



FOUNDATION "PANORAMA"

**Project "Women's Access to Justice in the Countries
of Central and Eastern Europe and Central Asia"**

**"ACCESS OF WOMEN, VICTIMS OF DOMESTIC VIOLENCE, TO JUSTICE"
(BASED ON THE RESULTS OF THE STUDY IMPLEMENTED IN TAJIKISTAN)**

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The study is conducted by Foundation “Panorama” with the financial support of OXFAM Novib as part of the project “Women’s access to justice in the countries of Central and Eastern Europe and Central Asia”, a regional initiative coordinated by CARAT Coalition.



BRIEF REVIEW

INTRODUCTION

The study “Access of Women, victims of Domestic Violence, to Justice in Tajikistan” is conducted in the frame of a joint project of Karat Coalition and Foundation “Panorama” (2010-2012) “Women’s Access to Justice in the Countries of Central and Eastern Europe and Central Asia”, implemented in five countries in the Region, i.e. Azerbaijan, Kyrgyzstan, Poland, Tajikistan and Uzbekistan. Overall project goal is to verify whether women can actually protect their rights using domestic legal remedies.

The issue of domestic violence and limited access of domestic violence victims to justice system was identified as an example of women’s rights violation in Tajikistan. At the end of 1990 the problem of “domestic” and “physiological” violence became one of the most important for the country. The tendency confirms that there are systemic, complex problematic issues in society related closely to gender inequality and to non-adequate reaction of law-enforcement bodies to gender based violence. In fact, one in four victims was subjected to violence by a family member (husband, parents, brothers, boyfriends, etc.). Analysis of reported cases of domestic violence indicates a wide range of forms of violence, which is a symptom and consequence of gender discrimination and inequality.

STRUCTURE

The report consists of an introduction, description of selected issues, research methodology, two sections where main findings, conclusions, recommendations are presented.

DESCRIPTION OF THE PROBLEM

By ratifying in 1993 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Tajikistan undertook the obligation to implement it. The Constitution of the Republic of Tajikistan (Article 17) guarantees gender equality.

In compliance with its international obligations, Tajikistan has adopted: "The State Program to Ensure Equal Rights and Opportunities for Women and Men for 2001-2010", the Law of the Republic of Tajikistan "On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization," (2005), the National Strategy on Women’s Empowerment (*Activization*) in the Republic of Tajikistan (2010) and a number of other strategic documents. Thus, the state has undertaken specific efforts and measures to comply with obligations under international treaties, as well as other international obligations.

In January 2007 the UN CEDAW Committee heard the National report of the Republic of Tajikistan on the implementation of the CEDAW, acknowledged the steps undertaken by the Government in order to successfully implement the Convention and adopted a number of conclusions and recommendations.

In 2010 - 2011 the implementation of the UN CEDAW concluding observations between 2007 to 2011 was monitored. **The results were as follows:** out of 29 recommendations only 1 was implemented in full, 14 were implemented partially, 14 were not implemented. 3 recommendations were not evaluated, as civil society representatives did not have access to the text of the next National Report to the CEDAW from Tajikistan.

Thus, the studies and monitoring of the implementation of CEDAW recommendations suggest that in Tajikistan the problem of domestic violence continues to remain relevant and important, while the question of how to battle this form of discrimination still needs to be solved. This can be explained, in particular, by the fact that despite the measures the government of the Republic of Tajikistan and civil society organizations undertake, there is still no efficient mechanism for overcoming barriers to actual gender equality. Consequently, in its absence important and necessary actions and activities cannot take place. In particular, one of the recommendations was the adoption of the law "On the Prevention of Domestic Violence." The government included adoption of the given Law, as a separate item, into main strategic documents, i.e. the "National Development Strategy of Tajikistan" for the period until 2015 and the "Poverty Reduction Strategy" (2009-2011). So far the law has not been adopted.

Since 2003 civil society organizations in the country have conducted discussions and lobbied for the adoption of the law on domestic violence. A number of republican and international seminars, conferences, round tables, public hearings have been held throughout the country dedicated to existing problems and mechanisms for women's protection from domestic violence, as well as to the need to adopt such a law. All events were widely covered in the Tajik media. As a result of these actions, civil society organizations of Tajikistan prepared comments and suggestions on the draft law on domestic violence and submitted them to the Parliament.

Being aware of the need for effective, systematic actions in the field of domestic violence prevention, in 2006 civil society organizations initiated the development of a unified system for reporting referrals to crisis and statistical reporting.

Currently in the country there are 18 Crisis and Resource Centers and their three branches that provide assistance to violence victims:

- ✓ Dushanbe– 3
- ✓ Soghd province – 4
- ✓ Khatlon province – 13
- ✓ RRS – Rasht – 1

All of them are operating on the basis of civil society organizations, except Crisis Center "Bovari" working under the Committee on Women and Family Affairs, under the government of the Republic of Tajikistan. All centers operate with the assistance of donor organizations.

Results of the study indicate the following reasons for the existence of the problem of domestic violence in society:

- widely spread belief that the seriousness of the problem of violence against women is greatly exaggerated and, in comparison with other social problems, is not so important. Especially it concerns the problem of domestic violence.
- widespread opinion that violence in the family is a family, private matter. As a proof, people often refer to the specificity of eastern mentality, existing traditions etc.

Such attitude to the issue of domestic violence is a result of the impunity of perpetrators, leading to a feeling of permissiveness and reoccurring violent behavior.

The problem is that not only in public consciousness, but also in legal practice in Tajikistan domestic violence is considered to be a private matter. Manifestations of domestic violence are

not classified as criminal offences in law; cases of referrals to law enforcement agencies in connection with domestic violence are very rare, the number of available legal remedies is very limited, although such offences are quite common.

This study aims at identifying problems related to the protection of women from domestic violence and analyzing the level of access to justice for the victims.

4. METHODOLOGY

The study's aim is the promotion of women's rights and improvement of their access to justice through the use of domestic and international legal remedies. Objective of the study is to identify violations of women's rights and problematic issues related to women's access to justice and protection of their rights.

Three questionnaires for in-depth interviews with women were developed: for domestic violence victims; for experts working in the field of the protection of citizens' rights, both in public and civil society organizations.

The study was conducted in August-September 2011 in Dushanbe, Kurgan-Tube, Bokhtar district of Khatlon province.

The number of female respondents from Dushanbe and Khatlon province is 20. In order to gain experts' opinion, 13 practicing lawyers from Dushanbe and Khatlon province were interviewed, out of them 11 defense attorneys and 2 judges. Six of them work in public institutions, while 7 are private-practice lawyers.

Also 8 employees of civil society organizations (CSOs), working in the field of women's rights protection, were interviewed: 4 from Dushanbe city, and 4 from Khatlon province. These organizations have been involved for many years in legal activities aimed at protecting the rights of women, children, as well as in women's legal education, especially in rural areas.

5. MAIN RESULTS

5.1. REVIEW OF LEGISLATIVE AND REGULATORY DOCUMENTS ON THE ISSUE OF DOMESTIC VIOLENCE IN THE REPUBLIC OF TAJIKISTAN

5.1.1. Legal system in Tajikistan and the protection of women against discrimination

According to interviewed legal practitioners, in Tajikistan there is legal protection for women against discrimination. First and foremost, this is the Constitution of the Republic of Tajikistan, a number of other regulatory acts and international treaties and agreements.

The Constitution of the Republic of Tajikistan proclaims general standards of equality between men and women in accordance with international standards. However, the Constitution, guaranteeing equal rights of citizens, does not contain a definition of "discrimination" and its prohibition in general.

In the Law of the Republic of Tajikistan "On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization," a definition of "discrimination" is given for the first time. The law defines discrimination as *"any distinction, exclusion or restriction made on the basis of sex, which is aimed at weakening or nullifying the recognition of equality between men and women in political, economic, social, cultural or "any other field"*. The law prohibits discrimination of men and women. Violation of the principle underlying the gender equality (realization of a public policy or other actions that put men and women at a disadvantage on the grounds of sex) is considered discrimination and should be eliminated. The

definition of "discrimination" given in this law is, in fact, a summary of the provisions of the first article of CEDAW. It does not introduce the terms "direct" and "indirect" discrimination and does not make a distinction between them.

5.1.2. Status and application of the CEDAW Convention in national legislation

The Constitution establishes the primacy of international treaties over national legislation. However, in practice, there have been no examples of judges taking decisions on the basis of CEDAW provisions.

Both defense attorneys and judges make almost no references to CEDAW in cases of women's rights violations and their protection.

5.1.3. Judicial protection of women's rights in domestic violence cases

Judicial protection of victims is complicated by the contradictions that exist in the criminal law, particularly between the Criminal Code and the Criminal Procedure Code.

5.1.4. Women's access to qualified legal aid

According to all interviewed lawyers, there are efficient laws in Tajikistan that protect women's rights and guarantee them equal rights with men; hence, every woman, the victim of violence, can receive help. However, the majority of female respondents and employees of civil society organizations believe that not all women can use legal remedies. This is due to the economic status of women, attitudes and beliefs in the society, low legal literacy and education level, which are the main barriers to women's access to justice.

5.2 ANALYSIS OF BARRIERS THAT PREVENT WOMEN'S ACCESS TO JUSTICE

5.2.1 Analysis of the ability of women to protect their rights

Women's access to justice and the system for their protection from violence are still insufficient. On the one hand, this is the result of the imperfection of the legal framework and mechanisms for implementation of adopted laws, the attitude of law enforcement and judicial officials to domestic violence manifestations and ways of their redress. On the other hand, it is connected to women's limited ability to protect their rights, i.e. most of them are financially dependent, have low level of general education and insufficient knowledge.

5.2.2. Analysis of the need of women to protect their rights

When contacting the police, courts, women are often faced with financial problems, i.e. they have no money to pay to a defense attorney, cover court fees, etc. In addition, women lack legal knowledge: they often just do not know where to go, cannot write their own statement to the police or the court, do not know the law.

5.2.3. Findings

Female victims of domestic violence have limited access to justice. Domestic violence victims continue to have problems with obtaining legal aid and protection in law enforcement bodies and the courts. Victims of domestic violence mainly turn for help to crisis centers, civil society organizations and local authorities. When contacting the police or courts women often face indifference and outright condemnation from both the law enforcement officials, as well as from neighbors, relatives, and acquaintances.

The main factors that hinder women's access to justice are as follows: imperfect legislation; lack of effective mechanisms for the implementation of adopted laws; low level of gender sensitivity and insufficient knowledge of the judiciary and law enforcement officials on the standards for the legal protection of women; underdeveloped network of public and community services aimed at the prevention of domestic violence and provision of various kinds of assistance to victims of violence; the impact of gender stereotypes on society's attitude towards domestic violence, etc. Current legislation of the Republic of Tajikistan, including the Criminal Code and the Criminal Procedure Code, contains clear contradictions that hinder the protection of the rights of victims.

RECOMMENDATIONS

In order to improve the legal framework for the prevention of violence in society and family, to adopt the Law "On the prevention of Domestic Violence" in a package with other legislative and regulatory documents that ensure the implementation of the Law.

To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, signed by the President of the RT in 2000.

To ensure the implementation of concluding observations related to domestic violence, made by the UN Committee on the Elimination of All Forms of Discrimination against Women for Tajikistan in connection with the country's first report in February 2007;

To monitor and evaluate regularly the implementation of national gender policies and international obligations aimed at promoting gender equality, with a focus on domestic violence prevention and protection from it.

To improve the institutional mechanisms for the development of cooperation between different government agencies, as well as the social partnership between civil society organizations and government agencies. To resume the activities of the Interagency Coordinating Council for the Prevention of Violence Against Women under the leadership of the Deputy Prime Minister of the Republic of Tajikistan;

To scale up pilot activities of the Ministry of Interior aimed at the prevention of domestic violence. To establish a special unit within the Ministry of Interior for the Prevention of Violence against Women and the National Analytical Center on Violence Against Women (establishment of such institutions was planned back in 2002).

