

CONCEPTUAL BACKGROUND OF THE LAW AGAINST DOMESTIC VIOLENCE

One. Grounds and needs for elaborating this draft Law

A vision of the new Constitution of Mongolia is finding its way through the adoption of specialized laws and introduction of amendments to the existing ones.

A development concept of Mongolia /1996/ states that “a creative human, able to think, full of potential and capable human is a foundation of the Mongolian national wealth and development. In improving the well-being and culture of people lies, in essence, the gist of development”. This provision is reflective of the idea that the source of social development is, in fact, “human development”. For “a human” is the most valuable item of the society, there is a natural need for cognizing the inner quality of human beings, modifying and instilling social mentality about them. Given this, a question of state protection and implementation of “human rights” should be considered in light of the above context.

In view of the fact that “a human” relates to a family”, a basic unit of the society, his right to enjoy protection on the part of the society and state has been recognized in both the national and international normative body. Proceeding from that, family settings should be related to the societal level and the question of ensuring human rights at such a level should be examined on a systemic basis, accordingly an issue of legal reform should start from this level. In connection with that, a scope of the state regulation and protection of relationships arising at the family level is widening and increasing.

In the last 5 years, on average upwards of 20,000 crimes have been registered per year, of which a substantial percentage accounted for crimes taking place in a family and household. This fact rightfully attracts the attention of jurists and researchers. Thus, 43,7 percent of all crimes registered in 1996-1998 had been committed at homes with personal motives. If one looks at the features of those crimes, they are mostly serious crimes, with the use of force, directed against the life and health of individuals. Results of a relatively large survey /covering 5,000 people/ on the influence of domestic violence on the mentality of children and their assessment of this problem, conducted by the National Centre against Domestic Violence, has revealed that 43.8 percent of all respondents lived in families with constant quarrels and rows. 6.0 percent of them indicated that their parents insulted each other and chased out of home, 5.1 percent used knives and like and attacked, and 1.5. percent broke furniture and other home items.

Apart from that, one of the main objectives of the above survey was to expose and determine the status and forms of domestic violence, reasons and conditions leading to victimization. Women, who accounted for 40.0 percent of the 5,000 respondents, answered to a question “Whose violence are you more subjected to?” the following way: 15.5 percent replied that they suffered from their husbands' violence, 4.0 percent from their parents' violence, 3.0 percent from violence on the part of their parents-in-law. These replies confirmed a fact that a pattern of violence is more prevalent among family members and relatives.

In conducting this survey, we endeavored to avoid a lop-sided approach. Thus, 37.4 percent of

all respondents were men. 16.0 percent of them indicated that they had been under oppression on the part of their wives, parents-in-law, and other relatives. Judging from the above, it is clear that all main members of a family, i.e. parents and children, are affected by some form of violence.

By way of replying to a question “What do you think the State should do to reduce domestic violence?”, 58.6 percent of male respondents and 62.4 percent of female respondents pointed out to “the need for adopting a special law” as a matter of priority.

Given this, bearing in mind a multi-faceted necessity based on legal and principal premises such as honor, liberty, security, and equality of individuals, the draft Law against Domestic Violence has been prepared and is being officially submitted now. As an amendment to the Convention on the Elimination of All Forms of Discrimination against Women, which was ratified by Mongolia in 1981, the United Nations General Assembly adopted on 20 December 1993 the Declaration on the Elimination of Violence against Women.

The fact that human rights are most violated in family settings during the current transition period attests to the absence of an adequate legal mechanism for the regulation of these relations.

We need to change our previous parochial approach to the question of domestic violence as a personal problem, an internal matter within a family. This question should be looked at in the context of family development as a basis for social development and the cognition of the inner quality of a man for insuring human rights and freedoms. This approach fits into the concept of legal regulation viewing a family as a separate, independent object of legal protection, whereby contributing significantly to the emergence of legal environment allowing to govern a family without jeopardizing its integrity.

Two. A status of consideration of the draft Law

In the course of the last two years, within the framework of the previously elaborated draft law there had been discussions with the participation of the law enforcement bodies, provincial and local managerial staff, foreign specialists working in the area of domestic violence, administration of foreign offices accredited to Mongolia, non-governmental organizations, on the basis of which the draft has been amended four times.

In the course of discussion about the draft Law against Domestic Violence, which had been organized in Dornogobi, Dundgobi, Dornod, Umnugobi, and Khovd provinces, more than a hundred comments and proposals were received and processed. Moreover, the Mongolian Women Lawyers' Association initiated and coordinated the collection of comments from central law enforcement bodies and legal professionals.

Through the distribution and discussion of the draft Law against Domestic Violence among the customers of the Shelter house at the National Centre against Domestic Violence, it has been possible to relate the draft to the realities of life. Example: A number of clients, which was only 15 in 1995, had been steadily increasing since and in 1998 it reached 133.

Three. The contents and composition of the draft law

Our country is a party to many international treaties conventions and pacts, hence, there is a need for

ensuring a conformity of legislation with them, as well as with the spirit and contents of the Constitution, and for mirroring changes taking place in the social fabric, with a view to arrive at the level of legal regulation that is supportive and protective of a family and commensurate with the world's existing standards. It is also necessary to create and allow our citizens to exercise legal guarantees for the resolution of the problem of domestic violence through the use of a legal mechanism. The present draft law against Domestic Violence has been prepared proceeding from these imperatives.

