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**LEGAL ANALYSIS OF THE LEGISLATION REGULATING
RELATIONS IN PROTECTION OF WOMEN FROM VIOLENCE IN
KYRGYZSTAN**

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** The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

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“Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families, and on society as a whole. Most societies prohibit such violence — yet the reality is that too often, it is covered up or tacitly condoned,” said UN Secretary-General Ban Ki-Moon in his address on 8 March 2007.

The studies of domestic violence problem conducted in Kyrgyzstan during 2003-2004 have indicated that it is widely spread. 70% of female and 66% of male citizens of the country acknowledge that domestic violence is a real problem existing in the Kyrgyz society. According to the National Statistical Committee, a number of people seeking help from social support centers is increasingly growing¹.

Kyrgyzstan is taking a number of actions aimed to reduce cases of any form of violence against women. Development of the legal framework meeting all international standards is of a key role in this.

At present, 2 groups of regulations effective in Kyrgyzstan can be distinguished, which regulate relations in protection of women from violence and ensure guarantees of equality and priorities for women's protection: international and national laws. Let us explore them in detail.

In accordance with the Main Law of the Kyrgyz Republic – Constitution, international treaties and agreements signed by the Kyrgyz Republic and that has entered into force as prescribed by the law, as well as universally accepted principles and norms of international law are an integral part of the legal system of Kyrgyzstan (Article 12). Thus, the international treaties listed below should be considered as an integral part of the legislation of Kyrgyzstan.

I. International Legislation

Kyrgyzstan, as a full member of the international community, has joined and ratified all major international instruments aimed to prevent violence against women and to eliminate all forms of discrimination, including the following documents:

1. *The Universal Declaration of Human Rights (10.12.1948)* has laid down the basic guarantees and outlined the main priorities for the protection of women against discrimination. Article 2 of the Declaration has established that everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 16 of the Declaration clearly establishes that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. And what is important is that marriage shall be entered into only with the free and full consent of the intending spouses.

¹ In 2004, 2,189 women and 47 men applied to crisis centers; in 2006, 5,510 women and 888 men sought help from crisis centers (according to data of the National Statistical Committee of the Kyrgyz Republic). According to the Ministry of the Interior, police receive from 8 to 10 thousand calls every year asking them to arrive to scenes of family scandals.

2. *The UN International Covenant on Civil and Political Rights (16.12.1966)*² in Article 3 obliges the States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

The subsection 3 of the Article 23 of the Covenant establishes that no marriage shall be entered into without the free and full consent of the intending spouses, while Article 26 establishes that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. *Convention on the Elimination of All Forms of Discrimination Against Women (18.12.1979)*³ in Article 1 very clearly defines “discrimination against women”. The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The Article 2 of the Convention very clearly prescribes all States to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

A special attention is paid in the Convention on elimination of discrimination against women regarding: participation in political and public life (Article 7); participation in representation

² The Kyrgyz Republic joined the International Covenant on Civil and Political Rights with the resolution of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 12 January 1994 No. 1406-XII.

³ The Kyrgyz Republic joined the Convention on the Elimination of All Forms of Discrimination Against Women with the resolutions of the Legislative Assembly of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 25 January 1996 No. 3 320-1 and the Assembly of People's Representatives of the Jogorku Kenesh of the Kyrgyz Republic of 6 March 1996 No. II N 257-1.

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of their Governments at the international level and participation in the work of international organizations (Article 8); acquiring, changing and retaining the nationality (Article 9); obtaining education (Article 10); employment (Article 11); health care (Article 12); the right to family benefits, bank loans, mortgages, as well as the right to participate in recreational activities, sports and all aspects of cultural life (Article 13); equality before the law (Article 15); marriage and family relations (Article 16).

It is very important that the Convention singles out the issue of protection and elimination of all forms of discrimination against women in rural areas (Article 16). It is very relevant for Kyrgyzstan, as the majority of the population live in rural areas.

4. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (06.10.1999)*⁴ is an important instrument for implementation of the Convention on the Elimination of All Forms of Discrimination Against Women and allows individuals or groups of individuals to report to the UN Committee on the Elimination of Discrimination Against women about cases of violence or violation of rights set forth in the Convention.