In order to expand women's access to justice and to create more effective mechanisms for the protection of women's rights, to develop and adopt a law on free legal aid; to scale up public and non-governmental legal aid services.

To scale up practices aimed at training judges and law enforcement officials on mechanisms for the protection of women subjected to violence. To include into the curriculum of the Institute for Advanced Training of Civil Servants, the Training Center for Judges of the Council of Justice, and the Academy of the Ministry of Interior and all other relevant institutions, a mandatory component on adopted legislative acts and international conventions ratified by Tajikistan, including the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration for the Elimination of Violence against Women, the UN CEDAW Committee's

special recommendation, the Convention on the Elimination of All Forms of Discrimination against Women and other legislative acts.

To expand the forms of social partnership of law enforcement bodies and civil society organizations *based on coordinated attempts* in the field of preventive, operational and rehabilitative activities.

To improve statistical recording and reporting in the Ministry of Interior, the Council of Justice and the Prosecutor's Office on reported offences, initiated proceedings, and convicted persons not only in regards to offenders but also victims of crimes.

To expand the projects of civil society organizations aimed at raising legal literacy of men and women, with the focus on human rights protection mechanisms. To promote outreach activities within local communities, "makhallyas", with the participation of both men and women.

To use more effectively the potential of religious organizations, informal leaders, all interested parties in informational campaigns aimed at raising awareness of domestic violence and human rights issues.

To develop a state communication strategy on gender equality promotion, including components of prevention and protection from domestic violence, to cover regularly domestic violence issues in mass media in order to influence public opinion and make violent behavior cases unacceptable in the eyes of the public.

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RECOMMENDATIONS

ABBREVIATIONS

Law - Law of the RT „ On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization"

CEDAW – Convention „On the Elimination of All Forms of Discrimination against Women"

CC – Crises Centers

CSOs – Civil Society Organizations

UN – United Nations

RT – Republic of Tajikistan

RC – Resource Centers

CC of the RT – Criminal Code of the Republic of Tajikistan

CPC of the RT –Criminal Procedure Code of the Republic of Tajikistan

OP – Optional Protocol to the CEDAW

1. INTRODUCTION

Since 2008 KARAT Coalition's program has focused on promoting the implementation of the CEDAW Convention in the Region through partnership with women's NGOs in Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Ukraine and Uzbekistan. Activities implemented in 2008-2009 aimed at promoting the Optional Protocol to CEDAW (OP CEDAW) and at supporting women's NGOs in using it as a tool to advance women's rights. During the process an attempt was made to identify some cases of discrimination against women when a complaint could be filed with the CEDAW Committee under the Optional Protocol to CEDAW.

KARAT's initiative in the field of women's access to justice is a part of the project on CEDAW implementation in five countries in the Region, i.e. Azerbaijan, Kyrgyzstan, Poland, Tajikistan and Uzbekistan. Overall project goal is to verify whether women can actually protect their rights using domestic legal remedies.

The study "Women's Access to Justice in the Countries of Central and Eastern Europe and Central Asia" is aimed at promoting the Optional Protocol to CEDAW (OP CEDAW) in five countries in the Region (Azerbaijan, Kyrgyzstan, Poland, Tajikistan and Uzbekistan).

Coalition's experience showed that in many countries there are problems and barriers obstructing women's access to the procedures provided by the Optional Protocol and preventing the victims as well as women's groups and organizations from submitting cases to the CEDAW Committee. Majority of the barriers seems to be connected with the requirement that victims of gender-based discrimination should first exhaust domestic remedies. This to a great extent may depend on social and cultural status of women in the society, power relations in the family, women's financial dependency and other types of discrimination experienced by women, including cross-discrimination. Hence, women's access to justice is determined by several factors which often are not directly related to the accessibility of legal aid.

KARAT's experience demonstrated that more attention should be paid to conditions determining women's access to justice at national level. Customs and religion influence greatly women's status in society. Women's rights violations have become a part of everyday reality and are perceived by society as regular manifestation of traditional gender roles. Hence, related forms of discrimination not only remain widely unrecognized but also women's rights violations have become a part of the accepted value system. As a result, many issues related to the topic are still considered to be a taboo. All above mentioned facts obstruct women's access to justice. Some barriers are caused by law enforcement officials' unwillingness to interfere with "family matters". Others may be fueled by the fear of consequences that might result from breaking taboos and customs based on patriarchal or religious values.

The study does not aim at providing a full picture of women's access to justice in the project countries. It aims at highlighting the importance of gender sensitive approach to the issue and analyzes cases of women's rights violations in situations where women's ability to use legal remedies for protecting their rights is quite limited due to their dependant and vulnerable status in society.

In Tajikistan, domestic violence and limited access of domestic violence victims to justice were selected as examples of women's rights violations.

Unfortunately, women of Tajikistan are constantly under the threat of becoming a victim of various forms of violence, i.e. physical, psychological, economic and sexual. Most often women experience violence in their own families. Wife beating is common. In the late 1990s the problem of "home" and "psychological violence" became one of Tajikistan's most urgent issues. In the national legislation "domestic violence" is not described as a separate category. Statistical reporting on crime victims does not include such subcategory as victims of violent crime in the

family. State institutions counteracting domestic violence and supporting victims of domestic violence are poorly developed. Until now, the law on domestic violence, that could have helped in solving the issue, has not been adopted in the country.

Previously conducted studies in Tajikistan show that almost every fourth victim was subjected to violence by a family member (husband, parents, brothers, boyfriend etc.). The analysis of reported cases of domestic violence demonstrated that there is a wide range of forms of violence, with the prevalence of intentional beating and batter (82%). In every second case of intentional beating and batter in the family, it was committed by a husband.

Among those convicted under Article 117 (torture), 116 (beating) husbands constitute the vast majority (respectively, 75% and 83.3%)¹

The peculiarity of these crimes is that the object of violence are the weakest members of the family. It is also characteristic that the majority of these crimes are of latent, i.e. hidden nature, when, fearing her husband (father), or due to family commitment, customs, financial or other type of dependency, victims do not report to law enforcement bodies about previous or current acts of violence. Accordingly, legal proceedings followed by a trial do not take place in the majority of such cases. In addition, many are convinced that violence does not constitute gross violation of human rights.

2. STRUCTURE

The report consists of an introduction, description of selected issues, research methodology, two sections presenting main results of the study, including conclusions and recommendations.

The introduction provides information about the initiative and the project of Karat Coalition, as well as the study "“Women’s access to justice in the countries of Central and Eastern Europe and Central Asia”, and the analysis of the issues of domestic violence and access to justice for victims of violence in Tajikistan.

Description of the problem contains the results of the study in Tajikistan, indicating the seriousness, urgency and scale of the problem in the Tajik society.

The methodology of the study reveals the purpose and objectives of the study, used tools and methodology of the study, and defines main target groups for in-depth interviews.

The first chapter examines existing international and national legal mechanisms aimed at protecting women from domestic violence.

The second chapter identifies barriers and obstacles encountered by women on their way to justice, including the impact of economic, social, psychological, physical, institutional and other factors on women’s ability to protect their rights as well as their need to protect their rights.

Conclusions and recommendations suggest measures that may improve the situation in the given field of human rights violation.

¹ See Bozrikova T. Court cases related to violence against women: realities and peculiarities, Dushanbe 2004. //The study was conducted in December 2003 – March 2004 with the financial support of the Swiss Cooperation Office (SCO). The analysis was done based on the information on gender of victims and offenders collected in 2002 in 10 geographical areas from the units of the Ministry of Interior, Prosecutor’s offices and Courts.

3. DESCRIPTION OF THE PROBLEM

By ratifying in 1993 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Tajikistan undertook the obligation to implement it. The Constitution of the Republic of Tajikistan (Article 17) guarantees gender equality.

In compliance with its international obligations, Tajikistan adopted: "The State Program to Ensure Equal Rights and Opportunities for Women and Men for 2001-2010", the Law of the Republic of Tajikistan "On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization," (2005), the National Strategy on Women's Empowerment (*Activization*) in the Republic of Tajikistan (2010) and a number of other strategic documents. Thus, the state had undertaken specific efforts and measures to comply with obligations under international treaties, as well as other international obligations.

In January 2007 the UN CEDAW Committee heard the National report of the Republic of Tajikistan on the implementation of CEDAW, acknowledged the steps undertaken by the Government in order to successfully implement the Convention and adopted a number of conclusions and recommendations.

In 2010 - 2011 the implementation of the UN CEDAW concluding observations between 2007 to 2011 was monitored. The results were as follows: out of 29 recommendations only 1 was implemented in full, 14 were implemented partially, 14 were not implemented. 3 recommendations were not evaluated, as civil society representatives did not have access to the text of the next National Report to CEDAW from Tajikistan.

Thus, the studies and monitoring of the implementation of CEDAW recommendations suggest that in Tajikistan the problem of domestic violence continues to remain relevant and important, while the question of how to battle this form of discrimination still needs to be solved. This can be explained, in particular by the fact that despite the measures the Government of the Republic of Tajikistan and civil society organizations undertake, there is still no efficient mechanism for overcoming barriers to actual gender equality. Consequently, in its absence important and necessary actions and activities cannot take place. In particular, one of the recommendations was the adoption of the law "On the Prevention of Domestic Violence." The government included adoption of the given Law, as a separate item, into main strategic documents, i.e. "the National Development Strategy of Tajikistan for the period until 2015" and "the Poverty Reduction Strategy (2009-2011)". So far the law has not been adopted.

Since 2003 civil society organizations in the country have conducted discussions and lobbied for the adoption of the law on domestic violence. A number of republican and international seminars, conferences, round tables, public hearings were held throughout the country dedicated to existing problems and mechanisms for women's protection from domestic violence, as well as to the need to adopt such a law. All events were widely covered in the Tajik media. As a result of these actions, civil society organizations of Tajikistan prepared comments and suggestions on the draft law on domestic violence and submitted them to the Parliament.

Being aware of the need for effective, systematic actions in the field of domestic violence prevention, in 2006 civil society organizations initiated the development of a unified system for reporting cases of referral to crisis centers and statistical reporting. In 2009, as part of the project implemented by a Coalition of CSOs in Tajikistan "From de-jure Equality Towards de-facto

Equality» with the support of DFID and UNIFEM, a unified database of crisis centers' clients was created, on the basis of computer software "Life without Violence". The software had been developed by Foundation "Panorama" in partnership with the Association of NGOs on gender equality and prevention of domestic violence against women, with the support of the UNIFEM Trust Fund.

Currently in the country there are 18 Crisis and Resource Centers and their three branches that provide assistance to victims of violence:

- ✓ Dushanbe– 3
- ✓ Soghd province – 4
- ✓ Khatlon province – 13
- ✓ RRS – Rasht – 1

All of them are operating on the basis of civil society organizations, except Crisis Center "Bovari" working under the Committee on Women and Family Affairs, under the government of the Republic of Tajikistan. All centers operate with the assistance of donor organizations. 10 Resource centers and Women's Center „Gukrukhsor" (CC, RC, and shelter) are supported by OSCE; Crises Center „Bovari" and 4 Resource centers are supported by the Swiss Agency for Development and Cooperation; 4 organizations provide services with the support of other donors.

According to unified data base in 2010, 4415 people contacted 10 CCs. Among them: 3946 women (89,4%) and 469 men (10,6%). During the first half of 2011, 2635 people contacted 12 CCs, among them 89% of women and 11% of men².

