a woman’s wish to preserve her family is a strong part of Tajik culture, and an important complicating factor in how she deals with domestic violence. “This is the mentality of Tajik women. They want to preserve the family. If they apply to court, it means that she has decided to separate from her husband, that she does not want any further relations with her husband. But in many cases they do not do it because they want their children to grow up with a father.”<sup>199</sup> Interviewees reported that even the individuals and organizations dedicated to serving domestic violence victims prioritize family preservation over women’s safety. A trainer in a women’s center explained that when they receive a domestic violence report, “Our main goal is to preserve the family, so we are looking for peaceful ways. Maybe you learn to tolerate this or you go to the mother-in-law or father-in-law about the violence and explain that this is wrong and they can not do that...It must be a very huge reason why she should go to court.”<sup>200</sup> A woman’s own family often pressures her to make up with her husband despite the abuse.<sup>201</sup> This pressure is intensified when her husband is a cousin.<sup>202</sup> Such marriages are not rare in Tajikistan.

<sup>188</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005).

<sup>189</sup> Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>190</sup> Interview with Judge, in Taj. (Oct. 31, 2005).

<sup>191</sup> Interview with Militia Officer, in Taj. (Nov. 14, 2005).

<sup>192</sup> Interview with Militia Officer, in Taj. (Nov. 5, 2005).

<sup>193</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>194</sup> Howard Holtz and Kathleen Furniss, *The Health Care Provider’s Role in Domestic Violence*, 8 *TRENDS IN HEALTH CARE, LAW & ETHICS* 48 (Spring 1993).

<sup>195</sup> Women’s Rural Advocacy Programs, *Alcohol Abuse and Domestic Violence*, <http://www.letswrap.com/dvinfo/alcohol.htm> (last accessed Jan. 10, 2007).

<sup>196</sup> *Id.*

<sup>197</sup> Holtz, *supra* note 194; Women’s Rural Advocacy Programs, *supra* note 195.

<sup>198</sup> Women’s Rural Advocacy Programs, *supra* note 195.

<sup>199</sup> Interview with Judge, in Taj. (Nov. 5, 2005).

<sup>200</sup> Interview with Non-gov’t Org., in Taj. (Nov. 14, 2005).

<sup>201</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005); Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005).

<sup>202</sup> Interview with Non-gov’t Org., in Taj. (Nov. 1, 2005).

Interviewees reported that economic dependence forces women to stay in abusive relationships. The poor economy in Tajikistan makes it particularly difficult for a woman to be independent. A lawyer reported, “We have ninety percent of our women who are economically dependent on their husbands, many without a high school diploma, many who cannot read, especially in the villages. We have had many years of war. Few workplaces accept women, and education is an expensive pleasure. Jobs don’t pay well.”<sup>203</sup>

A judge explained that men and their families manipulate housing regulations to the detriment of married women. Even a woman in a registered marriage has to be registered as someone officially living in the apartment to have a right to it. If the marriage fails, she will have to prove that she lives there.<sup>204</sup> Many interviewees told of women who had been kicked out of their homes by husbands who never registered them to the apartments. Men also register the apartments in relatives’ names. A lawyer said, “We can file a report in court about getting the kids back, child support, and receiving some of her personal belongings back. It is harder about the living space because...the apartment was neither his nor hers. The husband gave it away. There are no documents to support that they lived there.”<sup>205</sup>

Restrictions on land ownership rights in Tajikistan have a negative impact on the lives of rural women.<sup>206</sup> Despite equitable legal provisions, the customs, traditions and religious practices of Tajikistan limit a

<sup>203</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005). A 1999 survey indicated that 69% of Tajik men were employed and only 44% of Tajik women were employed. See FALKINGHAM, *supra* note 35, at 41.

<sup>204</sup> Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>205</sup> Interview with Lawyer, in Taj. (Oct. 31, 2005).

<sup>206</sup> In Tajikistan, the ownership of land is retained by the Republic. See TAJ. CONST. Art. 13. As it transitions to a market economy, the Republic has begun the process of privatizing the land formerly held in collective farms.

woman’s right to hold, use and inherit land.<sup>207</sup> The primary obstacles to women’s rights to land use include a lack of awareness of their rights, the procedural complexity and lack of transparency of the land registration process, as well as the cost of registration.<sup>208</sup> These limitations affect a woman’s ability to leave an abusive relationship and to live independently.

Many younger women in Tajikistan are uneducated. This lack of education contributes to the women’s economic dependence upon their husbands and limits their freedom to leave abusive situations. In Soviet times, explained a women’s center representative, girls attended school until the tenth grade.<sup>209</sup> Now, girls stop going to school even as early as the third grade. “Families don’t have the means to support all of their children to study, and they will pick the boys [to continue their education],” said a trainer.<sup>210</sup> A militia officer reported, “The basic problem is that parents don’t let girls go to schools and universities. We carry out meetings and explain that their daughters should study, but the parents don’t think this is violence, but a parental right.”<sup>211</sup>

<sup>207</sup> RACHEL SABATES-WHEELER, LAND RIGHTS AND ECONOMIC SECURITY FOR RURAL WOMEN IN TAJIKISTAN 10-11 (UNIFEM 2002).

<sup>208</sup> Other obstacles include water access issues and lack of training on business aspects of farming. ZONGMIN LI, NEEDS ASSESSMENT OF RURAL WOMEN ON LAND TENURE RIGHTS IN TAJIKISTAN (UNIFEM 2000) <http://www.untj.org/files/reports/Needs%20Assessment%20of%20Rural%20Women-On%20Land%20Tenure%20Rights%20in%20Tajikistan.pdf>.

<sup>209</sup> Interview with Non-gov’t Org., in Taj. (Nov. 10, 2005).

<sup>210</sup> Interview with Non-gov’t Org., in Taj. (Nov. 1, 2005).

<sup>211</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005). This “significant reduction” in the enrollment of girls is documented in a recent report on gender relations in Tajikistan. Experts explain that financial limitations and a revival of Islamic practices and traditional aspects of Tajik culture contribute to this trend. Also, the civil war interrupted the education of many women and girls, who left school for safety reasons or never began going to school during that time. Many of these young women, who would be ages 27 and younger, may not have returned to school when the war was over. They focused on finding employment in an economy ravaged by the war. Some of these young girls are

Certain conditions of marriage contribute to the perpetuation of domestic violence in Tajikistan and exacerbate the problem.<sup>212</sup> Most of the marriages in Tajikistan are arranged by parents.<sup>213</sup> Although the legal age for marriage is seventeen, interviews revealed that officials often allow a girl to marry before she reaches the legal age.<sup>214</sup> “They do it very quietly...no one admits they married at age sixteen. If we go and investigate, there are no witnesses who will come forward, so we have no case,” said a militia officer.<sup>215</sup> A prosecutor reported that they often only find out about underage marriages when they check the medical records at the hospital and see that girls under age seventeen are giving birth.<sup>216</sup> Interviewees reported that underage girls are often forced into marriage. These marriages are often associated with domestic violence cases and suicides.<sup>217</sup>

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leaving school early for arranged marriages, which also reflects traditional and Islamic practices, and the economic situation of the family. See HAARR, *supra* note 96, at 9-10.

<sup>212</sup> In its concluding comments on Tajikistan, the CEDAW Committee expressed concern:

*at the increasingly high number of women in monogamous unions based only on a religious ceremony without any legal effect...that polygamous unions are not uncommon, despite being illegal and prohibited by law, and by the fact that second and subsequent wives do not have any rights concerning property, inheritance or maintenance. It is also concerned that the legal age of marriage in Tajikistan has been reduced to 17.*

Concluding Comments, *supra* note 80, at 8.

<sup>213</sup> COLETTE HARRIS, CONTROL AND SUBVERSION: GENDER RELATIONS IN TAJIKISTAN (Pluto Press 2004).

<sup>214</sup> See TAJ. FAMILY CODE [TAJ. FAM. C.] §II Ch. 3 Art. 13.

<sup>215</sup> Interview with Militia Official, in Taj. (Nov. 1, 2005).

<sup>216</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

<sup>217</sup> Interview with Local Gov't Official, in Taj. (Nov. 8, 2005). The interviewee explained that the bride and groom may meet briefly, and then his parents go to meet her and her parents, and if all is acceptable the parents begin to negotiate the bride price. This is a fee that the groom's family pays for the bride. If they can agree, there is a marriage, despite what the bride-to-be may wish. The interviewee said,

*I have been working here for twenty-five years and I've seen a lot for my years of experience of what happens to young girls. The biggest problem is when the parents make, they force, the young girls to get married. This is when suicide happens. These young girls are desperate and they would do anything not to get married...they are 14, maybe 15, and they are in school, or maybe they just finished school and their parents*

Interviewees reported that polygamous marriages leave women particularly vulnerable. Women in unregistered or *Nikoh* marriages, whether they are first or second wives, have more difficulty ending an abusive relationship due to lack of support and access to living space. Sources reported that although polygamy is against the law in Tajikistan, it is an accepted practice.<sup>218</sup> “[I]f there was a prison sentence [for polygamy], half the men in Tajikistan would go to jail...,” reported one judge.<sup>219</sup> Interviewees explained that in a polygamous marriage, if the husband decides to beat the second wife, she has fewer legal protections than the first wife. If she decides to leave the husband or if her husband abandons her, the second wife must prove that she was, in fact, a wife, to receive support from him. In order to receive child support, she must prove that he is the father of her children.

Interviewees reported that a woman's status as a first or a second wife is particularly important if she becomes a victim of domestic violence.<sup>220</sup> Any negative reaction by the first wife, upon learning of a second wife, is viewed as a legitimate reason to beat the first wife. Her economic dependence on her husband and wish to preserve her home for her children force her to compromise and accept the situation.<sup>221</sup>

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*won't send them back to school or let them keep studying and instead force them to marry. This is when many girls commit suicide or burn themselves or jump into a river.*

<sup>218</sup> TAJ. FAM. C., *supra* note 214, at §II Ch. 3 Art. 14; TAJ. CRIM C., *supra* note 146, at Art. 170. Many people in Tajikistan justify polygamy based upon their religion. Islam allows a man to have up to four wives provided that he can provide for each of them equally. However, under Islamic teachings, national laws restricting the number of wives a man may have supersede religious allowances.

<sup>219</sup> Interview with Judge, in Taj. (Nov. 1, 2005).

<sup>220</sup> A person can only have one marriage registered officially; additional marriages have no official recognition and are referred to as unofficial or *Nikoh* marriages.

<sup>221</sup> Interview with Judge, in Taj. (Nov. 1, 2005).

Interviews revealed that second wives face a different and perhaps more difficult dynamic than first wives; since their marriages are not registered, they have no legal rights.<sup>222</sup> A crisis center reported cases where the first wife began to physically and psychologically abuse the second wife. The husband, afraid that the first wife will report his polygamy to the militia, tolerates the abusive situation in the house, and the second wife has to tolerate the situation also, as she has no legal standing.<sup>223</sup>

A psychologist explained that if a first wife decides to end an unregistered marriage, she has to prove the same things as a second wife in order to receive support or property.<sup>224</sup> Her husband can claim that she was just living with him and that the children are not his. She reported that many women are unaware that their marriages should be registered, and they do not know how to register them.<sup>225</sup>

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<sup>222</sup> If the second wife has no children, she has almost no rights. An interviewee from a woman's center reported that if a wife decides to fight to remain in the home, she is subject to much more violence from the husband. Interview with Non-gov't Org., in Taj. (Nov. 7, 2005). In a further complication, a husband might have only a Nikoh marriage with his first wife. A Nikoh ceremony is required for Muslims, and it must be the first ceremony performed for the couple. It has become more common for Tajik citizens to have that ceremony and not the official one, as Muslim traditions have become more popular. Without an official marriage, a woman cannot get a birth certificate for her newborn that names the father, unless he consents. A mother can get a birth certificate as a single mother, and in one case reviewed by The Advocates, her father's name was inserted instead of the real father's name, which is commonly done if the real father does not agree to be on the certificate. Case review, Tajikistan (Nov. 2, 2005). If a woman does not register her child, he or she cannot go to the polyclinic when ill, travel, or be enrolled in school. The 1999 World Health Organization survey found that more women in a Nikoh marriage experience sexual or psychological violence from the husband compared to officially married women: 40% of officially married women experienced sexual abuse from the husband and 52% of Nikoh women experienced sexual abuse from the husband; 51% of officially married women experienced psychological abuse from the husband, compared to 67% of Nikoh women. *Supra* note 96.

<sup>223</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>224</sup> See *supra* note 220.

<sup>225</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

### III. THE GOVERNMENT RESPONSE TO DOMESTIC VIOLENCE IN TAJIKISTAN

The government of Tajikistan has acknowledged the need to address violence against women.<sup>226</sup> In 1998, the Tajik government adopted the National Plan of Action of the Republic of Tajikistan for Enhancing the Status and Role of Women for the Period 1998–2005. The National Plan includes the goal of preventing all forms of violence.<sup>227</sup> Tajikistan has also implemented the “State Program on Main Directions of the State Policy Regarding Provision of Equal Rights and Possibilities for Both Men and Women in Tajikistan for the years 2001-2010” with an addendum: “Access of Rural Women to Land.” In March 2005, a “Law On the State Guarantees towards Equal Rights for Men and Women and Equal Possibilities to Implement Them” was adopted. In 1991, the National Committee on Women and the Family was created. A deputy prime

<sup>226</sup> “The underlying principles of the State's policy for ensuring equal rights and opportunities for men and women are equal access of men and women to all types of material and nonmaterial resources and to the means for developing their capabilities, including education and health care; equality of opportunities to participate in the decision-making process in economic, social and political areas; equal pay for equal work and equal access to high-paying jobs; and maintenance of equality not only in public life, but also in family life and the adoption of integrated measures to prevent violence in all forms against women. The plight of women in the Republic of Tajikistan is considerably more difficult than that of men.” CEDAW Report, *supra* note 31, at 10. The period of 2001 to 2010 was designated as a period to address equal rights and opportunities for men and women. The program “Guidelines for a State policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001–2010”, sets forth priority areas of State activity to address violence against women:

- upgrading of the legislative base to toughen penalties for violence in all its forms against women;
- improvement of the work of law-enforcement authorities in the prevention, recording and management of cases involving violence against women;
- invigoration of the public and public opinion in the struggle to suppress violence against women;
- elimination of the effects of violence against women through rehabilitation measures for their physical and emotional health;
- integrated and multisector approach to solving this problem.

*Id.*, at 7.

<sup>227</sup> *Id.*, at 10-11.

minister oversees issues related to women’s rights and gender discrimination on the national level. Similar structures are in place in oblast, city, and local representative bodies of authority. Social sector ministries and departments have subdivisions specifically focused on the needs of women, the family and children.<sup>228</sup> Despite these acknowledgements, the Tajik government has yet to pass a law specifically targeting domestic violence and the laws currently in place do not provide an adequate response to the crime. “In absence of a specific law on domestic violence, the Ministry of Internal Affairs issued a decree in May 2006, compelling state bodies to react to the information provided by crisis centres.”<sup>229</sup> Virtually no government funding of programs assisting victims of domestic violence exists. Domestic violence is not taken seriously by many professionals or government authorities in Tajikistan unless it results in a major injury or death.

#### A. THE LEGAL SYSTEM OF TAJIKISTAN

Tajikistan’s Constitution guarantees citizens many basic rights and freedoms and sets forth a commitment to follow international legal norms.<sup>230</sup> Tajikistan does not have a specific statute on domestic violence, but its Criminal Code provides criminal penalties for various

<sup>228</sup> *Id.*

<sup>229</sup> THE WORLD ORGANIZATION AGAINST TORTURE (OMCT) ET AL., HUMAN RIGHTS VIOLATIONS IN TAJIKISTAN: ALTERNATIVE REPORT TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE 21 (November 2006) (Unedited version, on file with the author).

<sup>230</sup> In its CEDAW Report, the Tajik government reported that: “The Constitution and other laws of the Republic of Tajikistan do not contain provisions that directly or indirectly restrict the rights or freedoms of women. The law on international treaties of the Republic of Tajikistan ensures that the Republic of Tajikistan favors unwavering compliance with international treaties and confirms its adherence to the principle of good-faith fulfillment of international obligations.” CEDAW Report, *supra* note 31, at 2.

levels of assault.<sup>231</sup> The Tajik family law provides theoretical equality between men and women in marriage and divorce.<sup>232</sup> In application, however, despite the neutral laws, the legal system creates significant barriers for women seeking legal recourse for domestic violence.

## 1. THE CONSTITUTION

The Constitution of the Republic of Tajikistan, adopted in 1994, proclaims Tajikistan to be “a sovereign democratic, rule of law, secular, and united state.”<sup>233</sup> The Constitution requires the government to protect its citizens from harm. Article 5 provides that “life, honor, dignity, and other natural human rights are inviolable. The rights and liberties of the person and citizen are recognized, observed, and protected by the state.”<sup>234</sup> Article 18 further provides that “[t]he inviolability of the individual is guaranteed by the government.”<sup>235</sup> Article 10 establishes the Constitution as the supreme law of the land and declares any contrary laws or legal acts to be without force.<sup>236</sup> It further provides that international legal instruments, to which Tajikistan is a party, are part of the legal system of the republic and that in cases of conflict, the international law supersedes domestic law.<sup>237</sup>

Chapter Two of the Constitution, *The Rights, Freedoms and Basic Obligations of the Person and the Citizen*, consists of chapters dealing with distinct categories of human rights. Article 18 guarantees the

<sup>231</sup> Like many criminal codes, the Tajikistan Criminal Code does not distinguish between assaults by strangers and assaults by relatives.

<sup>232</sup> One exception is that men do not have the right to file for divorce while a woman is pregnant or within 18 months after the child is born. TAJ. FAM. C., *supra* note 214, at §II Ch 4 Art. 17.

<sup>233</sup> TAJ. CONST. Art. 1.

<sup>234</sup> For constitutional language, see *infra* App. A.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> The laws and international legal instruments enter into force after official publication. CEDAW Report, *supra* note 31, at 3.

right to life.<sup>238</sup> Article 17 provides that “all persons are equal before the law and the courts,” and that “men and women have equal rights.”<sup>239</sup> Finally, Article 21 protects the rights of victims: “The government guarantees the victim judicial protection and compensation for harms suffered by him or her.”<sup>240</sup> Family rights and obligations are also addressed. Article 33 declares families to be the foundation of society, forbids polygamy and provides for equal rights within the marriage.<sup>241</sup> Article 34 provides for special governmental protection and patronage of mothers and children.<sup>242</sup>

## 2. THE CRIMINAL JUSTICE SYSTEM

Acts of violence are expressly prohibited under Tajikistan’s Criminal Code.<sup>243</sup> Despite the clear legal prohibition against physical violence, domestic assaults are not effectively addressed by the criminal justice system.<sup>244</sup> In 2005, the Tajik government reported to

<sup>238</sup> For constitutional language, see *infra* App. A.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> See generally, TAJ. CRIM. C. *supra* note 146, at Arts.109-117.

<sup>244</sup> In its CEDAW Report, the Tajik government did not include domestic violence in its chart of criminal acts indicating domestic violence against women:

*The Criminal Code of the Republic of Tajikistan specifies punishment for the following acts, which indicate discrimination against women:*

- rape (art. 138);
- sexual assault (art. 139);
- forced sexual acts (art. 140);
- sexual intercourse or other acts of a sexual nature with persons who have not reached the age of 16 (art. 141);
- sexual abuse (art. 142);
- groundless refusal to hire or groundless dismissal of a woman who has a child under the age of 3 (art. 155).

*Over the past five years, the following crimes, which are subject to punishment under the above-mentioned articles, were committed:*

No.	Crime	1999	2000	2001	2002	2003
1	Rape	39	39	61	62	52
2	Sexual assault	7	6	16	18	14



the Committee on Elimination of All Forms of Discrimination Against Women that “criminal charges have been brought against very few men who used violence against their wives.”<sup>245</sup> Government officials treat domestic violence as a family matter. At every step of the legal system domestic violence victims are shamed or encouraged to reconcile. Criminal justice system professionals routinely prioritize the preservation of the family over a woman’s safety and accountability for violent offenders.

Criminal justice officials disregard the seriousness of domestic violence unless it results in major injuries or death. Interviewees who have regular contact with

3	Forced sexual acts	1	2	4	3	–
4	Sexual intercourse or other acts of a sexual nature with persons who have not reached the age of 16	4	6	11	15	18
5	Sexual abuse	2	1	4	6	10
6	Setting up or maintaining facilities for prostitution, conspiracy to engage in prostitution, or trafficking in prostitutes	6	9	12	26	46

*It must be noted that, given the latency of crimes committed, the number of women who are victims of violence does not, in all likelihood, match the official data. The reason women do not report crimes to law enforcement authorities is, more often than not, that they do not want to talk about what happened.*

The report later states that: “Certain laws in the Republic of Tajikistan govern questions of family violence.

Individual provisions of the Criminal Code apply to men who use violence against their wives. Criminal charges have been brought against very few men who used violence against their wives.” CEDAW Report, *supra* note 31 at 7-8.

