**An Exploratory Study on Issuance of Protection Orders in Shanghai (2016.3-2019.9)**

**Executive Summary**

(March 2020)

Developed by Beijing Equality **[[1]](#footnote-1)**



**Introduction:**

In March 2019, on the third anniversary of the implementation of the "Anti-Domestic Violence Law of the People's Republic of China" (passed on December 27, 2015, effective on March 1, 2016, hereinafter referred to as the "Anti-Domestic Violence Law"), Beijing Equality, an NGO dedicated to combatting gender-based violence based in Beijing (为平妇女权益机构) issued a report based on the analysis of court decisions made on 560 applications for protection orders country-wide. The analysis found, inter alia, several trends apropos the nature of such applications: The number of applications and issuance of protection orders is increasing year on year; applicants are diverse; in addition to physical and mental violence, sexual violence, economic exploitation and control were common; and there had been success in applications for protection order extensions.

However, the report also found that some judges lacked thorough understanding of protection orders, which impaired their action to respond effectively to the specific needs of applicants. Furthermore, the report stressed that greater initiatives must be taken by judges in connecting the various parties responsible for domestic violence work in the judicial process, and that the disclosure of information and data related to cases of domestic violence must be improved. The nationwide report has motivated a need for critical analysis of the situation of protection orders in specific regions of China; this report is a direct response to that need.

Shanghai is a world leading metropolis and has a highly developed economy and vibrant social space, especially when compared to other cities in China. Therefore, its position as an advanced society and economy provokes interest in how it has managed to implement the "Anti-Domestic Violence Law" with respect to protection orders.

Beijing Equality developed this report which identifies the challenges faced by domestic violence victims grappling with applications for protection orders in Shanghai. This report is intended as a useful reference by researchers and practitioners as well as to motivate all partners involved in domestic violence work, to continue to follow closely the implementation of Shanghai's protection order system. In addition, we hope that this report will enable researchers and practitioners to monitor the implementation of protection orders in other provinces and cities, and make the protection order system more accessible for victims and effective in practice with the goal of promoting gender equality and protecting the rights and interests of citizens.

**Why Protection Orders?**

Protection orders are designed to build a barrier to curb incidence of domestic violence. As a coercive measure of the civil court (民事强制措施), a legal decision in favor of a protection order carries the intent to prevent domestic violence and protect former and potential victims, their children and relatives from harm.

**Scope of the Study:**

This report covers legal decisions of the applications for protection orders in Shanghai. The data were retrieved from the Chinese Judicial Documents website (<http://wenshu.court.gov.cn/>) of the Supreme People's Court during September and October 2019. A total of 104 legal decisions, issued by Shanghai District Courts between 1 March 2016 to 30 September 2019, were retrieved. The data represented 91 protection order cases, as well as a number of appeals and requests for extension for some of the cases.

The data was analyzed according to four areas of interest: Information of the applicant; the nature of the violence involved in the case; the details of the case as reported in the application; and the decision of the court, or, result of the application. Based on the specific findings of this research, combined with supplementary reports, we make four broader policy recommendations and several recommendations specifically for the judiciary branch. (See "Recommendations" section below)

It is important to note that not all cases and not all documents for each case are uploaded to the Chinese Judicial Documents website, and therefore, this report falls short in presenting a full picture of the situation in Shanghai. For example, while Shanghai's first protection order was issued in Xuhui District, the documents from the district were not available and had to be regrettably excluded. Notwithstanding, the data collected in the report was significant and the breadth of analysis and discussion takes these factors into account. Furthermore, we have included supplementary reports and materials to strengthen apparent gaps.

**Findings:**

In each of the four sections under focus, several important points were revealed from the data.

**1. Information of the applicant**

Among all cases, approximately 80% of the victims were female and more than 80% of the perpetrators were male. This data supports the result by previous studies that domestic violence is "gender-based"; In majority of the cases we examined, males are the perpetrators who conducted violence against their female partners, which is the most common relationship between applicant and respondent. 14% (11 cases) of the victims were elderly who were over the age of 70, and 4% (3 cases) were underage girls.

**2. Nature of the violence involved**

In 83 cases where the form of violence was specified in the legal documents, 95% (79 cases) involved physical violence, 57% (47 cases) involved mental violence, 27% (22 cases) involved damages to properties, and 8% (7 cases) involved economic abuse. 4% (3 cases) of the applicants experienced restricted personal freedom and 2% (2 cases) sexual violence. Nearly 70% of the applicants reported more than two forms of violence. The duration of abuse varied remarkably, from several days to 44 years.

**3. Details of the application**

Of the 82 cases specifying protection measures, 73% (60 cases) applied for at least two protection measures. The measure “prohibiting the perpetrators to practice domestic violence” are most likely to be approved (62%), followed by the measure to prohibit a specific violent act (60%), and thirdly, the measure “prohibiting the respondent to visit the applicant's residence, school, workplace or other venues where the applicant regularly visits” (57%).

