

**Domestic Violence Cases
in the Justice System of Azerbaijan**

**Rule of Law and Human Rights Unit
OSCE Office in Baku**

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The Office carried out its monitoring activities in line with the trial monitoring methodology developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

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List of Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations

Executive Summary

Domestic violence is a worldwide phenomenon that, in Azerbaijan as in the rest of the world, disproportionately affects women. As such, domestic violence and violence against women constitute a form of discrimination against women. Both domestic violence and judicial proceedings relating to domestic violence involve rights guaranteed by international as well as regional normative instruments. Azerbaijan's Constitution makes these rights part of the applicable legislative framework. Additionally, the 2010 Law on the Prevention of Domestic Violence and subsequent amendments to other relevant laws set forth a legal framework for the prevention of domestic violence and provision of support to victims. Nevertheless, more work remains to be done. The legally envisioned procedures for issuance of protection orders have yet to be fully implemented, the Criminal Procedure Code does not contain special provisions for the protection of victims of domestic violence and other points still require further review. The OSCE's monitoring of criminal proceedings involving domestic violence has shown what an important role the courts play in ensuring access to justice for victims of domestic violence in Azerbaijan.

I. Introduction

Domestic violence is a worldwide phenomenon. It has serious and wide-ranging effects on both the victims and society as a whole. The World Health Organization has estimated that the “lifetime prevalence of physical violence by an intimate partner ranged between 13 per cent and 61 per cent”.¹ However, domestic violence is often considered an internal family affair. As a result, a large number of cases remain unreported and therefore the real scope of the issue is difficult to grasp.

The United Nations (UN) Special Rapporteur on Violence against Women has noted that “despite the apparent neutrality of the term, domestic violence is nearly always a gender-specific crime, perpetrated by men against women.”² As such, domestic violence constitutes a form of gender-based discrimination.

The issue requires close attention and a dedicated and comprehensive response from Governments. This includes adopting and implementing adequate policies and legislation; affording victims necessary health, social, legal aid and other support services; organizing capacity building training for involved professionals as well as raising awareness about the issue among the population.

The justice system plays a crucial role in this mechanism. It shall apply the relevant legal framework, offer victims the needed protection and redress, and investigate and prosecute cases where elements of an administrative or criminal offence have been detected.

Azerbaijan demonstrated its commitment to tackle domestic violence through the adoption of the Law on the Prevention of Domestic Violence in 2010. This marked the Government’s determination to act in line with its international obligations and the clear beginning of a journey towards tackling the issue of domestic violence in Azerbaijan. Full implementation of the law and further steps in the area of protection of victims will advance Azerbaijan’s efforts to fight domestic violence.

¹ World Health Organization, *Multi-Country Study on Women’s Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women’s Responses*, Geneva 2005, pp. xii-xiii.

² UN Commission on Human Rights, report of the Special Rapporteur on *Violence against Women, its Causes and Consequences*, Ms. Radhika Coomaraswamy, in accordance with Commission of Human rights Resolution 1995/85, E/CN.4/1996/53, 5 February 1996, paras. 22-23.

Purpose, scope and methodology of the report

This is the first report that the Office has prepared on the issue of domestic violence cases in the Azerbaijan justice system. The Office selected this topic in co-ordination with the Ministry of Justice in order to assist the State authorities in reviewing the implementation of the Law on Prevention of Domestic Violence and to assess the application of this law in court proceedings in line with broader domestic legislation and relevant international standards. The report intends to highlight the importance of the role played by judges and prosecutors in affording victims access to justice, and thereby advancing the Government's efforts to combat the broader phenomenon of domestic violence.

The Office developed the report in accordance with its mandate³, in order to assist the host Government in further improving the justice sector and ultimately to increase compliance with OSCE principles, commitments and other international standards.

OSCE trial monitors observed court proceedings involving domestic violence cases over the period between July and December 2013. The trial monitors recorded relevant information based on questionnaires that the Office developed in co-ordination with the Ministry of Justice. Direct monitoring of court proceedings was conducted in Baku region. Additional information was obtained through regional Legal Resource Centres and interviews with civil society members working on the issue of domestic violence.

The report is divided into six sections. Following the introduction in section 1, section 2 presents an overview of the international and national legal framework applicable to cases of domestic violence. Section 3 assesses the implementation and application of these legal acts in the Azerbaijan justice system. Section 4 outlines the findings collected through trial monitoring of domestic violence cases and reviews the effects that the observed shortcomings could have on victims. The report ends with conclusions and a number of recommendations.

³ The Office's mandate is set out by the OSCE Permanent Council's Decision No. 318, dated 16 November 1999, and the memorandum of Understanding between the Organization for Security and Co-operation in Europe and the Government of the Republic of Azerbaijan, dated 19 June 2000.

