



**POWERFUL NATIONS HAVE ROBUST ECONOMIES,
ROBUST ECONOMIES REQUIRE STRONG FAMILIES**

REPORT

ANALYSIS OF THE DOMESTIC VIOLENCE-RELATED ISSUES IN ARMENIA

WITH

EXPERT CONCLUSIONS AND RECOMMENDATIONS

JUNE 2, 2022

“An increase in the share of women subjected to violence by 1 percentage point can reduce economic activity by up to 8 percent.

*International Monetary Fund
November 2021*

“In some countries, violence against women is estimated to cost countries up to 3.7% of their GDP – more than double what most governments spend on education.

*The World Bank
September 2019*

In Memory of

When the Police didn't act, she was left to fend for herself.

Diana Nahapetyan reported to the police several times that her husband was abusing her. Law Enforcement failed to act. Eventually, Diana was stabbed to death by her husband in front of her teenage daughters. She was 35. Her husband was sentenced to just 3 years in prison. Psychological evaluations of the husband documented that he was not mentally ill or driven by irresistible impulse. The evaluations suggested that he did not appreciate the nature or quality of wrongfulness of his act. Accordingly, his prison sentence was reduced.



Beaten to death by her husband and mother-in-law.



Zaruhi Petrosyan was 20 when she was beaten to death after having sustained days of physical abuse at the hands of her husband and mother-in-law. She had broken knees and broken fingers, but still tried to dial for help. She was believed to have been thrown down a flight of stairs, which crushed her skull. Her husband, Yanis Sarkisov, was sentenced to 10 years in prison through what was described as a fair criminal-trial by the Coalition to Stop Violence against Women. Her mother-in-law, Lilia Sarkisova, has not been charged and was given custody of the victim's infant child.

Stabbed to death for working on the computer.

Liana Manukyan's husband stabbed her to death while their 6-year-old son was at home. The autopsy showed that she had 14 cuts on her body. Her husband stopped only after seeing blood. The husband was sentenced to 10 years in prison. Their 6-year-old lives with his grandmother and suffers from severe psychiatric issues.



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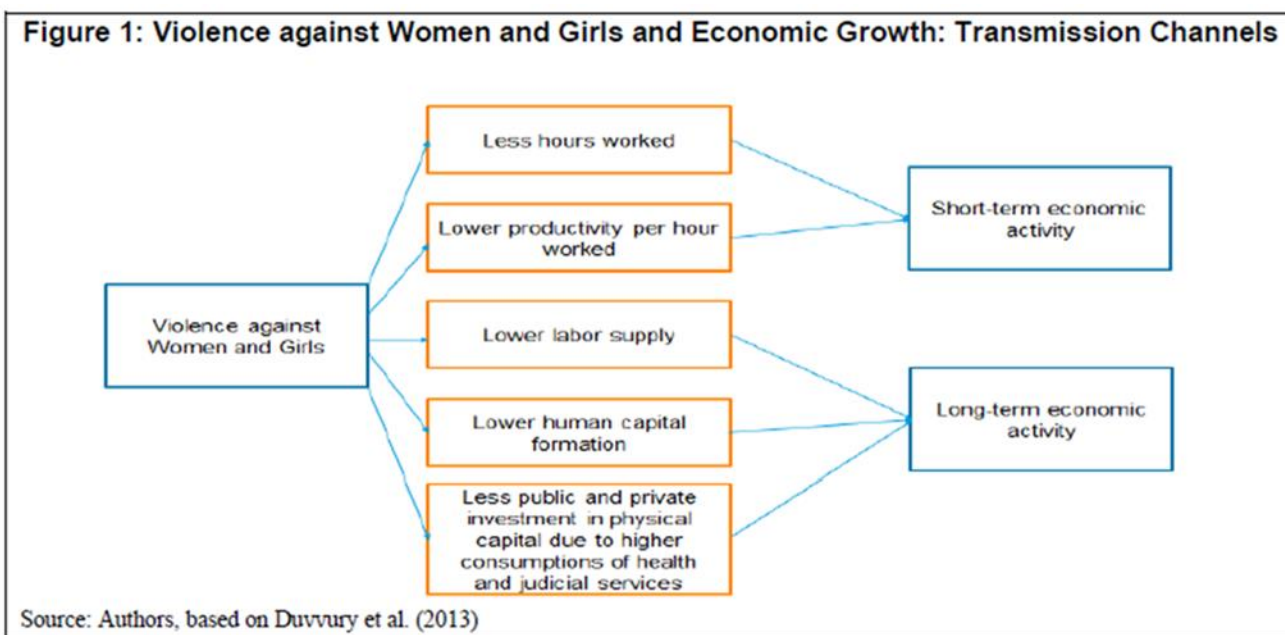
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I. Introduction

Importance of Improving Laws that Prevent and Prosecute Acts of Domestic Violence

In 2018, Armenia had dramatically reduced its levels of poverty and many had reached upper-middle-income status.¹ Unfortunately, COVID-19 reversed Armenia's gains and it is reported that Armenia's gross domestic product in 2020 experienced a whopping 8% drop. Moreover, the 44-day war with Azerbaijan caused a massive humanitarian crisis resulting in 90,000 displaced persons, many of whom are women and children. Adding fuel to the fire, our soldiers, traumatized by war, have returned to their respective homes.