More than 70% of the applicants submitted at least one piece of evidence and more than half submitted two or more pieces of evidence. Nearly half of the applicants provided evidence proving they had sought help from police. However, evidence was subject to rigorous review and many of the documents provided were ultimately rejected. In some cases, even submission of the police-issued "Domestic Violence Written Warning " (告诫书) failed to aid the applicant in getting a protection order. Also, the additional notes of the judgement suggest gender stereotypes played an important role in the rejection of the application.

**4. Result of the application**

One-third of the applications were rejected while only 54% (49 cases) approved. A large variation in application decisions was found between the different districts of Shanghai. Pudong New Area had the highest success rate of 75%, followed by Jiading District and Hongkou District with 55%, Qingpu District and Songjiang District with 50%, and Minhang District with 36%. Baoshan District rejected 83% of applications.

**Discussion:**

Several critical problems in the implementation of protection orders were found:

*- The number of applications for protection orders was small, and the issuance rate was low.*

According to data from Shanghai Women’s Federation, police were involved in nearly 3000 cases of domestic violence in 2016, however, by November 2016, only 44 "Written Warnings" were issued by police. In the same period, 106 applications for protection orders went to the court, and about one third of these applications were approved. By November 2018, 249 applications were accepted and 93 were approved. Comparative data shows that Shanghai's protection order issuance rate is far behind the national average. Furthermore, there is significant disparity between the various districts in Shanghai in the use of protection orders.

*- Specifically, protected groups and other vulnerable groups of protection measures.*

Cases involving minors, who might be both observers and victims of domestic violence, often result in court decisions aimed at maintaining the status quo rather than removing children from potentially dangerous situations.

In the case of violence against the elderly, the issuance of protection orders remains a problem. Among the ten cases involving persons between 71 and 90 years of age, six of those applications were rejected. No applications from other specifically protected groups in the Anti-Domestic Violence Law including the seriously-ill, the disabled, pregnant or breastfeeding women, were available for retrieval from the online database. Similarly, no applications from members of the LGBTQ+ community were found.

- Standards on admissible ev*idence are excessive.*

The requirements for evidence were in many cases excessively stringent, which vitiated the power of the protection order system. The protection order is a tool of prevention rather than punishment, and the issuance of a protection order does not determine conviction of the respondent. Therefore, the requirement for evidence should not be unreasonably high, thereby limiting its proper application.

In addition, when an application was rejected, the judged often failed to give concrete reasons explaining the rejection, and in those instances where a detailed explanation was provided, the reasonings are often based on the judges’ personal perceptions of safety, family and gender, rather than only on the provisions outlined by the law.

*- Issues related to protection orders submitted by a representative.*

The law on protection orders allows the police and the ACWF (All China Women's Federation) and other relevant agencies to apply on behalf of victims of domestic violence, however, of the cases examined by this report, these organizations have failed to exercise this duty and, in some cases, have victims turned to their abuser. For example, in Shanghai’s "Butterfly Case", the victim, who used the pseudonym "Butterfly" and identified herself as a lesbian, was subject to abuse by her family. Despite widespread attention to the case in China, local police in Shanghai did not aid the victim, but rather brought her back to her abusers.

- Court response to violations of protection orders.

The report identified two cases where a protection order was violated. In both cases, the court did not penalize the abuser for violating the order. Not only does this undermine the strength of the protection order system but it is also unfair to victims who have endured the process of applying for protection.

Recommendations:

As discussed above, the issuance and implementation of protection orders is not commensurate with the need in Shanghai, thus, we make four policy recommendations and several specific recommendations to the judiciary.

**Policy recommendations:**

1. Increase publicity of information related to the understanding and use of protection orders.

2. Increase the awareness of government and relevant agencies on domestic violence knowledge and ensure their ability to properly execute on their responsibilities as per their respective roles in domestic violence cases.

3. Strengthen collaboration between sectors responding to domestic violence cases.

4. Ensure proactive disclosure of domestic violence information and statistics.

**Specific recommendations for the Judiciary:**

5. Strengthen the legal system's implementation of protection orders by addressing several important areas:

5.1 Improve Judges’ awareness of domestic violence and how protection orders can be applied in practice.

5.2 Increase the acceptance and issuance rate of protection orders.

5.3 Increase issuance of eviction orders which compel the perpetrators to move out of the house from the victims.

5.4 Improve the system for determining admissibility of evidence related to domestic violence.

5.5 Ensure to investigate cases of delayed or overdue decisions and suggest corrective policy.

5.6 Ensure violations of active protection orders are investigated and violators held responsible.

**Concluding Remarks**

We hope that this report could contribute to efforts to combat domestic violence and ensure Shanghai can live up to its name as a model international metropolis.

1. This is the latest report among Equality’s monitor report series on the implementation of the Anti-Domestic Violence Law of China, published March 8, 2020. All previous reports were issued on March 1, 2017, November 28, 2017, March 6, 2018, and March 8, 2019 respectively, and can be found on Equality's website: www.equality-beijing.org. This report was written by Shuang Lin, Zudy Zheng, Zhang Wanqing and Feng Yuan and the English Executive Summary was written by Corey Willis. [↑](#footnote-ref-1)