UN Technical Paper Recommendations from the International Roundtable on the Family Violence Legislation in China

UN Inter-Agency Task Force to Support the China Family Violence Law Drafting Process

July, 2014 BEIJING
The UN Women estimates that at least one in every three women will be beaten, raped, or otherwise abused during her lifetime, and in most cases, the offender is a member of her own family.\(^1\) Violence against women, within the family as well as in other settings, is rooted in and reproduces power imbalances between women and men in family and society. Domestic violence is one common form of violence against women. Domestic violence consists of a combination of forms of abuse used by one intimate partner to gain power and control over the other, frequently involving a systematic pattern of abusive behaviors with this goal or intent. The majority of perpetrators of domestic violence are men and the majority of victims\(^2\) are women. It often includes physical violence in combination with other forms of controlling behavior such as mental, verbal, emotional, psychological, economic/financial and sexual abuse. Anyone may be a victim of domestic violence, but some groups are more vulnerable including women, children, persons with disabilities, and the elderly. Collectively, domestic violence and abuse of women, children, the elderly, and persons with disabilities committed by intimate partners and/or caregivers in the home is defined as family violence.

The causes of family violence are complicated and thus it has proven difficult to create a targeted, comprehensive and effective national legislative response. Nonetheless, the dramatic negative impact that family violence has on families, communities and societies cannot be denied. Family violence not only inflicts serious injury on its immediate victims, including lifelong negative psychological, physical injuries and death. When unaddressed, family violence increases health care costs and decreases economic productivity.\(^3\)

At the UN International Family Violence Roundtable on April 10-11, 2014 in Beijing, China, international experts on family violence, domestic violence, gender-based violence, child abuse, elder abuse and abuse of persons with disabilities provided valuable information about the national laws adopted in nine countries to prevent family violence, to protect victims of family violence.


\(^{2}\) The terms "victim" and "survivor" are used interchangeably in this paper in reference to individuals who experience family violence including those who are the targets of the abuse and children impacted by the abuse as witnesses or because they are present in the home where abuse is taking place. Since these terms convey different meanings and individuals who experience abuse express a desire to be referred to by one term or the other during the process of healing, both are utilized in this document.

\(^{3}\) The U.S. Centers for Disease Control and Prevention estimates that the cost of intimate partner rape, physical assault and stalking totaled $5.8 billion each year for direct medical and mental health care services and lost productivity from paid work and household chores. See Costs of Intimate Partner Violence Against Women in the United States. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. 2003. Available at http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf.
Executive Summary

This technical report provides specific recommendations regarding provisions to be included in the Chinese national Family Violence Law. These recommendations are informed by international human rights treaties adopted by China that define the State’s responsibility to provide protection to victims of family violence and hold perpetrators accountable as well as by the gaps that exist in current Chinese law. The recommendations also integrate lessons learned from presentations made by international experts on national laws regarding family violence, children’s rights, disability rights and elder abuse from Austria, Australia, Finland, Japan, Korea, New Zealand, South Africa, the United Kingdom, and the United States at the UN International Family Violence Roundtable in April 2014.

This report defines family violence to include violence against women, children, persons with disabilities and elders and the recommendations for the national Family Violence Law include protections for victims in each of these categories. The recommendations include development of a national systemic response to family violence, including coordination and collaboration between State departments and community-based organizations to prevent family violence, to provide support to victims, and to hold perpetrators of violence accountable through punishment and rehabilitation services. This report recommends that the State’s obligation include public education and awareness campaigns targeting youth, elders, persons with disabilities and women regarding what family violence is, and how to seek assistance. It also includes extensive training for the police, prosecutors, judges, and those who work with the elderly, children and persons with disabilities on how to identify family violence, and how to effectively respond and report abuse. The recommendations also include increased legal protections for victims including the definition and enforcement of the crime of family violence and access to civil protection orders for victims.

Annex A to this document contains additional information provided by the international experts during their presentations at the UN International Roundtable on Family Violence in April 2014 in Beijing. Annex B provides more detailed information about current laws and Policies in China that address Family Violence.

I. Introduction

The UN Women estimates that at least one in every three women will be beaten, raped, or otherwise abused during her lifetime, and in most cases, the offender is a member of her own family.1 Violence against women, within the family as well as in other settings, is rooted in and reproduces power imbalances between women and men in family and society. Domestic violence is one common form of violence against women. Domestic violence consists of a combination of forms of abuse used by one intimate partner to gain power and control over the other, frequently involving a systematic pattern of abusive behaviors with this goal or intent. The majority of perpetrators of domestic violence are men and the majority of victims2 are women. It often includes physical violence in combination with other forms of controlling behavior such as mental, verbal, emotional, psychological, economic/financial and sexual abuse. Anyone may be a victim of domestic violence, but some groups are more vulnerable including women, children, persons with disabilities, and the elderly. Collectively, domestic violence and abuse of women, children, the elderly, and persons with disabilities committed by intimate partners and/or caregivers in the home is defined as family violence.

The causes of family violence are complicated and thus it has proven difficult to create a targeted, comprehensive and effective national legislative response. Nonetheless, the dramatic negative impact that family violence has on families, communities and societies cannot be denied. Family violence not only inflicts serious injury on its immediate victims, including lifelong negative physical, psychological, social, economic and emotional impacts.3 When unaddressed, family violence increases health care costs and decreases economic productivity.4

At the UN International Family Violence Roundtable on April 10-11, 2014 in Beijing, China, international experts on family violence, domestic violence, gender-based violence, child abuse, elder abuse and abuse of persons with disabilities provided valuable information about the national laws adopted in nine countries to prevent family violence, to protect victims of family violence.

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violence, and to hold perpetrators accountable. These presentations also included recommendations for China’s national Family Violence Law. There was consensus among presenters that an effective, comprehensive national law and a commitment to implementation are essential to successfully address family violence. For example, it was reported that in the U.S., overall rates of domestic violence have decreased by 64% since the passage of a national law in 1994.

Adopting a rights-based and holistic approach to preventing and protecting subjects of the proposed law from family violence should be in accordance, and harmonized with international treaties. In China, there is no estimate for how many are experiencing or have experienced family violence. As is the case in many countries, family violence in China is underreported. Because of the nature of the crimes and the vulnerability of its victims, all forms of family violence, including domestic violence, victims often do not report the abuse and thus the crime is underreported globally. The limited data that has been reported in China demonstrates that family violence is a serious problem. A national survey conducted by the All China Women’s Federation in 2011 found that one in approximately every four women has experienced violence at home including verbal and physical abuse, having their freedom restricted and being forced to have sex.4 In 1999, the Anti-Domestic Violence Network of the China Law Society conducted a survey in nine cities in Zhejiang, Hunan and Gansu provinces in which 71.9 percent of 3780 individuals reported that the Anti-Domestic Violence Network of the China Law Society conducted a survey in nine cities. These surveys indicate the existence of domestic violence against older persons, though these results are not nationally representative. In one survey, the prevalence of violence among people over 60-year older women is 19.3%.5 Although there are 85 million persons living with disabilities in China, there is no estimate for how many are experiencing or have experienced family violence. Similarly, there is no data regarding the number of children exposed to family violence.

Family Violence in China

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4 All-China Women’s Federation and the National Bureau of Statistics released this data in 2011 following a national survey of 105,573 people aged eighteen and over and twenty, 405 teenagers aged between ten and seventeen).

5 This information is from Xia Yinlang so I do not have a citation for it.

6 Data from baseline survey in two project sites of ACWF/UNFPA VAW project, 2013.

II. Relevant International Law and Treaties

China has adopted several international treaties that require it to address family violence, including adopting a national Family Violence Law and reporting on progress toward the goal of decreasing the incidence of family violence. These provide a framework for China on which to base its development of a national legislative response to family violence.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines discrimination against women to include violence against women. China became a signatory and ratified CEDAW in 1980. Articles 2, 5, 11, 12 and 16 of CEDAW require the State parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life. In addition, General Recommendation No. 19 of CEDAW recognizes that gender-based violence is a form of discrimination and that it “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.” It also recommended that States include information on violence and measures introduced to address it in their CEDAW reports. Regular reporting by States is necessary to ensure implementation of policies and laws toward ending violence against women. The UN Commission on the Status of Women agreed conclusions on the elimination and prevention of all forms of violence against women and girls on March 15, 2013 recommend that countries “address and eliminate domestic violence through adopting, strengthening and implementing legislation that prohibits such violence, prescribes punitive measures and establishes adequate legal protection against such violence.”

Key international conventions that address abuse and violence against older persons are the Madrid International Plan of Action on Ageing (MIPAA 2002) and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW 1979), both of which have been adopted and ratified by China. Specifically, CEDAW recommends that States that are parties to the treaty should investigate, prosecute and punish all acts of violence against older women.7 Article 5 of the Madrid Plan’s Political Declaration states the commitment of governments “to enhance the recognition of the dignity of older persons and to eliminate all forms of neglect, abuse and violence”. “Neglect, abuse and violence” was listed as one of the 4 issues of Priority direction III of MIPAA’s recommendations for action: ensuring enabling and supportive environments, recognizing physical, psychological, emotional, financial forms that those “neglect, abuse and violence” usually takes.


7 Paragraph 37, GR 27 CEDAW
Inter-Country Adoption in 2005. Article 9 of the CRC states that a child shall not be separated from his or her parents against their will except when authorities subject to judicial review determine that separation is in the best interest of the child. Article 19 of the CRC requires that State Parties:

shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.

Further it defines protective measures to include in social programs to provide support for the child and those who have the care of the child and prevention efforts focused on the identification, reporting, referral, investigation, and treatment of children when abuse is reported. A rights-based approach to protecting children from family violence as described in these treaties requires the recognition of a child as a rights-holder rather than just a victim. Children have the right to be heard and to have their views given due weight. They must be respected systematically in all decision-making processes and their participation should be central when developing violence protection strategies and programs. Further, the best interests of the child should be a primary consideration in all matters affecting a child. Access to justice for children must be guaranteed through development of legal assistance programs, accessible complaint mechanisms, and child-friendly and gender sensitive court procedures.

 Adopted in 2006 by the UN and ratified by China in 2008, the International Convention on Rights of Persons with Disabilities (CRPD) emphasized the critical influence caused by obstacles of the social environment to persons with disabilities, not only focusing on impairments. Some of its goals are to create a systemic response to the needs for persons with disabilities and to increase visibility of persons with disabilities, ensuring a just and inclusive society in which everyone enjoys the same rights. CRPD requires monitoring and implementation by State parties and requires that persons with disabilities are involved in the reporting and monitoring (Article 4.3 and Article 33): “nothing about us without us”. This statement represents the understanding that no policy should be decided without the full and direct participation of members of the disability community. It incorporates the human rights framework approach, recognizing persons with disabilities as rights holders and the responsibility of the State to protect their rights. CRPD also recognizes that women and girls with disabilities are often at greater risk, both within and outside of the home, of experiencing violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 16 specifically requires that all States that are parties to CRPD:

shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home from all forms of exploitation, violence and abuse, including their gender-based aspects.

It also requires that State parties shall take all appropriate measures to prevent violence and abuse by ensuring gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. Anti-family violence programs must address the needs of persons with disabilities, ensuring accessibility and public education and awareness of the needs of persons with disabilities who experience family violence.