<sup>245</sup> *Id.* at 8. In its concluding comments on Tajikistan, the CEDAW Committee expressed concern about this fact: “The Committee is concerned that there have been very few court cases in the areas of domestic violence against women, polygamy, exploitation of prostitution and trafficking in persons. It is further concerned about the absence of court cases in other areas of women’s lives.” Concluding Comments, *supra* note 80, at 3.

victims of domestic violence reported that “throughout the Tajik system, no one – doctors, militia, prosecutors, is interested in minor injuries. There must be a major injury or near death for the situation to be taken seriously.”<sup>246</sup> Lawyers and advocates reported that it is difficult to successfully prosecute domestic violence cases.<sup>247</sup> “Either there is a significant injury and the penalty is very high, or it seems like nothing happens,” an advocate said.<sup>248</sup> “It is almost impossible to work with victims under the current criminal code,” agreed another advocate.<sup>249</sup>

Criminal justice officials prioritize family preservation over women’s safety. A lawyer for a non-governmental organization described the situation when women pursue low-level violence cases without prosecutor involvement: “In ninety percent of the cases the courts try to make the people make up and not start a criminal case...at the first or second hearing the judge asks if they will make up and usually she forgives him, they hug, and then go home.”<sup>250</sup> Prosecutors also encourage reconciliation. One prosecutor reported that if he sees that the husband is “a good and straight man,” even though he has been violent more than once, the prosecutor will try to preserve the family. He estimated that ninety percent of the cases brought to him settle.<sup>251</sup> If they do go to trial, he said, “the family starts degrading, and the consequences are a child without parents...It will ruin the family, and therefore we try to preserve them, and many people come to thank us for preserving the family.”<sup>252</sup>

Sources reported that corruption also is a major barrier to an effective response from the criminal justice

<sup>246</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>250</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>251</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>252</sup> *Id.*

system.<sup>253</sup> Corruption is reported to be widespread throughout the government. For government employees, “salaries are symbolic; you can not afford to live on these salaries.”<sup>254</sup> Referring to the legal system, one attorney reported, “I can not say there is any judge who would refuse a bribe, the monthly salary of a judge is ten US dollars and it is a simple calculation, with ten US dollars there is not enough to support a family, but all the judges have luxury cars.”<sup>255</sup> Interviewees reported that militia officers have taken bribes to not file a report of domestic violence and have delayed filing an official report of domestic violence to allow time for the victim or the perpetrator to bribe them.<sup>256</sup> Interviewees also reported that a woman may be expected to pay a bribe to get a forensic certificate.<sup>257</sup>

#### A. LAW

Tajikistan has a code-based civil law system. Separate codes address the roles and responsibilities of each main government agency. Domestic violence is addressed by the criminal and administrative codes

under the general assault statutes. No specific laws exist on domestic violence.<sup>258</sup>

The majority of domestic assaults fall under the Criminal Code Article 116, *Assault*.<sup>259</sup> Article 112, *Intentional Bodily Injury of a Lesser Degree*, may also be applicable.<sup>260</sup> For assaults resulting in more serious levels of injuries the criminal code includes Article 111, *Intentional Minor Bodily Injury* and Article 110, *Intentional Major Bodily Injury*.<sup>261</sup> *Torture*, Article 117, is used to prosecute domestic assault when there are at least three documented assaults that do not rise to the level of a violation of Article 111 or 110.<sup>262</sup>

Criminal justice officials reported that hooliganism can be pursued either as a criminal violation or an administrative violation.<sup>263</sup> *Hooliganism*, Article 237, applies to conduct that disturbs the public order, including some instances of minor bodily injury.<sup>264</sup> The *Hooliganism* statute can be used in domestic violence

<sup>253</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005); interview with Lawyer, in Taj. (Nov. 6, 2005); interview with Clinic, in Taj. (Nov. 14, 2005); Interview with Non-gov't Org., in Taj. (Nov. 10, 2005). When asked “Are you aware whether the perpetrator of domestic violence has had charges dismissed due to influence or money?” One militia officer reported: “It happens sometimes here. We, being the first witnesses on the scene, we cannot avoid providing materials and filing the charges. But afterwards we do not have control of the claims.” Interview with Militia Officer, in Taj. (Nov. 5, 2005).

<sup>254</sup> “Police bribes go up the ranks. Police are paid fifteen dollars a month, and you can not live on 100 dollars a month.” Interview with Int'l Org., in Taj. (Nov 4, 2005). “The salary is small and many do it to avoid military service. ...The salary is only ninety somoni and we have very long days.” Interview with Militia Officer, in Taj. (Nov. 5, 2005); Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>255</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005). Another interviewee reported that judges' salaries are 90 USD a month. E-mail from Lawyer to The Advocates for Human Rights (Dec. 18, 2006) (on file with author).

<sup>256</sup> Interview with Lawyer, in Taj. (Nov. 6, 2005). “All the time, also the women have to pay bribes to the militia to get them to start cases.” Interview with Clinic, in Taj. (Nov. 14, 2005).

<sup>257</sup> Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

<sup>258</sup> At the time of publication of this report, the Tajik government has been approached by local non-governmental organizations and international organizations with a draft domestic violence law which, if enacted, would create a civil remedy for victims of domestic violence.

<sup>259</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006); TAJ. CRIM. C., *supra* note 146, at Art. 116 (Assault). For statutory language, *see infra* App. A.

<sup>260</sup> TAJ. CRIM. C., *supra* note 146, at Art. 112 (Intentional Bodily Injury of Lesser Degree). For statutory language, *see infra* App. A.

<sup>261</sup> For statutory language, *see infra* App. A.

<sup>262</sup> TAJ. CRIM. C., *supra* note 146, at Art. 117 (Torture). For statutory language, *see infra* App. A.

<sup>263</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005). Hooliganism can be used as a legal means to remove a violent offender from his home or the scene of an assault for up to five days through an administrative process. Minor incidents, including public drunkenness, can be addressed administratively whereas more serious incidents need to go through the full criminal process and are subject to stiffer penalties.

<sup>264</sup> TAJ. CRIM. C., *supra* note 146, at Art. 237 (Hooliganism). For statutory language, *see infra* App. A.

cases when the neighbors are disturbed or public order is somehow affected.<sup>265</sup>

The Criminal Code addresses emotional abuse and psychological violence. *Torture*, Article 117, acknowledges the mental suffering caused by the sustained systematic assault that often characterizes domestic violence cases.<sup>266</sup> Article 109, *Driving to Suicide*, addresses the systematic degradation of the dignity of a victim. *Driving to Suicide* can be applicable in domestic violence cases. One judge explained, “often, the result of domestic violence is self-burning or suicide.”<sup>267</sup> The article can be used to prosecute the abuser for his moral culpability for the suicide. Interviewees explained that “driving to suicide” cases are very difficult to prove as there are usually few witnesses other than the husband’s family, who are reluctant to participate.<sup>268</sup>

<sup>265</sup> *Id.* A militia officer reported using the Hooliganism article to address domestic violence when the injuries were insufficient for an assault charge:

*Two years ago when I just began in the current zone, there was a young girl who had been married about eight months. Her husband beat her. She came to the office asking for advice. So the militia went to find the husband, and he said, “this is my wife and I can do as I wish.” So they sent her to file a claim with the city department. When the girl went to the forensic exam, she did not have bad injuries, so they could not make a case for beating. Then the case was sent back to the district militia, their office, and they interrogated neighbors and collected materials; they talked to the Mahallah chairperson and to the husband and wife. The file was sent to the investigator’s office. So the militia put in a case for hooliganism, as neighbors were disturbed two to three times. I don’t know what happened to the case, but since it was not returned, I believe it probably went forward to court.*

One interviewee reported cases in which women, usually in situations of polygamy, were accused of causing a family scandal when they learned about the second wife, and became violent in the confrontation with their husband. Some of these women were charged with hooliganism and some served several years in jail. Interview with Militia Officers, in Taj. (Nov. 5, 2005). See also, Interview with Int’l Org., in Taj. (Nov. 10, 2005).

<sup>266</sup> TAJ. CRIM. C., *supra* note 146, at Art. 117 (Torture). For statutory language, see *infra* App. A.

<sup>267</sup> Interview with Judge, in Taj. (Oct. 31, 2005).

<sup>268</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

Several provisions in the Criminal Procedure Code greatly affect the legal system’s response to domestic violence. Article 122 dictates which governmental body is responsible for prosecuting each type of crime.<sup>269</sup> Article 5 governs circumstances not subject to criminal prosecution, including cases of reconciliation between the parties.<sup>270</sup> Article 5.1 permits terminating criminal prosecution due to change in circumstance, including cases where the individual will no longer be considered dangerous to society.<sup>271</sup> Articles 5.2 and 5.3 provide for eliminating criminal punishment due to remorse of the accused or reconciliation of the parties.<sup>272</sup> These provisions can be used to repeatedly pressure domestic violence victims into terminating legal proceedings against their batterers. The willingness of a batterer to express remorse when facing criminal sanctions does little to protect the victim from ongoing or future abuse.

## B. IMPLEMENTATION OF THE LAW

### I. KHUKUMATS

Local government offices, known as khukumats, are sometimes called on to settle cases of domestic violence. One khukumat women’s committee representative said that women involved in family scandals or domestic violence have come to the khukumat for help “thousands of times.”<sup>273</sup> A survey documenting domestic violence in one Tajik oblast found that two percent of domestic violence victims sought help from khukumat women’s committees.<sup>274</sup>

Local governments’ responses to domestic violence vary. Interviews revealed that khukumats may offer to

<sup>269</sup> For statutory language, see *infra* App. A.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> Interview with Local Gov’t Official, in Taj. (Nov. 8, 2005).

<sup>274</sup> See HAARR, *supra* note 96, at 35.

reconcile the parties by mediating the dispute, and that they offer personal counseling services to victims and family members. Often this mediation and counseling takes the form of chastising the husband for his behavior and threatening him with legal consequences if the violence persists. Women are also frequently blamed for the violence and instructed on how to modify their behavior or appearance to avoid angering their husbands.

A khukumat official explained:

*First of all, we have a talk with the husband and to be honest, it does work pretty well to do this. We try to explain to him how he must behave, why the woman is important to the family, and if he is educated he will understand it... Usually, when we find the nature of the problem, the woman is guilty... we talk to the husband, we send the wife to forensics, an attorney, the prosecutor.<sup>275</sup>*

The official also reported a case in which a woman was beaten by her husband after she asked about his infidelities. The khukumat member reported that the problem was that the woman was not taking care of her hygiene. She helped the woman find work and to “expose” her beauty and “now they are living happily.”<sup>276</sup> The khukumat member did not address the violent behavior of the husband. This interviewee explained that if a woman turns to the khukumat with claims of repeated beatings, the khukumat will write a claim to the head of the district militia at the victim’s request. Later in the interview, the official claimed to notify the militia of a domestic violence case “every time.”<sup>277</sup> She also claimed, however, that there were times when a woman did not want anyone to know about the violence: “Sometimes she is in search of mutual understanding, just wants to talk, doesn’t want

her husband to know she is there. I give her advice....”<sup>278</sup>

Several interviewees revealed that the first response of the local government body is not to refer the case to the militia but to attempt personal counseling:

*Each day, I have ten people come to me with ten issues. One out of these ten, per day, is a violence problem. First, I try to solve it myself. I find out the whole story, and then I send it to law enforcement if necessary. I go to the husband. I say, violence should not be a part of life. If you can not agree, get a divorce. Love calmly, or divorce her. It is not necessary to hit her to solve the matter.<sup>279</sup>*

If that does not work, she explained that she will then act as an intermediary with the militia for the woman:

*If a person is shy and comes to me [with a domestic abuse problem] I myself find them a district militia and each of the militia knows which families have problems, so I call them for her. We might get to the husband through the workplace, and if the violence is repetitive, we have to file a militia report, and then they pass through forensics, etc.<sup>280</sup>*

A prosecutor reported using the khukumat to pressure a reluctant domestic violence victim who had been stabbed repeatedly to testify against her husband.<sup>281</sup> Interviewees reported that in some cases, the pressure from an official body is sufficient to handle the situation. A khukumat representative described such a case:

*There was a case where the husband was a taxi driver and not a good person. He cheated on his wife, and once he broke some bones. He gave her scrapes and bruises. It was usual in their family... She did not want us to submit a claim to the militia or to the court. She came to me and asked me for help. I went to see her husband twice at the taxi stand... I was told that it was futile... But*

<sup>275</sup> Interview with Local Gov’t Official, in Taj. (Nov. 8, 2005).

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> Interview with Local Gov’t Official, in Taj. (Nov. 10, 2005).

<sup>280</sup> *Id.*

<sup>281</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

*the victim's mother called me, and I went to see him at their home. When I arrived, I was surprised at how severely she was injured. I showed him my khukumat ID card, and I told him that she was under the protection of the khukumat, and that he had no right to beat her this severely...She had a broken leg, bruises under her eyes and all over her back...I warned him that if I saw this again, I myself would write a claim on him and submit it to court. As a result, the man improved and became my acquaintance...Her mother says he never beats her. She was afraid to go to the forensics doctor and her husband promised it would never happen again, but I gave her the option. No one called the police.<sup>282</sup>*

Khukamat officials report that their attempts at mediation are usually successful; however, they may testify in subsequent court proceedings if a case does go to court.<sup>283</sup> Khukumat officials also become involved in other family issues. They may try to reconcile families who want to divorce, register couples for official marriages after *Nikoh* ceremonies, and mediate property disputes.<sup>284</sup>

## II. MAHALLAH COUNCILS

In many communities in Tajikistan, a council of elders, a mahallah council, performs many of the functions of a local government.<sup>285</sup> Although not government agencies, the mahallah councils are frequently called upon by the government to execute certain social security functions including making decisions in cases involving families, such as divorces or domestic violence cases.<sup>286</sup> The mahallah councils vary in their

levels of activity and influence within communities in Tajikistan.<sup>287</sup>

Mahallah councils frequently offer advice and counsel to victims of domestic violence.<sup>288</sup> A settlement proposed by the mahallah is not legally enforceable, but if the woman decides to go through the formal court process, the court will consider the findings and recommendations of the mahallah.<sup>289</sup> The mahallah council may also refer a family to the militia, or appear as witnesses, or give an opinion in a prosecution. The militia also may rely on the mahallah's impressions of the family when investigating domestic violence cases.

A mahallah council's response to domestic violence varies depending on the attitudes of the members.<sup>290</sup> Interviewees reported that generally the goal of the mahallah council is to mediate the situation and to work toward reconciliation.<sup>291</sup> "First, they evaluate whose fault it is..." said a psychologist. If the woman is from a well-known and respected family, they may listen to her, explained an employee of an international organization.<sup>292</sup> A non-governmental organization representative described her experience that in most cases, the men on the mahallah council will support the head of the family.<sup>293</sup> With the goal of reconciliation, the woman is sometimes blamed for provoking the violence or told to endure the abuse.<sup>294</sup> Another non-governmental organization representative

<sup>282</sup> Interview with Local Gov't Official, in Taj. (Nov. 8, 2005).

<sup>283</sup> Interview with Local Gov't Official, in Taj. (Nov. 10, 2005); Interview with Local Gov't Official, in Taj. (Nov. 8, 2005).

<sup>284</sup> Interview with Local Gov't Official, in Taj. (Nov. 10, 2005); Interview with Local Gov't Official, in Taj. (Nov. 8, 2005).

<sup>285</sup> Interview with Int'l Org., in Taj. (Nov. 14, 2005).

<sup>286</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); e-mail from International Organization to The Advocates for Human Rights (Nov. 24, 2006) (on file with author).

<sup>287</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005).

<sup>288</sup> They are often consulted in divorce cases, and if they are respected and have strong leadership, may be asked to share their opinion on issues such as division of property. In one district of about 270 families, a mahallah council heard about 5 cases a month on property disputes, money or contract disagreements, wedding problems, and work or family conflicts. Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); interview with Mahallah Representative, in Taj. (Nov. 14, 2005).

<sup>289</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>290</sup> Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).

<sup>291</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005).

<sup>292</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>293</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005).

<sup>294</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005).

reported that women are told: “Be patient, you are a woman and must suffer this.”<sup>295</sup>

Comprised mostly of men, mahallahs are perceived to be biased against women.<sup>296</sup> Some mahallahs have female members or women’s groups, and one interviewee reported that a woman may be more likely to go to her mahallah if there are women members.<sup>297</sup> One member of a mahallah women’s group described their indirect approach to addressing domestic violence: the group provides a forum for a woman to come and discuss her problems. A member of the group then seeks out the husband and engages him in conversation on another topic. In the course of that conversation, the member brings up domestic violence generally and talks about how harmful it is.<sup>298</sup>

Despite the prevalence of active women’s committees on the mahallah councils in contemporary Tajikistan, one interviewee reported that the committees seem to have little positive effect in reducing violence in the family.<sup>299</sup> A member of a mahallah women’s committee in a small village reported:

*In the village where I live, women are still afraid, so they keep the domestic violence within them, and don’t tell anyone about it. They are afraid, especially of their [husbands], and what [they] will do... Sometimes I try to refer people ...but the women say no and they say why should I go, it will only be worse after...they don’t talk to anyone, and when I hear loud screaming and I try to interfere, the husband says to the wife, “Look who you are dealing with, it is these people who break up families.” They think I am the worst person in the*

*village because I am trying to teach women things.*<sup>300</sup>

In most cases, the women’s committee advises the woman to calm down: “In the evening we send [her] home, but then we tell her to look for the moment to talk with the husband, to be very calm, wait till he is done, and then work through it.”<sup>301</sup> The fact that the mahallah is comprised of members of the community may discourage some women from seeking help from them due to the fear of being publicly shamed. One employee of a non-governmental organization reported that when women bring cases of domestic violence to the council, “most often, you hear that personal family problems should not be dealt with in public and that you should try to solve it at home.”<sup>302</sup> The personal connections or the importance of a family in the community may also influence the mahallah’s resolution of a dispute.<sup>303</sup>

As an important part of Tajik culture and society, the mahallah has the potential to play a useful role in the resolution of domestic violence cases.<sup>304</sup> The mahallah is not an official part of the legal system; nor is it accountable to that system. Wide variations between mahallahs, their practices and their levels of influence exist in various communities. No clear regulations

<sup>300</sup> Interview with Mahallah Representative, in Taj. (Nov. 11, 2005).

<sup>301</sup> *Id.*

<sup>302</sup> Interview with Non-gov’t Org., in Taj. (Nov. 10, 2005).

<sup>303</sup> Interview with Int’l Org., in Taj. (Nov. 10, 2005).

<sup>304</sup> Mahallah councils cooperate with local and district officials and with non-governmental organizations and have performed valuable services. In one instance, they intervened to save the life of a seriously ill child:

*[The mother] can not take him out of the house without the husband’s permission, and the husband was in Russia... instead of going to the hospital the mullah came to read a prayer so the child would get better. So, we decided to go to the mother-in-law for permission, and we got it, and then we took the child to the hospital. [The mother] was afraid that he would divorce her straight away if she left the house without permission.*

Interview with Mahallah Representative, in Taj. (Nov. 11, 2005).

<sup>295</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5-7, 2005).

<sup>296</sup> Interview with Int’l Org., in Taj. (Nov. 9, 2005); Interview with Non-gov’t Org., in Taj. (Nov. 9, 2005).

<sup>297</sup> Interview with Local Gov’t Official, in Taj. (Nov. 8, 2005).

<sup>298</sup> Interview with Mahallah Representative, in Taj. (Nov. 11, 2005).

<sup>299</sup> Interview with Non-gov’t Org., in Taj. (Nov. 9, 2005).

govern how the mahallah responds to cases of domestic violence. Furthermore, no official means of appeal exist in cases in which the mahallah fails to act or functions inadequately in a domestic violence case. A non-governmental organization employee suggested that the mahallahs' potential to wield influence within families might be used as an effective tool if the government worked more actively with them and provided education for the councils, and specifically their leaders, on domestic violence and the need to protect victims in violent situations.<sup>305</sup>

### III. THE MILITIA

A domestic violence victim's first contact with the criminal justice system is often with the militia.<sup>306</sup> A prosecutor reported that the purpose of the militia's involvement in domestic violence cases is to "settle and mediate both parties."<sup>307</sup> Interviewees reported that this goal often involves justifying the domestic violence by blaming the victim. Thus, many women are

<sup>305</sup> Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).

<sup>306</sup> The militia in Tajikistan is under the auspices of the Minister of Internal Affairs and reports to that ministry. In the regions outside Dushanbe, the militia also is responsible to fulfill the orders of the Khukumats. There are district militia members assigned to each community. Their duty is to become acquainted with all residents in the community. One militia officer reported leaving business cards with the message "call me at this number, I'll respond." One group of militia officers referred to families in which there are frequent domestic assaults and disturbances as "unsustainable families." The officer explained that:

*an unsustainable family is generally when the family lacks money, and there is a misunderstanding between two partners. It's unsustainable, because they cannot sustain it on their own, because there are always problems. So, the result is mental disorders and the husband hitting his wife. The husband or wife can explode, and this can lead to low-level injuries.*

When asked to define "mental disorders," he said to think of a family with little money. "They have four or five children, they are hungry. They cannot do anything, so the man feels humiliated—this yields a sudden mental disorder at this particular time. So, what can he do—some actions like hitting his wife. Then he is sure to do 'unplanned actions like hitting his wife.'" Interview with Militia Officers, in Taj. (Nov. 5, 2005). See also, interview with Militia Officer, in Taj. (Nov. 5, 2005).