In numerous studies, the International Monetary Fund ("IMF") has found that gender-based violence is rampant in countries with weaker economic development that lack robust protective measures to prevent acts of domestic violence.² Additionally, the IMF has found that domestic violence has a tremendous deleterious impact on businesses, specifically higher rates of employee absenteeism, large staff turnover, reduced productivity, and higher occupational safety risks.



A study conducted in Africa's sub-Saharan region found "that violence against women and girls has a negative effect on economic activity. The results showed that when the percentage of women subject to domestic violence declines by 1 percentage point,

¹ [United Nations, Economic and Social Council, Country Programme Document, 15 June 2021.](#)

² [International Monetary Fund, The Heavy Economic Toll of Gender-based Violence: Evidence from Sub-Saharan Africa, 19 November 2021.](#)

per capita nightlights-based economic activities increase by 8 percent.”³ Similar studies conducted in Australia, Vietnam, United States and elsewhere in the world have all confirmed that robust laws preventing domestic violence and punishing perpetrators of domestic violence will exponentially increase a country’s gross domestic product.

Table 1. Selected costing studies of intimate partner violence

Author	Country	Type of Costs	Estimate	Percent of GDP
CDC (2003)	US (1995)	Annual health care cost, missed work, foregone earnings	US\$ 5.8 billion	0.065
Access Economics (2004)	Australia	Service provision, economic costs, pain and suffering	\$8.1 billion per year	1.2
Walby (2004)	UK	Service provision, Economic output and human and emotional costs	£23 billion/year	1.91
Orlando and Morrison (1999)	Nicaragua (1997)		US\$ 29.5 million	1.6
	Chile (1997)	Productivity loss	US\$ 1.56 billion	2
Duvvury et al. (2012)	Vietnam (2011)	Out of pocket expenditures, missed work, productivity loss	US\$ 1.71 billion	1.41
CARE (2010)	Bangladesh	Out of pocket expenditures and income loss due to missed work	US\$ 1.8 billion	2.05

Source: Duvvury et al. (2013)

In Armenia, predominantly women and children fall victim to domestic violence each year. Over 60% of Armenian women have experienced domestic violence at least once in their lifetimes. Additionally, most victims do not report domestic incidents due to cultural stigma and inadequate protection from the government. Consequently, only a small percentage of the reported cases are criminally prosecuted in Armenia.

Domestic violence is a public health issue that has wide-ranging consequences. It is not only detrimental to the health and wellbeing of victims, but it weakens economic growth and destabilizes families, and in turn, communities. As a result of a lack of resources to facilitate increased economic independence of women, domestic violence victims return to their abusive relationships for financial stability.

In 2017, Armenia made strides in fighting domestic violence by passing a domestic violence law entitled the “Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.” (“Armenia’s DV Law”) However, there are significant deficiencies in the laws and customs of the Republic of Armenia relating to the prevention and prosecution of domestic violence. This Report recommends specific areas in the current law requiring revisions which would significantly alter how victims are treated and how domestic violence laws are enforced.

³ [International Monetary Fund. The Heavy Economic Toll of Gender-based Violence: Evidence from Sub-Saharan Africa, 19 November 2021.](#)

This Report will focus on the following key areas:

- I. Eliminating the procedure of law enforcement issuing so called “warnings” to perpetrators of domestic violence.
- II. Adding provisions for interim custody and visitation of children when there is an emergency intervention.
- III. Remediating the lack of protection\restraining orders after a conviction.
- IV. Tailoring the temporary insanity defense to ensure it is not used as a victim blaming tool.

The suggested amendments to Armenia’s Domestic Violence Laws are prerequisites for:

- i. Strengthening families and family values;
- ii. Restoring peace in the family;
- iii. Prioritizing children’s best interests;
- iv. Guaranteeing rights to victims and granting them access to justice;
- v. Strengthening cooperation between public and local authorities and civil society;
- vi. Strengthening Armenia’s economy;
- vii. Driving outside investment into Armenia; and
- viii. Bringing much needed prosperity to Armenia.

II. Eliminate Warnings Provision from Armenia’s Domestic Violence Law

A. Issue: Does the Domestic Violence Law’s Warning Provision Protect Victims?

The current Armenian legislation contains a “warning” provision, requiring police to issue a warning for a “first time” violation, if police officers determine there are no grounds for emergency intervention and there are no “evident” elements of a domestic offense.⁴

B. Existing Law

The following is a direct quote from the statute’s English translation:

CHAPTER 2: PROTECTION MEASURES FOR VICTIMS OF VIOLENCE WITHIN THE FAMILY

Article 5: Types of protection measures for victims of violence within the family

1. Protection measures for victims of violence within the family are:

- 1) Warning,
- 2) Decision for emergency intervention, and
- 3) Protective decision,

2. The decision to apply protection measures shall be well-grounded. The protection measures shall be applied following the principles set forth in this law and ensuring the proportionality of intervention. The application of those measures shall not hinder the institution of a criminal case and criminal prosecution stipulated by law.