II. Normative framework relevant to domestic violence

A. International

Both domestic violence and judicial proceedings relating to domestic violence involve rights guaranteed by international as well as regional normative instruments. In particular, the Universal Declaration of Human Rights (UDHR),⁴ the International Covenant on Civil and Political Rights (ICCPR),⁵ and the European Convention on Human Rights and Fundamental Freedoms (ECHR)⁶ offer a wide array of protections. These include: the right to life, liberty, and security of the person;⁷ the right to freedom from torture or cruel, inhuman or degrading treatment or punishment;⁸ the right to equal protection before the law;⁹ freedom from discrimination;¹⁰ the right to a fair trial;¹¹ the right to private and family life;¹² and the right to an effective remedy for state breaches of human rights.¹³ While none of these instruments deal textually with the issue of domestic violence, the European Court of Human Rights (ECtHR) has developed an extensive body of precedent-setting jurisprudence in these types of cases.

The ECtHR's jurisprudence details the specific manner in which States must respond to cases of domestic violence in order to ensure that the more broadly defined rights of the ECHR remain intact. Recognizing that domestic violence is a phenomenon that disproportionately affects women, the court has embraced the CEDAW Committee's characterization of violence against women as a form of discrimination against women, as defined by Article 1 of CEDAW.¹⁴ Citing the language of the United Nations Human Rights Commission in the

⁴ Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, 217 A (III). Azerbaijan was admitted to the United Nations on 02 March 1992.

⁵ International Covenant on Civil and Political Rights (ICCPR), UN General Assembly Resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), adopted 16 December 1966, entry into force 23 March 1976. Azerbaijan acceded to the ICCPR on 13 August 1992.

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 87 UNTS 103, ETS 5; adopted by the Council of Europe 4 November 1950, entry into force 3 September 1953. The ECHR entered into force with respect to Azerbaijan on 15 April 2002.

⁷ See Article 3, UDHR; Article 6, ICCPR; Article 2 and 5, ECHR.

⁸ See Article 5, UDHR; Article 7, ICCPR; Article 3, ECHR.

⁹ See Article 7, UDHR and Article 26, ICCPR.

¹⁰ See Article 7, UDHR; Article 26, ICCPR; Article 14, ECHR.

¹¹ See Article 10, UDHR; Article 14, ICCPR; Article 6, ECHR.

¹² See Article 12, UDHR; Article 17, ICCPR; Article 8, ECHR.

¹³ See Article 8, UDHR; Article 2(3), ICCPR; Article 13, ECHR.

¹⁴ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination. See CEDAW, GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980). See also Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (11th session, 1992), UN Doc. A/47/38, paragraph 1. "[. . .] gender-based

landmark *Opuz v. Turkey* judgment, the court said: “[. . .] all forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.”¹⁵ Ultimately finding a breach of the applicant’s right to freedom from discrimination under Article 14 of the ECHR, in conjunction with Articles 2 and 3, the court recognized that State failure to protect women from domestic violence “[. . .] breaches their right to equal protection of the law and that this failure does not need to be intentional.”¹⁶

The jurisprudence of the ECtHR also imposes a positive obligation on States to protect individuals from violence and abuse by private persons. This positive obligation implicates rights guaranteed under Articles 2 and 3 of the ECHR, as well as Article 8 either alone or in combination with Article 3.¹⁷ It requires States to “[. . .] maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.”¹⁸ The positive obligation of States to take appropriate steps to safeguard the lives and personal integrity of those within their jurisdiction requires the state to put in place “[. . .] effective criminal-law provisions to deter the commission of offenses against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.”¹⁹ In certain circumstances, States may also have a positive obligation “to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”²⁰ A State may therefore violate Articles 2 and 3 of the Convention when its criminal law system does not have an “adequate

violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.

¹⁵ Original text from United Nations Commission on Human Rights [which in 2006 became the United Nations Human Rights Council], Resolution 2003/45, “Elimination of violence against women”, operative paragraph 8. Cited in *Opuz v. Turkey*, ECtHR Judgment of 9 June 2009, paragraph 188.

¹⁶ *Opuz v. Turkey*, *supra*, paragraph 191.

¹⁷ *Bevacqua and S v. Bulgaria*, ECtHR Judgment of 12 June 2008, paragraph 65.

¹⁸ *Bevacqua and S v. Bulgaria*, *supra*, paragraph 65.

¹⁹ *Kontrová v. Slovakia*, ECtHR Judgment of 31 May 2007, paragraph 49, which also references *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, Reports of Judgments and Decisions 1998-III, p. 1403, § 36 and *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports 1998-VIII, p. 3159, § 115. See also *Valiulienė v. Lithuania*, ECtHR Judgment of 26 March 2013, paragraph 75, in which the court extended the former requirement under Article 2 to protection against ill-treatment by private individuals under Article 3. The court further noted that “even in the absence of any direct responsibility for the acts of a private individual under Article 3 of the Convention, State responsibility may nevertheless be engaged through the obligation imposed by Article 1 of the Convention.” *Id.* at paragraph 74. See also *Eremia v. the Republic of Moldova*, ECtHR Judgment of 28 May 2013, paragraph 49.