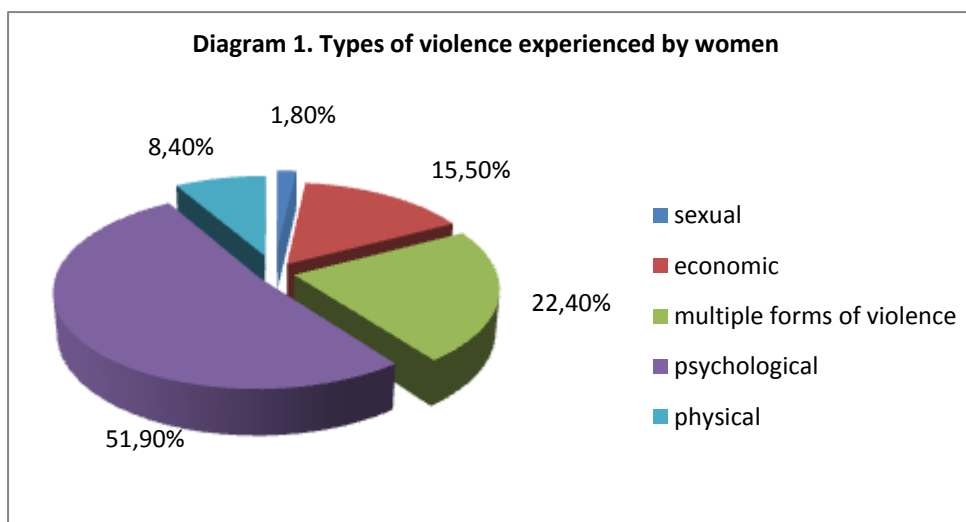
In 2010 and first half of 2011 „experienced violence" was the main reason for people to come to CCs. Second most frequent reason is the need for various consultations, including legal advice.

Table 1. Reasons for contacting Crises Centers

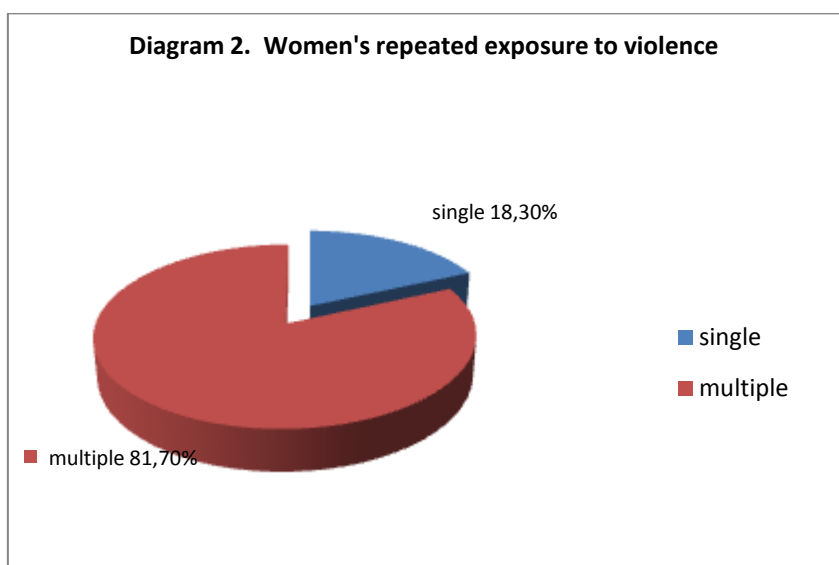
#	Reason for Contact	2010		First half of 2011	
		Number of people	%	Number of people	%
1	experienced violence	2503	56,6	1363	51,7
2	consultation	1562	35,4	1057	40,1
3	financial help	87	2,0	47	1,8
4	other	263	6,0	168	6,4
	Total in RT	4415	100,0	2635	100,0

According to the unified CCs data base, most frequent type of violence in the first half of 2011 is "psychological violence" – 51,9 %, followed by: "economic violence" - 15,5%, "physical violence"-8,4%, "sexual violence" - 1,8 %. At the same time 22,4% of victims experienced multiple forms of violence.

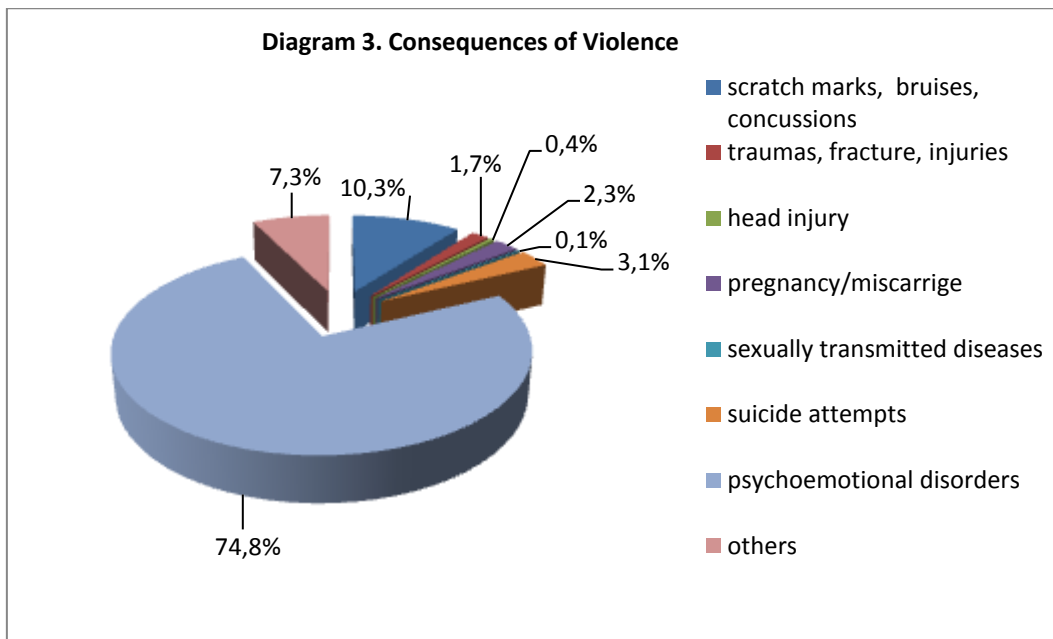
² Statistics on the activity of CCs in the RT from 01.01.2011 till 30.06.2011 (from the data base of the Foundation CSOs Coalition "From the "de-juro" Equality Towards the "de-facto" Equality") - Foundation „Panorama".



According to the study, 53% of victims live with a person who has behaved in a violent way. It is noted that women from different social groups are exposed to violence: both highly and poorly educated women, housewives and women working in various sectors of the economy, married and unmarried, young and old. Impunity of violence offenders contributes to the fact that violence against women occurs more than once. More than 80% of victims were abused repeatedly.



The practice shows that irrespective of the reason, violence always is followed by negative consequences. Data base analysis demonstrates that 74,8 % of CCs' female clients that had experienced violence suffered from psychoemotional disorders and over 3 % tried to commit suicide.



Domestic violence provides significant impact on emotions, intellect and behavior of women and children, subjected to violence. Moreover violence damages not only victim's personality but harms society and the state in general.

In authors' opinion, the reasons for the spread of domestic violence in Tajik society are as follows:

- widely spread belief that the seriousness of the problem of violence against women is greatly exaggerated and, in comparison with other social problems, is not so important. Especially it concerns the problem of domestic violence.
- widespread opinion that violence in the family is a family, private matter. As a proof, people often refer to the specificity of Eastern mentality, existing traditions etc.

Such attitude to the issue of domestic violence is a result of the impunity of perpetrators, leading to a feeling of permissiveness and reoccurring violent behavior.

The problem is that not only in public consciousness, but also in legal practice in Tajikistan domestic violence is considered to be a private matter. Manifestations of domestic violence are not classified as criminal offences in law; cases of referrals to law enforcement bodies in connection with domestic violence are very rare, the number of available legal remedies is very limited, although such offences are quite common.

The study aims at identifying problems related to the protection of women from domestic violence and analyzing the level of victims' access to justice.

4. METHODOLOGY

The study was conducted in August-September 2011 in Dushanbe, Kurgan-Tube, Bokhtar district of Khatlon province.

Goals and objectives

The goal of the study is the promotion of women's rights and improvement of women's access to justice through the use of domestic and international legal remedies. Objective of the study is to identify violations of women's rights and problematic issues related to women's access to justice and protection of their rights.

Used Methods

- desk-top analysis of statistical data;
- development of tools and study plan, sampling, development and testing of a draft of questionnaires for victims and experts, translation into Tajik;
- interviewer training;
- collection of primary information (in-depth interviews, experts' opinions);
- primary information processing and analysis;
- analytical report preparation.

Study plan and tools

Three questionnaires for in-depth interviews were developed:

- for female victims of domestic violence;
- for public sector experts working in the field of the protection of citizens' rights,
- for civil society experts working in the field of the protection of citizens' rights.

Target groups in case of in-depth interviews

- female victims of domestic violence, living in Dushanbe, Kurgan-Tube, Bokhtar district of Khatlon province
- practicing lawyers, i.e. defense attorneys and judges
- NGO employees working in the field of women's rights protection.

Number of interviewed women from Dushanbe and Khatlon province is 20.

Among them:

By nationality -18 Tajik women, 2 Uzbek women

By place of residence: 8 reside in cities, 12 reside in rural area.

By religion: all women were Muslim

Respondents, by age:

26-30 years - 6 persons

31-36 years - 7 persons

41-44 years - 4 persons

50-53 years - 3 persons

Respondents' family status: out of 20 interviewed persons 8 (40%) are officially married; 4 (20%) had the Muslim wedding rite (nikoh); 8 (40%) are divorced (out of them 7 women had the Muslim wedding rite "nikoh").

Out of 20 respondents: 11 women have between 1 and 3 children; 9 have between 4 and 6 children.

Level of educational: questionnaire results show rather low level of respondents' education:

	Level of education	Number of women	%
1.	Lower secondary education	8	40,0
2.	Secondary education	9	45,0
3.	Secondary vocational education	3	15,0

Some of the women completed 4 - 7 years of schooling. Only three out of 20 respondents have vocational skills. The majority of respondents, 14 persons (70%) currently do not work and only 6 persons (30%) work to support the family. Out of them 1 woman makes clothing, 2 sell goods at a market place, 1 works as a cleaning lady at a public institution, 2 women work at dekhkan farms.

In order to gain experts' opinion, 13 practicing lawyers from Dushanbe and Khatlon province were interviewed, out of them 11 defense attorneys and 2 judges. Six of them work in public institutions, while 7 are private-practice lawyers.

In addition 8 employees of civil society organizations (CSOs), working in the field of women's rights protection, were interviewed: 4 from Dushanbe city, and 4 from Khatlon province. These organizations have been involved for many years in legal activities aimed at protecting the rights of women, children, as well as in women's legal education, especially in rural areas.

The report benefits from other studies on violence against women previously conducted in Tajikistan³, in particular, the report of L. Alexandrova (lawyer of NGO "Human Rights Center") on the outcomes of work of legal aid centers, carried out under the project "Access to Justice and Judicial Reform ", with financial support from the Swiss organization for cooperation under the leadership of the Swiss Association for International Cooperation "Helvetas office in Tajikistan", presented at a roundtable on" Access to justice for victims of violence "(Dushanbe city, 18.08.2011).

³ Gender Relations in Tajikistan. 1999. National Report. – Dushanbe. 2000; Collet Harris. Control and Subversion (Gender, Islam and Socialism in Tajikistan). Amsterdam, 2000; Folingem D. Women of Tajikistan. ABP, 2000 Annemiek Rikhters. Gender Violence, Health and Healing in Situations of Ethno-National Conflicts: The Cases of the Former Yugoslavia and Tajikistan.- Hommes Armes, Femmes Aguries. Rapports de Genre en Situations de Conflict Arme. IUED, Geneve, 2001; Sharipova M. Violence against Children in Tajikistan: Some Results of National Survey. -RIC "Open Asia". 2001; Hegai M. Study on Multi-marriage in Tajikistan. Dushanbe. 2002; Population's Level of Awareness on Violence at Home and Working Place. – UNIFEM. 2002; Women's Protection from Domestic Violence.- League of Women-Lawyers. Dushanbe. 2004; Violence problem in Gender Statistic.- Gender and Development- Dushanbe. 2004; Court Cases on Violence against Women: Realities and Peculiarities.-League of Women-Lawyers. CSO "Panorama". - Dushanbe. 2004; Shoismatulloev Sh. Violence against Women: Past and Present.- Dushanbe. 2005; Haar R. Violence against Women in Marriage: General Survey of Population in Khatlon oblast, Tajikistan. December, 2005.- Dushanbe 2005; Mukhamadiev D. Tajik Women: Psychology and Rehabilitation from Stress.- Dushanbe. 2006; Kasimova S. Transformation of Gender Order in Tajik Society. – Dushanbe: Irfon, 2007; Domestic Violence in Tajikistan: A Human Rights Report. Minnesota Advocates for Human Rights.2007; Analytical paper «About realization of Law of the Republic of Tajikistan "On State Guarantees of Equality between Men and Women and Equal Opportunities for Their Realization". - Dushanbe, 2008; Evaluation of the Realization of State Program "Main Directions of State Policy on Guaranteeing Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan for 2001-2010, based on the results of public monitoring activities".-Dushanbe, 2009.

