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# THE WOMEN'S LEGAL RIGHTS INITIATIVE

## ALBANIA NGO PROTOCOL ON DOMESTIC VIOLENCE

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## **THE WOMEN'S LEGAL RIGHTS INITIATIVE**

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## NGO PROTOCOL ON DOMESTIC VIOLENCE

The goal of domestic violence intervention is:

- To prevent and reduce domestic violence in all its forms by appropriate legal means
- To guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled
- To uphold the law
- To hold the abuser accountable
- To provide an opportunity for abuser rehabilitation if appropriate
- To reduce recidivism and the need to return to the same location repeatedly.
- To prevent serious injury and homicide by intervening at lower levels of assault

A new law, "On Measures Against Violence in Family Relations" outlines very specific measures for NGOs providers.

### Definitions

Domestic violence occurs when any act of violence is committed within the family including but not limited to: (Article 3, On Measures Against Violence in Family Relationships)

- Murder (Articles 76 – 83, 85 of Penal Code)
- Threat (Article 84)
- Torture (Articles 86 and 87)
- Wounding (Article 88/b)
- Termination of pregnancy without consent (Article 93)
- Denial of help (Article 97)
- Causing of suicide (Article 99)
- Abduction (Article 109, 109/a)
- Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
- Trespass (Article 112 )
- Forcing into and exploiting for prostitution (Article 114)
- Insult (Article 119)
- Defamation (Article 120)
- Limitation of the freedom of expression/speech, of movement or assembly (Article 261)
- Violation of private life (Article 121)
- Rape (Articles 100-107)
- Other obscene acts (Article 108)
- Abandonment (Article 124)
- Denial of living means (Article 125)
- Illegal taking of child (Article 127)
- Coercion for cohabitation or termination of marriage (Article 130)
- Damage to property or economic well-being (Articles 150-154)

Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)

Serious intentional injury (Article 88, 88/a)

Non serious intentional injury (Article 89)

Other intentional injury (Article 90)

Serious injury due to negligence (Article 91)

Non serious due to negligence (Articles 92)

Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

AND one of the following relationships applies: (Article 3)

1. “Members of the family” are
  - a. Spouses or cohabitating partners
  - b. Brothers, sisters, relatives of direct blood line, including adoptive parents and children
  - c. Spouses of persons provided in paragraph b
  - d. Persons related by direct blood line, including parents and adoptive children of the spouse or the cohabitating partner,
  - e. Brothers and sisters of the spouse if these have been living together during the last 3 (three) months

### NGOs Role in Protection of the Victim

The law gives NGOs a very specialized and particular role:

- A petition for protection order may be presented on behalf of a minor by NGOs licensed by the Department for Prevention and Reduction of Domestic Violence (Article 15)
  - An NGO should think very carefully and take into account the following factors before presenting such a petition:
    - What is the capacity of the shelters?

At this time, there are only 3 in Albania and they only have for women with 2-3 children.

Is there a possibility that State Services will take the children and if so, is this a positive outcome?

There are no government shelters for children only orphanages. These have been known to have substandard care and there have been scandals especially regarding sexual abuse.

What is the reason the protective parent is not making the petition?

Is the protective parent unable to request a protection order because of physical or mental incapacity, is the person in jail, is the person prevented from leaving the house by the abuser?

- A petition for an emergency protection order may be presented by NGOs licensed by the Department for Prevention and Reduction of Domestic Violence. (Article 15)
  - The NGO should be very careful about using these provisions so as not to dis-empower the victim or make the situation more dangerous. The following factors should be considered:
    - Is there a life endangering situation?
    - Is there a medical exam or documentation/proof of the abuse?
    - Does the victim already have a plan to deal with the situation?
    - What will be attitude and likely action of the judge or police unit where the victim must ask for the order?
    - Will the victim be able to take her children with her if she leaves the home?
    - Does the victim know she can request such protection?
    - What are the services the victim will be able to access?
    - How safe will the victim be even after getting an order?
- Documents from NGOs may become evidence in the hearing. (Article 18)
  - The NGO must be mindful of the confidentiality requirements and safety issues before turning over documents and may need to retain their own attorney.
  - Articles 59, 159, 282, 283, 284 from the Criminal Procedure Code outline the law regarding reporting and testimony requirements in Albania. These are attached at the end of this protocol. Be sure that these are read and understood.
  - The NGO must also be mindful of the ethics codes relating to certain professions such as legal, medical and social workers.
- The representative from the NGO may be called as a witness in the hearing. (Article 19)
  - The person must be mindful of the confidentiality requirements and safety issues before testifying and may need to retain their own attorney.
  - Articles 59, 159, 282, 283, 284 from the Criminal Procedure Code outline the law regarding reporting and testimony requirements in Albania. These are attached at the end of this protocol. Be sure that these are read and understood.
  - The NGO must also be mindful of the ethics codes relating to certain professions such as legal, medical and social workers.

