

**American University of Central Asia
International and Business Law**

**DOMESTIC VIOLENCE AGAINST WOMEN
IN THE KYRGYZ REPUBLIC:
LEGAL ISSUES AND CHALLENGES**

Student: Kuldaeva Medina

Supervisor: Kasybekova K.

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Abstract

Domestic violence is a problem that exists in many societies and countries. The Kyrgyz Republic is not an exception. There are numerous cases of domestic violence used particularly against women by their husbands in this country. This problem is common to female victims in every single region of the Kyrgyz Republic. It happens to women with different backgrounds independently from their social status.

In this project legal issues and challenges of protection of women against domestic violence are concerned. It analyzes the legislation of the Kyrgyz Republic and identifies the problematic aspects. The project also suggests solutions to the existing inconsistency and gaps in the laws of the Kyrgyz Republic and provides recommendations on how to eradicate domestic violence in our society.

Introduction

The Kyrgyz Republic (hereinafter the KR) is a democratic country where every citizen has to receive protection of their rights, where rule of law is protected by the Constitution. Women's human rights, along with others, are frequently violated in different spheres: labor, education, and families. This project will focus primarily on the legal issues and challenges of protection of women's rights against domestic violence in the KR. The state has made several steps towards solving the problem of domestic violence. However, the actual effect of these actions will be the main focus of this project.

The project is significant because it will suggest solutions for existing legislative inconsistencies, offer different ways of prevention of violence against women in families, and recommend methods of effective work with already existing cases of domestic violence based on the experience of other countries.

Since the topic is tightly connected with such academic disciplines as sociology and psychology, the project will also contain information taken from such areas. Sociological and psychological theories and concepts are going to be employed in order to understand the nature of domestic violence and the reasons why women are afraid of reporting such crime. The project will provide data on domestic violence. It will also include statistics of the National Statistics Committee of the KR, international and non-governmental organizations, and crisis centers. There is lack of research materials on particularly this topic specifically concerning the KR. For this reason, as part of the research, the sources from such countries as Austria, the USA, Germany, UK, and India will be included. Finally, the project is important because its findings will assist women in protecting their rights against abuses in their marriages which is purulent.

The main question of the project is whether current legal framework of the KR aimed at protection of women against domestic violence is deficient. The whole paper will prove that the legislation does not provide sufficient protection of women's rights against domestic violence. The current legal framework aimed at the protection of women against violence in families is deficient, as if contains gaps and contradictions which leads to frequent violations of women's rights. The mechanism of enforcement of existing laws does not operate in a proper way which in its turn creates barriers for women to fully exercise and enjoy their rights and be free from domestic violence.

The research is delimited to only officially married women who suffer from domestic violence from their husbands on the territory of the KR.

Several methodologies are going to be used in the project. In particular, analysis, synthesis, comparative law and case study.

The first chapter is going to cover general information about domestic violence its nature and types. It will also discuss different types of human rights guaranteed by the national legislation and international legal documents that the KR has ratified.

The second chapter is analytical. It focuses on the problematic moments with regards to protection of women against domestic violence in the KR. As this chapter reveals legal issues and challenges, it suggests solutions and recommendations.

The third chapter is devoted to the general recommendations on how to eliminate domestic violence against women in the KR. It also describes measures that have to be used in order to deal with already existing cases of violence.

Chapter I. Domestic Violence: nature, types and situation in the Kyrgyz Republic

"All of us – men and women, soldiers and peacekeepers, citizens and leaders – have a responsibility to help end violence against women."

- UN Secretary-General Ban Ki-Moon

It is generally believed that streets are not safe. Anything can happen with a person on the street: she can be mugged, her things can be stolen, or even she can be a subject of a terrorist attack. Most of us believe that our homes are the places where we can be truly safe. We can find support, understanding and support there. However, our homes can be as dangerous as streets and even more dangerous for women. 2580 cases of domestic violence were registered in 2012 according to the National Statistics Committee of the KR.¹ In fact; women are the ones who suffer most from domestic violence. They are mostly abused by their husbands in the KR. In 2013 for the period of 3 months from January till March 570 cases of domestic violence were registered. 516 victims were women.²

Hardly no one is safe from being subjected to domestic violence. It can happen to anyone. It may occur in officially registered marriages and in cohabitation relationships, in heterosexual and the same sex relationships.³ Domestic violence can be used against any family member. However, in the KR women are the ones who suffer from it more than other family members.⁴ Worldwide 89 countries have enacted laws against domestic violence and

¹A. Osmonaliev, D. Bajjumanov, N. Tulegabylov, et al., "Socio-Economic Position of the KR. Monthly Publication," *National Statistics Committee of the KR*, 2013, accessed Apr. 10, 2013, available at: <http://stat.kg/images/stories/docs/obzor%20arhiv/2012/Obzor%2012%202012.pdf>.

² *Id.*

³Arlene S. Skolnik and Jerome H. Skolnick, *Family in Transition*, 12th ed. (New York: Pearson Education, Inc., 2003), 497.

⁴D.B Bajjumanov, N.M. Tulegabylov, O. Abdukalykov, et al., "Crime and Law in the KR 2005-2010. Statistical Compendium," *National Statistics Committee of the KR*, 2011, accessed Apr.10, 2013, available at: <http://stat.kg/images/stories/docs/tematika/social/Crime%202005-2010.pdf>.

90 states prosecute sexual harassment and marital rape.⁵ Along with that, over 100 countries lack the legal framework to counter domestic violence.⁶

The Kyrgyz Republic has enacted multiple laws and ratified international agreements that are aimed at protection against domestic violence. However, the usefulness of such actions is dubious since domestic violence takes place in the KR and the number of victims is growing.

One of the main causes for these kinds of criminal behavior against women is the existence of a culture of power and subordinate relations between the sexes (dominance model), which are based on economic inequality between men and women, are fixed and supported by cultural and religious traditions and customs, which are controlled by moral norms.⁷

Violence against women is exacerbated by social pressures, mainly because shame does not allow women to report certain acts that have been perpetrated against them.⁸ The lack of access for women to legal aid or protection; weak efforts by government agencies and community organizations to raise awareness of existing legal rules and their enforcement, as well as the small number of educational and other measures available to address the causes and consequences of violence stop women from reporting the violence they experience against themselves.⁹ All of these factors make women fear and feel insecure. It creates obstacles for them in the realization of their aspirations for equality.

⁵“Ending Violence against Women and Girls and Expanding Access to Survivor Services,” *United Nations Development Fund for Women*, accessed Mar. 20, 2013, available at: http://unwomen.eeca.org/en/areas_of_work/EVAW/.

⁶*Id.*

⁷Bermet Tugelbaeva, “Problem of criminal violence against women: prevention and control of consequences: on the materials of the Kyrgyz Republic.” *disserCat.2005*, accessed Feb. 3, 2013, available at: <http://www.dissercat.com/content/problemy-prestupnogo-nasiliya-v-otnoshenii-zhenshchin>, at point 7 of the main provisions for the defense.

⁸*Id.*

⁹*Id.*

The fear of violence is a permanent barrier to the mobility of women and limits their access to resources and basic activities. Violence against women is associated with high costs in the socio-economic and public health for every individual and for society as a whole.¹⁰ It is one of the crucial social mechanisms by which women are forced into a subordinate position in the hierarchy of social relations.

Domestic violence can be directed to any member in the family. Violence of a husband against his wife is characterized as "intimate partner violence". This term defines physical, sexual, or psychological harm by a current or former partner or spouse.¹¹ Domestic violence that this project focuses on is directed to a woman, a wife that is engaged in family relationship with her husband, the person who abuses her.

Marriage and family are among the oldest human social institutions.¹² From the legal point of view, marriage is the union of a man and a woman, concluded with free and full consent of the parties in accordance with the law, with the aim of the creation of the family, generating economic and moral relations between spouses.¹³

It is challenging to define what family is. The idea of a family and definitions of families from the past do not provide us with fully accurate picture of families today. From the sociological point of view, a family is a union of people, founded on a marriage, kinship, acceptance of other people's children that is characterized by common community life, interests and mutual work.¹⁴ However, the legislature has provided a clear definition of a family which exists today which this paper will utilize. In particular, the Family Code of the

¹⁰Marry Ann Schwartz, Barbara Marlene Scott, *Marriages and Families .Diversity and Change*, 2nd ed. (New Jersey: Prentice-Hall, 1994), 313.

¹¹"Intimate Partner Violence," *CDC*, last updated: April 10, 2013, accessed Jan. 7, 2013, available at: <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/>.

¹²*see supra* note 10, at 2.

¹³Semeinyi Kodeks Kirgizskoi Respubliki [SK KR][hereinafter Family Code], Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom], art. 2. Last amended: July 16, 2012 (Russ).

¹⁴Artem Manukyan, *Family Law*, Moscow, 2012, accessed Nov.13, 2013, available at: <http://e-college.ru/xbooks/xbook061/book/index/index.html>.

KR defines family as a group of persons related to each other by property and personal non-property rights and obligations arising from the marriage, kinship, adoption or other forms of foster care adoption that help to reinforce and develop family relations.¹⁵ Property and non-property relationships between spouses arise from officially registered marriages.¹⁶

Women and men are free to choose any form of the relationships to create the family. There are different forms of families like there are different forms of states. States can be democratic, religious, socialistic, and monarchic. As the state is determined by its territory, population, and power to control the society, family is determined by the territory where they live, amount of people in the family and the member of the family who holds the most power. There are traditional families where a woman is responsible for everything that is connected with the household and men are the breadwinners; in others, both a wife and a husband are employed, in the rest women work and men are unemployed. The family is like a state where are special rules of conduct, rights and obligation before each member in the family. In the family, some are generators of ideas, others are giving orders, and some are executing these orders.

The family is a system where the survival of each person in the family is directly related to how a husband and a wife get along with each other. The stability and welfare of a family depends on a well-being of its each member.

According to the Family Code of the KR, family relationships are regulated based on the principles of voluntariness of union of a woman and a man, equality of spousal rights, resolution of family issues by mutual agreement, priority of family upbringing, care about children's welfare and development ensure adequate protection of the rights and interests of

¹⁵Family Code, art. 2.

¹⁶Family Code, art. 2.

minors and disabled family members.¹⁷ Unfortunately, those principles are not always followed since such problem as violence against family members takes place in families.

Current situation with domestic violence in the Kyrgyz Republic

To understand the existence of domestic violence in the KR it is necessary to look at the geographical location of the KR, the amount of the population residing, historical background of the women's position in Kyrgyz society and the statistics of domestic violence in this country.

First of all, the KR is located in Central Asia. The bordering countries are Kazakhstan, Uzbekistan, Tajikistan and China. The constant number of people residing on the territory of the KR at the beginning of 2012 was 5 million 551.9 thousand residents. More than a third (34 percent) lived in urban areas and about two-thirds (66 percent) – in rural.¹⁸ Out of this number 2,810,200 are women, 2,741,700 are men. The majority of people are living in rural area. It is about 3,667,500 people.¹⁹ There are 1,884,400 people living in urban areas.²⁰

When the issue touches domestic violence in the KR, women are the ones who suffer most comparing to other family members. Each year, National Statistics committee issues a digest of statistics in different sectors. It was not until the recent years that the digest started to include statistics of domestic violence.

Unfortunately, the statistics are broad and do not give us the percentage of total number of domestic violence incidents which were committed by men towards women. It also does not show how many women became the victims of domestic violence. On the other

¹⁷Family Code, p.3, art. 1.

¹⁸A. Osmonaliev, D. Baijumanov, N. Tulegbulov, et al. "Demographic Yearbook of the KR.2007-2011. Annual Publication," *National Statistics Committee of the KR*. 2012, accessed Apr. 24, 2013, available at: <http://stat.kg/images/stories/docs/tematika/demo/Demo%20publ%202007-2011.pdf>, 6.

¹⁹*Id.* at 21.

²⁰*Id.*

hand, there is more precise data available in with regards to domestic violence for 2010. In particular, it states that this year 11751 women looked for help in crisis centers, courts of Aksakals, and other specialized institutions. The age of majority of women ranged from 18 to 34 years. 7308 women got injured and suffered. In contrast 1366 men actually suffered from domestic violence. Overall 1801 cases of domestic violence were officially registered, out of which 1456 cases of violence were committed by husbands towards their wives.²¹ Physical violence was noted to be one of the most common forms of domestic violence, it was found in 1414 cases out of 1801, next was psychological and the last is sexual.

Statistical compilation on Crime and Law 2005-2010, that is issued every 5 years, contains a separate table 10 which is devoted to the problem of domestic violence.²² According to it, overall in 2010, 8674 people asked for help in crisis centers, courts of Aksakals and other institutions regarding the domestic violence. Out of this number 7308 people were women, most of them were from 18-34, marriage age, and 1366 were men. Comparing the frequency of types of crimes, physical violence takes place most often. The majority of victims of domestic violence are wives suffering from their husbands.

General statistics for 2012 suggest that in 2011 overall 56509 marriages were registered on the territory on the KR. Among which city people officially registered their marriages less than country people. To illustrate, in cities there were 15930 marriages, in villages 40579 marriages. However, the level of divorces is almost similar. There were overall 8705 divorces registered in 2012. In cities 4497 couples divorced, in villages 4208.²³

Taking into account above mentioned information, it has become evident that domestic violence in the KR is widespread independently from the location. Secondly, the

²¹ *see supra* note 4, at 139.

²² Information was provided by the Employee of National Statistic Committee.

²³ *see supra* note 18, at 211.

most common form of domestic violence is physical. Thirdly, wives in the families are the ones who become victims of domestic violence more often compared to other family members. Finally, it has become evident that the level of divorces in villages is less than in urban areas.