Article 6: Warning

1. Warning shall be applied when the Police identifies a case of violence within the family for the first time, it does not have evident elements of an offence and there are no grounds for an emergency intervention. The warning decision shall include a notification on applicable legal sanctions in case of continuing or repeated violence. The warning is issued as soon as possible after learning about the case.

2. A copy of the well-grounded warning decision issued by the police officer shall be served to the perpetrator of violence within the family against signed acknowledgment. The content of decision shall be communicated to the perpetrator via phone if the latter is absent at the scene of action; if impossible, a copy of the decision shall be sent to the perpetrator via official e-mail or registered mail to the address of registration.

⁴ Provisions for Emergency Intervention are contained in Article 7 and empower police officers to make an emergency intervention order (including various provisions for removal, stay away, etc.) on the police officers’ assessment that there is a reasonable belief of imminent risk of repeated or continuing violence.

3. The warning decision is subject to appeal in the hierarchical order within one month after the perpetrator of violence within the family has received it or its content was communicated to him via phone as well as in the court within deadlines stipulated in the Republic of Armenia *Administrative Procedure Code*.

4. The police officer shall send a copy of the well-grounded warning decision issued to the support center of the permanent residence of the perpetrator of violence within the family which shall as soon as possible offer rehabilitation program services to the perpetrator of violence within the family to prevent new acts of violence.

C. Warnings Do Not Protect Victims.

According to the statutory framework, if police officers are called to respond to a domestic incident, the officers may issue a warning “when the Police identifies a case of violence within the family for the first time, it does not have evident elements of an offence and there are no grounds for an emergency intervention.”⁵ Armenia’s DV Law identifies five forms of violence in the family: (1) Physical violence; (2) Sexual violence; (3) Psychological violence; (4) Economic violence; and (5) Neglect.⁶ Armenia’s DV Law further provides that “[a]n emergency intervention order is made by a competent police officer to protect the life and health of a member of the family if one member of the family has committed violence against another member of the family and there is a reasonable belief of imminent risk of repeated or continuing violence.”⁷

i. Identifying abuse without training is difficult if not impossible.

Identifying abuse or an abuser is difficult. To an average person, an abuser may seem trustworthy and will often have a charming personality. In private, however, abusers are the opposite and can be aggressive, malicious, and violent. Many of these individuals learned violence in their adolescence; and as adults, they repeat toxic and destructive patterns with their own partner or children.⁸ Moreover, victims of violence often do not report domestic incidents because it would bring shame upon herself and her family.

Since it is difficult to detect violence within the family, particularly the offenses concerning psychological and economic violence, the police officers who respond to these calls must undergo extensive training.

ii. Training Police Officers

⁵ See Prevention of Violence Within The Family, Protection of Victims of Violence Within the Family and Restoration of Peace In The Family (“Armenia’s DV Law”) Ch. 2, Art. 6 § 1.

⁶ *Id.* at Ch. 1, Art. 3 § 2.

⁷ *Id.* at Ch. 2, Art. 7 § 1.

⁸ <https://www.psychologytoday.com/us/basics/domestic-violence>

In New York City, in responding to domestic violence calls, law enforcement officers must visually observe the location's surroundings, stand to the side of the door, listen at the door before knocking, and identify themselves as police officers. Upon entering the premises, officers visually scan for, and take possession of, any weapons. An officer will then immediately locate/ identify the aggressor and other parties involved.

To establish control of the situation, the responding officers separate all parties involved, maintain a watchful eye on all persons concerned, and remove the alleged suspect from the presence of the victim. It is important for the officer to prevent eye contact between all parties, as the aggressor could be controlling the victim's statements in this manner.

Factors that help officers determine the dominant aggressor include:

- Threats or the fear of physical injury;
- Whether the act was in self-defense;
- The history between the parties;
- The ages, weights, and heights of both parties;
- Criminal records, including convictions, probations, and paroles.
- The strength or special skills of the parties;
- Who called for help;
- The demeanor of the individuals involved;
- The existence of corroborating evidence;
- The use of drugs and alcohol; and
- The seriousness of injuries.

In New York, law enforcement officers are knowledgeable about common injuries that may result from domestic violence incidents. Often, injuries are located on the face, neck, back, chest, arms, and legs. There may also be injuries on victims that will show that they were protecting themselves from their assailants. For example, victims who attempted to defend themselves while on the floor may have injuries on the bottoms of the feet from kicking away the assailants. It is important for officers to discern injuries inflicted on the aggressor by the victim in self-defense. Such injuries may include, but are not limited to, scratches on the aggressor's face, back, neck, inner arms, hands, or chest.

Next, law enforcement officers will determine if medical assistance is required for the victim, establishing probable cause for arrest of the perpetrator, and reassuring the victim that he or she is safe. After the officers have secured the scene, they can begin interviewing the victim and any witnesses.