<sup>307</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

discouraged from seeking assistance. For women who do seek help, the procedure can be complicated and the response of the militia is hampered by inadequate resources and training.

Interviewees reported that women are actively discouraged from seeking assistance from the militia.<sup>308</sup> One agency worker explained that reporting to the militia is perceived as ruining the family: "This is mentality of our families, if the wife goes to court or to the militia, the husband will say how dare you sue me and say the *Taloqs*."<sup>309</sup>

An international organization employee reported: "[I]f they open a case and it goes to court, it means she has no right to live in the family any more. The life is such that if you go to the police, it will be worse."<sup>310</sup>

Emergency calls to the militia often go through the "02 line," an emergency line to the district militia station.<sup>311</sup> The inspector assigned to the line determines where the call is coming from and directs the relevant local inspector to go to the scene and investigate.<sup>312</sup> A militia officer reported that for a police station serving 100,000 people, they receive about ten to fifteen calls per month on the 02 line that involve a woman being beaten by her husband.<sup>313</sup> Two militia officers reported each receiving three or four claims of domestic violence a day.<sup>314</sup>

<sup>308</sup> Interview with Non-gov't Org., in Taj. (Nov. 11, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005); Interview with Int'l Org., in Taj. (Nov. 14, 2005); Interview with Non-gov't Org., in Taj. (Oct. 31, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005).

<sup>309</sup> Taloq means to repudiate or in this context "I divorce you." A spouse can end a religious marriage under Islamic tradition by saying Taloq three times in front of two witnesses. See the Glossary, *infra* App. B.

<sup>310</sup> Interview with Int'l Org., in Taj. (Nov. 14, 2005).

<sup>311</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

When a victim of domestic violence reports an assault to the police, she files a written complaint.<sup>315</sup> The victim is required to fill out the claim form in her handwriting.<sup>316</sup> Before she completes the form, the militia inform her about Article 346, which addresses penalties for providing false information.<sup>317</sup> The militia check the reports and any forensic reports for consistency.<sup>318</sup> The militia then speak to the husband and ask him to provide an explanation.<sup>319</sup> A militia officer reported that if the husband refuses to provide an explanation, it is considered an admission of guilt.<sup>320</sup> One militia officer reported that if a victim does not want to pursue prosecution, the militia will meet with the husband and explain the possible legal consequences of domestic assault. Interviewees referred to this approach as “explanatory work.”<sup>321</sup>

Upon a report of an assault, the district militia officer makes the initial decision whether to investigate and what to charge.<sup>322</sup> The case is then referred to the prosecutor or to the police investigative unit.<sup>323</sup> Interviewees reported that even if the victim goes first to the prosecutor, the case will be passed to the district militia officer to do the initial investigation.<sup>324</sup> The investigative unit reviews the initial reports and calls the family.<sup>325</sup> A prosecutor explained, “If the two have

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*Sometimes these are anonymous, like a woman who wants an inspector to take measures, but does not want her husband to know this. She does not want her husband to separate if he knows. For example, a wife comes and asks them to take measures but she wants them to do it like to scare him, like “your neighbors are claiming you are behaving badly. If you don’t stop, we will imprison you, and take some measures.”*

<sup>315</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005); interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>316</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>317</sup> *Id.*

<sup>318</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>319</sup> *Id.*

<sup>320</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

not yet settled the conflict in this period of time, then they see if they want to go further.”<sup>326</sup> The militia also talks with witnesses like the mahallah council.<sup>327</sup> They collect a copy of the husband’s passport and documents regarding his character, such as a letter of recommendation from the mahallah or from his place of work.<sup>328</sup> These are attached to the written report.<sup>329</sup> The militia decide either to send the documents to the court or to take no action.<sup>330</sup>

When asked if the procedure for responding to domestic violence assaults was any different than assaults between strangers, a militia officer reported: “We work following the same procedures, to file a report, to get an explanation from the victim. The basic difference is prophylactic against the individual. We do different work to prevent the violence. After the first case, there is preventative work. We speak to the man directly. We explain to him that next time he will be punished.”<sup>331</sup> The officer reported that this approach is not very effective. He explained, “it’s a long way from first filing a report to getting the offender punished... The problem is that during this wait, some women think again. We can not lock him up, she is forced to live with him, and many get tired of waiting. If he is drunk, we can only lock him up for a few hours and this is the only way we can take care of the problem ... Many women react by making up or leaving. They may not trust us because we are taking so long.”<sup>332</sup>

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<sup>326</sup> *Id.*

<sup>327</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005). A prosecutor reported that the militia may work in conjunction with a representative of the mahallah council to meet with the parties and “focus on the main objective, which is to preserve the families.” Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>328</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>329</sup> *Id.*

<sup>330</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>331</sup> Interview with Militia Officers, in Taj. (Nov. 1, 2005).

<sup>332</sup> *Id.*



Militia often act as mediators; the safety and security of victims are not top priorities. One militia member reported that the primary responsibilities of the militia are “to preserve the family, mediate and not let the children grow up without a father or mother.”<sup>333</sup> Militia often merely warn perpetrators of domestic violence that if the violence continues, there will be legal consequences. A prosecutor reported, “the police officer usually takes a signed document by the husband that he will not do it anymore. This is the mediation process.”<sup>334</sup> Even in cases of assaults resulting in serious injuries, militia still focus on mediation.<sup>335</sup> In cases involving serious injuries the militia have different “explanatory methods”: they call in neighbors during the explanation to use shame as a motivating factor.<sup>336</sup>

It is common for the militia to focus on finding a justification for domestic violence, rather than enforcing the laws that prohibit it.<sup>337</sup> A militia officer in a large district explained this approach: “The main action [of the militia] is directed to preserving the family...we question both parties...we need to know for how many years the husband has not beat and then has suddenly beat her – there must be a reason for it...We could

<sup>333</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>334</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>335</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005). When asked “Do you worry that he will kill her the next time?” The militia officer responded, “That almost never happens.”

<sup>336</sup> *Id.*

<sup>337</sup> There are procedures regulating conduct of the militia. A prosecutor reported that if the militia do not act on a complaint, the complainant may file a complaint with the prosecutor’s office which will result in consequences for negligence. The prosecutor also reported there is a monthly audit by the prosecutors’ office of law enforcement to examine the response to citizens’ complaints. If they find that the law enforcement officer has acted illegally a case may be filed against the responsible officer. A militia officer also reported that if the district militia officer does not go to the scene when a claim is reported, he can be held liable under Article 168, *Directions for Militia Officer for Carelessness. Id.*; interview with Governmental Officials, in Minnesota (Apr. 17, 2006).

expose the reason and mediate...we want to settle down the conflict.”<sup>338</sup>

Several interviewees reported that the militia routinely engage in finding fault and blaming the victims. A representative of a non-governmental organization reported militia members as saying: “Why are you embarrassing your husband? Go back home.”<sup>339</sup> Another non-governmental organization representative reported that militia tell women: “If you were a good wife, this never would have happened.”<sup>340</sup> One militia officer reported, “We want to know, who is really to blame. Maybe the woman provoked the beating.”<sup>341</sup>

When the militia do investigate domestic assaults, the investigation may be affected by their prejudices and assumptions. One militia officer exhibited his hesitancy to respond to domestic violence cases because of his perception that it interfered in the family: “They ask us to interfere with their family affairs. The wife asks the militia, come and tell my husband not to beat me. They want to frighten their husbands, so they will stop beating them.”<sup>342</sup> Another militia officer justified domestic violence to a psychologist: “If you explain something to a wife, then you explain it a second time, then you have to explain it a third time, you have to punish her.”<sup>343</sup> Militia members are also affected by traditional gender roles in the society. One interviewee explained her experience with the militia: “Their approach to problems is not as [enforcers] of legislation but as [men].”<sup>344</sup>

<sup>338</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>339</sup> Interview with Non-gov’t Org., in Taj. (Oct. 31, 2005).

<sup>340</sup> *Id.*

<sup>341</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>342</sup> *Id.*

<sup>343</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005). (quoting militia members)

<sup>344</sup> Interview with Non-gov’t Org., in Taj. (Nov. 7, 2005).

A high-level militia officer explained his suspicions of women who claim domestic violence:

*We have many cases under consideration where the wife and her relatives say, he is beating her systematically. Sometimes it is difficult to understand the psychology of women, what they want to achieve. Let us hope women will be 'self-conscious,' more responsible for their actions...does she want to prosecute because he beats her, or does she have some other goal, like to imprison the husband and get the apartment, or to get revenge?*<sup>345</sup>

The militia also has the option to impose administrative sanctions against abusers instead of referring a case to the criminal justice system. Administrative sanctions may include short-term incarceration or a fine. As one militia officer explained, "We have the authority when there is minor hooliganism or if a person is drunk and violates public order or beats someone, we can take his passport and go directly to the court, where we make an explanation and there is a fine or five-day punishment. In these circumstances, we take the perpetrator to detention."<sup>346</sup> Administrative procedures are applicable for lower level crimes although it was unclear how often they are used in cases of domestic violence.<sup>347</sup>

The militia's response to domestic violence is negatively affected by a lack of resources.<sup>348</sup> The militia does not have the basic equipment necessary to run an effective law enforcement system, including

<sup>345</sup> Interview with Militia Officer, in Taj. (Nov. 6, 2005).

<sup>346</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>347</sup> A militia officer reported that "what the inspector does in domestic violence cases is to make a warning protocol, telling him, do it again and we'll bring you to court and take sanctions against you according to the law. The second time, they do not arrest him. They just do a protocol according to Article 166, small hooliganism under the administrative code of Tajikistan" *Id.*

<sup>348</sup> At least one oblast supplements its professional militia force with volunteers. Interviewees reported that in this area there are as many volunteer militia as paid. The volunteer militia have the same authority and responsibility as professional militia yet have less training. The volunteer militia are a crucial part of law enforcement in that area. *Id.*

enough cars, phones, and computers.<sup>349</sup> Thus, long delays can occur while the police either commandeer a civilian's car or walk to the scene.<sup>350</sup>

Inadequate training of militia was also cited as a reason for the lack of appropriate response to domestic violence.<sup>351</sup> In 2002 and 2003, the Training Centre of the Ministry of Internal Affairs and a local non-governmental organization jointly sponsored a project in Dushanbe and Khatlon Oblast entitled "Training district police inspectors to prevent and avert violence against women."<sup>352</sup> Militia in Khujand City have collaborated with a crisis center in developing a protocol for dealing with domestic violence. All militia in this area receive three days of training and they have posted signs with procedures for handling domestic violence cases in their offices. The militia also have small leaflets with law, procedures and contact information for the non-governmental organization to give to victims of domestic violence. They have also

<sup>349</sup> *Id.*

<sup>350</sup> A high-ranking official said:

*In my opinion, it would be most helpful to solve the financial problems and the lack of resources in the militia. The militia should be well-equipped. Each militia person has 5,000 people who are spread over a significant area. He needs transport to get to calls quickly. He needs a computer to make a database – everyone wants to know what happens with cases, statistics, but we do not have the equipment. In the United States, you can find a person in the database and use fingerprinting techniques and so forth. We do not have even the basics, a computer database of who was arrested, charged, convicted and so forth. ... For all the departments in the Khujand militia, we have one official computer. Some departments buy a computer themselves, but not many. All transport expenses for militias should be reimbursed. Now private cars are used, because there are no office cars.*

Interview with Militia Officers, in Taj. (Nov. 6, 2005).

<sup>351</sup> *There should be a psychological component to the training to the responders to the domestic violence so that they have an appropriate understanding of how to approach the situation and what to say and how to deal with it. The persons who are called to deal with domestic violence need to understand it better, and they need to understand that they need to be neutral at the scene and not take one side over another so that they can get the full story and take the appropriate action right away.*

Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>352</sup> CEDAW Report, *supra* note 31 at 8.

installed a panic button in the domestic violence shelter that links to the militia office. If the staff or a victim are threatened, they can summon the police, who will respond in less than five minutes.<sup>353</sup>

#### IV. THE PROSECUTOR

Public prosecutors rarely pursue domestic violence cases. When prosecutors do become involved in domestic violence cases, their focus is on reconciling the parties. Grounded in the implicit assumption that domestic violence can be justified, prosecutors consider the conduct of the victim in making charging decisions.

The role of the prosecutor in the Tajik legal system is an extremely powerful one.<sup>354</sup> The Law on Prosecution that sets forth the rights and responsibilities of the prosecutor's office is the most influential law in the country.<sup>355</sup> The prosecutor has two primary roles – as a

litigator in the courtroom and as a monitor of all the activities of the criminal justice system from the investigative stage to the courts.<sup>356</sup>

Despite their position of power, prosecutors rarely exercise this power in domestic violence cases.<sup>357</sup> One interviewee explained that in his role as a prosecutor for twenty-five years, neither he nor his colleagues had ever been involved in a case where a man assaulted his wife resulting in low level injuries. This prosecutor stated, "This is not a serious crime."<sup>358</sup> Article 122 of the Criminal Procedure Code defines what cases are appropriate for prosecutor involvement. The majority of domestic violence cases fall under Articles 116 and 117 of the Criminal Code.<sup>359</sup> Unless the victim is a minor or disabled,<sup>360</sup> the prosecutor's office does not

<sup>353</sup> Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005). Additionally, in response to the May 2006 Ministry of Internal Affairs decree that compels state bodies to respond to the information provided by crisis centers, "persons working in such centres have even claimed that in some cases the police themselves inform victims about the existence of such centres when they require assistance. However, its enforcement is insufficient." OMCT, *supra* note 229, at 21.

<sup>354</sup> Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>355</sup> *The major functions of the Public Prosecutor's Office shall include:*

- *supervision over, strict compliance with, and consistent implementation of laws by the ministries, state committees and other departments of the Republic of Tajikistan; local governmental bodies, local self-governance bodies, military bodies, state control bodies, banks, enterprises institutions, social and religious establishments, political parties and other organizations (regardless of their governance, affiliation and forms of ownership), their officials, as well as over compliance with laws of the legal acts issued by these officials;*
- *supervision over, compliance with the rights and freedoms of the person and citizen, that all officials listed in the first paragraph of the present article recognize to be of the highest value;*
- *supervision over, compliance with, and implementation of laws by law enforcement authorities, agencies engaged in operational- investigative activities, interrogation and preliminary investigation;*

- *protection of the rights and freedoms of the person and citizen, state interests, different forms of state and non-state ownership in the course of legal proceedings;*
- *supervision over, compliance with, and implementation of laws in places of detention, preliminary detention, execution of punishment and other court-prescribed compulsory measures;*
- *supervision over, compliance with laws by court officers and other competent bodies while executing court judgments;*
- *investigation of crimes;*
- *development of crime-preventing measures, counteracting corruption, terrorism, extremism and other violations, in cooperation with other governmental bodies; participation in law-improvement activities and interpretation of laws;*
- *coordination of law enforcement efforts aimed at counteracting and preventing crime, corruption and other violations;*
- *participation in trial proceedings;*
- *protests against unlawful court decisions, sentences, rulings and judgments;*

*The Public Prosecutor's office shall have the right to assume other responsibilities, within its authority, requiring procuracy supervision under the Tajik law.*

CONST. LAW OF THE REPUBLIC OF TAJ. ON THE PUBLIC PROSECUTOR'S OFFICE [TAJ. PROS. L.] Art. 5.

<sup>356</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005); interview with Prosecutor, in Minnesota (Apr. 17, 2006).

<sup>357</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005); interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>358</sup> Interview with Prosecutor, in Minnesota (Apr. 17, 2006).

<sup>359</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006); for statutory language, see *infra* App. A.

<sup>360</sup> Interview with Judge, in Taj. (Nov. 4, 2005); TAJ. PROS. L., *supra* note 355, at Art. 12.

get involved in the prosecution of light injury assaults.

<sup>361</sup> Cases under these articles are privately prosecuted or prosecuted by the militia, and monitored by the Public Prosecutor's office.

At least one prosecutor reported, however, that women experiencing domestic violence can, and occasionally do, turn directly to the prosecutor's office for help. "If the militia does not work, then the victim comes directly to the prosecutor's office. ... Everyone knows the prosecutor's telephone. There is no need to go through the militia to go to the prosecutor's office."<sup>362</sup> An attorney reported one such case: "For example, a woman applied to the militia and said she was beaten. The militia declined to initiate a file. The woman went to an advocate. After reviewing the facts of the case, he appealed the decision of the militia. The prosecutor allowed our appeal, and the file was initiated. Since we have collected all the items, the prosecutor started a hooliganism claim, which he sent to the investigator and ultimately the matter went to court. This woman did not trust the militia; she had tried several times with them to file a claim. They provided no help."<sup>363</sup>

If the prosecutor's office has information on a serious crime, there is an obligation to prosecute. The victim's consent is not needed for the prosecutor's office to pursue a case. One prosecutor described two domestic violence cases his office was currently investigating. The first case involved a husband charged with murder for stabbing his wife to death. There was no official record of physical violence before the murder. Witnesses explained that the husband was "under stress and it happened all of the sudden."<sup>364</sup> The husband was detained pending trial. The second case

involved a husband charged under Article 109, *Driving to Suicide*. In this case, the husband was accused of beating his wife, leading to her attempted suicide by poison. A history of systematic violence existed. The wife had been to the militia twice and had forensic certificates documenting "low level injuries with no consequences." There had been no legal consequences for the prior assaults. The suicide attempt was in the summer of 2005 and as of November 2005 the case had not yet been presented in court. At that time, the husband and the wife continued to live together. The prosecutor reported that no violence has occurred since the suicide attempt and that the militia checks on the family.<sup>365</sup>

Public prosecutors also become involved in cases where the accused is a member of the military or militia.<sup>366</sup> A prosecutor described a case where a district militia inspector was prosecuted for domestic violence.<sup>367</sup> The inspector physically assaulted his wife and cut her with a knife. The accused was prosecuted and convicted under Article 111 of the Criminal Code. He received a sentence of three-and-a-half years imprisonment, and after appeal by the victim, the sentence was increased to three years and eight months.<sup>368</sup>

In cases involving serious injuries, the prosecutor's office exercises discretion when charging an assault under the Criminal Code. A prosecutor reported that when considering whether to prosecute a domestic violence case, prosecutors primarily consider the forensics report.<sup>369</sup> He reported that the victim should have a report for every case, but if she goes to the prosecutor without a report and describes the violence,

<sup>361</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006).

<sup>362</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

<sup>363</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005). *See also*, Interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>364</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

<sup>365</sup> *Id.*

<sup>366</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006).

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> Interview with Prosecutor, in Taj. (Nov. 14, 2005).

the prosecutor will investigate.<sup>370</sup> Prosecutors need other evidence or proof in addition to her report and the forensic certificate, so they work with witnesses and with the victim.<sup>371</sup> In this process, they also consider the behavior of the victim. One prosecutor reported that in decisions regarding prosecution they consider: the level of the blame, based in part on the injuries, and the behavior of the victim. “If the woman is a bitch and made her husband behave like this, of course we could take this into consideration. This does not mean we are men trying to protect men. Women can insult and provoke the man, but sometimes she is quiet and he still beats her, and that is wrong.”<sup>372</sup>

Prosecutors also prioritize preservation of the family over victim safety in domestic violence cases. One prosecutor stated: “[Prosecutors] are doing everything to make the family a whole family....If the husband acts again in the same manner, for example as an alcoholic or being bad in society, they will bring him to trial and sentence him. But if [the prosecutor] sees that he is a good and straight man who has several times done violence in the family, they will try to preserve the family.”<sup>373</sup>

One prosecutor stated that a significant obstacle to an effective legal response to domestic violence is the lack of a specific domestic violence law:

*In our law, there is no identification of domestic violence, in our criminology. We do not have “crimes of the family;” we are trying to lobby so that the term “domestic violence” will be placed into the*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>373</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005). Another prosecutor explained: “So, the prosecutors and the militia are all living with the same gender stereotypes.” The prosecutor noted that in the last two to four years there have been conferences and trainings regarding gender, trying to change the mentality so that women are not considered second-class. Women should not be “a friend of the human being but a human being herself.” Interview with Prosecutor, in Taj. (Nov. 4, 2005).

*Criminal and Administrative Code within the international framework. We understand that domestic violence is a very important issue and needs its own law. Unfortunately, we have to work within the framework of the general law at this time. Violence against women is a great problem for us – we realize it needs prompt reaction to prevent further problems in the family. For example, when two strangers are fighting in the street, it is easy to solve. We send each to his own home. But, when we are dealing with a husband and wife, they are in the same space. We realize it is important not to have the husband beat the wife and the wife commit suicide.”<sup>374</sup>*

## V. FORENSIC EXAMINERS

A certificate documenting physical injuries from a forensic examiner is required to prove an assault and determines the level of severity of criminal sanctions. The requirement adds an extra layer of bureaucracy to negotiate and is a barrier for women seeking safety from domestic violence through the criminal justice system. Women are often prevented from seeking a forensic examination due to attitudes of the militia or more practical obstacles such as lack of transportation to the forensic appointment. Abusers also prevent victims from obtaining forensic exams. Even for domestic violence victims who are able to get a certificate categorizing their injuries, the classification system inadequately captures the harm caused by domestic violence.