III. Current Laws and Policies That Address Family Violence in China Are Insufficient

Several national Chinese laws, national policies, provincial laws and policies address family violence and violence against women, however they do not provide a comprehensive definition of family violence, sufficient legal protections for victims or language enabling effective enforcement of those protections or rehabilitation and punishment of perpetrators. A national Family Violence Law is necessary to effectively prevent and stop family violence, to address gaps between current Chinese legislation, and the requirements of international treaties to which China is a party.

The Chinese Marriage Law, the Women’s Rights and Interests Law, the Law on the Protection of Minors, the Elder Rights and Interests Protection Law, the Law on the Protection of Persons with Disabilities, and the Criminal Law all address family violence. In addition, the All China Women’s Federation and the Propaganda Department of the Central Committee of the CPC, the Supreme People’s Procurate, the Ministry of Public Security, the Ministry of Civil Administration, Ministry of Justice, Ministry of Health promulgated a joint opinion on the prevention and ending of family violence in 2008, explicitly describing the duty of related departments and offered regulatory instruction for all regions and all departments as to how to address family violence. In 2013, the Supreme People’s Court, the Supreme People’s Procurate, the Ministry of Public Security, and the Ministry of Justice issued a joint opinion on child sexual abuse describing the duty of these departments to prioritize the protection of minors who are sexually assaulted. Currently in China, there are local regulations against family violence in 22 provinces (autonomous regions, municipalities); there are special policies in 7 provinces; there are more than 90 districts and cities where policies against family violence have been developed. In addition, as of 2008, twenty-three provinces, municipalities, and autonomous regions had passed enforcement plans for the national Law on the Protection of Women’s Rights and Interests specifically addressing family violence. Also police stations, courts, prosecutors, and other governmental organizations in some places have also developed regulations on family violence. Local regulations and policies identify family violence as a violation of a woman’s human rights and affirmatively state that preventing and responding to family violence is a means of ensuring harmonious families and social stability. These regulations encourage promotion of and public education regarding laws on the prevention of family violence in China to raise citizens’ legal awareness. A more detailed description of Chinese law and government policies on preventing an responding to family violence may be found in Annex B to this document.

Judicial Guidelines and Guiding Cases Regarding Civil Protection Orders in Family Cases and Criminal Cases Involving Family Violence in China
In 2008, the Institute for Applied Jurisprudence of the Supreme People’s Court of China issued “The Judicial Guidelines on Marriage Cases Involving Family Violence” (审理指南: 调查处理婚姻案件涉及家庭暴力) for judges hearing marital cases. The Bench Book contained a description of how judges may issue civil protection orders (renshen anquan baohu ling or 人身安全保护令) to provide protection to victims of family violence. It includes a definition of family violence, and it incorporates reference to Article 100 of the national Civil Procedure Law as the authority for judges to issue civil protection orders. In conjunction with issuance of the Bench Book, nine pilot courts were authorized to use the Bench Book to issue civil protection orders on behalf of victims of family violence in marital cases. Over the last few years, the number of provinces and courts involved in the pilot project has expanded to include at least seventy-four. Beijing was included in the pilot project in August 2012. As of February 2014, it had been reported that over 500 civil protection orders had been issued. For example, Xiangzhou People’s Court in Guangdong province has issued 92 civil protection orders.

The Bench Book is not law, and it is not binding on Chinese judges. However, several high provincial courts have issued opinions including language from the Bench Book regarding issuance of civil protection orders in marital cases; these opinions are considered law and binding in those jurisdictions. Moreover, attorneys have referred to the Bench Book when representing victims of family violence seeking civil protection orders in marital cases. The Bench Book also specifically prohibits sexual violence and economic abuse by restricting the victim’s control over family finances and personal property. Finally, both the Bench Book recognizes that family violence continues after the victim leaves the offender and thus protection is needed not only when the parties are still together, but also after they separate.

In July 2013, “Jiangsu Province’s Implementation Measurement of Warning System Against Family Violence (on trial)” was issued jointly by Jiangsu Province Higher People's Court, Jiangsu Province People's Procuratorates, Public Security Department of Jiangsu Province and Jiangsu Province Women’s Federation. Jiangsu province is the first province to establish a warning system against family violence to protect family violence victims’ rights and interests, and maintain family and social harmony and stability. The establishment of warning system against family violence is aimed at strengthening the power of family violence prevention by using the administrative guidance power from Public Security Organizations, and improving anti-family violence measures. The main contents include: warning and educating family violence perpetrators; providing legal support to family violence victims and; addressing perpetrators’ abusive behaviors through batterers’ education. More recently, other provinces and cities such as Ningxia and Suzhou have also issued warning systems.

On February 27, 2014, the Supreme People’s Court released 10 family violence “Guiding Cases” to provide direction to the lower courts about what constitutes evidence of family violence, who may seek protection and who may be a perpetrator of family violence against whom a victim may seek a protection order or criminal prosecution. These Guiding Cases were announced at a press conference where it was acknowledged that Chinese courts currently face difficulties adjudicating cases involving family violence. Several cases demonstrated that mental and emotional abuse, including intimidation and threats of violence are forms of family violence as well as harassment and stalking. Courts should take such non-physical abuse seriously and should collect evidence of these forms of family violence. The guiding cases also specifically recognize older abuse and a child’s exposure to abuse as a form of family violence. In addition, the cases reaffirm the authority of the courts to issue civil protection orders when requested by victims of family violence, including protection of the victim after he or she has separated from the batterer, and recognition of the negative impact of family violence on children and the need for protection for children who witness domestic violence. Finally, the Guiding Cases address the need for the court to consider the impact of family violence on a victim in criminal proceedings when a victim has no choice but to kill the perpetrator in order to stop the violence.

IV. Specific Recommendations for China National Family Violence Law

Incorporating the framework and requirements from the international treaties on violence against women, children, persons with disabilities and the elderly to which China is a party, recommendations from international experts, and an understanding of the current policy and law in China addressing family violence, we make the following recommendations regarding the provisions to be included in the national Family Violence Law.

State Should Establish Obligation to End Family Violence

The national law should state that addressing family violence is the responsibility, the duty, and the obligation of the State in order to ensure meaningful implementation of the law. By clearly articulating the State’s responsibility, the national law will clarify that family violence is not a private matter, within the family and beyond the reach of national laws and regulations. Instead, family violence destroys the harmony of the family and is a public issue requiring a public response from the State. Establishing the State obligation will also implicate the budgetary investment necessary to implement those obligations to achieve the goals of the legislation. The legislation must include language that requires that the State government to address primary prevention, secondary prevention, and tertiary prevention of family violence including:

Prevent the Occurrence of Family Violence

- Establish a system of research, including data collection, analysis, monitoring and evaluation to provide recommendations to increase effectiveness of implementation of provisions under the national law;
- Funding national, regional, and local public education and awareness campaigns about family violence including information on the rights of victims and how to seek help if someone believes they are a victim of family violence and abuse;
- Establishment of a coordinating mechanism to ensure collaboration among key stakeholders at various levels of government and between government, social services, health, education, police, community centers and other relevant agencies, in order to identify, intervene, support, and protect survivors from harm in a timely manner;
- Targeted awareness campaigns focused on addressing harmful stereotypes and practices surrounding gender and violence within specific, strategic population...
groups, promoting alternative understandings/knowledge and actions, should be implemented;
- Mandatory education in schools about healthy relationships and gender equality, addressing harmful gender stereotypes and misconceptions related to the legitimacy of violence in intimate relations in school syllabi including family violence awareness and prevention, and teachers trained on addressing the issues in the school setting and responding to suspicions of family violence; and
- Providing education and information dissemination on family violence through the media in order to reach to as many persons with disabilities as possible through accessible means, e.g. sign language, Braille, etc.

**Intervene and Stop Family Violence When It Is Occurring**
- Establish a credible, confidential, well-publicized and accessible nationwide system for reporting incidences of family violence through government and non-governmental organizations which link people affected by violence to emergency and long-term care and rehabilitation services;
- Require training by experts in family violence for police, judges, prosecutors, social workers, healthcare providers, and anyone who works with victims of family violence on the dynamics of domestic violence, including identification of abuse, and appropriate response, information about support programs and legal rights of adult and child victims, victims who are elderly and/or disabled;
- Establish counseling and support centers and shelters in all communities where victims can come together and seek support and safety and talk about their experiences so that they do not feel alone. Such centers and shelters need to be accessible to children, the elderly, and persons with disabilities; and
- Provide all survivors with civil and social programs such as free medical care and other available social benefits for their rehabilitation, access to training programs and housing services if so desired.

**Decrease the Occurrence of Family Violence in the Future**
- Designate funding in the budget and provide all the necessary resources specifically for implementation of the law, including physical, material resources for all the departments dealing with family violence;
- Develop a national-level office to administer the funds, conduct periodic review and evaluation, and coordinate national public education and training;
- Collect and disseminate data on the occurrence of family violence experienced by girls and women, elders, and persons with disabilities and children; and
- Provide caregivers with necessary assistance to prevent family violence.

**A. Definition of the Crime of Family Violence**

In addition to establishing the role of the State in ending family violence, the national Family Violence Law must contain legal provisions that define the crime of family violence. Current Chinese law does not have a criminal definition of family violence. The international experts at the UN International Roundtable on Family Violence provided several different definitions of family violence and domestic violence from their national laws. The experts reported on both the experiences of their countries in drafting their national Family Violence Laws and the challenges that their countries faced in implementation of their laws. These examples included definitions of the crime of family violence as well as the behavior that is sufficient for a victim to obtain a civil protection order. Definitions included: (1) behaviors that constitute family violence; and (2) the required relationship between the victim and the perpetrator for it to be considered family violence in criminal law or civil law. The following are examples of the definitions of family violence included in other countries’ national laws.

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**Korean Definition of Domestic Violence**

In Korea, the Act on Special Cases Concerning Punishment of Crimes of Domestic Violence was enacted in 1997 and revised 19 times including in 2014. The law defines domestic violence as: “Behavior causing physical, psychological or property damage among household members.” The Act recognizes the following crimes contained in the national Criminal Code of Korea as domestic violence:

- Injury or assault
- Abandonment or abuse
- Arrest or confinement
- Threats
- Defamation
- Housebreaking
- Coercion
- Fraud or blackmail

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**Australian Definition of Family Violence**

In 2011 Australia amended its Family Law Act of 1975 and changed the definitions of family violence and abuse to include:
- Assault
- Sexual assault
- Other sexual abuse
- Stalking
- Emotional and psychological abuse
- Economic abuse

Family violence is defined in its national law as: “Violent threatening or other behavior by a person that coerces or controls a member of the person’s family (the family member) or causes the family member to be fearful.”

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**Criminal Definition of Domestic Violence in South Africa**

The crime of domestic violence in the South African national Domestic Violence Act is defined as:

- Physical abuse
- Verbal abuse
- Emotional abuse/psychological abuse
- Financial/economic abuse
- Sexual abuse
- Intimidation/harassment
- Stalking
- Malicious damage to property
- Entry into the complainant’s residence without consent, where the parties do not share the same residence or
- Any other controlling or abusive behavior toward a complainant where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant
Examples of elder abuse, according to the U.K. and Japanese experts include:

- Physical abuse
- Sexual abuse
- Psychological abuse
- Financial or material abuse and exploitation
- Neglect
- Societal abuse
- Discriminatory abuse
- Institutional abuse
- Involuntary abandonment or isolation
- Abuse or denial of medication

The definition of elder abuse in the U.K. is:

―a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress of an elder person."