Historical evidence of domestic violence used against women

Anthropological studies and historical records show that violence against women has been a part of the institutional structure of different cultures across the history of humanity.²⁴ Vivid historical evidences of violence against women can be seen in the binding of young women's feet in China, the Indian suttee (the burning of Indian women on the funeral fires of their husbands), European and American witch burnings, the mutilation of African women's genitals through female circumcision (still practiced in some areas of Africa).²⁵ Throughout the history of the world women have been experiencing infringements of their rights. In Roman law, for instance a husband could beat, divorce, or kill his wife for adultery, public drunkenness, and other behavior.²⁶ Thus, throughout the history of humanity women were subjects of limitations of their rights.

Before the Russian colonization of the Central Asian region, people residing the northern part of the territory of modern KR had a nomad lifestyle and mostly practiced paganism where women enjoyed the same rights as men. However, the head of the family was considered to be the man and it was he who dictated the moral behavior of the family. In other words, there was patriarchy.²⁷ In spite of this fact, northern Kyrgyz women exercised

²⁴ *see supra* note 10, at 303.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Suad Joseph, Afsāna Namābādī. *Encyclopedia of Women and Islamic Cultures, Volume 2: Family, Law and Politics*. Netherlands: Koninklijke Brill NV, 2005, accessed Sept. 9, 2012, available at: <http://books.google.kg/books?id=4Uyypm6T7ZsC&pg=PR3&lpg=PR3&dq=Russian+Colonial+domains+of>

more social freedom than their counterparts in the south part of Central Asia. Kyrgyz used to live nomadic life. In the North of the country Kyrgyz women took an active part in daily life of the family. There was more liberal and less restrictive attitude towards women.²⁸ A family was a closely knit institution where membership was achieved by birth, adoption or marriage and the line was preserved through the son. On the contrary, a Muslim woman, mostly in the South of the country, was expected and required to behave in a manner not commensurate with her cultural surroundings which meant that women in the South part of the KR experienced more often infringements of their rights.²⁹ In the south part of the modern territory of the KR, women enjoyed less power and rights.³⁰ Based on the historical development of the Central Asia it may be concluded that although women in the North enjoyed more freedom than their Southern counterparts, men occupied higher positions and used to be the heads of the families.

The classification of types of domestic violence

It is necessary to define the meaning of domestic violence, its types and nature in order to understand it. Research on domestic violence reveals that domestic violence may result from feeling of low personal control.³¹ Domestic violence is defined as *"any intentional act by one family member against another, if this action violates the legitimate rights and freedoms of other members of the family, causing him/her physical and mental suffering and causes moral harm or contains a threat to the physical or personal development of a young*

+the+Caucasus+and+Central+Asia+Encyclopedia+of+Women+%26+Islamic+Cultures:+Family,+Law+and+Politics,+Volume+2, 73.

²⁸*Id.*

²⁹B. Djamgerchinov B. *Accession of Kirgizia to Russian*. (Frunze, 1959).

³⁰*see supra* note 27.

³¹Debra Umberson, Kristin Anderson, Jennifer Glick and Adam Shapiro, "Domestic Violence. Personal Control, and Gender," *Journal of Marriage and Family* 60, no.2, (May, 1998), JSTORE, accessed Oct. 12, 2012, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. p. 1

*member of the family.*³²

The perpetrators of domestic violence are characterized as having a lowered sense of personal control or a great necessity for control.³³ Such episodes of violence are believed to enhance personal control of a perpetrator.³⁴ One of the most common forms of violence against women is that performed by a husband against a wife. Such violence includes acts of “*physical aggression, psychological abuse, forced intercourse and other forms of sexual coercion, and various controlling behaviors such as isolating a person from family and friends or restricting access to information and assistance.*”³⁵ In fact, partner violence includes a broad range of relationships between adults. Researches show that women can be as violent as men in the relationships.³⁶ In spite of this fact the overpowering “*health burden of partner violence is borne by women at the hands of men.*”³⁷ When it comes to domestic violence in the KR women are the ones who suffer most in the family.³⁸

There are three officially recognized forms of domestic violence in the KR. According to the Domestic Violence Law they are physical, psychological and sexual.

Physical violence

The legislation of the KR recognizes three forms of domestic violence such as physical, sexual and psychological. The meaning of the word physical refers to something that “relates or pertains to the body, as distinguished from the mind or soul or the

³²Zakon KR o Sozialno- Pravovoi Zashite ot Nasilia v Semie [hereinafter Law on Domestic Violence] Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom] March 25, 2003, N 62, p. 5, art., 1 (Russ).

³³*see supra* note 31, at 1.

³⁴*Id.*

³⁵“Intimate partner violence,” *World Health Organization*, 2002, http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/en/ipvfacts.pdf.

³⁶*Id.*

³⁷*Id.*

³⁸Special Rapporteur on Violence against Women, its Causes and Consequences, Human Rights Council, U.N. Doc. A/HRC/14/22/Add.2 (May 28, 2010), (by Rashida Manjoo), p 9.

emotions”.³⁹ Such form of domestic violence is harmful for the body.

The legislation of the KR defines physical violence as “*torture or willful infliction by one family member to another of battery, injury, intentional deprivation of a family member from another family member the freedom of movement, housing, food, clothing, and other normal living conditions, forcing to hard labor.*”⁴⁰ Article 3 of the Family Code of the KR establishes the equality of the rights between men and women and equal opportunity for their realization.

In general, the battering experienced by women is referred to as the battered-woman syndrome, and it is generally cyclical.⁴¹ The cycle of abuse includes three stages: 1) tension building, where tension escalates gradually, making the woman increasingly uncomfortable in anticipation of the impending abuse; as the male becomes more violent the female feels less able to defend herself; 2) acute battering, where the woman is the victim of severe physical abuse; and 3) loving contrition, where the man apologizes for his behavior, professes his love, and promises the he will never do it again. Nevertheless after a while, everything starts from the beginning.⁴² Battering is often accompanied by verbal abuse, psychological abuse, and threats or actual violence towards children and other loved ones.

Physical violence is punishable by both the Code of Administrative Responsibility of the KR (hereinafter Administrative Code) and Criminal Code. The actions that intentionally inflicted serious bodily injury are punishable by Criminal Code. In particular, article 104 of the Code states: “*intentional actions that are harmful for a body, dangerous to life or resulted in loss of sight, speech, hearing, or anybody or the loss of its body functions, mental illness or*

³⁹“PHYSICAL,” *The Law Dictionary*, 2nd ed., accessed Feb. 10, 2013, available at: <http://thelawdictionary.org/physical/>.

⁴⁰Law on Domestic Violence, p. 5, art. 1.

⁴¹see *supra* note 10, at 310.

⁴²*Id.*

other health disorder, coupled with a disability is not less than one-third or resulting interruption pregnancy or expressed in indelible disfigured face -shall be punished by imprisonment for a term of five to eight years.” Article 105 of the Criminal Code discusses the infliction of less serious injury. For instance, intentional injury, that is not life-threatening and is not resulted from the consequences provided for in article 104 of the Criminal Code, but which has caused long-term health problem or a significant permanent disability less than one-third is punishable by a fine of up to four estimates or social work for up to two years, or restraint of liberty for a term up to three years, or imprisonment for up to three years. Intentional infliction of light bodily harm that “resulted in a short-term health disorder or insignificant a disability shall be punished by community service for a period of one hundred and eighty to two hundred forty hours, or a fine of up to fifty estimates, or social work for up to one year, or by imprisonment for up to one year.”

If acts of physical violence do not contain aggravating circumstances for which criminal liability is imposed, such actions will be punished by the Code of Administrative Responsibility. It contains provisions that impose administrative liability for battering, infliction of light bodily harm, and for causing serious or less serious injury carelessly.

Mental abuse or psychological violence

While physical violence affects the victim's body and bodily organs, mental violence influences the victim's psychological state of being. It is related “to or existing in the mind; intellectual, emotional, or psychic, as distinguished from bodily or physical.”⁴³ It is challenging see the consequences of emotional violence since it not instantly visible. This type of abuse can lead a person to suffer from depression, have suicidal thoughts that itself

⁴³“MENTAL,” *The Law Dictionary*, 2nd ed, accessed Jan. 21, 2013, available at: <http://thelawdictionary.org/mental/>.

puts him or her at a higher risk of committing suicide, abnormal eating habits, drug abuse and alcoholism.⁴⁴ The law on Social and Legal Protection Against Domestic Violence defines psychological violence as “*deliberate humiliation of one member of the family honor and dignity of another family member or coercion (forcing) his or her with means of threats, insults and intimidation to commit an offense or offenses which are dangerous to life or health, as well as leading to an impairment of the mental, physical and personal development of a minor member of the family.*”⁴⁵ Actually, this type of violence is very hard to persecute. Criminal Code provides punishment for insult. Article 128 “*Insulting, is deliberate humiliation of honor and dignity of another person in an indecent manner, shall be punished by a fine of from fifty to one hundred estimates.*(2) *An insult in a public speech, publicly exhibited works or media the information, shall be punished by a fine of one hundred to three hundred calculated estimates.* Threads are both punishable under Criminal Code and Code on Administrative liability.⁴⁶

Sexual violence

Another form domestic violence is sexual. To some extent, it is connected with physical violence, because it also can harm the body’s certain organs.⁴⁷ Any undesirable actions that are sexual in nature will constitute sexual assault. In particular, it is the “*act of one member of the family, violates the sexual integrity and sexual freedom of another member of the family, and sexual assault on a minor member of the family.*”⁴⁸ Sexual assault may be

⁴⁴Dr. Tabrez Ahmad , Poorva Khandekar , Kundan Kumar Ojha , Ipsita Mohanty , and Priyanka Biswas. “Domestic Violence in India: Will Law Alone Change the Situation?” *Social Science Research*, Sept. 3, 2009, p 3, accessed Mar. 10, 2013, available at: <http://ssrn.com/abstract=1467890>.

⁴⁵Law on Domestic Violence, p. 7, art. 1.

⁴⁶ Ugolovnyi Kodeks Kirgizskoi Respubliki [UK KR][hereinafter Criminal Code], art. 113 (Russ), Kodeks ob Administrativnoi Otvetstvennosti [KAO KR] [hereinafter Administrative Code], art. 66-11 (Russ).

⁴⁷see *supra* note 44, at 4.

⁴⁸Law on Domestic Violence, p. 8, art. 1.

in the form of forced sex acts, including vaginal, oral, and anal penetration; bondage, beating; torture; mutilation; bestiality; and group or gang rape.⁴⁹ Such violence is punishable by the Criminal Code of the KR. In particular, Chapter 18 crimes against sexual inviolability and sexual freedom of the individual.

General Prejudice about Domestic Violence

The understanding of the nature of domestic violence, family and marriages is sometimes distorted, blocked and influenced by myths.⁵⁰ False representations of victims and perpetrators in the course of domestic violence are regular matters.

One of such myths is that violence happens only in poor families. In fact, violence touches all kinds of families and is not limited by belonging to a social class.⁵¹ It takes place in families from different socioeconomic and racial groups. Domestic violence occurs in rural area, cities, and residential areas. However, those victims who have higher income can more easily seek help from specialists and therapists.⁵²

Secondly, people may be misled by another common myth associated with family violence.⁵³ This myth is based on the belief that victims provoke the abusive behavior of their husbands. It is one of the common tactics used by the perpetrators to blame their victims for “making” them abusive. This tactic becomes stronger when it is supported by the people or a perpetrator saying that the victim deserved it. Consequently, the victim believes that her wrongful actions provoked violence. Later, she will try to change her behavior in order to avoid the abusive episodes.⁵⁴

⁴⁹ *see supra* note 10, at 310.

⁵⁰ *Id.*

⁵¹ *see supra* note 44, at 10.

⁵² *see supra* note 10, at 307

⁵³ *see supra* note 44, at 10.

⁵⁴ *see supra* note 10, at 10.

The picture of a perpetrator in domestic violence

There is no one universal picture of a perpetrator of domestic violence; however, it is believed that all offenders possess “an ongoing pattern of coercive control involving various forms of intimidation, and psychological and physical abuse.”⁵⁵ A perpetrator is somebody who commits crime or civil infringements.⁵⁶ In the context of domestic violence against women a perpetrator is a male of any socio-economical, racial, ethnic, occupational, educational, and religious belonging. They can be employed in different places in various types of professions.⁵⁷ It is established that such perpetrators are generally the same age or older than their female victims.⁵⁸ Not all perpetrators are aggressive and hostile. It is known that some of them have mental problems such as depression, post-traumatic stress disorder, or behavioral disorder.⁵⁹ However, not all perpetrators are psychologically unstable. Offenders have different abusive behaviors and differ from each other with their pattern of dangerousness.⁶⁰

Violence against women occurs in cultures where women are the subjects of discrimination and physical violence.⁶¹ However, not all violent men were raised in such cultures. The phenomenon does not completely explain the prevalence of violence against women. Offenders often do not work, are troubled, feel threatened, and have low self-esteem.⁶² Oftentimes they have experienced different types of violence in their lives. Typical behavioral patterns of the perpetrators: desire to achieve power and control over the victim by

⁵⁵ *see supra* note 44, at 5.

⁵⁶ “PERPETRATOR.” *The Law Dictionary*. 2nd ed. <http://thelawdictionary.org/perpetrator/>.

⁵⁷ *see supra* note 10, at 5.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *see supra* note 10, at 6.

⁶² *see supra* note 44, at 6.

putting the victim into a fear, shame and helplessness.⁶³ Continuous intimidation, deterioration of victim's mind, and abusive actions contribute to the establishment of victim's fear and dependence.

Perpetrators often deny that their actions are violent and illegal, by minimizing their abusive behavior. For instance, they can blame victims for of "pushing buttons" or "provoking" the abuse.⁶⁴ Other example will be the case when a perpetrator projects blame on circumstances, such as making the excuse that alcohol or stress caused the violence.⁶⁵ On the other hand, there are perpetrators who understand that what they have done is improper, ask to forgive them, give promises not to use violence again.⁶⁶

Another type of abuser is the type who takes the responsibility for his violent actions and is ready to eventually stop his abusive behavior.⁶⁷ Not all perpetrators are "bad" people; however what they do is wrong. Some of the perpetrators early in childhood were abused in one or another form, ignored, or experienced domestic violence in their families.⁶⁸ The severity of the violent act will depend on above mentioned factors. The abusive behavior of perpetrators can be changed if there is going to be intervention in their actions. They can become nonviolence with a help of community services, sanctions and interference.⁶⁹

Women's Human Rights affected by domestic violence.

