

American University of Central Asia
International and Business Law Department

SENIOR THESIS PAPER

**CEDAW IN KYRGYZ REPUBLIC:
LEGAL AND PRACTICAL PROBLEMS OF ELIMINATING DOMESTIC VIOLENCE**

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Abstract

Over the past decades with the development of human rights, violence against women is understood as a violation of women's human rights and that it constitutes a form of gender-based discrimination. According to Declaration on the Elimination of Violence against Women and Convention on the Elimination of All Forms of Discrimination against Women every Member State has to develop legislation on violence against women. Correspondingly, many pieces of legislation have been developed that acknowledge violence against women as a form of discrimination and a violation of human rights. Kyrgyzstan as a country that embodies the union of different values, it plays a unique role with regard to women's rights and domestic violence. This paper analyzes the state of gender and domestic violence in Kyrgyzstan, and the extent to which domestic legislation on domestic violence has been effectively implemented. The paper proposes policy recommendations to deal with the challenges Kyrgyzstan has encountered in implementing its laws. Thus, in addition to advancing Kyrgyzstan's response to domestic violence, these recommendations aim to be guidelines for other countries as they enact and implement their own legislation.

Introduction

“Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women's lives, on their families, and on society as a whole. Most societies prohibit such violence — yet the reality is that too often, it is covered up or tacitly condoned.” It was a part of the speech of UN Secretary-General Ban Ki-Moon on 8 March 2007¹ concerning violence against women. Kyrgyzstan is not an exception, thus facing the same problem as many other States.

Currently, a lot of studies have been conducted in Kyrgyzstan on domestic violence, and they showed that problem of domestic violence is very wide spread. According to National

¹ Intensification of efforts to eliminate all forms of violence against women: Report of the Secretary-General Ban Ki-moon calls on new generation to take better care of Planet Earth than his own
<http://www.un.org/apps/news/story.asp?NewsID=21720&Cr=global&Cr1=warming>

Statistical Committee 70% of female and 66% of male citizens recognize that domestic violence is a real problem existing in the Kyrgyz society. Despite to that fact that Kyrgyzstan is taking measures to reduce the rate of violence against women, statistics show that this problem is increasingly growing².

For the reason, that the problem of domestic violence in current situation is very actual and needs better consideration, I have decided to write a research on this topic. With the aim of presenting a comprehensive and useful analysis of how women's rights legislation can be incorporated in Kyrgyzstan, this paper focuses on Kyrgyzstan's experiences with legislation that is regarded to elimination of domestic violence. It is worth to note, that this paper discusses the problem of domestic violence from the perspective of women (not men and children). This paper's five sections seek to contextualize and analyze domestic violence in Kyrgyzstan while identifying ways in which the lessons learned through Kyrgyzstan's experience can be applied elsewhere. The first part gives the historical background of development of gender rights, in particular about domestic violence. The second part discusses Kyrgyz legislation on the Elimination of domestic violence. Next, the article considers the reasons for weak implementation of domestic legislation and identifies the weak spots of implementation. The fourth part provides policy recommendations for improving Kyrgyz laws' implementation. The fifth and final section concludes the whole paper.

International standards on domestic violence legislation

For today there are the various international documents protecting human rights (conventions, pacts, treaties etc.). First of all, there are the documents adopted by the United Nations Organization. The violence in a family violates variety of the human rights established by the international norms. The international community considers domestic violence, first of all, as violence against the woman. That is not surprising, that women are more often suffer from domestic violence. According to the Amnesty International, at least, every third woman in the world least one time in a life is exposed to beating, compulsion to sexual relations or other form of oppression. As a rule, the abuser is relative or acquaintances of the woman. To 70 % of victims a violent death women have been killed by the husbands or roommates³.

² International legal norms and practices of eliminating domestic violence. (Международные правовые нормы и практики преодоления домашнего насилия.

КОНСОРЦИУМ ЖЕНСКИХ НЕПРАВИТЕЛЬСТВЕННЫХ ОБЪЕДИНЕНИЙ.)

Stable URL : www.wcons.org.ru/ru/files/Int_domestic_violence.pdf

³ Ibid.