These needs have been clearly attested to by the results of a survey on the question of liability for those who commit domestic violence conducted by the Mongolian Women Lawyers' Association among the law enforcement and implementation agencies, non-governmental organizations, prisons, and private sector employers and the elderly. 98.8 percent of the respondents pointed to the existence of the problem of domestic violence in our society and 97.1 percent of them indicated a necessity for a special law to address this problem.

When elaborating this draft, bearing in mind the relative spread of domestic violence and absence of an adequate legal environment to protect and ensure human rights and freedoms in family settings, and in order to secure the essence of a definition “family” and to preserve its integrity, it has been considered appropriate to use a term “against domestic violence”.

Aiming at protecting and securing the equality of spouses and members of their family, the draft law intends to govern relations arising in connection with the setting up and operation of a mechanism for protection and liability in cases of human rights violations in a family, their prevention and exposure, elimination of consequences and restoration of victim's rights.

Therefore, the draft law consists of the following sections:

Chapter 1: Basic definition of domestic violence

Chapter 2: Prevention from and combating against domestic Violence

Chapter 3: Liability to be imposed on violators of the Law Against Domestic Violence

Chapter 4: Entrance into force.

In view of the preparation of the draft Law against Domestic Violence, a family has become an object of legal protection within the framework of state protection. Given this, with a view to ensure a complex treatment of the relations emerging in connection with domestic violence, pertinent amendments to the Criminal and Civil Codes, the Law on Administrative Liability, the Codes of Criminal and Civil Procedure, the Law on Judicial Decision have also been drafted.

RESOLUTION OF THE STATE GREAT HURAL OF MONGOLIA

Date

Ulaanbaatar

Some measures to be taken in connection with the adoption of the Law against Domestic Violence

The state Great Rural of Mongolia hereby decides:

1. To assign the Government (R. Amarjargal) to implement the following measures in connection with the adoption of the Law against Domestic Violence:

- 1) To study and analyze the status of implementation of the Law against Domestic Violence and implement follow-up measures by reflecting them in general and special action plans on prevention from and combat against crimes;
- 2) To take measures aimed at incorporating a concrete part concerning domestic violence and its consequences in the curricula of secondary schools, colleges and universities, and institutions for pre-school children;
- 3) To support non-governmental organizations that provide assistance to the victims of domestic violence and take possible measures to collaborate with these organizations through the conclusion of a contract according to article 19 of the Law on the Government;
- 4) To take measures to restructure a division for children at the police by expanding it and forming on its basis a division for combat against domestic violence.

2. To assign the leadership of the law enforcement bodies, such as the police, courts and prosecutors offices, to carry out regular training on prevention from and combat against domestic violence to their respective staff.

Signature
Draft

LAW OF MONGOLIA
ON MAKING AMENDMENTS TO THE CRIMINAL CODE

Date

Ulaanbaatar

Article 1. The Criminal Code of Mongolia shall be amended as follows:

1) Article 110 paragraph 2:

“2. If the action specified in paragraph 1 of this article is committed against his/her own born, adopted children or stepchildren, or relatives, s/he shall be punished by imprisonment for a term of three to eight years.”

2) Article 111 paragraph 4:

“4. If the action specified in paragraphs 1 and 3 of this article is committed against his/her own born, adopted children or stepchildren, s/he shall be punished by imprisonment for a term of five to ten years.”

3) Article 113 paragraph 2:

“2. If the action specified in paragraph 1 of this article is committed against his/her own born, adopted children or stepchildren, or relatives, s/he shall be punished by imprisonment for a term of four to ten years.”

4) Article 122: Violation of an ex parte restraining order or a victim protection

“If a person, who after having been inflicted administrative punishment for breaching an ex parte restraining order or a victim protection order imposed by a court against a person who had committed domestic violence, has infringed the order again, s/he shall be punished by imprisonment for a term of up to three years or by corrective labor for a term of up to one year and six months.”

Article 2. In article 36 paragraph “h” after “an elderly” there shall be inserted a word “a disabled” and after “of a person” - a phrase “of a family member”; in article 112 paragraph 3 after a word “a child” there shall be inserted a phrase “and own born, adopted child or stepchild and a relative”.

Article 3. This law shall become effective on the same day as the Law against Domestic Violence.

Signature

Draft

LAW OF MONGOLIA

ON MAKING AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

Date

Ulaanbaatar

Article 1. The following words shall be inserted in the Criminal Procedure Code of Mongolia:

<<article 122>> after <<article 121 paragraph 1>> in article 16 paragraph 1 sub-paragraph 1;
<<suffered from actions of a family member or co-habitant>> after <<cannot>> in article 29 paragraph 3; <<;
step->> after <<born>> in article 34.1 sub-paragraphs 10 and 11 and <<step-, >> after <<born or>> in sub-
paragraph 13.

Article 2. This law shall become effective on the same day as the Law against Domestic Violence.

Signature

Draft