This allows citizens to be protected in cases when all available national methods of legal protection have been exhausted. It is particularly important that in accordance with the Article 5 of the Optional Protocol, in any time upon receipt of the report and before making a decision, the UN Committee may request a State Party to urgently consider its appeal and to take temporary actions that may be necessary to avoid possible irreparable damage to a victim or victims of presumed violation.

5. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (10.12.1962)*⁵ is another very important mechanism for Kyrgyzstan, as marriages without mutual consent and bride kidnapping are still a critical problem.

The Article 1 of the Convention directly bans marriages without full and free consent of both parties. Besides, such consent should be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses. The Article 2 obliges the States Parties to take legislative action to specify a minimum age for marriage. It is important that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons.

6. *Convention on the Nationality of Married Women (20.02.1957)*⁶ sets forth fundamental principles of acquisition and change of the nationality of married women based on equality of parties in the marriage, specifically neither the celebration, nor the dissolution of a marriage

⁴ The Kyrgyz Republic joined the Optional Protocol with the Law of the Kyrgyz Republic of 23 April 2002 No. 72.

⁵ The Kyrgyz Republic joined the Convention with the resolutions of the Legislative Assembly of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 25 January 1996 No. 3 322-1 and the Assembly of People's Representatives of the Jogorku Kenesh of the Kyrgyz Republic of 6 March 1996 No. II 260-1.

⁶ The Kyrgyz Republic joined the Convention with the resolutions of the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic of 25 January 1996 No. 3 323-1 and the Assembly of People's Representatives of 6 March 1996 No. II 259-1.

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between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife. A woman may acquire the nationality of her husband through specially privileged naturalization procedures.

7. *Convention on the Political Rights of Women (31.03.1953)*⁷ clearly states that women are entitled to vote in all elections on equal terms with men, without any discrimination. Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. Besides, women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

8. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (07.09.1956)*⁸ sets forth commitment for all States Parties to take all measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices whereby: a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; a woman on the death of her husband is liable to be inherited by another person. The Article 2 of the Convention obliges the States Parties to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

9. *The Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (26.05.1995)*⁹ sets forth the right for men and women of marriageable age to marry and found a family and that no marriages shall be made without the free and full consent of intending spouses in its Article 13.

For the purpose of ensuring that working women may effectively exercise their rights, the Article 14 of the Convention obliges the Contracting Parties: to grant leave with pay, adequate social security benefits, or allowances from public funds for women taking leave before and after childbirth within the period of time prescribed by national legislation; to regard as unlawful any notice of dismissal served by an employer on a woman during her absence on maternity leave or at such time that the period of notice would expire during her absence; to ensure that mothers who nurse their children have sufficient free time for that purpose; to regulate the employment of women for work on night shifts in industry; to regulate the employment of women for underground mining activities as well as for other types of work that are unsuitable for women because of their dangerousness, harmfulness to health or arduousness.

⁷ The Kyrgyz Republic joined the Convention with the resolutions of the Legislative Assembly of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 25 January 1996 No. 3 321-1 and the Assembly of People's Representatives of the Jogorku Kenesh of the Kyrgyz Republic of 6 March 1996 No. II 258-1.

⁸ The Kyrgyz Republic joined the Convention with the Law of the Kyrgyz Republic of 26 July 1996 No. 53.

⁹ The Convention was ratified by the Law of the Kyrgyz Republic of 1 August 2003 No. 182

10. The Maternity Protection Convention of the International Labor Organization (28.06.1952¹⁰) regulates all issues related to labor activities of women, particularly during pregnancy and after childbirth.

11. The United Nations Convention Against Transnational Organized Crime (15.11.2000)¹¹ aims to promote cooperation to prevent and combat organized crime more effectively. While the **Protocol to prevent, suppress and punish trafficking in persons, especially women and children¹²**, supplementing the United Nations Convention against Transnational Organized Crime, aims to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; to promote cooperation among States Parties in order to meet those objectives.