²⁰ *Kontrová v. Slovakia*, *supra*, paragraph 49.

deterrent effect capable of ensuring the effective prevention of unlawful acts” by a perpetrator of domestic violence.²¹

Numerous other international “soft law” documents have addressed the obligations of States at the intersection of domestic violence, gender inequality and human rights. One of the most prominent of these recent efforts is the Council of Europe’s “Convention on Preventing and Combating Violence against Women and Domestic Violence,” the so-called Istanbul Convention. The Istanbul Convention is the first legally binding treaty in the world which creates a comprehensive legal framework to protect women against all forms of violence, and strives to prevent, prosecute and eliminate violence against women and domestic violence. The Convention also establishes an international mechanism to monitor its implementation at the national level.²² The treaty will enter into force with 10 ratifications, 8 of which are from member States. To date, there have been just 8 ratifications, as well as 24 signatures not followed by ratification.²³ Azerbaijan has neither signed nor ratified the Convention.

Although the Istanbul Convention only functions as a persuasive norm in Azerbaijan, the other aforementioned instruments are applicable by virtue of Azerbaijan’s accession to these treaties. According to the Constitution of the Republic of Azerbaijan, “[i]nternational agreements wherein the Azerbaijan Republic is one of the parties constitute an integral part of [the] legislative system of the Azerbaijan Republic.”²⁴ The rights guaranteed by these agreements complement and enhance the panoply of domestically guaranteed rights. The rights and liberties in the Constitution are to be “[. . .] implemented in accordance with international treaties wherein the Azerbaijan Republic is one of the parties.”²⁵ These rights and liberties may only be restricted, *inter alia*, “[. . .] taking into consideration the international obligations of the Azerbaijan Republic.”²⁶ In certain instances, international norms may even override national law.²⁷

²¹ *Opuz v. Turkey, supra*, paragraph 199.

²² See press release 312(2011), “Council of Europe adopts new convention to prevent and combat violence against women”, 8 April 2011, last accessed 8 December 2013 at <https://wcd.coe.int/ViewDoc.jsp?id=1772297>.

²³ Treaty Office, Council of Europe, last accessed 8 December 2013 at <http://conventions.coe.int>.

²⁴ Article 148, II; Constitution of the Republic of Azerbaijan, last accessed 8 December 2013 at http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf.

²⁵ Article 12, II; *id.*

²⁶ Article 71, III; *id.*

²⁷ See Article 151, *id.*: “Whenever there is disagreement between normative- legal acts in [the] legislative system of the Azerbaijan Republic (except [the] Constitution of the Azerbaijan Republic and acts accepted by way of referendum) and international agreements wherein the Azerbaijan Republic is one of the parties, provisions of international agreements shall dominate.”

B. National

1. Constitution

As referenced above, the Constitution of the Republic of Azerbaijan, dated 27 November 1995, contains several legal provisions that are relevant in the context of domestic violence. In particular, Article 17 declares family “a basic element of society under special protection of the State.”²⁸ This article also obligates parents to “take care of their children and their education,” while the state “controls implementation of this responsibility.”²⁹ In Chapter III, the Constitution also guarantees a whole host of other rights that may apply to cases of domestic violence or judicial proceedings involving domestic violence. These include, *inter alia*: the right to equality (25), the right to life, the right to freedom of movement, the right to ownership of property, the right to live in safety (31 cite text of II), the right to personal immunity and confidentiality concerning personal and family life (32), the right to the sanctity of the home (33), the right to marriage (34), the right to social protection (38), the right to home (43), the right to defend one’s honour and dignity (46), the guarantee of the protection of rights and liberties by the court (60), the right to legal advice (61), the right to appeal a judicial conviction (65), and the right not to have to testify against a family member (66).

2. Law on the Prevention of Domestic Violence

The Law of the Republic of Azerbaijan “On the Prevention of Domestic Violence” (hereinafter “Domestic Violence Law”), dated 22 June 2010, seeks to prevent domestic violence “and its negative legal, medical and social outcomes,” to provide “legal assistance and social protection” for victims, and to eradicate the “conditions giving rise to domestic violence.”³⁰ According to the Domestic Violence Law, “domestic violence” is defined as “a deliberate infliction of physical and moral damage by persons to others, envisaged under this law, caused by abuse of close relative relations, current or past cohabitations.”³¹ In Article 1, the law defines and distinguishes between “domestic physical violence,” “domestic psychological violence,” “domestic application of illegal limitations of an economic character”, and “domestic sexual violence”. It also defines other key terms.

²⁸ See 17, I; *id.*

²⁹ 17, II; *id.*

³⁰ See The Law of the Republic of Azerbaijan on the Prevention against Domestic Violence (Domestic Violence Law), 22 June 2010, preambular text.

³¹ See Article 1, Domestic Violence Law, *supra*.