5. MAIN RESULTS

5.1. REVIEW OF LEGISLATIVE AND REGULATORY DOCUMENTS ON THE ISSUE OF DOMESTIC VIOLENCE IN THE REPUBLIC OF TAJIKISTAN

5.1.1. Legal system in Tajikistan and the protection of women against discrimination

The Republic of Tajikistan (RT) expressed its interest and intention to adhere to international human rights standards in accordance with the Universal Declaration of Human Rights and other UN human rights treaties. The country ratified several international conventions and treaties, in particular the Convention on the Elimination of All Forms of Discrimination against Women "(1993 (CEDAW), the International Covenant on Civil and Political Rights (1999). The President of Tajikistan also signed the Optional Protocol to CEDAW (2000), which has not been yet ratified.

In accordance with the Constitution of the Republic of Tajikistan, adopted in 1994, "international legal acts recognized by Tajikistan comprise an integral part of the national legal system. In case domestic law is inconsistent with recognized international legal acts, norms of international legal acts should be applied" (Art. 10).

General standards of equality between men and women enshrined in the Constitution of the Republic of Tajikistan are in accordance with international standards. However, the Constitution, guaranteeing equal rights of citizens, does not contain a definition of "discrimination" and its prohibition in general.

In compliance with its international obligations, the National Action Plan to improve the status and role of women for 1998-2005 was developed in Tajikistan; Presidential Decree "On strengthening the role of women in society" (1999) was issued; "The State Program to ensure equal rights and opportunities for women and men for 2001-2010" was adopted alongside the mechanism for its implementation; the Law of the Republic of Tajikistan " On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization," (2005) was adopted. This package of documents potentially provides legislative and policy framework necessary for gender policy implementation by relevant governmental structures of various levels, both executive and legislative.

In the Law of the Republic of Tajikistan "On State Guarantees of Equality between Men and Women and Equal Opportunities for their Realization," a definition of "discrimination" is given for the first time. The law defines discrimination as ***"any distinction, exclusion or restriction made on the basis of sex, which is aimed at weakening or nullifying the recognition of equality between men and women in political, economic, social, cultural or "any other field".*** The law prohibits discrimination of men and women. Violation of the principle underlying the gender equality (realization of public policy or other actions that put men and women at a disadvantage on the grounds of sex) is considered discrimination and should be eliminated.

The definition of "discrimination" given in this law is essentially a summary of the provisions of the first article of CEDAW. It neither introduces the terms "direct" and "indirect" discrimination and nor makes a distinction between them.

Tajik legislation imposes criminal liability in case of direct or indirect violation or restriction of rights and freedoms of man and the citizen that caused harm to the rights and lawful interests of citizens, regardless of gender, race, nationality, language, social background, personal, financial or employment status, residence, attitude to religion, convictions, membership in political parties and public associations.

However, criminal persecution in above mentioned cases is possible only if harm occurs otherwise the person cannot be held liable. In addition, criminal lawsuit may be initiated only if investigating authorities or prosecutor's office identify elements of offense (*corpus delicti*). Although the article contains the list of grounds for discrimination, the word "discrimination" in it is not mentioned.

Specific laws and state programs of the Republic of Tajikistan should constitute a procedural mechanism ensuring gender equality.

Specifying liability of individuals and legal entities in the Law for the infringement, the legislator does not define the nature of the liability, relevant remedies or the procedure for establishing the liability.

If the act does not contain *corpus delicti*, the law does not provide neither procedures for filing complaints in cases of discrimination or violation of rights, nor a list of agencies and individuals competent to consider complaints, initiate procedures for investigation, dispute resolution; the law also does not stipulate measures to be taken against individuals, officials etc.

According to interviewed legal practitioners, in Tajikistan there is legal protection for women against discrimination. First and foremost, this is the Constitution of the Republic of Tajikistan, a number of other regulatory acts and international treaties and agreements.

"In my opinion, in Tajikistan there is legal protection for women against discrimination. These are various documents, ranging from the Constitution of the Republic of Tajikistan and other regulatory & legal acts, both domestic and international, ratified by the Republic of Tajikistan. The Constitution of the Republic of Tajikistan is the guarantor of human rights protection, including the rights of women. " (In-depth interview with a practicing lawyer, Dushanbe, September, 2011.)

"The Constitution of the Republic of Tajikistan, all branches of law and the applicable laws protect the rights not of only women but also the rights of all members of society. Article 1 of the Constitution states that "Tajikistan is a social welfare state, a policy of which aims at establishing conditions for a dignified life and free development of a human being." This article, clearly, is fully applicable to women. That is, there is no distinction or reduction of women's role. The article suggests that women and men enjoy equal rights in all spheres of life. For example, Article 19 guarantees everyone judicial protection. It does not say that only men are entitled to judicial protection. For example, Article 17 stipulates that the State guarantees the rights and freedoms for both men and women, regardless of their sex, language or other characteristics. Article 34 stipulates that the mother and child are under special state protection and patronage. Article 30 prohibits women's work in underground mines and other heavy work." (In-depth interview with a practicing lawyer, Dushanbe, September, 2011.)

A separate anti-discrimination law does not exist, but according to most respondents, all branches of law protect women from discrimination.

"For example, I do not know if there is a separate anti-discrimination law in Tajikistan. But I have repeatedly said that labor laws, all branches of law protect women from discrimination. For example, labor law prohibits women from working more than 8 hours, it applies also to us, men; in case of women with small children working time maybe reduced up to 6 or 4 hours. Even during work they are also given time to feed and rest. If a single mother raises a child, she is paid allowances for children. The Criminal Code of the Republic of Tajikistan also protects the freedom of women and minor girls. The Family Code prohibits marrying and registering the marriage of minor girls. All of this suggests that anti-

discrimination provisions do exist, but in various laws. "(In-depth interview with practicing lawyers, Dushanbe, September, 2011.)

"The concept of discrimination is included in the legal system. All actions that violate or discriminate the rights of another citizen are considered to be discrimination." (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

The interviews demonstrated that all practicing lawyers know about the adoption of Law, from March, 1, 2005 „On State Guarantees of Equality between Men and Women and Equal Opportunities for Their Realization”, where the definitions of „gender”, „gender policy”, „gender equality” are given and the definition of „discrimination” is specified. This definition is consistent with the definition in Article 1 of the CEDAW Convention. Article 3 of the Law prohibits discrimination: "discrimination of men and women's rights is prohibited." Violation of the principle underlying the gender equality, is considered to be discrimination and should be eliminated.

5.1.2. Status and application of the CEDAW Convention in national legislation

Since 1993 Tajikistan is a state party to the Convention on the Elimination of All Forms of Discrimination against Women and has an obligation to ensure equality both de jure and de facto. All states, parties to CEDAW should be guided by the provisions of CEDAW to fulfill their obligations. CEDAW provides the means for achieving genuine equality. In general, it determines the need to eliminate discrimination in order to achieve equality. In particular, it points out that not only constitutional guarantees are required, but also the adoption of appropriate legislation that will provide a broad definition of the concept of equality in order to achieve equality de jure and de facto (Article 2a); introduces the notion of direct and indirect discrimination (Article 1), i.e. prohibiting discrimination in law and in practice (Article 2 f and g); impose sanctions (Article 2a and b), as well as establishes institutions competent to deal with such issues.

Although Constitution of the Republic of Tajikistan stipulates the principle of equality of women and men before the law (Art. 17), women do not yet have legal equality. This is due to the lack of a clear definition of discrimination in the Constitution and other laws, as well as to a limited number of ways to bring to justice for discriminative actions against women.

The Constitution establishes the principle of primacy of international treaties over national legislation. However, in practice, judges do not take decisions on the basis of CEDAW provisions.

"CEDAW not only may but should be used in judicial proceedings. Since the Convention is an integral part of the legislation of the Republic of Tajikistan, the normative & legal acts adopted by the RT, are adopted in accordance with the norms of the Convention." (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

According to lawyers, this can be explained by the fact that in case of all the provisions of the Convention there are similar provisions in domestic legislation, hence, there is no contradiction between the Convention and domestic law. As a result, during pretrial proceedings and during the trial domestic legal norms are applied.

"The Convention has primacy over the national legislation. And today we can say with confidence that our legislation is consistent and harmonized with international conventions. Amendments are introduced into national laws on an ongoing basis, and each our law is harmonized with the conventions ratified by the RT. There is no conflict between national laws

and international norms. " (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

"I personally have not used the Convention. All those requirements that are in the Convention, are also contained in our national legislation. There is no contradiction between our laws and the Convention. " (In-depth interview with practicing lawyers, Kurgan-Tube, September, 2011).

"We, defense attorneys, if necessary, during the trials use international conventions, especially in family cases when there is violence against children or women, that is, there is inequality in the family, and other problems. We protect the rights of one of the parties. In this case, we often refer to the Convention. For example, when one of a child's parents is a nonresident of RT, i.e. the mother is a citizen of the RT, and his father is a citizen of the Republic of Uzbekistan, or Afghanistan, and he takes the child to Uzbekistan or another state, regardless of whether the woman agrees or not. It violates the rights of a woman. And we, willingly or unwillingly, should refer to the Conventions." (In-depth interview with practicing lawyers, Dushanbe, September, 2011).

According to one respondent, it is impossible to bring the offenders to justice using the articles of the CEDAW Convention, and therefore the courts in civil and criminal cases do not refer to the articles of the Convention:

"It is the Convention on the Rights of Women. The woman, like the man, has the right to education, higher education; has the right to exercise ones' rights. And in fact, if this is the case when rights are violated, the case of violence, then criminal charges should be pressed. And the Convention is about the violation of women's rights. And in such a case bringing to justice is impossible. For example, the prohibition to leave the house, or to go to school, is discrimination against women. But the man cannot be brought to justice for that. " (In-depth interview with a CSO employee, Kurgan-Tube, Khatlon region, September, 2011.)

"Protection from discrimination exists only on paper. Despite the fact that all lawyers should know the laws and international treaties, even if they know the Convention, they don't refer to it directly. They use the national legislation". (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

The majority of respondents have superficial knowledge about the Optional Protocol to CEDAW Convention and are not aware of its procedures. They do not know how the ratification of the OP could help to protect women's rights.

"I do not have enough information on this issue. I have only theoretical knowledge obtained at advanced courses at the Educational Center. We had a theoretical course on the given Convention and I am familiar with the Protocol, but I haven't used it in practice". (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

„... on the Optional protocol to CEDAW, I can say that till now this Protocol hasn't been ratified. If it had been ratified, it would have been easier to protect women against violence". (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

6 out of 8 respondents from civil society organizations know about the Optional Protocol to CEDAW, and that it was signed in 2000 by the President of Tajikistan, but not yet ratified. They know that the OP is an additional mechanism for the protection of women's rights.

"As far as I know, if the Optional Protocol to CEDAW is ratified, our women, who really haven't found legal support and help under the national legislation, will be able to appeal to the international court. That is, if they exhaust domestic remedies and are still not satisfied, if they really are discriminated, they have the right to appeal to the international court." (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

All respondents think that the OP to CEDAW should be ratified by Tajikistan.