II. Legislation of the Kyrgyz Republic

The legislation of the Kyrgyz Republic, that regulates relations in the area of protection of women from violence and discrimination, is rather well developed. Noteworthy, Kyrgyzstan mainly brought its national legislation in accordance with main provisions of the above mentioned international conventions. Several provisions have been incorporated into general laws and special norms. The general laws include the Constitution, Family Code, Labor Code, Election Code, Criminal Code, Administrative Responsibility Code, etc. The special norms include the Law on Socio-Legal Protection from Domestic Violence, Law of the Kyrgyz Republic on State Guarantees of Equal Rights and Opportunities for Men and Women and instructions that set forth the order of execution of these laws. Let us review them closer.

The Constitution of Kyrgyzstan¹³ in paragraph 3 of the Article 13 states that all people are equal before the law and court in the Kyrgyz Republic. No one can be subjected to discrimination, derogation of freedoms and rights due to birth, gender, race, ethnic origin, language, religion, political and religious views or other personal or social circumstances. The paragraph 4 of the Article under question explicitly states that men and women have equal rights and freedoms, as well as equal opportunities for their exercises in Kyrgyzstan.

The Labor Code¹⁴ contains a set of guarantees that establish a special order for women's employment. The law includes a set of guarantees in general articles and a separate chapter on regulation of women's labor.

Let us look at general norms. The Article 93 obliges employers to offer half-time working day or week as requested by a pregnant woman. Also, pregnant women may be offered work at

¹⁰ The Kyrgyz Republic joined the Convention with the resolutions of the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic of 25 January 1996 No. 3 324-1 and the Assembly of People's Representatives of the Jogorku Kenesh of the Kyrgyz Republic of 6 March 1996 No. II 256-1

¹¹ The document was ratified by the Law of the Kyrgyz Republic of 15 April 2003 No. 74

¹² The document was ratified by the Law of the Kyrgyz Republic of 15 April 2003 No. 74

¹³ The Constitution of the Kyrgyz Republic was adopted on 5 May 1993 (the wording adopted through the referendum of 23 October 2007)

¹⁴ The Labor Code was adopted on 4 August 2004

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night time only if this is not prohibited for health purposes. Mothers of children under 3 years of age may be offered work at night time only with their consent (Article 97). Besides, the law allows to engage pregnant women in overtime jobs (Article 100), weekend and non-working days work only if this is not prohibited for health purposes (Article 114). The given law bans to cut short maternity leave of pregnant women (Article 130) and entitles them to take a leave when necessary (Article 134).

A working woman may take a leave without pay to take care of a child under 3 years of age, during this leave a woman is entitled to retain her workplace (Article 137).

The Labor Code prohibits use of women's labor in arduous work and in types of work that are harmful or dangerous to health (Article 218).

A special chapter is devoted to regulation of women's labor. Specifically, the labor legislation prohibits use of women's labor in types of work that are arduous, harmful or dangerous to health, as well as underground mining, except for types of work that does not require physical force or types of work entailing delivery of sanitation or everyday services. The labor legislation prohibits to use women's labor in types of work related with lifting and moving heavy objects by hand, exceeding the maximum permissible norm for them (Article 303).

Also, the law prohibits denying women employment for reasons connected with pregnancy or the presence of children (Article 305). The output and service norms will be reduced for pregnant women in accordance with medical report and at their request, or they can be moved to another type work that has no harmful production factors with retention of previous the rate of pay (Article 306).

Women are entitled to pregnancy leave lasting 70 days prior to childbirth and 56 days (in case of complicated childbirth or birth of two or more children – 70 days) after childbirth with pay of pregnancy and childbirth benefit in the size prescribed by the law (Article 307).

Another guarantee is connected with entitling working mothers of children under 1.5 years of age to have additional breaks for nursing a child (children) apart from a break for repose and lunch every 3 hours of work lasting no less than 30 minutes each (Article 309).

Termination of contract with pregnant women is not allowed, except cases when an organization is liquidated or a contract expires (Article 310).

The Election Code¹⁵ in its revised wording of 23 October 2007 has an important guarantee for women in their right to be elected. Particularly, political parties may nominate no more than 100 candidates. Same gender candidates should not exceed 70% of the overall number of candidates. Men and women should alternate in list of candidates in a manner so that no more than 3 candidates of same gender are listed in succession (Article 72).