Domestic violence has been a persistent problem throughout recorded history and is regarded as one of the primary public policy concerns worldwide⁴. The *Universal Declaration of Human Rights* which was adopted in 1948⁵, has recognized the principle of equality as one of the main principles. Accordingly Article 2 of the Declaration states that “everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Since the declaration was not a treaty and it was not legally binding, in the course of time the provisions of the Declaration were elaborated into two Treaties- International Covenant on Political and Civil Rights 1966, and International Covenant on Economic, Social and Cultural Rights 1966. *The International Covenant on Civil and Political Rights (1966)*⁶ as the title indicates has established international standards in political and civil spheres. It ensures the rights of self-determination, legal redress, life, liberty, freedom of expression, freedom of movement, fair trial, privacy and etc. One of the most valuable principle such as principle of non-discrimination was referred in Article 3 of the Covenant which obliges the States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. Furthermore, Article 26 states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Therefore, all domestic legislations shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*The International Covenant on Economic, Social and Cultural Rights(1966)*⁷ as the title indicates has established international standards in economic, social and cultural spheres. All Member States are obliged to take steps for progressive realization of the following rights: the right for safe and healthy working condition, for social security, to have protection of the

⁴ CEDAW - Rights That Benefit the Entire Community. By Leila Rassekh Milani, Sarah C. Albert and Karina Purushotma

⁵ On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories." <http://www.un.org/en/documents/udhr/>

⁶ The Kyrgyz Republic joined the International Covenant on Civil and Political Rights with the resolution of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 12 January 1994 No. 1406-XII.

⁷ The Kyrgyz Republic joined the International Covenant on Economic, Social and Cultural Rights with the resolution of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 12 January 1994 No. 1406-XII.

family, to be free from hunger, to obtain free education, participate in cultural life and others⁸. All of the rights listed in the Covenants should be guaranteed by Member States without discrimination of any kind of to race, color, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.

*The Convention on the Elimination of All Forms of Discrimination Against Women (1979)*⁹ (CEDAW, or Convention), was adopted by the United Nations in 1979, and is the most comprehensive international agreement on the basic human rights of women. The Convention provides an international standard for protecting and promoting women's human rights. It is the only international instrument that comprehensively addresses women's rights within political, civil, cultural, economic, and social life.

The fifth part of the CEDAW establishes a Committee on Elimination of Discrimination against Women (Committee). The main task of the Committee is to control the observance of the provision of CEDAW by Member States. This Committee is composed of 23 experts, who represent the Member States to the Convention, and they are elected by Member States out of the population of the State. But these experts act of behalf of themselves, not representing the interests of the State of their citizenship. They are elected by voting by secret ballot out of the list of candidates, proposed by Member States. Every member-expert is elected for the term of four years. They are constantly renewed, since the term of work of nine experts expire after two years. Rights after the election process, the list of these nine experts is determined by the Chairman of the Committee.

Member States are obliged to submit to the UN General Secretary its first report within one year after it has ratified or acceded to the Convention, subsequent reports must be submitted at least every four years or whenever the Committee so requests. These reports should cover the legislative, judicial, administrative and other measures that have been adopted by the Member State in order to implement the provisions of CEDAW into its national legislation. The Committee annually reviews the reports on their sessions that last up to two weeks. Annually the Committee submits a report to the General Assembly of United Nations about its activities with proposed suggestions and recommendation of general character, based on information gathers from National reports.

⁸ BENDING THE BOW: Targeting Women's Human Rights and Opportunities
http://www.soros.org/initiatives/women/articles_publications/publications/bendingbow_20020801/bending_the_bow.pdf

⁹ The Kyrgyz Republic joined the Convention on the Elimination of All Forms of Discrimination Against Women with the resolutions of the Legislative Assembly of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of 25 January 1996 No. 3 320-1 and the Assembly of People's Representatives of the Jogorku Kenesh of the Kyrgyz Republic of 6 March 1996 No. II N 257-1.

In 1999 October 6th, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*¹⁰ was adopted. This protocol provides with important mechanism on implementation of CEDAW. It includes an inquiry procedure and a complaints procedure. The objectives of these mechanisms are:

- to obtain specific remedies for the victim or victims,
- To advance women's equality by transforming those structures which maintain and support discrimination against women¹¹.

Following an inquiry procedure Committee enabled to conduct inquiries into serious and systematic abuses of women's human rights in countries that become States parties to the Optional Protocol. Also Optional Protocol gives a right to individuals or groups of individuals to claim against the Member State about violation of rights set forth in the Convention to the Committee. It provides a communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received¹². Optional Protocol establishes that a communication will only be considered by the Committee if it concerns a country that has become party to the protocol. In addition, a communication must be submitted in writing and may not be anonymous¹³. In addition, article 4 of Optional Protocol provided the admissibility criteria of communications. Before a complaint is considered, the Committee must determine that all available domestic remedies have been exhausted and the complaint is not, nor has been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. In addition, a complaint will only be admissible provided the complaint is compatible with the provisions of the Convention; is not an abuse of the right to submit a communication; the claimants' allegations can be substantiated, and the facts presented occurred after the State party ratified the Protocol¹⁴. After receiving of the

¹⁰ The Kyrgyz Republic joined the Optional Protocol with the Law of the Kyrgyz Republic of 23 April 2002 No. 72.