In New York, law enforcement is trained to be sensitive toward the needs and concerns of victims, which in the long run reduces domestic violence. Victims who feel that officers do not care about their condition may stop cooperating with them. However, a positive impression of the officer will ensure the victim's willingness to talk and cooperate.

In interviewing all parties involved, officers will obtain the history of violence between the parties involved, documentation of the incident, excited utterances by the victim, and questions about the aggressor's violations of protection orders, warrants, probations, or conditions of release.

In the process of ascertaining the above information, it is essential for officers to collect detailed information because it will aid the victim's pursuit for protection orders and other legal remedies. It is imperative for successful prosecution of domestic violence cases that the reports include the following items:

- A full description of the crime scene with photos including the names, ages, and locations of the parties upon the officer's arrival;
- A full description of the incident;
- Details of any medical treatment required by the parties involved;
- The names of parties present during the incident, including children and adults;
- The relationship of the parties involved;
- A description of the victim's and aggressor's emotional states;
- A body map showing victim's and suspect's injuries;
- Current and past protection orders;
- The suspect's probation or parole status; and
- Weapons seized at the location.

Additionally, in New York, officers gather the following information from the victim:

- Did the suspect threaten to kill her or children?
- Were there any weapons involved?
- Does the suspect have access to guns?
- Was the victim strangled or choked?
- Was the victim beaten while she was pregnant?
- Is the suspect capable of killing her or children?
- Is the suspect violently and constantly jealous of her?
- Has the physical violence increased in frequency or severity over the past six months?

With a proper understanding of available resources, law enforcement officers can help victims regain control over their lives. Immediately after the abuser's arrest is a crucial time for the victim because the victim may fear that the abuser will return and inflict more harm in anger over the arrest. Therefore, providing domestic violence victims with information about available resources for them will help them feel safe and regain control over their lives.

Accordingly, in New York City, officers know the resources available to domestic violence victims in the communities they serve and must provide this information to victims. Among the most important recommendations an officer can give is information about the following:

- The local domestic violence shelter and free legal resources;
- An officer can offer are his/her own name and contact information;
- The report or event number of the incident; and
- Contact information for the proper investigative unit.

New York’s Executive Law § 214(b) can be instructive for law enforcement in Armenia. It reads as follows:

The superintendent shall, for all members of the state police including new and veteran officers, develop, maintain and disseminate, in consultation with the state office for the prevention of domestic violence, written policies and procedures consistent with article eight of the family court act and applicable provisions of the criminal procedure and domestic relations laws, regarding the investigation of and intervention in incidents of family offenses” (McKinney’s Executive Law § 214(b) Family offence intervention).

ii. Issuing a warning may place a battered wife or an abused child in even more danger

The current warning provision (or any similar “warning” provision) not only trivializes the act of domestic violence but marginalizes the victim. The lack of immediate consequences increases the likelihood of the perpetrator responding and returning to the victim with increased psychological and physical aggression.

In 2015, the People’s Republic of China promulgated its domestic violence law. Under Article 16 of its law, the Chinese law enforcement authorities are permitted to issue warnings: “Where the circumstances of domestic violence are lighter and public security administrative sanctions are not given in accordance with law, the public security organs are to give the perpetrator criticism and education or issue a written warning.”⁹

Article 16 was criticized due to concerns that the warning system may be used by authorities as a compromise option even when circumstances call for immediate separation of aggressor from the victim: “The concern with the Written Warning system is that rather than supplementing punishments, it might become a compromise option which allows police to use less than the full force of the law in fighting domestic violence. In China, as elsewhere, police have been reluctant to intervene in family conflicts, and the new measures might easily become substitutes for fuller intervention.”¹⁰ Unfortunately, these concerns are now reality in China

⁹ [Domestic Violence Law of the People's Republic of China Article 16.](#)

¹⁰ [China Law Translate, 5 May 2017, Some Problems with China’s domestic violence warning system](#)

“with many examples of serious physical violence being responded to with only a written warning.”¹¹

D. Immediate Action is Key

In 2018, the Republic of Armenia signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”). The Istanbul Convention never became law because it was not ratified by the legislatures.

The Istanbul Convention does not utilize any warning mechanism. Instead it provides for immediate response, prevention and protection.¹²

i. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul 2011)

The following are select provisions from the Istanbul Convention:

Article 45 – Sanctions and measures

1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.
2. Parties may adopt other measures in relation to perpetrators, such as: – monitoring or supervision of convicted persons; withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating

¹¹ *Id.*

¹² See Istanbul Convention Article 50 recited in full at subsection (D)(i).

circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b. the offence, or related offences, were committed repeatedly;
- c. the offence was committed against a person made vulnerable by particular circumstances;
- d. the offence was committed against or in the presence of a child;
- e. the offence was committed by two or more people acting together;
- f. the offence was preceded or accompanied by extreme levels of violence;
- g. the offence was committed with the use or threat of a weapon;
- h. the offence resulted in severe physical or psychological harm for the victim;
- i. the perpetrator had previously been convicted of offences of a similar nature

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

1. Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.

