

Masters Paper

**Domestic violence as a women's rights violation in Armenia**

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## **Introduction**

The founding document of the UN, The UN Charter provides in its preamble that there is a need “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.” The Universal Declaration of Human Rights (UDHR) which followed and which forms the basis of bills of rights of many national constitutions was equally clear providing in article 1 that, “All human beings are born free and equal in dignity and rights”. These provisions were adopted almost six decades ago but since now they seem to be too ideal and not respected with regard to women rights. Domestic violence (DV) throughout of the decades of impunity has led the world to grave violations impairing and devastation women’s potential.

Domestic violence is a wide spread phenomenon in the world and in Armenia as well. In general its roots go deep into the problems of the society reflecting existing values. Through violence men seek both to deny and destroy the power of women. DV is also designed to intimidate both the individual woman who is the target and all women as a class. DV undermines not only women’s security at home but also their possibilities for independence, their exercise of human rights and their self-development. Violence thus perpetuates the economic, social and psychological dependency which, in its turn contributes to women’s vulnerability to violence. Having recognized the devastating effects and consequences of violence against women and also DV the international community has adopted comprehensive legal framework to combat this phenomenon which aims to make the world healthier and fair. One would think that there are a lot of other important issues and human rights violations than DV and there is no need to pay so much attention to it. I claim that this “minor” issue is a starting point for other violations and which escalation gives birth to other human made vices. The underlying meaning of DV is

women are being subject to abuse because they are women and physically weak than men. This “small” and unpunished violation grows to the violation of other groups, nations and states under the egis of if one has power, the power shall be used at expense of the weak. Violence toleration is the fostering element of outrageous wars and egregious violations of human rights. Therefore, there are no small human rights violations and there shall be no violation tolerance regardless of the level and the subject of violation. The aim of this paper is to emphasize the immediate need for undertaking appropriate actions to combat DV which can ensure the Armenian state’s compliance with the international obligations not only for DV but for human rights as a whole. The classification of DV as less important right which does not change the overall picture of human rights in Armenia is an illusion. In reality DV is an embryo of the discriminative and violent practices which flourishes in Armenian rich soil of impunity, growing and escalating into egregious human rights violations.

### **Domestic violence as a form of violence against women**

Domestic violence is a typical form of gender based violence. Though DV has a long history but the states even developed ones started to combat it very recently. International conventions, e.g. Convention on Elimination of All Forms of Discrimination against Women (CEDAW), European Convention on Human Rights (ECHR) do not explicitly address the issue. Though CEDAW is the main mechanism for protection against DV, it was supplemented by General Recommendation (GR) 19 in order to tackle the issue. ECHR likewise turned into this issue very recently. The European Court of Human Rights did not use the term DV and first time it used the term DV in *Opuz v. Turkey* case.<sup>1</sup>.

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<sup>1</sup> Application no. 33401/02, 09/09/2009

Though DV phenomenon is very, but the condemnation of it as a human rights abuse has come very recently. Council of Europe Recommendation 1817 (2007) states that national parliaments are invited among other things make domestic violence against women, including marital rape, a criminal offence. 1993 UN Conference in Vienna (The Vienna Declaration) declared that "Human rights of women are inalienable part of universal human rights" .. The breakthrough with regard to violence against women was the Beijing Declaration and Platform for Actions.

Many states including Armenia consider DV a private matter and not a "real police work" By the creation of this private/public dichotomy the partial or total impunity enjoyed by the perpetrators of violence against women is justified.<sup>2</sup> Some scientists claim that nowadays DV amounts to torture.<sup>3</sup> Torture, accepted as *jus cogens* or a peremptory norm of international law, illustrates what renders violence exceptional and heinous and thereby provides a framework for assessing the gravity of gender-based violence. The definition and practice of torture illuminates the nature and purpose of severe and deliberately inflicted violence as an assault on the body, the mind and dignity of the person, violence as an instrument of repression and subordination of the individual, group or society. When examined through the lens of torture, domestic violence against women emerges as a disturbingly comparable system of terror. Like torture, domestic violence usually involves some form of physical brutality, which often escalates over time<sup>4</sup>. This approach has not been supported by the ECHR because the Court still considers DV as ill-treatment<sup>5</sup>.

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<sup>2</sup> R.Capelon, Recognizing the Egregious in the Everyday: Domestic Violence as Torture, 1994

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Opuz v. Turkey case*

DV is systemic and structural, a mechanism of patriarchal control of women that is built upon male superiority and female inferiority, sex-stereotyped roles and expectations, and the economic, social and political predominance of men and dependency of\ women.<sup>6</sup>

International instruments namely CEDAW consider violence against women as a form of discrimination against women insofar as it targets women disproportionately and perpetuates the subordination of women. Article 1 of CEDAW provides a definition of discrimination against women on the basis of sex.“For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 2 highlights that the State is responsible for violations of rights within both the public and private sphere regardless of whether those violations are committed by State or non State actors. Article 1 of CEDAW includes both direct and indirect discrimination and requires States parties to ensure equality of opportunity and result.