According to the applicable legislation, complaints on domestic violence may be dealt with through criminal or civil procedure; or by executive authorities depending on whether or not any crimes were committed or premeditated, and whether the complaints contain any *corpus delicti*.³² If the complaint contains information about committed or premeditated crimes, or if it contains *corpus delicti*, it should be dealt with according to criminal procedure. Otherwise, it will be dealt with “by relevant executive authorities.”

3. Decrees of the President, Decisions of Cabinet of Ministers, National Action Plan of Protection of Human Rights

On 1 October 2010, the President of the Republic of Azerbaijan issued a decree on the implementation of the Domestic Violence Law.³³ The decree tasked Cabinet of Ministers, within a period of four months, to take a wide range of measures, including developing proposals on legislative acts necessary to fully realize the often general and aspirational language of the Domestic Violence Law. The decree appeared to recognize the law as a starting point, and tasked Cabinet of Ministers with paving a more concrete way forward for the implementation of the law. This included defining guidelines for reviewing complaints which do not contain criminal elements (1.3), defining guidelines for an offender registry and databank (1.4 and 1.5), defining guidelines for NGO support centres (1.6), developing proposals on “executive authorities” (1.7), and resolving more generally “the issues set forth” in the Domestic Violence Law (1.9). On 24 November 2011, the President of the Republic of Azerbaijan issued a second decree related to the implementation of the Domestic Violence Law.³⁴ Among others, the decree has defined the “relevant executive authorities”, which are repeatedly referred to but undefined in the Domestic Violence Law itself, as “local executive bodies”.

In response to the Presidential Decrees, the Cabinet of Ministers subsequently issued a number of decisions. These included: “Regulations on the Preventive Registration of Persons [who] Committed Domestic Violence and Conducting Educational and Remedial Procedure for them” (19 December 2011); “Regulations on the Establishment and Operation of a

³² See Article 5, Domestic Violence Law, *supra*.

³³ Decree of the President of the Republic of Azerbaijan on Implementation of the Law “On the Prevention of Domestic Violence” of the Republic of Azerbaijan, 1 October 2010.

³⁴ Decree of the President of the Republic of Azerbaijan on Additional Measures related to the Implementation of the Law of the Republic of Azerbaijan “On the Prevention of Domestic Violence” and “On Making Amendments to the Decree of the President of the Republic Azerbaijan of 22 January 2000, #265, on the Implementation of the Law of the Republic of Azerbaijan on Adoption, Empowerment of the “Civil Procedural Code” of the Republic of Azerbaijan and Legal Regulatory Issues related to it”, 24 November 2011.

Databank on Domestic Violence” (19 December 2011); “Regulations on the Grievance Procedure in the Absence of Criminal Elements in Complaints on Domestic Violence” (24 February 2012); and “Decision of the Cabinet of Ministers of Azerbaijan on Approval of "Regulations on the Activity of Domestic Violence Victims Assistance Centres" and "Regulations for the Accreditation of Non-public Aid Centres to Help Domestic Violence Victims"”(25 April 2012). This final decision contained two appendices: “Regulations on Activity of Aid Centres for Victims of Domestic Violence” and “Regulations on the Accreditation of Non-governmental Aid Centres for Victims of Domestic Violence”. Although many gaps still remain, as will be discussed below, these decisions signify a welcome and continued commitment to improve existing mechanisms, and also serve to flesh out some parts of the protection framework created by the Domestic Violence Law.

Addressing the issue of domestic violence is also included in Azerbaijan’s “National Action Plan on Protection of Human Rights in the Republic of Azerbaijan”. The National Action Plan lists, as measures to be undertaken “regularly”: “[s]trengthening combating violence against women, including domestic violence, provision of correct legal assistance tools, necessary compensations, medical and psychological aid, and rehabilitation to the victims of such violence,” as well as “organization of wide public awareness work in this field.” This measure is to be carried out by the State Committee on Family, Women’s and Children’s Affairs, Ministry of Health.

4. Amendments to Civil Procedure regulating protection orders

On 24 June 2011, a special law “On Amendments to the Civil Procedural Code of the Republic of Azerbaijan” was passed.³⁵ This law stipulated the order in which cases relating to the issue of long-term protection orders for victims of domestic violence should be reviewed, relative to other types of special proceedings. It also added a new Chapter 40-1 – “Proceeding order in the case of issuing a long-term protection order for the victim of domestic violence” – to the current Civil Procedural Code. After the passage of this amendment, Article 355.1.1 of the Civil Procedural Code now states:

If the person who has committed acts of domestic violence fails to fulfil the warning and fails to comply with the requirements of a short-term protection order, the victim or the relevant authority has the right to apply to the court for the issuance of a long-term protection order.

³⁵ See the Law of the Republic of Azerbaijan on Amendments in the Civil Procedural Code, 24 June 2011.

