

## LAW OF MONGOLIA AGAINST DOMESTIC VIOLENCE

1999-...-...

Ulaanbaatar

### Chapter One

#### GENERAL PROVISIONS

##### **Article 1. Purpose of the Law**

1.1. The purpose of this law is to regulate relationships arising in connection with the prevention of domestic violence, its revealing and bringing to an end, elimination of causes and consequences thereof, protection of victim's rights, and imposition of liability on offenders with a view to ensure the equal rights of family members and to protect their rights and interests.

##### **Article 2. Legislation on domestic violence**

2.1 The legislation on domestic violence shall consist of the Constitution of Mongolia, the Civil Code, the Family Code, the Law on the Protection of the Rights of the Child, and other legislative acts adopted in conformity thereof.

2.2 If an international treaty to which Mongolia is a party provides otherwise, the provisions of the former shall prevail.

##### **Article 3. Persons falling under the scope of this Law**

3.1. The following persons shall fall under the scope of the present Law:

- 3.1.1. a member of a family;
- 3.1.2. a relative;
- 3.1.3. other persons.

##### **Article 4. Legal terms**

4.1 The terms found in the present Law shall bear the following meaning:

4.1.1. "domestic violence" shall mean any act or inaction, or an attempt thereof, to inflict physical, psychological, sexual, or material harm by persons specified in article 3.1. of the present Law against each other;

4.1.2. "a member of a family" shall denote married couples, their born, adopted children, stepchildren, and other relatives living together with them;

4.1.3. "a relative" shall be understood as persons specified in articles 4.1.5 and 4.1.2. of the Family Code;

4.1.4. "other persons" shall mean unmarried persons who live or lived together, divorced couples, persons who have children, their born, adopted, or stepchildren, and relatives;

4.1.5. "physical abuse" shall mean an act of assault or battery causing a death or any harm to one's health;

4.1.6. "psychological abuse" shall be understood as an act of putting a person in a state of alert by means of threats, stalking, coercion, humiliation, intimidation, calumny, impairment of personal reputation, jealousy, isolation and other means;

4.1.7. "sexual abuse" shall mean an act or attempt of entering into involuntary sexual intercourse;

4.1.8. "a crime of domestic violence" shall mean an act or inaction stipulated

in paragraph 4.1.1 above which is criminalised by the Criminal Code;

4.1.9. "an offence of domestic violence" shall be understood as an act or inaction stipulated in paragraph 4.1.1. above which is not criminalised by the Criminal Code;

4.1.10. "an interested person" shall denote any state administrative, child care, and health institution which renders assistance to the victims of domestic violence, their workers, advocates and prosecutors.

## **Chapter Two**

### **PREVENTING AND COMBATING DOMESTIC VIOLENCE**

#### **Article 5. Prevention from domestic violence**

5 .1. Prevention activities to be carried out by the State, citizens, organizations, and officials shall be governed by the present Law, the Law on Crime Prevention and other laws.

#### **Article 6. Duties of the police on preventing and combating domestic violence**

6 .1. The Police shall have the following duties with regard to preventing and combating domestic violence:

6 .1.1. to conduct, on a regular basis and in accordance with a concrete program, training on a crime and offence of domestic violence, methods of their handling, rights of victims, and duties of policemen;

6.1.2. to train a special adviser to give consultation aimed at influencing the personality of an offender and to conduct training activities;

6.1.3. to form a team of specialized police personnel to deal with prevention and combating the crimes and offences of domestic violence;

6.1.4. to monitor, on a permanent basis, a status of the handling of the crimes and offences of domestic violence, and the performance of policemen and public inspectors for the protection of public order, and to take pertinent measures;

6.1.5. to prepare reports on the crimes and offences of domestic violence; to study the causes thereof; to develop and implement a program of action; to collect and submit annually to the Government all data pertaining to domestic violence under the following indicators: a total number of registered crimes and offences of domestic violence, victims and offenders by sex, amount of time invested in proceedings, and a type of action taken.

#### **Article 7. Submission of a communication on domestic violence**

7 .1. Victims of domestic violence, members of their family, interested persons, citizens shall have the right to report about domestic violence.