The United Nations Declaration on the Elimination of Violence Against Women emphasizes violence as “the essential and ultimate mechanism by which women are forced into a subordinate position as compared to men”. DV undermines a woman’s dignity self-esteem, social interactions and ability to participate and develop her capacities in the public spheres of life. GR No. 19 states that “... [T]he definition of discrimination includes gender -based violence” and that “[G]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”. Furthermore, the general

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<sup>6</sup> *Ibid*

recommendation addresses the question of whether States parties can be held accountable for the conduct of non -State actors in stating that “...discrimination under the Convention is not restricted to action by or on behalf of Governments ...” and “[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation” This provision has great significance for women’s abilities to enjoy rights and freedoms on an equal basis with men. The development of international human rights law shows significant advancement towards the protection of women rights: women rights are recognized as human rights and legal framework is getting more and more elaborate and effective to protect women rights. But the international instruments are not enough to ensure protection of women rights, the national implementing mechanisms have crucial role to guarantee the strict compliance of national law and practice with the international ones.

### **The failure of Armenia to combat DV in Armenia**

International standards that clearly establish the State’s duty to eradicate domestic violence have emerged since the 1980s.<sup>7</sup> Custom, tradition and religion cannot be invoked by States parties to defend violence against women in the family or to shield from international scrutiny cultural practices that are violent towards women<sup>8</sup>.

Although Armenia ratified the bedrock conventions condemning violence against women and particularly domestic violence, the situation remains unsatisfactory. Domestic violence and sexual abuse is a wide spread practice in Armenia. Government agencies, particularly law

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<sup>7</sup> Declaration on the Elimination of Violence against Women and General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women.

<sup>8</sup> United Nations document E/CN.4/2002/83

enforcement bodies like police, courts and so on are very reluctant to address the issue and take necessary measures to handle the issue.

This problem was researched by Amnesty International and was stated that “more than one in four women in Armenia may at some time experience physical violence at the hands of husbands or other family members, with much higher figures reported for psychological forms of violence”<sup>9</sup>. These are threatening figures which impair women and the whole society. The state authorities continue to remain indifferent and tolerant towards escalating numbers of violence.

According to Amnesty International a few women who complain for violence are pressured to get back their complaints. Only victims of violence are empowered to lodge a complaint other persons are not allowed to initiate a prosecution. The victim can have back the claim on the bases of reconciliation. The police do not investigate the reasons getting back the claim even if it is forced. Therefore many cases do not reach the stage of prosecution<sup>10</sup>. This creates an atmosphere of impunity which deepens and perpetuates violence against women.

Laurence Broers, Amnesty International’s expert on Armenia asserts that: “Women in Armenia suffer disproportionately violence or psychological and sexual abuse in the family and at work. This makes them victims of discrimination and therefore victims of a human rights violation. Unfortunately, this aspect is not widely understood in Armenia. On the contrary, declared support for the family perpetuates hidden abuse”<sup>11</sup>

Many domestic violence cases were and have been reported by NGOs but the perpetrators remained unpunished and so far there is no intention to change this vicious practice. The practice of the violence against women in Armenia is addressed by the CEDAW Committee. In its concluding Observations the Committee several times reiterated the problems and obliged the

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<sup>9</sup> See <http://www.amnesty.org.hk/html/node/10172>

<sup>10</sup> Amnesty International Report of 2008, <http://www.amnesty.org.hk/html/node/10172>

<sup>11</sup> See <http://www.amnesty.org/en/for-media/press-releases/armenia-women-suffer-silence-20081113>

state party to bring its practice in conformity with the international instruments. The last concluding observations on Armenia were on 19 January-6 February 2009<sup>12</sup>. The committee stated that domestic violence continues to be a significant problem in the State party as expressed in its previous concluding observations (A/57/38).

The Committee expressed its regret that Armenia did not mention anything on domestic violence in its report submitted to the Committee". It is further concerned that there is no specific legislation addressing violence against women and that the Criminal Code does not define domestic violence as a separate crime and does not criminalize it as such. The Committee is further concerned that there is no dedicated governmental body or coordinating institution tasked with implementing measures to counter all forms of gender-based violence against women".

The state report did not contain any data concerning the court cases on domestic violence and the Committee also stated that there were very few cases in the areas of sexual and other forms of violence against women. There was no statistics on murders of women by husbands or other persons. This makes difficulties to have a precise picture of the problem and find effective ways to combat it. The appropriate bodies as well as women have little knowledge on the rights of women and on CEDAW, recommendations of the Committee. The Committee was concerned that there is no case law where Convention is used and that no judicial cases on elimination of discrimination on the grounds of sex and gender were brought before the Committee. The absence of law on domestic violence and a criminal punishment for perpetrators of domestic violence makes lawful the domestic violence and foster discrimination against women. Without legislative grounds it is useless to combat domestic violence.