### NGOs Role in Implementation of the Order

The law gives NGOs tasks in implementation of the order as well:

- NGOs shall implement measures established by the court decision and shall coordinate with local government and police. (Article 26)
  - This must be read in conjunction with existing law regarding confidentiality requirements.
  - It must also be read in conjunction with existing reality. If a court orders a victim to stay at a shelter and there is no room, a privately funded NGO cannot be expected to comply without state support.
  - Likewise if a court orders victim or perpetrator to rehabilitation services and none exist due to lack of funding, capacity or expertise, an NGO cannot be expected to deliver what does not exist.

In addition, other areas of the law indirectly impact NGO's.

- Article 10(4) says that line government authorities are to provide transportation to victims to medical or social service centers. Currently most shelters have confidential locations which are not even disclosed to law enforcement. Neither hospitals nor law enforcement are safe places for victims. Neither hospitals nor law enforcement are safe places for victims nor can confidentiality be trusted. The present system works through NGO referral only. Without adequate infrastructure, it is suggested that this system continue.
- Article 6(g) and 8 (i) require that the MOLSAEO, Department of Prevention and Reduction of Domestic Violence will license shelters and rehabilitation facilities. NGOs are not currently involved in this process which is not open and transparent. NGOs need to be involved in the decision making to ensure that licensing standards incorporate Best Practices.
- A uniform method of keeping statistics needs to be developed among the NGOs and the regional hotlines under Article 9(3). In addition, since many women in the rural areas do not have access to telephones, a method of access needs to be devised for them.

## RECORDS

NGOs working with victims of domestic violence should bear in mind the importance of confidentiality for victims. Often victims will not come to a NGO unless they are assured of anonymity because they are too ashamed to have it known publicly that there is violence in the family. This is difficult to maintain in a small country and may not be practical.

One problem that has already arisen is if the victim flees with, especially with the children, and the perpetrator then goes to the police to report her disappearance as a crime, what information should the shelter or the lawyer provide to the police. The suggestion is if possible to have a central point where law enforcement can call e.g. a law office who can then find the information and reply to law enforcement only the information that we know nothing about her or she and the children are safe. If there is no central point, it is recommended that the shelter should say they cannot confirm if the woman is in the shelter or not, but they will put up a notice on a public notice board and she may call them. The shelter should then talk to the woman if she is there and tell her

what her husband has done and let her decide how to respond. If she does not want to call law enforcement, ask if the NGO can call and just tell them she and the children are safe.

Because the necessary infrastructure does not exist, it is probable that the NGO will be the only place that accurate records are kept for domestic violence victims. At the same time, problems exist regarding confidentiality for women at a shelter. These problems may become more acute as the legal infrastructure develops and comments made during counselling or at a shelter can be used against the victim. There are several methods to resolve this.

The shelter could consider not using names on their records but only referring to them by number so the person cannot be identified. The shelter could consider having two files. The official file would have only demographic information in it and general information. While a separate non-official file could be kept by the social worker that would have more detailed data including personal details that might cause problem for the victim at a later date. All files may be kept by the lawyer thereby creating a lawyer client relationship that is confidential. An NGO should have a consistent format and train its staff on that. All information should be kept in locked cabinets with limited access to only certain personnel. A victim should have access to her own record at any time.

Below are some suggested questions to assist NGO staff in getting necessary information.