In 2011 the Australian Family Law Act from 1975 was amended and includes a non-exhaustive list of potential examples of family violence and exposure to family violence including “a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.” These lists included patterns of family violence as well as single events. Abuse in relation to a child is defined as: “[a]n assault, including a sexual assault of the child or [a] person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person or causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subject to or exposed to, family violence, or serious neglect of the child.”

Austrian criminal law prohibits marital rape, dangerous threats, sexual assault, stalking, persistent perpetration of violence, sexual abuse, exploitation and prostitution of minors, trafficking in prostitution and sexual harassment. It is recognized that children are vulnerable to family violence, and there is a duty of civil society to provide mechanisms to provide rights and protections allowing a mechanism for providing safety, privacy and confidentiality are considerations.

In the U.K., the Family Law Act of 1996 created a non-molestation order that is sealed by the court stating that one party must not molest the other party. Molestation is not defined in the court stating that one party must not molest the other party. Molestation is not defined in the statute but it includes the following examples of behavior to be considered molestation:

- Violence
- Threats of violence
- Harassing or pestering behavior
- Pestering an applicant either in the family home or at work
- Abusive or persistent text or phone calls
- Verbal abuse and shouting at the individual in public
- Physically intimidating an applicant or using threatening language
- Damaging property in the family home
- Physical violence including slapping, shoving, kicking or pushing

Japan issued the Law for Preventing the Abuse of Older People and Providing Assistance to Caregivers in 2005. Abusive and neglectful acts of both caregivers in domestic settings and personnel of long term care institutions and of nursing care service providers includes:

- physical abuse
- caregiving neglect
- psychological abuse
- sexual abuse
- financial abuse

Financial exploitation against older persons by family members or people they are familiar with using undue influence due to their role and power to exploit the trust, dependence, and fear of others or by means of coercion, intimidation, undue influence, deception and/or emotional abuse are very rarely reported, although an elder may have the mental capacity to make decisions regarding his or her finances. Financial exploitation against older persons by family members or people they are familiar with using undue influence due to their role and and/or emotional abuse are very rarely reported, although an elder may have the mental capacity to make decisions regarding his or her finances.

Elder abuse may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Financial or material elder abuse in the U.S. and U.K. may include:

- Theft
- Fraud
- Exploitation
- Pressure in connection with wills, property or inheritance or financial transactions or
- The misuse or misappropriation of property, possessions, or benefits

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Recommendations for Definition of Family Violence

Based on the experiences of other countries, guidance from international treaties and China’s existing law, the definition of family violence should include a comprehensive, non-exhaustive list of specific behaviors that taken alone or together constitute family violence. The law should also include specific examples of abuse to assist with implementation of the law in relation to women, children, elders, and persons with disabilities.

The definition should build upon but not conflict with the definition of family violence in China’s Marriage Law and the Judicial Bench Book for civil protection order cases both of which focus more exclusively on violence committed by one spouse against the other to include forms of violence committed outside of marriage, and abuse committed against children, persons with disabilities and the elderly. The definition of family violence in the national law should be:
Examples of controlling and abusive behaviors may include refusing to assist in caregiving, including bathing or feeding or administering of medicine or threats to disclose medical conditions such as HIV or AIDS; refusing to provide transportation or other assistance to obtain necessary medical attention; isolation, and abandonment and/or neglect;

Threats or acts threatening the safety and well-being of children and dependent persons including witnessing family violence and being present in a home where family violence is occurring even if they have not witnessed the abuse as well as direct family violence as described here committed against a child or other dependent person and neglect;

Economic/Financial abuse includes the deprivation or threatened deprivation of any or all economic or financial resources to which the victim is entitled under law or which the victim requires out of necessity; the disposal or threatened disposal of household effects or other property in which the victim has an interest (irrespective of whether the parties are married in community of property or not); the use of economic or financial resources to threaten, intimidate, persuade, motivate or otherwise ensure the victim behaves in a way the perpetrator desires, including refusing to let the victim work, or forcing him or her to quit her or his job, or forcing him or her to surrender her earnings/salary, or harassing the person at work so that she or he is fired from her or his job.

The definition of intimidation includes uttering, conveying or causing a victim to receive a threat that induces fear.

Harassment is defined as engaging in a pattern of conduct that induces the fear of harm; watching or loitering outside of or near the building or place where the victim resides, works, carries on business, studies or happens to be; repeatedly making telephone calls, sending text messages, or inducing another person to make telephone calls to the victim whether or not a conversation ensues; repeatedly sending, delivering telegrams, packages, facsimiles to the victim’s home or work, whether physically or virtually through the internet or text messaging.

Stalking is defined as repeatedly following, pursuing, accosting, or contacting the victim by any means including in person, via telephone, email, social media, or surveillance using the internet, hidden cameras or tracking devices.

B. Definition of Family Members or Household Members

In Korea, the Act on Special Cases Concerning Punishment of Crimes of Domestic Violence stated that household members could seek protection from domestic violence and defined household members as:

- Spouse or former spouse (including common-law marriage)
- One’s or spouse’s current or former parents or children (including defacto relationship)
- Persons in relationship of step-parent and child, or mother and step-child, and
- Relative(s) living in the same household.

The definition of victim in national Korean domestic violence law is limited to “one who is directly damaged by domestic violence.”

In South Africa, the Domestic Violence Act of 1998 protects people from perpetrators of domestic violence in the following relationships:

- Marriage
- Parties who live together or have lived together but are not married
- Same sex partners who are living together or have lived together
- Individuals who are engaged, dating or a consensual intimate or sexual relationship
- Family members related by blood marriage or adoption, and
- People who ordinarily live together in the same residence

The South African law specifically and intentionally excluded landlords and tenants, domestic workers and their employers, and farmworkers from the list of relationships that qualify for protection from family violence.

In contrast, the New Zealand expert on abuse of persons with disabilities stated that national family violence laws should consider inclusion of paid caregivers among the relationships given their role in the lives of disabled individuals and the risk of abuse. Specifically, persons with disabilities who have experienced abuse have argued that paid caregivers be included in the definition.

Recommendations for Relationship Requirement of Definition of Family Violence

Based upon the experiences of the international experts and the gaps that exist in current national Chinese law, the requisite relationship for the crime of family violence includes:

- Any controlling, abusive, or generally detrimental act engaged in that harms the health, safety, and/or well-being of that person, including, but not limited to: any threats of, or actual physical abuse; sexual abuse, including marital rape; emotional, verbal or psychological abuse; economic/financial abuse; intimidation; harassment; stalking; damage or destruction of property belonging to the person or abuse of economic or financial well-being of the person; entry into the residence or workplace without consent; and/or inadequate care, neglect and negligent treatment; and witnessing family violence.

- Threats or acts threatening the safety and well-being of children and dependent persons including witnessing family violence and being present in a home where family violence is occurring even if they have not witnessed the abuse as well as direct family violence as described here committed against a child or other dependent person and neglect.

- Economic/Financial abuse includes the deprivation or threatened deprivation of any or all economic or financial resources to which the victim is entitled under law or which the victim requires out of necessity; the disposal or threatened disposal of household effects or other property in which the victim has an interest (irrespective of whether the parties are married in community of property or not); the use of economic or financial resources to threaten, intimidate, persuade, motivate or otherwise ensure the victim behaves in a way the perpetrator desires, including refusing to let the victim work, or forcing him or her to quit her or his job, or forcing him or her to surrender her earnings/salary, or harassing the person at work so that she or he is fired from her or his job.

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- Stalking is defined as repeatedly following, pursuing, accosting, or contacting the victim by any means including in person, via telephone, email, social media, or surveillance using the internet, hidden cameras or tracking devices.
Individuals who are or were married;

Individuals of the same or opposite gender who live together or have lived together regardless of whether they are married;

Individuals who have one or more children together regardless of whether they are married or living together;

Individuals who are engaged, dating or a consensual intimate or sexual relationship; irrespective of the duration of their dating or intimacy including lesbian, gay, bisexual and transgender individuals.

Family members related by blood, marriage or adopted children, step-children, parents, grandparents, nieces and nephews, etc. and other extended family members; and

People who ordinarily live together in the same residence including caregivers for children, the elderly or persons with disabilities who are related by blood or marriage.

C. Reporting and System of Investigation by Police and Other Institutions

Having defined the crime of family violence through actions and behaviors and requisite relationships, we move on to the importance of enforcement of the criminal law of family violence. Many of the international experts spoke of the need for effective enforcement of the national criminal law against family violence by the State, specifically by the police and through prosecution in the courts. The national law needs to clearly designate the role of the police as enforcing the law against family violence, including responding to calls reporting family violence, conducting thorough investigations of reports of family violence, providing safety to the victim immediately if necessary, and coordinating with the prosecutor and the courts to ensure the perpetrator will be detained and criminally prosecuted.

Training for the police on family violence and their response is necessary to ensure that they understand family violence is a serious crime and how to appropriately assist survivors, paying specific attention to the unique barriers facing children, the elderly and persons with disabilities.

Under Korean national law, when they receive notice of family violence occurring, the police must go to the scene and take emergency measures including:

- Stop the violent behavior
- Separate the offender and the victim
- Investigate the crime
- Guide the victim to counseling center or shelter if the victim expresses an interest in going
- Notify that recurrence of violence can lead to interim measures under Article 8 of the law
- Investigate quickly and send the case to the public prosecutor’s office
- Present an opinion as to whether the case is appropriate as a family protection case

In 1999, South Africa developed the National Police Instructions on Domestic Violence that describes the roles, responsibilities, and functions of the police regarding implementation of the Domestic Violence Act. Some of the most important responsibilities of the police provided by the South African National Police Instructions include the need for the police to:

- First locate the victim and take her statement on arrival at the scene of crime
- Interview the victim separately from the perpetrator
- Determine if there is imminent danger to the life of the victim
- Secure and protect the victim
- Confiscate any dangerous weapons used in the commission of the offence
- Open the case against the perpetrator, and if necessary
- Effect arrest
- Other police responsibilities include assisting the victim to find a suitable shelter and transport if she requires to leave the shared residence and to assist her to go for medical treatment.

1. Challenges

A challenge identified by the South African expert is the need for monitoring and evaluation of police to ensure their compliance with the instructions and to ensure that they have received...
training on the National Police Instructions. Another challenge is the availability of sufficient physical, material and financial resources in police stations to ensure the police are able to perform their responsibilities and functions in terms of the law. These are the resources necessary for victim support and protection such as timely and effective response to the incident of family violence. The U.S. expert identified a similar challenge; she reported that efforts to hold the police accountable for the death of victims when they fail to respond have proven unsuccessful.

