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VICTIMOGENIC EFFECT OF FAMILY VIOLENCE ON WOMEN'S INDICTMENT AND CONVICTION DESK REVIEW

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Abbreviations

SA	Statistical Agency under the President of RT
HIV	Human Immunodeficiency Virus
WHO	World Health Organization
GBV	Gender-Based Violence
GPO	General Prosecutor's Office
PI	Public Institution
WLHIV	Woman Living with HIV
HC	Housing Code
WWD	Women with Disabilities
TP/TS	Trafficked Person, Trafficking Survivor
WFAC	Woman and Family Affairs Committee under the Government of RT
HCC	Healthcare Code
CEDAW (1)	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW (2)	Committee on the Elimination of Discrimination against Women
CAV	Code of Administrative Violations
MOI	Ministry of Interior
DHS	Demographic Health Survey
MOHSPP	Ministry of Health and Social Protection of Population
MNMO	Majlisi Namoyandagon of Majlisi Oli
MOJ	Ministry of Justice
L&R	Laws and Regulations
VAWG	Violence against Women and Girls
NGO	Non-Governmental Organization
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
PO	Public Organization
GR	Government Resolution
UNDP	United Nations Development Program

RT	Republic of Tajikistan
SGBV	Sexual and Gender-Based Violence
AIDS	Acquired Immunodeficiency Syndrome
CC	Criminal Code
CPC	Criminal Procedure Code
UPR	Universal Periodic Review
LAC	Legal Assistance Centre
UNFPA	United Nations Fund for Population Activities
ACTED	Agence d'Aide a la Cooperation Technique et au Developpement – a non-governmental organization comprising 121 members, represented by Council of 17 existing members who supervise the activity of the charitable organization, and other missions. The Headquarters is situated in France.

Introduction

Studies regarding family violence conducted in Tajikistan over the last three years have revealed a picture where primarily women and girls have to endure violence due to various factors, the main of which are gender stereotypes and androcentric principles and traditions that are still alive, dependency on family members and husband/sexual partner and his family, imperfection of laws, insufficient number of government service providers for survivors and victims of gender-based violence, including family violence, poor performance of law enforcement and judicial agencies, and their gender insensitiveness, insufficient allocation of funds to programs aimed at restraint of violence against women and punishment of guilty persons, etc.¹.

Herein, studies show that 72,6% of population of Tajikistan still believes that family violence is a family, private business, and that no one can interfere with².

In recent times, electronic mass media and social media report on cases when women commit suicides, while depriving their own children of life³ – they plunge into water with children, or murder their family tyrants – husbands, mothers-in-law, and fathers. **For the first half of 2019, women committed more than 1000 crimes. Minister of MOI of Tajikistan, Sirodzhiddin Mukhriddin, reported that in prisons and camps of Iraq and Syria around 600 citizens of Tajikistan are retained in custody. According to him, in Iraq prisons there are 43 Tajik women and one child, and in Syrian camps – around 554 citizens of Tajikistan, including 86 women, 228 minor girls, and 240 minor boys⁴.**

Official statistics provided in statistical books of the Statistical Agency of RT provides data on the number of men and women who committed crimes, but, it does not specify, what crimes are committed most often by men, and what – by women, and what caused the committing such offences by women, whether it pertains to murder, murder by woman of her newborn child, infliction of serious injury or harm to health, etc.

No review has been conducted, as to practice of holding judicial proceedings where women were defendants, how investigative agencies and courts considered potential experience of repeated violence, to which a female defendant was subjected.

In order to conduct a desk review to study the consequences of violence against women that has brought about the conviction of female victims of such violence for various types of crimes, PO “The World of Law” is looking for a national consultant.

Methodology

1. Goal of the Desk Review

¹ L. Aleksandrova, N. Abdullaeva, V. Kocheev, J. Qudusov, D. Turakhanova. Review and analysis of legislation and policy of Tajikistan touching upon sexual and gender-based violence against women and girls, and their compliance with international standards. Analysis report. At the commission of UNDP under Initiative “Ray of Light”. Dushanbe, 2022.

² Baseline Study “Knowledge, attitude, persuasion, and behavioral training of population in sexual and gender-based violence” under the joint Initiative of the UN and European Union “Ray of Light”. PO “Mirror”. Dushanbe, 2021.

³ <https://vecherka.tj/archives/48250> <https://www.asiaplustj.info/ru/news/tajikistan/incidents/20190517/v-pendzhikente-zhentshina-brosilas-v-reku-s-dvumya-detmi>

⁴ <https://vecherka.tj/storiesofwomen/>

Goal of the desk review is to identify gaps and issues on the path to justice in the legislative framework and law enforcement practices of Tajikistan during investigation of crimes committed by women that have been caused by violence against them on the part of intimate partners or other family members.

2. Objectives of the Desk Review

- review national legislative framework and state programs on VAWG in terms of consequences of violence against women, which has brought about the conviction of women – victims of such violence, for various types of crimes, and gender considerations during disposal of relevant legal proceedings;
- review social media and mass media on cases of female suicide and/or commission of crimes by women in dependency situations, in the aftermath of family violence;
- review resolutions of RT Supreme Court plenums on judicial examination of cases that relate to murders, infliction of harm or damage to health, in terms of gender considerations, including situations when defendants are women – potential victims of violence;
- review available statistical data on crimes committed by women;
- make requests to the Main Directorate for Reformatory Justice (MDRJ) for the number of women convicted for crimes under Article 105 of the Criminal Code of RT and other articles related to crimes of violence;
- review national reports to the United Nations Human Rights Committee and the United Nations Human Rights Council, reports of NGOs, and studies, in terms of consequences of violence against women, which has brought about the conviction of women – victims of such violence, for various types of crimes, and gender considerations during disposal of relevant legal proceedings.

3. Expected Outcomes

As a result of executing these Terms of Reference, PO “The World of Law” expects to receive from national consultant the following deliverables:

- Study methodology for these TOR performance evaluation;
- Report on the outcomes of the desk review that should include the outputs of the following reviews and analyses:
 - National legislative framework and state programs on VAWG in terms of consequences of violence against women that has brought about the conviction of female victims of such violence for various types of offences, and gender considerations during disposal of relevant legal proceedings;
 - Social media and mass media on cases of female suicide and/or commission of crimes by women in dependency situations, in the aftermath of family violence;
 - Resolutions of RT Supreme Court plenums on judicial examination of cases that relate to murders, infliction of harm or damage to health, in terms of gender considerations, including situations when defendants are women – potential victims of violence;

- Available statistical data on crimes committed by women over the last three years;
- National reports of the Government of RT to the United Nations Human Rights Committee and the United Nations Human Rights Council, reports of NGOs, and studies, in terms of consequences of violence against women that has brought about the conviction of female victims of such violence for various types of offences, and gender considerations during disposal of relevant legal proceedings.

➤ Conclusions and Recommendations.

Conclusions and Recommendations

Conclusions

The conducted review of mass media shows that many articles in the Tajik media network segment are narrating mostly stories about the plight of women subjected to violence in family. Some articles show legal barriers that women encounter when seeking assistance from law enforcement bodies; but, these are few, and, even so, they have data discrepancy, or they have no reference to primary source. Yet, there is another issue related to the lack of public information on the websites of SC of RT, MOI of RT, GPO of RT, and other government entities obliged to maintain the collection of data on reports concerning family violence. Another problem is that there is still not established a common database on the collection of data on family violence, and gender-based violence. Thus, in the fourth Alternative Report of the Coalition of Public Organizations “From Legal Equality to Actual Equality”, it is noted that the Country has made a poor progress in collection of common statistical data regarding violence against women and girls. Paragraphs 119 and 120 of the National Report of RT show that statistical information on criminal and administrative cases of family violence preclude the gender-based analysis of data, with respect to guilty and affected persons, as well as prevailing relationship between them, vulnerability of affected persons⁵.

There are publications on the suicide of women with children, with the women – survivors of such actions held criminally liable, but, there is absolutely no legal analysis of these cases, although in some articles one can find a case stating that the fact of woman, who was a victim of violence, had been disregarded by legal system. Only one article was dedicated to the issue of convicting a woman who attempted to defend herself against family violence, and committed a crime. But, the article has not got into the root of the problem, although it has thrown light on the problem of unfair conviction of such women. There are also provided articles from the Russian and Kirghiz media network segments, with a deeper analysis of various aspects, including legal analysis of the topic of our concern. For which reason, conclusion is to cover this issue wider in mass media for its comprehension and solution.

⁵ Fourth Alternative Report of the public associations of Tajikistan on implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Dushanbe. 2023 // https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FTJK%2F52487&Lang=ru

Review of national reports on the human rights under UPR, and reports of Woman Affairs Committee, has showed that these reports do not provide gender-based disaggregated data for guilty and affected person, as well as lack the indication of relationship between them in criminal and administrative cases concerning family violence. This data are not harmonized between state actors that provide them (MOI of RT, SC of RT, GPO of RT, and SA). Measures taken at state level to prevent family violence are not of systemic sustainable nature.

In spotlight Alternative Report “On the Execution of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as for the rights of women released from places of detention”, prepared by public organizations “Human Rights and Rule of Law Office” and “Jahon”, there is highlighted an issue of public access to statistical data on the number of detainees in correctional facilities of Tajikistan, including gender-based data disaggregation. Also, there is an issue of gender considerations regarding social exclusion and conviction of women released from places of detention, legislation, stigma, and, in general, discrimination of convicted persons or formerly convicted persons. Data of MDRJ of MJ does not show information, for what crimes women have been convicted, with the absence of such data on the website of SA of RT as well. In general, in the aforementioned and other reports regarding family violence and SGBV, the topic covered in this study has not been highlighted.

This topic is not also highlighted in the recent legal studies that have been conducted in RT over the past few years⁶.

The conducted review of CC of RT and CPC of RT has showed that there are no specific provisions that would reflect gender factors when investigating cases related to family violence, as well as such particular circumstances as commission of a crime by woman while being under pressure of repeated family violence or any other tangled dependency on the affected person. But, at the same time, there are other legal mechanisms that investigators and judges should pay attention to, and might apply to the issue of our concern. It is justifiable defense, self-defense, or excessive self-defense, mitigating circumstances, conditional no-application of punishment. Article 72 of CC of RT provides for relief from criminal responsibility (exemption from criminal liability) on grounds of active repentance. But, release may happen, if a crime is of little or medium gravity, with act of amnesty and act of oblivion.