Several women's human rights are violated when domestic violence is used against them. The protection of such rights is guaranteed both under the national legislation and international treaties ratified by the KR.

⁶³ *see supra* note 44, at 6.

⁶⁴ *Id.* at 7.

⁶⁵ *Id.* at 7.

⁶⁶ *Id.* at 7.

⁶⁷ *Id.* at 7.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.* at 8.

Right's guaranteed by the Constitution of the Kyrgyz Republic in relation to the Domestic Violence

Human rights and freedoms belong to every person from the birth. They are inherent, inalienable, have supreme value and are based on principles of equality, in particular, the equality between men and women.⁷⁰ Unfortunately, human rights are often violated in different spheres of human activities including marital relationships. When women are the objects of marital violence, they are suppressed and are blocked from fully enjoying their fundamental rights and freedoms. International, regional and domestic protection of women's rights can make a difference if women are empowered to use their rights including the knowledge of what they can do if their rights are violated. National legislation of the KR and international norms identify certain rights and freedoms of women that should be protected by the government.

One of the main legal sources in the KR is the Constitution. It embodies the fundamental principles and rules of the legal regulation creating a legal basis for the adoption of laws and other legal normative acts.⁷¹ It has supreme legal force and direct effect in the KR, contains provisions that provide women with protection of their basic rights and freedoms. It guarantees state protection of fundamental rights and freedoms of the people residing on the territory of the KR. The Constitution contains norms that directly touch upon women's rights. Based on it, *"no one shall be discriminated against on grounds of sex, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, and other factors."*⁷² Moreover, the Constitution grants women and

⁷⁰Konstitutsiia Kirgizskoi Respubliki (2010) [Konst. KR][hereinafter Constitution], art 16.

⁷¹Zakon KR o Normativno Pravovih Aktah [Law on NPA]. Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom]. July 20, 2009. N 241, p. 1, art. 4 (Russ).

⁷²Constitution, p.2, art. 2.

men equal rights and freedoms, and equal opportunities for their realization.⁷³ For this reason, women and men should be treated equally by the state, by the society and particularly in the families.

It also recognizes the family as a foundation of society.⁷⁴ Family, fatherhood, motherhood, childhood are a concern of the whole society and has to receive preferential protection by the law.

As was previously discussed, physical violence is the most common form of domestic violence used against women. The Constitution states that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁷⁵ Domestic violence perpetrators will be brought to either administrative or criminal liability, depending on the degree of committed violence, if they intend to violate the rights of women.⁷⁶

According to Article 40 of the Constitution, everyone is guaranteed *judicial protection* of the rights and freedoms provided by the Constitution, laws and international treaties ratified by the KR the generally recognized principles and norms of international law. The same article also affirms that the state is responsible for extra-judicial or pre-trial salvation of the problem. Additionally, everyone has the *right to appeal* to the public authorities, local governments and their officials who are required to provide a reasoned response within established by the law time.⁷⁷ Unfortunately, it is questionable whether women receive such responses in practice.

One of the most important rights that is violated in the context of domestic violence is

⁷³Constitution, p.4, art.16.

⁷⁴Constitution, art. 36.

⁷⁵Constitution, art. 22.

⁷⁶KR Law on Domestic Violence, art. 8.

⁷⁷Constitution, art. 41.

the *right for freedom and integrity*.⁷⁸ Integrity has both physical and psychological aspects. For example, every person has a right to protect herself or himself against actions that can harm the mental state of being, that are humiliating and offensive in nature and to protect physical body against physically harmful actions.

Furthermore, national justice system in the KR is based on the *equality of citizens before the law and the court*. To illustrate, the decisions of the courts must be fair and not be influenced by parties' social statuses, race, nationality, sex...⁷⁹ Both women and men must receive equal treatment by the courts of the KR. Moreover, the Constitution provides women with a right to have access to health care.⁸⁰ The state has to create conditions for each *medical service*, and takes measures to develop the state, municipal and private health.⁸¹ So, if women are physically or psychologically harmed they possess a right to receive medical help.

A similar norm that facilitates women equal rights and opportunities is contained in the law on "Government guarantees and equal rights and opportunities for men and women."⁸² The law guarantees promotion of equal rights and opportunities for people of different sex. It is aimed at promoting and establishing progressive and democratic relationship between men and women. In particular, the primary concern of this law is to establish equality between men and women in all spheres of human activities including family relationships.⁸³

To sum up, human rights are inalienable and are acquired by a person from the birth.

The protection of women's human rights in the KR is guaranteed by the Constitution of the

⁷⁸Constitution art. 24.

⁷⁹Ugolovno- Processualniy Kodeks Kirgizskoi Respubliki [UPK KR] [hereinafter Criminal Procedural Code]. Last amended August 10, 2012, art., 16 (Russ).

⁸⁰Constitution, art. 47.

⁸¹Constitution, art. 47.

⁸²Zakon Kirgizskoi Respubliki o Gosudarstvennih Garantiyah Ravnih Prav i Ravnih Vozmojnostei dlya Mujchin i Zhenshin [hereinafter Law on State Guarantees of Equal Rights and Opportunities for Men and Women] Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom] August 4, 2008, N 184, art. 2 (Russ).

⁸³Law on State Guarantees of Equal Rights and Opportunities for Men and Women, art. 2.

KR.

Rights guaranteed by International Treaties

Women's rights are also protected by international agreements that the KR is a party to. The Constitution recognizes the legal power of international agreements that were ratified by the state. In particular, article 6 of the Constitution establishes that "*Legally entered into force international treaties ratified by the Kyrgyz Republic, and the generally recognized principles and norms of international law are an integral part of the legal system of the Kyrgyz Republic.*" Moreover, international human rights treaties have direct effect and possess priority over provisions of other international instruments.⁸⁴ Kyrgyzstan has taken multiple steps towards eliminating the problem of domestic violence in the Kyrgyz society. In particular, it has ratified several United Nations Conventions [Annex 1] which also provide protection of women's rights. Relying on the wording of those conventions, the KR is responsible for protection of its female citizens, in particular, women's rights.

International human rights treaties oblige Kyrgyzstan to protect women's rights whenever they are violated.

The most significant is the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter the Women's Convention). It recognizes that women have historically been subjected to limitations of rights, to regular discrimination and pressure based on negative images of women, and presumptions originated in culture, and accentuated by social and religious treatment.⁸⁵ It is an important international legal instrument that designed to protect women against different forms of violence to which the

⁸⁴Constitution, art. 6.

⁸⁵Rebecca J. Cook, "Enforcing women's rights through law," *Gender and Development* 3, no. 2. (June 1995), accessed Oct. 20, 2012, available at: <http://www.jstor.org/page/info/about/policies/terms.jsp>, 8.

KR is a party.

The KR has also ratified Optional Protocol to the Women's Convention. The intention to create the Optional Protocol was approved by the 1995 session of the Committee on the Elimination of Discrimination against Women, the body determined to oversee the implementation of the Women's Convention. The Protocol enables the Committee on the Elimination of All Forms of Discrimination Against Women to receive complaints from individuals from countries that have ratified the Protocol and whose rights under the Convention have been violated.⁸⁶ The Committee recognized domestic violence against women as a form of discrimination against women.⁸⁷

On the other hand, International Covenant on Civil and Political Rights (hereinafter ICCPR) has a binding force. Article 2 obliges the parties to the Covenant "[...]to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language [...]"

Another very important international legal instrument that encourages equality between men and women is the Universal Declaration of Human Rights (hereinafter UNDHR). Specifically, article 2 of the Declaration states that " Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex [...]" The declaration is not binding, however, its most provisions have become a part of international customary law.

It necessary to note that international treaties ratified by the KR that have entered into force according to laws of KR, and the generally recognized principles and norms of

⁸⁶ *see supra* note 85, at 10.

⁸⁷ General recommendations made by the Committee on the Elimination of Discrimination against Women. General Recommendation No. 19 (11th session, 1992), accessed Sept. 20, 2012, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

international law are an integral part of the legal system of the KR.⁸⁸ These international agreements have become an integral part of Kyrgyz national legislation and they have supreme authority over national laws excluding the Constitution and Constitutional laws. Though not listed in the Law on Normative Legal Acts, the notion of the priority of international agreements to which the KR is a party to is mentioned in various Codes. For instance, article 8 of UNDHR declares, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Similar to the declaration, ICCPR and the Women’s Convention claim that everyone is equal before the law independently on the attribution to gender. However, ICCPR provides additional rights such as rights to have fair and public hearing by “a competent, independent and impartial tribunal established by law.”⁸⁹ All of these rights are crucial to know.

State's Actions in addressing the protection of women’s rights

The government of the KR is responsible for providing protection of women's rights. The government must be accountable for not effectively protecting the rights of women. It is the government who must be held responsible for not enforcing the law and, for example, for not instituting training and educational programmes for girls that would provide alternatives to early marriage. Up to this point, there were several National Plans of Actions (hereinafter NPA) for gender equality in the KR. Specifically, the very first National Plan «Ayalzat» was initiated in 1996. It continued until 2000. The next NPA was adopted in 2002 and it lasted till 2006. Later another NPA was adopted in 2007-2010. The NPA that is effective today was

⁸⁸Constitution, p.3, art. 6.

⁸⁹U.N. Treaty Collection, Status as at 21-04-2013 05:04:23 EDT, ch.IV, HR, International Covenant on Civil and Political Rights, New York, 16 December 1966, art.14, accessed Oct. 14, 2012, available at: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

adopted in 2012. It was created to last until 2014. Recently National Strategy of the KR to achieve gender equality from 2014- 2020 was approved by the government. It has become clear, that recent decisions regarding the adoption of 6 year strategy is a long term project and does not take into account the fact that the strategy's objectives' will effect women whose needs may be completely changed by 2020.

The role of Ombudsman in protection of women's rights

The ombudsman is a special constitutional position that was designed specifically to help people protect their human rights.⁹⁰ Ombudsman (Akyikatchy) shall be a person without criminal record.⁹¹

Ombudsmen's responsibilities are to protect the rights and civil liberties, to prevent violations of the rights and freedoms of persons and citizens.⁹² There is a law that allows to bring unconstitutional laws before the Constitutional Chamber when the laws violate people's human rights.⁹³ In cases if Ombudsman finds violations of human rights, he or she will apply to law enforcement authorities asking them to stop such violations. The Ombudsman has very important powers.

Women's human rights are violated in the course of domestic violence. Violations of women's rights are thus a concern of the Ombudsman. In fact, during the Parliamentary hearings, Tursunbek Akun Ombudsman (Akyikatchy) presented the special report on "Problems of protection of the rights of women against domestic violence."⁹⁴ The goal of the

⁹⁰Zakon Kirgizskoi Respubliki ob Ombudsmene Kirgizskoi Respubliki [hereinafter Law on Ombudsman of the KR] Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom] July 31, 2002, N 136, art. 3 (Russ).

⁹¹Law on Ombudsman of the KR, at p.2, art. 3.

⁹²Law on Ombudsman of the KR, at art. 3.

⁹³Law on Ombudsman of the KR, at p.3, art. 8.

⁹⁴Committee Department. "Information about the parliamentary hearings on the theme: "Woman in the modern Kyrgyz society: problems and achievements." *Kenesh.kg*. . October 18, 2011, accessed Jan. 12, 2013, available at: http://www.kenesh.kg/Articles/3147-Infomaciya_o_parlamentskix_slushaniyax_na_temu_ZHenshhina_v_sovremennom_kyrgyzskom_obshhestve_problemy_i_dostizheniya_18_oktyabrya_2011_goda.aspx.

report was bringing to the legislature, the executive branch the information on the situation of women's rights. To his opinion, until now, women have been subjected to various forms of discrimination, and their rights have been violated. He stated that women's opportunities are limited and needs are ignored. Violence against women, including bride kidnapping, polygamy, early marriages and domestic violence continue to be sustained, and the legislation needs substantial revision.”⁹⁵

⁹⁵*see supra* note 94.

Chapter II. Legal Issues and Challenges in the Protection of Women against Domestic Violence in the Kyrgyz Republic

“The very best predictor of a state’s peacefulness is not its level of wealth, its level of democracy, or its ethno-religious identity; the best predictor of a state’s peacefulness is how well its women are treated. What’s more, democracies with higher levels of violence against women are as insecure and unstable as nondemocracies.”

- M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli, and Chad F. Emmett.⁹⁶

Legal Framework on protection against domestic violence

The main concerns of this chapter are the problematic aspects of eradicating the domestic violence against women in the KR. In spite of the fact the KR has ratified the Women's Convention, and adopted the Law of the KR on Social and Legal Protection Against Domestic Violence (hereinafter the Domestic Violence Law), the rights of women are not protected. Wives are, more than other members of families, subject to domestic violence. Later, in the paper the focus will be shifted to Administrative Code of the KR, Criminal and Criminal Procedural Code of the KR. Then, the discussion will proceed with the law enforcement authorities and their preparedness to manage domestic violence cases. Finally, the chapter will end with the discussion of the role of Non -Governmental Organizations and crisis centers in the struggle against domestic violence.