Article 50 – Immediate response, prevention and protection

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

**ii. The US Department of Justice National Institute of
Justice Special Report on DV June 2009**

The following are some of the relevant findings of the US Department of Justice National Institute of Justice in a report entitled “Practical Implications of Current Domestic Violence Research: for Law Enforcement, Prosecutors and Judges:¹³

2.10 Is arrest the best response?

A major re-examination of a series of fairly rigorous experiments in multiple jurisdictions finds that arrest deters repeat reabuse, whether suspects are employed or not. In none of the sites was arrest associated with increased reabuse among intimate partners.¹⁴ Another major study, based on 2,564 partner assaults reported in the National Crime Victimization Survey (1992-2002), found that whether police arrested the suspect or not, their involvement had a strong deterrent effect. The positive effects of police involvement and arrest do not depend on whether the victim or a third party reported the incident to law enforcement. Neither do they depend on the seriousness of the incident assault, whether a misdemeanor or a felony. (internal citation omitted)

A Berkeley arrest study similarly found that all actions taken by responding officers — including arrest, providing victims with information pamphlets, taking down witness statements, and helping victims secure protective orders — were associated with reduced reabuse. By contrast, the highest reabuse rates were found where the responding officers left it to the victim to make a “citizen arrest,” swearing out a complaint herself.¹⁵ Research has also shown that police response also significantly increases the likelihood that victims will secure protective orders.¹⁶

Research also finds that the vast majority of victims report satisfaction with the arrest of their abuser when interviewed after the fact. In Massachusetts, 82 percent were either very or somewhat satisfied, and 85.4 percent said they would call police again for a similar incident.¹⁷ Similarly, a study of courts in California, Oregon, Nebraska and Washington found that 76 percent of the victims said they wanted their abuser arrested.¹⁸ Also important to note is that police arrests in spite of victims’ objections do not reduce the likelihood of victims reporting new abuse to police.

¹³ [U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Special Report Practical Implications of Current Domestic Violence Research: for Law Enforcement, Prosecutors and Judges, June 2009 by Andrew R. Klein.](#)

¹⁴ Internal citation omitted.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

E. Proposed Solution: Eliminate warnings from Armenia's Domestic Violence Law

Warning Provisions as well as any references to “warnings” should be removed from the Legislation as shown below:

Article 4: Main terms of the law:

- 4) Perpetrator of violence in the family – a natural person ~~against whom there is a warning~~, emergency intervention or protective decision in the manner prescribed in this law;
- 5) Victim of violence in the family – a natural person who sustained violence in the family as determined by ~~a warning~~, an emergency intervention or a preventive decision or a judgment of the court that entered into force;

Article 5: Types of protection measures for victims of violence within the family

1) ~~Warning~~

Article 6: Warning

1. ~~Warning shall be applied when the Police identifies a case of violence within the family for the first time, it does not have evident elements of an offence and there are no grounds for an emergency intervention. The warning decision shall include a notification on applicable legal sanctions in case of continuing or repeated violence. The warning is issued as soon as possible after learning about the case.~~

2. ~~A copy of the well-grounded warning decision issued by the police officer shall be served to the perpetrator of violence within the family against signed acknowledgment. The content of decision shall be communicated to the perpetrator via phone if the latter is absent at the scene of action; if impossible, a copy of the decision shall be sent to the perpetrator via official e-mail or registered mail to the address of registration.~~

3. ~~The warning decision is subject to appeal in the hierarchical order within one month after the perpetrator of violence within the family has received it or its content was communicated to him via phone as well as in the court within deadlines stipulated in the Republic of Armenia *Administrative Procedure Code*.~~

4. ~~The police officer shall send a copy of the well-grounded warning decision issued to the support center of the permanent residence of the~~

~~perpetrator of violence within the family which shall as soon as possible offer rehabilitation program services to the perpetrator of violence within the family to prevent new acts of violence.~~

Article 7: Emergency Intervention Order

1. An emergency intervention order is made by a competent police officer to protect the life and health of a member of the family if one member of the family has committed violence against another member of the family and there is a reasonable belief of imminent risk of repeated or continuing violence. ~~An emergency intervention order may also be made if a violent act without elements of offence is committed within one year after receiving a warning~~

Article 11: Preventive registration and deregistration of the perpetrator of violence within the family

1. The perpetrator of violence within the family against who ~~a warning~~, an emergency intervention order or a protection order is issued as well as an adult with criminal record for family violence shall be registered by the Police for preventive purposes.

Article 19: Support center

5) Following the procedure established by the Competent Authority arrange the rehabilitation of perpetrators of violence within the family, offer the latter relevant assistance and participation in some activities as a part of rehabilitation program as soon as possible after the receipt of a copy of ~~the warning or~~ emergency intervention order;

6) Offer psychological assistance to the victim of violence within the family as soon as possible after the receipt of a copy of ~~the warning~~ or emergency intervention order;

9) Upon the consent of the person applying to support center and to ensure her safety, check with a relevant unit of the Police the presence of grounds for issuing ~~a warning~~ or an emergency intervention order as well as apply to the court to receive a protection order in cases prescribed in this law.