#### 1. Safety Assessment

- Is the abuser present at the location of the exam?
- Assess and record information pertaining to the person's risk for suicide or homicide and potential for serious harm or injury.
- Determine if it is physically/psychologically safe for the victim to go home. Are the children or other dependents safe?
- Assess the victim's degree of entrapment and level of fear.

#### 2. Police Report and Protection Order

- The victim should be assisted in filing a police report if she chooses to but should never be pressured to do so. Under no circumstances should use of the facility or services be limited to those who have filed police reports.
- The victim should be assisted to file a protection order if she chooses to but should never be pressured to do so. Under no circumstances should use of the facility or services be limited to those who have filed protection orders.
- Staff should be aware of legal reporting requirements in Albania. See Criminal Procedure Code Articles at the end of this protocol for more information.
- Note whether a police report was filed and record the name of investigating officers and actions taken.
- Note whether a protection order was requested and the court or police unit at which it was requested.

### 3. Screening – How to Ask

- Direct Questions
  1. At any time, has a partner hit, kicked or otherwise hurt or frightened you?
  2. Has your partner or ex-partner ever hit you or hurt you?
  3. Has he/she threatened to hurt you or someone close to you?
  4. Has your partner ever tried to restrict your freedom or keep you from doing things that were important to you?
- Indirect questions
  1. When I see a woman with an injury like yours, it is sometimes because someone hurt her. Has someone been hurting you?
  2. How has the abuse affected the patient's health?
- Current Episode questions
  1. What happened?
  2. How were you hurt?
  3. Were alcohol or drugs involved?
  4. Was a weapon involved?
  5. Was the use of pornography involved (when sexual assault)?
- Follow up questions
  1. Have your children ever seen or heard the abuse?
  2. Have your children ever been threatened or hurt?
  3. Have you sought help in the past?
  4. Have you ever tried to leave? What happened?
  5. What resources are available to you in the community?

### 4. Lethality Assessment – Homicide Risk

- How has the control or violence changed in frequency/severity?
- Does the abuser use drugs and/or alcohol?
- (If sexual abuse) Does the abuser use pornography?
- Has s/he ever threatened or tried to kill you or others close to you?
- Do you believe he is capable of killing you?
- Is there a firearm in the home?
- Have you ever been threatened with a weapon or has a weapon been used on you?
- Are you planning to leave/divorce him? Is s/he aware of your plans?
- Is it safe for the victim to go home? How much danger is the victim in if she stays/leaves?
- Are there warning signs that allow her/him to anticipate impending danger? Does the victim have a safety plan?
- What kind of access does the perpetrator have to the victim?

## **Specific Albanian Laws of Relevance**

The first set of laws relates to when a person has to report a crime, what kinds of crimes they are obligated to report and what are the legal protections for professionals regarding confidentiality.

### **Article 159 Criminal Procedure Code Maintaining professional secrecy**

1. May not be compelled to testify on what they know due to their profession, except in cases where they have the obligation to report to proceeding authorities:

- a) religious representatives, whose statutes are not in contravention of the Albanian legal order;
- b) attorneys at law, legal representatives and notaries;
- c) physicians, surgeons, pharmacists, obstetrics and anyone who exercises a medical profession,
- d) those who exercise other professions, which the law recognises them the right not to testify on what is related to professional secrecy.

2. When the court has reasons to suspect that the claim made by these persons in order to avoid the testimony has no grounds, orders the necessary verification. Where it (claim) results baseless, the court orders the witness to testify.

3. Provisions provided under paragraph 1 and 2 shall also apply to professional journalists pertaining to the names of persons whom they have got information from during the course of their profession. But, when the information is indispensable to prove the criminal offence and the truthfulness of the information may only be proved through identification of the source, the court orders the journalist to reveal the source of his information.

### **Article 282 Criminal report from medical personnel**

1. The medical personnel that is legally bound to lodge a criminal report, must present it within forty-eight hours and send it to the prosecutor or any judicial police officer of the place where he has intervened or provided the assistance and, when the delay may bring any danger, to the nearest judicial police officer.