Forensic doctors are charged with making medical assessments in criminal cases. They examine the victim and determine the extent of the bodily injury. The forensic doctors then categorize the injuries into four levels which correspond to the categories in the assault provisions of the criminal code: heavy injuries (life-threatening injuries and compound fractures), medium injuries (injuries that require more than twenty-one days to heal and all other broken bones), light

<sup>374</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

injuries (injuries that require seven to twenty-one days to heal), and light injuries without consequences (injuries requiring up to six days to heal).<sup>375</sup> The categorization of the injuries has a determinative role in the outcome of the case. Cases that are classified as light injury or light injury without consequences are privately prosecuted. The prosecutor's office prosecutes primarily medium and heavy injury cases.<sup>376</sup>

In all cases of physical injuries, the militia are required to direct victims to the forensic doctor. Forensic doctors will not examine a victim if she appears without the proper referral.<sup>377</sup> Cases of rape are the only exception to the referral requirement. The militia are expected to provide a victim with a referral if she comes to the precinct and files a report or if they are called to the scene of an assault.<sup>378</sup> Several interviewees reported that militia are often reluctant to provide referrals and that this reluctance is a major barrier to women seeking a remedy for their injuries.<sup>379</sup> If a woman is hospitalized due to her injuries, the hospital is required to notify the militia and the forensic doctor is allowed to rely on the hospital examination in rendering a certificate.<sup>380</sup>

A militia officer stated: "We really rely on the forensic exam, the conclusion of the doctor who provides evidence. It is the forensic doctor who says whether

the injury is minor or major and who determines whether and how we go forward."<sup>381</sup>

The attitudes of the forensic doctors can affect the categorization of the injuries. One forensic doctor reported that it was his job to "very carefully check each word of the person who comes in here" and to assess her credibility and report if she is lying.<sup>382</sup> Another forensic doctor stated, "Sometimes they will have injuries that last a year and then they will come in at the end and say they were beaten all year long and they exaggerate...we need to have the proof by documents because some people lie..."<sup>383</sup> The personal beliefs of the forensic examiner can create an effective barrier to justice for a battered woman because the classification on the certificate determines the course of the case.

The forensic certificate requirement creates an additional burden on victims and can be a barrier to accessing justice. A forensic doctor acknowledged that "there might be the people, women, who don't come here because they are saving the family. There are many reasons, they might be ashamed...."<sup>384</sup> Logistics may also be a barrier to obtaining the forensic certificate. The closest forensic doctor may be as far as two to three hours' drive from the woman's home. Many women cannot afford the expense of traveling there or they are prohibited by their husbands from going.<sup>385</sup> The forensic examiner's office in the capital is open twenty-four hours a day.<sup>386</sup> Outside of the capital, however, a forensic examiner's office may have more limited hours.<sup>387</sup>

<sup>375</sup> Interview with Forensic Physician, in Taj. (Nov. 14, 2005).

<sup>376</sup> For more information, see *supra* Section III(A)(2)(iv) The Prosecutor, at 37.

<sup>377</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); Interview with Non-gov't Org., in Taj. (Nov. 4, 2005). One forensic doctor did inform The Advocates that his office would examine victims without a referral but this was inconsistent with the information from several other interviewees. Interview with Forensic Physician, in Taj. (Nov. 14, 2005).

<sup>378</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>379</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); interview with Prosecutor, in Taj. (Nov. 12, 2005); Interview with Int'l Org., in Taj. (Nov. 14, 2005).

<sup>380</sup> Interview with Militia Official, in Taj. (Nov. 6, 2005).

<sup>381</sup> Interview with Militia Officers, in Taj. (Nov. 5, 2005).

<sup>382</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>383</sup> *Id.*

<sup>384</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>385</sup> Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

<sup>386</sup> Interview with Forensic Physician, in Taj. (Nov. 7, 2005).

<sup>387</sup> Interview with Forensic Physician, in Taj. (Nov. 14, 2005).

The conclusions on a forensic certificate can be challenged when introduced as evidence in court. If there is reason to doubt the accuracy of the first forensic certificate, a new examination can be ordered through a commission of three experts.<sup>388</sup> Forensic doctors may also be called to testify in court regarding their examination; this testimony often occurs in cases of heavy injuries. In lower level injury cases, “they don’t call the doctors to testify, because they usually do not reach court.”<sup>389</sup>

## VI. COURT

Domestic violence cases frequently do not reach court. Cases initiated by the victim often result in dismissal due to reconciliation. Reluctance of witnesses to testify and attitudes of judicial officers make private prosecution difficult. Due to barriers to effective prosecution of lower level domestic violence cases, most domestic violence convictions involve homicides.

Although no official statistics are published specifically on domestic violence, a senior prosecutor reported that in all of Tajikistan, there were a total of six convictions in 2004 and seven convictions in 2005 for intentional assaults on a woman’s health. This total includes all domestic violence convictions from cases with nonfatal injuries.<sup>390</sup> This prosecutor also reported that there were forty-three convictions in 2004, and forty-one convictions in 2005 for spousal homicide in Tajikistan, the vast majority of which were husbands killing wives.<sup>391</sup>

<sup>388</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>389</sup> Interview with Forensic Physician, in Taj. (Nov. 14, 2005).

<sup>390</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006). From 1999 to 2003, a total of ninety-three criminal cases of Assault were instituted under Article 116 in Tajikistan which resulted in thirty-three convictions; seventy-three criminal cases of torture were brought under Article 117, and convictions resulted in sixty-four of the cases. CEDAW Report, *supra* note 31, at 8.

<sup>391</sup> Interview with Prosecutors, in Taj. (Apr. 21, 2006).

Interviews revealed that the court system does not prioritize victim safety and offender accountability, rather it prioritizes preservation of the family. Cases of low level injuries can be initiated in court by the militia or by the victim herself.<sup>392</sup> In privately prosecuted assault cases, the judge asks the parties whether they will reconcile. If they agree, the case is dismissed.<sup>393</sup> If it is the first time the perpetrator has been prosecuted for an assault, the court will try to mediate the case or give the perpetrator a warning sentence.<sup>394</sup> One judge reported that in privately prosecuted cases, his primary responsibility is to mediate. He estimated that thirty to forty percent of such cases end in reconciliation.<sup>395</sup> Another judge estimated reconciliation at eighty percent.<sup>396</sup> Interviewees reported that court officials consider reconciliation to be the best solution in domestic violence cases. One judge explained, “The court will officially ask a woman if she agrees to make up and if she publicly says yes, the case is done. We always offer this option...and usually there is no case.”<sup>397</sup>

Interviewees reported that in addition to a forensic certificate, courts also require witnesses to prove domestic violence.<sup>398</sup> Interviewees reported that it is

<sup>392</sup> *Id.*

<sup>393</sup> TAJ. CRIMINAL PROCEDURE CODE [TAJ. CRIM. PROC. C.] Art. 5.3 “This is true for all crimes that could lead to up to five years imprisonment.” Interview with Non-gov’t Org., in Taj. (Apr. 21, 2006). For statutory language, *see infra* App. A.

<sup>394</sup> Interview with Lawyer, in Taj. (Nov. 11, 2005).

<sup>395</sup> Interview with Judge, in Taj. (Nov. 14, 2005).

<sup>396</sup> Interview with Judge, in Taj. (Nov. 4, 2005). “The victim can stop the trial at any time and drop the case. 80% of the light injury court cases are ended this way.”

<sup>397</sup> One attorney reported that judges, interested in mediating a reconciliation, will “force the husband to pay fines for making psychological trauma to the wife.” The money is paid directly to the wife and this is used as an unofficial tool to reach reconciliation and dismiss the matter. Interview with Non-gov’t Org., in Taj. (Apr. 21, 2006); interview with Judge, in Taj. (Nov. 2, 2005).

<sup>398</sup> Interview with Non-gov’t Org., in Taj. (Apr. 21, 2006). “The law says that cases are proven by the matching evidence and the accused will say he did not do it, so you need witnesses. The

difficult to persuade witnesses to testify in domestic violence cases. In criminal cases, a witness can be compelled to testify. The rules allow for the court to send three notices, and if the witness fails to appear, the court can authorize guards to find the witness and bring him or her to court. Despite this power, judges frequently deny requests to exercise it due to the expense.<sup>399</sup> This denial presents a particular obstacle to victims of domestic violence who traditionally live with their husbands and their husbands' families, who are unlikely to be cooperative witnesses. A judge reported that "as a rule, the judge will rely only on the word of the people living in the house unless the violence was such that it led to neighbors being aware of it."<sup>400</sup>

A judge offered this insight into the reasons few witnesses may come forward to report domestic violence:

*The neighbor has to be of a certain character that when he/she sees a victim in need, he/she has the courage to stop the violence and call the militia and then be ready to go through the end of the trial. Because more and more often, the neighbors pretend they don't see anything. They say it is in the family and that the family will work it out, and then it doesn't reach the court. The society is very accepting of domestic violence.*<sup>401</sup>

Interviewees reported that domestic violence victims hesitate to pursue remedies in criminal court due to the stigma attached to women who come forward to report abuse. Cases that are brought are often withdrawn due to defense tactics of blaming the victim and attacking her character. "Women feel as though they are in a weakened position and that when they are personally attacked and blamed for the violence by being accused

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accused will blame it all on the victim." Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>399</sup> Interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>400</sup> Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>401</sup> *Id.*

of immoral behavior, then they are likely to withdraw the complaint because they do not want to be seen in that manner by the society."<sup>402</sup>

Personal beliefs of judges can also affect how domestic violence is handled in the courts. To many, a "family scandal" is not a crime. One judge stated, "In my understanding, if a person hits his wife once, it is not violence. True violence is systematic violence."<sup>403</sup> A militia officer reported that many judges believe that domestic violence "must be settled within the family. The mistake is within the woman.... There is a way of thinking: if a woman is innocent, a man will never beat her. ... Domestic violence cases should not be pursued."<sup>404</sup>

An interviewee reported a case of a woman who sought court protection from her husband who had beaten her regularly for sixteen years:<sup>405</sup>

*The husband always tortured her, took her passport and made obstacles. She asked for legal support and what she should do. None of the militia or the prosecutors reacted. The man was not attending the court hearings, and he is supposed to or else be forced to attend by law—but the court does nothing. ... The court thinks time will pass, and it will be settled.*<sup>406</sup>

One judge explained that the few convictions for low level domestic violence usually result in a fine or community service.<sup>407</sup> Prison terms are rare.<sup>408</sup> The court is required to consider the victim's opinion in sentencing.<sup>409</sup> A judge explained: "Usually the woman doesn't want him imprisoned. She doesn't work and is dependent financially on the husband and thinks if he

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<sup>402</sup> *Id.*

<sup>403</sup> Interview with Judge, in Taj. (Nov. 2, 2005).

<sup>404</sup> Interview with Militia Officer, in Taj. (Nov. 4, 2005).

<sup>405</sup> Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>406</sup> *Id.*

<sup>407</sup> Interview with Judge, in Taj. (Nov. 4, 2005).

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*



goes to prison, no one will take care of her and the children. Also she is afraid of being judged by the family and neighbors as being guilty of sending her husband to prison and making the family fall apart. The relatives might then come in and pressure her and make it worse...<sup>410</sup>

### 3. FAMILY LAW

#### A. MARRIAGE

A woman's marital status is extremely important in Tajikistan. The common view that equates a woman's worth with her marital status and values preservation of the marriage above all else contributes to the difficulty women face in securing their safety. Other factors, such as economic dependency and a lack of property rights, also complicate women's ability to leave abusive marriages.

The Family Code of the Republic of Tajikistan, adopted in 1998, sets forth regulations on marriage, divorce and child custody. The code establishes that men and women have equal personal<sup>411</sup> and property rights<sup>412</sup> in marriage, and there can be no discrimination on the basis of gender, race, nationality, language, religion or social origin.<sup>413</sup> Marriages are only legally recognized if registered at state registry offices.<sup>414</sup> Religious

<sup>410</sup> *Id.*

<sup>411</sup> TAJ. FAM. C., *supra* note 214, at §III Ch 6 Art. 32.

<sup>412</sup> *Id.*, at §III Ch 7 Art 34.

<sup>413</sup> *Id.*, at §I Ch 1 Art. 1(5). Religious marriages performed before 19 December 1929 are also official marriages. *Id.*, at §II Ch 3 Art. 10(4).

<sup>414</sup> *Id.*, at §II Ch 3 Art. 10(1). The code sets the minimum age for marriage at seventeen, or sixteen with a judicial waiver. *Id.*, at §II Ch 3 Arts. 11(1); 13(1-2). There is a one month waiting period between filing an application and the marriage ceremony. There is a fifteen somoni charge for the civil ceremony. This is approximately four U.S. dollars. Interview with Local Gov't Official, in Taj. (Nov. 8, 2005). Many women are married at younger ages, "[s]uch marriages may be entered into with a Nikoh religious ceremony and without State registration. They entail no legal consequences. The rights of second and third wives are not covered by secular law. This category of women is aware that secular law cannot protect their rights. The absence

marriages are not recognized by the state.<sup>415</sup> Although there are clear benefits to having a registered marriage subject to the laws outlined in the Family Code of Tajikistan, many Tajik men and women forego the civil registration and marry solely through religious ceremonies.<sup>416</sup> Two main reasons explain why civil registration is not pursued. The first is to avoid the marital age requirements. Many girls are married at age fifteen or sixteen.<sup>417</sup> The second is due to the legal prohibition on polygamy.

Economic dependency, a complicating factor in domestic violence cases, is exacerbated for women who do not have a registered marriage. Property rights and paternity are both tied to official registration of the marriage. One judge explained that it is very difficult for a religiously married woman to prove her interest in a property.<sup>418</sup> A religiously married couple is also unable to register their children with the father's name on the birth certificate. The mother is obliged to register the child as a single parent. If the relationship dissolves, the lack of established paternity becomes a major obstacle to seeking child support.

#### B. DIVORCE

The legal system most often addresses domestic violence in the context of divorce. Interviewees reported that divorce cases involve domestic violence

of rights forces these women to endure all kinds of violence committed by the husband and his relatives." CEDAW Report, *supra* note 31, at 12.

<sup>415</sup> TAJ. FAM. C., *supra* note 214, at §I Ch 1 Art. 1(3).

<sup>416</sup> A khukumat leader estimated that in his district, more than half of the first marriages were registered. He explained that the khukumat worked with schoolgirls and explained their rights. Interview with Local Gov't Official, in Taj. (Nov. 10, 2005).

<sup>417</sup> Interview with Militia Officers, in Taj. (Nov. 1, 2005).

<sup>418</sup> An official marriage provides women with some legal rights and protections; however, she must separately register as someone officially living in the apartment. If the marriage fails she will have to prove that she lives there; this is easier for women in official marriages than for women married religiously, but it is still not automatic. Interview with Judge, in Taj. (Nov. 4, 2005).

thirty percent to one hundred percent of the time.<sup>419</sup> One attorney reported that of the four to five clients seeking a divorce he sees per day, “they are all victims.”<sup>420</sup> Although they acknowledge the abuse during the divorce proceedings, most women do not seek criminal charges or other remedies for the violence. One judge told The Advocates: “What is interesting is when we have divorce cases, we see violence. Women during the marriage and after the divorce don’t file for violence even though they have the report. They are just happy to leave. ... [G]et them divorced and let this be in the past.”<sup>421</sup>

The Family Code provides that “a marriage may be dissolved by divorce at the request of one or both spouses.”<sup>422</sup> When there are minor children involved, the court has the power to order the noncustodial parent to pay child support.<sup>423</sup> If one of the parties objects to the divorce, the court shall require the spouses to complete a three-month reconciliation term before granting the divorce.<sup>424</sup> Lawyers practicing

regularly in family court reported that the reconciliation term does not apply in cases where the court finds there has been domestic violence.<sup>425</sup> For the court to find domestic violence in a divorce proceeding, the victim must state that physical violence is the reason for the divorce and provide a forensic certificate.<sup>426</sup> Despite the potential waiver of the reconciliation period, many victims of domestic violence do not report the violence when filing for divorce.<sup>427</sup>

Interviewees reported that the threat of divorce is used to keep women from seeking help from domestic violence, particularly in cases of unregistered marriages. An unregistered marriage can be dissolved when a spouse says, “I divorce you” or *Taloq*, three times in front of two witnesses. One interviewee described how some men use this option to divorce their wives when they have called the militia. By the time the militia arrive, the divorce is complete.<sup>428</sup>

Dissolutions of unregistered marriages are not subject to judicial review. To secure support for herself and the children of the marriage, a woman in an unregistered marriage must overcome several burdens. First, she must establish the paternity of the children. Second, she must prove that she lived in the family home. If she has a residence permit, she will have a legal right to remain there. Finally, she must have a legal basis to seek support, because an unregistered wife is not eligible for property rights under the Family Code. Advocates have sued for support on behalf of their clients under other theories, such as construing the second wife as a housekeeper who is entitled to back pay.<sup>429</sup>

<sup>419</sup> Interview with Local Gov’t Official, in Taj. (Nov. 12, 2005); interview with Lawyer, in Taj. (Oct. 31, 2005).

<sup>420</sup> Interview with Lawyer, in Taj. (Oct. 31, 2005).

<sup>421</sup> Interview with Judge, in Taj. (Nov. 1, 2005).

<sup>422</sup> Except that “the husband shall not have the right to institute court proceedings on the dissolution of the marriage during the wife’s pregnancy and in the course of one and a half years after the birth of the child. In the context of a married couple with no minor children, if the parties are in agreement, they can forgo court and have their marriage terminated at a civil registry office.” TAJ. FAM. C., *supra* note 214, at §II Ch 4 Art. 16(2); Art. 17; Art. 19(1)

<sup>423</sup> *Id.*, at §II Ch 4 Art. 24. The formula for employed parents is: for one child he pays twenty-five percent of his salary, for two he pays thirty-three percent of his salary, and if there are three or more, he pays fifty percent of his salary. For unemployed parents a fixed amount of money is determined. For children born in Nikoh marriages, the father is not on the birth certificate and the mother must establish paternity before she can receive a court order for child support. If the father is willing to stipulate that he is the father, then she has met her burden, but this rarely happens. DNA evidence, witnesses to the Nikoh wedding, and testimony corroborating that they lived together can all be used to show fatherhood. Interview with Lawyer, in Taj. (Oct. 31, 2005); Interview with Local Gov’t Official, in Taj. (Nov. 11, 2005); Case Review, Nov. 6, 2005.

<sup>424</sup> TAJ. FAM. C., *supra* note 214, at §II Ch 4 Art. 22(1)

<sup>425</sup> Interview with Non-gov’t Org., in Taj. (Nov. 5, 2005).

<sup>426</sup> *Id.*

<sup>427</sup> Interview with Prosecutor, in Taj. (Nov. 4, 2005).

<sup>428</sup> Interview with Non-gov’t Org., in Taj. (Nov. 14, 2005).

<sup>429</sup> One international organization employee reported “The second wives who come here ask for legal advice on getting

## B. THE MEDICAL SYSTEM OF TAJIKISTAN

Interviews revealed inconsistent responses from the medical system when confronted with domestic violence injuries. Many victims, unwilling or unable to go to the militia, seek medical treatment through the state-run medical system after a domestic assault.<sup>430</sup> Although the medical system has the potential to play a key role in identifying cases of domestic violence and providing services and information to victims, most medical professionals in Tajikistan are not trained to address the needs of domestic violence victims.

The medical system in Tajikistan is a national health care program, a government structure under the Ministry of Health.<sup>431</sup> Access to health care is officially free-of-charge to Tajik citizens.<sup>432</sup> The medical system is comprised of hospitals, which handle serious cases, trauma centers, which handle emergency medicine

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property or if the children are not legally registered. Legal advisors will also provide legal representation in courts." When asked how successful are the second wives in property claims, she reported that they "have no such law defining the second wives. They should have such cases. They have had some successes, but there are not so many." *Id.* Another non-governmental organization employee reported that when dealing with domestic violence victims in unregistered marriages:

*The first is to provide her with psychological counseling to calm her down. Then we start to explain to her, her rights as a woman. We try to get her acquainted with the Family Code. If she has kids, she can get alimony to support them. If no kids, she has almost no rights. If she had worked for him in the past, she can claim financial support from him. E.g. if she worked for him in the past as a secretary, she can claim that. She has rights if she has a residence permit in the home, the right not to leave it. And she can be considered like a housekeeper who works in the house. She can claim an additional salary as if she had cleaned for two years without pay.*

Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>430</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>431</sup> Interview with Physician, in Taj. (Nov. 5, 2005).