¹¹ THE OP-CEDAW AS A MECHANISM FOR IMPLEMENTING WOMEN'S HUMAN RIGHTS: AN ANALYSIS OF THE FIRST FIVE CASES UNDER THE COMMUNICATIONS PROCEDURE OF THE OP-CEDAW

¹² Article 2 of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/optional%20protocol%20to%20CEDAW.htm>

¹³ Articles 3 of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/optional%20protocol%20to%20CEDAW.htm>

¹⁴ Articles 4 of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/optional%20protocol%20to%20CEDAW.htm>

communication and prior to its final decision, the Committee can contacting the State Party with an urgent request that the State Party take steps to protect the alleged victim or victims from irreparable harm. In the case if the communication was found to be admissible, the Committee brings a communication to the attention of the State Party, provided the complaint has consented to disclosure of their identity to the State Party. The State Party has to provide a written explanation or statement to the complaint within six months.

An inquiry procedure allows the Committee to initiate a confidential investigation by one or more of its members where it has received reliable information of grave or systematic violations by a State Party of rights established in the CEDAW. Where warranted and with the consent of the State Party, the Committee may visit the territory of the State Party. Any findings, comments or recommendations will be transmitted to the State Party concerned, to which it may respond within six months¹⁵. These mechanism played a good role in implementation of the provisions of CEDAW in the legislation of State Members.

Context of CEDAW on domestic violence

CEDAW is built on the understanding that discrimination against women in any area of social, economic, political or cultural life is not an isolated incident. The fundamental importance of the CEDAW to achieve gender equality lies in the fact that:

- *it gives the definition of the term “discrimination against women” in Article 1: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” ;*
- *it obliges States Parties to incorporate the principle of equality between men and women in their National legislation - the Constitution and other acts;*
- *it explains that the adoption of the "temporary special measures aimed at establishing de facto equality between men and women is not considered discrimination"(Art. 4).*

The signatories to the Convention, recognizing the true extent of the problem cannot be confined to questions of law, but must take responsibility for reform at all levels, including the

¹⁵ Article 8 of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/optional%20protocol%20to%20CEDAW.htm>

customs, cultural norms and practices. This Convention recognizes the necessity of modification of the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women(Art.5(a)).

In the text of CEDAW there are no concrete provisions on domestic violence against women, but discrimination against women includes gender-based violence.

Main applicable provisions to domestic violence:

- *Article 2 (comprehensive state obligation to eliminate discrimination against women);*
- *Article 5 (elimination of prejudices and practices, based on the stereotyped roles of women and men);*
- *Article 16 (elimination of discrimination against women in marriage and family relations: equality of women and men, same rights and responsibilities).*

Although CEDAW does not include an explicit reference to violence against women, subsequent

developments in international law and in interpreting CEDAW have recognized violence as a violation of human rights¹⁶. The United Nations General Assembly adopted a resolution 40/36¹⁷ on domestic violence in 1985. Later, in 1986 the United Nations Economic and Social Council (ECOSOC) also adopted a resolution 1986/18 that recognized “violence in the family” as a “grave violation of the rights of women.”¹⁸ In 1992 the Committee on the Elimination of Discrimination against Women has adopted General Recommendation 19, which referred that domestic violence is “*violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.*” With time International Community concentrated its efforts on current day issues, and as a result, after the World Conference on Human Rights in Vienna in 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women, which also stated that “*violence against women constitutes a violation of the rights and fundamental freedoms of women and*

¹⁶ Human Rights and Domestic Violence. Zoe Craven, Research Assistant, Australian Domestic and Family Violence Clearinghouse http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/human_rights.pdf

¹⁷ Resolution 40/36, A/RES/40/36, November 29, 1985

¹⁸ ECOSOC resolution 1986/18, May 23, 1986, para 2.

impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women”.

In 1995 the Fourth World Conference on Women in Beijing included elimination of all forms of violence against women as one of its twelve strategic objectives, and listed concrete actions to be taken by governments, the United Nations, international and nongovernmental organizations¹⁹.

Kyrgyzstan adopted the Declaration on the Elimination of Violence, this instrument recognizes “*that violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities and impedes the full development of their potential*”²⁰.

Kyrgyzstan and domestic violence

The Beijing platform of actions accepted on Fourth World Conference in 1995, became for the Government of The Kyrgyz Republic the base document for realisation of the national policy in maintenance of gender equality. As a result the country to the decided to accept special laws, legal standard and national plans directed on achievement of the gender equality. In April 1999. At special session of the Commission of the United Nations by position of women Kyrgyzstan has been named among first ten states which are successfully carrying out of the obligations, accepted on the Fourth World conference in Beijing.

