



Ваш Вибор
ОБЩЕСТВЕННЫЙ СОЦЕД



Ваш Вибор
ОБЩЕСТВЕННЫЙ СОЦЕД

IPHR
International
Partnership
for Human Rights

Tajikistan: Failure to Protect Women from Domestic Violence

Joint NGO submission to CEDAW ahead of 71st Session

OCTOBER 2018



Introduction

In 2013 the UN Committee against Torture, the UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee published specific recommendations to Tajikistan concerning domestic violence. These included that Tajikistan criminalize domestic violence including psychological violence; ensure that victims can lodge complaints; ensure that complaints are investigated by the state regardless of the severity of the harm; and that perpetrators are punished appropriately. They also recommended that victims are provided with protection, shelters and separated from their abusers.

In late 2016, researchers from International Partnership for Human Rights (IPHR) visited Tajikistan to find out about the situation for victims of domestic violence and how protection had improved after the adoption of the Law on Prevention of Violence in the family. The report on the findings entitled “He left his footprint on my life’ - Domestic violence in Tajikistan: Time to right the wrongs” was issued by Nota Bene, IPHR and Polish Helsinki Foundation for Human Rights in March 2017, on International Women’s Day. In June 2018, IPHR updated research on the issue when on a mission to Tajikistan and this submission has been prepared together with Tajikistan based organizations the Public Foundation Nota Bene, Najoti-Kudakon and Vash Vybor (Your Choice) .

Our joint research shows that although the authorities have taken some positive steps since the adoption of the 2013 Law on the Prevention of Violence in the Family , such as, the approval in 2014 of the Action Plan for the Prevention of Domestic Violence and creation of some 12 posts of police officers specializing in domestic violence across the country, the Tajikistani authorities are still failing in their duty to provide effective protection to all victims of domestic violence. The tragic consequences of this failure are believed to be reflected in the alarming rise in the suicide rate among women and girls in Tajikistan in recent years.¹

One issue clearly identified through the research is that societal perceptions are proving difficult to change, and that stigma and lack of awareness about domestic violence remain widespread. Society continues to blame the victim of violence rather than the perpetrator. Despite efforts, government representatives have failed to communicate a consistent public message of zero tolerance of domestic violence and state media continues to perpetuate gender disparity and stereotypes which reinforce the idea that women and girls should be “controlled”.

This short submission highlights continuing protection gaps for women victims of domestic violence in both legislation and practice. For further information please see: <http://iphronline.org/domestic-violence-tajikistan-time-right-wrongs-20170308.html>

Failure to criminalize all forms of violence against women

In 2013 CEDAW recommended the Tajikistani authorities “*amend the Criminal Code, the Criminal Procedure Code and other relevant legislation in order to enforce, among other things, the provisions of Law No. 954 on prevention of violence in the family with a view to criminalizing all forms of violence against women.*”

¹ <https://tribune.com.pk/story/1132722/tajikistan-shock-mothers-kill-babies/>

Despite ongoing lobbying by civil society and numerous recommendations by international actors, Tajikistan has not criminalized all forms of domestic violence. A major weakness in the Law on Prevention of Violence in the Family is its failure to define domestic violence in a manner which addresses the dependent relationship of the victim and the offender as well as the systematic nature of the violence.

The Law provides for administrative liability: the Code on Administrative Offences (Article 931) stipulates that actions which violate the Law, if not classified as crimes under the Criminal Code, should be punished by fines equivalent to from two to five times the base calculation rate. If a perpetrator violates a restraining order, the punishment can be a fine of from five to ten times the base calculation rate, or administrative detention from five to 15 days. Women's rights campaigners argue that imposing fines on perpetrators of domestic violence often causes financial hardship to the survivor and/or her children, who are often economically dependent on the perpetrator and do not have access to any other form of social support.

During the May 2016 Universal Periodic Review of Tajikistan by the UN Human Rights Council, the Tajikistani authorities undertook to establish a working group to study the question of including a specific provision relating to domestic violence in the Criminal Code. Subsequently, the issue was reportedly included into the mandate of the working group on the humanization of Tajikistan's Criminal Code. Tajikistani civil society representatives have not been included into this working group or allowed to participate in discussions or reviews. The current status of discussions about the criminalization of domestic violence is not known.