During investigation of such crimes, investigators and judges should consider and understand not only the legal aspects of issue, but also consider its psychological aspects, unbiased findings on a situation with family violence in particular region, country, and in the world. Some publications in the Russian mass media show that investigators and judges, while investigating cases that we focused on, are under the influence of false myths on family violence,

⁶ L. Aleksandrova, A. Khaidarov. Review of the Law of the Republic of Tajikistan “On the Legal Assistance” at the commission of PO “The Center for Human Rights”, with technical assistance of UNDP Project “The Rule of Law and Access to Justice”. Dushanbe. 2021; Sinisha Milatovich and Maya Kovach, “Study of Access to Justice in Tajikistan” (UNDP 2021); L. Aleksandrova, N. Abdullaeva, V. Kocheev, J. Qudusov, D. Turakhanova. Review and analysis of legislation and policy of Tajikistan touching upon sexual and gender-based violence against women and girls, and their compliance with international standards. Analysis report. At the commission of UNDP under Initiative “Ray of Light”. Dushanbe, 2022; L. Aleksandrova. Review of legislation regarding family violence in Tajikistan at the commission of PO “Mirror”, with financial support of non-governmental international charitable organization “ACTED”. 2023.

ignore the facts of family violence phenomenon, etc. Lack of gender sensitiveness in judges and investigative officers does now allow them, in the light of the available provisions in CC of RT and CPC of RT, to impartially and thoroughly investigate cases, considering all particulars in the case – it is psychological and economic dependency of woman, who committed a crime, on the affected person (in case of family violence, this person is abuser), woman's report concerning facts of violence against her and inaction of law enforcement bodies on this subject, impunity in case of repeated violence committed against woman, and many other factors.

The lack of efficient means of competent legal assistance, not only when woman has been subjected to family violence, but, also when she has been forced to commit a crime protecting herself from a rapist, will abridge her right to a fair trial. Having summarized issues of realizing the right to defense as guaranteed observation of the right to a fair trial for women, who have experienced intimate partner violence or violence on the part of other relatives, and committed a crime under the influence of that violence, it is worth noting that provisions of CPC of RT, Laws of RT “On the Legal Assistance”, “On the Targeted Social Assistance” are not gender-sensitive, do not take into account the status of this category of persons, and, in general, a mechanism for provision of government-funded legal assistance has a lot of barriers, gaps in implementation arrangements, and insufficient funding.

Review of the website of the Supreme Court of the Republic of Tajikistan has showed that in their Section “Legislation” there is a reference to page “Resolutions of the Plenum of the Supreme Court of RT”, and further is a separate reference to resolutions of RT Supreme Court Plenums for criminal, civil and administrative cases. On page “Resolutions for Criminal Cases”, we have found only one resolution related to crimes of violence pertaining directly to family violence – Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan №1, as of June 26, 2009, Dushanbe, “On the Judicial Practice in Murder Cases (as amended by Resolution of the Plenum, as of November 23, 2012, № 29)⁷.

The contents of the abovementioned Plenum of SC of RT №1, as of June 26, 2009, as amended on November 23, 2012, show that there is no explicit reference to investigation of murder cases, with due regard to repeated violence against woman accused of murder, as well as there is no gender approach, in general, in this document. Nevertheless, there are some paragraphs that superficially reflect the necessity to consider all circumstances that have brought about murder, and mental condition defense.

The Criminal Code of RT does not contain a separate corpus delicti providing for liability for family violence, or such category as family offences that exists in the Criminal Code of Georgia. Thus, the Criminal Code of Georgia envisages a separate corpus delicti, family abuse – Article 126.1 and Article 11.1 of CC of Georgia specify what offences fall under definition of family offences. Family offence means commission by one family member against other family member of an offence specified by Articles 108, 109, 115, 117, 118, 120, 125, 126, 137-141, 143, 144-1443, 149-151, 160, 171, 253, 255, 2551, 3811 and 3812 of CC of Georgia. There is a note to Article 126.1 of CC of Georgia stating that for the purposes of this article family members are recognized to be: spouses, mothers, fathers, grandfathers, grandmothers, children

⁷ <https://sud.tj/ru/dokumenty/postanovlenie-plenuma-verkhovnogo-suda/postanovleniya-po-ugolovnym-delam/>

(stepsons, stepdaughters), adopted children, adoptive parents, spouses of adoptive parents, adoptees, foster families (stepmothers, stepfathers), foster parents, grandkids, sisters, brothers, parents of spouses, sons-in-law, daughters-in-law, divorced/former spouses (ex-husbands/ex-wives), as well as persons who keep or kept house.

Alongside this, Article 65 of CC of Georgia (binding) also refers to issues of family violence and, based on this provision, court may charge the convicted person with performance of certain obligations: do not change the permanent place of residence without permission of probation department, do not establish relations with persons who may involve them in anti-social activity, do not visit certain places, provide financial assistance to family, take the cure, undergo a course of treatment of sexually transmitted diseases. Court may charge the convicted person with other duties facilitating their correctional rehabilitation. Similar provisions do not exist in CC of RT.

Recommendations

- Introduce changes in Article 50 (1) of CPC of RT and Article 21 of the Law of RT “On the Legal Assistance” and include, as recipients of government-funded secondary legal assistance in criminal cases, women and girls who are victims of family violence, both, as affected and suspected, the accused and defendants;
- Establish a transparent and viable mechanism for payment of services of lawyers who provide services according to Article 50 of CPC of RT;
- Conduct a full-scale study regarding consequences of family violence for woman brought to trial due to a crime committed under the influence of the said violence, particularly in terms of observance of the right to a fair trial. When conducting a study, put questions to women, and to a wide group of experts – defense lawyers, lawyers of NGOs, judges, prosecutors, and investigators.
- Review judicial practice, cases in hand on conviction of women for murder or infliction of damage or harm to the health of intimate partners, filicide, etc.
- Reconsider the Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan №1, as of June 26, 2009, Dushanbe, “On the Judicial Practice in Murder Cases (as amended by Resolution of the Plenum, as of November 23, 2012, № 29), and introduce changes in the Resolution, having summarized the judicial practice with gender considerations;
- Review other Resolutions of the Plenum of the Supreme Court of the Republic of Tajikistan in criminal cases due to deterioration of health, etc. that could provoke women – victims of family violence, to committing a crime, if they have been adopted;
- Prepare a number of media materials with legal analysis of problems, when considering murder cases concerning women who murdered their children in an attempted suicide, as well as other crimes caused by family violence.

I. Review of Social Media and Mass Media on Cases of Female Suicide and/or Commission of Crimes by Women in Dependency Situations, in the Aftermath of Family Violence

This section provides the review of online mass media, social media concerning publications related to violence against women and girls, particularly in terms of their conviction for crimes that they committed when likely being under the influence of family violence.

In 2020, in their publication, online news media company “Vechyorka” (“Tonight’s News”) has reviewed a topic of suicide committed by women with their children in Tajikistan from 2015 to 2020. The article has said that **in recent times there have become more frequent suicide cases of Tajik women with children. Only over the last five years, mass media told about 7 of such [cases](#). But, their actual number was probably higher.**

July 2015, resident of Yavan, Parvina Abdullaeva plunged into canal with three children, the woman was saved, and children had drowned.

September of the same year, 23 years old, resident of Vakhsh, Salomat Pirova, also with three children, plunged into river, the woman was saved, and children had died.

In the early February of 2016, in Nurek, 25 years old Zukhro Mahmurodova, with four children, plunged into river. All of them had died.

On April 2, 2017, 21 years old Maftuna Rahmonova, after a family quarrel, committed suicide, with her six month old child, in a similar manner.

Sayram Kholova, resident of Village Sunbula of Gissar district, plunged into river with two small children.

Also, in August 2020, 30 years old woman, resident of Rasht district, plunged into [river](#) with three small children.

A short time ago, there was conducted a trial of Nazokatkhon Toirova. On September 9, 2020, she choked to death four her small [children](#). As a result, she was found guilty and sentenced to 25 years’ imprisonment. According to mass media, after the murder of children, she decided to commit suicide, but, in the last moment, changed her mind, arrived at local police station and confessed to crime⁸.

Article provides the world’s statistics on suicide, disaggregated by gender, across the Central Asia, where Tajikistan is at the bottom of the rating. “But, there is no room for complacency, for government agencies and the society in general” – as writes the author. In the article, special attention is paid to female suicide, especially when women commit suicide, as well as attempt the life of their children. This phenomenon is analyzed in the article. A brief survey was conducted in December 2020, in the Tajik Facebook segment, in which 789 people mentioned that such female suicides with children are caused by family violence, and 108 people pointed to early marriage that is also a harmful practice violating the rights of women and girls. No justice issues were touched upon in this article, how such cases are investigated, whether such cases are tried without bias or prejudice, whether a life story of these women is examined,

⁸ <https://vecherka.tj/archives/48250>

whether all means of legal defense are used to protect these women, which should be used when trying such cases, etc. But, as recommendation, it was suggested to change punishment from a lesser to a greater degree for incitement to suicide⁹.

In the same 2020, on the regional platform of IWPR (Institute for War and Peace Reporting) in the Central Asia¹⁰, [CABAR.asia](https://cabar.asia) (Central Asian Bureau for Analytical Reporting) has published an analytical article on the topic: “Tajikistan: When Justice Do an Injustice to Woman”.

The article tells a story of woman who murdered her husband. “27 years old resident of Soghd Region, in the north of Tajikistan, has been serving her 8 years’ sentence for murder of her husband. Muhabbat stabbed in anger the spouse when he resorted once again to beating her. The court left out of consideration that she gave herself up to authorities and that she was continuously subjected to violence in family”.

There was also told another story related to attempted suicide of woman with child. It was highlighted an issue of ignoring the fact of family violence committed by the woman’s husband during administration of justice. Unfair conviction of woman: “In 2015, 24 years old resident of Vahdat plunged into river with baby who was not even forty days old. Occasional passers-by saved the woman, but the baby had died. The woman was accused of intentional killing her baby. During interrogation, she stated that did it due to everyday battery on the part of husband. By decision of court, the woman was sentenced to 7 years’ imprisonment. But, no any measures against her husband were taken¹¹”.

Author of the article provides statistics on the number of women’s complaints filed to MOI from 2018 to 2019 that has increased by 30%. Also, for the same period, there is provided statistics on crimes committed by women, but, no data provided on classification of crimes, meaning whether these were crimes of violence against husbands, other relatives, or crimes of economic nature, such as theft, fraudulent practices, etc.

Author provides the opinion of experts saying that there are no studies in Tajikistan that would review the causes of crimes committed by women. Nevertheless, in their opinion, Tajik women commit crimes due to despair, as well as due to subjecting women to violence on the part of their husbands and relatives.

There is provided the global data on violence against women, femicide on the part of intimate partners and other relatives. “According to information of the Tajikistan’s resource center for gender matters and prevention of family violence, for 9 months of 2019, every woman was subjected to two or three types of violence. Battery (physical abuse) – 369, economic duress (duress of goods) – 848, mental violence – 1084, sexual violence – 16”, – data is provided on family violence in Tajikistan.

⁹ Ibidem.

¹⁰ International media organization that supports local and civil journalists, and civil society activists in countries that survived conflicts, crises, and those in transition. IWPR has been operating in 27 countries of the South-Eastern Europe, Eurasia, Middle East, Africa and Central Asia. (<https://cabar.asia/ru/about-ru>)

¹¹ <https://cabar.asia/ru/tadzhikistan-kogda-pravosudie-nasiluet-zhenshshinu> 27.01.2020

There are provided quantitative data on imprisoned women in Tajikistan and outside the country. “The committee reports that at the present time, in the single female prison of Nurek City there are around 300 women. 158 female citizens of Tajikistan are in prisons of other countries, including 90 in Russia, Turkey and China on various charges, including drug traffic and murders¹²”.