The Administrative Responsibility Code¹⁶ guarantees that no administrative arrest can be applied towards pregnant women (Article 38) and sets forth responsibility for an employer for illegal termination of a contract with a pregnant woman and mother of children under 3 years

¹⁵ The Election Code was adopted on 29 May 1999

¹⁶ The Administrative Responsibility Code was adopted on 4 August 1998

of age (Article 72).

Additions to the Administrative Responsibility Code were adopted on 26 July 2004. The Article 66-3 was added that states that domestic violence includes any intentional actions (physical, mental, sexual) of one family member against another in case these actions derogate constitutional and other rights and freedoms of a family member causing harm to health, physical or mental sufferings, damage his or her physical or mental development regardless age and gender and if these actions do not have signs for criminal prosecution. Such actions are subject to fine in the size varying from fivefold to tenfold minimum calculation index.

Besides, the Administrative Responsibility Code has norms regarding responsibility for failure to comply with terms of a temporary protective warrant (Article 66-4) and protective court order (66-5). An infringer will face either fine in the size varying from fivefold to fifteen-fold minimum calculation index or administrative arrest for up to 15 days.

*The Family Code*¹⁷ sets forth the most important principles and provisions regarding celebration of marriage. The first article states that family relations are regulated in accordance with principles of the free and full consent of the parties in the marriage, equality of spouses in family, resolution of family issues only with mutual consent, priority of family upbringing of children, providing for their well-being and development, providing appropriate protection of rights and interests for underage and disabled family members. Moreover, the law bans any forms of restriction of rights of citizens to entering into marriage and family relations by birth, race, ethnic origin, language or religion.

The Article 2 of the given law defines marriage as an equitable union between a man and a woman solemnized with the full and free consent of the intending spouses in the order prescribed by the law with the purpose to found a family, and as such generating property and personal relations between spouses.

The Article 3 of the law sets forth gender equality in family relations and clearly establishes equality of rights of women and men in family, equal personal and property rights, as well as equal opportunities for their exercise.

Marriages in Kyrgyzstan are solemnized at the authorities registering acts of civil status (Article 11) with the mandatory presence of marrying individuals (Article 12). The mutual free consent of men and women of marriageable age intending to marry is necessary for celebration of marriage (Article 13). The marriageable age in Kyrgyzstan is since 18 years old. The authorized local government bodies may be entitled to give permission to enter into marriage for women of 16 years old with serious reasons in place as requested (Article 14).

*The Criminal Code*¹⁸ contains norms that set forth an especial order of application of criminal law towards women, as well as norms that set forth accountability for committing violence against women.

Thus, for instance, correctional labor, as kind of punishment, shall not be imposed on pregnant

¹⁷ The Family Code was adopted on 30 August 2003

¹⁸ The Criminal Code was adopted on 1 October 1997

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women or women having children under 3 years of age (Article 46-2), women shall not be sentenced life imprisonment (Article 50).

The Criminal Code clearly states that crimes committed against pregnant women aggravate amenability of a person who committed such crime (Article 55).

The Criminal Code entitles pregnant women and women having children under 14 years of age, except for women sentenced to more than 5 years in prison for felonies a suspended sentence until a child turns 14 years (Article 72).

A number of articles of the Criminal Code set forth liability for different forms of violence against women. The law states the severest punishment for rape. Depending upon classifying signs, punishment varies from 5 years in prison to life sentence (Article 129). Forcing a woman to have sexual intercourse (Article 131), having sex and other sexual actions with a person under 16 years of age (Article 132), and sexual abuse of minor children (Article 133) are also punishable by law in Kyrgyzstan.

For unreasonable failure to employ or unfair dismissal of pregnant women and women with children under 3 years of age, an employer may face criminal liability in form of a fine in the size of up to one hundred-fold minimum calculation index (Article 144).

The legislators have set forth tougher liability for bigamy or polygamy, that is living together two or several women with maintenance of one household (Article 153). Such act is punished by up to 2 years in prison.

An important restrictive aspect of the current criminal law is responsibility for the forced entry into actual marital relations with a person who has not attained the age and kidnapping of a person who has not attained the age for entry into the actual marriage (Article 154). Depending on the severity, such acts are punishable by fine or imprisonment for a term of three to seven years.