The expert from Korea reported that Korea faces challenges in the punishment and accountability for offenders. She stated that the national law is not enforced. In 2009, only 10.4% of those identified were indicted for domestic violence cases. Questions from police like “Do you want to press charges?” and “Do you want your husband to be punished?” transfer the burden from the police to the victim and creates challenges for survivors in seeking protection. She stated that in Korea, domestic violence is not considered a crime but rather a behavior to be changed by education and counseling. There are two tracks of legal response in Korea: criminal punishment and family protection and they are not working well together. A survey in 2012 of victims in shelters indicated that victims are not reporting domestic violence because they fear increased violence from the offender, they don’t know how to report, they don’t think things will improve if they report to the police, and they fear that the offender would know that they are reporting. Often it is reported that the police do not separate the victim and the offender when they come to the home and they do not arrest the offender.

2. Recommendations Regarding Police Reporting and Investigation of Family Violence

The law should include Standard Operating Procedures (SOP) for police in dealing with family violence cases including specific guidelines on how to respond to notification of family violence, how to investigate when arriving at the scene, how to locate the survivor and secure her safety, the collection of evidence, necessary steps for cases to proceed within the justice system, removing the suspected perpetrator from the family dwelling when it is consistent with the victim’s wishes, provision of rehabilitation options for perpetrators and organizing Safety Plans for victims who are not willing to leave the abusive relationship. It should also include notification and involvement of the victim and her family when the perpetrator of the family violence is released from prison. The SOP must also include structures to monitor and evaluate the compliance of officers with the SOP. The SOP should establish a clear mandate and responsibility for the police to:

- Establish various mechanisms and measures for reporting of family violence by survivors, their families, interested parties and community members;
- Respond quickly to calls regarding family violence;
- Stop the violence when they arrive at the crime scene and separate the victim and the perpetrator;
- Conduct a thorough investigation including safety assessment to victim and separately interview the alleged victim(s), perpetrator, any neighbors or witnesses;
- Arrest the perpetrator of family violence, incorporating the wishes of the victim;
- Confiscate any dangerous weapons involved in the commission of family violence and keep them in a safe place to be used as evidence;
- On completion of investigation, draft a report regarding the incident and submit it to the public prosecutor;
- Apply for the issuance of an emergency protective order if the victim is in danger of serious bodily injury;
- Enter police reports of family violence into a database so that repeat offenders may be tracked and investigated;
- Refer the survivor and any witnesses of the family violence to support services. This should include:
  - Informing the survivor of her/his legal rights, her rights to health care, counseling, shelter, etc. This information must be provided in an accessible format to ensure availability for all victims, including persons with disabilities or those who speak another language
  - Assisting the survivor to stay in her/his home environment safety through the establishment of a Safety Plan or go to shelter if she/he wishes, seek medical treatment, as well as to provide protection
  - Mandatory reporting of child abuse identified during an investigation, safeguarding of any children if it is in the best interests of the children.

D. Prosecutorial Response

A key provision in national family violence laws as reported by international experts at the UN International Roundtable on Family Violence Law is clearly defining family violence as a crime, and ensuring that police, prosecutors and judges collaborate and coordinate a consistent, systematic prosecution of offenders and sentencing which effectively ensures the reduction of family violence through individual and general deterrence of offenders. Several international experts stated that mandatory training for police, judges, and prosecutors on family violence is necessary to ensure effective prosecution and sentencing.

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<th>In the U.S., the national</th>
<th>Under Korean national law, when danger of reoccurrence of</th>
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<td>Violent Against Women Act provides funding for states and civil society organizations to provide trainings for police, prosecutors and judges on domestic and sexual violence. Prosecutor training includes how to collect and present evidence of family violence in court. Training for judges includes how to consider evidence of family violence.</td>
<td>Temporary expulsion of the perpetrator from the house or room</td>
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<td>Prohibiting the perpetrator from approaching the victim within 100 meters</td>
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<td>Prohibiting the perpetrator from contacting the victim through telecommunication</td>
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The Guiding Cases recently issued by the Chinese Supreme People’s Court regarding domestic violence include two cases where domestic violence perpetrators were killed by their victims and in both cases the victim is sentenced to short prison terms with longer probationary terms, recognizing the low possibility of recidivism or harm to society.

1. Challenges
Challenges identified by several experts was the need for prosecutors to understand that family violence is a serious crime that can lead to significant bodily injury or death and that the State has a responsibility to intervene to hold the perpetrator accountable and provide protection for the victim. Prosecutors need training on how to gather and present evidence of family violence to successfully prosecute perpetrators. In addition, coordination between police, prosecutors, the courts and judges is critical to ensure safety of victims and effective prosecution of perpetrators. When victims retaliate against their perpetrators and kill them, they are often prosecuted and receive longer prison terms than male perpetrators of violence. Prosecutors and judges must receive training on the impact of family violence on victims including women, children, elders and persons with disabilities, so that this information may be appropriately presented and considered at trial and sentencing for commission of family violence crimes.

2. Recommendations
The national Family Violence Law should harmonize with the Chinese Criminal Law and Criminal Procedure Law, ensuring:

- That family violence perpetrated against a person with a disability (adults and children) be classified under a special section/schedule as a serious offence requiring severe sentence, specifically to recognize that commission of family violence on person with a disability carries on its own, an aggravating factor. Such a scheduled offence should carry a longer sentence than other family violence cases involving people with no disabilities;
- Denial of bail for individuals arrested for one or more crime(s) of family violence;
- Mandatory minimum jail time of one year for convicted offenders of family violence;
- Tougher sentencing for repeat offenders such as increased jail term by one-third;
- In the case of child victims: in addition to the punitive/correctional measurements for the abusers, provision of rehabilitation, integration and supportive service for children, the abusers and the families to minimize the negative impact of family violence on them;
- Ensuring that the court system, law enforcement and judicial officers receive training and adopt gender sensitive, age-friendly, child-friendly and disability-friendly procedures;
- Ensuring that the best interests of the child is a primary consideration in all matters affecting a child;
- Any decision to separate a child from his or her parent(s) or family environment is made only when it is in the child’s best interests;
- Ensuring that safety measures and places of safety are made available for children who have to be separated from their parent as a result of family violence perpetrated by the parent;
- Ensuring periodic, close monitoring of the family situation of the children returned to their families;
- Providing guidance for the courts to consider evidence of the impact of family violence on a victim when she or he kills or severely injures the perpetrator, including evidence rules regarding hearing expert testimony;
- Make police, judges, prosecutors, educators, social workers and health care professionals mandatory reporters of child abuse, elder abuse, and abuse of persons with disabilities and provide clear procedures for reporting; and
- Put in place stringent measures for consideration on the release of the perpetrator from prison after sentence has been served, for the feasibility of either reintegration of the perpetrator into the community or his family.

E. Civil Protection Order Provisions: Family and Civil Court Proceedings
As described above, Chinese courts have begun to issue civil protection orders to provide protection to victims of family violence in family law cases. It is recommended that the Chinese national Family Violence Law include the creation of a civil protection order, building upon the example from the Bench Book, to include access by victims outside of the intimate family relationship.

International experts at the UN Workshop shared that their country’s national family violence laws included civil protection orders. The civil protection order is considered one of the most effective legal intervention tools to stop violence that has already occurred from continuing, by providing protection and financial support to victims quickly as well as holding the perpetrator accountable through enforcement by the police and courts if it is violated. An individual victim applies for a civil protection order from the civil or family court, and a judge issues an order against the perpetrator of family violence when sufficient evidence is presented of imminent danger of ongoing family violence.
Each country’s law clearly defined the relationship necessary to apply for an order, the abuse that must be alleged in order for a judge to issue an order, and the types of injunctive relief and remedies that a judge may include in an order for the victim. In addition, each country’s law detailed that a copy of the court order must be served on the respondent, offender, and that the police must be provided with a copy. The civil protection order is enforced by the victim and by the police. When the victim learns that the perpetrator has violated the order, they are to call the police and the police are to immediately arrest the perpetrator and he or she is to be charged with violating the order. The order is criminally enforced: the perpetrator may be sentenced to a prison sentence and/or a fine for violating the civil order. Importantly the victim’s decision to petition the court for a civil protection order is separate from the decision by the police and the prosecution to arrest and prosecute the perpetrator of the crime of family violence. In fact, a victim may have a civil protection order while the criminal prosecution of the crime is ongoing.

In the U.K., protections for children are available within the context of a family where there is a factual nexus with domestic violence. In addition, a non-molestation order may be made to prohibit a party from molesting a relevant child defined as:

- Any child who is living with or might reasonably be expected to live with either party to the proceedings
- Any child in relation to whom an order under the Adoption Act of 1976, the Adoption and Children Act of 2002 or the Children Act in 1989 is in question in the proceedings, and
- Any other child whose interests the court considers relevant

To enforce a non-molestation order, the victim of family violence may call the police and choose to have the breach dealt with in the criminal courts or initiate contempt of court proceedings in the civil courts. A violation of a non-molestation order in the U.K is a criminal offence since 1 July 2007, when the Family Law Act was amended, and the offender may be imprisoned for up to five years or fined or both.

**South Africa has a protection order** that the court may issue on behalf of a victim against a perpetrator of domestic violence. It may require that:

- A peace officer accompanies a victim to a place to assist with collecting her or his personal property
- The perpetrator pay rent or mortgage payments
- The respondent to pay emergency monetary relief to address the financial needs of the victim
- The physical address of the complainant must be omitted from the protection order unless the nature or terms of the order necessitates the inclusion of such address
- If the court determines that it is in the best interest of the child, it may order that the respondent shall not have contact with the child or order contact with the child based on specific conditions

It also may prohibit the respondent from committing any of the following:

- Any act of domestic violence
- Enlisting the help of another person to commit any such act
- Entering a residence shared by the complainant (victim) and the respondent (perpetrator) provided that the court may impose this prohibition only if it appears to be in the best interest of the complainant
- Entering the complainant’s residence
- Entering a specified part of such a shared residence
- Entering the complainant’s place of employment
- Preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in the shared residence or a part of the shared residence
- Committing any other act as specified in the protection order

1. Challenges

A challenge identified by the South African expert is ensuring that the personal property that the victim is escorted by a peace officer to obtain from the home is clearly defined. Another challenge is when the offender depletes the communal estate when the victim and children have left the shared residence in anticipation of divorce. A proposed solution for this problem is to include in the civil protection order the requirement that the offender not sell, remove, destroy or otherwise deplete the property of the communal estate without the permission of the other victim and that any allegations of property shall be reported to the police. In addition, the police should have a checklist to be used for interviews to support applications for protection orders in order to ensure that as much comprehensive information as possible shall be included in the application for protection order. The checklist used for interviews should include all the different types of abuse in order to guide the interviewer to exhaust all these questions when taking a statement from the complainant. This will eliminate the multiplicity of protection orders and the unnecessary amendments thereof.

According to the expert, South Africa needs to establish Guidelines for magistrates on domestic violence to deal with issues of negligence, non-compliance and accountability of magistrates who fail to strictly implement the provisions of the law. Their experience is that some magistrates think that if there is no physical abuse then there is no domestic violence. Another challenge faced in South Africa is that some courts receive many petitions for protection orders and they do not have sufficient staff to handle them. This leads to delays in issuance of orders and victims then being subject to threats by the perpetrator leading them to request that the petition be withdrawn. The recommendation is that the return date to seek a protection order needs to be within 14 days. Another recommendation is that the...
legislation provide alternative methods for ensuring that victims of domestic violence are afforded a free, effective and user-friendly model to use the services of the police to ensure that the perpetrator receives services and the possibility of substituted service where the police would affix the order on the door when there is no one at the residence of the respondent. Another recommendation from South Africa is to include the use of a medical form or certificate with the application for a protection order as already happens in criminal cases in South Africa. This will provide guidance for the victim so that she can prove the extent of the injuries that she suffered at the time of the abuse when they are no longer visible when she returns.