In general, the article raises the question of the right to a fair trial for women who were convicted for crimes of violence against their husbands, and children, while stating that one of the main reasons of such behavior is family violence committed against them, but, does not make a legal analysis of consideration and investigation of such cases.

In 2021, there was an article telling about a story of woman’s suicide with her children by hanging. It is worth noting that the headlined cause of this suicide has pointed out not family violence, but, a family quarrel, thereby exonerating woman’s close relatives and, probably, her husband from responsibility for committed by woman the murder of her children and suicide.

Partly, the cause of such article’s headline is the primary source of publication on this fact – report of MOI. Situation is described as follows: “The report of MOI says: “On April 10, 2021, approximately at 16:00, citizen Sharipova Shahlo Erkinovna, b. 20.12.1988, resident of Neknoti Town, Rudaki township, City of Penjikent, married, has three children, due to a family quarrel, in order to deprive herself and her children of life, brought them to “Boghi Niyoz” site of the said town, passed a scarf round their neck, and hung them on the tree. Then she hung herself”. The article further told about other known acts of suicide committed by women since 2015. The mentioned reasons of suicide included poverty, battery on the part of relatives, postpartum depression, or for some unknown reasons¹³. The article was rather of an informative nature than of an analytical nature.

Late in 2021, a journalist and gender specialist, Nisso Rasulova, conducted a gender review of articles issued in the media market of Tajikistan: ““Women are Sources of Family Violence”: How They Cover Gender-Related Offences in Tajikistan”. She narrated first a story about a scandal that happened in social media between journalists and human rights activists following a statement that the source of family violence are women themselves, as they continue enduring it and teach the young generation of adolescent girls and young women to endure it.

Media critic of “New Reporter”, Nisso Rasulova, decided to clarify, whether this opinion is prevailing in local journalists, and reviewed some publications in various mass media dedicated to gender-based violence issue¹⁴.

Nisso Rasulova, with efficient professionalism, has examined the articles in the Tajik media segment regarding this issue, and also paid attention to articles, which we have reviewed regarding female suicide acts, as well as the case where woman murdered her husband. She highlighted both, the strengths of family violence coverage and the weaknesses that exist in news

¹² Ibidem.

¹³ **In Tajikistan, woman, after a family quarrel, hung her three children, and then took her own life.** April 11, 2021//<https://rus.azathabar.com/a/31197764.html>

¹⁴ <https://newreporter.org/2021/12/20/zhenshhiny-istochniki-domashnego-nasiliya-kak-v-tadzhikistane-osveshhayut-gendernye-prestupleniya/>

agencies. But, it is worth noting that little attention was paid to legal issue and justice, including the subject of our concern.

Consequences of family violence that brings about the conviction of woman for woman's forced actions to defend herself against rapist are described in media landscape of CIS countries. Thus, the Russian media segment provides statistical data on the conviction of women in Russia for intentional murder who were victims of family violence. Thus, the article provides the following data: "By [statistics](#), 79% of women convicted in Russia for intentional murder were victims of family violence, while 91% of Russian women convicted for excessive self-defense did defend themselves against their partners or other male relatives¹⁵".

The said article described the fate of one woman, the story of her life, the most part of which she was subjected to violence, and how law enforcement bodies failed to help her, also when the woman, while trying to defend herself against rapist, had killed person in excess of self-defense. The article, according to the woman herself, describes weaknesses identified in investigative and judicial examination of her case – lack of registration of the acknowledgement of guilt, although the woman herself called an ambulance and didn't flee from prosecution, with witnesses being at variance, providing tricky arguments, allegedly being on the fuddle, woman's "deer in the headlights" high arousal mental state, and a host of other things.

The article also provides another study conducted in Yekaterinburg. "In 2018, specialists of the Crisis Center "Yekaterina" from [Yekaterinburg conducted](#) a series of interviews in Correctional Facility №6 in Nizhny Tagil. Respondents were women serving their sentences for partner murder following the continuous family violence. Sociologist, Anna Vygodskaya, officers of the Crisis Center and officers of psychological service of [Federal Service for the Execution of Sanctions](#) for the [Sverdlovsk Region](#) talked to 39 detainees about motives and causes of crime. According to expert, before fatal outcome, law enforcement bodies received only few claims. From among the surveyed persons, there were only 2-3 women whose family violence cases were brought to trial. One of them was successfully finished: man received a conditional sentence, but, when the term of sentence expired, violence resumed and resulted in murder.

There again, several women, right on the day of murder, called police and reported that they were beaten, but, authorities failed to respond in any way.

All the surveyed respondents noted that family violence was systematic. The different was only duration – from one year to 29 years. Some women by that time were divorced from partners, and murder happened after: came on the child's birthday – and run at ex-wife; came in to take things – began to thrash¹⁶.

The article also tells about the single center in Russia that helps victims of family violence who discharged the term of sentence for a crime committed against life and health of their close relatives.

¹⁵ <https://lenta.ru/articles/2022/05/18/womenmurder/>

¹⁶ Ibidem

The article provides the expert opinion of lawyer and human rights activist, Mary Davtyan, why law enforcement bodies are so slow to respond to family violence, when women seek assistance from them, and, first of all, these are family violence myths that they prone to.

From the legal point of view, she tells, when should be classified justifiable defense against attack, when self-defense and other legal aspects in more details. Also, the expert replies in details to the question: *“How person can defend oneself against attack, and not be imprisoned?”*¹⁷

This article will arouse interest both, of researchers studying the issues of family violence and SGBV in general, and women who are likely to be in situation of violence and already at zone of risk of committing suicide or acts of violence against their intimate partner. Partly, it can be used as an analog for writing similar articles from experience of Tajikistan and on the basis of legislation of the Republic of Tajikistan, having extended a group of experts. Thus, one can interview judges, prosecutor and police agency officers, lawyers defending such women, and, last but not least, women themselves, who serve sentence for murder of husband in self-defense.

In 2020, in the Kirghizstan media landscape there was also published an article on tragic consequences of conviction of women who were subjected to systematic family violence. Journalist of **24.kg** listened to fellow-countrywomen, who could not endure any more battery, suffer indignities. What was the outcome of their self-defense? All of them now are in a female colony in Stepnoe rural community.

Like in the Russian article provided above, it is noted that all stories about convicted women were similar, and they were subjected to family violence over a number of years, and failed to find support from law enforcement bodies.

The article quotes an interview of expert – Azamat Shambilov. Thus, the expert tells: “Women who murdered their partners did not plan to do so. 90% of them commit offences in the heat of passion, under pressure, in challenging life situations. Often, husbands or cohabitants attack them. In all of the post-Soviet states, women say: we suffered from family violence for many years, we had a bad time”, — he emphasizes.

According to the expert, there is a host of stories about family battery that resulted in tragic outcomes. In practice, according to the expert, there are cases when woman kills her husband or cohabitant, fearing of her children’s life.

Interesting thing in the article is not only story about the plight of women who are subjected to family violence, lack of gender sensitiveness of legal system, but also advanced experience of foreign countries that use probation service for prevention of family violence. Azamat Shambilov tells about this experience, and how it can help in Kirghizstan¹⁸. We believe that such experience can also help many women of Tajikistan.

In the article “Family Violence in Tajikistan: What measures are required to help victims?”, author, Shohsanam Shodieva, told, what difficulties women encounter on the path to justice, in order to defend themselves and punish abuser. She provides statistical data on the

¹⁷ Ibidem

¹⁸ <https://24.kg/obschestvo/141068/>

number of family violence complaints filed, restraining orders issued, criminal cases initiated, but, it is not indicated for whom. It may be useful for those who are not aware of legal issues related to family violence¹⁹. Serious flaw of this article is the absence of primary sources where statistical data have been taken from. Such failure may cause discontent and even complaints from government institutions.

Also, on the known platform, there are placed stories about the plight of women subjected to family violence²⁰.

Other articles that have been reviewed for the last year in media landscape of Tajikistan primarily highlight measures taken by the Women and Family Affairs Committee under the Government of RT for criminalization of family violence in Tajikistan, as well as measures the Committee takes for change in the Law of RT “On the Prevention of Family Violence”, and inform that there is being developed a new State Plan of Actions for prevention of family violence for 2024- 2030²¹.

More detailed information on steps for criminalization of family violence is provided in other article of “Asia Plus” that initially tells about the conducted Regional Conference of the Central Asian Alliance for Eradication of Gender-Based Violence, and on issues that have been discussed therein. In the second part of the article, its author provides detailed information, according to expert, gender specialist, on the stages of introduction of family violence article into a new draft of CC of RT – Article 153 of a draft CC of RT.

It is important to note that the first draft of this article, which was included in 2020, brought to criminal responsibility the accused, both, for mental violence and infliction of small damage to health. In the second draft, after a new draft CC of RT was sent for follow-up revision in 2023, liability for family violence is incurred only in case, if person inflicts moderate and higher damage to health²². However, for mental violence, such as blackmail, impairment of dignity, behavior control, battery, infliction of moderate damage to health are excluded, which is indicative of the lack of understanding of international standards for criminalization of family violence and gender sensitiveness by group members of new draft CC of RT.

The conducted review of mass media shows that many articles in the Tajik media segment primarily touch upon the plight of women who are subjected to family violence. There are articles that show legal barriers that women encounter when seeking assistance from law enforcement bodies, but, these are few, and, even so, they have data discrepancy, or they have no reference to primary source. Yet, there is another issue related to the lack of public information on the websites of SC of RT, MOI of RT, GPO of RT, and other government entities obliged to maintain the collection of data on reports concerning family violence. Another problem is that there is still not established a common database on the collection of data on family violence, and

¹⁹ <https://cabar.asia/ru/author/shohshodieva>

²⁰ <https://longreads.cabar.asia/17letmucheniya>

²¹ <https://asiaplustj.info/ru/news/tajikistan/laworder/20240812/budet-li-kriminalizovano-domashnee-nasilie-v-tadzhikistane>

²² <https://asiaplustj.info/ru/news/tajikistan/society/20240713/v-tadzhikistane-sobirayutsya-kriminalizirovat-domashnee-nasilie>

gender-based violence. Thus, in the fourth Alternative Report of the Coalition of Public Organizations “From Legal Equality to Actual Equality”, it is noted that the Country has made a poor progress in collection of common statistical data regarding violence against women and girls. Paragraphs 119 and 120 of the National Report of RT show that statistical information on criminal and administrative cases of family violence preclude the gender-based analysis of data, with respect to guilty and affected persons, as well as prevailing relationship between them, vulnerability of affected persons²³.

There are publications on the suicide of women with children, with the women – survivors of such actions held criminally liable, but, there is absolutely no legal analysis of these cases, although in some articles one can find a case stating that the fact of woman, who is a victim of violence, has been disregarded by legal system. Only one article was dedicated to the issue of convicting a woman who attempted to defend herself against family violence, and committed a crime. But, the article has not got into the root of the problem, although it has thrown light on the problem of unfair conviction of such women. There are also provided articles from the Russian and Kirghiz media network segments, with a deeper analysis of various aspects, including legal analysis of the topic of our concern. For which reason, conclusion is to cover this issue wider in mass media for its comprehension and solution.