Punishment for forcing women into marriage or continued cohabitation, bride kidnapping against her will, as well as obstruction to a woman to get married stipulated by the Criminal Code is as much important (Article 155). However, the measure of responsibility of persons for such acts is not so harsh. The guilty person can be punished with a fine in the size of 100-200-fold minimum calculation indexes or up to 3 years in prison.

The Criminal Code sets forth a very severe punishment for trafficking in persons. Recruitment, transportation, concealment, receipt, transfer, sale and purchase of a person or any other illegal deal with or without consent of a person made by coercion, blackmail, fraud, deception, kidnapping, with the purpose of exploitation or other benefits depending on the qualifying signs will be punished with imprisonment from 3 to 20 years (Article 124).

The Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence was adopted on 25 March 2003 through a unique method for Kyrgyzstan – using the method of grassroots initiative, when groups of women's organizations collected more than 30,000 signatures necessary for submission of the draft law for consideration of the Parliament. The given law aims to create socio-legal system of protection of life and health of family members from violence in Kyrgyzstan and provides violence victims with protection from domestic

violence in line with international human rights standards.

The law clearly defines domestic violence (family violence) as any willful act of one family member against another, if this act infringes the legitimate rights and freedoms of a family member, causing physical or mental suffering, moral harm or a threat to physical or personal development of a minor family member. Despite the fact that the law protects all persons, regardless gender, violence in family is mainly committed against women. Thus, according to findings of the monitoring of implementation of the Law on Socio-Legal Protection from Domestic Violence, in most domestic violence cases the violence was committed against women - the wives (57%), mothers (14%), sisters (7%), in every sixth case children suffered from violence (16%). Much fewer domestic violence was committed against other family members - fathers, stepfathers, uncles, aunts (6%)¹⁹.

The law obliges courts, prosecutor's offices, police stations, community courts, Ombudsman and other entities within a scope of their competence to take all possible measures to prevent and suppress domestic violence and to offer assistance to victims of domestic violence.

The law defines a temporary protective warrant and protective court order as means of socio-legal protection from domestic violence. The temporary protective warrant may be issued in case domestic violence has been committed or in case of a risk of domestic violence. A victim of domestic violence or his or her representative is eligible to apply for a temporary protective order in a situation posing threat to life or health of a family member.

The Law of the Kyrgyz Republic on State Guarantees of Equal Rights and Equal Opportunities for Men and Women was adopted on 4 August 2008. The Law bans direct and indirect gender discrimination (Article 5). In particular, direct gender discrimination includes discrimination by marital status, pregnancy, potential pregnancy and family duties; sexual harassment; different pay rates for the same work with the same qualifications. Indirect gender discrimination includes reproduction of gender stereotypes through mass media, education, culture; setting terms, requirements that resulted or may result in negative effects in form of harm to individuals of a certain gender.

Persons, who commit direct or indirect discrimination, may face punishment in cases and order stipulated by the legislation of the Kyrgyz Republic. Besides, the law sets forth guarantees of gender equality in public administration and public and municipal service, guarantees of equal electoral rights, guarantees of gender equality in economic and social conditions, in labor relations. The law provides for gender examination of legislation and draft laws of the Kyrgyz Republic.

The National Human Rights Program 2002-2010, which was endorsed by the executive order of the President of the Kyrgyz Republic on 2 January 2002, is implemented in Kyrgyzstan apart from the above mentioned laws. The given Program includes a whole section devoted to observance of women's rights (Section 3.4). Also, the President of the Kyrgyz Republic

¹⁹ Monitoring of practical application of the Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence. Bishkek, 2009, p. 6

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endorsed the *National Action Plan to Achieve Gender Equality in the Kyrgyz Republic 2007-2010* in his executive order of 20 August 2007. This Action Plan is a fundamental document that defines public gender policy, its goals, objectives, principles, directions and priorities and provides for coordination of efforts of legislative and executive agencies with all structures of civil society and non-governmental organizations in particular, which deal with implementation of social programs, prevention of discrimination by gender, protection of human rights and family, maternity, fatherhood and childhood as supreme human values.

