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

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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 judicial institutions the effective elimination of discrimination against women.

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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

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 of 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.

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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.

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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.

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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

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