"I think this is a contemporary issue. Most likely in the near future it will be ratified. We're talking about gender equality, and if you look ten years back, back then no special attention was paid to the issue. But today the Government acknowledges the problem, this terminology is introduced into the legislation and it works, that is, it has gradually become everyday terminology and we use it in practice. So, I think, in the near future, this protocol will be ratified. It will become a legal mean of assistance to women in case of violence and violation of their rights. " (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

5.1.3. Judicial protection of women's rights in domestic violence cases

The majority of interviewed lawyers stated that there is no contradiction between the legislation and judicial practice.

No, there is no contradiction between the legislation of the RT and judicial practice, and especially in case of legal protection of women. Till today there have been no contradictions. I haven't encountered them in my work so I cannot say anything about it. On the contrary, there are benefits for women. For example, in accordance with the Family Code of the Republic of Tajikistan, if a woman is pregnant or has a child under 1.5 years, a man cannot file a divorce petition with the court. This is beneficial for women's rights. Because when a woman is pregnant, she is in need of a greater support from her husband. Also, according to the Labour Code, until the child turns 1.5 years, a mother cannot be engaged on heavy work." (In-depth interview with practicing lawyers, Dushanbe, September, 2011).

If national legislation can help protecting the rights of women subjected to domestic violence, why they continue to be a vulnerable group in our society? Lawyers from the Center for Human Rights tried to analyze the provisions of the Criminal Code and the Criminal Procedure Code⁴.

Typically, cases on domestic violence are considered under Art. 112 and 116 of the Criminal Code of the Republic of Tajikistan and virtually never under Art. 117, although the content of the article is associated with domestic violence⁵.

Art. 112 and 116 do not foresee isolation of the offender from the victim and his deprivation of liberty, as this is not a grave offence. Art. 117 talks about systematic nature of offence, which is very difficult to prove in family affairs.

If one analyzes the CPC of the RT, Art. 24 part 2 states that "The offenses stipulated in Articles 112, 116, 135, 136, parts 1 and 2 of Article 156 of the Criminal Code of the Republic of Tajikistan shall be recognized as "cases of private prosecution". Proceedings are initiated on the

⁴ The information is provided by L. Alexandrova, a lawyer from the Human Rights Center..

⁵ Article 112. Intentional infliction of minor bodily harm

Article 116. Beating

Article 117. Torture

basis of the statement of a victim, his/her legal representative, and the proceedings are subject to termination in the event of the reconciliation with the offender."

Article 26 of the Criminal Procedure Code states that in case of any victim's statement, the relevant agencies **have to** initiate criminal proceedings. Based on the above mentioned facts, one may conclude that in such cases as intentional infliction of minor bodily harm and beating criminal proceedings **should be initiated** and can be terminated (according to current legislation) in case of reconciliation of the parties. However, Article 73 of the Criminal Code (relief from criminal liability in case of reconciliation with the victim), a person committing a minor or moderate offence, may be exempted from criminal liability if s/he reconciles with the victim and compensates inflicted harm. Art. 27 Part.1Par. 5. of the Criminal Procedure Code do not foresee initiation of criminal proceedings. That is art. 24 and 26 of the CPC do not comply with Art. 27 of the Criminal Procedure Code, and moreover, in this case norms of the Criminal Code do not comply with the norms of the Criminal Procedure Code. According to Art. 73 of the Criminal Code the relief from liability is possible under two conditions: 1) parties have reconciled and 2) the harm has been compensated for. And only when both requirements are met, a person may be exempted from criminal liability. Those requirements can be met as a result of the following procedures: a decision recognizing the person as the victim of the crime - issued in accordance with Part 1. Article 42 of the CPC immediately after the criminal event and the inflicted damage. A person is recognized as a civil plaintiff based on Part 1 of Article 44 of the CPC. But this is only possible when criminal proceedings are initiated. In practice, usually nobody explains to victims of domestic violence their rights, and certainly nobody explains the right to bring civil action in case of criminal proceedings.

Another obstacle that in our opinion delays the process of proving the guilt of the accused of a crime under Articles 112,116 of the Criminal Code is that the new rules of the CPC (art.354) require that "private prosecution cases" are initiated by courts. This means that some courts referring to this article reject results of militia's investigation made on the basis of a persons' s statement in private prosecution cases. As a result it turns out that militia officers, having received citizens' statements and having executed all necessary actions (referral for examination, etc.), further can neither refuse to initiate criminal case (as it's not in their competence) nor refer it to the court. Therefore, sometimes militia officers refuse to take statements from citizens.

And this happens despite the requirements of Art. 140, 141, 145 of the CPC of the RT, that when a victim wants to make a statement, and because of one's helplessness and/or dependence cannot protect own interests, official bodies are obliged to accept the statement, review it and initiate criminal investigation. Thus, we can conclude that the passiveness of all official institutions contributes to the impunity of offenders, resulting often in a victim's suicide or some other extreme actions. It is also important to note that in par. 4 of Art. 24 of the CPC it is indicated that the prosecutor has the right to prosecute under these articles irrespective of victim's position. The prosecutor, investigator, inquiry officer shall, within their competence initiate criminal proceedings in every case of a crime, and take all legal measures to establish the circumstances of the crime and if there is sufficient evidence refer the case to the court.

Art. 145 of the CPC also obliges inquiry bodies, an investigator and prosecutor to accept, register, and to consider the statement and report on any committed or planned crime. The applicant receives a document confirming registration of the statement or report on crime, indicating the name of the person who accepted the statement or report and the time of registration. Statements and reports on crimes received by the court are sent to the prosecutor who decides whether a criminal case is to be initiated; the applicant should be informed about the decision taken. The decision based on received statements and reports on crime should be taken within **three days** from the date of their receipt. And Art.145 par. 8 of the CPC states that "if a statement or information on criminal record is sent, the inquiry body, investigator,

prosecutor are obliged to take measures to prevent or counteract the crime, as well as to preserve all the evidence."

On the other hand, when courts receive citizens' statements on beatings, they cannot perform operational activities in order to stop the offence, investigate the crime scene, preserve the evidence etc. Thus, in new CPC there is contradiction between Art. 354 and Art. 145, which not only obstructs the work of the militia and courts, but also violates citizen's right to get timely protection in case of assaults. During this period of time anything may happen to the victim of violence and markings on the body may heal. Thus, the statement is taken by the militia and next, while justification for refusal is being written, is sent to the court. The court forwards it to the prosecutor's office, time passes by, traces of beating disappear. No document states that immediately after the acceptance of the statement the victim is sent for medical examination and measures are taken to prevent further crimes.

In such a way authorities responsible for the registration and further investigation of domestic violence cases by their lack of action provide grounds for new offences against the victim. In order to prevent further violence, crime prevention measures should be taken as provided by Art. 101 of the CPC. In domestic violence cases such measure as house arrest can be used. For example, parts 1 and 2 of Art. 110 of the CPC provide that "House arrest means isolation of the suspect, the accused and the defendant from society without his/her detention; nevertheless legal constraints defined by a judge/a court may be imposed. House arrest can be accompanied by the following measures applied both separately, and jointly: - A prohibition to communicate with certain persons and to meet anybody at home ... "; part 3 of the same article also specifies that "the decision of the judge/court on house arrest specifies measures to be applied to the suspect, the accused and the defendant; as well as indicates the surveying authority or official".

Unfortunately, currently the given norm isn't used for the following reasons: first, law enforcement officials do not clearly understand the mechanism of its realization; secondly, due to the absence of required equipment; and, thirdly, law enforcement bodies are not willing to apply such complicated mechanism in "private prosecution cases" (this measure is applied by analogy with imprisonment).

A question should be asked: Who should register domestic violence cases and collect first evidence? Based on the experience and following the logic, this task should be given to local departments of internal affairs, i.e. to district militia officers who are always present in their areas. They should be authorized to register any complaint either in case of a family quarrel or any conflict between the neighbors; especially in case of physical violence, they should be obliged to register the statement and refer the violence victim for a medical examination. Such quarrels mostly occur at home or near the victim's house, that is why it is unreasonable to refer this task to some other agency or body. If incident happens late at night, it's almost impossible to find the judge or the public prosecutor at such a late hour. Only a district militia officer can respond to the incident and he will be the first one to deal with the issue of violence. Thus, legislation should stipulate relevant duties of local Departments of Internal Affairs (district militia officers) aimed at prompt and effective investigation of issues related to domestic violence and violence in general.

Criminal law interprets violence in a contradictory way. Psychological violence is not even called the violence in criminal law. In the description of the components of crime, the concept of violence is used only in relation to physical violence. In particular, the threat is seen as information about the possibility of physical violence or other adverse actions for the victim. The criminal law virtually ignores psychic trauma caused by the threat, although threats can cause harm to human health comparable to physical assaults.

The existing criminal law, criminal procedure and administrative law do not introduce particular definitions and penalties for domestic violence. The legislation does not bring the desired results

eliminating domestic violence cases, which is becoming an increasingly spread type of offenses against life, health and dignity of women, children and other family members. Currently, according to official statistics, a significant number of injuries of varying severity, beatings and humiliation, forced early marriages, sexual motivated offences take place in the family.

5.1.4. Women's access to qualified legal aid

According to all interviewed lawyers, there are efficient laws in Tajikistan that protect women's rights and guarantee them equal rights with men; hence, every woman, the victim of violence, can receive help. They can contact human rights organizations, the Bar Association of the RT for free legal aid or an attorney. Hence, it seems, that there are no obstacles:

“For women subjected to violence, all kinds of legal aid are accessible, and all services for them are free. Whether it be services of an attorney or bringing lawsuit to the court, according to the Criminal Procedure Code in case of having minor children the court can exempt the woman from court fees. Or in many cases when the woman acts as the plaintiff, the defendant, be it her husband or someone else, is ordered to pay court fees. Services of attorney or other services according to the Constitution of the RT are guaranteed.”(In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

“There are no obstacles for gaining legal protection for women today. The only flaw I think is the low level of knowledge and education of these women, especially of women in rural areas. And regarding the judge who said that women with low income may write to the Bar association asking for free legal aid - certainly, such practice exists, and we often take part in such proceeding.. For example, in case when a woman can't speak at the hearing i.e. doesn't know what to do, can't answer simple questions, the judge is obliged to provide her an attorney. In case of low income, a letter to the Bar is written requesting free legal aid. And the Chairman of Bar nominates some attorney to protect this woman's rights free of charge”. (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

„Well-off women contact private lawyers and as a rule receive good quality services. In regards free legal aid, Bar Charter says that low income families, women, mothers with many children, disability pensioners with disability of the 1st or 2nd degree can request free legal aid from the Bar that should be provided. Besides, I'll repeat, various CSOs have lawyers who can provide free legal aid to such women. And finally, if it is impossible to find an attorney free of charge, it is possible to file petition with the Prosecutor's Office, both on the regional or republican level. According to the law, the Prosecutor's Office is obliged to render free legal aid to such category of people.”

(In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

But in reality various obstacles obstruct woman's way to rights protection:

„From my practical experience, I can say, that access to legal protection, both in the city, and in the countryside is provided to all citizens of the RT according to the law. So, legal aid is accessible to all. Our republic is rather small, residential settlements are close to each other and such legal aid is accessible to all. I repeat that it depends on an elementary standard of living and people's literacy. And the reasons for the lack of access to legal aid are poverty, illiteracy, fear of being subjected to violence by a spouse or other society members or a person's erroneous conviction that it is impossible to achieve justice and etc.” (In-depth interview with practicing lawyer, Dushanbe, September, 2011).

The survey showed that not all women can use legal remedies. This is due to the economic status of women, attitudes and beliefs in the society, low legal literacy and education level, which are the main barriers to women's access to justice.