Convention on the Elimination of All Forms of Discrimination Against Women

The KR ratified the Women's Convention, accessed to it on February 10, 1997.⁹⁷ This

⁹⁶Soraya L. Chemaly, “16 Facts About “Domestic,” Violence and Peace,” *CWGL*, accessed Dec. 15, 2012, available at : <http://cwgl.tumblr.com/post>.

major international legal instrument provides women with protection against all forms of discrimination. The Convention as an international legal instrument requires respect for, and observance of, the human rights of women. It is universal, comprehensive in scope and legally binding in character.⁹⁸ It is significant because it recognizes that women have historically been subjected not simply to specific areas of disadvantage, but also to systemic discrimination and oppression founded on negative stereotypes of women, and presumptions rooted in culture, and reinforced by social and religious attitudes.⁹⁹ Article 21 of the Convention empowers the Committee on the Elimination of All Forms of Discrimination against Women to issue general recommendations or guidelines to the states on the application of the Convention in particular situations.¹⁰⁰

In 1992, the Committee adopted general recommendation 19 where it specifically discussed the issue of family violence.¹⁰¹ In particular, the Committee identified family violence as a form of violence against women. It was said that such form of violence “*put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.*”¹⁰² In the specific recommendations section the Committee required the states to “*ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.*”¹⁰³ In addition, the committee suggested that the states should provide appropriate

⁹⁷U.N. Treaty Collection, Status as at 25-12-2012 10:03:39 EDT, ch.IV, HR, Convention on the Elimination of All Forms of Discrimination against Women [hereinafter the Women’s Convention], New York, 18 December 1979, accessed Sept. 20, 2012, available at: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=IV-8&chapter=4&lang=en>.

⁹⁸*see supra* note 92, at 8.

⁹⁹*Id.* at 9.

¹⁰⁰ *see supra* note 104, at art. 21.

¹⁰¹Recomm. of the Comm. on the Elimination of Discrimination Against Women, 11th sess. No. 19, 1992, last accessed on March 26, 2013, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

¹⁰²*Id.* at art. 23.

¹⁰³*Id.* art 24 (b).

protective and support services for victims. Moreover, the Committee recommended that states provide gender-sensitive training for judicial and law enforcement officers and other public officials in order to effectively implement the Convention.”¹⁰⁴ It should be noted that recommendations are not obligatory for states. The Committee advises about how to better implement the Women's Conventions and what should be done for the protection of women's rights guaranteed by the Women's Convention.

In general, the Women's Convention obliges parties to the Convention to “incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting the discrimination against women, to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.”¹⁰⁵ The national legal system of the KR is required to be constructed in a way that would provide realization of the rights represented in the Convention.¹⁰⁶ The KR also ratified the Optional Protocol to the CEDAW in 2002. By ratifying the Optional Protocol the KR took obligations to recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction.

The Women's Convention formulates general legal norms; it is applicable for a wide range of people and can be employed over and over again. Such conventions become sources of, not only international law, but also the sources of the national Law. Thus, judges in the Kyrgyz courts must know this Convention and must apply its norms for the resolution of the

¹⁰⁴Recomm. of the Comm. on the Elimination of Discrimination Against Women, 11th sess. No. 19, 1992, last accessed on March 26, 2013, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>, art. 24 (b).

¹⁰⁵The Women's Convention, at art. 2.

¹⁰⁶The Women's Convention, at art. 2.

cases concerned. Attorneys that protect women's rights should also be familiar with this legal instrument in order to effectively defend their clients.

Nevertheless, the reality is different. The KR has submitted three periodic reports to the Committee on the Elimination of All Forms of Discrimination against Women. In its concluding observations of the third periodic report submitted in 2008, the Committee stated that “although the Convention is directly applicable and thus an integral part of Kyrgyz law, its provisions, the Optional Protocol and the Committee’s jurisprudence thereon, as well as the Committee’s general recommendations, are not sufficiently known, including by judges, lawyers and prosecutors, and by women themselves, as indicated by the absence of any court decisions that refer to the Convention. In addition, the State party has failed to explain whether the Convention’s provisions were ever raised in court.”¹⁰⁷ Taking into consideration the conclusion of the Committee, the Convention is seldom applied in the KR in spite of the fact that it is a part of the legal system.

Recommendations

International agreements that the KR has ratified are an integral part in the legal system of the KR. Therefore, its citizens can freely use it as an instrument for the protection of their rights. It also concerns lawyers, judges and prosecutors. They must be aware of the existence of the Women's Convention. They have to be familiar with its provisions. In order to achieve this goal, educational programs aimed at specifically teaching students international instruments of protecting women's rights in the KR should be developed by the Ministry of Education of the KR. Such courses must be obligatory for any student who is going to pursue his or her career in law. This is necessary because those students eventually

¹⁰⁷ Concluding observations of the Comm. on Elimination of Discrimination against Women. Kyrgyzstan, 42nd Sess., Oct. 20-Nov 7, 2008 U.N. CEDAW/C/KGZ/CO/3, (Nov. 7, 2008).

will become lawyers, judges and prosecutors and some of them might have cases involving domestic violence. In order to make a just decision and be able to use all mechanism of the victims' protection they should possess the knowledge of international human rights law which particularly discusses the Women's Convention and its implementation in a country of a state party.

Furthermore, women need to know their rights that are granted to them by the Women's Convention and they have to learn how to protect them. In order to ensure this, mandatory educational program in educational institutions of different level should be created in order to educate the younger generation about the Women's Convention, about the Optional Protocol, explaining that in case if all national remedies are exhausted a woman can apply to the Committee on the Elimination of All Forms of Discrimination Against Women.

Family Code of the Kyrgyz Republic

The Family Code of the KR is one of the major legal instruments devoted to specifically regulate family relationships. Family law regulates family relationships that arise from several legal facts: marriage, divorce, invalidation of a marriage, determines forms and order of children adoption. The basis of family law is the Family Code. The legal understanding of the meaning of family is determined by the composition of members in the family.¹⁰⁸ The Family Code prohibits gender discrimination among family members. In particular, it declares that a wife and a husband in a family have *"equal personal and property rights, and equal opportunities for their realization. 2. Gender equality in family relations is protected by society and State. 3. The relationship between family members and persons living with them are based on the principles of gender equality, as well as honor and respect*

¹⁰⁸ *see supra* note 14.

of dignity. 4. Gender discrimination in family relationships is prohibited."¹⁰⁹

The laws must be founded on the need to strengthen the family, building family relations based on the mutual respect, mutual assistance and responsibilities before all family members, non-random interference in family matters, ensure the smooth realization of the family members' rights, and to the court protection of these rights.¹¹⁰ Article 8 of the Family Code states that *"Implementation of the members of the families of their rights and performance of their duties should not violate the rights, freedoms and legitimate interests of other family members and other citizens."* The principles any family should be based on respect, help, and mutual support. It is necessary to note that the relationships in troubled families go against the very principles of family creation.

Inconsistency in Article 8 of the Family Code

Nevertheless, one of the norms, in the Code, contradicts to this concept. To demonstrate, article 1 says that any restriction of citizens' rights in marriage and in family relations on the basis of social, racial, national, linguistic or religious affiliation are prohibited.¹¹¹ The legislator forgot to mention that any limitations of rights of family members must also not be made on the basis of sex. The norm says nothing about limitations of rights of any person's in the family based on the affiliation of this person to one or another sex.

The presence of violence in the family has a negative impact on relationships between family members. If one of the spouses decides to end such relationships Family Code provides them with a right to divorce. However, divorce procedures in the KR created obstacles for the victims of domestic violence.

¹⁰⁹Family Code, at art. 3.

¹¹⁰Family Code, at sec. 2, p. 1, art. 1.

¹¹¹*Id.* at art. 1.

Precarious divorce laws

The divorce laws in the KR are designed to preserve the family. For instance, point 2 of Article 23 of Family Code states that "In a case of divorce without the consent of one spouse to divorce the court may take action to reconcile the spouses and may postpone the hearing, appointing spouses reconciliation period in within three months."¹¹² Only if measures to reconcile the spouses were unsuccessful and the couple (one of them) insists on divorce, the divorce may be granted. If an abusive husband insists on preserving the family, a suffering wife will have to wait for three more months in order to end the violence she experiences towards her. This norm discourages women from leaving abusive marriages. According to the theory of cycle of violence suggested by Dr. Lenore Walker, violent behavior has a cyclical nature. The cycle of violence consists of three stages: tension building, abusive incident and reconciliation and promises.¹¹³ For the period of prolongation the perpetrator might ask his wife to forgive him and give promises that he will never use violence against her again. A woman might believe and stay. However, based on Dr. Walter, the honeymoon, a period of kind and loving care, will be followed by repetition of violent behavior.¹¹⁴ On the other hand, during three month a woman might experience violence again.

Judges try to convince the parties to remain married. The emphasis on preserving the marriage is, in fact, built into the structure of the divorce proceeding. Based on the procedural laws, the judge first calls the spouses for a mediation session in which the judge questions the couple about whether they can reconcile.

If the couple does not reconcile in this first stage, the court schedules the first hearing,

¹¹²Family Code, art. 23.

¹¹³"Cycle of Violence," *Remedies.Inc*, 2013, accessed Mar. 18, 2013, available at: <http://remediesrenewinglives.org/domesticviolence/cycleofviolence.Asp>.

¹¹⁴Joseph Devine, "Lenore Walker's Cycle of Violence," *EzineArticles.com*, accessed February 20, 2013, available at: <http://ezinearticles.com/?Lenore-Walkers-Cycle-of-Violence&id=1366375>.

in which the judge may closely examine the arguments for divorce and again counsel the couple to think differently about their marital problems. If the judge believes there is a chance that the marriage can be saved, she may suspend the proceedings until a later date. If by the end of three month period one of the spouses still insists on divorcing, then a judge can divorce a couple.

The legislation of the KR is constructed in a way to keep families together. However, there are families where domestic violence is used and where divorce is one of the ways to stop having abusive relationships. The prolongation period given by a judge puts a woman into a great risk. Her life may be threatened by her abusive husband during prolongation period or she may be deceived by husband's promises, kind and loving care that in future may be followed by the acts of violence.

Recommendations

A woman who decides to divorce her abusive husband and leave the violent relationship must not require waiting for almost three month in order to legalize her decision. The prolongation of time for reconciliation in cases of the families where a husband repetitively uses violence against his wife should be ended as soon as possible. It is difficult for a woman to leave relationship and make this step. The legislation makes it even more challenging for a woman to get divorce. If an abusive husband refuses to divorce his wife, the judge should consider the evidence of domestic violence in the family such as medical examination of a wife, presence of temporary or court orders the a husband received, the fact that a husband received administrative arrest and fine for domestic violence. All of these factors should be a reason for a judge to divorce a couple without any delay.

Even though the Family Code prohibits gender discrimination some changes must be

made to the article 1 of the Family Code. The norm shall be consistent with international agreements and the Constitution of the KR if the word “sex” will be added after the phrase “on the basis of.” If this is not done, it will seem as if the laws allow the restriction of rights of any family member on the basis of sex. In a marriage, a husband will be able to limit the scope of the rights of a woman in a family since the law does not say anything about it. In order to avoid such situation, the additions must be added to this article. As a result of the modifications, the norm will look like; any restrictions of citizens' rights in a marriage and in family relations on the basis of sex, social, racial, national, linguistic or religious affiliation are prohibited.

Law of the Kyrgyz Republic on Social and Legal Protection against Domestic Violence¹¹⁵

The Domestic Violence Law regulates relationships in the sphere of social-legal protection of people who suffered domestic violence in their families.¹¹⁶

According to the Constitution of KR of 2003, the right of legislative initiative belonged to the President of KR, deputies of Jogorku Kenesh, the Government of the KR and 30,000 of electors, so called national initiative.¹¹⁷ In 2003, 36,000 voters expressed their desire to protect people of the KR from domestic violence by signing the project of the Domestic violence law. Thus, the Law was adopted by the national initiative.¹¹⁸ This action was significant because it recognized domestic violence as an offense and it provided women with a right to obtain protective orders against their offenders. The Law defines domestic

¹¹⁵ Law on Domestic Violence, art. 1.

¹¹⁶ *Id.* at general provisions.

¹¹⁷ Konstitutsiia Kirgizskoi Respubliki (2003) [Konst. KR][Constitution 2003], art. 64.

¹¹⁸ E. N. Ershova, S.G.Ayvazova, "International legal norms and practice of overcoming of domestic violence," *Russian Association of Women's NGOs "Consortium of Women's Non-governmental Organizations*, 2010, accessed Nov. 15, 2012, available at: <http://www.wcons.or.g.ru>, pdf, 81.

violence as “any deliberate action of one member of a family against another, if that action infringes legal rights and freedoms of the family member, causes him/her physical or psychological suffering and moral loss or poses a threat for physical or personal development of a minor member of the family.”¹¹⁹ In 2008 the parliament had its first hearing on the law’s implementation and further measures to prevent domestic violence.¹²⁰ It discussed the importance and effectiveness of adopting the Domestic Violence law. As a result of the hearing it became evident that the law was “lagging.” because women were still unprotected from domestic violence.¹²¹ Six years after the adoption of the Domestic Violence law, Special Rapporteur on violence against women, its causes and consequences Rashida Manjoo, presented findings of her visit to the KR. She stated that “domestic violence is widespread and on the rise, and affects women of all social strata.”¹²² This shows that Domestic Violence law was not effective six years after its adoption since the level of domestic violence was still high. Later, in 2010, in country reports on human rights practices the country was still noted for having problems with domestic violence against women. Even though the law was adopted the problem of domestic violence was not solved.

Instead of cutting the roots of domestic violence against women completely by providing strong measures and substantive rehabilitation programs, the Domestic Violence law contains general definitive and explanatory provisions that doubtfully have essential effect on women's lives in problematic families.

The purpose of its adoption was to regulate relations in the sphere of social and legal

¹¹⁹Law on Domestic Violence, art.1.

¹²⁰ Implementation of the Kyrgyz Republic’s ‘Law on Social-Legal Protection from Domestic Violence’ and the discussion of proposals to improve the legislation with the aim to prevent domestic violence. Hearing before the Parliament of the KR, Jun. 17.

¹²¹Human rights watch memorandum. Domestic violence in Kyrgyzstan, *HRW*, accessed on Oct. 10, 2012, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HRW_cedaw42.pdf, p1.