Government representatives currently refer to Article 11 of the Law on Prevention of Violence in the Family which defines the role of law enforcement agencies towards the perpetrators of domestic violence - family aggressors, whom the police are obliged to register and undertake educational and preventive measures. Although individual preventive conversations with abusers are undeniably important in helping them to understand their behavior, and to realize that they are breaking the law, classifying all forms of domestic violence as crimes would send an unequivocal message about its unacceptability to the traditional, patriarchal society in Tajikistan and thus help to combat impunity. It would additionally allow for improved tracking of the effectiveness of intervention and prevention strategies.

Failure to clearly define “family” in the Law on Prevention of Violence in the Family

In 2013 CEDAW expressed concern at *“The lack of a specific definition of family in the existing legislation, including that on the prevention of violence in the family, which may leave out of its scope women in de facto polygamous relations, which are quite widespread, in particular in rural and remote areas”*.

The Law on Prevention of Violence in the Family refers to the prevention of *“family violence”*. Article 1 refers to *“any intentional illegal act of physical, psychological, sexual or economic nature committed in family relations by one member of the family towards another member of the family resulting in violation of his rights and freedoms, physical pain or damage to health.”* Although earlier drafts of the Law reportedly included more information about family members, the adopted version does not provide a definition of *“family”*, making it unclear if violence from in-laws is covered and what scope of familial relations is covered by the Law. In addition, while the Law provides for couples living in unregistered marriages by specifically referring to couples who live together and run a joint household, this definition potentially continues to exclude people involved in polygamous marriages, which are outlawed, but frequently occur in practice.

Failure to set up effective mechanisms to prevent violence, protect victims and punish perpetrators

Since the adoption of the Law on Prevention of Violence in the Family in 2013, the authorities have taken some steps to integrate it into other legislation - for example introducing amendments to both the Code on Administrative Offences and the Law "On Militia" to bring them in line with this Law.²

However, as its name suggests, the Law on Prevention of Violence in the Family concentrates primarily on the prevention of domestic violence rather than establishing a comprehensive framework of prevention, referrals, protection from violence, punishment of perpetrators and rehabilitation of survivors as required by international human rights standards.

The Law lists the state agencies responsible for its implementation, which include the national and local bodies of the Ministry of Education, Ministry of Health, Ministry of Labour and Social Protection, Ministry of Internal Affairs, local administrations and committees on women and family affairs, and victim support centres, but provides insufficient detail about how these bodies should interact. It does not refer to the roles or responsibilities of prosecutor's offices or the courts in cases of domestic violence. The Law stipulates that the government is responsible for coordinating the implementation of the Law, but fails to attribute clear responsibilities to the different government agencies, and to clarify mechanisms by which the enforcement of the Law can be monitored and evaluated. Neither does it provide clear instructions for referrals, filing complaints, monitoring the situation in vulnerable families, or the issuance of restraining orders.

The Law provides that intervention measures to prevent violence will depend on the individual situation, but does not clarify the criteria by which cases should be assessed and intervention decided.

Lack of coordinated protection strategy

In 2014, the Tajikistani government adopted the Action Plan for the Prevention of Violence in the Family for 2014-2023 which aims to ensure implementation of the 2013 Law and influence public opinion about domestic violence. The tasks set out by the Action Plan include strengthening law enforcement actions on the prevention and detection of domestic violence; gathering data on incidents of domestic violence and ensuring social and legal protection by establishing crisis centres, medical and social rehabilitation services and improving social support.

The Action Plan provides a comprehensive list of implementing agencies, and names the Committee for Women's and Family Affairs (CoWFA) as the body responsible for its overall coordination and implementation. CoWFA chairs the working group on implementation. The Action Plan states that the work is to be carried out "*with funds from the State budget and other extra-budgetary resources*", but inadequate funds have been provided by the state for the successful implementation of the Action Plan. This significantly hinders effective implementation.

² Specifically, two additional articles were introduced to the Code on Administrative Offences punishing violations of legislation on the prevention of family violence and violation of conditions established by restraining orders. The Law "On Militia" was amended with provisions requiring the police to undertake measures to prevent family violence.