“Legal remedies are provided, but not in full. Very often the court rules not in favor of the victim. Often the decision is taken by the court without thorough analysis of the details. Not all women can use attorney’s services, as not all these women can afford an attorney, as one needs to pay to the attorney”. (In-depth interview with a practicing lawyer, Kurgan-Tube, September, 2011).

“Good quality legal defense usually costs money. For rural women legal defense is less accessible, then for women from cities, as the majority of civil society organizations, basically, work in the capital, in Dushanbe. They can solve the problems of city women, and not rural women. Probably, in the village they even don't know about such humanitarian organizations.” (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

“... many women don't know their rights. Mostly it can be observed in rural areas where the women are vulnerable. Due to their low legal literacy, or illiteracy, their fundamental rights are violated. They can't contact neither local law enforcement bodies nor representatives of authorities at city or village Khukumats, nor the Committee on Women and Family Affairs in own district, where they could protect their rights. They have no legal literacy ... Only when they lose patience, they start contacting (official bodies).” (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

“I will give an example. The husband regularly tortures his wife, doesn't allow to work or study, doesn't allow her to communicate with her parents, etc. In such a case it is necessary to contact the militia. In case of physical injuries, it is necessary to undergo medical examination, to inform the Prosecutor’s Office, to get legal aid from an attorney, to write to the Committee on Women and Family Affairs, etc. But not all women know it and are capable of doing it, since they don't know laws, have no money, are afraid of negative opinions of neighbors”. (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

“... such obstacle is poverty, and you know that for trip from a rural area to the regional or national capital money is needed. It’s the fact. The second factor is illiteracy. If the woman is illiterate, she even doesn't understand that her rights are violated or doesn't know where to go and whom to contact.” (In-depth interview with a practicing lawyer, Dushanbe, September, 2011).

When describing step by step detailed procedures for the investigation of domestic violence cases, one of the respondents from Dushanbe said:

„... extremely difficult and important issue; briefly I can say that if a woman contacts us for some reason, we first need to analyze the problem, then analyze and study the legislation relevant for the case. Then - let’s assume we are talking about an attorney - the attorney should choose the way for defense. Should one go to the court and wait for results for long time or maybe it would be better to contact a specific state institution and obtain some quick results? If the strategy for protecting one’s client’s interests is chosen correctly, then you can always get some result. Finally the attorney goes to the court or to some state institutions. Eventually, it is possible to address the President of the RT as the guarantor of the Constitution and protection of the citizens rights and freedoms, including women.”

According to the respondents, more efforts should be aimed at increasing women’s legal knowledge, especially rural women. Both governmental agencies and civil society organizations should be engaged in these activities. TV and radio programs should be made, the media should cover domestic violence issues, explain to women their rights and responsibilities, ways of overcoming the crisis, free legal aid should be provided to women with low income.

“Mentality of rural and city women is different. In the countryside a woman is constantly working either in the field or doing housework. If public organizations could inform women on their rights at meetings and seminars, this group’s access to legal remedies would have improved.” (In-depth interview with practicing lawyers, Kurgan-Tube, September, 2011).

“Often husbands don't allow their wives neither to work, not to go anywhere, - everything is banned. It's good to organize courses, seminars for increasing women's legal literacy just in makhallys, i.e. where people live. They are very useful. Earlier, we participated in such seminars in Rasht, they are very useful.” (In-depth interview with practicing lawyers, Dushanbe, September, 2011).

“Legal literacy training programs are connected with advocacy or with mass-media. So, the TV and radio should contribute to that as well. Our women are mostly housewives and many of them watch TV, listen to the radio. It is possible to inform women about their rights using such programs. For example, on the radio, at least once a week, as women in the field and at home listen to the radio. They could have organized it. For example, when a woman watches on TV how to cook a cake or something else, she writes it down or remembers. Isn't that so?” (In-depth interview with practicing lawyers, Dushanbe, September, 2011).

“... the basic problem is that women don't know their rights. We should explain it to them in a simple language. For example, there is the Family Code - what is it about, what the Criminal Code means? All should be explained. And after our explanation she starts to understand, and says: my rights are violated in this or another way. And we, in accordance with the legislation, collect required documents, write her statement and go to the court”. (In-depth interview with practicing lawyers, Kurgan-Tube, September, 2011).

According to one of the respondents, current legal system does not always correspond to the specific needs of women. And it would be much better if, for example, attorneys had narrow specialization, i.e. the protection of the interests of women and children, etc., as it is done in developed countries:

“... in comparison with economically developed countries of Europe and the USA, we don't have narrow specialization in protecting the rights of women and minor children. I mean attorneys. We work in private practice, so we have very different cases. In the West, judges have narrow specialization, for example, the family law, or protection of interests of women and children in civil proceedings etc. It does not work this way here as judges, public prosecutors, investigators and attorneys do not have narrow specialization. Accordingly, the quality of legal aid decreases.”

(In-depth interview with practicing lawyers, Dushanbe, September, 2011).

According to all respondents it's essential to adopt the Law “On the Prevention of Domestic Violence” and to ratify the Optional protocol to the CEDAW Convention.

„Undoubtedly, in order to protect women from domestic violence it is necessary to ratify the Optional protocol to CEDAW and to adopt the law on domestic violence in our Republic. I think that this will put an end to domestic violence.” (In-depth interview with practicing lawyers, Kurgan-Tube, September, 2011).

“The draft of the law, currently undergoing the process of enacting, should be adopted. In case of family disputes and for the protection of family members from violence this

document is of greatest importance. In case of each offence the state should introduce a measure of restraint.” (In-depth interview with practicing lawyer, Dushanbe, September, 2011).

5.2 ANALYSIS OF BARRIERS THAT PREVENT WOMEN'S ACCESS TO JUSTICE

5.2.1 Analysis of the ability of women to protect their rights

According to the UN Special Rapporteur on violence against women, Yakin Erturk, who paid a working visit to Tajikistan in 2008, "Access to justice for women and their protection from violence are still insufficient."⁶

On one hand, this is due to imperfection of the legal framework and mechanisms for implementation of adopted laws, the attitude of law enforcement and judicial authorities to the domestic violence issues and their solutions. On the other side it's connected with women's limited abilities to protect their rights, as most of them are poorly educated, financially dependent, and have insufficient legal knowledge.

According to the study results, most women are not educated and have no vocational skills or degree as their parents made them marry early and did not educate their daughters:

"I graduated from school in May and in September I was married. I was a minor, very young. My marriage was registered only before the birth of my first son".
(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

Some of the women completed 4 - 7 years of schooling. Only three women out of 20 respondents have had vocational training. The majority of respondents, 14 persons (70%) currently do not work and only 6 persons (30%) work to support the family. Out of them 1 woman makes clothing, 2 sell goods at a market place, 1 works as a cleaning lady at a public institution, 2 women work at dekhkan farms.

The majority of women described their household's financial situation as a very difficult one, i.e. they have money only for food.

"... the most important is to feed ourselves. At least, to have enough money for food. We are happy to have enough for daily food and not to borrow, not to humiliate ourselves in front of others. It's enough for us, thanks God. Enough for food and thanks God we don't knock on someone's door begging". (In-depth with a female violence victim, Kurgan-Tube, August, 2011).

„Our income is enough only for a day-to-day living, for food. I have tried to save some money to buy a TV set, but so far in vain". (In-depth interview with a female violence victim, Dushanbe, August, 2011).

The majority of women have never had money of their own, as they had never worked, but took care of the family and were fully dependent on their husbands and family. But even those women who worked could not spend the money they earned freely but only with the permission of a husband, mother in law, parents and other family members.

„ No, I don't have money of my own, and never had. When I lived with my husband, he worked and brought money to his mother, farther, sister. The mother spent the money according to her wishes. She always bought for herself and the daughters dresses, furniture, jewelry, etc. And she never bought anything for me". (In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

⁶ Cit.: Public Hearings "Mechanisms of Protection from Domestic Violence". December 8, 2010. Discussion materials..- Dushanbe, 2010. - p. 36.

„No, I didn't have any money. I sold my earrings, goods. But I didn't have the money of my own. For example, when I was pregnant, the husband said: „I don't have money...”. Even if he had, the mother-in-law would not have allowed to spend it on me. So, I sold my belongings. When my father was alive he brought some money. He said it was the money for my treatment”.
(In-depth interview with a female violence victim, Bokhtar district, Katlon province, August, 2011).

“Money was mine, but I had no right to spend it. For example, in the evening somebody ordered some clothes, I sewed during the night, early in the morning at 6 o'clock I took the clothes to the market, and was paid for work. But as soon as I came back home, my husband, and the mother-in-law took away the money. They didn't allow me spending on myself. Even when I fell ill, they didn't allow spending on me or on children. Only in emergencies, after quarrels and scandals he allowed buying medicines”. (In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

All interviewed women were subjected to domestic violence (physical, psychological, sexual) by husbands, mother-in-laws, husband's relatives, etc.

„I got married in 2007. It was a difficult time: no light, no water. I had to carry water, and I was late. The husband beat me for it. He said: „I am not the younger brother who intercedes for his wife. Don't fool around me. I never will buy you any extra things, and if you'd go to your mother, I never would come for you. And he often beat me. Also he said that if I love him, I would never say about it to anybody”.
(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011.)

“I was beaten by my husband, sisters-in-law, and father-in-law. For 3 months I wasn't allowed to leave the house. The husband brought bread, meals to the room and I couldn't leave the room. In a way, they forced me to leave with a 4 months-old child. I was kicked out. Even after talok (Muslim divorce), for two days I was in this house, in this room - hungry with three children. Then I called the uncle; he said that in an hour they would arrive. They came in half an hour: the uncle, the brother, the stepmother. But they said: “Leave your three children, we won't take them, we'll take only you”. Then we have called the district militia officer, the chairman of makhally committee, and the foreman. And then the district militia officer gave my four-month child to my uncle”.
(In-depth interview with a female violence victim, Bokhtar district, Katlon province, August, 2011).

“When I became pregnant, they (husband's grandmother, mother-in-law,) didn't want me to give birth. And when I was 4 months pregnant, they took me for an abortion. At my second pregnancy they started telling my husband that I was sick, “disabled” and he should divorce me. He struck me with a thick stick, and the bleeding started. But at the maternity clinic I didn't say that the husband had beaten me. I had an abortion. During the third pregnancy I managed to conceal it till the 4th month. When I informed my husband about the pregnancy, he began to swear - why I didn't say it earlier. My father-in-law came to my defense. They would not have allowed me to give birth if it would not have been for his intervention. So, that's how, concealing my pregnancy, I gave birth to a baby”.
(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011.)

“The husband beat me and forced to shave the head completely as I had cut my hair without his permission. I refused. I said whether I would be bald or not, he would still humiliate me and marry another woman. So in the morning he went to his mother. After two days he returned, but didn't talk to me. He slept at his sister's, she lived close to us. Seeing it the

neighbors told me to bring my husband back. I went there, begged him to live together saying that everything would be good. He came back, called his Mum, went on his knees before her and asked her to release him from me, as he did not want to live with me. They sat down together and divided all the property. In the morning I got up and as usual started to sweep the yard, put the dough and did everything not to destroy the family. The mother-in-law forced my husband to find a car and to drive me home to my parents. In short, he brought me home and said to the uncle – “I don't want to live with her because she had cut her hair short without my permission”.