Kyrgyzstan had ratified CEDAW as a result of the powerful upsurge of activity of representatives of a wide range of state and public structures, especially inspired by the events of the Beijing World Conference on Women, 1995. This was the first step towards development of Women Rights in Kyrgyzstan. After that Kyrgyz Parliament ratified 5 International Conventions Protecting the Rights of Women:

- Political rights of women Convention²¹;
- Convention on marriage, matrimonial age and marriage registration²²;

¹⁹ Innocenti Digests: DOMESTIC VIOLENCE AGAINST WOMEN AND GIRLS). United Nation’s Children’s Fund Innocenti Research Center. www.unicef-irc.org/publications/pdf/digest6e.pdf

²⁰ Declaration on the Elimination of Violence against Women General Assembly resolution 48/104 of 20 December 1993
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en)

²¹ Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954.<http://www1.umn.edu/humanrts/instree/e2cprw.htm>

²² Convention on Consent to Marriage, Minmum Age for Marriage and Registration of Marriages

- Citizenship of married women²³;
- Maternity protection convention²⁴;

And the fifth one was the Convention on Elimination of all forms of discrimination against women. The same year, 1996, by the Resolution of President became the Year of Women. These mechanisms established Kyrgyzstan's obligation to address violence against women through national policies and legislation. The National Program for Women's Status Improvement "Ayalzat" was approved for 1996-2000. In 2002 Kyrgyzstan ratified the Optional Protocol of CEDAW, thus giving a right to its citizens to write petitions to the CEDAW Committee.

Since that time the Government of Kyrgyzstan prepared 3 periodic report (1999, 2004, 2007). While at the same time, the women's movement organizations have been formed networks, common platform for the preparation of alternative reports, including the interests of the most vulnerable and marginalized groups (girls, rural women, sexual minorities, sex workers, persons with disabilities). Kyrgyzstan had made many amendments and adopted new laws and regulation in order implement provisions of CEDAW. The following list of document that governs women rights in Kyrgyzstan:

- The Constitution of the Kyrgyz Republic²⁵;
- Labor Code of the Kyrgyz Republic²⁶;
- Family Code of the Kyrgyz Republic²⁷;
- Civil Code of the Kyrgyz Republic;
- Criminal Code of the Kyrgyz Republic²⁸;
- Law of the Kyrgyz Republic "On protection of health of the people in the Kyrgyz Republic"²⁹;

Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of 7 November 1962 Entry into force: 9 December 1964, in accordance with article 6
<http://www2.ohchr.org/english/law/convention.htm>

²³ Citizenship of Married Women. <http://www.jstor.org/stable/2188846>

²⁴ Maternity Protection Convention, 2000 Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Note: Date of coming into force:07:02:2002.)
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

²⁵ The Constitution of the Kyrgyz Republic was adopted on 5 May 1993 (the wording adopted through the referendum of 23 October 2007)

²⁶ The Labor Code was adopted on 4 August 2004

²⁷ The Family Code was adopted on 30 August 2003

²⁸ The Criminal Code was adopted on 1 October 1997

²⁹

- 2003 - adoption of the Law "On State Guarantees of Gender Equality" and "On Social and Legal Protection from Domestic Violence"³⁰;

Therefore, CEDAW for now is a biggest achievement for all defenders of women's rights in Kyrgyzstan. However, at the same time despite to the fact that the CEDAW was ratified and many steps were taken by the government in order to improve the situation in Kyrgyzstan in the sphere of women rights, the actual state of affairs requires improvement.

Owing to the different ways in which development impacts men and women, UNDP began in 1995 to calculate a Gender-related Development Index (GDI), which accounts for the inequalities in achievement between women and men. Kyrgyzstan's GDI value in 2008 was worse than that of 116 countries out of the 177 countries for which data is available (UNDP)³¹. Another indicator, the Gender Empowerment Measure (GEM) "reveals whether women take an active part in economic and political life" (UNDP). Kyrgyzstan's GEM value ranked 120th out of 182 countries in 2009(UNDP³²). These indicators reflect that gender equality in Kyrgyzstan remains a concept not yet actualized. Kyrgyzstan ranks higher than some other neighboring countries like Tajikistan, but it is behind most European countries (UNDP).

CEDAW analysis

International context on domestic violence in CEDAW

International research on victims of domestic violence indicated that majority of women have experienced physical violence at the hands of an intimate partner or family member³³. It is known that there are many types of violence against women, however for the purpose of this paper other types of violence will not be covered, such as violence caused by stranger, by coworkers and others.