¹²²*see supra* note 38, at 8.

protection of victims of domestic violence, as well as to determine the preventive activities of the domestic violence. Along with that the law defines family violence and provides with types of domestic violence and explanation of each type. It determines three major types of violence that may occur in the families. However, the domestic violence law ignores the fact in addition to physical, sexual and psychological violence a victim may experience economic and verbal violence.

Economic violence

Economic abuse has been defined as “[m]aking or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.”¹²³ In the course of domestic violence money can be used as an instrument of control. In other words when the perpetrator fully controls money or other economic resources of the victim it is financial abuse.¹²⁴ To illustrate, somebody is employed and is getting salary. However, she or he cannot use the money earned because an abuser in a family does not allow to spend the money.¹²⁵ In India, Section 3 clause (iv) of the Protection of Women against Domestic Violence Act 2005, defines economic violence as a) “[...] deprivation of all or any economic or financial resources to which the aggrieved person is entitled [...] including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other

¹²³Susan L. Pollet. “Economic Abuse: The Unseen Side of Domestic Violence.” *nycourt.gov*, Feb. 2011, accessed Mar. 2, 2013, available at: http://www.nycourts.gov/ip/parent-ed/pdf/economicabusenyjournal2011_1_1.pdf.

¹²⁴“Financial or Economic Abuse. What is Financial Abuse?” *Peoples-Health.com*, 2012, accessed Feb.5, 2013, available at: http://www.peoples-health.com/financial_abuse.htm .

¹²⁵*see supra* note 44, at 3.

*property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship; c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to.”*¹²⁶

Verbal abuse

Type of abuse that causes injuries by the words, either written or spoken, is called verbal abuse. Verbal means by word of mouth or oral.¹²⁷ Such form of violence involves the use of language. “It is a form of profanity in that it can occur with or without the use of expletives.”¹²⁸ Verbal abuse is somehow contributes to the formation of emotional or psychological abuse.¹²⁹ For instance, if somebody verbally abuses another then the offended person gets hurt and he or she starts thinking about the offense, worries about it. This will eventually lead to the creation of psychological abuse. The Protection of women from Domestic Violence act 2005 in India merges emotional and verbal abuse saying that “verbal and emotional abuse includes- insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.”¹³⁰

The law offers remedies for victims of family violence. For example, they can file a complaint, obtain protective order, and address the local court of elders (*Aksakals*).¹³¹ It also provides that victims have the right to have access to such services as transportation to a medical institution, accommodation in a secure place and information on personal safety and

¹²⁶The Protection of Women Against Domestic Violence Act of Sep. 13, 2005, N 43, (The Gazette of India Part II, section I), section 3 clause (iv), accessed Jan. 13, 2013, available at: <http://wcd.nic.in/wdvact.pdf>.

¹²⁷“VERBAL,” *The Law Dictionary* 2nd ed, accessed Mar. 14, 2013, available at : <http://thelawdictionary.org/verbal/>.

¹²⁸Patricia Evens, “Verbal Abuse Precedes Domestic Violence,” *verbalabuse.com*, 1999, available at: <http://www.verbalabuse.com/page3/page8/page8.html>.

¹²⁹*Id.*

¹³⁰*see supra* note 133, at section 3 (iii) (Eng).

¹³¹*see supra* note 38, at 9.

legal aid.¹³² All those actions are performed by the entities indicated in the Domestic Violence law. For instance, representatives of a crisis center after receiving a claim from a woman can transport her to a hospital.

Special mechanisms on protection of victims of domestic violence

Important special measures of social and legal protection from family violence are interim protective order (hereinafter IPO) and protective court orders (hereinafter PCO). IPO and PCO have a function to protect victims of domestic violence from violent acts of a perpetrator. To illustrate, an IPO can be obtained by a woman if an act of domestic violence was committed against her or if her life is threatened.¹³³ Such an order is issued by an official of inner affairs at the place where family violence was committed. It should be issued within 24 hours from the time family violence happened, or from time of existence of a real threat of its taking place or from the time of the filing of a statement of facts of the violence. The IPO is issued to a person who has committed family violence is valid for up to 15 days.¹³⁴ “This order prohibits perpetrator from committing any acts of violence or having contact with the victim and obliges him to pay for related medical treatment.” If the violator does not follow the conditions of the orders he will be punished by a fine of between five to fifteen estimates¹³⁵ (one estimate equals to 100 som) or administrative arrest for up to ten days.¹³⁶ The bodies of prosecutor's office, the department of family and child support, educational bodies and health, social security, specialized social service agencies, NGOs, citizens who are engaged in business activities of providing social service to people may seek the issuance of a

¹³²Law on Domestic Violence, art. 8.

¹³³*Id.* at art. 13.

¹³⁴*Id.* at art. 13.

¹³⁵Postanovlenie Jogorku Kenesha Kirgizskaoi Respubliki ob Utverjdenii Razmera Raschetnogo Pokazatelya [Decree on establishment of the amount of one Estimate] Informazionniy Zentr Toktom. Zakonodatelstvo KR [Toktom] July 15, 2006, N 1115-III (equivalence of one estimate is 100som).

¹³⁶Law on Domestic Violence, art. 66-4.

protection order in the bodies of internal affairs of the KR.¹³⁷

On the other hand, a PCO may be issued by the court to protect the victim of domestic violence and prevent further violence in the presence of consent of the victim.¹³⁸ The Court, having examined the material given by the body of inner affairs, makes the decision to grant the person who committed domestic violence with such order. If the person who received PCO fails to execute conditions prescribed in the order within the period fixed by the court he will be brought to either administrative or criminal liability.¹³⁹ It is true that Administrative Code of the KR penalizes the violation of the court order. However, Criminal Code is silent about it. There is no norm that would regulate the issue of PCO in the Penal Code of the KR. Obviously, this is a substantial gap in the law.

The application of PCO is low. The statistics show that in practice the orders are seldom issued. For the period of 2003 until 2008 in total 18 protective orders were issued.¹⁴⁰ In 2010, no PCOs were issued. In 2011 there were only 2 orders issued. The latest statistics on National Statistics Committee shows that in the first three month of 2012 no PCOs were issued.¹⁴¹ The measures that were supposed to provide additional protection for women factually are rarely employed.

The Domestic Violence law aims to create a social and legal system for the protection of life, health of family members against violence and provide protection to victims of domestic violence, based on respect for international human rights. The law is directed to

¹³⁷ *see supra* note 125, at 84.

¹³⁸ Law on Domestic Violence, art. 16.

¹³⁹ *Id.* at art. 25.

¹⁴⁰ Shadow report to the Third Periodic Report of Kyrgyzstan 42nd CEDAW Sess. *Forum of Women's NGOs of Kyrgyzstan*, 2008, available at http://www.iwrawap.org/resources/pdf/42_shadow_reports/Kyrgyzstan_S%20Forum.pdf.

¹⁴¹ Human Rights Training on Strengthening of Judicial Protection of Rights of Children, Women and Handicapped People. The Statistics of National Statistics Committee of the KR on Domestic Violence 2010, 2011, 2012. *The Project of European Union, Max Plank Institute of Comparative Public and International Law*, Dec. 6-8, Bishkek, Kyrgyzstan.

"create conditions for the full and healthy family relationships, meanwhile particular concern of the state is protection of minors elderly family members against domestic violence."¹⁴² Nevertheless, the special measures like IPO and PCO are not often applied. There is no criminal liability for violating the conditions of PCO enforcement of provisions of the law is weak.

Recommendations

As there are more types of domestic violence than physical, psychological and sexual, the Domestic Violence law should contain definitions of economic and verbal abuses. This will help women who experience this kind of violence to protect themselves lawfully based on the additions that should be made.

Secondly, theoretically, special measures for protecting people from domestic violence are very reasonable. However, relying on the numbers of statistics, it seems that application of special protective mechanism such as IPO and PCO is not widely practiced in the KR. 15 days, more than two weeks, is a short term for a victim of domestic violence to get or to deal with over what happened to her in abusive relationship. It is advisable to increase the period of time for which TPO is issued or totally cancel to issuance of the order and leave just CPO if the conditions of the PCO are violated, than a perpetrator will be criminally liable for his actions.

Administrative Code of the Kyrgyz Republic

Administrative law regulates social relations that arise in connection with the practical realization of executive power.¹⁴³ It regulates the relationships that arise in the sphere of state

¹⁴²Law on Domestic Violence, art. 1.

¹⁴³U.M. Kozlov, "Administrative law", *Bibliotekar*, 1999, <http://www.bibliotekar.ru/administrativnoe-pravo->

administration that in its turn is a type of social administration.¹⁴⁴ The source of Administrative regulation is the Code of the KR on Administrative Responsibility (Code on AR). The Code on AR contains a separate norm on domestic violence. It states that Marital abuse is characterized as an administrative offense. Such an offense is punishable by a fine of between five to ten estimates (1000 som) or administrative arrest.¹⁴⁵ It is important to note that an administrative fine equals to 500- 1000 Kyrgyz som, it is approximately 11 \$ - 21 \$ USA, and administrative arrest lasts for up to 5 days.¹⁴⁶ The notion of administrative arrest was not included into the Article 66-3 until the president of the KR Almazbek Atambaev earlier in the summer of 2012 signed a law of the KR "On Amendments and Additions to the Code of Administrative Responsibility" where the offender is now can be punished with either a fine or an arrest.¹⁴⁷ In November 2012, Parliamentary Committee of the KR on law and order and crime control has approved a draft law on "On amendments and additions to the Code of Administrative Responsibility." The draft law increases liability of spouses for cases of domestic violence.¹⁴⁸

There are similarities between Administrative and Criminal law branches. They, both of them have the same aim of punishment, which is the achievement of social justice and prevention of violations of law. Secondly, they possess the same methods of state enforcement. Finally, they have some identical types of punishments such as fines, arrest and mandatory social works.

The difference between them is that conviction under Criminal law unlike

2/index.htm.

¹⁴⁴N.T. Sheripov, *Administrative Law of the KR*. (Bishkek: OAO Erkin-Too, 2008), 6.

¹⁴⁵Administrative Code, art. 66-3.

¹⁴⁶Administrative Code, art. 66-3.

¹⁴⁷Administrative Code, art. 66-3.

¹⁴⁸"Parliamentary committee approved the bill which increases the responsibility of spouses for domestic violence," *For.kg*, Nov.7, 2012, <http://for.kg/news-197045-ru.html>.

Administrative, are listed on a person's record which have more serious impact on persons lives.¹⁴⁹ For instance, an accused person does not have a right to work in state bodies and institutions. As a rule, in order for a crime to be qualified as a criminal one there must be a great degree of social danger of such as offense. As a rule, the degree of social danger of an administrative offense is usually much lower than the criminal. It is necessary to establish the degree of social danger that domestic violence has in order to determine whether it should be characterized as a criminal offense.

The specifics of domestic violence are that it has systemic character. It does not occur once, and it is not a random incident, but rather it is repetitive violence that can appear in different forms.¹⁵⁰ It can be concluded that the liability for domestic violence is not strict and the offense considered to be less dangerous than other criminal offenses.

Recommendations

The administrative responsibility for domestic violence is not strict. The abuser can pay the fine and continue using violence against his wife. It is necessary to increase liability for domestic violence to 100 estimates.(10 000 som)¹⁵¹ It is going to be more challenging for a perpetrator to gather 10000 som (approximately 213 US dollars) than 1000 som (approximately 22 US dollars) to pay a fine. Before using violence against a woman a husband would consider his financial abilities if the violence were to continue if the same abuser commits the offense a second time he must be criminally liable for his actions.

Moreover, the liability for domestic violence should contain both administrative arrest and (not or) administrative fine. If the fine will be combined with arrest, the victim will have

¹⁴⁹Criminal Code, art. 76.

¹⁵⁰See supra note 125, at 80.

¹⁵¹Administrative Code, p.5, art. 30.

time to think over the situation and make a decision about what to do next. Thus, the article 66-3 has to be modified. Administrative arrest has to be 15 days minimum.

Finally, the word "or" will be changed to "and." To illustrate the norm will look like: "Domestic violence [...] - punishable by a fine of 100 estimates and administrative arrest for up to 15 days.

Criminal Code of the Kyrgyz Republic

Criminal Code of the KR provides penalties for crimes of violence against a human however it does not penalize serious crimes such as violence in marriages. The inevitable legal consequences of criminal condemnation are criminal record whereas administrative liability does not carry after itself such outcome. Domestic violence has to be penalized by Criminal Code of the KR and has to be treated as a dangerous for society criminal offense.

Article 8 of the Domestic Violence law says that the Court, when deciding the cases of domestic violence, must make decisions in accordance with the Domestic Violence law, administrative, criminal and civil procedural code. The Criminal Code contains general norms on infliction of physical injuries to a person which are applied in deciding the cases of domestic violence. However, it is silent about domestic violence. The reasoning of the legislation is not clear. In fact, the Domestic Violence law refers to Criminal Code of the KR, while the Code does not have any special provisions on domestic violence.

Marital rape as a criminal offense

Another important issue that fall under domestic violence topic is marital rape. Some researchers argue that marital rape is "just one extension of domestic violence."¹⁵² It is illegal in the KR however such crime is not specifically criminalized. There is no definition of a

¹⁵²Raquel Kennedy Bergen. "Marital Rape." *University of Hawaii*, 1999, accessed Dec. 12, 2012, available at: <http://www.hawaii.edu/hivandaids/Marital%20Rape.pdf>.

spousal rape in Kyrgyz laws and for this reason, it is necessary to look for it in the laws of other countries.