Like the Law, the Action Plan fails to attribute clear tasks to each of the agencies leading to weak coordination between the ministries it enumerates. The Action Plan does not specify deadlines for implementation or specific indicators for measuring impact and progress. It states that CoWFA is responsible for collating six-monthly statistics from all relevant agencies on complaints of domestic violence, media campaigns and prevention activities, divorces and court decisions connected to domestic violence and CoWFA publishes an annual overview of activities on its website with general statistics on violence in the family. Unfortunately, in-depth analysis and systematic presentation of these statistics is lacking.

Within the framework of the National Action Plan for Implementing the Recommendations of the Second cycle of the Universal Periodic Review, a working group has been set up under the Government for Gender Equality, in which there are several sub groups. One of them is developing legislation to overcome gender stereotypes, headed by the Committee on Women's and Family Affairs (COWFA), the second was set up under the Ministry of Justice and is working to improve the law on women's rights. Civil society representatives participated in the first and second of these groups and gave their recommendations. The third, under the Prosecutor General's Office aims to improve legislation on domestic violence, but members of civil society did not belong to this group. There is very little precise information available on the progress of this working group.

In 2018, the Interagency Working Group on the Prevention of Domestic Violence, under COWFA developed instructions for staff of regional Women's and Family Committee's for promoting gender equality and preventing domestic violence and to assist in improved coordination and effective intervention. Overall co-ordination between state agencies on service provision to victims of domestic violence remains weak, particularly in remote areas of the country.

Victims require increased protection after restraining orders are issued against perpetrators of domestic violence

Trainings for law enforcement officers have had a positive effect and ordinary police officers in some regions, such as Soghd in northern Tajikistan reportedly now issue restraining orders more readily after receiving a complaint about domestic violence. A source in Soghd told IPHR that such cases are swiftly transferred to administrative court, which issues a fine to the perpetrator of about 120 Tajik somoni (approximately 12 USD). However, police in Soghd report that in many cases the payment of the fine exacerbates the situation in families, as upon return home perpetrators often continue the domestic violence in retribution for having had to pay the fine.

Problems connected with restraining orders include the **lack of sustained monitoring** of the victim's welfare in the period after the restraining order has been issued. In some regions this is difficult due to the remote location of certain villages. When working on cases of domestic violence against women, law enforcement officers and judges at administrative courts reportedly often **fail to assess and monitor the danger of children** to domestic violence and make timely interventions. More resources are needed to ensure protection is effective in practice.

Inadequate provision of emergency shelters: legislative and funding gaps

The Law does not establish clear implementation mechanisms and attribute clear responsibilities to different state bodies in relation to shelters. It does not stipulate which authorities are responsible to provide and fund shelters, meaning that few shelters have been set up.

The Law instead refers to NGOs as providing shelter and fails to stipulate that the centres or rehabilitation centres established by the local authorities should provide shelters for victims of domestic violence. The lack of legal provisions for a means of escape from home in the form of shelters means victims of domestic violence's lives are directly put at risk.

NGOs providing services to victims of domestic violence have faced serious funding crises over the last three years as international donors phase out their support. The state has largely failed to take over financial responsibility for running of shelters and many NGOs are not able to continue providing essential services and shelters have had to close, leaving victims of gender-based violence unprotected and with nowhere to turn.

According to one independent expert interviewed in Dushanbe in June 2018, shelters run by NGOs include one in Khujand, one in Kulyab (which is temporarily shut due to lack of security). In addition, the UN Population Fund (UNFPA) funds eight rooms in city hospitals and maternity units operating across the country where women who have experienced gender violence can stay for a maximum of three days.

Limited access to legal aid for victims of domestic violence

The Law on Prevention of Violence in the Family does not guarantee free legal aid to victims of domestic violence, while domestic legislation provides for free legal aid to those suspected, accused and convicted of criminal offences. As a result, in some cases the alleged perpetrator of domestic violence is allowed free legal aid, but not the victim.

As part of ongoing reforms to the legal aid system, in accordance with the Concept on Provision of Free Legal Aid in the Republic of Tajikistan, which was adopted in 2015 for eight years, domestic violence has been included in the list of issues when free legal aid should be provided with pilot schemes being planned. However, it is not known how many victims of domestic violence have actually benefited from legal aid because the bodies running the pilot schemes, including the main implementing body, the Ministry of Justice, have not yet made public any monitoring results or conclusions.