7. Article 201.2 Content of application (under Chapter 35.1 Procedure for issuing protection order)

4) Perpetrator of violence in the family – a natural person against whom there is a warning, emergency intervention or protective decision in the manner prescribed in this law;

5) Victim of violence in the family – a natural person who sustained violence in the family as determined by ~~a warning~~, an emergency intervention or a preventive decision or a judgment of the court that entered into force;

III. Armenia's Domestic Violence Law Should Contain Provisions Regarding Custody and Visitation When Emergency Intervention Measures are Undertaken

A. Issue: Is the lack of interim custody and visitation provisions in the context of an emergency intervention a deterrent to reporting violence within the family?

In the framework of an emergency intervention, Armenia's Domestic Violence Law lacks provisions concerning custody and visitation of children.¹⁹

B. Existing Law

The following is a direct quote from the statute's English translation:

Article 7: Emergency intervention order

1. An emergency intervention order is made by a competent police officer to protect the life and health of a member of the family if one member of the family has committed violence against another member of the family and there is a reasonable belief of imminent risk of repeated or continuing violence. An emergency intervention order may also be made if a violent act without elements of offence is committed within one year after receiving a warning.
2. The validity term of an emergency intervention order shall not exceed twenty days. If during the validity term of an emergency intervention order the court examines the application for a protective decision, then it shall be effective until the ruling of the court.
3. An emergency intervention order may apply the following restraining measures:
 - 1) Immediately and forcibly remove the perpetrator of violence within the family from the residence of the victim of violence within the family and prohibit his return until the deadline established in the order;
 - 2) If they live separately, prohibit the perpetrator of violence within the family to visit the workplace, school, leisure places or residence of the victim of violence within the family and, if

¹⁹ See DV Law Chapter 2 Article 7.

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- necessary, persons under victim's care as well as other venues attended by the latter;
- 3) Order the perpetrator of violence within the family to stay from the victim of violence within the family (and persons under the victim's care, if necessary) at such a distance that will not raise in the latter a reasonable fear for personal safety. The order to apply this measure shall specify the distance;
 - 4) Order the perpetrator of violence within the family to surrender all firearms under his possession until the expiry of the deadline specified in the order. If the perpetrator of violence within the family possesses firearms, he shall immediately surrender those firearms to the police officer issuing the order at the time when this restraining order is communicated to him;
 - 5) Prohibit the perpetrator of violence within the family to communicate with or contact the victim of violence within the family (and persons under her care, if necessary) through phone, mail or other forms of communication.
4. Restraining order may apply to any or all measures of the section 3 of this article specifying the same or different deadlines for those measures. The decision maker shall follow the principles of this law ensuring the proportionality of restraint when selecting the restraining measures.
 5. If the person under imminent threat is a minor or an incapable person, the competent police officer issuing the order shall send a copy of that order and relevant records to the guardianship and trusteeship body which shall assess the situation and undertake measures stipulated in law and its charter.
 6. If the emergency intervention order is issued against the only legal representative of a minor or incapable person living with the latter then the guardianship and trusteeship body, upon the receipt of a copy of the order but no later than within 24 hours, shall arrange the care of such minors or incapable persons following the procedure set forth by the Republic of Armenia legislation and based on their best interest.
 7. A well-grounded decision of the competent police officer to issue an emergency intervention order shall become effective once it is served to the perpetrator of violence within the family. Its copy shall be served to the perpetrator of violence within the family against signed acknowledgment; if the latter is absent at the scene of action, the content of decision shall be communicated to the perpetrator via phone;

if impossible, a copy of the decision shall be sent to the perpetrator via official e-mail or registered mail to the address of registration.

8. When applying the restraining measure stipulated in the section 3, clause 1 of this article the competent police officer issuing an emergency intervention order shall stay at the residence of the victim of violence within the family until the perpetrator of violence within the family collects his belongings and leaves the residence of the victim of violence within the family. After the effectiveness of the order, the perpetrator of violence within the family may take his belongings from that venue only once and accompanied by a police officer.
9. The competent police officer issuing an emergency intervention order shall immediately submit a copy of the order and relevant records to the chief of his unit.
10. The perpetrator of violence within the family shall refrain from such actions that will lead to nonfulfillment of obligations set forth for the perpetrator of violence within the family in the emergency intervention order. If the perpetrator of violence within the family intentionally and regularly commits such actions, the emergency intervention order may be revoked by the competent police officer issuing it. The same officer may revoke the emergency intervention order if as a result of peaceful settlement procedure set forth in this law peace in the family is restored as well as if prior to its expiry the court decides to apply protection order.
11. The Police shall supervise the implementation of the emergency intervention order by the perpetrator of violence within the family.
12. The competent police officer issuing an emergency intervention order shall send a copy of the order to the support center at the permanent residence of the victim of violence within the family.
13. The restraining measure stipulated in the section 3, clause 3 of this article shall not apply when the meeting between the perpetrator of violence within the family and the victim of violence within the family is arranged in the scope of peaceful settlement procedure stipulated in this law with the permission of the support center at the premises of the center or in the presence of a relevant specialist of the center.
14. Failure to comply to requirements of the emergency intervention order by the perpetrator of violence within the family shall entail liability under the law.
15. The emergency intervention order shall indicate the deadline for its appeal, the appeal body including the court where the order can be challenged, and the legal sanctions for breaching the order. The

emergency intervention order can be challenged in the order of hierarchy within five days of notifying the perpetrator of violence within the family, and in the court within the deadline established by the Republic of Armenia Administrative Procedure Code. The appeal against the order shall not suspend its implementation. The administrative appeal shall be examined and a resulting decision shall be made within five days of its receipt.