Furthermore, this Article also stipulates that the application should be reviewed in a hearing, closed to the public, within three days after its submission to the court.³⁶

5. Selected provisions of the Administrative Offence Code penalizing Domestic Violence Law violations

The Code of the Republic of Azerbaijan on Administrative Offence (Administrative Offence Code) also has two substantive norms that penalize actions which may fall under the umbrella of “domestic violence” as defined by the Domestic Violence Law. These include Article 38.1, which penalizes battery/beatings,³⁷ and Article 38.2, which penalize specific actions prohibited by the Domestic Violence Law. These include: “application of illegal restriction with economic character in domestic environment, i.e. for actions directed by one person against another person to deprive him/her of possessions being under his/her property, discretion or use and income, create dependence, and maintain such dependence or abuse”; or “actions directed to deliberately causing psychological pressure by one person against another person in a domestic environment, or causing psychological violence (harassment) or the creation of intolerable psychological condition”.³⁸

6. Domestic violence is not as a separate criminal offense under the Criminal Code of the Republic of Azerbaijan

Domestic violence is not enumerated as a separate criminal offense, or as an aggravating circumstance to any other crimes, under the Criminal Code of the Republic of Azerbaijan. Rather, the Domestic Violence Law relies on perpetrators of domestic violence being charged with those crimes which are already enumerated by the Criminal Code. Depending on the context, of course, this may constitute a wide range of crimes. Since the Domestic Violence Law defines “domestic violence” in part as “the deliberate infliction of physical and moral damage,” it is likely that many domestic violence related crimes would fall under Section VIII of the Criminal Code (crimes against the person).

During the drafting of the Domestic Violence Law OSCE/ODIHR highlighted, in its comments to the working group, the potential benefits of including in the definition of domestic violence a list of the acts that define crimes involving domestic violence. “Such an

³⁶ See Article 355.3 Republic of Azerbaijan Civil Procedural Code.

³⁷ See Article 38.1, Code of the Republic of Azerbaijan on Administrative Offense.

³⁸ See Article 38.2, *id.*

enumeration of the range of criminal conduct employed by many perpetrators of domestic violence would underscore the breadth of violent crimes and fear-inducing or harmful conduct often committed but most importantly, it would be clear to those tasked with implementing the law that those crimes ordinarily ascribed to third parties can and do occur in the home and/or amongst persons who remain in a family, or similar relationship.”³⁹ Additionally, the OSCE recalls a recommendation by the Council of Europe’s Committee of Ministers to “classify all forms of violence within the family as criminal offense”.⁴⁰

7. Victim’s status and rights according to the Criminal Procedural Code

Investigation of the crimes that constitute domestic violence should be carried out according to the Criminal Procedural Code of the Republic of Azerbaijan (hereinafter Criminal Procedural Code). However, the Criminal Procedural Code does not envisage any special proceeding for domestic violence-related crimes.⁴¹ Therefore “domestic violence” is not considered as an independent criterion for special procedural treatment.

8. Other substantive laws

Some of the other substantive laws of the Republic of Azerbaijan may be applicable to certain situations involving domestic violence.

- **Law on State Protection of Persons Taking Part in Criminal Procedure:** Victims of domestic violence may be classified as “protected persons” according to the definition set forth in Article 3.2 of this law. As such, they would be entitled to a host of security measures, as enumerated in Article 7 of the law.⁴²
- **The Family Code:** Article 64.0.4 states that parents can be deprived of parental rights if acts related to domestic violence are committed against their children.⁴³
- **Law on Gender Equality:** This law defines and prohibits, *inter alia*, gender discrimination and sexual harassment.⁴⁴ It also imposes a responsibility on the State for ensuring gender equality.⁴⁵

³⁹ ODIHR Opinion of the Draft Law of the Republic of Azerbaijan on Domestic Violence, paragraph 15. Citing “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 3.

⁴⁰ Appendix to Council of Europe, Committee of Ministers Recommendation Rec (2002)5 “On the protection of women against violence”, paragraph 55.

⁴¹ The only possible exception to this is Article 37.5.4 of the Criminal Procedure Code of the Republic of Azerbaijan, which permits a semi-public criminal prosecution to be initiated by the prosecutor, *inter alia*, when “the offence was committed by threats and by force or against a person dependent on the person who committed it”.

⁴² Law on the Azerbaijan Republic on State Protection of Persons Taking Part in Criminal Procedure, 11 December 1998.

⁴³ Family Code of the Republic of Azerbaijan, Article 64.0.4.

Certain other laws, such as the Law on Execution, the Law on Social Services, and the Law on Access to Information have imposed duties on various State and public authorities, rather than on the court. Furthermore, Article 17.1 of the Law on Health Care requires that victims of domestic violence are provided with free professional medical care.⁴⁶

III. Shortcomings in national protection mechanisms

A. Protection orders

The Domestic Violence Law foresees a system of both short-term and long-term protection orders for victims of domestic violence.⁴⁷ According to this law, short-term protection orders may be issued by “relevant executive authority” if “actions of a person, who has committed domestic violence, do not lead to a criminal responsibility, but violate the rights and legal interests of a victim of domestic violence.”⁴⁸ So, in theory, if an act of domestic violence is not overtly criminal in nature, a victim should still be able to obtain protection.