2. Recommendations for Civil Protection Order

The Chinese national law should include a civil protection order to provide protections for victims of family violence, building upon the pilot project begun with the Bench Book as described above. The law should include detailed requirements so that the victim can seek protection from the civil court and choose among different forms of protection and relief those that are most appropriate for her situation and needs. The protection order should include the definition of family violence included in the national law, including the behaviors and requisite relationships described above. In addition, the law should require the courts to develop standardized forms for victims to use when applying for a protection order that enables them to describe the abuse that led them to seek the protection order and the types of protection and remedies they are seeking. The law should clearly state that the victim or any other interested party, including family members and the police may apply for a civil protection order on behalf of the victim who could either be a child, a person with disability or a person who is unconscious or hospitalized and is not in a position to make an application herself, the judge issues the protection order, and the police enforce the protection order under the supervision of the court. If the perpetrator is not at the court hearing where the order is issued, the court should make sure that the perpetrator is served a copy of the order and that the police have a record of the civil protection order. The law should ensure that judges have powers to confirm an emergency Protection order once there is a proof of positive service on the perpetrator who fails to attend court on the return date.

The following remedies should be available to the victim on request and the court to order in the protection order for a specified time:

- The offender must stay a certain distance from the victim and any children in the home at all times;
- The offender must not contact the victim in any way – in person, via phone, email, etc. – or the children in the home;
- The offender be evicted from the home;
- The victim is awarded temporary custody of children in the home;
- The victim is awarded child support for any children;
- The victim is awarded economic support necessary to maintain the home;
- If the victim chooses to leave the home, the court can order that the victim be escorted by the police to the home to collect personal belongings;
- Personal belongings must, include articles, items, which in the discretion of the judge granting the protection order, are necessary for the daily use by the victim and the children, which may include household furniture and equipments;
- The application for protection order should make provision for the complainant to stipulate what she and her children would require as personal belongings so that such items are applied for and granted by the court in terms of the protection order;
- The offender must not destroy, sell, or otherwise diminish the personal, and/or marital property, and/or residential property of the victim and the perpetrator during the order;
- The offender must reimburse the victim for any costs incurred because of the violence including medical bills, lost wages if a job is lost because of the violence, and other expenses;
- The offender must pay for living expenses related to raising any minor children in the custody of the victim while the order is in effect;
- Prohibit the offender from committing any act of domestic violence against adults and children included in the order;
- Prohibit the offender from enlisting the help of another person to commit any such act;
- Prohibit the offender from entering a residence shared by the complainant (victim) and the respondent (perpetrator) provided that the court may impose this prohibition only if it appears to be in the best interest of the complainant;
- Prohibit the offender from entering the complainant’s residence;
- Prohibit the offender from entering a specified part of such a shared residence;
- Prohibit the offender from entering the complainant’s place of employment;
- Prohibit the offender from entering or coming within a certain distance of any children, including at home or at school;
- Require the offender/batter to attend counseling and education programming regarding committing family violence;
- Other measures to protect the personal safety of the claimant and their specific family members.

To ensure that these options are made known to the victim of family violence, they should be included in a standard form provided to a victim who comes to the court seeking a civil protection order. To enforce the order of protection, the victim must call the police and tell them that the defendant has violated the order. The civil protection order should be criminally enforced and the defendant should be arrested by the police and held until there is a hearing before the judge who will determine punishment. Punishment for violation of the protection order should be up to two years in prison, and/or fines and/or counseling for battering.

3. Consideration of Evidence

Pictures of injuries, police records, a statement from a witness, documentation from a social service organization, and documentation of the abuse, including text messages containing threats from the respondent, are all examples of evidence that the victim may bring forward or the judge may seek in support of a victim’s statement that the offender has committed family violence in a civil protection order hearing. The standard of proof that the judge should use to consider this evidence is preponderance of the evidence. Once the victim presents evidence of the family violence and that the respondent committed the act that caused the injury, the burden of proof...
shifts to the respondent. If the defendant denies causing the harm but is unable to provide evidence in support of his denial, then the judge should find family violence has occurred and grant the order. In this way, the standard of evidence used in civil protection order cases and family law cases where family violence is alleged is different from the standard of evidence applied in criminal cases.

F. Housing and Employment Legal Protections

The international experts described how their countries laws required that the individual accused of family violence be evicted from the home for different periods of time to enable to survivor to stay in their home with their family. International experts noted that for a victim of family violence living in a home that has been made accessible for her needs, it is impractical for her to be forced to leave her home in order to be safe from abuse.

The Family Law Act 1996 of the U.K includes an occupation order that allows for the regulation of the occupation of the family home. It allows the court to exclude a person from entering his or her own property. If she or he meets the requirements to make an application by being entitled to occupy the home or otherwise (including, but not limited to, where she or he is a former cohabitant of a person who does have a right to occupy the property), a victim of family violence may apply to the court for an occupation order against the offender of family violence. Where the judge has found that there is risk of significant harm it may (or must in certain circumstances) grant an occupation order. The test is defined in Section 33(7) of the Family Law Act. The significant harm test is met:

If it appears to the court that the applicant or any child whose interests the court considers relevant is likely to suffer significant harm attributable to the conduct of the respondent if an occupation order is not issued

• UNLESS the respondent or any child the court considers relevant is likely to suffer significant harm if the order is made and
• The harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent, which is likely to be suffered, by the applicant or child if the order is not made

Even if the significant harm test is not met, a court may still issue an occupation order considering these factors from section 33(6) of the law if the victim is applying under section 33 (modified provisions apply depending on the victim’s relationship with the property/respondent):

• The housing needs and resources of each of the parties and of any relevant child
• The financial resources of the parties
• The likely effect of any order or decision not to issue an order on the health, safety or well-being of the parties and of any relevant child, and
• The conduct of the parties in relation to each other and otherwise

In an occupation order, a victim may request and a judge may issue an order that may be made for a specified time or until further order (depending on the order sought) that includes:

• Enforcement of the victim’s right to remain in the home
• Order an offender/respondent to allow the victim to enter a home or part of a home and remain there
• Regulate the occupation of the dwelling house, including dividing it up and restricting a party from entering a specified part of it
• Regulate, including suspending or restricting the exercise of a respondent’s rights in relation to the dwelling house
• Order an offender/respondent to leave a house or part of it
• Exclude a respondent from a defined area around the property, for example require the offender to stay at least 50 meters away from the home
• Supplemental orders may also be made that a party pay the rent, mortgage payments or general household expenses, to maintain, or repair the property, that the party remaining in the property make payment to the party removed or orders dealing with disputes over the case and the use of furniture

In addition, in the U.K where a victim of family violence is in need of urgent protection and where giving notice to the respondent would put the applicant in further danger, an application for an occupation order or a non-molestation order can be made “without notice” under Section 45(1) of the Family Law Act. The without notice hearing should be followed by an on notice hearing as soon as just and convenient where both parties can argue their case before a judge. Also, without notice orders will only be effective once the respondent has been served.

In Korea, the national law includes a protection order in which a victim may submit an application to the court for protection that includes expulsion of the perpetrator from the home and financial support for housing if the victim chooses to leave the home and a victim of family violence has preferential rights to public housing.

In Austria, the Protection from Violence Act empowers the police to expel perpetrator of domestic violence from the shared home. The police expulsion is effective for two weeks. If the victim wishes the protection to be extended, she may apply for a temporary injunction to the local court within the two weeks seeking an additional two weeks.

In the U.S., if a victim petitions the court for a civil protection order, a request may be made to the judge to evict the perpetrator from the home, or the victim may choose to leave. If they are living in public housing, victim cannot be evicted from her home because of her status as a victim, and the perpetrator may be evicted. In addition, several states have passed laws prohibiting private landlords from discriminating against victims of domestic violence in renting homes, and prohibit eviction from housing. In addition, the national fair housing law prohibits discrimination based on sex in housing, and this has been interpreted to prohibiting discrimination in housing against victims.

Also, in the U.S., several states including California and New York have laws that prohibit employers from refusing to hire or fire a victim of domestic violence, sexual violence or stalking. These laws also require the employer to provide accommodations to keep the victims safe at work including relocation to another workplace and locks on doors. Several states in the U.S. including California, Washington State and Illinois have passed laws requiring employer to provide leave from work for victims to heal from injuries, relocate and attend court proceedings to ensure their safety from the perpetrator of the violence.
Recommendations

The Chinese national Family Violence Law should include housing protections for victims of family violence including the ability of the court to:

- Enforcement of the victim’s right to remain in the home;
- Order an offender/respondent to allow the victim to enter a home or part of a home and remain there;
- Regulate the occupation of the dwelling, including dividing it up and restricting a party from entering a specified part of it;
- Regulate, including suspending or restricting the exercise of a respondent’s rights in relation to the dwelling house;
- Order an offender/respondent to leave a house or part of it and still continue carrying out his responsibilities towards the children and if married, such responsibilities accruing to his spouse as a result of their marriage;
- Exclude a respondent from a defined area around the property, for example require the offender to stay at least 50 meters away from the home.

In addition, the law should provide for preference in public housing for victims who choose to leave their home, access to emergency and transitional housing and prohibit denial of housing to victims and their children because of their status as victims of family violence.

Similarly, the law should prohibit employers from firing or refusing to hire a victim of family violence because they are victims of family violence and require employers to provide leave from work to address the violence in their lives, including attending court proceedings to obtain a civil protection order or other relief.

V. Conclusion

China must demonstrate its commitment to ending family violence by adopting a national law that establishes the State’s obligations and responsibilities to prevent family violence, to protect its victims and to provide rehabilitation and punishment to perpetrators. It must create the framework necessary to ensure the coordination and collaboration among government and non governmental organizations to ensure the law’s effective implementation. The national Family Violence Law must contain specific protections and rights for all victims of family violence including women, children, elders and persons with disabilities. The experiences of survivors of violence must inform the development of remedies for victims and accountability for perpetrators including punishment and rehabilitation. Legal protections must also reflect the unique characteristics of domestic violence, a form of family violence, by integrating remedies and legal structures that address the pattern of abuse used to exert power and control over victims who are primarily women and the societal gender bias that permits it. Finally, the law must contain clear procedures and responsibilities for courts, judges, prosecutors, attorneys, the police, the health community, social service providers and community partners to enforce the law to end family violence in all its forms.
education on domestic violence should be included in school curricula at all levels as a primary prevention method.

Korea’s expert recommended community education programs including videos on prevention and protection of victims disseminated to broadcasting business operators. There is also a public education campaign in New Zealand called “It’s Not Ok!” that focuses supporting community action on family violence. It provides information and advice, training, and provides education materials and other resources. In the U.S. a new public education initiative was launched recently called “No More!” and it includes having well-known actors agree to pose for posters with their name and the words “No More” and domestic violence, or sexual violence.