<sup>432</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); interview with Forensic Doctor, in Taj. (Nov. 7, 2005). However, this was a disputed claim amongst the interviewees. One interviewee reported that "We still have the free of charge medicine but this is just words because you need to give money. No doctor will treat for free much less give a certificate. My mother had eye surgery recently and we definitely had to pay." Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

and operations on less serious cases, and clinics, which handle primary care.<sup>433</sup>

No medical protocol currently exists to address domestic violence in Tajikistan.<sup>434</sup> Awareness and levels of understanding regarding domestic violence vary widely among medical professionals. Education for medical professionals on domestic violence is conducted primarily on a voluntary basis by non-governmental organizations and international organizations.<sup>435</sup> One organization in Dushanbe, Avesto, collaborates with a group of family doctors. They are now working on a policy of screening for domestic violence, a protocol for documenting the medical information obtained from their clients, and procedures to preserve patient confidentiality and any evidence collected. They are developing the protocols with a plan to train family and forensic doctors in the near future.<sup>436</sup> The Advocates interviewed several other organizations that had developed cooperative relationships with medical professionals.<sup>437</sup>

Outside of these cooperative relationships, interviews revealed that medical professionals in Tajikistan do not screen for domestic violence.<sup>438</sup> None of the doctors interviewed by The Advocates routinely asks their patients whether they were experiencing domestic violence. Even when it is clear that the injuries are from a beating and are inconsistent with what a woman

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<sup>433</sup> Interview with Physician, in Taj. (Nov. 7, 2005). There are 442 hospitals, 1025 outpatient polyclinics, thirteen maternity homes, and 631 facilities with women's counseling centers in Tajikistan. CEDAW Report, *supra* note 31, at 42.

<sup>434</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>435</sup> *Id.*; Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>436</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>437</sup> Interview with Non-gov't Org., in Taj. (Nov. 4, 2005); Interview with Non-gov't Org., in Taj. (Nov. 10, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>438</sup> Interview with Physician, in Taj. (Nov. 5, 2005); interview with Clinic, in Taj. (Nov. 10, 2005); interview with Physician, in Taj. (Nov. 7, 2005).

reports, doctors do not inquire about domestic violence.<sup>439</sup> Asking questions about domestic violence when a woman has not volunteered the information is seen as “pressuring her.”<sup>440</sup> One interviewee feared that this pressure might lead to “psychological trauma.”<sup>441</sup>

A physician explained that doctors are very careful about the advice they give to women who they determine are domestic violence victims. She expressed concern about making the situation worse for victims:

*[W]e do not tell the families that she told us of the violence. We say she came in and said she fell down the stairs, but we are doctors and we know that this type of injury is not from falling down the stairs.... Before we explain it, everyone thinks it is normal to have this violence in the family... We are very careful when we give advice not to make the situation worse or to say it in such a way that they will go back and be worse to her.*<sup>442</sup>

Medical professionals interviewed by The Advocates demonstrated that the general attitude of medical professionals prioritizes reconciling the family over the needs of the patient. The goal of family preservation has caused medical professionals to lie to patients about their being at risk for disease. One doctor reported that she determines what information she will give patients based on this goal of preserving the family, and would even tell a wife that her husband had not been unfaithful.<sup>443</sup> Another interviewee reported an

incident of falsification of medical records. She reported that in transferring a woman from the care of a clinic to a hospital after she had been beaten, causing a miscarriage at sixteen weeks gestation, the clinic workers “took it upon [themselves]” to report that she had been injured in an accidental fall.<sup>444</sup> One medical professional confronted husbands without the patients’ permission: a clinic worker reported that if she is told about domestic violence by a patient that one of her tactics is to “anonymously tell the husband not to do it anymore, without telling the victim or saying that she said anything.”<sup>445</sup>

When women seek treatment for domestic violence injuries, medical professionals are required to report all injuries to the militia.<sup>446</sup> There is no confidentiality requirement in these situations. In fact, compliance with the reporting requirement is monitored by the prosecutor’s office.<sup>447</sup> Failure to report an injury or misrepresenting an injury is a criminal offense.<sup>448</sup> A prosecutor informed The Advocates that this reporting requirement is well known in the community, and that it may deter women from seeking the medical treatment they need. “That is one of the reasons that victims don’t always go to the hospital – they heal at home or find a private doctor.”<sup>449</sup>

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skin diseases and STDs are a shared specialty of medical doctors. Thus, the clinics offer services for both, but many with skin diseases are afraid to come for treatment for fear that people will think they have an STD. There is also a connection between STDs and domestic abuse. One doctor explained that “the first reaction [the husband has] when he finds out he has an STD is aggression toward the woman who might have made him sick, not self-blame for his actions. His first thought is to find her and beat her.” Interview with Physician, in Taj. (Nov. 6, 2005); interview with Physician, in Taj. (Nov. 5, 2005).

<sup>444</sup> Interview with Clinic, in Taj. (Nov. 14, 2005).

<sup>445</sup> Interview with Clinic, in Taj. (Nov. 14, 2005).

<sup>446</sup> Interview with Militia Official, in Taj. (Nov. 6, 2005).

<sup>447</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>448</sup> Interview with Prosecutor, in Taj. (Nov. 7, 2005).

<sup>449</sup> Interview with Prosecutor, in Taj. (Nov. 11, 2005).

<sup>439</sup> Interview with Physician, in Taj. (Nov. 7, 2005).

<sup>440</sup> Interview with Clinic, in Taj. (Nov. 9, 2005).

<sup>441</sup> Interview with Physician, in Taj. (Nov. 7, 2005).

<sup>442</sup> Interview with Clinic, in Taj. (Nov. 4, 2005).

<sup>443</sup> Interview with Physician, in Taj. (Nov. 6, 2005). A doctor who treats sexually transmitted diseases reported that if a man tests positive for a sexually transmitted disease (STD), she encourages him to inform his partners but will tell his wife that her husband has not been unfaithful in order to save the family. There is a double standard with regard to STDs in Tajikistan. The doctor knows of no cases where the wife has rejected her husband due to an STD but many where the husband or family has rejected the wife. A taboo surrounds this issue. In Tajikistan,

Interviewees reported another confidentiality issue that deters women from seeking medical treatment: Women often need to seek family permission to go to a clinic and are accompanied by family members.

*Members of the family will demand to come with them and it is even difficult to get her to be able to come into the exam room alone. Often they want to listen to what she is telling the doctor. They will try to peek through the door during her examination to watch her.*<sup>450</sup>

Through a project with the Ministry of Health of Tajikistan and Doctors Without Borders, a center for psychosocial support has been established in Dushanbe. This project was the only government center offering psychological services in the country. In describing the center, an employee reported: "We deal separately with victims of violence because we have many people who come to us with this problem. We have had many programs on domestic violence."<sup>451</sup> The project was established in 1998 but is no longer in operation.<sup>452</sup> A Crisis Center providing psychological and legal aid has been established within the Committee on Women and Family Affairs and is currently funded by the ProVAW project of the Social Development Group.<sup>453</sup>

Under a pilot domestic violence prevention project funded by Mercy Corps, several clinics in Dushanbe have "domestic violence rooms."<sup>454</sup> Victims of domestic violence who self-identify are given information about the room and told that they are welcome to use the room and "work on the problem" together with the

<sup>450</sup> Interview with Clinic, in Taj. (Nov. 4, 2005).

<sup>451</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005).

<sup>452</sup> E-mail from Int'l Org. to The Advocates for Human Rights (Nov. 24, 2006) (on file with author).

<sup>453</sup> *Id.*

<sup>454</sup> The project is funded by international donors; there is no government funding of this program and it is considered as additional unpaid work by the doctors. Interview with Clinic, in Taj. (Nov. 4, 2005); Interview with Int'l Org., in Taj. (Nov. 8, 2005).

doctor.<sup>455</sup> The doctors keep records of all visits to the room, including documentation of any injuries.<sup>456</sup> The doctors have received training from an international organization on identifying domestic violence, the causes, how it happens and the role of the medical professional in addressing it.<sup>457</sup>

*Before we had this training, I wasn't aware very much about domestic violence. I had seen people come through the clinic with injuries, but I did not think anything about it. I just passed over it because this is a family problem and not for me. But now I am much more aware, and I am also more aware of it in my own life...*<sup>458</sup>

<sup>455</sup> The initial session is an opportunity for the victim to talk about the violence she is experiencing. The staff listens but does not give advice. On the second visit the woman brings her husband and the staff talks to each person individually. They separate the couple because men "feel it is humiliating to talk about their problems in front of their wives." Interview with Clinic, in Taj. (Nov. 4, 2005).

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Id.* A similar program, funded by the ProVAW project of the Social Development Group has been piloted in one clinic. E-mail from Int'l Org. to The Advocates for Human Rights (Nov. 24, 2006) (on file with author).



## IV. NON-GOVERNMENTAL ORGANIZATIONS' RESPONSE TO DOMESTIC VIOLENCE

*Non-governmental non-profit organizations (NGOs) first appeared in Tajikistan in the early 1990s as part of the transition from a Sovietized society to the evolving modern Tajik society. With the withdrawal of Soviet support, the Tajik government was no longer able to fully fund existing health and economic and social development programs. Before long non-governmental organizations were called upon to fill critical niches in humanitarian aid . . . These non-governmental organizations, largely funded by the international community, created organizational structures that had not previously existed in Tajik society.*<sup>459</sup>

A variety of non-governmental organizations now provide support to women who are victims of domestic violence. Their activities include counseling services, research, public education, hotlines, medical and psychological care, legal services, training programs for police, judges and government officials and economic empowerment.<sup>460</sup>

The first crisis center in Tajikistan opened in 1996, with a hotline, and continues to operate. Since then a number of others have opened, some of which have closed due to lack of funding. Interviewees reported

that the hotlines and the counseling offered in the offices of the crisis centers are the backbone of the services provided by non-governmental organizations to Tajik women. They provide critical information about basic human rights, equality, gender issues and domestic violence. They also provide psychologists and social workers to listen and to respond to the women who are in crisis.

There is one shelter for victims of domestic violence in Tajikistan, which is sanctioned by the local government, and which opened in July 2005.<sup>461</sup> Victims of physical, psychological and sexual assault may stay there for up to fourteen days.<sup>462</sup> Interviewees reported their concern that fourteen days is insufficient time for victims to stay at the shelter, especially considering how difficult it is to find suitable employment and housing in the currently difficult Tajik economy.<sup>463</sup>

A number of non-governmental organizations provide free legal representation or advice to victims of violence. Many non-governmental organizations either provide or refer clients to medical and psychological services.<sup>464</sup> A few non-governmental organizations

<sup>459</sup> NAT'L ASSOC. OF BUS. WOMEN OF TAJ., THE THIRD SECTOR IN THE REPUBLIC OF TAJIKISTAN: A REVIEW OF THE LAW, A SURVEY OF NON-PROFIT ORGANIZATIONS. (2002). The civil war that devastated large parts of the country from 1992 to 1997 created humanitarian needs that precipitated the birth of the first wave of non-governmental organizations, financed almost exclusively by international donors. Much of this effort was focused in Khatlon, where the fighting, casualties and destruction were the greatest. *Id.*

<sup>460</sup> Many non-governmental organizations reported recognizing the importance of women having greater economic independence from their husbands. Several organizations were working on economic empowerment, through micro-credit finance programs, the operation of places of employment, and skills training classes. Interview with Non-gov't Org., in Taj. (Nov. 10, 2005); Interview with Non-gov't Org., in Taj. (Nov. 1, 2005); Interview with Non-gov't Org., in Taj. (Nov. 4, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005); Interview with Non-gov't Org., in Taj. (Nov. 10, 2005); Interview with Non-gov't Org., in Taj. (Nov. 1, 2005); Interview with Non-gov't Org., in Taj. (Nov. 11, 2005).

<sup>461</sup> Interviewees reported many obstacles in establishing the shelter, which took several years. Once funding was secured, the government provided the necessary approvals, and the local government made efforts to find a building for the shelter. The shelter has agreed to take in victims of trafficking at the request of the Khukumat. Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).

<sup>462</sup> *Id.*

<sup>463</sup> *Id.* The organization would like to provide longer-term accommodation for up to six months and is exploring with its donor the option of a Japanese model "step house." This might include the rehabilitation and conversion of one of the city's presently unused dormitories into such housing.

<sup>464</sup> See *supra*, Section III(B), The Medical System of Tajikistan, at 45.

report that they have a gynecologist and/or a psychologist or social workers on their staff.<sup>465</sup>

Non-governmental organizations have addressed the need for legal reform in domestic violence cases. One non-governmental organization reports that they have petitioned the court to allow the non-governmental organization to appear in a domestic violence case. The organization also sought to alert and educate key players in the legal system on behalf of the victim by writing to the prosecutor and the court, to remind them of their responsibility to protect victims of domestic violence. In one case, a non-governmental organization successfully advocated on behalf of the victim's family, before a judge who was considering the evidence in a case where a husband murdered his wife. The husband was convicted and sentenced to twelve years' imprisonment. This non-governmental organization alerts the media so that cases where women's rights are at risk receive public attention.<sup>466</sup>

Non-governmental organizations have established and coordinated informal community mechanisms used to address violence, such as civil councils and women's groups. In one project, a non-governmental organization helped to establish women's councils in two villages, which coordinate roundtables with authority figures, conduct public information campaigns, and sponsor discussions.<sup>467</sup> In another case, an organization selected nine members from twenty applications to serve on a council to work on family conflict issues.<sup>468</sup> The organization facilitated a

one-day training with the council, and coordinates two to three weekly meetings with a trainer.<sup>469</sup>

One interviewee described the importance of having a place for women to seek support: "Our center is a light in the window. For two years, women have gathered here. To say it directly, most of the women here have been victims of domestic violence and we are always ready to listen to their stories. This is also valid, if a woman can just go to a place and share her story."<sup>470</sup>

Staff from many non-governmental organizations reported they had participated in domestic violence trainings. Some of these trainings were facilitated by international organizations using established models.<sup>471</sup> Others participated in regular trainings in cooperation with local organizations.<sup>472</sup>

Non-governmental organizations report that they regularly collaborate among themselves and with international organizations to develop and present trainings for governmental officials and judicial officers at the national and local level, including a national level training for judges, prosecutors, militia and advocates.<sup>473</sup> The government is involved at all stages of planning and presenting these sessions.

Interviewees described a training program in Khujand that was jointly developed by a non-governmental organization and the Department of Internal Affairs. The non-governmental organization and the Department conducted research and then collaborated to train all the district militia in Khujand on gender

<sup>465</sup> Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).

<sup>466</sup> *Id.* A former judge, who is now with a non-governmental organization, has called judges to pressure them and ask what they are doing when a case is not moving forward. *Id.*

<sup>467</sup> Interview with Non-gov't Org., in Taj. (Oct. 31, 2005).

<sup>468</sup> *Id.* One civil council, composed of three women and six men, has been set up to solve family and local problems as an informal court. Interview with Non-gov't Org., in Taj. (Nov. 1, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005).

<sup>469</sup> Interview with Non-gov't Org., in Taj. (Oct. 31, 2005).

<sup>470</sup> Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

<sup>471</sup> A director of an organization attended a training on the Duluth Model, which incorporates a coordinated community response to each case of domestic violence, and others have participated in trainings sponsored by international workers. Interview with Non-gov't Org., in Taj. (Nov. 7, 2005); interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>472</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005).

<sup>473</sup> Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).



awareness, women's rights and domestic violence. Following the training, they installed instructional signs at Department headquarters, so the militia could refer to the proper steps in responding to a domestic violence call. The non-governmental organization provided the militia with informational leaflets, which include a basic outline of women's rights, domestic violence issues and contact information for the crisis center.<sup>474</sup> As a result of this collaboration, employees reported that the militia have called the center, accompanied women there, and have helped to maintain the security of the center.<sup>475</sup> Other non-governmental organizations also facilitate domestic violence trainings for health professionals, mahallahs, advocates, judges, prosecutors and militia.<sup>476</sup>

Non-governmental organizations reported that they do extensive work focused on public education.<sup>477</sup> For several years, they have conducted public campaigns, held media events, sponsored school programs, held poster contests for both adults and children and developed and produced plays about domestic violence. Many non-governmental organizations participate in the annual 16 Days of Activism Against Gender Violence Campaign. These efforts are aimed at addressing the pervasive lack of knowledge about women's rights and the widespread societal acceptance of women's subservience. Interviewees stated that, "We must change the way women think. It is hard to change a person's mentality, but we are doing it as fast as we can."<sup>478</sup> They offer information

<sup>474</sup> *Id.*

<sup>475</sup> *Id.* Staff from the center said that if they receive threats from relatives of shelter residents, they can press a call button, and the militia arrive within five minutes. *See Id.*

<sup>476</sup> Interview with Non-gov't Org., in Taj. (Nov. 4, 2005); Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005).

<sup>477</sup> One such non-governmental organization is the Social Development Group, the coordinator of this report.

<sup>478</sup> Interview with Non-gov't Org., in Taj. (Nov. 1, 2005).

designed to increase knowledge of basic gender awareness issues, legal rights and health issues, and provide pre-marital counseling about sexual behavior, domestic violence and suicide.

Non-governmental organizations have played a significant role in drafting and lobbying for a domestic violence law.<sup>479</sup> The draft law creates a civil order for protection remedy for victims of domestic violence.<sup>480</sup> Many non-governmental organizations reported the need for civil protection because they consider the sanctions under the criminal law to be a deterrent to reporting violence.<sup>481</sup>

Funding is one of the greatest challenges faced by non-governmental organizations in Tajikistan. Virtually all non-governmental organizations working in Tajikistan are funded by external donors, including international agencies, international non-governmental organizations,<sup>482</sup> foreign governments, public and private aid organizations, the World Bank and other financial institutions. Several organizations reported the lack of government funding for domestic violence services.<sup>483</sup> Some non-governmental organizations have resorted to creative means of raising funds, such

<sup>479</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); Interview with Non-gov't Org., in Taj. (Nov. 4, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005).

<sup>480</sup> Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); Interview with Non-gov't Org., in Taj. (Nov. 5, 2005); interview with Lawyer, in Taj. (Nov. 6, 2005).

<sup>481</sup> Interview with Lawyer, in Taj. (Nov. 6, 2005); Interview with Non-gov't Org., in Taj. (Nov. 14, 2005); Interview with Non-gov't Org., in Taj. (Nov. 4, 2005). Non-governmental organization representatives reported that women do not want to see their husbands imprisoned. There are several reasons for this: if he is in jail, she and the children will suffer the financial consequence of losing the breadwinner. The term of the sentence is viewed as too harsh. The conditions in prison are inhumane. One interviewee has been lobbying to re-establish a temporary alternative: isolation units for intoxicated men who are removed from the home. Interview with Non-gov't Org., in Taj. (Nov. 5-7, 2005).

<sup>482</sup> One such international organization is the Swiss Agency for Development and Cooperation, the sponsor of this report.

<sup>483</sup> Interview with Non-gov't Org., in Taj. (Nov. 9, 2005); Interview with Non-gov't Org., in Taj. (Nov. 11, 2005).

as raising livestock, canning goods,<sup>484</sup> or operating a telephone center.<sup>485</sup>

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<sup>484</sup> Interview with Non-gov't Org., in Taj. (Nov. 1, 2005).

<sup>485</sup> Interview with Non-gov't Org., in Taj. (Nov. 10, 2005).

## V. INTERNATIONAL ORGANIZATIONS' RESPONSE TO DOMESTIC VIOLENCE

International organizations provide funding, knowledge, and capacity building that fulfill a vital function in the economically depressed civil society of Tajikistan. Most of the services and support provided to Tajik victims of domestic violence are funded by international organizations and donor governments. This assistance is provided either directly through their own programming, or through Tajik government agencies or non-governmental organizations, to which they provide funding and other resources. While most support is provided through financial grants to government agencies or non-governmental organizations, international organizations also conduct trainings, sponsor public education initiatives, collect data, and support advocacy for legal reform.

International organizations and non-governmental organizations reported donors most often provide aid in the form of grants to support research, education, and crisis and women's centers.<sup>486</sup> While funded by a grant, these centers, in turn, are able to provide important services to victims, such as legal and psychological support.<sup>487</sup> In recent years, local advocates also report that they have been funded to represent clients on domestic violence matters or related issues, such as divorce, property rights or polygamy.<sup>488</sup> One organization provided a grant to a non-governmental organization to present seminars for survivors of self-immolation to discuss their lives after the burning.<sup>489</sup> Other organizations fund individuals to carry out research on development and violence

against women.<sup>490</sup> For example, several international organizations, including the Swiss Agency for Development and Cooperation, which sponsored this report, have funded research on violence against women.<sup>491</sup>

Grant money is generally provided for projects and not general operating funds. Interviewees from international organizations report that it is their goal to build capacity, and not just distribute money.<sup>492</sup> To this end, many international organizations train government officials, judges, police and non-governmental organizations.<sup>493</sup> For example, one international organization operated judicial training centers aimed at empowering judges to recognize gender issues, and developing the judicial sector as a lobbying group.<sup>494</sup> Another organization trained local centers to create a friendly place for women to gather, talk, relax, solve domestic problems, and seek support.<sup>495</sup> These trainings supplement the otherwise limited training opportunities available locally to advocates and service providers.