Lack of clear statistics to help monitor problem and develop strategic intervention programmes

In 2013 CEDAW expressed concern about *“the persistent high incidence of domestic violence against women, and underreporting as a result of the prevalence of discriminatory social and cultural norms and limited access to justice and legal support for victims”* and *“The lack of information and data on the nature, forms, extent and causes of violence against women”*. CEDAW recommended that the Tajikistani authorities *“Collect [...] statistical data on all forms of violence against women, including domestic violence, disaggregated by sex, age and relationship between the victim and the perpetrator, and undertaking or supporting studies and/or surveys on the extent and root causes of violence against women.”*

Obtaining a clear picture of the scale of domestic violence against women in Tajikistan remains complicated due to the lack of centralized, comprehensive statistics disaggregated in a way which would allow for analysis of the prevalence of the problem.

There is no central governmental database providing publicly accessible and transparent disaggregated national statistics on domestic violence. Inconsistent and uncoordinated methods of data collection and insufficiently detailed publicly-accessible data on incidences and causes of domestic violence make it difficult to establish a baseline against which to measure progress in protection and prevention of domestic violence and assess which policies are effective and worth pursuing. NGOs report that they continue to record cases and statistics in relation to their work on a local level, but that a central body which would receive statistics from different bodies and compile overall national statistics does not yet function. According to state statistics, for the first six months of 2018 498 people turned to COWFA branches in Tajikistan with concerns about domestic violence.³

The State Statistics Agency publishes information bi-annually obtained from a database maintained by crisis centres, as well as sex-disaggregated data on all crimes committed in Tajikistan. In 2014 it also published data on violence against women from a Demographic and Health survey conducted in 2012. However, crime statistics fail to identify the victim-perpetrator relationship, or provide details about the reasons for the crime, and therefore it is not possible to accurately estimate the incidence of domestic violence.

Training for officials on working with gender based violence

In 2013 CEDAW recommended that Tajikistan prioritize *“mandatory training for judges, prosecutors and police officers on the strict application of legal provisions criminalizing violence against women”*.

Law enforcement officials: In a positive development, training courses have been run by the Organization for Security and Co-operation in Europe (OSCE) and Prevention of Domestic Violence (PDV) amongst others for police officers on gender-based violence and domestic violence, particularly in Dushanbe and Khatlon region in Southern Tajikistan. There are at least a dozen specialized police inspectors trained on domestic violence and funded by the Ministry of the Interior who work across the country. In the areas where they operate, NGOs have reported significantly improved responses to domestic violence. The trainings have had a positive effect in some regions, including in Soghd in the

³ State report on implementation of UPR recommendations – first half of 2018

north where there are reports that ordinary police officers now issue restraining orders swiftly after a complaint about domestic violence.

In another positive development, in 2018 the Ministry of Internal Affairs reported developing manuals for law enforcement officers as well as initiatives undertaken to increase the participation of women in the Ministry of Internal Affairs.

Doctors and medical personnel: Women victims of domestic violence have to undergo humiliating and degrading medical examinations in front of committees of male doctors, causing further trauma. In November 2017 a working group was set up under the Ministry of Health and Social Protection to develop guidelines for temporary shelters and to pilot expanded social assistance in seven districts. Trainings of medical personnel are taking place, particularly in Dushanbe and Khatlon region.⁴

Judges and prosecutors: In the course of its research, IPHR heard from both NGO service providers and victims of domestic violence themselves that judges and prosecutors often dismiss their claims, telling them to “think about the children” and prioritizing keeping the family together over protection concerns. Training initiatives are being undertaken but need expanding.

Failure to bring most perpetrators to Justice

A State’s international obligation with regard to the crimes of private individuals is to ensure that it protects individual’s lives, liberty, and security against these private acts without discrimination.⁵ By failing to routinely prosecute or even in many cases investigate perpetrators of domestic violence, Tajikistan is denying women equal protection of criminal law in violation of its international obligations.

In its State Report to the Committee against Torture in 2018 Tajikistan reported that from 2015 to 2017, 454 criminal cases were opened in relation to violence against women – but the statistics did not clarify how many of the perpetrators were charged or prosecuted and indeed how many of the cases involved domestic abuse.