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

„On the seventh month of my pregnancy the father-in-law told me that my husband would bring the car from Russia, therefore we needed to build a garage. Husband brother's wife was making the dough, the mother-in-law was cooking. The father-in-law said to me: “You are tall, therefore you will give me the clay. This is your husband's car, anyway”. Despite the seventh month of pregnancy I carried the water, the clay; cut the clay by shovel and gave it to the father-in-law. Only to make all of them happy. And nevertheless, the father-in-law and the husband reproached me that I do nothing, only eat a lot and sleep. These are the most painful moments for me”. (In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

Often, women exposed to violence at their husband's place do not have the support and understanding of their parents. One of the women told a story when her husband's drunk brother molested her sexually and she told her husband. Other family members, her husband's sisters got to know about that and then her life became unbearable. Her husband beat her. Sisters-in-law ridiculed her and said that she should not have said anything to her husband, even if his brother had had sex with her. She was forced to flee from her husband's house to her mother, but her mother did not support her. She did not take her in, but sent back to her husband's place

“In winter they took away my clothes and pushed me into the street. And the husband beat me. Almost every day I was beaten. When it became unbearable, I took the son and escaped to my mother. For four days I lived there. Then the daughter-in-law has told to my mother that I had escaped from the husband's house. My mother took the cradle, put it in the middle of the yard together with my things and said – „Take your child, and go away, I am not the nurse for your orphans. Don't dishonor me, and know - I won't accept you alive; only if your corpse will be brought from that house. Rise and go to the husband”. What could I do? I took the child and with tears in my eyes went to the husband. From this day it became even worse for me. They blamed me every moment. They said, your own mother wouldn't have kicked you out if you are so good. They ridiculed me as they wanted.”

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011)

Thus, women are obliged or compelled by circumstances to remain silent not responding to the abuse as others make them believe that the disclosure of information about cases of violence goes against societal values. In society there are stereotypes, "you cannot wash dirty linen in public", "married daughter is a cut slice of bread" (somebody you can't depend on any longer). Such attitude of woman's parents, relatives result in continuous abuse of women, often in the presence of their children.

“Once, when my husband was absent, his drunken brother came at midnight and knocked on my door. I had seen him earlier and locked the door. He knocked, and knocked and threatened to break the door if I did not open it. But I didn't open to him. At last he had broken the door and entered the room. He was without shirt, and his pants' zipper was open. I was frightened and said to him that it's a sin. “Your brother is not at home, what for did you come here?” He said that I am hiding his brother and started to search for him in the wardrobe, under

the table. My 3 years daughter was sleeping with me. A blanket has slipped from her, he looked at her and asked: who is it? I answered that it's my daughter, Shahlo. He said: "First I will rape Shahlo, and then you". The blood rushed straight to my head. I was so frightened for my daughter. When he touched my daughter's leg, I grasped the mop and started to beat him: the head, hands, everywhere. Then he snatched out a mop and began to beat me. I was five month pregnant and I shouted, and neighbors called the militia".

Militia officers condemned her for complaining on her husband's brother. As a result, he was briefly detained but later husband's relatives compelled the woman to take her statement from the militia back.

"Our society is blaming a woman even if she is not guilty. She will be blamed in any case. The woman is always guilty. It is said that the woman should be patient, and the man is just a man. Now everybody is busy with their own lives, nobody supported me. There are people who condemn me. But there are those who understand and support me".

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

One of the women told her story, as her husband tricked her to swallow heroin capsules and bring heroin to Russia. In Moscow she was detained and sentenced to seven years; she had four children. She spent in jail 5 years and 8 months and during that time her mother and her brother died, her husband married another woman, he reregistered their house in his sister's name and then sold it. The woman was released from prison in 2006 and since that time she has had no home, during her stay in prison the children stayed either with her sister or at the orphanage.

"... when I was caught and told that it was heroin, I was in shock, and didn't know what to do. I was sentenced for seven years, and only I and God know what I went through. I stayed there for 5 years and 8 months. When I was imprisoned my elder son was 7 years old, the second was 5 years old, the third was 2,5 years old and the fourth had only 9 months. All my thoughts were about children: what happened to them and where they were. After the release from prison and my return home, I learnt that the husband had informed all the relatives that I had died in Russia, that my youngest child had died. Because I was allegedly dead, he married again, in 2003. It turned out that he reregistered the house in his sister's name and sold it. I returned to Tajikistan in 2006. Till now I have stayed at my relatives and acquaintances."

(In-depth interview with a female violence victim, Dushanbe, August, 2011)

Currently the husband pays child support for 3 children in the amount of 30 Somoni (about 6 U.S. dollars). The woman filed petition to the district court asking to increase the child support. The Court ruled the increase of the child support up to 120 Somoni (about 25 U.S. dollars), but the court's decision has not been implemented yet. A woman cannot afford hiring a lawyer in order to protect her rights. In addition, she told how rudely and disrespectfully the judge and the court marshal treated her:

"It was very difficult for me to listen how rudely the judge and the court marshal talked to me: mocking, humiliating, and hinting at sexual relationships. To me all this is very strange. My elder son is already 17, the second is 14. If we, all women, blindly obey them, what will happen to us? How our children will treat us? They will not respect us as parents".

The woman blames herself almost for everything, in particular, for being tricked into trafficking heroin and for ruining her children's lives:

"... at that time I was fed up with scandals, abuse. I believed husband. We lived together, had four children. May be he really wanted to earn good money. I didn't know that it

was heroin. I despise myself; I don't know how to live. I can't look into my children's eyes. They already are grown up, mature persons. They will marry and will become distant from each other. There is no love between them. All these problems and troubles from all directions are pressing me. I am trying to guess what will happen to them in the future, how would they live, etc. One of the sons is supposed to study in the 10th grade, but he has to wash cars, earning money".

Most of the interviewed women contacted the militia, local authorities, or the court asking for assistance in resolving the difficult situation in the family. But still there are women who keep suffering without turning to the militia or the court, trying to "keep the family together."

"... the son of the brother-in-law insisted that I have to rise, and not to pretend that I am sick: "Rise and let's harvest wheat". When I cried, he very roughly offended me and struck me. I was in horror. I never will forget it. Then it kept repeating every day for six years. But only for the sake of the husband, not to lose the family, I persevered. I never complained to the husband". (In-depth interview with a female violence victim, Bokhtar district, Katlon province, August, 2011).

According to this woman, she did not complain to her husband, because he would have taken the side of his relatives in any case:

„He should have his own opinion, instead of living according to his relative's wish. After all he had children. Even if I was guilty, what is the guilt of these two kids? I accuse only the husband. He was a weak person, and followed other's advice, instead of living his own way".

„ I didn't contact anybody in order to solve my family situation. But when they took away my children, I decided to get them back".

The husband of this woman from Kurgan Tube, Khatlon province took away two of their children, and kicked her out of the house. She had not seen her children for 7 months and only after the decision of the court was able to get the children back:

„The court was the ultimate authority to which I turned. At first I entrusted my hope in God, and then only in the court. And I have obtained very good result. The court ruled in my favor, that is children were returned to me. Nobody has the right to take away the children of minor age from the mother without her consent".

When contacting the militia, the court women often face financial problems as there have no money for an attorney, court fees, etc., and in addition, women lack legal knowledge. Often, they simply do not know who to ask, cannot write their own statement to the militia or the court, do not know the law.

"I knew nothing about where I can turn to for help. I am from this city. But as I said, in May, 1985, I graduated from school, and in September I was married. I was very young, a minor. The marriage was officially registered right before the birth of my first son. I saw nothing, knew nothing, I do not know about the existence of any organizations. I knew nothing. I said already that my brothers advised me to go to the court and apply for divorce, receive the child support payments, and start the life anew ...".

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

„I didn't go anywhere and didn't know whom to contact. First, I do not know where to go and how to write the statement, etc. Secondly, I asked one relative and he answered that I

can't achieve anything, as I neither have residential registration in their house, nor official marriage registration or children's birth certificates. Therefore I decided that with no money, it would be only waste of time. Nothing can be done without money. Parents and relatives didn't support me. I didn't have any money to give to the militia to protect me".

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

According to all interviewed employees of civil society organizations, not all women can use legal remedies. This is, first of all, due to women's low legal literacy and education level; secondly, because of their difficult financial situation, since women often do not have money of their own; thirdly, because of the mentality, customs and traditions, but also because of women's disbelief in just punishment.

"The first reason why women don't contact law enforcement bodies is their financial situation, the second is their ignorance. She doesn't know that she has the right for a particular petition. In most cases all services for women coming to our organization are free. When women come to us, they get to know about their rights. Only then they realize that they have particular rights. Another factor obstructing women's contacts with official bodies is our mentality, our customs and traditions. If the woman goes to the court, the militia or other official bodies, people from her kishlak (village) may say bad things about her. And, secondly, if she goes to the court, her family will cease to exist. If the family is on the eve of the disintegration, it, undoubtedly, will break up. So, there are many factors that prevent our women from going to such bodies."

(In-depth interview with a CSO employee, Kurgan-Tube, August, 2011)

„The main reason is that in the majority of cases our women do not contact official bodies as they do not want to lose their families. Only because they want to preserve the family. And secondly, they come to the conclusion that the offender will not be punished. Such women have not yet contacted law enforcement bodies and do not know about the opportunities offered by such official bodies".

(In-depth interview with a CSO employee, Kurgan-Tube, August, 2011)

5.2.2. Analysis of the need of women to protect their rights

The analysis of women's interviews has shown that a number of them has tried to defend their rights. It must be admitted though that law enforcement officials and the courts are not always really trying to help them.

Although law enforcement officials state that *"there are no barriers today that prevent women from obtaining legal protection"* (In-depth interview with practicing lawyers, Dushanbe, September 2011.).

In reality, when contacting the militia or the judiciary bodies, women are often faced with outright extortion, indifference and condemnation, both on the side of law enforcement officials, and neighbors, relatives, and acquaintances. One of the women told that when she filed a petition to the court asking for permission to move with her daughter into the husband's house, the judge promised her to help in case she agrees to become his "wife":

"...the judge said to me that it's impossible to find a room for me in my husband's house on the basis of presented documents. But he can do it with one condition. I asked – „what condition?" He answered, if this room would be ours – that means his and mine. He proposed me to live with him. I said –, there are hundreds and may be thousands like me. Would you

marry all of them?" And I quarreled with him. After it he excused himself and said that I should keep his words to myself".

(In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

Another woman was kicked out by her husband out of the house with her three children, and when she contacted the militia she not only did not receive help, but instead was told that she has no rights on the house, the property and even the children, as her marriage had not been officially registered.

"I have been kicked out with three children. I have no place to live. Where can I go? I have no vocational skills. I am sick, invalid. I can't read and write. I had been operated twice. I contacted the militia. Husband's relatives bribed them, as they have money. Militia did not help me. I also contacted the Women's Committee...."

(In-depth interview with a female violence victim, Dushanbe, August, 2011).

Only after she applied to the Crisis Center under the Committee on Women and Family Affairs of the Republic of Tajikistan, she got free assistance in collecting documents and filing a petition to the court asking for allocation of living space for her and her children at her husband's house, as well as for child support. Five months ago the court issued a positive decision on child support payment, but until today, the woman hasn't got a penny. The court did not rule in favor of her moving into her husband's house. The woman believes that her husband bribed the court and, therefore, the court decided in his favor. *"... They said that they took two thousand dollars to the district court. They said that they paid off everybody at the court and that I won't be able to move into their house."*

„Of course, I did not expect such attitude towards us. They are lawyers. Many of our women are illiterate, don't know their rights. They are court employees and know all laws and rights, it's their profession. That's why they have to explain everything to illiterate women – rights and obligations, how to act in a correct way. But court employees do not consider us to be human beings. There are too many tricks there. Sometimes they don't treat us as human beings, even don't listen". (In-depth interview with a female violence victim, Dushanbe, August, 2011).

It is especially difficult for women to prove their rights for child support, house, property etc. if they had contracted only a religious marriage.