International organizations also work to raise public awareness. One organization created a literacy program and a computer skills class for young girls.<sup>496</sup> Another intergovernmental organization initiated a human rights education project. A lack of resources has recently limited the scope of this program.<sup>497</sup>

<sup>490</sup> *Id.*

<sup>491</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005).

<sup>492</sup> Interview with Int'l Org., in Taj. (Nov. 8, 2005); Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>493</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005); Interview with Int'l Org., in Taj. (Nov. 4, 2005); Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>494</sup> Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>495</sup> Interview with Int'l Org., in Taj. (Nov. 14, 2005).

<sup>496</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>497</sup> *Id.*

<sup>486</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005); Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>487</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>488</sup> Interview with Int'l Org., in Taj. (Nov. 14, 2005); Interview with Non-gov't Org., in Taj. (Nov. 7, 2005). One organization provides assistance to non-governmental organizations that provided legal assistance to indigent people in Dushanbe, Khojan and Vandard. Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>489</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005).

Several organizations focused their education efforts in the religious community, as well. One international organization targeted the religious sector and prepared a new edition of a booklet entitled *Women's Rights in Islam*.<sup>498</sup> Another interviewee reported that she brought religious leaders together to discuss domestic violence, because some men go to these leaders for advice before marriage.<sup>499</sup>

Organizations used various forms of media as a means of outreach. One organization used television to disseminate trainings.<sup>500</sup> In addition, interviewees worked with the media to dispel gender stereotypes and raise awareness about specific women's issues, such as trafficking.<sup>501</sup> Like their local non-governmental organization counterparts, international organizations seek to educate multiple sectors in Tajikistan.

The Advocates learned of several projects to collect information and document the situation of women in Tajikistan. For example, several organizations reported that they were monitoring medical and legal facilities.<sup>502</sup> One organization reported that they provided notebooks to women's and psychological centers to track violence.<sup>503</sup> Other interviewees conducted focus groups and interviews to collect more information about violence against women and suicide in Tajikistan.<sup>504</sup>

International organizations reported that they have worked to reform the legal system in various ways.

Other organizations created initiatives to strengthen the influence of international law, such as lobbying for ratification of the Optional Protocol to CEDAW and taking a delegation of women to the United Nations Division for the Advancement of Women.<sup>505</sup> Still other international organizations have played a role in drafting a domestic violence law, collecting comments, gathering signatures in support of the draft law and holding roundtable discussions.<sup>506</sup>

Many international organizations reported that a key factor in reducing violence was economic empowerment. To enable women to become more independent, one organization helps women create their own businesses and trains them on the practical issues of business, such as registration, taxes and business planning.<sup>507</sup> As of fall 2005, this organization has given out micro-credit loans to forty women, fifteen of whom are in the Khatlon region.<sup>508</sup> By providing greater economic independence for Tajik women, the staff of these projects report that it is their goal to make it easier for domestic violence victims to come forward about the violence and to leave their abuser.<sup>509</sup>

<sup>498</sup> *Id.*

<sup>499</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005).

<sup>500</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>501</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005); Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>502</sup> Interview with Int'l Org., in Taj. (Nov. 8, 2005); Interview with Int'l Org., in Taj. (Nov. 4, 2005).

<sup>503</sup> Interview with Int'l Org., in Taj. (Nov. 8, 2005).

<sup>504</sup> Interview with Social Scientist, in Taj. (Nov. 4, 2005); Interview with Non-gov't Org., in Taj. (Nov. 1, 2005); Interview with Int'l Org., in Taj. (Nov. 8, 2005).

<sup>505</sup> Interview with Int'l Org., in Taj. (Nov. 10, 2005).

<sup>506</sup> *Id.* For more information on the draft domestic violence law, see the discussion in the non-governmental organization section, *supra* 51.

<sup>507</sup> Interview with Int'l Org., in Taj. (Nov. 9, 2005).

<sup>508</sup> *Id.*

<sup>509</sup> *Id.*

## VI. TAJIKISTAN'S OBLIGATIONS UNDER INTERNATIONAL LAW

*It is now well established under international law that violence against women is a form of discrimination against women and a violation of human rights. States' obligations to respect, protect, fulfill and promote human rights with regard to violence against women encompasses the responsibility to prevent, investigate and prosecute all forms of, and protect women from, such violence and to hold perpetrators accountable. States are responsible under international law for human rights violations and acts of violence against women perpetrated by the State or any of its agents. Such responsibility arises not only from State actions, but also from omissions and failure to take positive measures to protect and promote rights...States are accountable for the actions of non-State actors if they fail to act with due diligence to prevent, investigate or punish such acts and provide an effective remedy.*<sup>510</sup>

As a member of the United Nations,<sup>511</sup> Tajikistan is obligated to protect the human rights of every person living within its borders. Tajikistan is a party to the International Covenant on Civil and Political Rights<sup>512</sup> (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women<sup>513</sup> (CEDAW) without reservation<sup>514</sup> and is therefore legally bound by

<sup>510</sup> In-depth Study on All Forms of Violence Against Women: Report of the Secretary-General, U.N. GAOR 61st Sess., Agenda Item 60(a), at 73, U.N. Doc. A/61/122/Add.1 (2006).

<sup>511</sup> Tajikistan became a member state of the United Nations on March 2, 1992. See <http://www.un.org/Overview/unmember.html> (last accessed Feb. 1, 2006).

<sup>512</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), available at <http://www1.umn.edu/humanrts/instreetree/b3ccpr.htm>. Tajikistan's ratification entered into force on Apr. 4, 1999.

<sup>513</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1981) available at <http://www1.umn.edu/humanrts/instreetree/e1cedaw.htm>. Tajikistan's ratification entered into force on 25 Nov. 1993.

<sup>514</sup> Tajikistan did enter a declaration with regard to Article 41 of the ICCPR. The declaration does not affect the analysis of Tajikistan's obligations with regard to domestic violence. See Office of the High Commissioner for Human Rights, <http://www.unhchr.ch/tbs/doc.nsf/22b020de61f10ba0c1256a2a0027ba1e/80256404004ff315c125638b005f28f5?OpenDocument> (last accessed Feb. 1, 2006).

these treaties.<sup>515</sup> Tajikistan has also ratified the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>516</sup> Tajikistan also has additional commitments to protect women's human rights under the Universal Declaration of Human Rights<sup>517</sup> (UDHR) and the Declaration on the Elimination of Violence against Women<sup>518</sup> (DEVAW).

These instruments set forth international standards condemning domestic violence. Under international law, it is not sufficient for governments simply to refrain from violations of individuals' rights at the hands of the state or state actors. All member states of the United Nations have an affirmative duty to act with due diligence to protect women from violence perpetrated by private actors and to punish perpetrators when violations occur.<sup>519</sup> Domestic violence is a serious

<sup>515</sup> International law can be divided into binding and nonbinding law. Binding law includes treaties to which the state is a party and customary law. Nonbinding sources include declarations, UN General Assembly resolutions, committee reports from treaty bodies, international court decisions, and treaties to which the state is not a party. Binding international law is enforced through domestic courts, treaty monitoring bodies and international courts. Nonbinding international law sources reflect international consensus on a specific issue and can be used to influence domestic legislation. When a nonbinding principle becomes so universally accepted, it becomes customary law, which has the binding force of a treaty. Malinda Schmiechen, *Parallel Lives, Uneven Justice: An Analysis of Rights, Protection and Redress for Refugee and Internally Displaced Women in Camps*, 22 ST. LOUIS U. PUB. L. REV. 473, 481-482 (2003).

<sup>516</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, annex, U.N. GAOR 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984) available at <http://www1.umn.edu/humanrts/instreetree/h2catoc.htm> (last accessed Feb. 1, 2006). Tajikistan's ratification entered into force on October 2, 1995. Tajikistan did enter a declaration with regard to Articles 21 and 22. The declarations do not affect the analysis of Tajikistan's obligations with regard to domestic violence.

<sup>517</sup> G.A. Res. 317A (III) *supra* note 8. The UDHR was adopted and proclaimed by the United Nations General Assembly (of which Tajikistan is a member) in 1948.

<sup>518</sup> G.A. Res. 48/104, *supra* note 2.

<sup>519</sup> *An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has*

problem throughout Tajikistan. The failure of the Tajik government to adequately and appropriately respond to systematic violence against women is a violation of international legal obligations and human rights standards.

As a party to the ICCPR, Tajikistan is legally obligated to protect the rights to life, liberty and security of persons in Tajikistan.<sup>520</sup> Article 7 of this treaty forbids torture, cruel, inhuman and degrading treatment or punishment. If a person's rights under the treaty are violated, Tajikistan is required to provide and enforce an effective remedy.<sup>521</sup>

As a party to CEDAW, Tajikistan is legally obligated to eliminate all forms of discrimination against women. The Committee on the Elimination of All Forms of Discrimination Against Women made explicit in its General Recommendation 19 that violence against women is a form of prohibited discrimination under CEDAW. Article 2 of CEDAW obligates Tajikistan "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." Further, Tajikistan is required to "take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to

achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."<sup>522</sup> In 2007, Tajikistan was reviewed by the Committee.<sup>523</sup> The Committee urged Tajikistan to:

*[G]ive priority to eliminating all forms of violence against women, in particular domestic violence, and to adopt comprehensive measures to address it in accordance with its general recommendation 19. The Committee calls upon the State party to enact, without delay, the existing draft bill on social and legal protection against domestic violence. Such legislation should ensure that: violence against women and girls constitutes a criminal offence; women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders and availability of a sufficient number of shelters; and perpetrators are prosecuted and adequately punished. The Committee recommends the implementation of training for parliamentarians, the judiciary and public officials, in particular law enforcement personnel and health-service providers, ensuring that they are sensitized to all forms of violence against women, in particular domestic violence, and can provide adequate support to victims. It also recommends further public awareness-raising campaigns on the unacceptability of violence against women.*<sup>524</sup>

As a party to CAT, Tajikistan is legally obligated to "take effective legislative, administrative, judicial or other measures" to prevent acts of torture in any territory under its jurisdiction and "to ensure that all acts of torture are offenses under its criminal law."<sup>525</sup> Domestic violence can rise to the level of torture.<sup>526</sup>

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*not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.*

Velásquez Rodríguez v. Honduras, Series C: Decisions and Judgments, No. 04, (Inter-American Commission on Human Rights, 1988) available at [http://www.umn.edu/humanrts/iachr/b\\_11\\_12d.htm](http://www.umn.edu/humanrts/iachr/b_11_12d.htm). For a thorough discussion of the basis for state responsibility to victims of domestic violence, see Kenneth Roth, Domestic Violence as an International Human Rights Issue, HUMAN RIGHTS OF WOMEN, 326, 329-30 (Rebecca Cook, ed. 1994); Katherine Culliton, Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas, 34 Harv. Int'l L.J. 507 (1993); Dorothy Thomas & Michele Beasley, Domestic Violence as a Human Rights Issue, 15 Hum. Rts. Q. 36 (1993).

<sup>520</sup>G.A. Res. 2200A (XXI), *supra* note 521, at Art. 6, 9.

<sup>521</sup>*Id.*, at Art. 2.

<sup>522</sup>G.A. Res. 34/180, *supra* note 522, at Art. 5.

<sup>523</sup>See generally, Concluding Comments, *supra* note 80.

<sup>524</sup>*Id.*, at 5.

<sup>525</sup>G.A. Res. 39/46, *supra* note 525, at Arts. 2, 5.

<sup>526</sup>For more information, see Bonita C. Meyersfeld, Reconceptualizing Domestic Violence in International Law, 67 Alb. L. Rev. 371, 398 (2003) (discussing works that have highlighted the similarities between frequent forms of extreme domestic violence and the acts contemplated by the drafters of the CAT and other international instruments and offering a framework for addressing extreme forms of domestic violence as private torture under the CAT); Rhonda Copelon, Intimate Terror:

Article 16 further obligates Tajikistan to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...when such acts are committed by ...or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>527</sup>

Although the UDHR and DEVAW are not binding treaties, both represent statements of international consensus and are informative in guiding state conduct. The UDHR, which is arguably customary international law and thus enforceable, declares that all persons have the right to life, liberty and security of person.<sup>528</sup> The UDHR further declares that all persons should have equal protection under the laws and an effective remedy for violations of fundamental rights.<sup>529</sup>

Under DEVAW, states may not use customs, traditions and religious considerations to avoid their obligations to eliminate domestic violence. This Declaration sets forth affirmative steps member states are expected to take in combating domestic violence:

1. provide and enforce effective legal remedies for the wrongs caused by acts of domestic violence;
2. provide information to women on their right to seek redress from violence;
3. develop comprehensive legal, political, administrative and cultural programs to prevent violence against women;
4. provide training to law enforcement officials; and

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Understanding Domestic Violence as Torture, HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 116 (Rebecca J. Cook, ed., 1994) (comparing the physical and psychological elements of domestic violence with the definition of torture and concluding that the process, purposes, and consequences [of the two] are startlingly similar).

<sup>527</sup> G.A. Res. 39/46, *supra* note 525, at Art. 16.

<sup>528</sup> G.A. Res. 317A (III), *supra* note 8, at Art. 5.

<sup>529</sup> *Id.*, at Art. 6-7.

5. promote research and collect statistics relating to the prevalence of domestic violence.

Article 4(g) of the Declaration instructs states to work to provide “specialized assistance, health and social services, facilities and programs as well as support structures” for women subjected to violence and their children and also to take “appropriate measures to promote their safety and physical and psychological rehabilitation.”

A recent report by the UN Secretary General’s Office on violence against women reaffirms the standards set out in DEVAW and further clarifies how inaction by the state violates its obligations under international law:

*State inaction leaves in place discriminatory laws and policies that undermine women’s human rights and disempowers women. It shifts responsibility for preventative and remedial measures to [non-governmental organizations] and other groups in civil society. It also functions as approval of the subordination of women that sustains violence and acquiescence in the violence itself. State inaction with regard to the proper functioning of the criminal justice system has particularly corrosive effects as impunity for acts of violence against women encourages further violence and reinforces women’s subordination. Such inaction by the State to address the causes of violence against women constitutes lack of compliance with human rights obligations.*<sup>530</sup>

These rights provided by the treaties are also set forth in the Constitution of Tajikistan. The Constitution includes the right to life, liberty, the security of person, the right to an effective remedy, as well as a prohibition against torture.<sup>531</sup>

The Tajik government has failed to protect women from private perpetrators of violence. The government of Tajikistan is not in compliance with its obligations under the ICCPR, CEDAW and CAT and its failure to

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<sup>530</sup> U.N. Doc. A/61/122/Add.1, *supra* note 519 at 34.

<sup>531</sup> TAJ. CONST. Arts. 5, 18, 21.

protect the human rights of women contravenes the principles of the UDHR. As outlined in this report, the Tajik government has failed to create a system where women who suffer violence at the hands of their partners are protected, or where the perpetrators are punished. Despite the widespread nature of the problem, the militia does not adequately respond to domestic violence. Victims are often ignored or blamed for the violence and encouraged to go home and reconcile. When the militia does respond to an assault, the perpetrators are almost never removed from the home. The militia's lack of response to domestic violence leaves women in potentially dangerous situations with no security.

The Tajik government is denying women their right to an effective remedy for acts violating their fundamental human rights. Tajikistan is required to provide an effective and adequate remedy for violations of fundamental human rights under Article 2 of both the ICCPR and CEDAW. As detailed in this report, the Tajik legal system does not provide an adequate remedy for victims of domestic violence. Throughout the legal process, major barriers prevent women from seeking justice. The militia does not generally investigate claims of domestic violence; rather, officers view it as a "family matter" and discourage reporting. Women who do report violence to the militia are often shamed and many have trouble getting the required form to visit a forensic doctor. The forensic examination system acts as a barrier for women seeking justice, and often proves insurmountable to women who do not have the economic resources or the freedom of movement to get a timely examination. Furthermore, the forensic classification of injuries does not adequately reflect the seriousness of a domestic assault. Based on the forensic classification, most instances of domestic violence do not qualify for prosecution by the public prosecutor. Women seeking

justice are required to privately prosecute their own cases. Even if a woman is in a position to take her case to court, she is repeatedly asked whether she would be willing to reconcile, thus ending the case. The perpetrator is rarely removed from the home during the pendency of the case, and economic dependency precludes most women from seeking alternative living arrangements. At every step in the legal process, women are discouraged from pursuing the matter and are encouraged to reconcile with their husbands, even if they continue to subject their spouses to further violence. Women in Tajikistan do not have an effective remedy under the Tajik legal system as it is currently being administered.

The government of Tajikistan has failed to meet the international standards set forth in DEVAW. As described in detail in this report, the government response to domestic violence fails to adequately provide safety for women or accountability for perpetrators by failing to properly investigate and punish domestic violence. Criminal justice personnel are inadequately trained to respond to the complexities of domestic violence. Although government officials gave The Advocates limited access to statistics, the interviewers were repeatedly informed that the crime statistics were not sorted to track levels of domestic violence. Virtually no government-funded programs provide services to victims of domestic violence.



## VII. RECOMMENDATIONS

Based on the findings of its delegation, The Advocates recommends the following:

1. The government of Tajikistan should provide victims of domestic violence with equal and effective access to the criminal justice system, and redress for the harm that they have suffered. To this end, the government should:
  - a. Consider amending the Criminal Procedure Code to include physical assault within the category of cases a public prosecutor can prosecute.
  - b. Consider amending the Criminal Code to include provisions that specifically address and facilitate prosecution of domestic violence.
  - c. Consider amending the Criminal Procedure Code so that reconciliation is not a bar to prosecution of domestic violence.
  - d. Consider directing judges to compel reluctant third-party witnesses to appear and testify in criminal prosecutions for domestic violence.
  - e. Consider amending the forensic regulations to reflect more accurately the specific nature and severity of injuries women suffer in domestic violence cases.
  - f. Consider accepting medical documentation from primary care physicians and hospitals as evidence in cases of domestic violence instead of a forensic report.
  - g. Evaluate whether the existing punishment structure for domestic violence offers an effective and appropriate remedy to women who are victims of domestic violence and consider the possibility that the imposition of fines in such cases further penalizes women.
2. The government of Tajikistan should consider an alternative legal provision in addition to the criminal laws that would provide an immediate remedy for domestic violence victims with a focus on safety.
3. The government of Tajikistan should undertake educational programs at all levels of the judicial system to improve their understanding of the problem of domestic violence, and how to evaluate the level of risk and the needs of women in such situations. Attendance at such trainings should be mandatory and ordered from the highest levels of government.
4. The government of Tajikistan should undertake educational programs at all levels of the prosecutor's office to improve their understanding of the problem of domestic violence, and how to evaluate the level of risk and the needs of women in such situations. Attendance at such trainings should be mandatory and ordered from the highest levels of government.
5. The government of Tajikistan should undertake educational programs at all levels of the militia, including volunteer militia, to improve their understanding of the problem of domestic violence, and how to evaluate the level of risk

and the needs of women in such situations. Attendance at such trainings should be mandatory and ordered from the highest levels of government.

6. The government of Tajikistan should direct militia to enforce the Criminal Code and not mediate cases of domestic violence.
7. The government of Tajikistan should direct militia to remove batterers from the scene in cases of domestic violence to ensure the safety of victims.
8. The government of Tajikistan should undertake educational programs at all levels of the health care system, including forensic physicians, to improve their understanding of domestic violence, how to screen for and document its existence, and the needs of women in such situations. Attendance at such trainings should be mandatory and ordered from the highest levels of government. After such training, medical personnel should be directed to screen all patients for domestic violence.
9. The government of Tajikistan should collect data and maintain accurate statistics on the nature and extent of domestic violence, as well as encourage research on this human rights violation.
10. The government of Tajikistan should collect data and maintain accurate statistics on the nature and extent of suicide related to domestic violence, as well as encourage research on the problem.
11. The government of Tajikistan should collect data and maintain accurate statistics on the nature and extent of miscarriages as a result of domestic violence, as well as encourage research on the problem.
12. The government of Tajikistan should evaluate whether the existing inheritance and property laws and customs ensure women equal and effective access to utilization of land and other resources.
13. The government of Tajikistan should provide an effective legal process for women in unregistered marriages to seek rights to property and child support.
14. The government of Tajikistan should conform to the Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation 19, the Declaration on the Elimination of Violence against Women and the Beijing Platform for Action in all of its work toward the elimination of violence against women and the provision of services for victims of such violence. Specifically, the government should work to ensure that specialized assistance is available to women subjected to violence, in particular women who have children, including assistance in child care, counseling, health services, financial support and housing assistance.
15. The government of Tajikistan should encourage and facilitate, including by providing financial support, the efforts of non-governmental organizations that assist women in cases of domestic violence and should cooperate with such organizations in their work.
16. The government of Tajikistan should provide financial support toward the creation and

operation of domestic violence shelters throughout the country.

17. The government of Tajikistan should fully fund government agencies that work with victims of domestic violence.
18. The government of Tajikistan should distribute information about domestic violence resources in a variety of settings, including brochures about basic health information, to enable women to receive this information without it being obvious to their batterers.
19. The government of Tajikistan should undertake a public education campaign, in cooperation with local non-governmental organizations working on the issue, to improve awareness and understanding of the problem of domestic violence, its criminality, the right of women to be free from violence in the home, the severe and far-reaching consequences of domestic violence and the needs of women in such situations.