The definition of the term "violence against women" at first was elaborated in Article 1 of the UN Declaration on the Elimination of Violence against Women in 1993. The definition is the following :

³⁰ *The Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence* was adopted on 25 March 2003

³¹ **Gender-related development index.** HUMAN DEVELOPMENT REPORT 2007/2008

Stable URL: http://www.hdr.undp.org/en/media/HDR_20072008_GDI.pdf

³² **Gender empowerment measure and its components.** HUMAN DEVELOPMENT REPORT 2009

Stable URL: http://www.undp.org.tr/.../Table_K_from_HDR_2009_EN_Gender%20Empowerment%20Measure.pdf

³³ DOMESTIC VIOLENCE AGAINST WOMEN AND GIRLS(INNOCENTI DIGEST).

United Nation's Children's Fund Innocenti Research Center.

Stable URL : www.unicef-irc.org/publications/pdf/digest6e.pdf

*"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."*³⁴

Article 2 affirms that "Violence against women shall be understood to encompass, but not be limited to, the following:

- a) Physical, sexual and psychological violence, occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."³⁵

This definition recognizes that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."³⁶

Kyrgyz legislation implementing CEDAW

The legislation of the Kyrgyz Republic on protection of women from violence and discrimination is quite well developed. Accordingly domestic legislation of Kyrgyz Republic has mainly implemented the norms of International Treaties that were ratified by the Government. The reflection can be found in the Constitution, Criminal Code, Administrative Responsibility Code, etc.

³⁴ Declaration on the Elimination of Violence against Women
General Assembly resolution 48/104 of 20 December 1993
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en)

³⁵ Article 2 of the Declaration on the Elimination of Violence against Women
General Assembly resolution 48/104 of 20 December 1993
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en)

³⁶ Human Rights and Domestic Violence. By Zoe Craven, *Research Assistant, Australian Domestic and Family Violence Clearinghouse*
http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/human_rights.pdf

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

The main law that is specialized in domestic violence is the Law “On Social-Legal Protection from Domestic Violence”. Below there will be the analysis if this specialized law in details.

Law “On Social-Legal Protection from Domestic Violence”

During last decade a big attention was paid to the adoption of legislation regarding gender violence, particularly to domestic violation. The UN Secretary General called Member State to follow their obligation given at the 1995 Beijing World Conference on Women. For now 189 countries adopted the Beijing Platform for Action³⁷ thus obliging themselves to develop special domestic programs aimed in eliminating domestic violence. Legislation of many countries now consider marital rape as a crime, some States adopted laws against domestic violence.³⁸

Kyrgyzstan has enacted *Law “On Social-Legal Protection from Domestic Violence”* in March 25th, 2003 it set a cutting-edge precedent for itself and for many other countries. This was the first piece of Kyrgyzstan legislation that formally made a “private matter ‘public’”³⁹. This law is intended to protect the person being abused, primarily through the issue of a protection order. While the law is not intended for punishing the perpetrator of the violence, “ its enactment nonetheless represent a significant change from previous legislation, which offered no recourse for women being victimized by their relatives and, on the contrary, would generally hold the woman responsible for provoking the violence”⁴⁰. The passage of Law was an important step for the government and people of Kyrgyzstan .

³⁷ Fourth World Conference on Women
Beijing Declaration

<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

³⁸ DOMESTIC VIOLENCE AGAINST WOMEN AND GIRLS (INNOCENTI DIGEST).
United Nation’s Children’s Fund Innocenti Research Center.

Stable URL : www.unicef-irc.org/publications/pdf/digest6e.pdf

³⁹ Justice through Domestic Violence Legislation: Improving the Implementation of Turkey’s Law 4320 on the Protection of the Family. Perspective Author: *Barbara L. Rodriguez*
Stable URL: <http://www.princeton.edu/jpia/past-issues-1/2009/2.pdf>

⁴⁰ Ibid.

Now we will stop on features of the Law, it is probably, the unique law which was accepted in the country by a popular initiative method. Domestically, women's rights activists lobbied for many years trying to pass Law. Women's NGOs coordinated efforts to increase awareness of the campaign against domestic violence.

These women's rights and gender activists took advantage of their increased exposure to the international human rights arena. "Through participation at UN conference in Beijing, activists learned effective lobbying and advocacy skills that were then utilized in persuading their own government"⁴¹. The adoption of the law took place due to the strong and active lobby of this document from local civil society, particularly from members of women's rights groups. . In 2003 36 thousand signatures⁴² were collected for the lobbying of the draft of this law in Parliament.

This law specifically deals with the issue of domestic violence, in particular it defines the term of domestic violence in Kyrgyz legislation. Accordingly, article 1 states that domestic violence is "any intentional act by one family member directed towards another family member if such act limits victim's legal rights and freedoms, inflicts physical or mental suffering and causes moral harm; or contains a threat to the physical or mental development of a minor member of the family."⁴³ This definition is very broad, leaving the space for the different types of violence- physical and psychological harm inflicted against women in private life. Art 1 includes violence committed by family members in the form of physical abuse, psychological abuse and sexual abuse.