The National Council for Women, Family and Gender Development at the President of the Kyrgyz Republic was set up for implementation of public gender policy in Kyrgyzstan. The State Secretary of the Kyrgyz Republic presides in the National Council. The President of the Kyrgyz Republic in his executive order No. 64 on approval of the provision and members of the National Council for Women, Family and Gender Development of 13 February 2006 enhanced a status and expanded its powers and membership by adding government officials and more representatives of civil society organizations. The activities are coordinated by a working body of the National Agency – Secretariat for Women, Family and Gender Development, which is a structural unit of the President's Administration of the Kyrgyz Republic.

III. Problems in legislative regulation of protection of women from violence in Kyrgyzstan

Having analyzed the current legislation, one can say that Kyrgyzstan has a developed legal framework protecting rights and interests of women, including from violence, which is in line and does not conflict with international norms. Yet, one can not say for sure that women of Kyrgyzstan enjoy the same rights as men and are not exposed to violence. On women's way to equal terms with men there are such obstacles as growth of unemployment and poverty, poor social welfare system, decreased participation in decision-making process and re-distribution of property, a high morbidity rate. Moreover, women are frequently unaware of their rights, while stereotypes and traditions that were shape in andocentric society still persist in society. The current legislative acts need improvement through expansion of legal, court and implementation practices.

Even though numerous issues are clearly formalized in the legislation, yet mechanisms of implementation are poorly elaborated and often bring application of various provisions of the law to nothing.

The problem of bride kidnapping and of early marriage cases exists acutely. In this regard, the Committee on Elimination of Discrimination against Women chance in the final recommendations after consideration of the third periodical report of Kyrgyzstan from October 23, 2008 was very seriously concerned about continuation of cases of brides kidnapping, existence of forced marriages and polygamy (item. 21, 22)

The bride kidnapping problem in Kyrgyzstan remains to be as critical as before. For instance, the latest survey conducted in 2004 disclosed that among 543 surveyed respondents in rural areas, 374 respondents (80%) were kidnapped and 10 respondents said they were

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kidnapped more than once²⁰. Only 34% of bride kidnappings were made with consent of women. 46% of respondents said they were kidnapped by deceit and 18% were kidnapped with use of physical force²¹.

As abovementioned, there is a criminal liability for kidnapping to get into marriage regardless of woman's will in Kyrgyzstan.

Article 155 of the Criminal code of the Kyrgyz Republic stipulates that forcing women to getting marriage regardless of her will or continuing of marriage cohabitation or kidnapping for getting into marriage, as well as also prevention to woman to getting into marriage – should be punished by penalty at the fee from one hundred to two hundred of reliability index or by the restriction of freedom up to three years.

Unfortunately, in practice there are rare institute proceedings under this article and moreover, just few cases are sent to the court. According to the Ministry of Interior, 31 cases were processed all over Kyrgyzstan in 2007, and 23 cases submitted to the court, 12 cases processed in 2005 were and 10 cases submitted to the court²².

In many respects, the problem of involvement of people to criminal liability who perpetrate the criminals like these connected with this that a criminal case is processed only in the submission of citizen's petition, and victims on account of different reasons very rarely hand in such petitions, as well as because that they do not trust militia. In particular, there were facts, when militia officials themselves committed bride kidnapping for getting into marriage.

The problem of early marriages. Unfortunately, state statistical bodies do not track the dynamics of early marriages. Measurement of scales of this phenomenon is very complicated due to latent character of this phenomenon. Early marriages usually are not registered within state authorities and children born in such families either do not have birth certificates or receive them too late. Women in such families as usually do not have any property rights²³.

The marriageable age in Kyrgyzstan is since 18 years old. The authorized local government bodies may be entitled to give permission to enter into marriage for women of 16 years old with serious reasons in place as requested (Article 14).

According to the data of Ministry of Justice of the KR 104 marriages with persons from 16 to 18 years old were registered in 2006, 108 marriages in 2007 and 91 marriage in 2008²⁴.

The Criminal code of Kyrgyzstan in the article 154 provides the liability for forcing into actual marriage relationships the person not achieved sixteen years old (punishment –penalty at the rate from one hundred up to five hundred calculation index or by correctional works up to two years or restriction of freedom up to five years). In the second part of the Law it is indicated that human kidnapping not achieved sixteen years old for getting into actual marriage relationships – punished by prison term from three up to seven years.