Marital rape is a form of intimate violence and the majority of victims are females. Victims of marital rape are often called “hidden victims” since they rarely report their experience. There are three types of marital rape: 1) *forceful rape*, the husband establishes the frequency and type of sexual activity in the marriage 2) *battering rape*, where a husband humiliates and degrades his wife and 3) *obsessive rape*, contains elements of sadism, forcible anal intercourse and sexual fetishes.¹⁵³

The following definition is taken from Californian Penal Code article 262 “Spousal Rape.” Generally, spousal rape where a victim is the spouse of the perpetrator is an act of sexual intercourse accomplished:

"(1) against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused. (3) Where a person is at the time unconscious [...]. (A) Was unconscious or asleep. B) Was not aware, knowing, perceiving, or cognizant that the act occurred. (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact. (4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat [...]. (5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official [...]."¹⁵⁴

¹⁵³ *see supra* note 10, at 316 -317.

¹⁵⁴ The Penal Code of California (Penal Code) of Jan. 1, 1873. Ch.2, art. 262, *California State Legislature*, accessed Feb. 3, 2013, available at: <http://www.shouselaw.com/spousal-rape.htm>.

The law very specifically explains under which conditions a woman is considered to be raped by her husband.

While marital rape is not specifically considered under the KR law, a tremendous number of women suffer its consequences.¹⁵⁵ Marital rape is one of the aspects of domestic violence. It poses dire consequences and it threatens women's lives. According to worldwide studies, "health problems caused by marital rape include HIV and other sexually-transmitted infections, vaginal bleeding or infection, genital irritation, pain during sex, chronic pelvic pain, and urinary tract infections."¹⁵⁶ The consequences of marital rape are very serious. In particular, "women who experience sexual assault within a physically violent marriage have been shown to have more negative feelings toward men, greater negative feelings about sex, more negative feelings about marriage, lower self-esteem, more paranoid ideation and anxiety, and more disruptions in body image than women who experience physical violence only."¹⁵⁷ Marital rape, as differentiated from intercourse generally, can also lead to complications during pregnancy that can negatively affect health of both women and their children. The research indicates that women who are raped by their husbands are likely to experience multiple assaults and often suffer severe long-term physical and emotional consequences. Marital rape may be even more traumatic than rape by a stranger because a wife lives with her assailant and she may live in constant terror of another assault whether she is awake or asleep.¹⁵⁸

¹⁵⁵ *see supra* note 4.

¹⁵⁶ Joanna Crichton and Celestine Nyamu Musembi, "Marital Rape and Its Impacts: A Policy Briefing for Kenyan Members of Parliament" *realising-rights.org*.2009. <http://www.realising-rights.org/docs/newsletter/Marital%20Rape%20Policy%20Brief%20for%20MPs.pdf>.

¹⁵⁷ Jennifer Langhinrichsen-Rohling and Candice M. Monson, "Marital Rape: Is the Crime Taken Seriously Without Co-occurring Physical Abuse?." *Journal Of Family Violence* 13, no. 4: 433-443, *Academic Search Premier*, EBSCOhost, accessed November 13, 2012.

¹⁵⁸ *see supra* note 159, at 7.

A considerable number of countries have made marital rape a criminal offense.¹⁵⁹ To illustrate, according to a United Nations Development Fund for Women (UNIFEM) report on Domestic violence, marital rape is recognized as a crime in as many as 50 countries including Austria, Belarus, Bhutan, Cyprus, Hungary, Mexico, Nepal, and the Seychelles. Almost 45 states have specific laws against domestic violence, 21 more are drafting new laws, and many countries have amended criminal assault laws to include domestic violence.¹⁶⁰ Domestic violence must be treated seriously. By criminalizing this crime the society may stop having frivolous attitude towards this problem and start thinking about consequences of committing domestic violence.

Marital rape is not specifically criminalized in the KR nor is it specifically legal—it is considered under general rape provisions. Chapter 18 “*Crimes against sexual inviolability and sexual freedom of the individual*” contains provisions that discuss rape and actions of a sexual character in general. Article 129 specifically discusses rape and establishes punishment.

The impacts of marital rape are no less serious and are sometimes more frightening than those of rape by strangers. In fact, marital rape has several features that differ this type of crime from a stranger rape. A victim of stranger rape usually experiences it once and she does not know this person. A woman understands that it is rape. Stranger rape is punishable by the Criminal Code of KR.¹⁶¹ Commentaries on article 129 of Criminal Code of KR define that the victims of a rape can be only female persons regardless of their moral character, behavior that preceded the crime, or legal status (prostitute, girlfriend and wife). It is worth

¹⁵⁹Bureau of Democracy, Human Rights, and Labour. U.S Dep't of State Diplomacy in Action, “2010 Country Reports on Human Rights Practices: Kyrgyz Republic,” *state.gov*, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154482.htm#>.

¹⁶⁰*Id.*

¹⁶¹Criminal Code, art. 129.

mentioning the fact that commentaries to the Criminal Code of the KR is a non-binding document and has recommendatory character. In other words the relationship of a perpetrator with his victim does not matter because prostitutes, girlfriends and wives are put on the same level when the court tries to determine the punishment. It is not considered in the law that wives are related to their husbands differently rather than girlfriends or prostitutes.

Another difference is that besides physical connection, in a marriage spouses have property and personal non-property relationships. They both have obligations in a marriage: to respect each other, support, and be responsible for all members of the family.¹⁶² By having abusive behavior towards his wife, the man destroys the fundamental basis of the family relationships.¹⁶³ The perpetrator deprives a woman from the opportunity to have healthy and happy family life. In marital rape woman knows who the rapist is. It is more than just physical or sexual assault. A woman, who lived in one home with her husband, shared with him secrets and fears maybe even with whom had children experiences “betrayal of trust.”¹⁶⁴ A perpetrator is not somebody a victim had sex with for the first time. In fact the violator is a person the woman has had intimate relationship with often over many years, and who she believed wanted the best for her, who would never intentionally hurt her.¹⁶⁵ Thus, marital rape and stranger rape should be identified separately.

A case of domestic violence against a woman that stirred public not only in Kyrgyzstan but also far beyond the borders of our country was the case of Nazgul Akmatbek kyzy. Based on the facts, the woman was raped by her husband who was a GKNB officer, and his driver. The court did not find the elements of the rape. A military court acquitted the two

¹⁶²Family Code, art. 1 .

¹⁶³“Marital Rape. Rape is Rape,” *Hidden Hurt*, accessed Oct. 10, 2012, available at: http://www.hiddenhurt.co.uk/marital_rape.html.

¹⁶⁴*Id.*

¹⁶⁵*Id.*

men on May 24, 2012. The court decided and agreed with Bekboev, husband of the victim, that Akmatbek kyzy was the driver's lover. After that Akmatbek kyzy applied to a higher military court. As a result of such appeal Bekboev was forbidden from leaving Bishkek by the court and the same court ordered the driver to be jailed. This second trial began in July 2012.¹⁶⁶ The courts have the attitude that "the rape of a wife is a sex game," rather than a crime, says Elena Tkacheva, Akmatbek kyzy's therapist and head of the Chance Crisis Center in Bishkek.¹⁶⁷ Such form of domestic violence is an under-reported violent crimes because it is socially tolerated.¹⁶⁸ Having been working for 20 years with battered women, Tkacheva says she hasn't seen a single case of marital rape be prosecuted as a crime. "No one – not judges, police officers, local government officials, psychiatrists or doctors – recognize it as such," she said.¹⁶⁹ There are several reasons why women do not refer to courts: lack of knowledge, fear of being killed and fear to lose their children and social and moral obligation to be a wife. The victim was not going to even sue her abusers, if this fact would not have become known to her family. The young woman, a mother of four, wife of an officer of special services, year after year, suffered humiliation from her husband and did not even consider, that such inhuman treatment at the hands of her husband was actually a criminal offense. As she confesses, she kept living with Azamat only because of their children. She wanted them to be grown up in the whole family with both mother and father.¹⁷⁰ Women remain silent is because they are afraid to receive a social stigma of a "fallen woman" if they openly say that they were raped by their husbands.

¹⁶⁶David Thrilling, "Kyrgyzstan: Rape Trial Spotlights Women's Plight," *EURASIANet.org*, July 12, 2012, <http://www.eurasianet.org/node/65654>.

¹⁶⁷*Id.*

¹⁶⁸*see supra* note 167.

¹⁶⁹*see supra* note 173.

¹⁷⁰Chinara Asanova, "Silence of the Lambs," *National Newspaper Slovo Kirgizstana*, Jul. 17, 2012, accessed Sept. 3, 2012, available at: <http://slovo.kg/p=10878>.

The right to be protected from any form of physical violence can be found in the laws of the KR and some international agreements that the KR is a party to. However, considering the gap in the law of KR, women are not protected against marital rape.

It has to be noted that domestic violence is a severe social problem and it must be taken seriously. It is not enough to make domestic violence a criminal offense but rather solve it by using a wide range of measures. To illustrate, if the killing of the person was criminalized; however, it did not solve the problem since murders happen.¹⁷¹ Another example, domestic violence is like a physical illness and it is not enough just to treat one hand to solve the problem.¹⁷² If the perpetrator receives a criminal record, it will have the impact on the family. In cases when a husband is the only breadwinner in the family, the presence of criminal record will negatively affect the finances of the family.

Criminalization of Marital Rape in Various Countries.

Developed countries such as United Kingdom, Canada and the USA accept marital rape as a criminal offense. For instance, Californian laws on domestic violence and Penal Code provide women with protection against rape by their spouses. To demonstrate, in order to prove that an accused is guilty under California spousal rape laws, the prosecutor must prove four facts (otherwise known as "elements of the crime"): "(1) that a male and female engaged in sexual intercourse, (2) that you were married to the alleged victim at the time, (3) that the act of intercourse was against the will of your spouse, and (4) that the sex was accomplished by means of force or fear, or that it took place while the alleged victim was prevented from consenting due to extreme intoxication and/or the fact that he/she was

¹⁷¹Taken from the interview of Tulegenov Tursunaly Asakeevich, teacher of Criminal Law in AUCA. See Annex III

¹⁷²*Id.*

unconscious.¹⁷³ Under Californian laws, marital rape is considered to be a felony and is punishable by the following penalties: 1) formal probation, three, six, or eight years in the California State Prison. 2) This prison sentence could increase by three to five years if you inflict a great bodily injury or harm on your spouse. 3) It could also increase to a maximum life sentence if you have been convicted for multiple sex crimes or if this is your third "strike" under California's Three Strikes Law, up to \$10,000 in fines, and 4) a lifetime duty to register as a sex offender pursuant to California Penal Code article 290.¹⁷⁴

In UK on 14th of March 1991 by the decision of The House of Lord in case R v R marital rape exemption was abolished.¹⁷⁵ In this case a husband was found guilty for the attempt to rape his wife. Earlier by the law men were protected by marital rape exemption which allowed husbands rape their wives against their will.¹⁷⁶ Men were given immunity from liability for marital rape. It was considered that a woman could not refuse her husband from having sex.¹⁷⁷

Another example of a country whose norms regulate spousal rape is Canada. In Canada, marital rape was criminalized in 1983 (at this time the legislative terminology was changed from —rape to —sexual assault). In Canada the law of rape and sexual assault evolved to focus on protecting women from physical injury. However, respect for a woman's ability to consent or demonstrate non-consent was an area of the law that remained, and continues to be a problem. The introduction of the *Canadian Charter of Rights and Freedoms*

¹⁷³ *see supra* note 161.

¹⁷⁴ *Id.* art. 290.

¹⁷⁵ R v. R. [1992] 1 A.C. 599, *House of Lords*, accessed Dec. 6, 2012, available at: <http://www.leeds.ac.uk/law/hamlyn/rvr.htm>

¹⁷⁶ O.S Kapinus, "The responsibility for Rape in the Modern Criminal Law," *Ex-jure*, 2006, available at: <http://www.ex-jure.ru/law/news.php?newsid=718>.

¹⁷⁷ "To Have and to Hold: The Marital Rape Exemption and The Fourteenth Amendment," *Harvard Law Review*, 99, no. 6: 1255.1986, *Academic Search Premier*, EBSCO *host*, accessed Nov.13, 2012.

in 1982 provided the impetus for the criminalization of marital rape in Canada.¹⁷⁸

To sum up, the KR Criminal Code does not have specific norms that discuss domestic violence even though the Domestic Violence law has references to the Code. Marital rape is a form of intimate violence that carries after itself serious negative psychological and physical consequences. Marital rape is different from stranger rape and by putting marital rape on the same level with all other types of rape the legislator does not take into consideration the specificity of relationships between a victim and a perpetrator.

Recommendations

It is recommended to leave Administrative liability for domestic violence that happened for the first time as it was suggested prior in paragraph discussing Administrative Code. Nevertheless, if the perpetrator commits the same offense second time, then he will bear criminal responsibility for his actions. This condition should be added into Administrative Code. In particular, article 66-3 should contain a paragraph stating that if a person repeats the act of domestic violence, the violator will be attracted to a criminal responsibility.

Secondly, it has been established that marital rape is different from stranger rape and that women suffer more harm from rape being in the same home with the perpetrator. Based on it, the notion about marital rape must be included in the Criminal Code either as a separate norm like in Californian Penal Code, or as an aggravating factor under the general norm about rape which will provide for a greater liability of a criminal.

Finally, there must be a norm establishing a punishment for those who violate the

¹⁷⁸Fiona Sampson, "The Legal Treatment of Marital Rape in Canada, Ghana, Kenya and Malawi-A Barometer of Women's Human Rights," *Theequalityeffect*, Sept, 2010, available at: <http://theequalityeffect.org/pdfs/maritalrapebarometer.pdf>, 19.

conditions of the court protective order. As it was suggested earlier, the repetition of domestic violence must entail criminal responsibility.