Training on the Dynamics of Family Violence

Another key aspect of prevention efforts described by almost every international expert was training on the dynamics of domestic violence and its impacts on victims, including an understanding of gender bias is necessary for judges, prosecutors, police, nurses, doctors, social workers, and anyone else who regularly interacts with families and victims.

Training, to be effective must be provided by experts, provided regularly, at no cost to the attendees, and it must be funded by the State.

Training is necessary because a law cannot change attitudes and mindsets about domestic violence, it cannot convince a police officer to consider it a serious crime and thus respond appropriately, and it cannot explain how a social worker can support a disabled victim. Only through extensive and regular training and education of all service providers can the necessary shift in culture and attitude about domestic violence be achieved. Importantly, trainings must be tailored to each group.

In Finland, challenges faced are changing attitudes about violence against women, legal reform and evaluation of the laws, knowledge about gender, violence and the law by service providers. In Korea, counselors and trainers must be qualified to work on emergency call centers, counseling centers and shelters. They must attend a 100-hour education program and training.

Attorneys and judges should receive training specific to their roles, and social workers and nurses should receive training specific to their role. Moreover, cross training on domestic violence and disability, domestic violence and child abuse, and domestic violence and elder abuse is required to ensure that all service providers know how to identify all forms of abuse, and response appropriately.

New Zealand has a violence intervention program that is a health services program in which all women who are 16 years old or older seeking health services are asked if they have experienced family violence. The questions are asked privately when she is alone and any risks identified are medicated. The program provides ongoing training for staff, there is management-level buy-in, staff connects individuals who are identified as victims with support services and there is evaluation of these activities to evaluate their effectiveness.

In the U.S., on average, the national Violence Against Women Act funds train over 500,000 law enforcement officers, prosecutors, judges, victim advocates, and other personnel, and provide services to more than 700,000 victims every year.

The South African expert also recommended that national legislation should include requiring that all services providers be familiar with and training on safety planning and provision of them to victims based on her experience. In addition, she stated that National Police Instructions on Domestic Violence should clearly state the powers of the police as being to search the premises, look for the victim, ensure the security and protection of the victim and children, confiscate the dangerous weapons and all necessary evidence required in court and effect arrest on the perpetrator and leave all other functions to the court.

Reporting, Research and Data Collection

Several experts highlighted the importance of the need to collect data on the rates of domestic and family violence experienced by girls and women, elders, and persons with disabilities as well as children. Regular review of implementation of policies and procedures to ensure outcomes and impact has proven effective in more than one country represented at the International Conference.

It was repeatedly noted that a lack of information about the rates of violence and types of violence experienced by persons with disabilities and elders made it difficult to understand the scope of the problem and incorporate that understanding into effective prevention, protection and punishment structures. It was recommended that the national domestic violence law require that intersectional data be collected on domestic violence, based on age, location, whether the person has a disability, and whether children were present in the home for the violence.

For example, in 2003-2004, the Japanese Ministry of Health, Labor and Welfare conducted a nationwide survey on elder abuse in a domestic setting which found that the average age of victims was 81.6, 76.2 percent of the victims were female, and 99.6% of the victims needed some form of care. Identified perpetrators of the abuse included daughters-in-law (20.6%), daughters (16.3%) and spouse (husband: 11.8%; wife: 8.5%). 88.6% of perpetrators were living with the victims. The most frequently reported abuse was psychological, 63.6%, neglect, 52.4%, physical, 50%, financial 22.4%, and sexual, 1.3%. This information proved extremely helpful in the drafting and passage of their national law regarding elder abuse as described below.

Similarly, New Zealand conducted a national survey in 2001 and 2006 to develop a better understanding of the percentage of persons who identify has having a disability. In 2006, the survey indicated that 17% of the population was living with a disability, 82% of whom were adults living in private households. The percentage of persons with disabilities increased with age and the most common disability types for adults were physical and sensory. Of the adults living in residential care, 99.7% had a disability. This information was valuable in understanding how to develop effective interventions to reach persons with disabilities who may be at risk for abuse.
In addition, regular reporting and data collection regarding the police response and the courts’
experience with handling cases involving allegations of abuse is also critical to ensuring victims are receiving the protection and access to their rights as contemplated in the national law. This research should be collected regularly and analyzed for information that may be used to improve legal and social service responses. The recommendation was for the State to dedicate funding for this purpose expressly.

**Examples of Multi-Sector Coordination and Collaboration to Provide Support Services for Victims**

In Japan, the national law against elder abuse identified the Comprehensive Community Support Center in each municipality as the agency that receives reports of elder abuse and each prefectural government is responsible for coordination among municipalities, provision of information and any assistance and advice necessary. Partnering and cooperating organizations identified include the police, professionals at long term care institutions, doctors, public health nurses, lawyers, and any other individuals who work at institutions related to welfare for the elderly. There are advocacy centers in each municipality to support older people and older persons with disabilities. It is the responsibility of the municipality to develop a cooperation system among related agencies and to publicize the agency that accepts abuse reports and what services are available for preventing abuse and providing support to victims and caregivers. Rooms are held for older people in need of care when caregivers are identified as so burdened that they need emergency physical and psychological help.

In Korea, the national law required the state to establish and operate emergency call centers for victims, including foreigners. Collaboration and coordination of services is key, with the Korean Bar Association and other legal aid agencies, with medical institutions, with shelters and counseling centers.

The South African expert also recommended creating one stop service centers for victims across the country like in South Africa where they are called Thuthuzela Care Centres. They are meant to have all services at one place for health, social, judicial counseling, etc. for victims. Services must be available for victims 24 hours including a hotline and police response.

In Austria, as well the U.S., there are shelters for victims and counseling centers that focus on violence in intimate relationships with a focus on violence against women. There are hotlines for victims to call and translators are available to help victims who speak various languages when they call the hotline.

**Protections for Children in the Context of Family Violence**

Several experts recommended inclusion of specific protections for children in national legislation addressing family violence. Experts from the United Kingdom and Australia in particular provided guidance as to how to incorporate protections for children in the national law in the context of family violence. Research in Australia indicates that violent households are significantly more likely to have children than non-violence households and that violent households have a significantly higher proportion of children age five years and under. The expert from the U.S. also provided information about the long-term impact of domestic violence on children who are present in the home when it occurs, whether or not they are targeted or the direct focus of the abuse:

- 5.5 million U.S. children live in families in which partner violence occurred at least once in the past year, and seven million children live in families in which severe partner violence occurred;
- Children who experience childhood trauma, including witnessing incidents of domestic violence, are at a greater risk of having serious adult health problems including tobacco use, substance abuse, obesity, cancer, heart disease, depression and a higher risk for unintended pregnancy;
- Children of mothers who experience prenatal physical domestic violence are at an increased risk of exhibiting aggressive, anxious, depressed or hyperactive behaviour.

Experts from Australia, and the U.S. all stated that identifying the risk of harm to children and enacting safeguards to protect them in a family law system is difficult. In the context of relationships, abuse may not be as clear as an act of physical violence, but may involve subtle and prolonged exposure to controlling and threatening behaviors. Australia’s Family Law Legislative Amendment Act of 2011 attempted to incorporate this understanding into the legal system response. Importantly, 79 percent of judicially determined cases in the Family Court and 67 percent of cases in the Federal Magistrates Court in Australia included allegations of family violence and/or child abuse.

Specifically, several experts recommended that the definition of family or domestic violence in the national law include children’s exposure to family violence. For example, in Australia, the Family Law Act of 2011 amended the definitions of family violence and abuse to include exposure to family violence defined as: “a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.” Abuse in relation to a child is defined as “[a]n assault, including a sexual assault of the child or [a] person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person or causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subject to or exposed to, family violence, or serious neglect of the child.”

In the U.K., protections for children are available within the context of a family where there is a factual nexus with domestic violence. It is recognized that children are vulnerable to family violence, and there is a duty of civil society to provide mechanisms to provide rights and protections allowing a mechanism for providing safety, privacy and confidentiality are considerations. This information is incorporated into the access of non-molestation orders an occupation orders as described below.
Examples of Effective Responses To Elder Abuse

Experts from Japan and the United Kingdom provided extremely valuable information about elder abuse and their experience in adopting and implementing national laws to address it. Notably, both countries have adopted laws on elder abuse separate from national anti-domestic violence laws. It was agreed by experts that a national law addressing elder abuse is important, and there are ways to incorporate elder abuse into a national anti-domestic violence or family violence law. A key question that was raised was whether to include abuse by caregivers employed by the family in the home or in an institution in the group of individuals identified as offenders of domestic violence or family violence. The consensus among the experts is that this type of abuse is serious and must be addressed by the law, but not in the context of a national anti-domestic violence law, since labor laws typically cover these forms of abuse.

For example, Japan has a Law for Preventing the Abuse of Older People and Providing Assistance to Caregivers. The purpose of the Elder Abuse Prevention Law is to specify the roles and responsibilities of the national and local governments as well as private citizens for preventing the abuse of older people, for protecting victims of abuse, and for assisting caregivers in reducing the burden of caregiving. Traditionally in Japan, family members have taken care of older parents at home, however industrialization and urbanization led people to leave their homes and there are ways to incorporate elder abuse into a national anti-domestic violence or family violence law. The consensus among the experts is that this type of abuse is serious and must be addressed by the law, but not in the context of a national anti-domestic violence law, since labor laws typically cover these forms of abuse.

An expert on elder abuse from the U.K. stated that it is important to incorporate social and cultural contexts, gender and power relationships and know that abuse occurs not just family and interpersonal relationships. It is also critical to recognize ageism is a part of the issue. Elder abuse may take place in any context including when a vulnerable adult lives alone or with a relative, or when they live in nursing, residential, or day care settings, in hospitals, custodial situations, support services who come into people homes, or other places previously considered safe. It is critical to assess the environment to identify the abuse, the context in which the behavior is occurring is relevant because exploitation, deception, misuse of authority, intimidation, or coercion may render a vulnerable adult incapable of making his or her own decisions.

Similar to the social model definition of disability described above, experts recommended adopting the social model definition of elder abuse states that the person is not vulnerable, but the circumstances or situation they are in may render them vulnerable to abuse. As a result, prevention of abuse involves risk assessment and risk management. Effective interventions to stop elder abuse include legal, therapeutic, supportive, focus on victim and perpetrator. Education and training about the unique aspects of elder abuse for police and all service providers for elders and victims of domestic violence is essential, as well as judges and prosecutors. National guidance with local approaches is recommended, the development of multidisciplinary perspectives that emphasize collaborative orientation and partnerships. Confidentiality is also a critical issue, if an elder seeks assistance or anther reports abuse and there must be clear protocols to ensure confidentiality. Agencies should draft a common agreement relating to confidentiality and setting out the principles governing the sharing of information based on the best interests of the vulnerable individuals. A key theme in the development of responses to violence against women in the U.K. is empowerment. Empowering

This graphic demonstrates the system of response to elder abuse in Japan:
The age perspective of interpersonal violence has been considered as an emerging issue since action approved by an older adult. Caregiver or family member or undue gains allotted to the caregiver or family member from abuse is the inappropriate disposal of an older person’s property without their consent by a caregiver or family member, care workers, and volunteers. The consent of the victim is an issue as well. Whether the individual has the ability to consent to care, or consent to the state’s investigation into abuse is a key question. Consideration of an individual’s right to self-determination, right to refuse protection, consideration of their capacity, and the type of the abuse and the extent of their participation is key. Abuse may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Financial or material abuse may include theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions or the misuse or misappropriation of property, possessions, or benefits. Also financial exploitation against older persons by family members or people they are familiar with using undue influence due their role and power to exploit the trust, dependence, and fear of others or by means of coercion, intimidation, undue influence, deception and/or emotional abuse are very rarely reported, although an elder may have the mental capacity to make decisions regarding his or her finances. Perceptions of financial abuse appeared less consistent over time.