As mentioned earlier in this report in Section II.B.3, the second Presidential Decree implementing the Domestic Violence Law has identified “relevant executive authorities” as “local executive bodies”. In light of this, these local executive organs are, among others, authorized to issue the short-protection orders in domestic violence cases as envisaged under the law.

The issuance of long-term protection orders is contingent on the prior issuance of a short-term protection order. A victim of domestic violence may apply to the court for a long-term protection order if the perpetrator fails to observe the requirements of the short-term protection order.⁴⁹ Therefore, if no short-term protection order is issued as foreseen by the law, then the court will not receive any valid petition for the long-term protection order, thereby depriving the victim of the possibility to access this form of protection.

⁴⁴ See Articles 2, 3 and 4, Law of the Republic of Azerbaijan on Gender Equality, 10 October 2006.

⁴⁵ See Article 6, *id.*

⁴⁶ See the Law on Health Care, 26 June 1997, amended through the Law on Amendments to the Law on Health, 24 June 2011.

⁴⁷ See Article 10, Domestic Violence Law, *supra.*

⁴⁸ See Article 11.1, Domestic Violence Law, *supra.*

⁴⁹ See Article 12.1, Domestic Violence Law, *supra.*

The Trial Monitoring Team was not able to find information about any case when a short-protection order was issued by the local executive body, and consequently, about any case when a long-term protection order was issued by the court based on violation of such short-term protection order. On the other hand, the Trial Monitoring Team has received information from an NGO who assists victims of domestic violence that in fact, one long-term protection order was issued by the court based on violation of a police warning only and that they assisted the party in this process.⁵⁰ The creativity of both the NGO and the court in seeking and obtaining the protection order is commendable. However, full implementation of the mechanism foreseen by the applicable legislation, which places the competence to issue short-term protection orders on the local executive bodies, would enable victims of domestic violence to apply for short and long-term protection orders in a clear and transparent manner.

B. Lack of special safeguards in the Criminal Procedural Code for victims of domestic violence

Article 5.1 of the Domestic Violence Law stipulates that if complaints of domestic violence contain information about committed or premeditated crimes, then these should be reviewed “in the manner defined in the criminal procedure legislation.”⁵¹ However, the Criminal Procedural Code itself has no provisions that specifically deal with the needs, rights, or special situation of victims of domestic violence. The Domestic Violence Law itself does impose different obligations on the actors in charge of criminal procedure however it does not specify which of these actors are responsible for which of the listed duties. The relevant article is titled as “Measures to be taken along with criminal prosecution where the crimes related to domestic violence are examined as defined in the criminal-procedural legislation”.⁵² The vague language of this provision with regard to ascription of duties, taken together with the absence of domestic violence-specific provisions in the Criminal Procedural Code, risk jeopardizing the rights of victims in domestic violence related criminal proceedings.

⁵⁰ OSCE Office in Baku interview with the NGO “Clean World”, 6 December 2013.

⁵¹ See Article 5.1, Domestic Violence Law, *supra*.

⁵² See Article 7.0, Domestic Violence Law, *supra*.

The provisions of the Law on Protection of Persons Taking Part in Criminal Proceedings, listed in section II.B.8, may also be used by judges.⁵³ However, that law also makes no direct reference to victims of domestic violence.

IV. Issues observed in criminal proceedings related to domestic violence

1. Importance of adequate instruction of rights for unrepresented victims in criminal proceedings

According to the Criminal Procedural Code, the victim is one of the participants in the criminal procedure.⁵⁴ As participants in the procedure, victims have certain procedural rights,⁵⁵ as well as duties,⁵⁶ which judges are obliged to explain. The trial monitors recorded that in the court proceedings related to domestic violence, the victims generally represent themselves in person. In such cases, the judge's duty to explain their rights to them is particularly important.

The trial observers reported that in many cases judges did not announce the list of rights and in some cases judges merely announced the rights without any explanation. By failing to instruct the victims of their rights in a full and understandable manner, especially in cases of unrepresented victims, the courts jeopardize victims' legal rights.

2. Inappropriate language by justice system actors towards victims

Judicial authorities are obliged to conduct the proceedings in a way which respects all participants' fundamental rights, including the right to personal dignity and equality,⁵⁷ as protected under the Constitution.⁵⁸

Despite this requirement, the trial observers have recorded that justice system actors do not always accord victims with the respect to which they are entitled by the law.

⁵³ See Article 3(2) and Article 7 of the Law on Protection of Persons Taking Part in Criminal Proceedings, *supra*.

⁵⁴ See Article 7.0.18, Criminal Procedural Code, *supra*.