II. Review of National and Alternative Reports of the Government of Tajikistan as to Fulfilling International Obligations regarding Family Violence

In the Seventh periodic National report of the Government of RT to the Committee on the Elimination of Discrimination against Women, the Government provides statistical data on criminal cases initiated for polygamy under Article 170 of CC of RT. Thus, from 2020 to the first half of 2022, courts considered 254 criminal cases for the said crime and brought in 222 guilty verdicts.

There are provided statistical data on the number of applications to the Ministry of Interior (MOI), most of which have been filed against men, data on the number of restraining orders issued from 2019 to 8 months of 2022. There is provided information on the number of inspectors in the country for prevention of family violence (in total, 17 inspectors).

There are provided data on the number of initiated criminal and administrative cases related to family violence: “Neighborhood police inspectors and inspectors for prevention of family violence of MOI Departments in districts and cities of the republic, for 8 months of 2022, have initiated 49 criminal cases, with 739 materials handed over to other agencies within the limits of their authority.

²³ The fourth alternative report of public associations of Tajikistan on implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Dushanbe. 2023 //

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FTJK%2F52487&Lang=ru

In accordance with Articles 93¹ and 93² of the Code of Administrative Violations of RT (CAV), there have been drawn up 1365 protocols on administrative violations and 200 administrative protocols under other articles. There have been conducted 4840 meetings for fulfilling the requirements of the Law of RT “On the Prevention of Family Violence”²⁴. These data lack their gender-based analysis; they should be disaggregated by gender, age, established relationship between victim and abuser. Such information is missing.

A broad range of measures is mentioned, including public awareness campaigns and educational campaigns for civil servants, but they are conducted on an irregular basis, under project activities of donor organizations, with activities of state actors on prevention of family violence frequently subjected to criticism.

There are specified articles of CC of RT, under which abusers, for committing the acts of gender-based violence, may be held criminally liable, but, no particular statistical data are provided.

In replies of the Government of Tajikistan to a list of questions in 2023, there have been clarified statistical data on criminal cases investigated by prosecution agencies, as well as data on verdicts brought in by courts of RT. Thus, for the period of 2021–2022, the republican courts considered 982 criminal cases, in which family violence was the cause of a crime, among them 192 persons were sentenced to imprisonment, 464 of the affected persons were women. Within the prescribed period, courts considered 5 criminal cases under Article 130 (1) of CC of RT, 8 persons have been convicted, among them 3 convicted persons and 10 affected persons are women²⁵. In these prosecution agencies, in general, there is no information on guilty and affected persons, disaggregated by gender. Data of SC of RT are also incomplete to reconstruct a crime of family violence.

In November 2021, as per procedure of Universal Periodic Review of human rights, Tajikistan has rendered National Report to Human Rights Council on observation of human rights, in general, in the country, in various areas, including protection from violence against women and girls, and adoption of preventive measures.

Thus, in Paragraphs 44-46 of the Report, there is provided information on persons deprived of freedom. There are indicated measures taken by the Government due to penitentiary system reform, in particular, on June 25, 2020 there has been adopted Strategy of RT for reforming the system of executing punishments under criminal law for the period of up to 2030, and Plan of Actions for 2021-2025 prescribing measures for system humanization, rehabilitation and re-socialization of detainees, improvement of mechanisms and measures for non-custodial service of sentence, improvement of detention conditions, etc. There is approved “Procedure for organizing medical assistance to persons

²⁴ Paragraphs 115-123 of the Seventh periodic report approved by the Government of Tajikistan on implementation of the Convention on the Elimination of All Forms of Discrimination against Women presented in 2022 // https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=TJK&Lang=RU

²⁵ Paragraphs 34-35 of Tajikistan’s Replies to a range of topics and questions due to the country’s seventh periodic report*. Receipt Date: October 23, 2023. Committee on the Elimination of Discrimination against Women. Eighty seventh session // https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=TJK&Lang=RU

serving sentence in detention facilities and persons taken into custody”²⁶, developed a framework for rehabilitation and a system for assessment of risks and classification of convicted persons, and a draft program for professional training and employment of convicted persons in penitentiary system institutions, and persons released from detention facilities, for the period of 2021-2030.

There are highlighted changes in CPC of RT and the Law of RT “On the procedures and terms of custodial detention of suspects, the accused and defendants” that provide for basic guarantees of the rights of detainees: provision of information on the basic rights since the time of actual arrest, including immediate communication with close relative, access to lawyer and declining to give evidence, formalization of an arrest protocol within 3 hours, mandatory registration of personal identity of all officials participating in arrest, mandatory medical examination, including by independent physician, before placing a suspect into temporary holding facility; excluded provisions for custodial detention only on the grounds of crime severity, enhanced guarantees of the rights of minors during arrest and custodial detention, ban on placement of minors with adults, as well as putting the former into cellular confinement, solitary confinement, and military confinement²⁷.

In the information provided, there are no data on actual measures for enforcement of statutory provisions and policies that would bring about positive practical results.

In the National Report on UPR, there is provided information on prevention of family violence. There are provided statistical data on the number of applications filed to MOI concerning family violence, on investigation of criminal cases caused by family violence, and verdicts brought in by courts of RT. These data are not disaggregated by gender of the guilty and affected person, and by blood relationship or any other relationship between them. Innovation that this report contains is that there is provided information on criminal cases, in which women fell victim to murder or had grave consequences of the harm to health. “Prosecution agencies ascertained that for the period of 2016-2020 140 (2016 – 24, 2017 – 41, 2018 – 28, 2019 – 28, 2020 – 19) women died or sustained grave bodily injuries as a result of committed murders or attempted murders. Also, like in the National Reports to the Committee on the Elimination of Discrimination against Women, in 2018 and 2022, there is repeated information on the articles of CC of RT prosecuting crimes of family violence, on the draft of a new CC of RT, where a separate Article 153 is included. Family violence: a training course in the Academy of MOI of RT “Prevention of family violence, etc.”²⁸

Review of national reports has showed that the topic of conviction of women who were subjected themselves to family violence for a long period, and committed a crime expressly for this reason, was not covered in the reports.

In spotlight Alternative Report “On the Republic of Tajikistan’s Execution of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as for

²⁶ On May 1, 2018, by joint Order of the Ministry of Justice of RT and MOHSP of RT, № 40/402

²⁷ <https://documents.un.org/doc/undoc/gen/g21/235/17/pdf/g2123517.pdf>

²⁸ <https://documents.un.org/doc/undoc/gen/g21/235/17/pdf/g2123517.pdf>

the rights of women released from places of detention”, prepared by public organizations “Human Rights and Rule of Law Office” and “Jahon”, there is highlighted an issue of public access to statistical data on the number of detainees in correctional facilities of Tajikistan, including gender-based data disaggregation.

According to data of the Main Directorate for Reformatory Justice (MDRJ) of the Ministry of Justice of the Republic of Tajikistan, for the period from 2015 to 2019, in correctional facilities of MDRJ 670 women were serving sentence. Approximately half of them were released from prison under amnesties during these years.

At the end of June 2019, in correctional institution 3/8 of Nurek City (female colony), there were 290 of convicted women.

In 2020, the number of detainees, as reported, was around 10 thousand.

According to data taken from other open sources, as of 2023, in Tajikistan 9317 prisoners have been serving sentence. According to some reports, more than half of the amnestied women, who have been convicted under articles for theft and fraudulent practices, would recidivate and return to colony. The reason for this is considered to be the lack of employment and social exclusion of these women – pertinent data are provided in the report. There are covered crimes committed by women, like theft and fraudulent practices, and nothing is provided as to other types of crimes.

There is presented a legislative framework to support persons released from places of detention, labor legislation, as well as a policy adopted to support persons released from places of detention, etc.

There is covered an issue of employment of persons released from places of detention, especially it concerns women. Although the legislation does not require mandatory provision of a clean record paper, but, in practice it is required everywhere. If person has a criminal record, they will not be employed.

Also, there is covered a separate issue in the report referred to as “Gender Factors”. It touches upon issues of discrimination of convicted women after release and their stigmatization and social exclusion²⁹. The issue covered in our study is not covered in the provided thematic report, as well as in reports of other public organizations³⁰.

²⁹ Thematic alternative report on the implementation by the Republic of Tajikistan of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as to the rights of women released from places of detention. Public Organizations “Human Rights and Rule of Law Office» and “Jahon”. 2023 // https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FTJK%2F56842&Lang=ru

³⁰ The fourth alternative report of public associations of Tajikistan on implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Dushanbe. 2023 // https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FTJK%2F52487&Lang=ru and Tajikistan: Inability to protect women from family violence Joint presentation of NGOs to the UN Committee on the Elimination of Discrimination against Women (CEDAW), before consideration of the Seventh Periodic Report of Tajikistan at 87th session in January 2024. December 2023 // https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FCSS%2FTJK%2F57061&Lang=ru

On the website of the Statistical Agency under the President of RT, in official statistics section, there is placed a separate page “Gender Statistics”, where official gender statistical data are provided, including the number of convicted women. Thus, database indicates that in 2021 there have been convicted 895 women, and in 2022 – 1186 women, but, not indicated the relevant articles of CC of RT³¹. In data book “Men and Women”, prepared by SA of RT, with support of the UN Women, in 2020, there are provided data on the composition of persons who committed crimes. So, the number of women who committed crimes for 2019 is 1885, whereas in 2018 the number of such women was 1640. The number of men who committed crimes is many times higher, so, in 2019 – 15081, and in 2018 – 14618. Herewith, the number of convicted women from among those who committed a crime is less, in 2018 – 1030, in 2019 – 1040. There are no data on men³².

III. Review of National Legislative Framework and State Programs on VAWG and Gender Equality

In Tajikistan, issues of prevention of family violence, and explicitly VAWG, its control and protection of injured or aggrieved persons (victims), bringing guilty parties (perpetrators) to responsibility are governed by different legislative instruments.

In this review, we examine the legislation and policy of the Republic of Tajikistan in terms of taking into consideration the violence that woman has been experiencing throughout her life on the part of husband, ex-husband, intimate partners, or other family members, when woman has become herself the accused/defendant/convicted person, committing a murder or inflicting harm to health in the attempt to defense herself against abuser. In this context, criminal and criminal procedure legislation should prescribe legal mechanisms enabling to take into consideration the aforementioned circumstances of long-lasting violence and mental state of woman, and other primary factors.

While investigating such crimes, investigators and judges should take into consideration and understand not only the legal aspect of the issue, but also keep in mind its psychological aspect, unbiased finding of facts relevant to situation of family violence in particular region and country, and in the world.

Thus, in CIS landscape, in the Russian Federation, lawyers of Moscow Region, in the course of Debate Club “The Bar & Society”, discussed issues on the topic: “Contemporary day-to-day realities and challenges in consideration of family violence cases at jury trial”, and shared their experience.