2. The medical personnel criminal report stipulates the person to whom the assistance was given and, when it is possible, his personal details, residence and anything else that serves to identify him, circumstances of the act, means used to commit it and its consequences.

3. When several persons have provided their medical assistance in the same case, all of them are obliged to make a criminal report, with the right to draft and endorse a single document.

Comparing these two Articles, it seems that IF there is a specific law that requires a medical personnel to report, then they have to do so in accordance with Article 282. But since there is no such law, they are not required to report or testify as in Article 159.

The next laws apply to when a crime has to be reported.

### **Article 283**

#### **Criminal report from citizens**

1. Any person that has received notice of a criminal offence prosecuted *ex-officio* must lodge a criminal report of it. In cases specified by law, lodging of criminal report is compulsory.

2. The criminal report is lodged orally or in writing to a prosecutor or to a judicial police officer, personally or through a representative.

3. Anonymous criminal reports may not be used except in cases provided for by article 195.

Those crimes that are prosecuted *ex-officio* are those where a complaint from the victim is not necessary.

### **Article 59**

#### **Aggrieved person private prosecution**

1. One who is aggrieved by the criminal offences provided for by articles 90, 91, 92, 112, first paragraph, 119, 120, 121, 122, 125, 127, 148, 149 and 254 of the Criminal Code, has the right to apply in court and take part in the trial as a party to prove the charge and claim the reimbursement of the injury.

2. The prosecutor participates in the trial of these cases and, as the case may be, request for the conviction or acquittal of the defendant.

3. If the private prosecutor or his defense counsel assigned by him does not appear during the session without reasonable grounds, the court dismisses the case.

Thus the crimes listed in Article 59 are private prosecution claims that can go forward only if the victim brings the complaint. Therefore, they DO require a complaint from a victim. Therefore they are NOT *ex officio* and information about these crimes does NOT need to be reported under Article 283.

These crimes are:

- Other intentional harm (90)
- Serious injury due to negligence (91)
- Non serious injury due to negligence (92)
- Breaking and entering into a home (112)
- Insulting (119)
- Libel (120)
- Intruding into someones privacy (121)
- Spreading personal secrets (122)

Denial of support (125)  
Failing to inform of the changing of domicile (126)  
Unlawfully taking of child (127)  
Publication of another persons work with own name (148)  
Unlawful reproduction of the work of another (149)  
Infringing the inviolability of a residence (254)

Article 284 also requires that a complaint must be filed by the injured person before a criminal charge can begin. These crimes DO require a victim complaint and cannot be brought *ex officio*. Therefore, information about them does NOT need to be reported.

These crimes are:

Non serious intentional injury (89)  
Non-consensual sexual intercourse with a mature woman (102.1)  
Sexual or homosexual intercourse through abuse of office (105)  
Sexual or homosexual intercourse with extended family members or under custody (106)  
Forcing or impeding to cohabit or divorce (130)  
Abuse of telephone calls (275)

#### **Article 284 Complaint**

1. The prosecution for the criminal offences provided for by articles 89, 102, paragraph one, 105, 106, 130, 239, 240, 241, 243, 264, 275 and 318 of the Criminal Code, may commence only with the complaint of the injured person, who may withdraw it at any stage of the proceedings.

2. The injured person lodges a statement with the prosecutor or judicial police in person or through a special representative, in which he expresses his willingness to prosecute an act provided by law as a criminal offence.

3. When the complaint is made orally, the records kept for this purpose are endorsed by the complainant or his representative.

4. The one who receives the complaint ensures the identity of the complainant and submits the documents to the prosecutor.

5. In cases provided for by article 59, the complaint is filed with the court by the injured private accuser (private prosecutor).

The next laws relate to the possibility that a person from an NGO could be called as an expert witness on domestic violence. The following articles of the Criminal Procedure Code outline the process and requirements of such expert witness.

#### **Article 178 Object of Expert Examination**

1. Expert examination is allowed when it is necessary to carry out researches or to acquire information or evaluations that require special technical, scientific or cultural knowledge.

2. Expert examination to determine the professionalism in the (commission) of the criminal offence, criminal drive, the character and personality of the defendant and, in general, the psychical features that do not depend on pathological causes, are not allowed.