⁵⁵ See Article 87.6, *id.*, as well as Article 189, *id.*

⁵⁶ See Article 87.7, *id.*

⁵⁷ Article 12, Criminal Procedure Code, *supra* and Article 3.0.2, Domestic Violence Law, *supra*.

⁵⁸ Article 46 and 25 of the Constitution, *supra*.

During its monitoring of criminal proceedings involving domestic violence, the trial monitors have recorded cases such as:

- A prosecutor mentioning a proverb extolling the benefits of domestic violence to a victim;
- A judge telling a victim that her words and behaviour in the courtroom showed that she was “as guilty as her husband”; and
- A judge trying to convince a victim to proceed with a hearing in closed session, using the reasoning that since she was a woman, some of the facts to be investigated in the trial would be “shameful” for her.

Although few in practice, inappropriate language that indicates discriminatory attitudes, where gender based stereotypes appear to substitute the facts, may further victimize the victim. Justice actors and particularly courts are the visible and actual guarantors of laws and of the rights of individuals that derive from these laws. As such, the constitutionally guaranteed respect for dignity and equality should also be reflected in the language that justice actors use towards the victims.

3. Inappropriate use of reconciliation so as to terminate the proceedings

The Domestic Violence Law calls on the responsible actors to “assist in the normalization of relation between parties and resumption of family affairs”⁵⁹. This applies uniformly to cases which fall under the jurisdiction of criminal prosecution bodies, because they contain elements of a crime, and those that are to be reviewed by the relevant executive bodies.

The Azerbaijan normative framework does permit the termination of criminal proceedings based on victim’s consent or actions in certain cases. Cases of private prosecution shall be discontinued upon victim’s withdrawal of the complaint.⁶⁰ The law also foresees certain cases within semi-public prosecution when the perpetrator can be released of criminal liability for the committed criminal offence on the basis of reconciliation with the victim. The article, however, stipulates that in order to benefit from this provision, the perpetrator must have no prior criminal record, pose no big public danger and must have “compensated or removed the caused harm” to the victim.⁶¹

⁵⁹ See Article 7.0.4 and Article 8.0.8, Domestic Violence Law

⁶⁰ See Article 37.2, Article 43.1.1, Article 47.1, Criminal Procedural Code.

⁶¹ See Article 73, Criminal Code of the Republic of Azerbaijan.

The trial observers have noted that courts frequently use this procedural tool of reconciliation of the perpetrator and the victim so as to terminate the proceedings. In these cases, the courts have often appeared to place their primary focus on the “first time offender” status of the defendant, instead of on the sincerity of the reconciliation between the perpetrator and the victim and the other conditions required under the law.

For example, in one case, the judge repeatedly asked that the victim say the word “reconcile” for the court record, despite the victim’s apparent reluctance to do so. Such expression of formal consent could be used as the basis to terminate the proceeding.

As the UN Special Rapporteur noted about the Azerbaijan context in particular: “The systems of redress that currently exists favours family unity instead of considering the rights of the individual, and thus ignore the notions of protection of victims and accountability of perpetrators.”⁶² As noted in the UN document “Good practices in legislation on violence against women,” reconciliation often does not serve the best interests of the victim.⁶³

Court-facilitated or encouraged reconciliation between perpetrator and victim in domestic violence cases may run counter to the intent of the law, considering the unequal power dynamic between perpetrator and victim, and hereby may put the victim at risk of further harm.

Instead of systematically attempting to apply this provision to first time offenders in domestic violence cases, courts should assess the individual circumstances of each case, especially as they relate to the victim’s security, and should verify the genuine nature of the “reconciliation” between perpetrator and victim, bearing in mind the inherent inequality of the parties in domestic violence cases.

⁶² Press statement of the UN Special Rapporteur on Violence against Women, *supra*, point 4.

⁶³ The document notes that mediation between perpetrator and victim is problematic because it: “[. . .] removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.” See page 43, “Good practices in legislation on violence against women,” Report of the Expert Group Meeting organized in Vienna on 26-28 May 2008 by the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime. Available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf), last accessed on 8 December 2013.

V. Conclusions

As the findings of the report clearly demonstrate, the passage of the Law on the Prevention of Domestic Violence in 2010 marked a significant step forward by the government of Azerbaijan in tackling the global phenomenon of domestic violence. This commitment should be viewed in the context of the panoply of internationally guaranteed rights, implicated by this pressing social problem. The normative framework established in the Domestic Violence Law and operationalized by amendments to the Civil Procedural Code, the Administrative Offence Code, and other relevant legislation; mark the clear beginning of a journey toward eradication of domestic violence in Azerbaijan. The judicial system, and judges and prosecutors in particular, have a vital role to play in upholding the rights of victims. The legislative framework, therefore, needs to continue to evolve in ways that support the realities of the courts' work. Furthermore, judges and prosecutors should continue to receive training on implementation of the Domestic Violence Law and amendments to other laws related to domestic violence. A true commitment to pursue perpetrators of domestic violence, and rigorous safeguarding of the rights of victims, will create a climate where the inequalities underlying domestic violence itself can be eradicated.