In Japan, elder person is defined as someone who is over 65 years old or older. Caregiver is defined as individuals who provide nursing care in domestic settings, excluding professionals. Elder abuse is defined as abusive and neglectful acts including physical abuse, caregiving neglect, psychological abuse, sexual abuse and financial abuse by caregivers in domestic settings and personnel of long term care institutions and of nursing care service providers. Physical abuse is defined as abusive acts, which harm or may harm the body of an older adult. Caregiving neglect is a lack of caregiving that leads to malnutrition including leaving older people alone for a long time. Psychological abuse is defined as negative behaviors directed at older people including abusive language, emotional abuse that causes considerable psychological trauma to older adults. Sexual abuse is defined as inappropriate sexual behaviors directed at older people, forced sexual engagement or unwanted engagement in sexual related discussions with older adults. Financial abuse is the inappropriate or disposal of an older persons property without their consent by a caregiver or family member or undue gains allotted to the caregiver or family member from an action approved by an older adult.

The age perspective of interpersonal violence has been considered as an emerging issue since 1975 from UK.1 It was initially called as “granny battering”, that indicates from beginning of its recognition; gender was unavoidable perspective of violence against older persons. While population ages, the sex ratio of older persons will decrease along age cohort as women outnumber men in old age. Elder women are the majority of the older population. But women suffer longer than men in bad health though their life expectancy is higher than men. Physical and mental impairment leaves them more vulnerable to violence. In cultural specific contexts, for example, in some traditional societies older widows are subject to abandonment and “property grabbing”.

Challenges

Continuing challenges include how to treat cases of elder abuse when victims do not want to be removed from their families or their abusers, and how can a family reunion is made successfully. Similarly, how can support be given to caregivers who are perpetrating the abuse. The presenter from Japan recommended that the perpetrators of elder abuse who are family members be supported rather than punished. Ignorance of different forms of violence leaves us blind to vulnerability of older persons, particular older women who are subject to sexual violence and economic control.

Recommendations Regarding Addressing Family Violence Against Persons with Disabilities

International experts from New Zealand and the national expert from China on disability provided invaluable information about the increased vulnerability of persons with disabilities to violence and recommendations for how to include effective protections for victims with disabilities in the national law. The key to protecting victims of domestic violence who have disabilities is to develop robust interventions across government programs leading to mainstreaming of family violence prevention.

In New Zealand, the definition of domestic relationship in the national Domestic Violence Act is unclear so the Act may not cover disabled please, and it does not require police officer to be trained in disability, something that the New Zealand expert recommended and it does not address the need for services for victims of domestic violence be accessible for persons with disabilities. There is a need for research and data on the percentage of disabled persons who experience domestic violence, and a need to ensure universal access. It is known that persons with disabilities experience domestic violence at higher rates, and yet disabled people do not have a way to be a part of the service design for victims to ensure that it addresses their needs. As a result, police may not identify domestic violence committed against persons with disabilities, the information available in the courts for victims to enforce their rights to be free from violence are not accessible, and so then effectively they do not have any rights. Similarly, domestic violence counselors and service programs have limited knowledge about persons with disabilities and there is limited collaboration between domestic violence and disability advocacy communities. Similarly, disability service providers have limited knowledge or training about domestic violence and thus are not identifying and assisting abuse survivors. It is important similarly that public education campaigns about domestic violence include persons with disabilities and abuse experienced by persons with disabilities. Korea’s expert recommended that shelters should be long term and short term and include access for persons with disabilities.

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1 In British scientific journals in 1975 (Baker, 1975).
Examples of Criminal Punishment and Accountability of Offenders

All of the experts address criminalization of domestic violence as a critical part of holding offenders accountable and keeping victims safe.

The expert from Korea explained that the mixture of civil and criminal remedies authorized in their national legislation has meant that domestic violence is still not being taken seriously as a crime. However, criminal enforcement of protection orders is important. In Korea, the goals of their laws regarding domestic violence include punish to the perpetrator of the violence, to provide family protection to rearrange the environment and change the behaviors so that peace and stability in the family that has been destroyed by the domestic violence can be restored and healthy family can be developed and the human rights of the victim and family members can be protected. Domestic violence crimes in the criminal code include injury or assault, abandonment or abuse, arrest or confinement, threatening, defamation, housebreaking, coercion, fraud or blackmail, destruction of wealth or property. A perpetrator of domestic violence is defined as a person who has committed a domestic violence crime and a victim is one who has been directly damaged by domestic violence.

When there is evidence of danger of a recurrence of domestic violence in Korea, the prosecutor may petition the court to issue Temporary Measures. With Temporary Measures, a judge may order a perpetrator be evicted from the home or room shared with the victim, may prohibit him from coming within 100 meters of the victim, and prohibit the perpetrator from contacting the victim via telecommunications. If the person subject to Temporary Measures violates the order, the prosecutor may request detention in a police cell or prison. Korea also has Urgent Temporary Measures where the police may request the court to issue Urgent Temporary Measures when there is danger of recurrence of domestic violence. The police can request for Urgent Temporary Measures within 48 hours. If the request does not occur that quickly or if the court does not grant the Temporary Measures the Urgent Temporary Measures should be cancelled.

Punishment for perpetrators convicted of not implementing protective disposition or for violating a temporary protection order or a victim protection order in Korea includes imprisonment for up to 2 years imprisonment or a fine or detention. For repeated violations, judges may order perpetrators be imprisoned for up to 3 years or a fine. If an agency staff member violates a victim’s confidentiality, a judge may order them to up to one-year imprisonment or a fine. If a newspaper or broadcasting company or publisher violates the victim’s confidentiality, they may face a smaller fine. If a domestic violence offender refuses to cooperate with an investigation they can be fined.

Unfortunately, Korea faces challenges in the punishment and accountability for offenders: it is weak and not enforced. In 2009, only 10.4% were indicted for domestic violence cases. Questions from police like “Do you want to press charges?” and “Do you want your husband to be punished transfer the burden from the police to the victim. Domestic violence is not considered a crime but rather a behavior to be changed by education and counseling. Two tracks of legal response: criminal punishment and family protection and they are not working well together. A survey in 2012 of victims in shelters indicated that victims are not reporting domestic violence because they fear increased violence from the offender, they don’t know how to report, they don’t think things will improve if they report to the police and they fear that the offender would know that they are reporting. Often it is reported that the police do not separate the victim and the offender when they come to the home and they do not arrest the offender.

New Zealand also has Police Safety Orders that may be issued by the police on the spot and is effective for five dates. It is a document given to the victim and the offender is evicted from the home for five days. 27,400 have been issued.

Austrian criminal law prohibits marital rape, stalking persistent perpetration of violence, sexual exploitation and prostitution of minors, trafficking in prostitution and sexual harassment. Amendments to the Act of Criminal Procedure also increase rights and protection for women including the right to information, right to access the file and notification of the date when the offender will be released from prison, right to participation in proceedings granted to the victim. In 1994, Finland recognized rape in marriage and in 2002 a law was passed requiring notification of the victim when the perpetrator is released from prison. The police investigate the abuse when there is suspected criminal behavior; the penalty for assault is a maximum of two years.

Questions raised in Japan in the process of developing the Elder Abuse Prevention Law included disagreements about whether the court should have authority to issue a written permit to enter homes. The law permits personnel to enter the home for investigation only if there is a reported case of elder abuse. Another concern raised was whether perpetrators of elder abuse should be punished. It was decided that it is more appropriate to treat caregivers as individuals who need support instead of punishment.

Importance of Addressing Confidentiality

In Korea, public officials, assistants, counselors, and heads of agencies must keep the facts of domestic violence confidential. In family protection case, no personal items or photos can be printed or broadcast. Teachers and staff members of schools and day care centers may not reveal information on children’s enrollment, transfer or advancement to another school due to domestic violence.

In the U.S., some states have passed laws prohibiting publication of the victim’s address or contact information in court or other public records. Confidentiality is critical to ensuring that victims feel comfortable coming forward and seeking assistance. In the U.S. confidentiality is included in the Violence Against Women Act, the national anti-domestic violence law, and it applies to all service providers who work with victims and is communicated to the victim. Similarly, in South Africa, the national Domestic Violence Act requires that the physical address of the complainant must be omitted from a protection order, unless the terms of the order necessitate its inclusion. The court may issue any directions to ensure that the complainant’s physical address is not disclosed in any manner that may endanger the safety, health or wellbeing of the complainant. Amendments to the Act of Criminal Procedure also increase rights and protection for women including the right to have the new address of the victim is kept confidential.
Economic and Financial Remedies and Rights of Victims

Several international experts emphasized the need to recognize the economic impact of domestic violence on victims and the need for the national law against domestic violence to incorporate economic remedies.

In Korea, state or local government may support victims with financial benefits including cost of living, education expenses for children, childcare expenses or other needs. Korea’s national law also prohibits an employer from dismissing or giving other disadvantages to an employee who is a domestic violence victim. Victims have preferential rights to public housing.

The South African expert stated the need for the national anti-domestic violence law to recognize the financial, economic challenges facing victims who may not feel that they can leave if they have no income. Amendments to the South African Act of Criminal Procedure also increase rights and protection for women including the right of the victim to receive financial reparations from the offender in the criminal proceedings.

In the U.S., several states have passed laws prohibiting employers from firing employees because they are victims of domestic or sexual violence and providing job accommodations and leave from work for victims to address the violence in their lives without fear of job loss.

ANNEX B

Additional Information about Current Laws and Policies in China
Addressing Family Violence

“The state respects and protects human rights” is a basic principle established by China’s Constitution when it was revised in 2004. National Chinese law specifically addresses domestic violence as a violation of human rights. Citizens have the right to life and the right to health. Marriage, family, elderly, mothers and children are protected by law. Battering other individual is considered a violation of women’s rights of the person according to the General Principles of Civil Law of the People’s Republic of China.1 In China, the Marriage Law, Women Rights & Interests Protection Law, Minor Protection Law, the Disability Protection Law, and The Elder Rights & Interests Protection Law explicitly prohibit domestic violence. In addition, the Criminal Law, the Criminal Procedure Law, the Civil Procedures Law and the Public Security Law safeguard the personal rights of the family members.

The Marriage Law also stated that family violence should be prohibited, and a victim of family violence may seek assistance from local committees, the victim’s family and public security to seek mediation and to stop the violence.2 The Marriage Law also states that individuals who commit family violence that is sufficiently severe as to constitute a crime under the Criminal Law shall be held criminally liable.3 Finally, it detailed that if a spouse is able to prove domestic violence is the basis for divorce; she is entitled to claim damages for the domestic violence.4 Although this language is clear, the law did not provide a definition of family violence or domestic violence for these purposes, leading to confusion and a lack of enforcement of these provisions. In December 24th 2001, the several interpretation of the Chinese Marriage Law [1] issued by China's Supreme People’s Court included establishment of domestic violence as a permissible basis for divorce if mediation fails.5 It defined domestic violence is defined as: “the perpetrator batter, binds, injures, or forcibly restrict personal liberty of the family member causing physically or mentally harm to the family member.”