C. To Ensure Stability within the Family, the Republic of Armenia Should Amend Its Domestic Violence Law to Include Provisions Concerning Interim Custody and Visitation During Emergency Intervention.

In the context of an emergency intervention, Armenia’s domestic violence law lacks provisions concerning custody and visitation. Without such provisions, victims will be reluctant to report domestic violence for fear of not having custody of their children after reporting, or not being able to protect their children from the perpetrator.

Additionally, allowing a finding of domestic violence to impact custody and visitation will provide an effective deterrence to the perpetrator while also protecting the children.

D. Proposed Revisions to the Law

The Armenian Bar Association’s Domestic Violence Committee proposes the additions of the following statutory provisions to Armenia’s existing rules of law which follows the California Family Code intended to address the gap in Armenian’s current statutory framework.

Rule 1: “Joint legal custody” means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

Rule 2: “Joint physical custody” means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

Rule 3: “Sole legal custody” means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

Rule 4: “Sole physical custody” means that a child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation.

Rule 5:

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against any person with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Rule 6 and Rule 7. This presumption may only be rebutted by a preponderance of the evidence.

(b) To overcome the presumption set forth in subdivision (a), the court shall find that paragraph (1) below is satisfied and shall find that the factors in paragraph (2) below on balance, support the legislative findings in Rule 7.

(1) The perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child pursuant to Rule 6 and Rule 7. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Rule 7, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Rule 8, may not be used to rebut the presumption, in whole or in part.

(2) Additional factors:

(A) The perpetrator has successfully completed a batterer's treatment program as outlined by Rule 9.

(B) The perpetrator has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

(C) The perpetrator has successfully completed a parenting class, if the court determines the class to be appropriate.

(D) The perpetrator is on probation or parole, and has or has not complied with the terms and conditions of probation or parole.

(E) The perpetrator is restrained by a protective order or restraining order, and has or has not complied with its terms and conditions.

(F) The perpetrator of domestic violence has committed further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when the person is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to

another, or to have engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty, of a crime against the other party that comes within the definition of domestic violence.

(2) The requirement of a finding by the court shall also be satisfied if a court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court shall consider any relevant, admissible evidence submitted by the parties.

(f) In a custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to custody mediation in the case.

Rule 6:

(a) In making a determination of the best interests of the child the court shall, among any other factors it finds relevant and consistent with Rule 7, consider all of the following:

(1) The health, safety, and welfare of the child.

(2) (A) A history of abuse by one parent or any other person seeking custody against any of the following:

(i) A child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary.

(ii) The other parent.

(iii) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

(B) As a prerequisite to considering allegations of abuse, the court may require independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public

agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence.

(3) The nature and amount of contact with both parents.

(4) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services.

(5) (A) When allegations about a parent pursuant to paragraphs (2) or (4) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child.

(B) This paragraph does not apply if the parties stipulate in writing or on the record regarding custody or visitation.

(b) Notwithstanding subdivision (a), the court shall not consider the sex, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of the child.

Rule 7:

(a) The National Assembly of the Republic of Armenia (hereinafter referred to as “Legislature”) finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court’s primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that children have the right to be safe and free from abuse, and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.

(b) The Legislature finds and declares that it is the public policy of this state to ensure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided in subdivisions (a) and (c) of this section and Rule 6.

(c) When the policies set forth in subdivisions (a) and (b) of this section are in conflict, a court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

(d) The Legislature finds and declares that it is the public policy of the Republic of Armenia to ensure that the sex or sexual orientation of a parent, legal guardian, or relative is not considered in determining the best interests of the child.

Rule 8:

(a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Rule 6 and Rule 7:

(1) To both parents jointly or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Rule 6 and Rule 7. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) The court shall not consider the sex or sexual orientation of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a).

(d) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child, consistent with this section.

Rule 9:

A batterer's treatment program may include, but is not limited to, lectures, classes, group discussions, and counseling, and which shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

IV. Term Limits on Orders of Protection

A. Issue: Should Armenia’s domestic violence law provide temporary and/or permanent orders of protection against perpetrators, who were convicted and released from incarceration?