Analyzing norms it can be concluded that in case when there is no compulsion the liability do not come into force for such kind of actions and taking into account that such kind of marriages often are dealt on parents arrangements of young girls then the quantity of criminal cases on such kind of criminals are very few. According to the data of the Ministry of

²⁰ Survey "Bride kidnapping (*Ala Kachuu*) in Kyrgyz village". 2004, p. 5

²¹ Ibidem, p. 5

²² Reports of crisis centers

²³ Reports of crisis centers

²⁴ Data from the Ministry of Justice of the Kyrgyz Republic

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the Interior 21 cases were processed in 2007 all over Kyrgyzstan and 19 cases submitted to the court, 3 cases were processed in 2008 and 3 cases submitted to the court²⁵.

In March 3, 2009 parliament hearings on nubility were conducted in Kyrgyzstan initiated by the Committee on Youth, Gender policy, Physical training and Sports of Jogorku Kenesh (Parliament) of the Kyrgyz Republic. Parliamentarians initiated amendments into the Domestic code which are without exception forbidding getting into marriage before 18 years old. In the near future this draft law will be considered by the Parliament.

The problem of polygamy. Bigamy and polygamy are criminally punished in Kyrgyzstan. Article 153 of the Criminal code says that bigamy and polygamy i.e. cohabitation with two or several women with common house keeping is punished by sentencing with the term up to two years.

The data of the Ministry of the Interior shows that 2 cases was processed in 2007 all over Kyrgyzstan and 2 was submitted to the court, in 2008 no case²⁶. According to the statistics it is obviously that this article is almost invalid but it is does not mean that there are no such criminals, and more means that the Law is not practiced. Although such problem exists and state authorities do not undertake anything for determine such criminals and bringing to liability the perpetrators, moreover, in 2006 Minister of Justice of the KR in the framework of humanization acts of criminal legislation initiated amendments into criminal code which were directed to cancellation of criminal liability for polygamy and bigamy. Only intervention of civil society and international organizations helped to block up this initiative.

Problem of sexual harassment. Legislation of Kyrgyzstan does not stipulate criminal liability for sexual harassment. In the case of acting of extreme forms of such behavior perpetrator may be involved into criminal liability under the article 131 of the Criminal code in accordance with this compulsion to sexual connection, buggery, lesbianism or acting another sexual acts by blackmail, threat, damage or seizure of property or using finance or another dependents of victim is punished by penalty at the rate from one hundred up to two hundred by estimate indicator or by deprivation of liberty up to two years.

The data of the Ministry of the Interior shows that criminal cases under this article are brought an action very few. Thus, in 2007 5 cases were brought into action all over Kyrgyzstan and 4 cases were directed to the court, in 2008 2 cases were brought into action and directed to the court²⁷.

However, the concept of “sexual harassment” is wider than it is stipulated in article of the Criminal code. It may include indecent gestures and suggestions, touching, hints, vulgar jokes and etc. There is no criminal responsibility in legislation of the KR for such actions. Although, the article 2 of the CEDAW Convention obliges all countries which ratified the Convention to undertake all necessary measures for elimination the discrimination against women from any person, organization or institution.

IV. Recommendations

The following recommendations were produced based on the legislative analysis that was carried out, as well as findings of surveys and monitoring. The recommendations follow below:

- it is necessary to set up a state specialized body that will regulate gender equality issues

²⁵ Data from the Ministry of Interior

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that can possess the right to initiate any amendments in legislation of the country;

- criminal liability for forcing a woman to enter into marriage or to continue cohabitation, or bride kidnapping without a consent of woman and obstructing to women to get married (Article 155 of the Criminal Code) needs to be tightened. Criminal cases should be opened in cases of committed domestic violence whether a woman filed a claim or not;

- - to cancel the exceptional cases in the Domestic code, under which marriage could be contracted under achievement of 16 years old;

- to establish criminal and administrative liability for actual marriage relations with persons not achieved 18 years old and to call to account despite availability of an application from the injured party;

- to establish criminal for sexual harassment against women;

- to strengthen the liability for polygamy and bigamy and to call to account availability of an application from the injured party;

- it is required to unify and adjust statistical collection procedures regarding violence against women.