Physical violence in the family is defines as "physical domestic violence" as "an intentional torture by beating, damaging health, intentional deprivation of the freedom of movement, housing, food, clothing and other normal living conditions, forcing hard labor by one family member to another; as well as deviation by the parents or guardians of minors from their responsibilities towards the minor, such as carrying out their responsibilities regarding health and security of the minor that may result in infliction of harm to his physical or mental wellbeing, damage to his honor and dignity as well as physical and mental development of an affected child; or may lead to death of the member of the family."

Psychological violence in the family is "an intentional humiliation of one family member by

⁴¹ International legal norms and practices of eliminating domestic violence. (Международные правовые нормы и практики преодоления домашнего насилия.

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Stable URL : www.wcons.org/ru/ru/files/Int_domestic_violence.pdf

⁴² Ibid.

⁴³ Article 1 of the Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence of Kyrgyz Republic

another; coercion by one family member of another to commit an illegal act by threats, humiliation or blackmail that causes danger to one's life or health, including offenses that lead to disruption of mental or physical development of a family member.”

Sexual violence in the family is “an act by one family member that infringes sexual inviolability of another family member; as well as acts of a sexual character involving a minor.⁴⁴”

In general the law is very detailed and it has provisions on the list of subject that work on suppression and the prevention of domestic violence, and the subjects that render social supports to the victims of domestic violence. The concerned bodies are:

- Judicial bodies,
- Office of Public Prosecutor,
- Law-enforcement bodies,
- Courts of aksakals,
- The ombudsman (Акыйкатчы) the Kyrgyz Republic,
- Official bodies within the competence,
- Other subjects on socially-legal protection from family violence.

The article from 8-12 enumerates that tasks and obligation of these competence bodies in the prevention and protection spheres.

The most important passage that was taken by the adoption of this law was the creation of a special protection mechanism. Besides general mechanism such as administrative and criminal proceeding, Article 21 introduces protective order.

Protective order is defines as “a legal document granting a victim of domestic violence protection by the state. It contains a warning to the individual who committed or attempted to commit an act of domestic violence by the means described in this Law⁴⁵.” The law establishes two types of protective orders – temporary restraining order and protective court order.

Temporary restraining order can be issued by law-enforcement bodies when the victim of domestic violence or the representative of the victim files the complaint. The order shall be issued within 24 hours from the time of the perpetration of domestic violence or existence of real threat of its fulfillment, or from the moment of a filing of complaint about the fact of

⁴⁴ Ibid.

⁴⁵ Article 1 of the Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence of Kyrgyz Republic

committed violence⁴⁶. The term of the order is up to 15 days. The order imposes special measure to the abuser that shall be followed during the functioning of the order. Specific measure can be in the form prohibition to the abuser to make any violent actions against the victim, restriction on access to minor children, regulation of inadmissibility of direct and indirect contacts with the victim, obligation to pay cost of treatment suffered from violence.

The other type of protection order is protection court order issued by judicial bodies. It can be given out for the term from 1 month till 6 months. In the order the court defines terms of its action and a condition of execution of the order. This mechanism is intended to be very effective and prompt, accordingly the court is given only 10 days from the moment of a filing of application to have hearing and adopt a decision on granting the order or for denial.

The measure that are imposed by the court order are stricter than the ones imposed by temporary restraining order. The measures are following :

- Prohibition to make any violent actions against the victim of domestic violence by the abuser,
- The offer to the person who has committed an act of domestic violence to leave a residing place,
- Regulation of access of the abuser to minor children,
- The prevention of the abuser of inadmissibility of direct and indirect contacts with the victim,
- The prohibition to get and use fire-arms or other types of weapon defined by court,
- A duty to pay expenses of the treatment of injuries suffered from the violent act,
- An interdiction for individual use of joint property⁴⁷.

The compliance with temporary restraining order and protection court order shall be investigated and monitored by police. Police shall insure that abuser is not infringing upon the terms of the order and that he is not abusing the victim again.

⁴⁶ Article 23 of the Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence of Kyrgyz Republic

⁴⁷ Article 27 of of the Law of the Kyrgyz Republic on Socio-Legal Protection from Domestic Violence

Implementation of Law “On Social-Legal Protection from Domestic Violence”

The absence of systematic, reliable data complicates any attempt to determine the extent of changes in the prevalence of domestic violence in Kyrgyzstan since the passage of Law.⁴⁸ Nevertheless, it seems that despite the positive implications for women’s rights owing to the law’s passage in Kyrgyzstan, and despite the law’s limitations in terms of punitive measures against perpetrators, the benefits have thus far been limited by a failure to actually implement the law.