VI. Recommendations

To the judiciary:

- In criminal cases involving domestic violence, judges shall announce and explain to victims their rights during the proceeding, as required by law. Judges are advised to be particularly diligent in this duty in cases of unrepresented victims.
- During criminal proceedings involving domestic violence, judges shall treat victims with dignity and respect reflective of their equality under the law.
- During criminal proceedings involving domestic violence with defendants without a prior criminal record, judges are advised to proceed with caution when proposing and assessing reconciliation between perpetrators and victims, foreseen as a ground for termination of proceedings by Article 73 of the Criminal Code. Judges are advised to diligently assess the

individual circumstances of each case, especially as they relate to the victim's security, and verify the genuine nature of the "reconciliation" between perpetrator and victim, bearing in mind the inherent inequality of the parties.

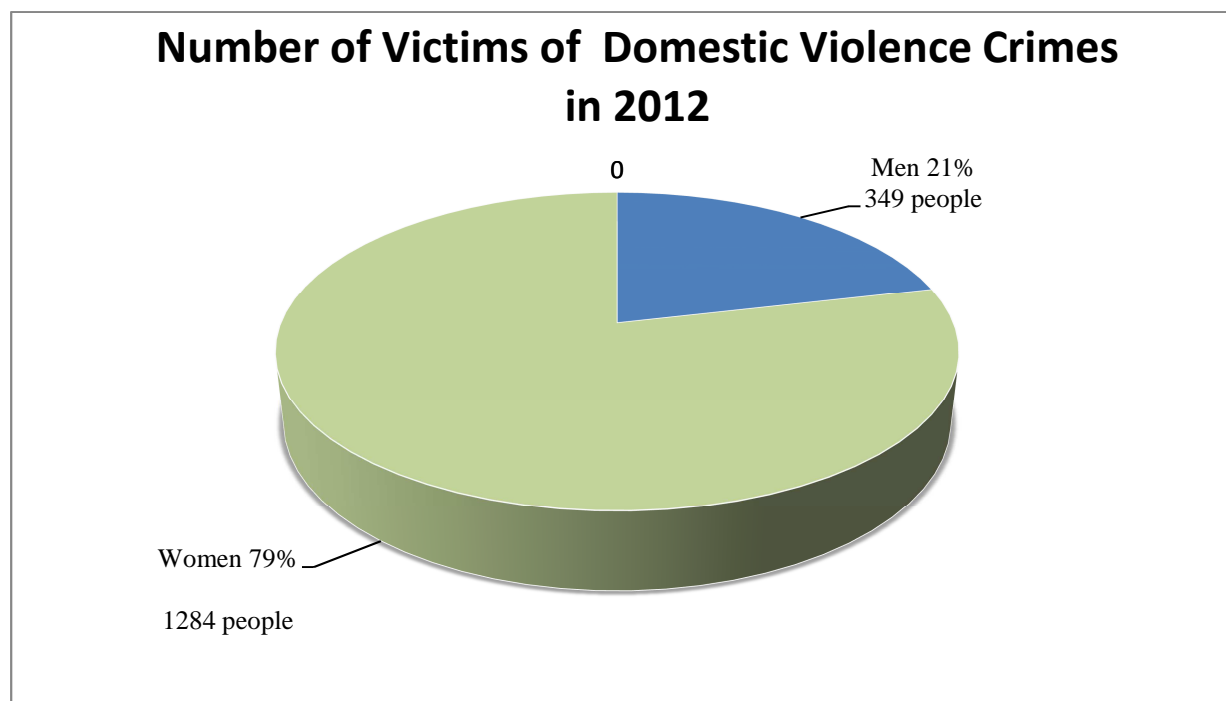
To the executive branch:

- The executive bodies are encouraged to continue to develop and further implement the national mechanism for prevention of domestic violence, as foreseen in the Domestic Violence Law. In particular, it is important that measures are taken that would enable the proper functioning of the protection order mechanism as foreseen by the law.

VII. Annex I

CRIMES THAT HAPPENED AS A RESULT OF DOMESTIC VIOLENCE IN 2012⁶⁴

	Number of victims	of which women	of which	
			girls aged 18	pregnant women
Total	1633	1284	7	8
including:				
premeditated murder	42	28	2	-
attempted murder	14	12	-	-
drive to commit suicide	3	3	-	-
intentional heavy body injuries	17	10	-	-
intentional infliction of injury on health	69	48	-	1
intentional light body injuries	441	325	2	-
beating	5	5	-	-
threatening with killing or serious body injuries	13	13	-	1
other	1029	840	3	6



⁶⁴ Crimes that happened as a result of domestic violence (family conflict) in 2012, the State Statistical Committee of the Republic of Azerbaijan, <http://www.stat.gov.az/source/crimes/indexen.php> last accessed on 12 December 2013.

Statistics of Types of Domestic Violence Crimes in 2012