Thus, Head of the Center for Protection of Family Violence Victims, Mary Davtyan, told about family violence as evidence material to criminal case. She explained the importance of understanding what family violence is, and all related things, both, for lawyers who defend a female victim, even if woman committed murder of her abuser, and investigators and judges who investigate such cases.

³¹ <https://www.stat.tj/ru/gendernaya-statistika/>

³² https://www.stat.tj/wp-content/uploads/2024/02/tajikistan_statistical_publication-1.pdf

It is important not to perceive family violence as a family quarrel, but as systematically repeated acts of physical, psychological, sexual, and economic pressure on significant others, which are committed against their will in order to get hold of them³³.

It is important to understand the statistics of such cases of family violence, both, in the country and in the world, and, perhaps, in particular region. When statistics is missing, it does not mean that there is no family violence. Therefore, it further complicates the issue of family violence. Thus, global studies show: “Most of acts of violence against women are committed by present husbands or ex-husbands, or intimate partners. More than 640 million or 26% of women at the age of 15+ years were subjected to violence by intimate partner.

Among those women who were in a relationship, almost each fourth adolescent girl at the age of 15–19 years (24%) was subjected to physical and/or sexual abuse by intimate partner or husband. 16% of young women, at the age of 15-24 years, had been subjected to such abuse for the last 12 months³⁴. In Tajikistan, according to Demographic Health Survey, “among ever married women, the incidence of all forms of abuse on the part of their present or ex-husband/partner in 2023 is lower than in 2017 and 2012. In general, the incidence of spousal physical, sexual, or emotional abuse committed by present or last husband/partner of women has increased from 24% in 2012 to 31% in 2017, and has then sharply decreased to 16% in 2023³⁵”. Although the last data of 2023 DHST also require further analysis, but, of course, they will not affect particular legal cases. Here, it is important to understand the extent of the problem, and recognize that women much more frequently than men become victims of family violence, specifically, victims of their husbands/intimate partners. Furthermore, the global statistics notes that whereas 56% of all femicide acts are committed by intimate partners or other family members, only 11% of murders of men are committed in private life³⁶.

At the meeting of debate club of Moscow Chamber’ lawyers, Mary Davtyan also drew attention to such peculiarity of family violence as FV cycle stages that are also important to know. Mary Davtyan specified family violence cycle stages: mounting pressure, act of violence itself, and the repentance of an abuser. In her opinion, lawyers should keep in mind that the considerable reduction or disappearance of the third stage often results in active protective actions of affected party that often brings about severe injuries or death of abuser.

When considering such cases, it is important to keep in mind the psychological aspect of “victim – abuser” relationship. The lawyer emphasized that judges and investigative agencies usually do not understand, why a female violence victim would not abandon the abuser and would bring the situation to the boiling point, i. e. to justifiable defense. As Mary Davtyan believes, it is due to a

³³ Catherine Korobka. [Judicial Practice Criminal Law and Process.](https://www.advgazeta.ru/novosti/advokatv-obsudili-kak-zashchitit-zhertvu-domashnego-nasiliva-prevysivshuyu-predely-neobkhodimoy-oborony/) // **Material of edition № 15 (296) August 1-15, 2019//** <https://www.advgazeta.ru/novosti/advokatv-obsudili-kak-zashchitit-zhertvu-domashnego-nasiliva-prevysivshuyu-predely-neobkhodimoy-oborony/>

³⁴ World Health Organization (2021). [Violence against women prevalence estimates, 2018.](#)

³⁵ Statistical Agency under the President of the Republic of Tajikistan, Ministry of Health and Social Protection of Population of the Republic of Tajikistan and ICF. 2024. Demographic Health Survey of Tajikistan 2023: Report on key indicators. Dushanbe, Republic of Tajikistan and Rockville, Maryland State, USA: Statistical Agency under the President of the Republic of Tajikistan, Ministry of Health and Social Protection of Population of the Republic of Tajikistan and ICF.

³⁶ United Nations Office on Drugs and Crime and UN Women (2022). [Gender-related killings of women and girls: Improving data to improve responses to femicide/feminicide.](#)

range of psychological reasons, one of which is “Stockholm syndrome”, the psychological tendency of a female victim to bond with, identify with, or sympathize with her abuser. Mary Davtyan added that it is a protective response related to the wish to survive in a grave psychological situation. Apart from “Stockholm syndrome”, reasons may be economic dependence on abuser, lack of other social contacts in victim, as well as active repentance of abuser deceiving the victim. The lawyer noted that these circumstances must be taken into consideration by agencies investigating a crime of victim against abuser.

It is important to examine myths on family violence and understand why they are considered as myths, and what would unveil such myths. Thus, Mary Davtyan explained that family violence myths do hinder access of the victims of FV to justice. Belief in such myths will result in that competent authorities will actually refuse to accept an application for consideration or will not properly collect evidence. At this meeting, lawyers touched upon issues concerning necessary classification of crimes committed by victims against abusers as justifiable defense, reasons why courts do not recognize it as such. In this connection, the speaker drew attention of lawyers to how one can make court to change their mind in case when immediately prior to the murder of abuser a victim has sustained bodily injuries not dangerous to life and health. So, a female victim never knows what blows would bring about. The same actions may bring about different results, therefore, according to Mary Davtyan, victim, as a rule, has all grounds to believe that a particular act of violence would be dangerous to her life and health. The lawyer noted that when beatings are started, victim does not know how far abuser would go. This issue is particularly important for strangulation that is often practiced by abusers³⁷.

Situation with family violence described by Moscow lawyers does not provide any provisions of criminal and criminal procedure legislation of the Russian Federation, but, clarify the problem that brings about unfair conviction of women subjected for many years to violence on the part of intimate partner or other family member. Unfortunately, no such issues have been raised in RT at the level professional community. Nevertheless, some publications in mass media make someone sit up and take notice of why women in Tajikistan, for example, plunge into river with children, and are lately convicted for long-term imprisonment³⁸, after they have survived, and children not. But, neither the Supreme Court of RT nor prosecution agencies inform in public space on what has brought about woman to commit such action, and whose fault it is.

In this connection, we will review the Criminal Code of RT and Criminal Procedure Code of RT in terms of the existence therein of provisions, legal mechanisms that take into account situation of family violence, in which was woman accused of committing a crime against abuser, or of such crime as murdering own children (filicide)³⁹.

The Criminal Code of RT does not contain a separate corpus delicti providing for liability for family violence, or such category as family offences that exists in the Criminal Code of

³⁷ Catherine Korobka. [Judicial Practice Criminal Law and Process.](https://www.advgazeta.ru/novosti/advokaty-obsudili-kak-zashchitit-zhertvu-domashnego-nasiliya-prevysivshuyu-predely-neobkhodimov-oborony/) // **Material of edition № 15 (296) August 1-15, 2019** // <https://www.advgazeta.ru/novosti/advokaty-obsudili-kak-zashchitit-zhertvu-domashnego-nasiliya-prevysivshuyu-predely-neobkhodimov-oborony/>

³⁸ <https://asiaplustj.info/ru/news/tajikistan/society/20160801/komitet-po-dalam-zhenshchin-v-smerti-zhitelnitsynureka-i-ee-chetyrekh-docherei-vinoven-muzh>

³⁹ Ibidem.

Georgia. Thus, the Criminal Code of Georgia envisages a separate corpus delicti, family abuse – Article 126.1 and Article 11.1 of CC of Georgia specify what offences fall under definition of family offences. Family offence means commission by one family member against other family member of an offence specified by Articles 108, 109, 115, 117, 118, 120, 125, 126, 137-141, 143, 144-144.3, 149-151, 160, 171, 253, 255, 255.1, 381.1 and 381.2 of CC of Georgia. There is a note to Article 126.1 of CC of Georgia stating that for the purposes of this article family members are recognized to be: spouses, mothers, fathers, grandfathers, grandmothers, children (stepsons, stepdaughters), adopted children, adoptive parents, spouses of adoptive parents, adoptees, foster families (stepmothers, stepfathers), foster parents, grandkids, sisters, brothers, parents of spouses, sons-in-law, daughters-in-law, divorced/former spouses (ex-husbands/ex-wives), as well as persons who keep or kept house.

Alongside this, Article 65 of CC of Georgia (binding) also refers to issues of family violence and, based on this provision, court may charge the convicted person with performance of certain obligations: do not change the permanent place of residence without permission of probation department, do not establish relations with persons who may involve them in anti-social activity, do not visit certain places, provide financial assistance to family, take the cure, undergo a course of treatment of sexually transmitted diseases. Court may charge the convicted person with other duties facilitating their correctional rehabilitation. Similar provisions do not exist in CC of RT.

When an offence is committed, investigative agencies shall initially define its corpus delicti that is cumulative biased and unbiased evidence fixed in criminal law⁴⁰, which define a socially dangerous act as offence. Corpus delicti consists of essential elements of offence. Essential element of offence is a particular legally relevant fact of action that is minimally required to recognize it as [criminal](#). If at least one essential element of offence is missing in action, then corpus delicti will be missing as integral unit. In the criminal law theory, there are four distinguished elements: object/target of crime, objective aspect of crime, subject/perpetrator of crime and mental element of crime or in crime. Object of crime — social relations, interests and benefits protected by criminal law, which are violated by criminal offence [\[11\]](#).

Objective aspect of crime is its real-life external manifestations, and it includes elements relevant to criminal action itself: action and failure to act patterns, their appearances (place/scene of crime, modus operandi, time, crime situation, instrumentalities), as well as features of harmful consequences of crime. Mental element of crime includes a perpetrator's internal mental condition characters, attitude towards a socially dangerous act and its consequences, impulsive causes, purposes that perpetrator sought to achieve by violation of criminal law, etc. Finally, personal features of perpetrator are illustrative of criminally significant properties inherent in the nature of perpetrator: age, mental health, official capacity, etc. [\[13\]](#) Brief excursion into the criminal law theory was made to show how important is proper classification of a crime committed by women who experienced family violence.

All elements are important to classify a crime as intentional murder, infliction of death by negligence, or as justifiable defense. In this context, elements relevant to woman herself, i. e. to

⁴⁰ A. N. Trainin. Corpus delicti according to the Soviet criminal law. M., 1951. p. 75.

subject/perpetrator of crime, and to mental element of crime, illustrative of the perpetrator's behavior, may be among the most difficult components in the classification of crime. When identifying component elements of such crimes, important is principle of guilt.

The definition of guilt itself is missing in the legislation of RT. Article of CC of RT notes that the criminal Law is based on principles of legality, equality before the law, inescapable nature of liability, personal responsibility, culpability, justice, humanism, democratism. No one can be blamed for commission of crime until entry of judgment into legal force, as mentioned in Article 20 of the Constitution of RT. This principle is also prescribed in Part 2 of Article 4 of CC of RT. In CC of RT, a number of articles provide definition of forms of guilt (*mens rea*). Thus, according to Article 27 of CC of RT, only a person who has committed an action, willful or negligent, may be found guilty of committing an offence. Action committed only by negligence may be recognized as crime only in case when consistent with relevant article of Special Part of this Code. Articles 28 and 29 of CC of RT provide definitions of crimes committed with express or implied malice (intentionally) or by negligence or presumptuously (carelessly/recklessly). Article 31 of CC of RT provides for infliction by innocence (accidental). Thus, an action shall be deemed to be committed innocently, if a committer was unconscious of and, under circumstances of the case, should not or could not have been conscious of social danger of their action (failure to act), or had not foreseen a risk of socially dangerous consequences and, under circumstances of the case, should not or could not have foreseen them, and an action shall also be deemed to be committed innocently, if a committer, although had foreseen a risk of socially dangerous consequences of their actions (failure to act), but could not prevent these consequences due to the lack of their psychophysiological capacity to endure worst-case or mental stress conditions.