The provision of the Law refer to Administrative Code of Kyrgyz Republic, that had amendment due to the adoption the Law, The Article 66-3 of the Administrative Code states that “domestic violence includes any intentional actions (physical, mental, sexual) of one family member against another in case these actions derogate constitutional and other rights and freedoms of a family member causing harm to health, physical or mental sufferings, damage his or her physical or mental development regardless age and gender and if these actions do not have signs for criminal -4 and minimum calculation index⁴⁹.”

Furthermore, article 66-4 and 66-5 provide responsibility for the infringement of the temporary restraining order and court order. The sanction can vary from the fine in the size of fivefold to fifteenfold minimum calculation index or administrative arrest for up to 15 days⁵⁰. These are the only provisions directly attributed to the implementation of the Law *On Social-Legal Protection from Domestic Violence*”.

Regarding to the *Criminal Code* of Kyrgyz Republic there are no specific provision referring to domestic violence, neither it has provision on violation of protective orders. Therefore, the victims should rely on general crimes such as

- Article 104. Deliberate causing of heavy harm to health. The harm should cause loss of speech, hearing ability either loss functions of other organs, causing mental illness or other frustration of health connected to proof disability not less than on one third. One of the circumstances indicates that harm caused interruption of pregnancy is considered as aggravating circumstances. Another circumstance is when harm cause with regard to a known minor or helpless person or to a person who is materially or

⁴⁸ Kyrgyzstan Reconciled to Violence State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan www.hrw.org/en/reports/2006/09/26/reconciled-violence

⁴⁹ Article 66-3 of the Administrative Code of Kyrgyz Republic

⁵⁰ 66-4, 66-5 of the Administrative Code of Kyrgyz Republic

otherwise dependent upon the perpetrator. The punishment can vary from imprisonment for the term from five till fifteen years.

- Article 105. Deliberate causing of less heavy harm to health, not dangerous to a life and not entailed the consequences provided in article previous Article 104, but the harm which has caused long frustration. The punishment can vary from arrest for the term up to six months or imprisonment for the term up to seven years.
- Article 106.. Deliberate causing of heavy or less heavy harm to health in a condition of strong sincere excitement caused by violence or a great insult from the victim, and equally long psychoinjuring situation which has arisen in connection with regular illegal or immoral behaviour suffered. This article can be used against women who has been victimized at first by the partner, and as a result of lack of control has responded with a violence as well. As the circumstance of psychological unbalanced state has noticed, correspondingly the punishment is not that strict comparatively to article 104, 105- it is punished by the penalty at the rate to hundred minimum monthly wages or arrest for the term up to three months, or imprisonment till three years.
- Article 111. Torment – “Inflicting physical or psychological suffering through systematic beatings or through other violent means, having not resulted in the consequences as under Articles 104, 105. The punishment can be an imprisonment up to seven years. Circumstances for heavier punishment is committing violence against a “person who is materially or otherwise dependent upon the perpetrator, as well as against a person who had been abducted or taken hostage.”
- Article 112. “Deliberate causing of light harm to health that resulted in a short-term health disorder or in a minor permanent loss of the ability to work.” The punishment vary from arrest up to six month or imprisonment u one year. But if the violence did not cause short-term health disorder or in a minor permanent loss of the ability to work the punishment can in the form of fine of up to 30 times the minimum monthly wage, placement of the perpetrator under arrest for up to three months.
- Article 113. Threat of murder – in the case of presence of the sufficient bases to be afraid of realization of this threat can be punished as by arrest for up to six months or two years in prison.
- Article 129. Rape, which is sexual intercourse through the use of physical violence, threats of physical violence to the victim or her kinship, or taking advantage of the helpless state of the victim. The punishment can be imprisonment of five to eight years

for “regular rape,” and from eight to 25 years for acts of rape committed under aggravating circumstances, and provides the death penalty.

- Article 131. Compulsion to actions of sexual character. This crime is punished by the penalty at the rate from hundred to two hundred minimum monthly wages or imprisonment for the term up to two years.
- Article 132. The sexual intercourse and other actions of sexual character with the person punished by imprisonment for the term up to three years.

These are the articles that cover the issue of violence and that impose criminal liability on the perpetrators.