The Criminal Code is indifferent to the relationship between a perpetrator and his victim in the case of rape. In order to break the silence of those women who are afraid of reporting the cases of marital rape the society must be aware that this problem exists. To achieve this goal mass media, newspapers and educational sector need to be involved in the process of spreading the information about marital rape in the society, in local communities. There must be training provided for women that will guide them in such difficult moments in their lives. Besides, the National Statistics do not provide any numbers about the cases of rape in the families. It is advisable to create a new section in the annual overview of socio-economic position in the KR that is issued by the National Statistics committee of the KR that would provide statistics on the numbers of marital rape registered each year. As it was discussed earlier, one of the main reasons why women do not report such crime is their fear. To make women feel free and safe talking about marital rape they have experienced there must be a complex of measures has to be created such as rehabilitation programs, trainings, education of women about their rights. The more women know that marital rape is a type of domestic violence and it is persecuted the more women will report it. The moment the society, the government and law enforcement authorities acknowledge the existence of such crime, women will start reporting more.

Criminal Procedural Code of the Kyrgyz Republic

It is important to examine what rights women possess under the Criminal procedural Code in order to find out any legal inconsistencies. Whether the victims of domestic violence are given any additional procedural rights compared to others. For this purpose norms in the

Criminal Procedural Code must be analyzed. Before the actual trial a woman who suffered domestic violence has to tell her story to an investigator who was assigned to examine this issue. However, testimony may be either videotaped or recorded to voice recorder equipment. Voice or video recording can be used upon the request of a victim or because of the decision of the investigator to do so. The final decision to record the testimony of the victim is made by the investigator who has to notify the victim about it. During the trial this recording can be used upon the request of the victim, if she refuses to give testimony. In reality, the situation is different women have to retell her traumatic story many times. As an example, a victim of domestic violence Nazgul Akmatbek kyzy had to tell her story 30 times while going through the process of finding help and justice from law enforcement authorities and courts.¹⁷⁹ This practice is unacceptable and humiliating for women.

Moreover, victims who suffer physical violence are scared of their abusers. They have a feeling of fear that any action on their part will contribute to more violence.¹⁸⁰ Experiencing great stress when she each time tells her story to other people. It is psychologically traumatizing for women. Therefore, victims who are present on trial may feel discomfort and fear being at the same room with the perpetrator. It can influence mental state of the victim. Additionally, because of the fear that the victim might feel during the trial, her testimony might not be truthful.

Finally, victims of domestic violence should be provided with psychologists since they experience deep psychological distress during the whole process of filing a lawsuit against their husbands. In Austria, with the help of NGO's, female activists, scientific scholars, victims of domestic violence now have a right to have psychologists during the trial.

¹⁷⁹ *see supra* note 173.

¹⁸⁰ *see supra* note 10, at 313.

Recommendations

In order to ensure the victim's psychological stability, and in order to effectively gather her testimony, it is necessary to make several changes in the Criminal Procedural Code. In particular, The Code has to provide special protection of the victim of domestic violence from continuous unnecessary emotional trauma during the criminal proceedings. For this purpose, we should refer to the already existing practice of such protection in Germany. In particular, German Code of Criminal Proceedings prohibits asking a question that could lead to revealing of facts of sexual nature from private life of the victim or her family can be posed only if it is indispensable.¹⁸¹ Moreover, according to the Code the court can ask the defendant to leave the courtroom during the time when the victim is giving testimony if there is a big chance that the victim might not be truthful and can be influenced by the presence of the accused. In particular, article 223-a of the Code States that *“If there is any probability that by giving a statement or by answering a certain question, the witness, collaborator of justice or the victim i.e. the person who suffered some damage, would expose himself or herself or another closely related person to a serious threat to their life, health or physical integrity (endangered witness), the endangered witness may withhold his statement or the presentation of information, until the necessary conditions for his or hers protection are provided for.”*¹⁸² This provision is an effective tool for protection of victims of domestic violence from undergoing psychological stress during testimony. It should be used in the KR.

Furthermore, at the stage of investigation the victims of domestic violence has to be given a right to decide themselves whether to video tape or voice record their testimony

¹⁸¹Code of Criminal Procedure in the version published on 7 April 1987 (Federal Law Gazette [Bundesgesetzblatt] Part I p. 1074, 1319), as most recently amended by Article 2 paragraph (30) of the Act of 22 December 2011 (Federal Law Gazette [Bundesgesetzblatt] Part I p. 3044), art 223-a, art 221.

¹⁸²*see supra* note 188. at art. 223-a.

independently from the decision of the investigator.

In Germany the Act of 1998 to Protect Witness in Questioning in Criminal Proceedings and to Improve Victim Protection provides for the use of video in criminal proceedings thus the victim can be protected against stressful procedure of direct testimony and against the contact with the offender. This example should be applied in Kyrgyz courts.¹⁸³

Moreover, the criminal procedural Code must contain a norm which will allow for a victim of domestic violence to have a psychologist during a trial free of charge.

The role of law enforcement authorities in addressing the problems of domestic violence

Everyone has the right to appeal to the public authorities, local governments and officials who are required to provide a reasoned response within a reasonable time. However, this is not always given to women. Statistics show that over the period of 15 years, law enforcement authorities refused to initiate 21, 530 cases of violence against women. Over the period of 12 years there were only 7,314 cases registered.¹⁸⁴ According to National Statistics Committee of Kyrgyz Republic in 2012 from January till August 1911 cases of domestic violence were registered, 1792 temporary protective orders were given, 128 criminal cases were initiated and sent to a court, 862 people were attracted to administrative liability.¹⁸⁵

One of the reasons why temporary and court protective orders are seldom issued is that law enforcement authorities are unwilling to interfere in family matters because they believe that relationships in the family are private and that the state should not disturb

¹⁸³“Germany. Violence against Women,” *Legislationline.org*, 2013, accessed Dec.4, 2012, available at: <http://legislation.org/topics/subtopic/25/topic/7/country/28>.

¹⁸⁴see *supra* note 177.

¹⁸⁵see *supra* note 1, at 201.

them.¹⁸⁶ This thinking is founded on patriarchal concept of the family which is disappearing faster in urban area than in rural. Studies that were conducted in Austria showed that for police officers, families are "sacred" and they do not want to know what is happening inside the family. They believe that if a woman does not go to the police station the same day the violent act happens, she is prone to exaggerate what happened to her and what she is afraid of. The findings were made based on examination both rural and urban police officers. In Austria like in the KR, patriarchal structures are deeply rooted. Many police officers do not know how difficult it is for a woman to get out of the abusive relationship.

Law Enforcement authorities play a crucial role in managing domestic violence. The Committee on Elimination of All Forms of Domestic Violence in its conclusions stated that "police approach to such violence is ineffective and that police officers frequently prefer to qualify such incidents as constituting mere hooliganism."¹⁸⁷ The Committee added that victims of violence prefer to contact crisis centres, NGOs, rather than addressing the State authorities. Based on Human Rights report 2010 many crimes were underreported because victims experienced social, psychological and cultural pressure and because of indifference of law enforcement authorities.¹⁸⁸ Sometimes the representatives of inner affairs help the perpetrator to escape the liability by refusing women to accept their written statements.

The following case shows unwillingness of law enforcement authorities to investigate the issues of domestic violence. Taken from the database of "Sezim" crisis center: For the purpose of keeping confidentiality of her personality, the victim will be named Mrs. X. She is a mother of two teenagers. A year ago she separated with her husband due to the fact that he

¹⁸⁶Birgit Haller, "Different Effects of Domestic Violence in Urban and Rural Areas," In *Ten Years of Austrian Anti-Violence Legislation*, p 28. (Vienna: Druckerei Hans Jenztsch & Co GmbH, 2008), available at <http://www.bka.gv.at/DocView.axd?CobId=34228>.

¹⁸⁷see *supra* note 114, at paragraph 19.

¹⁸⁸see *supra* note 166.

used domestic violence against her. After the separation, the perpetrator continued his violent actions. He would visit her and repeatedly abuse her. In particular, he would frequently beat her, threaten to kill her and the children, lock her at home without giving an ability to go out, and verbally humiliated her in the presence of the children. In the search for help and protection, Mrs. X went to a local department of inner affairs. She was surprised to see her husband there talking to a person who was on duty there. Nevertheless, after waiting for some time she handed in her written statement. Her claim was registered, however, nothing happened. Her husband was allowed to have a free access to her apartment. When she called the department, asking about her statement, she learned that the claim was under the revision and this process would require time. Meanwhile, her husband intimidated her by saying she had to take back her claims from the department. Because of the slow process of solving her issue by the law enforcement authorities, she decided to apply for help to “Sezim” crisis center where she received legal consultation and for the first time learned about protecting orders and her rights.¹⁸⁹

This case illustrates the ineffectiveness of department of inner affairs in addressing the problems of domestic violence in the KR.

Another problem is lack of financial support of the state of law enforcement authorities. In cases of issuing protective orders it requires money to send a victim to a medical examination. The perpetrator must be delivered to a District Department of Inner Affairs. To do it the car has to be filled with gasoline and it is not always in the gasoline tank since it is financially costly.¹⁹⁰ As the result victims do not get medical examinations and perpetrators are not sent to a District Department of Inner Affairs. It is the responsibility of

¹⁸⁹Crisis center “Sezim” database of the women who ask for help.

¹⁹⁰Anara Niyazova, “The case of Kyrgyzstan,” In *Consurtium of Women’s Non-Governmental Organizations. International legal Norms and Practice to Overcome Domestic Violence*, p 82. (Moscow: 2010), available at: <http://www.wcons.org.ru>.

the government to support financially law enforcement bodies so they work effectively.

Recommendations

It is very important for law enforcement authorities to understand the nature of domestic violence and not to be driven by stereotypes and personal beliefs about family. If not, the consequences of law enforcement's ignorance to the cases of domestic violence and lack of knowledge may be serious. Considering this, those who possess great authority, who are superior in rank can influence officers should raise awareness about family violence among them, communicate to them how to deal with domestic violence.

In order to increase assistance of law enforcement authorities to victims of domestic violence first they have to get educated about what constitutes domestic violence and how to work with such cases. For instance, the “Duluth model” [Annex 2] which describes the main types of domestic violence can be used for educational purposes. The “Duluth model” is also referred to as the Power and Control Wheel. It was developed from the experience of battered women in Duluth, a port city in Minnesota State in the USA, who had been abused by their male partners. It has been translated into over 40 languages and has resonated with the experience of battered women world-wide. It represents the cycle of domestic violence and widely used in trainings as an explanation of the cycle of domestic violence.¹⁹¹ This wheel may be used to educate law enforcement or prosecutors. The wheel provides an explanation for why a victim might return to an abusive spouse or why victim is refusing to cooperate in a criminal prosecution. In order to motivate authorities to actively participate in resolving domestic violence conflicts, “the system of encouragements and awards should be

¹⁹¹“Wheel Galary,” *The Duluth Model*, accessed Nov. 13, 2012, available at: <http://www.theduluthmodel.org/training/wheels.html>.

created.”¹⁹² If their work will be stimulated financially and morally, the results will be higher.

Previously it was recommended to increase the administrative fine for domestic violence to 10,000 som. Some part of this money can be used to cover the costs of victims medical examination and costs of the transportation of the perpetrator a District Department of Inner Affairs. Another approach that can help to attract money for the state is establishing diplomatic relationship with the countries where the level of domestic violence is low. The KR can use the experience of other countries on how to raise money to address the problem of domestic violence.

The role of crisis centers and NGO's in protection of women against domestic violence in the Kyrgyz Republic

Usually, a woman who decides to leave her abusive husband places herself at a great risk and has an urgent need of a safe place to stay. This decision is not easy to make. Researchers conducted in this area indicate that most of the time women would continue experiencing domestic violence against them because of the fear to leave violent relationships.¹⁹³ Even if a woman may leave the house, economic necessity may force her back to her abusive partner, who might retaliate with even more severe violence and abuse. She may face the risk of becoming homeless. Sometimes women remain in abusive relationship because of religious beliefs. They feel that their faith requires them to keep their marriages and family together at all costs and to honor and obey their husband, submitting to his will.¹⁹⁴ Women experience great fear and emotional distress while sharing one home with an abuser. Women would remain in abusive relationship because they also fear psychological

¹⁹²see supra note 179.

¹⁹³see supra note 10, at 313.

¹⁹⁴see supra note 10, at 313.

pressure and cultural traditions. They are afraid to go to courts since attorneys and citizens of the KR generally think that judicial system is corrupted and that judges are sensitive to outside force.¹⁹⁵ The place where women in the KR can find support and shelter are crisis centers.

There are 13 crisis centers in the KR.¹⁹⁶ Their main functions are to provide legal, psychological consultations and social support. Few of them have shelters where a woman can stay while escaping violence at home. The problem with shelters is that they have a very limited number of available places. Moreover, women can only stay there temporarily. According to the article 17 of the Domestic Violence law the victims have a right for free accommodation in the shelter for up to 10 days. The extension of the residence in the shelter is possible on the conditions of the agreement. Usually women come back home where they used to live with their abusive husbands because they do not have other places to live. The moment they return home the cycle of domestic violence starts again. On the other hand, crisis centers are not able to provide housing for women for long period of time because they lack financial resources.

One vivid example of a crisis center that provides legal and psychological support to female victims of domestic violence is crisis center “Sezim.” The Center “Sezim” is a public organization. The organization's mission is to protect the rights of women and the family; rehabilitation of abused women and the study and analysis of the problem of violence in society, preventive and active protection of the population from various forms of violence, including gender, legal education of the population of the Kyrgyz Republic. “Sezim” provides rehabilitation and reintegration assistance (during and outside living in the shelter) to women

¹⁹⁵ *see supra* note 166.

¹⁹⁶ “About the Association of Crisis Centers in Kyrgyzstan,” ACC, Nov. 28, 2012, accessed Sept. 19, 2012, available at: http://www.acc.web.kg/aboutacck_rus.html.

and their children affected by gender, domestic violence and trafficking. Analysis of the center indicates that the number of people seeking help after experienced violence increases every year by about 5-10%.

Women from all regions of the KR ask the specialists of the center for legal counseling and assistance in obtaining services of the shelter. The center has extensive experience in the area of gender rights, domestic violence and trafficking.