In the criminal law, determination of offender's guilt and principle of guilt is quite complex structure. The essence of this principle is that no one can be held criminally liable until their personal fault has been ascertained with respect to a socially dangerous act and its consequences. Principle of guilt presumes the criminalization of actions by legislator and criminal liability of person strictly subject to any premeditation and contributory negligence. This principle means that in the absence of guilt there cannot be criminal liability; guilt is underlying premise that criminal liability arises from. Nevertheless, legislator, using various wording, endeavors to delimit the liability of person when they commit offences with express or implied malice, by reckless misconduct or criminal negligence, or classifies offences with a clear account of the state of offender (in the heat of passion, in state of emotion; irresistible impulse), or with an indication of reasonable action, such as justifiable defense (including self-defense and defense of others).

Thus, principle of guilt is close relationship between biased and unbiased elements of crime (elements of *actus reus*). On the one hand, person shall be held criminally liable only for wishes and intentions that have been really transformed into socially dangerous acts. On the other hand, (causing of) grave consequences cannot trigger criminal liability, if they are not caused by mental attitude of offender. This theory is put into practice during investigation of criminal cases. As we understand, any ideal theory may have inconsistencies in practice.

Chapter 8 of CC of RT specifies circumstances that exclude the criminal character of actions. This chapter specifies a range of factors that enable the exclusion of the criminal

character of actions. In this case, we, perhaps, may use two factors – justifiable defense (Article 40 of CC of RT) and physical or mental coercion (Article 43 of CC of RT).

Thus, Article 40 of CC of RT states what justifiable defense is, and how it should be applied. It is not crime an action that has been committed in justifiable defense, i. e. in protection of the identity and rights of defender or other person, statutory public or state interests from socially-dangerous infringement, by inflicting damage on infringer, if this infringement has been attended by violence dangerous to the life of defender or other person, or by imminent threat of such violence.

Protection from infringement not attended by violence dangerous to the life of defender or other person, or by imminent threat of such violence, is lawful, if it has been exercised without excessive justifiable defense, i. e. deliberate acts that are expressly disproportionate to the gravity and nature of an infringement.

It shall not be deemed to be excessive self-defense, when actions of defender are caused by a surprise infringement, if defender could not objectively assess the gravity and nature of an infringement. The right to justifiable defense is vested in person regardless of any possibility to avoid infringement, irrespective of professional or any other specific training or official position of person, or seek assistance from other persons or public authorities.

Provision of this article, with its proper application and interpretation, indeed, may help women, who committed a crime against their abuser, if they ultimately defended themselves against abuser or defended their children. Nevertheless, in this matter, a system of justice should have a pool of competent and gender-sensitive interrogating officers, investigators, prosecutors, judges and, of course, lawyers.

Article 43 of CC of RT is applicable when woman is coerced into criminal wrongdoing, for example, by threatening her life or life of her significant others. Under such duress, woman might take money from third persons on her own behalf, but give them to husband, and then be not able to wipe off a debt. Husband would use this money to meet own needs, and run away. But, it would be difficult to prove that she acted under duress or when being defrauded.

Article 61 of CC of RT contains circumstances that mitigate the punishment of guilty persons. The following circumstances may be referred to our topic being examined:

- Commission of crime in a state of strong mental agitation (extreme emotional disturbance) caused by violence, great insult and other unlawful actions of injured or aggrieved person;
- Commission of crime when using excessive force in justifiable defense (exceeding limits of necessary defense);
- Commission of crime under physical or mental coercion, or in situation of material, job-related, or other dependence;
- Provision of medical and other assistance to injured or aggrieved person immediately after commission of a crime, voluntary compensation of material and psychological damage inflicted by crime, other actions aimed at mitigation of damage inflicted to injured or aggrieved person.

Also, Parts 2 and 3 of this article state that if the circumstance specified in Part 1 of this article is provided for by relevant article of Special Part of CC of RT as constituent element of offence, it cannot be applied once again as a circumstance mitigating the punishment. When awarding a punishment, as mitigating factors, there may be considered other circumstances not specified in Part 1 of this article.

Hence, judge, while taking into consideration all facts and peculiarities of a case, can also refer to other circumstances to mitigate punishment.

In the general part of CC of RT, there are also articles that may be applied by judges to mitigate the state of woman who committed a crime against her abuser under emotional pressure, violence on the part of her intimate partner in the course of their joint lifetime. It is Article 63 of CC of RT – awarding milder punishment than the one specified for given crime. Thus, it is noted that in the presence of exceptional circumstances related to the purposes of and motives for an act, role of the guilty person, their behavior during or after commission of crime, and other circumstances significantly reducing the social danger level of crime, as well as with active facilitation of a participant of gang offence to detection of gang offences, punishment may be awarded lower than the lowest limit, as prescribed by the relevant article of Special Part of this Code, or court may assign milder punishment than the one specified by this article, or may not award additional punishment provided for as mandatory punishment. Exceptional circumstances shall be deemed to be both, particular mitigating circumstances and a set of such circumstances.

Article 71 of CC of RT (Conditional Non-Application of Punishment) prescribes that if court comes to a conclusion on possibility of correcting the convicted person without enduring the punishment, but, under behavior control conditions, it may deliver a judgment on conditional non-application of such punishment. With conditional non-application of punishment, court takes into consideration the social danger level and nature of committed offence, personal identity of the guilty person, mitigating and aggravating circumstances.

With application of Article 71 of CC of RT, court is also guided by such definition as ‘grade of offence’. According to Article 18 of CC of RT, subject to the social danger level and nature, actions are divided into crimes of little and medium gravity, grievous and extremely grievous crimes. Thus, Article 71 of CC of RT cannot be applicable to persons who were already convicted in the past for intentional crime, with custodial sentence; for example, for theft, intentional infliction of moderate damage to health, etc. Also, this article is not applicable to person who committed a grievous or extremely grievous crime, except for minors, first- and second-group disabled persons, women, as well as men who have reached the retiring age. Conditional non-application of punishment is not applicable to persons sentenced to imprisonment for indecent/sexual assault, with aggravating qualifying crime attributes (for example, gang rape of person under 14 years old, etc.).

Grievous crimes shall be deemed to be intentional actions, for which maximum punishment provided for by CC of RT does not exceed twelve years’ imprisonment. Extremely grievous crimes shall be deemed to be intentional actions, for committing which CC of RT provides for more than twelve years’ imprisonment or capital punishment.

With conditional non-application of punishment, court will establish a probation period, during which the convicted persons should prove their correction by appropriate behavior. Probation period is assigned for the term from one year to five years, and is counted since the time of entry of judgment into legal force.

Court, when making a decision on conditional non-application of punishment, may charge the convicted person with performance of certain obligations: on a certain date compensate the inflicted damage, do not change the permanent place of residence, work or studies without notifying authorities that exercise control over the behavior of the convicted person, do not visit certain places, get employed or pursue one's studies, take the cure, undergo a course of treatment of sexually transmitted diseases, provide financial assistance to family.

If upon expiry of not less than the half of a probation period the convicted person has proved correction by their behavior, court, on application of authorities that exercise control over the behavior of the convicted person, may render a decision on vacation of conviction and expunging of record of conviction.

If the convicted person, in respect of whom a conditional non-application of punishment has been assigned, disturbs the public peace and is administratively reprimanded for such behavior, or willfully evades imposed-on obligations, court, on application of authorities mentioned in Part 9 of this article, may render a judgment on probation revocation and enduring the punishment as ordered by court.

Article 72 of CC of RT provides for the exemption from criminal liability due to active repentance. But, release may take place, if it is a crime of little or moderate gravity. According to Article 18 of CC of RT, crimes of little gravity shall be deemed to be actions, for committing which maximum punishment provided for by this Code does not exceed two years' imprisonment, as well as reckless actions, for committing which maximum punishment provided for by CC of RT does not exceed five years' imprisonment. Crimes of moderate gravity shall be deemed to be intentional actions, for committing which maximum punishment provided for by this Code does not exceed five years' imprisonment, as well as reckless actions, for committing which punishment provided for by CC of RT exceeds five years' imprisonment.

Article 73 of CC of RT provides for the exemption from criminal liability in case of settlement with the injured or aggrieved party. With regard to private charge cases, person, who committed a crime of little or moderate gravity, may be exempted from criminal liability, if they have settled with the injured or aggrieved party and compensated damage inflicted to the injured or aggrieved person. In family violence cases, such cases are often classified as intentional infliction of small damage to health and bodily blows/beatings (Articles 112 and 116 of CC of RT).

In CC of RT, there also two articles that may mitigate punishment in certain conditions—application of amnesty and act of oblivion. Nevertheless, they may be applied to a certain category of convicted persons, and this does not necessarily relate to women who committed a crime. But, these provisions do not affect the proper classification of a crime by court or investigative authorities, it is a sort of good will of the state, in the name of the President and Parliament, for persons who committed a crime, but, for certain reasons (committed for the first

time, hardships, and merits to the state, etc.), they may receive mitigated punishment or reduced term of punishment.

During the investigation of crimes committed by women against their abuser, these women fall under the category of arrested, suspected, accused persons, and defendants. Thus, all guarantees of criminal justice, provisions of Criminal Procedure Code of RT shall be applicable to them. So, there shall not be discriminatory attitude towards them, neither on grounds of gender identity nor on any other grounds. All are equal before the law and court, men and women have equal rights, as states Article 17 of the Constitution of RT. Inviolability of person is guaranteed by the state. No one can be subjected to torture, inhuman treatment and punishment. Coercion to medical and scientific experiments on humans is prohibited (Article 18 of the Constitution of RT). Everyone is guaranteed to have legal protection. Every person is entitled to require that their case should be examined by competent, independent and impartial court constituted according to law. No one can be apprehended and arrested for any reasons, other than for cause. Every person may have the services of a lawyer since the time of apprehension and arrest. No one can be found guilty of crime prior to the entry of judgment into legal force⁴¹.

The aforesaid constitutional principles are implemented in details in CPC of RT. But, in the criminal procedure law, there are no special provisions that would consider the gender-related character of crimes.

Nevertheless, in any case, during the investigation of criminal cases and their consideration by court, provisions of the national law should take into account and comply with those international criminal justice standards that are provided for in Articles 2, 7, 9, 10, 14 of ICCPR.