The Women Rights & Interests Protection Law of 1992 was amended in 2005 and prohibits domestic violence against women in the section of rights and interests in

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3 Id. at art. 45.

4 Id. at art. 46(c); see Zhao, supra note 44, at 211.

marriage and family. The law also provides a multi-sectorial intervention model so as to prevent and stop domestic violence. The police, the civil administration bureau, the judicial administration bureau and the rural and urban grass roots self-governing mass organization, social organization, should prevent and stop domestic violence within their duty scope and offer relief for the battered women by law. The law also provides that the victim may claim for administrative punishment imposed on the perpetrator; also the victim may file civil litigation to the court. These laws also do not provide definitions of these terms nor enforcement mechanisms for these protections.

The Minor Protection Law, which was revised on 26 October 2012, prohibits domestic violence against a minor and thus protects the minor’s rights in family relationships and protects the physical and mental health of the minor. China’s children are further protected by other legal provisions specifically aimed at protecting them in their roles as, for example, family members or as students, as well as being covered by general legislation covering crimes against the person. Despite this, China still lacks a clear legal definition of violence against children as well as legal provisions prohibiting violence against children in all its forms.

Article 25 of the Elder Rights and Interests Protection Law was adopted in 1996 and revised on 28 December 2012 and prohibits domestic violence against an elder. Article 75 provides that one who commits intervention of the freedom of marriage of the elder, the abuse against the elder or domestic violence against the elder should be criticized and educated by the organization or company in which one works for; one, who is in violation of public security management rules, should be administratively punished; one, who is commit crimes, should be liable for one’s crimes. It is however, without a proper provisions and clear procedures for the elderly benefit and there is no provision for elderly against family abuse and violence.

With respect to family violence against the disabled the Chinese law on the Protection of Persons with Disabilities (2008) provides some protection with respect to rehabilitation, education, employment, social security and cultural life, but the issue of family violence against the disabled is not addressed therein.

Article 260 of the China Penal Code provides that “One who maltreats the family member shall, if the circumstances are severe, be sentenced to no more than two-year term, criminal detention or public surveillance. One who commits the above crime with serious injury or death of the victim, shall be sentenced to a term between 2 years and 7 years. The first crime shall not be tried without complaint.”


Addressing the need for clarity regarding the definition of family violence in the Marriage Law, China’s Supreme People’s Court issued the “Judicial Interpretation for Issues Regarding the Marriage Law of the People’s Republic of China” in December 2001. This document provided the first national-level guidance on how judges should handle marital cases involving allegations of domestic violence, including a definition of family violence.

1. Judicial Guidelines Issued by China’s Applied Jurisprudence Institute

In March 2008, the Institute for Applied Jurisprudence of the Supreme People’s Court of China issued “The Bench Book on Marriage Cases Involving Domestic Violence” (涉及家庭暴力婚姻案件审理指南 roughly translated as “Bench Book”) for judges hearing marital cases. The Bench Book contained a description of how judges may issue civil protection orders (renshen baohu ling or 家暴安全保护令) to provide protection to victims of domestic violence. The purpose of the Bench Book is to provide assistance to judges handling marriage cases involving allegations of domestic violence. It includes a definition of domestic violence, and it incorporates reference to the national Civil Procedure Law as the authority for judges to issue civil protection orders. In conjunction with issuance of the Bench Book, nine pilot courts were authorized to use the Bench Book to issue civil protection orders on behalf of victims of domestic violence in marital cases. Over the last few years, the number of provinces and courts involved in the pilot project has expanded to include at least seventy-four. Beijing was included in the pilot project in August 2012.

Only individuals who are married to the person whom has allegedly committed domestic violence, or those who are recently divorced from the individual whom has allegedly committed the domestic violence are currently permitted to petition the court for a civil protection order in China. As stated in the Bench Book, an individual may only file for a civil protection order immediately proceeding or for a limited time after, filing for divorce. A victim must file for divorce within fifteen days of when the court has issued the civil protection order or the civil protection order will be deemed expired. The victim may also apply for a civil protection order for six months after the divorce proceedings are completed. In this way, the Bench Book requires that the civil protection order be issued in conjunction with divorce proceedings. Application for civil protection judge may start at the starting day of, during, or within 6 months of the divorce proceedings. Urgent protection order has a 15-day period of validity while long-term protection order lasts for 3-6 months.

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The Bench Book references CEDAW and incorporates the definition of family violence from the Judicial Interpretation of the Chinese Marriage Law from 2008. The Bench Book defines domestic violence for the purposes of determining when it is appropriate to issue civil protection orders in marital cases, thereby addressing confusion caused by the lack of clarity in the Marriage Law. The definition of domestic violence is broader than the definition of family violence:

Behavior, among family members, especially between husband and wife whereby one party violates the other party’s physical, sexual, emotional and other personal rights through coercion, violence, abuse, economic control and other means in order to attain the purpose of controlling the other party.”

It then references international conventions, laws, and research as the basis for further describing the four manifestations of domestic violence: physical violence, sexual violence, emotional violence, and economic control. These forms of domestic violence are framed as violations of individual rights, consistent with international human rights principles. The inclusion of emotional, mental, economic, and sexual harm as forms of domestic violence in the Bench Book demonstrates a clear understanding of dynamics of domestic violence, that it is a pattern of physical and other abusive behaviors and tactics designed to assert power and control over the victim.

The Bench Book is not law, and it is not binding on Chinese judges. However, several high provincial courts have issued opinions including language from the Bench Book regarding issuance of civil protection orders in marital cases; these opinions are considered law and binding in those jurisdictions. Moreover, attorneys have referred to the Bench Book when representing victims of domestic violence seeking civil protection orders in marital cases.

Between March 2008, when the Bench Book was issued, and October 2010, it was reported that one hundred protection orders were issued. It is estimated that over two hundred have been issued as of April 2013! For example, Shaanxi became a part of the pilot protection order project in 2010, and they have issued thirty-five protection orders for victims as of January 2013.

On February 27, 2014, the Supreme People’s Court released 10 typical domestic violence guiding cases with judicial intervention, through which the Supreme Court direct the courts’ trial of domestic violence cases. The lower level courts should refer to and comply with the Guiding Cases released by the Supreme Court. The Guiding Cases can also be quoted in the judgment by the lower level courts. The 10 cases extend the definition of domestic violence in the current judicial interpretation, explicitly deem the mental violence such as threatening, intimidation as domestic violence. Also the 10 cases consider the control of power as the roots of domestic violence, though which the domestic violence can be distinguished from other sorts of disputes. In addition, the 10 cases made explicit model on some controversial issues such as the issuance of protection order, protection of the victim in break-up violence, protection of the children who witness the domestic violence, the relief of punishment in the case where the victim revenged violence with violence.

A Chinese legal framework against domestic violence has been established after years of effort and legislation against domestic violence has made significant progress. However, the current rules are prescribed separately in many laws and there is no systematic law. There are no explicit definitions of domestic violence behavior. The rules are mostly slogans and advocacy articles so that they cannot be implemented. The rules put emphasis on the punishment afterwards instead of prevention or intervention in advance so that it cannot protect the victim and stop the violence effectively. Therefore, China needs a special comprehensive anti-domestic violence law to set up a systemic institution to prevent and stop domestic violence, to rescue the victim, to punish and correct perpetrators so as to control domestic violence effectively.

2. Consideration of Evidence in Protection Order Cases

In China, the Bench Book asserts that a judge should treat the statement of the victim as more credible than that of the offender. In support of this recommendation, the Bench Book states that the victim would not take the risk of coming to court and sharing this information unless it was the truth. The Bench Book also provides examples of evidence that may prove that a petitioner has suffered domestic violence or is facing the threat of domestic violence in order to meet the evidence requirements of a civil protection order. Pictures of injuries, police records, a statement from a witness, documentation from a social service organization, and documentation of the abuse, including text messages containing threats from the respondent, are all examples of evidence that the victim may bring forward or the judge may seek in support of a victim’s statement. The Bench Book states that the standard of proof that the judge should use to consider this evidence is preponderance of the evidence and the judge is to make the decision “based on logic reasoning and the rule of experience and avoid the evidence standards of criminal procedures.” Once the victim presents evidence of the injury and that the respondent committed the act that caused the injury, the burden of proof shifts to the respondent. If the defendant denies causing the harm but is unable to provide evidence in support of his denial, then the Bench Book instructs the judge to find domestic violence has occurred and grant the order. The Bench Book permits judges in China to issue a civil protection order that includes a similar range of injunctive relief as in the U.S.: requiring the respondent to stay a certain distance from the victim, her home, work, or other places she frequents, prohibiting the respondent from harassing, stalking, beating, threatening, or having any other unwelcome contact with the claimant. In addition, the judge may also order the respondent from beating and threatening the family and friends of the claimant. The judge may also order that the respondent temporarily move out of the residence shared by the parties.

Because the civil protection order may only be sought along with a divorce, there are also several remedies available that are specifically related to the divorce proceedings. For example, the judge may order that while the protection order is in effect, “either party shall not make decisions on joint property of great value.” In this way, the linking of the civil protection order to the divorce proceedings is helpful in preserving assets. The Bench Book specifically recognizes that financial considerations may play a role in her decision to seek safety. It states that when a judge finds it necessary, he or she may order the respondent to pay for living expenses for the victim and expenses related to raising any minor children in the custody of the victim while the order is in effect. Moreover, the judge may order the batterer to pay for any medical expenses, fees for therapy, or
“necessary fees of the claimant for receiving medical care due to the violent behaviors of the respondent.” These specific remedies related to divorce proceedings and financial support for victims acknowledge the risk that women take coming forward to seek a divorce in China and the significant financial barriers that she will face including obtaining housing after the separation.

The Bench Book also recognizes that the victim wants the abuse to stop, and the batterer may need professional assistance in order to change behavior, so the judge may order that the respondent receive therapy at his own expense. However, in China, limited availability of appropriate batterers’ treatment services makes this a false option in many instances. Finally, the Bench Book includes a “catchall” provision that enables the judge to order “other measures to protect the personal safety of the claimant and their specific family members.”

According to the Bench Book, if the respondent violates a civil protection order in China by harassing, beating, or threatening the victim or her family members, including specifically forcing the victim to drop the charges or give up “legitimate rights and interests” the court should impose fines or take the respondent into custody. If the respondent’s behavior is both a violation of the ruling, and a crime, he should be “transferred to the public security agency” or “inform the victim that he or she may file criminal private prosecutions.” The Bench Book also addresses the possibility that the victim may return to the court seeking that the civil protection order be dismissed. Within three days of receiving the order, the claimant or the respondent can request a hearing on dismissing the order. If the judge believes that a hearing is necessary, she may decide to hold a private hearing excluding all but the parties and family members. If the claimant refuses to attend the hearing, the order will be dismissed, unless it is proven the reason the victim did not attend is because the respondent threatened the victim. If the respondent refuses to attend the hearing on dismissal of the order, the hearing will proceed ex parte.