When resolving legal problems and providing legal advice, lawyers of the center use various legal normative acts such as the Constitution of the KR, the Family Code of the KR, the Penal Code of the KR, Criminal Procedure Code of the KR, the Domestic Violence law, and other. After having an internship in this center, it has become evident that most female victims of domestic violence are legally illiterate, helpless and lost. For this reason, the attorneys of the center frequently prepare all necessary legal documents for them, represent and protect their interests in Bishkek courts.

The Association initiated the implementation of the internationally recognized 'Duluth' model which entails the creation of community groups to respond to cases of violence.¹⁹⁷

The association tries to attain this goal through research, networking, campaigning and capacity building. In 2001, 12 crisis centers united and created the Association of crisis centers in the KR (ACCK) and its members actively participated in the preparation and lobby for the Domestic Violence law. Since the beginning of 2007, activities have started to strengthen the network and its sustainability. A new organizational charter has been adopted, a code of ethics, membership rules, and a strategic plan. In 2009 a sixteen-day national

¹⁹⁷ Association of Crisis Centers, *HIVOS*, accessed Dec. 10, available at: <http://www.hivos.nl/dut/community/partner/10009095>.

campaign was launched to raise awareness about Women's Convention. The ACCK aims to broaden and improve its legal and psychological services by means of training and teaching, including programmes for offenders of domestic violence.

In the winter of 2012, local NGO's and crisis centers have participated in campaign initiated by the Center for Women's Global Leadership devoted to 16 Days of Activism Against Gender Violence Campaign. The campaign involved local media, youth groups and an overall number of 65,535 people. The purpose of this campaign was to raise awareness of the society about violence that is used against women, to spread the information about the scale of the problem and to actively involve the society in the resolution of this issue. Some NGO's issued informational brochures with articles taken from active national laws and international conventions that guarantee the protection of women's rights against any forms of violence.¹⁹⁸

The NGO's and crisis centers in the KR play a crucial role in the processes of fighting against domestic violence. Thousands of women each year refer to them in a search of survival from abusive marital relationships. They are the places where women can find real help and support. They are independent from the state. Mostly such organizations are financially supported by foreign donors, not by the state.

The state must support crisis centers financially. However, there are very few such centers that are completely supported by the state. If the state does not invest money to the prevention of domestic violence, in future it may merely affect the state budget and the society. In order to provide legal and psychological assistance to the victims, the staff of the center must receive salary. Most of the centers do not have their own real estate. They rent

¹⁹⁸Association of Crisis Centers, *HIVOS*, accessed Dec. 10, available at: <http://www.hivos.nl/dut/community/partner/10009095>.

offices which also require money. If the state does not combat family violence and diminish this problem, in the long run the problem will aggravate and it will be even more expensive for the state to deal with already happened cases of domestic violence. The places in the shelters centers are limited. They significantly contribute to prevention of violence; nevertheless, they oftentimes lack financial support. Furthermore, not all women are familiar with the services that shelters provide. However, those who happen to receive help from them have recognised shelters and their effectiveness. Lack of financing can negatively affect the quality of service, staff and inhabitants of the shelter. Under the women's convention, women affected by violence are given a right to receive protection, safety and support. Since the KR has ratified the Convention it has an obligation to create such conditions to the victims of domestic violence.¹⁹⁹

Recommendations

The majority of crisis centers are located in big cities such as Bishkek, Osh, Talas, and others. However, there is a lack of crisis centers in rural areas where acts of violence against women happens more often. Building crisis centers in rural areas must be one of the top priorities of the state in order to provide victims with physiological and legal assistance. It is difficult to get out of the abusive relationship for women being captured by fear. Based on it there must be intervention measures created that will help women to stop violence some of them simply are not able to do it personally. Since the large part of the population of the KR resides there. Those are the areas where domestic violence takes place more often compared to the cases of domestic violence on urban areas. Experts in legal and psychology spheres

¹⁹⁹Maria, Rosslhumer, "Success, Problems and New Strategies in Women's Shelter Activities," In *Ten Years of Austrian Anti-Violence Legislation*, p 117. (Vienna: Druckerei Hans Jenztsch & Co GmbH, 2008), accessed Mar. 6, 2013, available at <http://www.bka.gv.at/DocView.axd?CobId=34228>.

must be attracted to work in crisis centers, so they could provide professional help to the victims.

To raise public awareness about domestic violence there must be an active involvement of mass media. In particular, there must be advertisements, promoting healthy relationship between family members on TV, on the radio, over the Internet.

The state must financially support crisis centers since what they are doing is the concern of the whole society not individuals. Even if a family is regarded as something private and sacred, it is the state whose major concern has to be a family. By providing centers with money, the quality of their work will increase, they will be able to provide shelters for a greater number of people, and they would be able to hire professional staff to work with victims. They would be able to help more people than today.

Chapter III. General recommendations

The family is a concern of not only the state but also society. Domestic violence is a problem that is not going to be easily solved since it has happened world-wide, in different societies. It is not enough to adopt laws and make changes in those that already exist. Comprehensive approach should be used to eradicate this social illness.

Legislative framework changes. First of all, the inconsistencies in law must be corrected. The legislative gaps must be filled in accordance with Constitution and international obligations that the KR has.

The laws alone will do little. In resolving the issues of domestic violence the State must take into consideration that fact that the laws have to be applied in each case individually. Along with that, there must an active participation of the society in discontinuation of abusive relationships inside the families.

The KR has adopted several national plans of actions in order to eliminated gender discrimination in the society. However, the plans must be more than just printed material. There must be strong implementation procedures of such plans of actions, and adequate budgets have to be allocated for these purposes. States have to ensure that all political and legal measures regarding violence against women "are coordinated nationwide and focused on the needs of the victims and that relevant state institutions as well as nongovernmental organizations (NGOs) be associated with the elaboration and the implementation of the necessary measures."²⁰⁰ If there is going to be operative application of laws on domestic violence such legal framework will increase the number of reported cases. Victims will see

²⁰⁰Rosa Logar, "Introduction National and International Measures to Prevent Domestic Violence Against Women and Children," In *Ten Years of Austrian Anti-Violence Legislation*, p 15. (Vienna: Druckerei Hans Jenzsch & Co GmbH, 2008), accessed Oct. 15, 2012, available at <http://www.bka.gv.at/DocView.axd?CobId=34228>.

the applications of law on practice and be more willing to share their stories with society.

Increase of role of Mass Media. Additionally, there must be an active involvement of mass media and raising awareness of the society about domestic violence and especially violence against women.

Education on domestic violence. In order for a young female generation to know their rights, education on domestic violence must be a compulsory lecture under the Human Rights course in school curriculum. Educational institutions must educate young girls and boys to respect each family member in the family. The state must provide training for citizens to family life, marriage and motherhood.²⁰¹ Education inside of the families is also important. Mothers, sisters and other female relatives should promote the respect for women.

Increase of civil society movement. Influential female leaders in different areas including political, economic and legal should deliver speeches empowering women to stand up and speak for themselves.

Special trainings for perpetrators. The final important recommendation is to create special programs for violent men that will educate them and teach them how to manage their abuse behavior. In particular, it would be wise to refer to the successful experience of providing trainings for perpetrators of domestic violence for more than a decade that was used in Austria.²⁰² There, trainings for perpetrators are implemented throughout different levels of social system. Men's Counselling Service of Vienna, the Domestic Abuse Intervention Centre Vienna and the referring institutions cooperate with each other to make intervention system more successful. The Vienna program's coordinated legal, social education and therapeutic measures in order to provide support to victims and work with

²⁰¹Family Code, art. 1.

²⁰²International Conference in the Context of the Council of Europe Campaign to Combat Violence Against Women, Including Domestic Violence ten Years of Austrian anti-Violence legislation, Nov. 5 to 7, 2007. (Vienna and St. Pölten, Austria), accessed Oct. 15, 2012, available at: <http://www.bka.gv.at/DocView.axd?CobId=34228>.

perpetrators with the aim to prevent future violence has become an international standard that ensures protection and safety for victims of violence.²⁰³ The Vienna training programme corresponds to international programme standards. The main goal of such program is to stop immediately and sustainably violent behaviour on the part of men and also to improve their social competence towards equality in relationships and responsible parenthood.

Violence is about establishing power and control over the victim. The programs employ the social education approach of Duluth Model and provide consultancy and assistance to partners of violent men.

Another central task of the training programme is to coordinate measures to prevent violence.²⁰⁴ In cooperation with other institutions, in particular the police, the Youth and Family Offices, public prosecutors and courts, measures aimed at preventing further violence are coordinated. It has shown that obligations imposed by courts enhance the motivation of violent men to analyse their violent behaviour.

Taking into consideration the successful experience in Austria it is reasonable to adopt this program in Kyrgyzstan by considering the cultural differences. It is suggested to make compulsory attendance of such trainings for men who were brought to an administrative and criminal responsibility.

²⁰³Birgitt Haller, Sylvia Low, Karl Mahrer, at. all., "Summary of a Discussion of Experts," In *Ten Years of Austrian Anti-Violence Legislation*, p 25. (Vienna: Druckerei Hans Jenztsch & Co GmbH, 2008), accessed Feb. 16, 2013, available at <http://www.bka.gv.at/DocView.axd?CobId=34228>.

²⁰⁴Barbara Ille, Heinrich Kraus, "The Vienna Training Programme for Violent Men," In *Ten Years of Austrian Anti-Violence Legislation*, p 251. (Vienna: Druckerei Hans Jenztsch & Co GmbH, 2008), accessed Feb.16, 2013, available at <http://www.bka.gv.at/DocView.axd?CobId=34228>.

Conclusion

Domestic violence is a social illness that affects mostly women in the KR. The majority of cases of domestic violence involve a husband abusing his wife. Family violence has different forms. Domestic violence is sometimes hard to recognize for women. As a result, some women stay in abusive relationships without even knowing that their rights are violated and that there is a way to stop violence against them.

After thorough examination and analysis of the legislation of the KR related to the protection of women's rights against domestic violence, the senior project demonstrated the existence of legal problems in the sphere of domestic violence. In particular, some changes must be made in Domestic Violence law, Family Code of the KR, Administrative Code of the KR, Criminal Code of the KR, and Criminal Procedural Code of the KR. Moreover, the project proved the presence of the problem with enforcement of laws. Furthermore, such issues as defective laws, cultural beliefs, traditions, stereotypes, discriminatory attitudes towards women in the society, ignorance of law enforcement authorities to the acts of domestic violence, lack of state financial support of crisis centers create great obstacles for women to fully exercise their rights. Some laws contain inconsistencies and the others had gaps.

The comparative law analysis showed that the legislations of some foreign countries are more seriously concerned about domestic violence than the KR is. The study of domestic violence across such academic disciplines as sociology and psychology revealed the complicated nature of such abusive behavior, the traumatizing consequences it may cause to the victims of domestic violence. Cross discipline study helped to understand the challenges that women experience while they suffer from family abuse.

The KR ratified multiple international treaties that address the issue of domestic violence and protection of women's rights. However, the KR has been unable to meet the obligations under these agreements, which negatively reflects on the effectiveness of victims' protection and fighting against domestic violence in general.

The project has proved that the problems exist, it is widespread, and it must be eliminated.

Finally, the project has suggested recommendations for prevention of violence against women in troubled families, advised methods of work with perpetrators and victims of domestic violence and proposed the solutions for the existing gaps and inconsistency in domestic violence legal framework.

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ANNEX I

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2. Convention on the consent to the marriage, the minimum age for marriage and registration of the marriage. (Ratified by Kyrgyzstan on March 6th 1996.)
3. Convention on the Nationality of Married Women. (Ratified by Kyrgyzstan on March 6th 1996.)
4. Convention on the Elimination of All Forms of Discrimination against Women. (Ratified by Kyrgyzstan on March 6th 1996.)
5. International Covenant on Civil and Political Rights. (Ratified by Kyrgyzstan on January 12, 1994.)
6. Additional Protocol to the International Covenant on Civil and Political Rights. (Ratified by Kyrgyzstan on January 12, 1994.)
7. Kyrgyzstan participated in the IV International Conference on Women in Beijing in 1995, which adopted the Beijing Platform for Action.

ANNEX II



“Duluth Wheel”, available at: <http://nylag.org/units/matrimonial-and-family-law/about-domestic-violence/>.

ANNEX III

Interview with Tulegenov T.A, the instructor of Criminal and Administrative Law in American University in Central Asia.

Q: What do you think about the problem of domestic violence against women in the KR?

A: It is a serious problem. I would say it is a social illness that is not that easy to treat.

Q: What are your suggestions on how this problem can be eliminated in our society?

A: I think a set of different measures should be used. For instance, there must be some training programs for the society. Prophylactic works should be conducted by the representatives of law enforcement authorities. Mass Media should spread the information about domestic violence, about the real cases so the perpetrators will be ashamed of their behavior. The gaps in the legislation must be fixed. Well, it is a set of measures. It is not enough to change laws to get rid of this problem.

Q: Should we criminalize domestic violence?

A: Yes and No. We criminalized murder, however, people still continue killing other people. Of course, domestic violence should be strictly punished. Nobody has a right to use violence against other people. I am even against touching of one person of other person without the consent of the last. On the other hand, if we criminalize domestic violence, we will increase the number of people with criminal record. This has very serious consequences since those people cannot occupy certain jobs, there are certain limitations they would have if they receive criminal record. Also, children will not be able to communicate with their fathers. What if fathers were the only bread winners in the family. I strongly believe that each case must be decided individually. I am for the usage of preventative measures.

Q: How to make law enforcement authorities not to ignore cases of domestic violence but to investigate them?

A: Law enforcement authorities are the human beings just like you and me. I understand them. They get a little money for their job. They do not have motivation to go to places where domestic violence happened. The system of the system of encouragements and awards should be created in order to stimulate their work. They need to be educated about what domestic violence is. They need to have some training before they can help others.