CPC of RT establishes the right of persons to require that their cases should be examined by "competent, independent and impartial court constituted in accordance with law".⁴² CPC of RT guarantees the equality of citizens before the law and in *judicio*, regardless of nationality, race, gender, language, religion, political beliefs, education, and social and property status⁴³. The language of criminal proceedings is Tajik, and persons lacking knowledge of Tajik have the right to use the services of an interpreter, file a claim/report, give testimony, file an application, and become familiar with all case papers⁴⁴. These provisions do not take into account the rights of persons with various disabilities, particularly persons with vision and hearing disabilities.

Article 15 of CPC of RT states that no one can be found guilty of crime prior to the entry of judgment into legal force. The obligation to prove accusation lies with accuser. A suspect, the accused and defendant are not obliged to prove their innocence. All doubts about guiltiness of the accused, which cannot be eliminated as per procedure established by CPC of RT, shall be interpreted in favor of the accused (*in dubio pro reo*). Judgment of conviction cannot be based on assumptions.

⁴¹ Articles 19-20 of the Constitution of the Republic of Tajikistan

⁴² CPC of Tajikistan, Article 8

⁴³ CPC of Tajikistan, Article 16

⁴⁴ CPC of Tajikistan, Article 18

In principle, all legal proceedings are open to public; courts may conduct closed-to-the-public hearings⁴⁵. Closed judicial examination, alongside this, is allowed by reasoned ruling of court (judge's ruling/decreed of judge), with regard to cases of offences committed by persons under sixteen years old, indecent/sexual assault, sexual and other crimes, in order to prevent from disclosure of information concerning intimate details of life aspects of those participating in a case, or information derogative to their dignity, as well as in cases when it is required by security interests of process participants and witnesses, their family members or close relatives⁴⁶. That is to examine facts in the case, before-the-fact circumstances of a crime committed by woman, for example, sexual partner has brutally raped her, and attempted to rape her again in the same manner resulting in that woman has killed the rapist.

CPC of RT provides for the right of process participants to appeal against the procedural actions/failure to act and decision of judge, prosecutor, head of investigative force, investigator, head of interrogation office, and interrogating officer⁴⁷. Members of the jury participating in these processes are not mentioned in this list.

When a person commits a crime, and is arrested by law enforcement bodies, classified at this stage as arrested person, circumstances of case are investigated in arrest, evidence of person's guilt is procured, and at this stage person is classified as the accused. As soon as all evidence is collected and, before taking the case to court, investigator is to give a ruling on bringing that person to responsibility as the accused. When the case has been taken to court, judge assigns the case for consideration, and the accused is reclassified as defendant. At each aforementioned stage, CPC of RT prescribes the rights, safeguards and duties for a committer in all their statuses, except for status of arrested person.

Thus, in accordance with Article 46 of CPC of RT, the accused should be immediately interrogated, but, not later than within 24 hours since the time of actual arrest. The accused, since the time of actual arrest, in accordance with Article 49 of CPC of RT, has the right to defense. The accused is entitled to:

- since the time of actual arrest, immediately have the services of a defense lawyer, unhindered communication vis-à-vis with defense lawyer, including prior to investigative interviewing;
- have become familiar with order on institution of criminal proceedings;
- give or refuse to give explanations or testify, and be informed of this right before interrogation;
- know what they are accused of;
- receive a copy of arrest protocol or order on the measure of restraint;
- give evidence in the native language or language they can speak;
- have the free services of an interpreter;
- exhibit evidence;

⁴⁵ CPC of Tajikistan, Article 19

⁴⁶ CPC of Tajikistan, Article 273

⁴⁷ CPC of Tajikistan, Article 23

- file an application;
- become familiar with protocols of investigative actions performed with their participation, as well as with materials submitted to court, in support of their custodial detention as a measure of restraint;
- file a motion for disqualification;
- appeal against the action and decision of court, prosecutor, investigator and interrogating officer. Part 4 Article 47 of CPC of RT specifies the rights of the accused that actually repeat the rights of the suspected person, adding to them the following:
- know what they are accused of, receive a copy of orders on indictment, about measure of constraint, as well as receive a copy of indictment charge;
- familiarize with order on commissioning of expert evidence and expert's conclusion; upon completion of investigation, familiarize with all materials of case and extract necessary information from;
- take exception against termination of proceedings in case;
- take part in judicial examination of imposing a pre-trial restraint (bail hearing).

Then, in Part 5 Article 47 of CPC of RT, obligations of the accused are specified. Thus, the accused shall:

- appear by summoning of investigative agency;
- obey to legal enactments of investigative agency;
- take part in investigative and other procedural actions, when it is deemed necessary by preliminary investigative agency.

Defendant has the right to:

- attend court of the first instance and court of cassation;
- pre-imposition statement;
- familiarize with a record of trial and make comments to it;
- appeal against a verdict, ruling and decision of court, judge;
- receive a copy of disputed decisions;
- receive a copy of complaints and representations with regard to criminal case, and raise an objection;
- take part in consideration of issues related to execution of sentence;
- enjoy other rights envisaged by CPC of RT⁴⁸.

⁴⁸ CPC of RT // Part 6 Article 47.

3.1. Right to Defense as Guaranteed Observance of the Right to a Fair Trial

Studies conducted during the last few years, in terms of national legislation that protects women and girls from sexual and gender-based violence, provision of government-funded legal assistance to them, focused exclusively on injured or aggrieved party. It is quite reasonable and clear enough, as most often those injured or aggrieved as a result of family violence are women and girls⁴⁹, but, at the same time, there was not covered an issue when women committed crimes, while being victims of SGBV/family violence⁵⁰.

In our review, we will examine an issue of provision of competent legal assistance to women, as being arrested, suspected, accused, and defendants. As was already mentioned above, in Part 4 Article 46 of CC of RT, the accused is entitled, since the time of actual arrest, to immediately have the services of a defense lawyer, unhindered communication vis-à-vis with defense lawyer, including prior to interrogation.

We need to find out, based on this provision, who may be a defender, who would pay to obtain a defender for suspected offender. Thus, according to Article 49 of CPC of RT, lawyers may be accepted as defenders. But, at the same time, in the course of the judicial proceedings, on a court's ruling, on a ruling of judge, prosecutor, investigator and interrogating officer, as defenders, there may be accepted close relatives and legal representatives of arrested, suspected, accused person, and defendant. Accordingly, if in our case, suspected, accused female, and female defendant are not in position to obtain a lawyer, they may be defended by close relatives. But, here is the real issue, not all close relatives are legal experts and lawyers. Situation differs in injured or aggrieved persons, as distinct from suspects, the accused and defendants. According to Part 1 Article 45 of CPC of RT, representatives of injured or aggrieved person, civil claimant and private prosecutor shall be deemed to be close relatives or other persons legally eligible to represent in the criminal proceedings the lawful interests of a suspect, civil claimant and private prosecutor, and eligible for participation in the case by a ruling of interrogating officer, investigator, prosecutor, court, and judge. Thus, we tell that for injured or aggrieved parties one may also retain lawyers and human rights activists from public organizations who may represent their interests by power of attorney, which cannot be done for the suspects, accused, and defendants. This issue is essential when women, who committed a crime, cannot afford to obtain a lawyer, and when State does not retain a public defender, or when appointed/assigned lawyer is not enough conscientious in performing their duties.

Due to the aforementioned factors, after having reviewed the provisions of CPC of RT, we have identified factors that would facilitate or hinder the exercising of women's rights to

⁴⁹ According to data of MOI of RT, during the last four years, they have received 12 638 complaints about family violence. 82% of complaints touched upon unlawful actions of men in the family, 18,4% – unlawful actions of women in the family (Human Rights Council, [National Report](#) presented in accordance with Paragraph 5 of Appendix to Resolution 16/21 of Human Rights Council (26.08.2021 A/HRC/WG.6/39/TJK/1), paragraphs 65-68).

⁵⁰ L. Aleksandrova, N. Abdullaeva, V. Kocheev, J. Qudusov, D. Turakhanova. Review and analysis of legislation and policy of Tajikistan touching upon sexual and gender-based violence against women and girls, and their compliance with international standards. Analysis report. At the commission of UNDP under Initiative "Ray of Light". Dushanbe, 2022; L. Aleksandrova. Review of legislation regarding family violence in Tajikistan at the commission of PO "Mirror", with financial support of non-governmental international charitable organization "ACTED". 2023.

defense, as concerns women accused of violent crimes against their intimate partners/relatives, or of crimes committed under their duress or influence.

Article 50 of CPC of RT defines a procedure for retaining, appointing and replacing a defender. Its contents suggests that a defender is either retained by the suspect, accused, and defendant personally, by their legal representatives, as well as by other persons, by their order or with their consent; or interrogating officer, investigator and prosecutor, in certain circumstances, are obliged to take measures on the appointment of a defender.

Appointment of a defender is possible when participation of assigned or appointed defender during five days has turned out to be impossible, then interrogating officer, investigator and prosecutor are entitled to encourage an arrested, suspected, accused person to retain another defender and, in case of their refusal, take appropriate measures for appointment of defender. Part 8 Article 50 of CPC of RT states that if a suspect or accused person does not exercise the right to have a defender, prosecutor or investigator shall assign a defender for them. Also, Part 6 Article 50 of CPC of RT notes that if during 24 hours since the time of apprehension of a suspected person or arrest of suspected, accused person the retaining of a defender at their choice has turned out to be impossible, interrogating officer, investigator or prosecutor should take measures for retaining another defender. From the contents of these provisions, it follows that a lawyer should always take part in the criminal proceedings, since the time of apprehension, by order or at the invitation of person, suspect, and person accused for crime or defendant. But, the contents of Parts 5 and 7 Article 50 of CPC of RT contradict Parts 6 and 8 Article 50 of CPC of RT, when procedural actions and administration of criminal case is possible without attendant assistance of a defender. Thus, if a defender involved in the criminal proceedings cannot take part in legal proceedings during five days, and a suspect, the accused does not retain another defender and does not ask for their appointment, then interrogating officer, investigator is entitled to perform this procedural action without attendant assistance of defender, except in cases provided by Part 1 Article 51 of this Code. If a suspect, the accused refuse to have services of an appointed defender, it is allowed to conduct investigative actions with participation of a suspect, the accused, without participation of a defender, except in cases provided by Part 1 Article 51 of CPC of RT.

Refusal of a suspect and the accused from a defender is effectuated as per procedure established by Article 52 of this Code. When a suspect, the accused and defendant are not aware of their rights, lack law knowledge, this provision will enable law enforcement bodies not to retain a lawyer by appointment and conduct legal proceedings without attendant assistance of defense lawyer, with potential violations, but, except in cases provided by Part 1 Article 51 of CPC of RT, as stated above. Also, one cannot accept a refusal from defense lawyer due to the lack of funds to pay for legal assistance or other circumstances indicative of the forced refusal from the services of a defense lawyer, but, persons accused of a crime may be not aware of this fact.