7.2. Doctors and workers of medical institutions who have provided a medical treatment to a victim of domestic violence shall have a duty to so report to the police, within 24 hours, provided the victim has given a consent

7.3. Organizations for children shall inform a Secretariat of the pertinent soum and district Governor, the police and childcare organizations about the instances indicating about a child being subjected to domestic violence.

7.4. A communication about domestic violence may be submitted to the police of an area where an offender or victim resides permanently or temporarily, or where the violence took place, or where an organization which provides medical or other

assistance is located, if a victim is sheltered there.

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

**Article 8. Duties of a policeman on receiving a communication about domestic violence**

8.1. Upon receipt of the following communication about domestic violence a policeman shall be obliged to undertake promptly actions specified in Article 9 of the present Law:

8.1.1. an instance of domestic violence has caused disturbance and the rights and interests of family members and cohabitants might be violated;

8.1.2. the existing situation of domestic violence is likely to exacerbate;

8.1.3. an act of domestic violence has occurred;

8.1.4. an ex parte restraining order or a protection order is in effect.

**Article 9. Actions of a policeman regarding a communication**

9.1. A policeman who has received a communication shall carry out the following activities:

9.1.1. to interview a victim and witness in a place where they can speak freely (separately from an offender):

9.1.2. to record the communication in detail;

9.1.3. to explain to the victim his/her rights as provided for in article 11 of this Law;

9.1.4. to take measures to ensure the safety of the author of the a communication;

9.1.5. if need be, to arrange for a transfer of the victim and his/her dependants to a medical institution and to an organization rendering assistance to such victims, or any other safe place;

9.1.6. to undertake all measures to restrain the offender from causing further violence.

9.2. Provided the victim has filed a complaint requesting the issuance of an ex-parte restraining or protection order, such a complaint shall be transferred to a court after the requirements specified in article 9.1. above had been met.

9.3. All activities mentioned in article 9.2. above shall be undertaken within 10 days.

**Article 10. Submission of a complaint seeking an ex parte restraining or protection order**

10.1. The right to submit a complaint seeking an ex parte restraining or protection order shall be vested in a victim of domestic violence or his/her family member, or on their behalf in interested persons and persons so entitled by law.

10.2. If a complaint is being filed together with a communication, it must be submitted to the police according to jurisdiction provided for in article 7.3. of the present Law; if a complaint is being filed on its own, it must be submitted to a court according to the same jurisdiction rule.

10.3. Provided either of the requirements set forth in articles 7.2. and 10.2. of this Law have been complied with, a complaint may not be refused on the grounds of wrong jurisdiction.

**Article 11. Requirements for a complaint seeking an ex parte restraining or protection order**

11.1. A complaint shall address the following:

11.1.1. what act of domestic violence has taken place or is there an imminent danger of such an act, its timing and place;

11.1.2. what harm has been or could have been inflicted on a victim as a result of domestic violence;

11.1.3. full name and place of residence of a complainant and offender /if a victim needs to hide from the offender, a place of residence of the former may be omitted from the complaint/;

11.1.4. what are the complainant's wishes as regards the rights specified in article 12 of the present Law.

**Article 12. Rights of a victim**

12.1. A victim of domestic violence shall have the right to seek the undertaking of the following measures:

12.1.1. to stop the violence and take protective measures to prevent from further violence;

12.1.2. to be taken to a medical institution for medical treatment;

12.1.3. to be transferred to a safe place or organization providing assistance to the victims of domestic violence;

12.1.4. to have the offender arrested, to have an ex parte restraining or protection order issued;

12.1.5. to have a lawsuit initiated against the offender;

12.1.6. to get a divorce or live separately;

12.1.7. to file a claim with a court for the compensation of material and psychological damages;

12.8. to file a claim with a court for the deprivation or restriction of parental rights and exaction of allowances and other expenses in accordance with the Family Code.

**Chapter Three**

**LIABILITY TO BE IMPOSED ON VIOLATORS OF THE LAW AGAINST DOMESTIC VIOLENCE**

**Article 13. Types of liability to be imposed on offenders**

13.1. If an act committed by an offender is of a criminal nature, she/he shall be held liable in accord with the Criminal Code.

13.2. Regardless of the criminal or non-criminal nature of the act committed by the offender, an ex parte restraining or protection order may be issued by a court with a view to protect a victim.