### **Recommendations to eliminate DV practice in Armenia: practical and legislative approach.**

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<sup>12</sup> CEDAW/C/ARM/CO/4/Rev.1

Though Armenia is a monist country and does not require to adopt special act for incorporation of international legal norms into national legislation, it does not mean that the state authorities are not obliged to adopt effective mechanisms to fulfill international obligations. The Committee stated that the lack of effective legal and other measures prevents the State party from dealing in a satisfactory manner.<sup>13</sup> This means that states must adopt appropriate legal framework to combat DV. However, the state has discretion to choose the regulatory framework. The states shall establish a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness raising, education and training, shelters, counseling for victims of violence and work with perpetrators. to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms. In doing this I especially value the political will of the state to implement effective measures targeted towards women to eliminate the deepened discrimination practices<sup>14</sup>. The comprehensive system of antidiscrimination and zero violence tolerance policy must be by the adherence to the due diligence obligation. DV is a multifaceted phenomenon which can be eliminated by multisided approach being able to cope with its economic, social, legal, cultural and other aspects. I especially give importance to the establishment and implementation of national legal legislation on combating DV. The Committee several times emphasized the national implementation mechanisms of DV. Ratification of treaties shows a degree of commitment to the values and rights the conventions espouses, states that become party to such enforcement procedures are announcing to the world that they are ready to work with the international community towards full compliance with their international obligations in realization of the importance of human rights that have been overlooked throughout history

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<sup>13</sup> Communication No.: 2/2003, Ms. A. T. v. Hungary, (Views adopted on 26 January 2005, thirty-second session).

<sup>14</sup> *Ibid*

However, there is no meaningful way to ensure that those rights are being respected without adoption of legal instruments at the national level. Ensuring the rights of women must be done at the national level. Therefore, adoption of the national laws on regulating DV issues is a *sine qua non* which entails the effective implementation mechanisms. The Committee stated that it is necessary to strengthen implementation and monitoring of the laws on DV, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so, vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence as well as ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.<sup>15</sup>

It is necessary also to enhance coordination among law enforcement and judicial officers, and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence. Strengthening training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the international framework is an essential part of implementation of a state's obligations.

With this regard the need to adopt national legislative framework for elimination of discrimination against women and DV is a crucial aspect. A draft law on DV of RA has been

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<sup>15</sup> See paragraph 9.3 of the Committee's views on communication No. 2/2003, A.T. v. Hungary., CEDAW/C/39/D/6/2005.

going back and forth to the National Assembly and the Government. It is worth to mention that the draft law on DV is not enough to combat effectively the situation. It is necessary to adopt comprehensive, holistic approach meaning that the law should be accompanied by amendments to other laws and other new laws to cover the whole issue. The problem is so deep and intertwined with other aspects of life that it is impossible to foresee fundamental changes in the existing situation. Thus a policy paper and actions plan is needed to guide the whole process. Adoption of antidiscrimination law is a vital necessity not only from the perspective of women's rights protection but for the human rights as a whole.

Concerning DV draft law of RA the following considerations should be taken into account:

1. to change the title of the law which is Law on DV and does not contain the aim of the law. I suggest to use the following title Law on Elimination of Domestic Violence and Protection of Victims of Domestic Violence. Almost all the laws of other countries emphasize in the titles the aim of the laws. The law of the Republic of Georgia is titled as Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims, the law of Bosnia and Herzegovina is titled The Law on protection from Domestic Violence. This was suggested by OSCE opinion on the draft law of Azerbaijan.”While it is assumed that the question of the title of the draft Law, depending on the importance placed in the extant legal order of the Republic of Azerbaijan, does not constitute an issue of legal interpretation, it may nevertheless serve to signal to those to whom it is addressed the primary aim of the draft Law. In another words, such an amendment to the title may add emphasis to the goal of the draft Law in protection victims of domestic violence”<sup>16</sup>

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<sup>16</sup> Opinion On the Draft Law of The Republic of Azerbaijan On Domestic Violence, 12 September, 2009, [www.legislationline.org](http://www.legislationline.org)