B. Existing Language of the Law, if any:

R.A., ch.2, art. 9 § 1: Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family

“If in the scope of criminal investigation of violence within the family the perpetrator of violence within the family is detained or compulsorily placed in the medical facility, or the protection measures stipulated in the Republic of Armenia Criminal Procedure Code such as personal safety of the protected person, protection of her residence and property, relocation of the protected person to new residence, change of identification documents or change of appearance of the protected person are applied to the victim of violence within the family then the restraining measures stipulated in the emergency intervention order and the protection order prohibiting the perpetrator to approach the victim, her residence or venues frequently attended by her are suspended for the period of the latter measures being effective.”

C. Argument

The existing Armenian domestic violence legislation does not provide the necessary and proper protections to victims of domestic violence. Presently, the law offers a six-month order of protection, which may be extended for an additional 3 months. However, if a perpetrator is arrested and thereafter incarcerated, the Armenian domestic violence law does not provide for any orders of protection or stay away orders. As a result, it would not be possible for a victim to obtain any long-term restrictions offering protection from the perpetrator.

D. Proposed Solution

As is done under New Jersey’s Prevention of Domestic Violence Act and New York’s Criminal Procedure Law, Armenia’s Domestic Violence law should provide for temporary and/or permanent orders of protection—especially when the perpetrator is arrested and convicted.

In New York, a full order of protection requires that the defendant stay away from the victim’s home, school, business, or place of employment, or designated witnesses

to the alleged offence, [any contact, including internet/social media, is prohibited unless there is a modification from family Court]. *See* New York Criminal Procedure Law §530.13 (1)(a).²⁰

Additionally, limited and full orders of protection require that the defendant refrain from harassing, intimidating, threatening, or otherwise interfering with the victims of the alleged offense and such members of the family or household of such victims or designated witnesses as are specially named by the court in such order.²¹

In New York, if a perpetrator violates an order of protection, then he/she will be charged with the crime of criminal contempt in the first degree. *See* New York Penal Law §215.51(b). This statute is a Class E Felony. A non-violent Class E felony can carry a sentence of one and one-third to four years of probation. A violent Class E felony carries a sentence of one and a half years to four years of probation. Jail time can also be tacked onto the sentence if there is a record of previous felonies in the past 10 years.

In New Jersey, a person commits Criminal Contempt in the Second Degree when there is an “[i]ntentional disobedience or resistance” to a court's “lawful process or other mandate”; or by violating “that part of” an order of protection that requires him to “stay away from the person ... on whose behalf the order was issued”; and either the order of protection was “duly served” on him or he has “actual knowledge” of the order because it was issued in court in his presence.²²

In general, if a victim of domestic violence is granted a temporary restraining order (TRO), the TRO remains in place until a decision is rendered following a final restraining order (FRO) hearing. An FRO, if granted, does not expire.²³ N.J.S.A. § 2C:25-28 – Prevention of Domestic Violence Act

²⁰ *See* New York Criminal Procedure Law §530.13 (1)(a).

²¹ *See* New York Criminal Procedure Law §530.13 (1)(b).

²² Penal Law § 215.50(3), Penal Law § 215.51(c).

²³ N.J.S.A. § 2C:25-28 – Prevention of Domestic Violence Act

V. Prohibiting Victim-Blaming through the Guise of the Temporary Insanity Defense

A. Issue: Is the Temporary Insanity Defense Utilized for Victim-Blaming in Court?

In those circumstances where domestic abuse results in the death of the victim, Armenia's criminal code provides for a temporary insanity defense which ambiguously implicates the victim's own actions as apparent justification.

B. Existing Law

Armenia's Criminal Code provides a sudden or temporary insanity defense for the crime of murder as follows in relevant part:

The murder committed in the state of suddenly arising depression caused by regular illegal and immoral behavior of the aggrieved as well as the murder committed in the state of sudden insanity caused by the violence, mockery, heavy insults or other illegal, immoral actions (inaction) of the aggrieved, emotional duress is punished with imprisonment for the term of up to 4 years.²⁴

C. Argument

Culpability for domestic violence should not hinge upon the victim's actions short of those actions which would otherwise justify a need for self-defense. 'Mockery' and 'heavy insults' must not serve as sufficient justification for domestic abuse, much less murder. These terms, as well as the clause "other illegal, immoral actions (inaction)," also pose significant challenges for law enforcement given their ambiguity and subjectivity. The allusion to the victim's own moral disposition, including normative conclusions about the victim's morality, i.e., immoral actions, is not only irrelevant, but poses significant enforcement challenges as well. Such assessment could invite further unnecessary harassment of the victim, including intimate facts and details about the victim which could deter victims of domestic violence engagement of the legal process.

D. Proposed Solution

For purposes of domestic violence prosecution, the foregoing criminal code section should be revised to exclude any reference to the victim's "mockery, heavy insults, . . . and immoral actions." To the extent the victim's "violence" is an issue at all,

²⁴ [Criminal Code § 7, Ch 16, Art 105](#)

clarification should be made to reconcile self-defense as the plausible defense outside of any general insanity defense.

Further, although addressing an unrelated point, any temporary insanity defense based upon intoxication should be qualified such that voluntary intoxication does not free the aggressor from responsibility for his acts.

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