One woman told that she was married according to the Muslim tradition, has one child, and after her husband gave her divorce and married a second time, tried to get child support and the right to live in her husband's house. The court ruled in favor of the woman and decided upon the child support in the amount of 100 Somoni (about 21 U.S. dollars) and ordered that she can move into her husband's house. But the decision of the court has not been implemented: the husband pays child support not in full and irregularly and she cannot move in to her husband's house. Once, after the divorce, she was severely beaten by her husband, he cut her hands with a knife blade and she spent 10 days in hospital. After release from the hospital, she was summoned to the local militia office. Instead of offering her help, they started harassing her and forced to take all the blame on herself, stating that she herself cut her hands, etc. In the end it resulted in a slander lawsuit against her:

„Prosecutor's Office employee told me to take blame upon myself; said that women stay at home the whole day and men come back home tired. He said that I should confess that I have cut hands with blade and beat myself. He threatened me that I will be put to prison and said to think about my only son. Being frightened I took the blame upon myself. After frightening me they called me to the Prosecutor's Office. They asked whether I had planned to frame my husband

together with my uncle and that I wasn't neither beaten nor my hands were cut with the knife blade. I confirmed that in the presence of a public prosecutor. I was told to write the explanation. I began to cry. Prosecutor's Office employee started to write by his own hand that I was guilty, and I was given to sign it. I was there alone and was frightened. I don't know the laws. I have taken the blame upon myself and they initiated a slander lawsuit against me »
(In-depth interview with a female violence victim, Dushanbe, August, 2011).

Another woman tried for a year to get court ruling regarding the paternity establishment and child support payments:

"I had no attorney as I had no money. Only the statement was written. One girl, an attorney, wrote my statement to the court, free of charge. It was about paternity establishment and child support payments. Nothing else. Till now, - no result, neither on paternity establishment, nor on child support. For paternity establishment the expertise was appointed. For 6 months the case was in the court and then I was informed that the case would be closed..."
(In-depth interview with a female violence victim, Dushanbe, August, 2011).

The woman's last hope is the Committee on Women and Family Affairs. But it is difficult to prove their rights even to women that have contracted an official marriage. Many of the interviewed women believe that our laws are humane, correct, but in practice it is very difficult to prove one's rights.

"... I had no attorney. I had no money. I filed divorce at the court. I thought that after this my husband will come to his senses and calms down. But we divorced. The property separation had to be made. We were invited twice. My statement was in the court for 6 months. Nothing was decided further. But somehow at the next visit I was said that the court has closed our case. It was not clear for me, why legal bodies are behaving like that. They do what they want. In my opinion, the money is playing a large role. If you have no money, nobody can help. On learning that the court had closed my case I again started to collect documents. Passed them to court, but there has been no ruling for two years already. I do not know, what will be the end." (In-depth interview with a female violence victim, Dushanbe, August, 2011).

This woman believes that the court should be more considerate and fair when it comes to protecting the rights of women and children:

"It is necessary, that court bodies solve all questions in accordance with the law and in the context of present time and people's bad living conditions. Sometimes women even don't have money for transport. Court employees should understand well that people contact them when they really have to. They should solve vital problems in short periods of time. Women come to courts with hope, though sometimes they do not have money for the trip. They are so exhausted; with the wings cut off. I experienced it all myself. It's really frustrating - for people, for nation. I am a Tajik woman and I am frustrated. We should know the value of our mothers, of women."
(In-depth interview with a female violence victim, Dushanbe, August, 2011).

The vast majority of interviewed women spoke very well about the employees of crisis centers that had supported them practically and morally when solving their family issues. In particular, many women received free legal aid.

"I contacted the Women's Center. And many thanks to women from the Women's Center for explaining to me where to go and whom to address. My children were without documents; they helped to collect the papers. I went to the court. They went with me, explained

me my rights. They accompanied me to Dushanbe, to the Supreme Court. And only then I understood, what rights I had -where to go, what to say, with whom and how to talk. I learnt about my rights, the rights of my children. And only then my problems were partially solved". (In-depth interview with a female violence victim, Kurgan-Tube, August, 2011).

Prior to that, the woman contacted the militia asking for the return of her four children, taken away by the husband after the divorce. For three years the issue had not been resolved, finally, with the help of the lawyers from the Center for Women "Ghamkhori" after lengthy litigation at the district, provincial and the Supreme Court, she managed to get back her children, get child support payments, and the payment of children's share after their property division. Now this woman has a place to live together with her children. She is very grateful to the Center employees for their support and free aid:

„Well, I don't want to offend anybody, but except those people, complete strangers to me, nobody backed me at that time. Neither brothers, nor the sister, neither relatives, nor neighbors – nobody asked me: „Shafolat, how are you doing now? ... Where are your children, what's in your heart? Many thanks, thousand thanks to women from this Center".

According to the employees of human rights organizations, women's knowledge about their rights have increased and to a great extent thanks to civil society organizations that deepen women's legal knowledge, provide free legal aid and psychological support.

“Today, in particular, our organization receives plenty of letters. Our office is under the Committee on Women's and Family Affair and daily many women come to us with various problems: protection of the rights, representation in court, family relations, paternity establishment, property division, child support payments, the right for entry, etc. We provide legal aid to our best abilities and show them the direction".

(In-depth interview with a CSO employee, Dushanbe, September, 2011).

„A woman from a poor family cannot afford a lawyer. And certainly, if there are more of such Women's Centers with free legal aid and psychological support, then more women could have had a chance to consult an attorney". (In-depth interview with a CSO employee, Kurgan-Tube, September, 2011).

„CSOs play a huge role in women's rights protection and I consider that the most important here is that all CSOs' aid is free of charge – consultations, writing all kinds of statements, attorney's participation in legal proceeding....".

(In-depth interview with a CSO employee, Kurgan-Tube, September, 2011).

But still this is not enough. The state should pay more attention to women's legal literacy, every woman, even in the remotest village, should know that she and her children receive special protection from the state, that according to the law she has equal rights with men in all spheres of life, that violence in any of its manifestations is a crime and it cannot be justified, or explained by cultural or social norms and traditions, religion or economic problems. Violence against women and children is an offense and liable to punishment. According to respondents, in order to increase the legal literacy of women there is a need for: TV and radio programs on women's rights, seminars and lectures in local communities (makhalyas, jamoats), press articles, etc.

„ It's important to held more seminars, training programs, involving, particularly, rural women subjected to domestic violence; women limited in access to legal aid; unemployed women, etc. "

(In-depth interview with a CSO employee, Dushanbe, September, 2011).

According to all civil society organizations' employees there is a clear need for adopting a law on domestic violence as violence against women remains widespread and has serious impact on the people of the Republic of Tajikistan and the society as a whole; violence obstructs the achievement of fair and equitable development of men and women, it prevents the consolidation of society that respects the dignity of its members and the rights of every human being.

"In spite of the existence of the laws saying that the woman should be free and today we even say that women's rights are even above the rights of men in society, we can't prove that in the Constitution it's written that women should be protected from any kind of violence and the persons subjecting women to violence should be held criminally liable. For sure, the existence of one specific law certainly would have improved the situation greatly."

(In-depth interview with a CSO employee, Kurgan-Tube, September, 2011).

"This law has already been written and if it's adopted it would be of great help for the victims of violence. And this is of great importance."

(In-depth interview with a CSO employee, Dushanbe, September, 2011).

Thus, the analysis of the collected empirical data indicates that the following factors impact the access to justice of female victims of domestic violence:

- Inadequate legal framework and the absence of a specific law on the prevention of violence and protection of the family against violence
- Existing stereotypes, traditional mentality assigning to women secondary roles in family and society.
- Low level of legal literacy and financial dependence of women.
- Lack of coordinated and guided activities of state bodies, NGOs and other civil society institutions aimed at shaping public opinion about manifestations of domestic violence.
- Lack of knowledge in key law enforcement agencies on legislation and regulatory framework related to domestic violence
- Lack of a systematic dialogue between civil society organizations and law enforcement agencies
- A limited number of crisis centers and shelters for victims of domestic violence
- Insufficient outreach work and informational materials on women's rights explained in simple understandable terms
- Lack of governmental communication strategy and poor coverage of problems associated with domestic violence in the media (both print and video).

5.2.3 FINDINGS

Results of the study confirm that domestic violence is rather a widespread phenomenon in Tajikistan.

Victims are subjected to various forms of violence, i.e. physical, sexual, economic, and psychological. Most often a person is subjected to several types of violence at the same time.

Women are often subjected to violence in the family by husbands, their husbands' relatives - mothers in law, brothers, sisters and others. These cases do not happen just once, but are of a systemic nature. Beatings, torture, psychological trauma, stress, prohibition to work and study, the loss of a child, financial dependence are the most common forms of domestic violence. Hiding domestic violence results in more serious consequences.

Female victims of domestic violence have limited access to justice. Domestic violence victims continue to have problems with obtaining legal aid and protection in law enforcement bodies and the courts. Victims of domestic violence mainly turn for help to crisis centers, civil society organizations and local authorities. When contacting the police or courts women often face indifference and outright condemnation from both the law enforcement officials, as well as from neighbors, relatives, and acquaintances.

The main factors that hinder women's access to justice are as follows: imperfect legislation; lack of effective mechanisms for the implementation of adopted laws; low level of gender sensitivity and insufficient knowledge of the judiciary and law enforcement officials on the standards for the legal protection of women; underdeveloped network of public and community services aimed at the prevention of domestic violence and provision of various kinds of assistance to victims of violence; the impact of gender stereotypes on society's attitude towards domestic violence, etc. Current legislation of the Republic of Tajikistan, including the Criminal Code and the Criminal Procedure Code, contains clear contradictions that hinder the protection of the rights of victims.

Another group of factors is associated with women's inability to defend their rights due to the low level of legal literacy and established patterns of women's behavior in case of violence.

It is necessary to adopt a whole package of measures aimed at improving women's access to justice and at the prevention of and protection from domestic violence.

RECOMMENDATIONS

In order to improve the legal framework for the prevention of violence in society and family, to adopt the Law "On the Prevention of Domestic Violence" in a package with other legislative and regulatory documents that ensure the implementation of the Law.

To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, signed by the President of the RT in 2000.

To ensure the implementation of concluding observations related to domestic violence, made by the UN Committee on the Elimination of All Forms of Discrimination against Women for Tajikistan in connection with the country's first report in February 2007;

To monitor and evaluate regularly the implementation of national gender policies and international obligations aimed at promoting gender equality, with a focus on domestic violence prevention and protection from it.

To improve the institutional mechanisms for the development of cooperation between different government agencies, as well as the social partnership between civil society organizations and government agencies. To resume the activities of the Interagency Coordinating Council for the Prevention of Violence Against Women under the leadership of the Deputy Prime Minister of the Republic of Tajikistan;

To scale up pilot activities of the Ministry of Interior aimed at the prevention of domestic violence. To establish a special unit within the Ministry of Interior for the Prevention of Violence against Women and the National Analytical Center on Violence Against Women (establishment of such institutions was planned back in 2002).

In order to expand women's access to justice and to create more effective mechanisms for the protection of women's rights to develop and adopt a law on free legal aid; to scale up public and non-governmental legal aid services.

To scale up practices aimed at training judges and law enforcement officials on mechanisms for the protection of women subjected to violence. To include into the curriculum of the Institute for Advanced Training of Civil Servants, the Training Center for Judges of the Council of Justice, and the Academy of the Ministry of Interior and all other relevant institutions, a mandatory component on adopted legislative acts and international conventions ratified by Tajikistan, including the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration for the Elimination of Violence against Women, the UN CEDAW Committee's special recommendation, the Convention on the Elimination of All Forms of Discrimination against Women and other legislative acts.

To expand the forms of social partnership of law enforcement bodies and civil society organizations based on coordinated attempts in the field of preventive, operational and rehabilitative activities.

To improve statistical recording and reporting in the Ministry of Interior, the Council of Justice and the Prosecutor's Office on reported offences, initiated proceedings, and convicted persons not only in regards to offenders but also victims of crimes.

To expand the projects of civil society organizations aimed at raising legal literacy of men and women, with the focus on human rights protection mechanisms. To promote outreach activities within local communities, "makhallyas", with the participation of both men and women.

To use more effectively the potential of religious organizations, informal leaders, all interested parties in informational campaigns aimed at raising awareness of domestic violence and human rights issues.

To develop state communication strategy on gender equality's promotion, including components of prevention and protection from domestic violence, to cover regularly domestic violence issues in mass media in order to influence public opinion and make violent behavior cases unacceptable in the eyes of the public.