In Tajikistan, women who are victims of domestic violence face obstacles in taking forward complaints against their abusers including difficulties in accessing free-of-charge medical examinations and in gathering proof of systematic abuse from witnesses. For example, in June 2018, IPHR was told by an independent lawyer about a woman victim of domestic violence in Dushanbe who was required to pay 50 Tajik somoni (approximately 4.5 Euros)⁶ for a medical examination after she was beaten and sexually abused by her husband. In some cases, police officers (who refer the women for a medical examination) have to cover the costs of the medical examination themselves, but this obviously depends on their goodwill. It is important that medical examinations for victims of domestic violence should be carried out completely free of charge and funded by the state.

In addition, evidentiary requirements mean that victims of domestic violence need to swiftly obtain documentation of their injuries which can be difficult for women living in remote rural areas. The requirement that medical certificates used in criminal prosecutions for domestic violence should contain evidence of physical abuse makes it impossible for victims of economic and psychological abuse to pursue complaints.

4 Prevention of Domestic Violence <http://pdv.tj/en/>

5 For example, ICCPR Article 26 states: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion,)

6 The average salary in Tajikistan is estimated to be some 145 USD <https://tradingeconomics.com/tajikistan/wages>. However, many women in Tajikistan do not have any access to income.

Another obstacle to justice for victims of domestic violence is the requirement that those who sustain minor injuries (Articles 112 (deliberate infliction of bodily injury) and 116 (assault) of the Criminal Code) are required to pursue complaints against aggressors in a private capacity without support from the law enforcement services. Women are expected to collect the necessary documentation and evidence at their own expense and represent themselves in court or pay for a lawyer to do so. This process is highly bureaucratic and women are required to compile documents including residence registration (which many women living at their husband's house do not have), written complaint to court (which given high levels of illiteracy and legal illiteracy for many women is impossible without paying for legal help). This means victims are more vulnerable to pressure from abusers or relatives not to press charges.

NGOs and lawyers report that even if the case against the perpetrator does get to court, the victim of domestic violence faces further obstacles including:

- Information about women's past sex lives is sometimes used in court to cast doubt on the victim's allegations;
- Judges sometimes prioritize the protection of the family unit over concerns about domestic violence, and take steps to keep the family together rather than protect the woman and children at risk;
- Prosecutions for domestic violence are regularly dropped when the victim reconciles with the perpetrator (given the inadequate availability of shelters and social housing many victims are faced with no option but reconciliation).
- Amnesties are regularly applied to perpetrators of domestic violence both who are under investigation and who have been convicted. This undermines efforts to put a stop to domestic violence.
- Courts generally do not consider issues of compensation for moral harm, on the grounds that the victim did not request it. However victims are often not advised about their rights to claim compensation.

We are also concerned that the Tajikistani authorities fail to meet the standard of due diligence regarding the investigation and prosecution of crimes related to domestic violence. CEDAW elaborates this standard of due diligence: *"Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation (Article 9)."*⁷

⁷ CEDAW General Recommendation 19 stipulates that all forms of violence against women fall within the definition of discrimination against women as defined in the Convention.

Recommendations

We ask you urge the authorities of Tajikistan to:

Amend legislation: include an article in the Criminal Code specifically criminalizing all forms of domestic violence including psychological violence; amend the Criminal Procedural Code to stipulate that incidents of domestic violence should be investigated through public prosecution instead of through private prosecution and that a victim of domestic violence is not responsible for instigating criminal proceedings; include specific references into relevant legislation (including the Law on Prevention of Violence in the Family) regarding the welfare of children who are victims and/or witnesses of domestic violence and provide a detailed mechanism to ensure their social protection and support;

Compile central Statistics: ensure that statistics and data on domestic violence are compiled centrally and made publicly available, disaggregated by sex and age and the perpetrator-victim relationship and also showing how many people have been investigated, charged, prosecuted and convicted in connection with allegations of domestic violence and how many have benefitted from amnesties;

Improve protection and coordination: establish more posts of specialized police officers trained in working with women victims of domestic violence; review the Plan of Action for the Prevention of Domestic Violence, and indicate clear objectives for each agency, establishing a referral mechanism with deadlines and specific indicators for measuring impact and progress; provide funding from the central budget for the implementation of programmes to prevent domestic violence, in particular for shelters in rural areas for women and children who are victims of domestic abuse and provide long term funding for NGOs providing such services.