## VIII. CONCLUSION

The Tajik government does not effectively protect each woman's fundamental right to be free from violence. By excusing domestic violence as a private family matter explained by custom or mentality, instead of addressing it as a criminal matter and providing safety for the victims and accountability for the perpetrators, the Tajik government has demonstrated a serious lack of understanding of the gravity of domestic violence. By inadequately providing redress for domestic violence crimes through its existing legal, economic and social structures, the government of Tajikistan has not upheld its obligations as a member of the United Nations or its binding legal obligations under international human rights law.



## APPENDIX A: UNOFFICIAL TRANSLATIONS OF TAJIK LEGAL PROVISIONS

### CONSTITUTIONAL PROVISIONS

**ARTICLE 1:** The Republic of Tajikistan is a sovereign democratic, rule of law, secular, and united state. Tajikistan is a social state whose policies are directed towards creating conditions to ensure a worthwhile life and the free development of the person. "Republic of Tajikistan" and "Tajikistan" are equal in meaning.

**ARTICLE 5:** Life, honor, dignity, and other natural human rights are inviolable. The rights and liberties of the person and citizen are recognized, observed, and protected by the state.

**ARTICLE 10:** The Constitution of Tajikistan possesses supreme legal power, and its norms have direct application. Laws and other legal acts that are contrary to the Constitution do not have legal force. The government and all its organs, officials, citizens, and citizens' associations are obligated to comply with and execute the Constitution and laws of the republic. International legal acts recognized by Tajikistan are a constituent part of the legal system of the republic. In the case of a discrepancy between the laws of the republic and recognized international legal acts, the norms of the international legal acts are applied. Laws and international legal acts recognized by Tajikistan enter into force after their official publication.

**ARTICLE 17:** All persons are equal before the law and the courts. The government guarantees the rights and freedoms of every person regardless of ethnicity, race, sex, language, faith, political beliefs, education, or social or property status. Men and women have equal rights.

**ARTICLE 18:** Every person has the right to life. No person may be deprived of life except by the verdict of

a court for a very serious crime. The inviolability of the individual is guaranteed by the government. No one may be subjected to torture or cruel and inhuman treatment. Forced medical and scientific experiments on people are prohibited.

**ARTICLE 21:** The law protects the rights of victims. The government guarantees the victim judicial protection and compensation for harms suffered by him or her.

**ARTICLE 33:** As the foundation of society, the family is under the protection of the government. Each person has the right to start a family. Men and women who have reached the age of marriage have the right to enter freely into marriage. In familial relations and in the event of abrogation of a marriage, spouses have equal rights. Polygamy is forbidden.

**ARTICLE 34:** Mothers and children are under the special protection and patronage of the government. Parents are responsible for raising children, and adult children who are able to work are obligated to care for their parents. The government takes care to protect orphans and the disabled, as well as their upbringing and education.

### CRIMINAL CODE PROVISIONS

#### **ARTICLE 109.** Driving to Suicide

(1) Driving an individual to suicide or attempted suicide by threat, cruel treatment, or by systematically degrading the dignity of a victim is punishable by imprisonment for a period of three to five years.

(2) The same actions committed in regard to a person, who was in financial or other dependence of the guilty person, or committed in regard to a minor is punishable by imprisonment for a period of five to eight years.

**ARTICLE 110.** Intentional Major Bodily Injury

(1) Intentional major bodily injury which is life-threatening, or which has led to the loss of sight, speech, hearing, or any body organ, or inability of an organ to function, or expressed in permanent damage to the face, as well as other injury to health which is life-threatening or has caused a health disorder along with a stable loss of no less than one-third of normal capacity to work, or the complete loss of professional capacity to work, in cases in which the profession is known to the perpetrator, or caused the miscarriage, mental illness, sickness of drug dependence or taxicomania is punishable by imprisonment for a period of five to ten years.

(2) The same actions, if committed:

- a) towards two or more individuals;
- b) in relation to an individual or his relatives in connection with carrying out of his official or public duties;
- c) in relation to a minor or individual who is helpless and whose helplessness is known by the guilty person;
- d) in relation to a kidnapped person or hostage;
- e) in relation to a woman being pregnant knowingly for an offender;
- f) with extreme brutality;
- g) in a manner dangerous for the lives of many people;
- h) by a group of individuals or in a conspiracy;
- i) in the process of mass disorder;
- j) with a mercenary or by hire, as well as along with robbery, extortion, or banditry;

k) out of hooligan motives;

l) with the goal of hiding another crime or facilitating the commitment of another crime, as well as along with rape or forcible actions of sexual character;

m) on the ground of national, racial, religious, regional hatred or hostility, or vendetta;

n) with the goal of using the organs or tissues of a victim;

o) repeatedly or by an individual who has earlier committed murder or intentional major bodily injury except for the actions provided in Articles 105, 106, 107, and 108 of the present Code, -

is punishable by imprisonment for a period of eight to fifteen years simultaneously with confiscation of property or without it.

(3) The actions, specified in paragraphs one and two of the present Article, if they:

- a) are committed by an organized group;
- b) are committed by a dangerous or especially dangerous recidivist and;
- c) carelessly have led to the death of a victim, -

are punishable by imprisonment for a period of twelve to twenty years simultaneously with confiscation of property.

**ARTICLE 111.** Intentional Minor Bodily Injury

(1) Intentional minor bodily injury which is not life-threatening and does not result in consequences provided for in Article 110 of the present Code, but causes continuing health problems or major physical disability with the loss of one third of the capacity to



work is punishable by up to two years of correctional labor, or up to three years of imprisonment.

(2) The same action, if committed:

- a) towards two or more individuals;
- b) in relation to an individual or his relatives in connection with the carrying out of his official, civil, or public duties;
- c) by a group of individuals or in a conspiracy;
- d) with extreme brutality;
- e) in the process of mass disorder;
- f) on the ground of national, racial, religious, regional hatred or hostility, as well as vendetta;

by an individual who has earlier committed major bodily injury or murder specified in Articles 104 and 110 of the present Code is punishable by imprisonment for a period of three to five years.

#### **ARTICLE 112. Intentional Bodily Injury of Lesser Degree**

Intentional bodily injury of lesser degree leading to a short-term health disorder, or minor permanent loss of work capacity is punishable by a fine of up to 300 times the minimum monthly wage or up to two years of correctional labor, or up to four months of confinement.

#### **ARTICLE 116. Assault**

Assault or committing other actions of violence, which caused physical pain, but did not lead to the consequences specified in Article 112 of the present Code, are punishable by a fine of up to 300 times the minimum monthly wage, or up to three months of confinement.

#### **ARTICLE 117. Torture**

(1) Causing physical or mental suffering by systematic assault or other forcible means, if it does not lead to the consequences specified in Articles 110 and 111 of the present Code, is punishable by up to three years of imprisonment.

(2) The same actions, if committed:

- a) towards two or more individuals;
- b) in relation to an individual or his relatives in connection with the carrying out of his official, civil, or public duties;
- c) in relation to a minor or individual known to the offender as being careless or financially or otherwise dependent on the an offender, as well as an individual kidnapped or
- d) taken as a hostage;
- e) in relation to a woman known to be pregnant;
- f) by a group of individuals or in a conspiracy;
- g) by hire;
- h) by torture or cruelty;
- i) on the ground of national, racial, religious, regional hatred or hostility, as well as vendetta, - is punishable by imprisonment for a period of five to eight years.

#### **ARTICLE 237. Hooliganism**

(1) Hooliganism, i.e. intentional actions, rudely violating the public order , accompanied by violence to citizens, as well as destroying and damaging property, is punishable by a fine in the amount of 500 to 1000 times of the monthly minimum wage or by confinement

for a period of three to six months, or by up to two years' imprisonment.

(2) The same acts, if they :

a) cause minor bodily injury;

b) are committed by a group of persons, a group of persons in a conspiracy, or by an organized group, or repeatedly;

c) are connected with obstructing an officer or another person carrying out their obligations for the protection of the public order;

d) neglect public moral norms, -

are punishable by deprivation of freedom for a period of two to five years.

(3) Hooliganism committed:

a) by using firearms or other objects made for inflicting wounds;

b) by a dangerous or especially dangerous recidivist, -

is punishable by deprivation of freedom for a period of five to ten years.

**ARTICLE 346. Knowingly Providing False Information**

(1) Knowingly providing false information about a crime is punishable by a fine in the amount of 500 to 1000 times the minimum monthly wage or confinement for a period of three to six months.

(2) The same action:

a) connected with felony charges;

b) that manufactures artificial evidence to prove the charge;

c) for mercenary motives;

d) in the interests of an organized group, -

is punishable by correctional labor for up to two years or deprivation of freedom for up to five years with or without confiscation of property.

(3) The actions specified by paragraphs one or two of the present article:

a) committed in relation to an investigator, judge or prosecutor;

b) causing grave consequences , -

are punishable by deprivation of freedom for a period of five to seven years with confiscation of property.

**CRIMINAL PROCEDURE CODE PROVISIONS**

**ARTICLE 5.** Circumstances not subject to criminal prosecution

Criminal prosecution may not be initiated, and, if initiated, must be terminated, when:

1) the criminal act is lacking;

2) the elements of the crime are lacking;

3) the statute of limitations has run;

4) an amnesty has been granted, if such amnesty eliminates punishment for the committed act, and also in the event of clemency to a particular individual;

5) the individual who has committed the act that is dangerous to society has not reached the age of accountability for criminal actions prescribed by law;

6) the victim and the accused reconciled, in cases initiated exclusively pursuant to the complaint by the

victim, except in cases governed by Chapters Two and Three of Article 104 of this Code;

7) the complaint by the victim is lacking, in cases where prosecution may be initiated exclusively pursuant to the victim's pressing charges, except in cases governed by Chapter Three of Article 104 of this Code, when the prosecutor has the authority to begin a criminal case without the victim pressing charges;

8) the accused is deceased, except where the initiation of the criminal case is necessary to rehabilitate the deceased or where the initiated case concerns other parties, and new circumstances have arisen;

9) the sentence against the individual concerning the same accusation has taken effect or a decision or a ruling has been issued to terminate the criminal case on the same basis (the Ruling of the Presidium of the Supreme Court of the Republic of Tajikistan, August 25, 1983);

10) there exists a valid ruling by an investigative body, an investigator, or a prosecutor, regarding termination of the criminal case on the same basis, except where a court presiding over the criminal case determines that criminal prosecution is necessary (the Ruling of the Presidium of the Supreme Court of the Republic of Tajikistan, August 25, 1983).

If the circumstances outlined in subsections one, two, three, and four of this Article become evident during the initial stages of a criminal investigation, the court must bring the process to a closure, and issue an acquittal in cases subject to subsections one and two, or a conviction without imprisonment in cases subject to subsections three and four.

Termination of criminal prosecution pursuant to circumstances outlined in subsections three and four is not allowed when the accused protests such

termination. The criminal case will proceed in the manner prescribed.

**ARTICLE 5.1.** Termination of a criminal case pursuant to a change in circumstances

The court, the prosecutor, and also the investigator and the investigative body pursuant to the permission by the prosecutor, may terminate a criminal case if it is determined that by the time of the commencement of the criminal investigation, preliminary investigation or court hearing, the action will no longer be considered dangerous to society or the individual will no longer be considered dangerous to society (the Ruling of the Presidium of the Supreme Court of the Republic of Tajikistan, July 27, 1972 and August 25 1983).

**ARTICLE 5.2.** Elimination of criminal punishment pursuant to the remorse of the accused

The court, the prosecutor, and also the investigator and the investigative body pursuant to the permission by the prosecutor, may, in accordance with Article 72 of the Criminal Code of the Republic of Tajikistan, refuse to prosecute a criminal case or terminate a criminal case initiated against an individual who has committed a crime of a lower degree if such individual demonstrates remorse for the committed act.

Prosecution of other criminal acts in cases described in Chapter One of this Article, may be terminated pursuant to the provisions of the Special Chapter of the Criminal Code of the Republic of Tajikistan.

The accused must be provided with the basis of any rulings and given the right to protest any rulings, until a refusal to prosecute or a termination of a criminal matter.

The accused must be informed of a refusal to prosecute or a termination of a criminal matter, and is

entitled to an appeal of the ruling within five days of the court ruling or a decision by the prosecutor, investigator or investigative body, to a higher court or a prosecutor if a higher rank.

A refusal to prosecute or a termination of a criminal matter on the bases described in Chapter One of this Article, is not permitted if the accused protests. (Act № 576 of May 21, 1998).

**ARTICLE 5.3.** Elimination of criminal punishment pursuant to reconciliation with the victim

The court, the prosecutor, and also the investigator or the investigative body pursuant to the permission by the prosecutor, may refuse to initiate a criminal case or terminate criminal prosecution against an individual who has committed a crime of a lower degree for the first time, if such individual reconciled with the victim and paid damages for the inflicted harm. (Act № 576 of May 21, 1998).

**ARTICLE 122.** Agencies of preliminary inquiries and investigation

Preliminary criminal investigations are conducted by investigators of prosecutorial agencies, investigators of national security agencies, and investigators of tax authorities, and also investigators of internal affairs agencies and investigators of the Drug Control Agency of the Cabinet of the President of the Republic of Tajikistan (Act № 865 of December 10, 1999, Act № 99 of July 25, 2005).

Preliminary investigation of crimes stipulated in Articles 104-109, 121, 122, 123, 124, 127-131, 133, 138, 141, 142-164, 168, 169, 170, 172-178, 183, 186-188, 190, 191, 198, 199, 207-211, 217, 220-229, 231, 233, 236, 245, 246, 251, 257, 258, 261, 263, 274, 276, 286 (part two), 287-291, 295-297, 298-304, 314-332, 343, 344, 345-365, 367-394, 398-405 of the Criminal Code of the

Republic of Tajikistan is conducted by investigators of the prosecutorial office. (Act № 99 of July 25, 2005).

Preliminary investigation of crimes committed by judges, prosecutors, investigators, internal affairs officials, or officials of customs and tax authorities, or of the Drug Control Agency of the Cabinet of the President of the Republic of Tajikistan, and crimes committed against these individuals during fulfillment of their official duties, is conducted by investigators of the prosecutorial office. (Act № 865 of December 10, 1999).

Preliminary investigation of crimes by military personnel and individuals enlisted for military duty, and also civil personnel of the Armed Forces of the Republic of Tajikistan, committed during the fulfillment of their official duties or on the territory of a military base, is conducted by investigators of the prosecutorial office.

Preliminary investigation of crimes stipulated in Articles 179-182, 184, 189, 218, 287-290, 298-312, 335, 336, 395-397 of the Criminal Code of the Republic of Tajikistan is conducted by investigators of the internal affairs agencies.

Preliminary investigation of crimes stipulated in Articles 314, 316, 319-322 of the Criminal Code of the Republic of Tajikistan is also conducted by investigators of a security agency, if such crimes are connected with an investigation of other crimes subject to the jurisdiction of that agency.

Preliminary investigation of crimes stipulated in Articles 259, 259.1, 260, 269, 270, 271, 292, 293 (part two), 340.1 of the Criminal Code of the Republic of Tajikistan is conducted by investigators of tax authorities. (Act № 99 of July 25, 2005).

Preliminary investigation of crimes stipulated in Articles 245, 253, 261, 262, 263, 264, 265, 279, 281, 282, 283, 289 (part one), 294 (part three), 295 of the Criminal Code of the Republic of Tajikistan is also conducted by investigators of tax authorities, if such crimes are connected with an investigation of other crimes subject to the jurisdiction of such authorities. (Act № 99 of July 25, 2005).

Preliminary investigation of crimes stipulated in Articles 181, 200, 201, 202, 245, 246, 251, 257,258, 261, 263-268, 273-280, 286-291, 323-325 of the Criminal Code of the Republic of Tajikistan, and crimes not stipulated in Article 121 (parts two through seven), is conducted by investigators of the internal affairs office. (Act № 865 of December 12, 1999, Act № 99 of July 25, 2005).

Preliminary investigation of crimes stipulated in Articles 314, 316, 319-322, 340, 346, 347, 352, 353 of the Criminal Code of the Republic of Tajikistan, is conducted by investigators of the internal affairs office, if such crimes are connected with an investigation of other crimes subject to the jurisdiction of that agency.

Preliminary investigation of crimes stipulated in Articles 200, 201, 289 (part concerning contraband of narcotics and psychotropic substances) of the Criminal Code of the Republic of Tajikistan is also conducted by investigators of the Drug Control Agency of the Cabinet of the President of the Republic of Tajikistan. (Act № 865 of December 10, 1999).

Preliminary investigation of crimes committed by underage individuals, or individuals unable to realize their right to defense due to a physical or psychological impairment, is conducted by investigators of the internal affairs office.

In order to ensure a comprehensive, full and objective inquiry and preliminary investigation regardless of the subject of the investigation, the prosecutor shall, in accordance with Article 212 of this Code, be entitled to request any criminal case from the investigative body, to transfer a case to another, or to transfer the case to the prosecutorial office. (Act № 576 of May 21, 1998).

## FAMILY LAW CODE PROVISIONS

**ARTICLE 1(3).** Subject to recognition shall be only a marriage, entered into in the bodies for registering the civil status acts. The marriage concluded under the devotions shall have no legal meaning.

**ARTICLE 1(5).** Any forms of restricting the rights of citizens in their entering into a marriage and in their family relations because of the social, racial, ethnic, language or religious affiliation shall be prohibited.

**ARTICLE 10(1).** A marriage shall be entered into at the state registry offices.

**ARTICLE 10(4).** The marriages concluded by devotions on the territory of the Republic of Tajikistan before December 19, 1929, shall be equated with the marriages registered by the civil acts registry offices.

**ARTICLE 11(1).** A marriage shall be concluded in the presence of the persons, entering into the marriage, after the expiry of a term of one month from the date of their filing an application to the registry offices.

In exceptional cases, if there are valid objective reasons and reasons related to the personality of those entering into a marriage or their parents (adopters) for doing this, a marriage can be concluded before the expiry of one month term, and this term may also be extended, but not by more than three months.

**ARTICLE 13.** The Marriageable Age

1. The marriageable age shall be established as seventeen years.

2. In exceptional cases, the court at a request of persons wishing to enter into a marriage may lower the marriageable age established for men and women, but not by more than one year.

3. The applications shall be considered by the court in terms of a special proceeding at the residence of the person whose age is lowered. The rights to apply to a court on the issue shall be evolved at the age of 16.

**ARTICLE 16(2).** The marriage may be terminated by its dissolution upon an application of one or of both spouses, and also upon an application of the guardian of the spouse, recognized by the court as legally incapable.

**ARTICLE 17.** Restriction of the Husband's Right to File a Claim for the Dissolution of the Marriage

The husband shall not have the right to institute court proceedings on the dissolution of the marriage during the wife's pregnancy and in the course of one-and-a-half years after the birth of the child.

**ARTICLE 19(1).** In case there is mutual consent to the dissolution of the marriage on the part of both spouses, who have no underaged children, the marriage shall be dissolved at the registry offices.

**ARTICLE 22(1).** When considering a case on the dissolution of marriage in the absence of one of the spouse's consent to the dissolution of the marriage, the court shall take measures for reconciling the spouses and shall have the right to put off the proceedings of the case, having fixed for the spouses a three-month reconciliation term.

**ARTICLE 32.** The Spouses' Equality in the Family

1. Each of the spouses shall be free to choose the kind of occupation, activities and trade, as well as the places of stay and of residence.

2. The issues of motherhood and of fatherhood, of the children's upbringing and education, and other issues, involved in the life of the family, shall be resolved by the spouses jointly, proceeding from the principle of spousal equality.

3. The spouses shall be obliged to build their relations in the family on the basis of mutual respect and mutual assistance, to facilitate the welfare and the consolidation of the family, and to take care of their children's well-being and development.

**ARTICLE 34.** The Spouses' Joint Property

1. The property acquired by the spouses during their marriage shall be their joint property.

2. To the spouses' joint property shall be referred the incomes of each of the spouses from his labor activity, from his business activity and from the results of his intellectual activity, the pensions, the allowances and also the other monetary receipts, things, deposits and securities, shares and any other movable or immovable property acquired by the spouses in the period of their marriage, regardless of the name of the spouses under which it was acquired (or the monetary means, used to acquire it).

**ARTICLE 66.** Exercising Parental Rights by the Parent, Residing Apart from the Child

1. The parent, residing apart from the child, shall have the right to communicate with the child and has a duty to take part in his upbringing and in resolving the issue of the child's receiving an education.

The parent, with whom the child lives, shall not prevent the child's communication with the other parent.

2. The parents shall have the right to conclude a written agreement on the way the parent, residing apart from the child, may exercise his parental duties.

If the parents cannot reach an agreement, the dispute shall be resolved in court with the participation of the guardianship and trusteeship body, upon the claim of the parents (of one of them).

3. In the case of non-abidance by the court decision, the measures, stipulated by the civil procedural legislation, shall be applied to the guilty parent. In the case of persistent non-fulfillment of the court decision, the court shall have the right, upon the claim of the parent residing apart from the child, to make a decision passing the child over to him, proceeding from the child's interests and taking into account his opinion.