**Article 14. Ex parte restraining order**

14.1. An ex parte restraining order against an offender shall be issued by a court when there exists a real danger of inflicting physical, psychological, sexual harm or impairment of health and life of a victim.

14.2. The ex parte restraining order shall provide any or all of the following measures:

14.2.1. to order to discontinue causing any further acts of domestic violence;

- 14.2.2. to oblige the offender to live in a place other than the home;
  - 14.2.3. to prohibit the offender from contacting the victim at the latter's work or any other place;
  - 14.2.4. to allow the offender access to his/her children only in the presence of a third person;
  - 14.2.5. to require the offender to attend counseling aimed at changing his/her behavior;
  - 14.2.6. to impose a temporary restriction on the offender's right to dispose of common property;
  - 14.2.7. to exact from the offender expenses pertaining to the victim's medical treatment and costs of legal defense and assistance provided by organizations rendering aid to such victims;
  - 14.2.8. to prohibit the offender who is so entitled from possessing firearms or other weapons;
  - 14.2.9. to advise of arrest or institution of a criminal proceedings if the present order is breached.
- 14.3. The ex parte restraining order shall remain in effect until a matter of adopting a protection order is decided by the court.
- 14.4. A matter of arresting or instituting a criminal lawsuit in case of the violation of the ex parte restraining order shall be decided according to due process.

#### **Article 15. Procedure for issuing an ex parte restraining order**

- 15.1. A court within 8 working hours following the receipt of a complaint shall issue an ex parte restraining order against an offender.
- 15.2. The ex parte restraining order may be issued in the absence of the offender if the latter cannot be summoned (his location is unknown).
- 15.3. The ex parte restraining order may be issued in the presence of a victim if she/he so requests.
- 15.4. The court shall issue the ex parte restraining order provided the fact of committing an act of domestic violence in circumstances of a real danger has been attested to by the victim's complaint, witnesses' testimony, or/and other evidences.
- 15.5. The court shall dispatch immediately the issued ex parte restraining order to the police of the area where the offender, victim, and other persons concerned reside.

#### **Article 16. A victim protection order**

- 16.1. Within 14 days following the 30th day after the issuance of an ex parte restraining order, a court shall examine a need for adopting a victim protection order.
- 16.2. In case of a need for extending the measures specified in the ex parte restraining order, the court shall issue a victim protection order for a term of 12 -18 months depending on the details of the act, extent of harm/danger, and the offender's personal state.
- 16.3. The protection order shall be issued in the presence of the offender and victim on the basis of materials, which served a ground for passing an ex parte restraining order.
- 16.4. The protection order shall stipulate the measures provided for in article 14.2. of the present Law.
- 16.5. If circumstances change, a complainant may request the rescission or modification of the terms of the order while the latter is still valid.
- 16.6. The court shall forward immediately a copy of the issued protection order to the

police of the area where the victim and other persons concerned reside.

16.7. In case of disagreement with the protection order, a person concerned may appeal it to a court of the higher instance within 10 days.

16.8. The appeal shall be examined by the court in accordance with a procedure provided for in the Civil Code.

**Article 17. Monitoring of the implementation of an ex parte restraining and protection order**

17.1. The General Department of the Police shall keep a central registry of ex parte restraining and protection orders; the soum and district police branches, bug and khoroo Governor's, as well as public inspectors for the protection of public order shall monitor the implementation of the orders.

**Article 18. Liability for the violation of the legislation**

18.1. Judges, policemen, doctors and medical workers, who failed to fulfil their duties envisaged in the present Law, shall be held liable according to the pertinent legislation.

18.2. If a breach of an ex parte restraining or protection order lacks a criminal nature, she/he shall be arrested according to the Law on Administrative Liability.

18.3. Regardless of the arrest of the offender or institution of a criminal lawsuit against him/her, the ex parte restraining or protection order shall remain effective for a period specified by law. 18.4. The arrest of the offender against whom an ex parte restraining or protection order has been issued shall not constitute a ground for relieving him/her from his/her maintenance duty envisaged by the Family Code.

**Chapter Four**

**MISCELLANEOUS**

**Article 19. Entrance into Force**

This Law shall become effective on ..... of 1999.