### **Article 179**

#### **Assigning of Expert**

1. An expert is assigned by selecting him among persons recorded in certain books for this purpose or among those who have special knowledge in the relevant subject. When the expert examination is declared invalid or new examination is needed to be performed, the proceeding authority takes measures, when possible, that the new task shall be entrusted to another expert.

2. Notice of the proceeding authority decision to assign an expert shall be served to the defendant or his defence counsel, informing him that he has the right to ask for disqualification of the expert, to propose other experts, to take part in expert examination, when possible, and to present questions to the expert.

3. When researches and evaluations seem very complex or require different knowledge in several subjects, the proceeding authority entrust the performance of examination to several experts.

4. Expert is bound to perform his task, except in cases where there exists one of the grounds that excludes him from being an expert or when he claims that he is not competent or does not have the ability to perform the expert examination and his request is accepted by the proceeding authority.

### **Article 182**

#### **Provision on proceeding authority**

1. The proceeding authority orders the expert examination by a reasoned decision, which contains the assigning of expert, a brief presentation of the case, the day, time and venue assigned for the appearance of the expert.

2. The proceeding authority summons the expert and takes the necessary measures for the appearance of persons subject to expert examination.

### **Article 183**

#### **Assigning the task**

1. The proceeding authority, after being ensured on the expert's identity, asks him whether there are grounds of disqualification for the task of expert, warns him on the obligations and liabilities provided for by the criminal law, drafts the requests for expert examinations and invites him to make the following statement: "Being aware of the moral and legal responsibility of the task I am undertaking, I shall perform it with

honesty and fairness and I shall keep the secrecy of all the actions connected to the examination".

2. Remuneration of the expert is determined by an order of the authority that ordered the expert examination.

#### **Article 184** **Expert Actions**

1. In order to answer the requests for examination, the proceeding authority may authorise the expert to look into acts, documents and anything else included in the prosecutor's or court file.

2. The expert may also be authorised to take part during the questioning of parties and obtaining of evidence.

3. When the expert requests information from the defendant, injured person or other persons, the information will be used only for the purposes of expert examination.

4. When for the needs of expert examination it is necessary to destroy or change the essence of an item, the experts, when possible, are bound to preserve the rest of the item, evidence the part used for the examination, informing the proceeding authority and the parties as such.

#### **Article 185** **Expert examination report**

1. The expert opinion is given in writing.

2. When the assigned experts are more than one and they have different opinions, each one of them presents his opinion in a separate report.

3. Where facts are complex and the expert cannot give an immediate answer, the proceeding authority gives him a period of time not longer than sixty days. In case of need for especially complex verifications, this period of time may be extended for more than once for periods of time not longer than thirty days, but not exceeding the maximum period of time of six months.

If the case is a civil one e.g. a protection order hearing, the following is the law related to expert testimony in civil cases.

ALBANIAN CIVIL PROCEDURE CODE

### **EXPERT**

#### Article 80

When specific knowledge in the field of science, technology or art is requested for the assessment or clarification of facts related to the dispute in trial, the court will call one or more experts.

Experts are selected from among persons registered in special lists and in conformity with the rules determined in this Code.

## Article 81

The expert gives his opinion in writing, but may be heard in a court session and be asked by the court and the parties.

The opinion of the expert is not mandatory for the court and when the court has a dissenting opinion with that of the expert, it must reason in details such an opinion in the final decision or in the decision given during the trial.

It is not up to the expert to give a juridical opinion.

## Article 82

The expert is obligated to fulfil the tasks given by the court except for when he presents justified grounds which are accepted by the court.

The failure of the expert to appear in court without legitimate grounds, causes his bringing to the court by enforcement.

The dismissal of the expert from his participation in trial is made when the conditions provided in Article 72 of this Code are met.

## **Responsibility of the expert**

### Article 83

The expert bears responsibility in conformity with the Penal Code in case he refuses to perform the task he has been given to him or performs a false expertise.

The expert is obligated to compensate damages, which have been caused to the parties or other participants in the process because of his guilt.