4. The parent, residing apart from the child, shall have the right to obtain information on his child from the educational, medical institutions and other institutions. The information may be refused, only if the parent presents a threat to the child's life and health. The refusal to provide information may be disputed in court.





## APPENDIX B: GLOSSARY

**DOMESTIC VIOLENCE:** The use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. The violence can take the form of pushing, hitting, choking, slapping, kicking, burning or stabbing.

**JAMOAT:** A local village level government office.

**KHUKUMAT:** Government of Tajikistan, also district government office.

**MAHALLAH:** A traditional community structure, a local neighborhood council.

**MILITIA:** Law enforcement agency, police officer.

**MULLAH:** A Muslim teacher or reader of the Qur'an, and traditionally an expert on Islamic law.

**NIKOH:** Unregistered, referring to the status of a marriage or wife. *Nikoh* marriages are solemnized by an Islamic religious ceremony but are not registered with the state.

**OBLAST:** Region or Province, an administrative and territorial division in Tajikistan.

**QALIM:** Bride price, an amount of money, property, or wealth paid to the parents of a woman for the right to marry their daughter.

**TALOQ:** To repudiate. According to Islamic tradition, if a husband says *Taloq* three times, the marriage is terminated.





## THE ADVOCATES FOR HUMAN RIGHTS ADDENDUM TO *DOMESTIC VIOLENCE IN TAJIKISTAN* TWO YEAR UPDATE: OCTOBER 2008

This Addendum is a compilation of current conditions and new developments in Tajikistan, based upon The Advocates' research and interviews via email and telephone. The Advocates for Human Rights congratulates the domestic violence advocates in Tajikistan for their remarkable progress in just two years, and for promising developments in several areas, detailed below. Continuing concerns are also noted.

### A. COUNTRY CONDITIONS IN 2008

Tajikistan continues to face serious economic challenges, complicated by severe climate conditions in the last two years which created additional hardships for many Tajik families. Much of the country's infrastructure remains in disrepair. Corruption continues to be a significant barrier to general economic improvement.<sup>532</sup>

Economic experts have noted that women are making an increased contribution to the economy and to the family budget.<sup>533</sup> However, the advancement of women as equal participants in Tajikistan's transition to a market economy has been jeopardized by a regression

<sup>532</sup> Country Profile: Tajikistan, 10 March 2008, at <http://www.fco.gov.uk/en/about-the-fco/country-profiles/asia-oceania/tajikistan?profile=all>.

<sup>533</sup> *Women and Men in the Republic of Tajikistan*, Digest by Tajikistan State Statistics Office, 2006 at [http://www.untj.org/files/gender/Men&Women\\_eng.pdf](http://www.untj.org/files/gender/Men&Women_eng.pdf), last acc. 12 September 08.

in the participation of girls in education at all levels in Tajikistan.<sup>534</sup> In addition, the number of *nikoh* or religious marriages has increased, as has the number of babies delivered by girls aged 15-17.<sup>535</sup> Many of these marriages are unregistered, which, as noted in *Domestic Violence in Tajikistan*, is a complicating factor that increases a woman's vulnerability to an abusive situation by making it harder to obtain housing or support after leaving an abuser. The legal age of marriage in Tajikistan is 17, and a group of non-governmental organizations has recommended that the government of Tajikistan increase the legal age to 18, with clearly defined exceptions, in order to reduce the number of early marriages and to increase the length of a young girl's education.<sup>536</sup>

### B. PROMISING DEVELOPMENTS AND CONTINUING CONCERNS

#### 1. PROMISING DEVELOPMENT: THE DRAFT LAW

A draft Law "On Protection from Family Violence" is in process, with a committed working group. The

<sup>534</sup> Briller, Vladimir, *Tajikistan country case study, 2008 Global Monitoring Report, Country Profile prepared for the Education for All Global Monitoring Report 2008*, at <http://unesdoc.unesco.org/images/0015/001555/155515e.pdf>, last acc. 12 September 08.

<sup>535</sup> *Supra* at 533.

<sup>536</sup> Non-governmental Organizations of Tajikistan: *Shadow Report on the Realization of the Convention on the Elimination of All Forms of Discrimination against Women*, Dushanbe, November 2006.

Advocates would welcome the opportunity to do a detailed commentary on all aspects of the draft law. For preliminary comments about the draft law received, see the Appendix.

### CONTINUING CONCERNS: LAW NOT YET INTRODUCED INTO PARLIAMENT

The draft Law “On Protection from Family Violence” has not yet been introduced in Parliament, despite assurances to the United Nations Special Rapporteur on Violence against Women that it would be introduced in the summer of 2008.<sup>537</sup>

Additionally, no changes to Family Code or to Criminal Code or Criminal Procedure Code have been made, which could have made prosecution of violent offenders more feasible for domestic violence victims.<sup>538</sup>

### 2. PROMISING DEVELOPMENT: AN INCREASE IN VITAL STATISTICS KEPT BY THE TAJIKISTAN GOVERNMENT

The compilation and disaggregation of statistics relating to domestic violence are important requirements for effective implementation of law and policy against domestic violence. *Domestic Violence in Tajikistan* reported that no official statistics were published specifically on domestic violence.<sup>539</sup> The government of Tajikistan’s State Statistics Office prepared a Digest which contains statistics from 2000-2006 on types of crimes and numbers of convicted

persons, but these statistics are not disaggregated for cases involving intimate partner violence.<sup>540</sup>

However, the Digest does contain information on public attitudes and acceptance of domestic violence.<sup>541</sup> According to the Digest, most women aged 15-49 believe that a husband has the right to beat a wife.<sup>542</sup> The Digest also reported that in the past 5 years, the 12 crisis centers in Tajikistan have received 17,676 applications for assistance or information, and that over 77% of these applications have been from women. It stated that psychological violence is most frequently reported (56.5% in 2005), and physical violence is the next most frequently reported (22.3% in 2005).

Statistics such as these will inform not only government policy but also NGO service plans and public awareness campaigns.

In addition, the Digest detailed the causes of accidental deaths in 2005 and noted countrywide statistics on suicides.<sup>543</sup> It stated that most victims of accidental deaths are men, yet “[a]t the same time, hundreds of women die from fire and flame accidentally.” Deaths caused by fire and flame constituted 6% of accidental deaths in Tajikistan in 2005. 11% of all deaths in 2005 were listed as suicides.

### CONTINUING CONCERNS

Although detailed statistics were kept on the types of violence experienced by persons applying to crisis centers, statistics were not reported on the gender of the perpetrator and the victim, and the relationship

<sup>537</sup> See : “UN Special Rapporteur on Violence against Women Concludes Visit to Tajikistan” at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/03E589518A1B6415C125745200742F4F?opendocument>; last acc. 12 September 08

<sup>538</sup> Interview with international NGO employee, 4 September 08

<sup>539</sup> See page 41 of *Domestic Violence in Tajikistan*

<sup>540</sup> *Supra*, note 533

<sup>541</sup> *Supra*, note 533.

<sup>542</sup> *Id.*

<sup>543</sup> These statistics were not available when *Domestic Violence in Tajikistan* was written. See p. 15 of *Domestic Violence in Tajikistan*.

between them. Additionally, the Digest did not contain any statistics on criminal prosecutions or convictions for domestic fatalities or nonfatal domestic violence. This information is very important for those making and enforcing domestic violence law and policy.

Militia, forensic physicians and medical providers should investigate the deaths caused by fire and flame. Prosecutors should aggressively investigate cases which warrant “driving to suicide”<sup>544</sup> charges. Public awareness campaigns should continue to try to prevent these deaths.

### **3. PROMISING DEVELOPMENT: TRAININGS AND PROTOCOLS ON DOMESTIC VIOLENCE HAVE BEEN INITIATED FOR MILITIA AND MEDICAL PROVIDERS**

The Advocates has learned that numerous trainings for militia and medical providers have been taking place in certain areas of Tajikistan since 2005. Training modules for police and for medical providers were printed in April of 2006 and have been distributed during the last two years. The medical provider module was distributed in Dushanbe, Khatlon and the Sughd Region. Additional modules for medical providers were printed in August, 2008, and new trainings are planned.

The police training module was distributed through trainings in the Militia Training Center and the Academy of the Militia, and at trainings for District police in Dushanbe and Khatlon.<sup>545</sup> Trainings have also been provided by different NGOs.<sup>546</sup>

### **CONTINUING CONCERNS**

<sup>544</sup> Taj. Criminal Code Art. 109. See also pages 16 and 29 of *Domestic Violence in Tajikistan*.

<sup>545</sup> Email from NGO employee, 10 September 08

<sup>546</sup> Email from international NGO employee, 4 September 08

These trainings, while commendable, should be extended to the militia and medical providers, and especially forensic physicians, throughout the entire country of Tajikistan. In some regions of Tajikistan, there are no trainings for medical providers on screening and treatment protocols for domestic violence victims.<sup>547</sup> Training should begin in medical colleges for all medical professionals.

Trainings should also be conducted for prosecutors and judges on domestic violence law and policy throughout Tajikistan.

### **4. PROMISING DEVELOPMENT: DATA COLLECTION BY CRISIS CENTERS ON DOMESTIC VIOLENCE CASES IS IMPROVING**

Some crisis centers are providing information on domestic violence cases to their local police. In compliance with a May 2006 decree<sup>548</sup> by the Ministry of the Interior that compelled state bodies to develop a response to information provided to them by crisis centers.<sup>549</sup> One crisis center has developed a data base to collect and analyze data from the other centers, and has trained the staff in other centers to do the same.<sup>550</sup> This NGO plans to publish a monitoring report on women and domestic violence by the end of 2008.<sup>551</sup> Police in some areas have specialized departments which formally record and examine all claims of domestic violence.<sup>552</sup>

<sup>547</sup> Email from domestic violence advocate, 9 September 08

<sup>548</sup> The World Organization Against Torture (OMCT) et al., *Human Rights Violations in Tajikistan: Alternative Report to the United Nations Committee Against Torture (November 2006)* at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/omct\\_taji.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/omct_taji.pdf).

<sup>549</sup> Email from international NGO employee, 4 September 08

<sup>550</sup> Email from international NGO employee, 4 September 08

<sup>551</sup> Email from international NGO employee, 4 September 08

<sup>552</sup> *Tajik Women's Groups Press for Domestic Violence Law*, at [http://www.iwpr.net/?p=rca&s=f&o=341537&apc\\_state=henprca](http://www.iwpr.net/?p=rca&s=f&o=341537&apc_state=henprca), last acc. 12 September 08

### CONTINUING CONCERN

There is no centralized collection of data from crisis centers which could be provided to the MOI or to the State Statistical Committee. Not all crisis centers use the database provided to them.

#### 5. PROMISING DEVELOPMENT: NGOS, UNITED NATIONS ORGANIZATIONS AND TAJIKISTAN GOVERNMENT OFFICIALS HAVE FORMED COALITIONS FOR EFFECTIVE CHANGE

Non-governmental organizations have joined forces to broaden the range of services offered to victims across Tajikistan.<sup>553</sup> A coalition of NGOs, created in 2005, organized to promote the implementation of public policies to end violence against women. The coalition obtained an agreement with the Ministry of the Interior to improve the collection of statistics on domestic violence and to create a working group to draft the Law on Social and Legal Protection on Domestic Violence.

The coalition also worked to raise public awareness of domestic violence.<sup>554</sup>

Another coalition of United Nations Organizations and local NGOs has a broad mandate to promote gender equity and holds regular meetings with the Committee on Women and Family Affairs, with the Women's Group in the Parliament, and with local NGOs. They participated in consultations on the CEDAW *Concluding Recommendations for Tajikistan*<sup>555</sup> and helped to develop the Digest *Women and Men in*

*Tajikistan*.<sup>556</sup> They consulted with the NGOS supporting the Working Group on the draft Law on Social and Legal Protection on Domestic Violence, and trained NGOs to collect domestic violence statistics. They held round tables with religious leaders, community members and government officials.<sup>557</sup>

Other NGOs worked with international and local government officials to undertake an ambitious program for the "16 Days of Activism Against Gender Violence" in 2007 in Tajikistan. Activities included: round tables of crisis center representatives, national broadcasts of films on domestic violence, meeting with University students and many local events in communities across Tajikistan to raise awareness on domestic violence and to strengthen local work.<sup>558</sup>

#### CONTINUING CONCERNS: NON-GOVERNMENTAL ORGANIZATIONS ARE UNDERFUNDED

The lack of sustainability is a crucial issue for NGOs and the services they provide. The government has not allocated sufficient funding for NGOs in their work against domestic violence, or for shelters for victims of domestic violence. There is still only one domestic violence shelter in Tajikistan-- a serious indicator of the lack of government response.<sup>559</sup>

#### 6. PROMISING DEVELOPMENT: SPECIAL RAPPORTEUR'S VISIT FOCUSES CONCERN ON PLIGHT OF TAJIK WOMEN

<sup>553</sup> "Tajikistan", from Asian Development Bank Gender and Development, at <http://www.adb.org/gender/working/taj002.asp>.

<sup>554</sup> From: UNDP: Civil Society and Human Development in Tajikistan, at [http://cfapp1-docs-public.undp.org/eo/evaldocs1/adr/eo\\_doc\\_597030542.pdf](http://cfapp1-docs-public.undp.org/eo/evaldocs1/adr/eo_doc_597030542.pdf), last acc 12 September 08.

<sup>555</sup> See: <http://daccessdds.un.org/doc/UNDOC/GEN/N07/243/56/PDF/N0724356.pdf?OpenElement>.

<sup>556</sup> *Women and Men in the Republic of Tajikistan*, Digest by Tajikistan State Statistics Office, 2006 at [http://www.untj.org/files/gender/Men&Women\\_eng.pdf](http://www.untj.org/files/gender/Men&Women_eng.pdf), last acc. 12 Sept 08.

<sup>557</sup> Email from international NGO employee, 4 September 08. See also [www.untj.org/gender](http://www.untj.org/gender).

<sup>558</sup> See [www.untj.org/gender](http://www.untj.org/gender).

<sup>559</sup> Email from domestic violence advocate, 10 September 08

In May of 2008, the United Nations Special Rapporteur on Violence against Women visited Tajikistan and called for measures to enhance women's access to justice and the effectiveness and availability of services offered to victims.<sup>560</sup>

### CONTINUING CONCERNS

The government continues to erode the status of women by condoning early marriage, by allowing parents to remove their daughters from school at an early age and by allowing polygamous marriages.<sup>561</sup> All of these factors increase a woman's vulnerability to domestic violence.<sup>562</sup>

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<sup>560</sup> From: "UN Special Rapporteur on Violence against Women Concludes Visit to Tajikistan" at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/03E589518A1B6415C125745200742F4F?opendocument>; last acc. 12 September 08.

<sup>561</sup> *Anti-Discrimination Committee Urges Tajikistan to Go Beyond Declaratory Laws, Use Practical Measures, Like Quotas, To Advance Women's Equality*, Report of Committee on Elimination of Discrimination Against Women, UN General Assembly WOM/1604, 26 January 2007, at <http://www.un.org/News/Press/docs//2007//wom1604.doc.htm>.

<sup>562</sup> Email from domestic violence advocate, 10 September 08 "[s]econd or third wives...live in situations of domestic violence and have no legal rights to anything (especially property rights.)"





## APPENDIX C: PRELIMINARY COMMENTS ON DRAFT LAW “ON PROTECTION FROM FAMILY VIOLENCE”

BY THE ADVOCATES FOR HUMAN RIGHTS, SEPTEMBER 2008

**GENERAL PROVISIONS, ARTICLE 2, MAIN NOTIONS USED IN THIS LAW, PARAGRAPH 1) FAMILY:** To better protect more victims of domestic violence, the Law should also apply to *persons involved in a significant romantic or sexual relationship or who have formerly been involved in a significant romantic or sexual relationship*. Many situations of domestic abuse involve people in such relationships. Persons in dating or former intimate relationships should be included in all definitions of persons covered by the law in Articles 2 and 3.

**CHAPTER 1 GENERAL PROVISIONS, ARTICLE 2, MAIN NOTIONS USED IN THIS LAW, PARAGRAPH 5) MENTAL FAMILY VIOLENCE AND PARAGRAPH 6) ECONOMIC FAMILY VIOLENCE:** The concept of domestic violence should focus on physical harm or the threat of physical harm. Claims of mental violence are open to manipulation and to retributive counterclaims by violent perpetrators. For example, a perpetrator may claim that physical violence is an appropriate response to an act of psychological harm. Or, an angry or disgruntled violent abuser may seek protection against his wife for alleged damage of an economic nature. The priority of courts and militia should be to protect the safety of victims and their children.

**CHAPTER 3, BODIES AND ORGANIZATIONS THAT PROVIDE SOCIAL-LEGAL PROTECTION FROM FAMILY VIOLENCE AND THEIR AUTHORITIES, ARTICLE 10, AUTHORITIES OF PROSECUTOR OFFICES:** Article 10 is likely to remove the focus from victim safety and offender accountability. The prevention of domestic violence is best provided by private non-commercial organizations that work directly with victims. These organizations best know victims' needs and can most effectively represent their

interests. The government should provide support and funding to these groups.

**CHAPTER 3, ARTICLE 11, AUTHORITIES OF INTERNAL AFFAIRS BODIES:** Internal affairs bodies, or police, should focus on identifying the violent offender, holding the offender accountable for the violence, and ensuring the victim's safety. In both Bulgaria and Georgia, the Ministries of the Interior found the implementation of preventive measures to be difficult. They are now seeking amendments to their law that provide for more focus by police on enforcement and holding the offender accountable. Article 11 should specifically state that the internal affairs bodies may remove the batterer from the home in order to protect the victim. Article 11 should specifically state that the transportation of a victim to a shelter or specialized institution for medical-social rehabilitation of the victim should occur only at the request of the victim.

**CHAPTER 3, ARTICLE 12, AUTHORITIES OF OTHER GOVERNMENT BODIES AND ORGANIZATIONS RENDERING SOCIAL-LEGAL PROTECTION FROM FAMILY VIOLENCE:** The Advocates are concerned about including provisions addressing child abuse in the domestic violence law. Domestic violence laws, which are intended to provide an immediate remedy of separation and protection, are not well-suited to address child abuse. Child abuse should be addressed as a separate law containing specifically tailored remedies for neglected or abused children and procedural protections for parents. Research on the impact of domestic violence on children should be taken into consideration in any determinations about custody of children. In particular, it is important that custody of

children is at least initially given to the non-violent parent until a court may hold a hearing to determine long-term or permanent custody arrangements.

**CHAPTER 3, ARTICLE 14, AUTHORITIES OF CENTERS FOR MEDICAL-SOCIAL REHABILITATION OF VICTIMS OF FAMILY VIOLENCE, PARAGRAPH 4):** In paragraph 4, victims should be provided with rehabilitation services only upon the victims' request.

**CHAPTER 5, SPECIAL MEANS OF SOCIAL-LEGAL PROTECTION FROM FAMILY VIOLENCE, ARTICLE 25, MEASURES STIPULATED BY TEMPORARY INSTRUCTION:** Official authority to order the violent offender out of the home should be clearly stated in the temporary instruction provision. In some countries, police have found that the lack of authority to remove the violent offender from the home proved problematic to their implementation of the law. This led them to seek amendments to allow them to remove the violent offender from the home. The offender should also be prohibited from going near the workplace of the victim and the schools of the children. The offender should be prohibited from obtaining or possessing firearms. Offenders should be required to turn over their weapons to the police. An additional measure should be included which will allow the court to order support from the abuser for the victim and children during the term of the order. The failure of an offender to adhere to the temporary instruction should be a criminal offense and not an administrative responsibility.

**CHAPTER 5, ARTICLE 26, JUDICIAL PROTECTIVE WARNING:** The judicial protective warning should remain in effect for at least one year unless the offender requests a hearing. A violation of the judicial protective warning should be a criminal offense and if the abuser violates the restrictions, the criminal penalties should become more severe with each violation.

**CHAPTER 5, ARTICLE 28, MEASURES STIPULATED BY JUDICIAL PROTECTIVE WARNING:** An additional measure should be included which will allow the court to order financial support from the abuser for the victim and children during the term of the protective warning.

**CHAPTER 6, LIABILITY FOR COMMITTING FAMILY VIOLENCE, ARTICLE 30, LIABILITY FOR COMMITTING FAMILY VIOLENCE:** Persons who commit family violence should be subject to criminal liability. The Law should communicate a zero tolerance for all violence to the public.

**CHAPTER 7. FINANCING OF BODIES AND ORGANIZATIONS PROVIDING SOCIAL-LEGAL PROTECTION FROM FAMILY VIOLENCE, ARTICLE 32, SOURCES OF FINANCING:** The Government of Tajikistan must provide funding in its annual budget so that the actions by ministerial, state and local bodies under this Law may in fact be implemented. Experience has shown that adequate and regular government funding, rather than reliance upon local budgets or private grants or donors, provides the most reliable shelters and counseling networks for victims. If organizations that provide special help to victims must obtain their funding from the victim's family, this will deter the victim from seeking aid from these organizations.