2. It can be useful to supplement the legislative preamble with an explicit acknowledgment that domestic violence affects women in particular, and that it constitutes a form of discrimination and violation of women's human rights<sup>17</sup>.
3. The Armenian draft law does not contain the definition of DV instead containing actions which can be considered as DV. The notion of DV is important in my view. Though there are several delineations of DV (UN Conventions definition, the US counterpart, international courts definitions and so on) however it is possible to incorporate one of them into the law.
4. The actions constituting DV do not cover economic violence which is required to cover under international instruments: CEDAW, GR 19 and so on.
5. It is necessary to have clear classification of DV actions as administrative, civil and criminal. In several countries DV is a misdemeanor<sup>18</sup>. It would support the effective implementation of the law.
6. The draft should be presented in tandem with amendments to other laws. The civil and criminal procedure, criminal codes shall be amended. A careful scrutiny shall be done to make sure other laws are not in contradiction with the draft because according to the Law on Legal Acts in case of contradiction of legal acts of the same level the prior one shall prevail. The Law on Police should be amended as well.
7. The Law shall contain an antidiscrimination provision which is very essential. DV is considered as a discrimination against women according to UN instruments as well

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<sup>17</sup> See the judgment of: *Opouz v Turkey* (Application No 33401/02), Strasbourg, 9 June 2009.

<sup>18</sup> <http://www1.umn.edu/humanrts/svaw/domestic/laws/regional.htm#EU>

according to the landmark ECHR case of *Opuz v. Turkey*. The principle of non-discrimination is often not respected, frequently in the area of women's rights.<sup>19</sup>

8. It is necessary as well to supplement the ambit of protection measures which can be directing the perpetrator to stay a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member, an order prohibiting the perpetrator from using or possessing firearms or other weapons specified, an order granting the victim possession or use of an automobile, or other essential personal effects, and order granting custody of children, and order denying visitation rights, or specifying visitation under supervision, an order requiring the payment of certain costs and fees, and order concerning any other property rights<sup>20</sup>.
9. In case of imposition of fines it should be ensured that the victim does not carry the burden of the punishment together with the perpetrator Alternative measures shall be provided by the law with this regard.
10. The draft law envisages the creation of support and counseling center and psychological centre. It seems burdensome for the state and unjustified the creation of these separate institutions. These provisions entail significant state expenses which jeopardizes the adoption of the entire law. Besides I do not think these institutions has primary role in combating DV. They are certainly have importance but it is essential the prevention stage rather than after violence support. The Georgian law provides a creation of Rehabilitation centre. The law of Bosnia and Herzegovina does not create a separate

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<sup>19</sup> D. Otto “‘Gender Comment’: Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?” 14 (2002) *Canadian Journal of Women’s Law*

<sup>20</sup> “*Model Code on Domestic and Family Violence*”, Advisory Committee of the Conrad N. Hilton Foundation Model Code Project of the Family Violence Project, National Council of Juvenile and Family Court Judges, California. 1994, Page 5

institution though provides with state obligation to ensure legal, psychological aid. I suggest empowering preventive and protection mechanisms rather than creating separate centers.

## **Conclusion**

In addition to proclaiming that women's rights were human rights, the Vienna Declaration, 1993 also proclaimed that "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights."<sup>21</sup>

In general recommendation 12 it called on States parties to provide information on legislation that was in force to protect women "against the incidence of violence in everyday life (including sexual violence, abuses in the family, sexual harassment in the workplace etc)"<sup>22</sup>

Moreover the States are to ensure the introduction of a specific law outlawing violence against women and to investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards.<sup>23</sup>

According to the international instruments and case law on DV and discrimination Armenia has failed to combat DV and discrimination against women which has been stated in Committee concluding observations though it is evident that the elimination to discrimination against women is a key objective of the international community.

Adoption of antidiscrimination laws and DV law is a requirement both under universal legal instruments like UN and regional like European council. Not observance of these requirements deteriorates human rights situation in Armenia, impede democracy and affects even the economic stage of the country. Though state officials would claim that DV has nothing to do

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<sup>21</sup> Vienna Declaration and Programme of Action, 1993, UN. Doc. A/CONF, 157/24

<sup>22</sup> CEDAW general recommendation 12, para. 1.

<sup>23</sup> *A. T. v. Hungary*, para 11 (e).

with democracy and economic situation in Armenia and even Armenia does not have a problem with DV or it's not a vital issue for Armenia, the reality remains the same: underpowered women do not participate in decision making processes, do not have access to public goods and continue to have inferior status in the society. One may say that this is an exaggeration but looking to the reality through the objective lens a sad reality would attract the attention.

Two months ago a 20-year-old woman was severely beaten by her husband and died. Not going into horrible details of the case, it is enough to say that every day, every month we hear similar stories with or without lethal consequence. I do not think that this kind of stories is private and incidental ones. If the state continues closing eyes on these egregious violations it would lead to overall human rights crises the trends of which are evident even now.

A legislative package on combating DV is important to prepare and adopt very soon which should be followed by the establishment of effective implementation mechanisms. Law enforcement bodies should be trained to address properly the DV cases. Implementing these requirements effectively and bona fide clear political will should present.

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