Article 50 of CPC of RT mentioned that administration of criminal case would be possible without attendant assistance of defense lawyer, except for Part 1 Article 51 of CPC of RT. Article 51 of CPC of RT specifies, when the attendant assistance of defense lawyer is mandatory. Attendant assistance of defense lawyer in criminal proceedings is mandatory, if:

- it is asked for by a suspect, the accused and defendant;
- a suspect, the accused or defendant is minor;
- a suspect, the accused or defendant, due to physical or mental deficiency, are not able to exercise their right to defense with no outside help;
- a suspect, the accused or defendant cannot speak language of legal proceedings;
- defendant held in custody refuses to attend court;
- the accused is outside the Republic of Tajikistan, and evades attending court;
- person is accused of committing a crime that may entail capital punishment or life imprisonment.

As we can see, for women, who, due to justifiable defense or any other circumstances caused by violence against them, could commit a crime, it is practically impossible to secure mandatory attendant assistance of defense lawyer, unless she has asked for or is a person with disabilities. As is highlighted in one of the recent legal surveys regarding SGBV, “women do not use a system of justice to protect their rights, and, in general, women have insufficient knowledge on their rights in family relations”⁵¹. For example, only 11,7% of women knew on the right to divorce without the consent of husband. Victims of violence, disabled persons, migrants and refugees, national minorities and people living with HIV, more often than other groups of population had no money to seek legal protection. They also lack enough information on their legal rights and, as a rule, they mistrust the legal system. Furthermore, victims of family violence encounter disparagement and humiliating treatment on the part of law enforcement bodies^{52,53}.

Part 3 Article 51 of CPC of RT also states that if in cases specified in Part 1 Article 51 of CPC of RT, a defense lawyer has not been retained by arrested, suspected, accused persons, and by defendant, or by their legal representatives, as well as, with their consent, by other persons, interrogating officer, investigator, prosecutor, court, judge are obliged to provide for participation of defense lawyer in the case. In these cases, a ruling of interrogating officer, investigator, prosecutor, judge, or a ruling of court on assignment/appointment of defense lawyer is binding on the Union of Lawyers of the Republic of Tajikistan.

Parts 12 and 13 Article 50 of CPC of RT define, in what cases a defense lawyer’s services are paid for by State. It is noted that obtaining a defense lawyer by State and payment for lawyer’s services are effectuated in cases provided by Article 50 (1), as per procedure established by the Law of the Republic of Tajikistan “On the Legal Assistance”. It is worth noting that in 2020 there was adopted a new Law of RT “On the Legal Assistance”. After adoption in 2020 of the Law of RT “On the Legal Assistance”, additional Article 50 (1) has been

⁵¹ Sinisha Milatovich and Maya Kovach, "Study of Access to Justice in Tajikistan" (UNDP 2021) pp. 87-88

⁵² Ibidem, p. 107

⁵³ L. Aleksandrova, N. Abdullaeva, V. Kocheev, J. Qudusov, D. Turakhanova. Review and analysis of legislation and policy of Tajikistan touching upon sexual and gender-based violence against women and girls, and their compliance with international standards. Analysis report. At the commission of UNDP under Initiative “Ray of Light”. Dushanbe, 2022.

included in CPC of RT. According to Article 50 (1) of CPC of RT, payment for services of defense lawyer is guaranteed for the following persons:

- suspect, the accused, defendant or convicted person in need of legal assistance, being not able to pay for these services, who are recipients of targeted social assistance in accordance with legislation of the Republic of Tajikistan;

- suspect, the accused, defendant or convicted person, who are minor orphans or minors, whose parents (or persons replacing them) are not able to pay for these services, who are recipients of targeted social assistance in accordance with legislation of the Republic of Tajikistan;

- veterans of the Great Patriotic War and equal-status persons, veterans of combat operations in the territory of other states and equal-status persons, as well as Chernobyl Atomic Power Station disaster-stricken persons, persons who took part in the elimination of consequences of this disaster;

- persons eligible for assistance as provided by Paragraphs 3, 5, 6 and 7 of Part 1 of Article 51 of this Code.

Reviewing the categories of persons eligible for government-funded legal assistance has identified the following barriers:

- Article 50 (1) mentions the term “recipients of targeted social assistance”, which covers a suspect, the accused, defendant or convicted person. The question arises as to who is recipient of targeted social assistance, and how this status is established. Awarding the status of recipient of targeted social assistance is defined by the Law of RT “On the Targeted Social Assistance”. To acquire this status, it is necessary to have time, administrative resources, compliance with compound indicators, and a host of other things that would make quite difficult for woman who might need to obtain a lawyer and have legal services funded by government. More detailed information, on the barriers hindering the acquisition of the status of recipient of targeted social assistance and, consequently, on gaining the right to defense in this case, can be obtained from the review of the Law of RT “On the Legal Assistance”⁵⁴;

- women, who are victims of family violence or SGBV, in general, are neither the recipients of legal assistance nor the recipients of targeted social assistance;

- In accordance with Part 5 Article 26 of the Law of RT “On the Legal Assistance”, it is noted that a lawyer, having received the notification from coordination center (when appointed lawyer is required, interrogating officer, investigator, prosecutor or judge send a request to coordination center PI “Center for Legal Assistance” under MJ of RT), produces a warrant of attorney to interrogating officer, investigator, prosecutor or judge. After a meeting with arrested, suspected, accused person, defendant, and convicted person, jointly with requester, lawyer defines, whether person has the right to secondary legal assistance or not. If lawyer defines that such right exists, then they should, according to Article 10 of the Law of RT “On the Targeted Social Assistance”,

⁵⁴ L. Aleksandrova, A. Khaidarov. Review of the Law of the Republic of Tajikistan “On the Legal Assistance” at the commission of PO “The Center for Human Rights”, with technical assistance of UNDP Project “The Rule of Law and Access to Justice”. Dushanbe. 2021, pp. 34-37.

enquire with a social protection department at person's place of residence and wait for reply, according to the standard procedure, from 15 to 30 days in accordance with the Law of RT "On the Requests of Legal and Physical Persons"⁵⁵. This procedure will protract the process of administration of justice.

- Very low payment for lawyer's services, with regard to such cases, is also a demotivating factor affecting the quality of competent legal assistance provided⁵⁶.

Drawing conclusions on implementation of the right to defense as guaranteed observance of the right to a fair trial for woman who experienced violence on the part of intimate partners or other relatives, and committed a crime under the influence of this violence, it is worth noting that provisions of CPC of RT, Laws of RT "On the Legal Assistance", "On the Targeted Social Assistance" are not gender-sensitive, do not take into account the status of this category of persons and, in general, a mechanism for provision of government-funded legal assistance has a lot of barriers, gaps in implementation and funding arrangements.

3.2. Review of Plenums of the Supreme Court of the Republic of Tajikistan on Criminal Jurisdiction pertaining to Family Violence

Review of the website of the Supreme Court of the Republic of Tajikistan has showed that in its Section "Legislation" there is a reference to page "Resolutions of the Plenum of the Supreme Court of RT", and further is a separate reference to resolutions of Supreme Court Plenums for criminal, civil and administrative cases. On page "Resolutions for Criminal Cases", we have found only one resolution related to crimes of violence pertaining directly to family violence – Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan №1, as of June 26, 2009, Dushanbe, "On the Judicial Practice in Murder Cases (as amended by Resolution of the Plenum, as of November 23, 2012, № 29)"⁵⁷.

The contents of the abovementioned Plenum of SC of RT №1, as of June 26, 2009, as amended on November 23, 2012, show that there is no explicit reference to investigation of murder cases with due regard to facts of repeated violence against woman accused of murder, as well as there is no gender-sensitive approach, in general, in this document. Nevertheless, there are some paragraphs that superficially reflect the necessity to consider all circumstances that have brought about murder, and mental condition defense.

Thus, Paragraphs 4-6 note: "Keeping in mind that the mental condition of the accused before and at the time of committing a crime is essential to establish the motive and purpose of a murder, preliminary investigation bodies should carry out a forensic psychiatric examination and, whenever necessary, call for carrying out expert examination, with placement of person in

⁵⁵ Article 18. Time period for consideration of requests of physical and legal persons // Law of the Republic of Tajikistan "On the Requests of Legal and Physical Persons", as of July 23, 2016 № 1339 // <http://surl.li/ietdfs>

⁵⁶ For one day of participation – at least, 1 and not more than 2 Fee-based Service Indicators (FSI). For one day of participation on holidays or at the weekends, and in the night time – at least, 2 and not more than 3 FSIs (Rate of and procedure for remuneration of defender participating in the criminal proceedings in the capacity of defense lawyer by a ruling of interrogating officer, investigator, prosecutor, judge, or by a court's ruling // GRRT, as of June 29, 2017, № 325).

⁵⁷ <https://sud.tj/ru/dokumenty/postanovlenie-plenuma-verkhovnogo-suda/postanovleniya-po-ugolovnym-delam/>

relevant health care institution for in-patient health surveillance. 5. It is necessary to make distinction between intentional murder and intentional infliction of grievous bodily harm that has resulted in the death of an injured or aggrieved person, when death is likely to be caused by contributory negligence. Addressing the issue of any premeditation on the part of offender in committing the crime with which offender was charged, it is necessary to keep in mind a set of all circumstances of the crime committed, in particular, modus operandi and crime instrumentalities, the extent, nature and localization of injuries, and other bodily injuries (for example, injuries to vital organs), reasons for termination of criminal wrongdoing, etc., as well as before-the-crime and after-the-crime behavior of offender and injured or aggrieved person, their relationship. Thus, indicative of specific homicidal intent may be: cause death by point-blank shooting at a person, shoving a person over a cliff/pushing a person under a high building, by toxic substance poisoning, drowning, hanging, and pushing under the passing train, car, and the like. A long lapse of time, which has passed since the time of inflicting injury till the time of death, shall not exclude liability for murder provided that there is causal relationship between the action of offender and resulted death of injured person, i. e. actions (or failure to act) of offender must be essential prerequisite for death to come. When ascertaining the indirect intent, the action committed should be classified by ensuing of consequences in fact (Articles 110, 111, 112 of CC of RT). Part 1 Article 104 of CC of RT classifies a murder committed without qualifying crime attributes specified in Part 2 Article 104 CC of RT, and without mitigating circumstances provided for by Articles 105, 106 and 107 of CC of RT, for example, at quarrel/variance or affray (with the absence of hooligan motives), out of jealousy, out of envy, dislike/enmity, hatred, revenge that may be caused by offence, insult, acts of indecency and unlawful acts on the part of injured or aggrieved person in the past, as well as murder committed at request of injured or aggrieved person, when impelled by a feeling of compassion, with failure to ascertain the purpose and motive of murder, with non-repayment of a debt, ridden by superstitions, religious and ritual murder not related to the motive of national, religious, racial and parochial/sectional hatred.

Further, more qualifying crime attributes are explained across various paragraphs of Part 2 Article 104 of CC of RT. In Paragraph 28 of the Plenum, it is also noted that courts, during consideration of intentional murder cases, if there are reasonable grounds, should make special rulings (pass riders). One should draw attention of government agencies, public organizations or office holders to detected facts of violations of law, as well as reasons and conditions facilitating the commission of crimes that require appropriate response.

In the light of the abovementioned findings, an in-depth analysis of Plenums of SC of RT is required regarding crimes of violence, if they are adopted, as well their follow-up revision with gender considerations.