Kyrgyzstan statistics on domestic violence

Because of the unreliable data it is difficult to know precisely how many women in Kyrgyzstan have experienced domestic violence. For reasons including safety, shame, fear, and lack of awareness, domestic violence often goes unreported. Compounded by the shortages reporting of law enforcement officials and the lack of statistical data management, the data available are bale to represent an actual situation on domestic violence in the country. Nevertheless, studies show a consistently dismal information of the extent to which domestic violence intruded into the lives of Kyrgyzstan women:

- 83% of women suffer various forms of violence from their husbands or partners;
- 29% of women, apart from psychological violence, are regularly subject to physical violence in the form of battery, throwing things, threatening with weapon or knife;
- 38% of victims of physical violence are injured or become mentally sick;
- 24% of women were kidnapped for the purpose of marriage and stayed with their kidnappers;
- each fourth of kidnapped women later divorced, of which every second woman divorced due to brutal treatment;
- 15% of women were forced to marry by their parents;
- Annually from 7,500 to 8,000 women approach the crises centers of Kyrgyzstan for help⁵¹
- every year Ministry of Internal Affairs KR registers to **10,000** emergency calls connected with domestic violence⁵²

⁵¹ Crisis Centers of Kyrgyzstan
www.un.org/kg/index2.php?option=com_resource&task...no...

⁵² Ibid.

- Every month from **40 to 50** women and girls of victims of violence in family are hospitalised in the Bishkek city⁵³

According to the researches on the enforcement of the Law “ On social-legal protection from domestic violence” in 2008 for 6 years of laws action the protective court order has been given just twice, when **246** Temporary restraining orders were issued within three months of 2009.

The conclusion after the review of the statistical data on domestic violence show that despite to the fact that Kyrgyzstan has legislation prohibiting domestic violence, this problems remains to be one of the actual issue for consideration. Activities that were undertaken in elimination of gender based violence are not very effective. Raised its concern about domestic violence, and it At the review in November, 2008 CEWAD Committee “During its review of Kyrgyzstan in requested from the Kyrgyz Government to take special measures eliminate violence against women⁵⁴.

The passage of Law “On Social-Legal Protection from Domestic Violence” seems that despite the fact that it created a mechanism for protection of victims of domestic violence, it has been far limited to be fully implemented. The research conducted in 2009 on monitoring practice of the abovementioned Law has revealed a number of the difficulties connected by its implementation. One of the obvious concerns is that the number of issued protective order comparatively to the a number of women subjected to domestic violence is very low. The representative of the Supreme Court , Nizamidin Azimjanov said that “The low number of issued protection orders does not mean that violence does not exist but rather that people do not approach courts. Nearly all divorce suits include domestic violence.”⁴⁷

The reasons of weak implementation and nonexploitation of protective orders

UN bodies such as, INICEF, INIFEM, many international organization such as Human Rights Watch, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and other has reveal the reason for nonimplementation. The list of reasons include social and economic pressures that

⁵³ International legal norms and practices of eliminating domestic violence. (Международные правовые нормы и практики преодоления домашнего насилия.

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⁵⁴ Human rights watch UPR Submission. Kyrgyzstan, 2009

woman faces within her society. Below the reasons for weak implementation will be considered in details.

Insufficient and inconsistent statistics on domestic violence

Statistical data on the violence against women is not clearly provided. The problem is that National Statistical Committee gathers the information on violence in general, not differentiating different types of violence such as violence at work, violence inflicted by strangers or violence inflicted by family members. According to National Plan on actions on achievement of gender equality in the Kyrgyz Republic for 2007-2010 a special form of the departmental statistical reporting providing data gathering in cases of violence against women was developed. However, this data includes very wide definition of violence. According to the materials provided in the brochure “Women and Men in the Kyrgyz Republic” ,2007, the number of crimes registered against women was “3,427 in 2004 and 3,615 in 2006⁵⁵”. However these number included such crimes as murder, different level of harm caused to the person, rape, bride kidnapping and others. This data does not provide a specific type of violence as domestic violence, with the additional information on abusers and the relationship between the abused and abuser. The data does not provide the adequate information on cases of reporting of domestic violence in law enforcement bodies. However, there is only a comparative information on a number of persons addressed to aksakal courts, crisis centers, and other social organizations.

| | All | | | Individual approached with the problem of domestic violence | | |
|-----------------------|--------------|-------------|-------------|---|-------------|------------|
| | women | men | all | women | men | |
| In 2004 | 11936 | 9792 | 2144 | 2236 | 2189 | 47 |
| Aksakal court | 1597 | 1133 | 464 | 149 | 117 | 32 |
| Crisis centers | 9922 | 8474 | 1448 | 2087 | 2072 | 15 |
| Social funds | 417 | 185 | 232 | - | - | - |
| In 2007 | 10545 | 8549 | 1996 | 5469 | 4734 | 735 |
| Aksakal court | 950 | 560 | 390 | 755 | 451 | 304 |

⁵⁵ Ibid.

| | | | | | | |
|-----------------------|------|------|------|------|------|-----|
| Crisis centers | 8642 | 7274 | 1368 | 4129 | 3731 | 398 |
| Social funds | 860 | 655 | 205 | 492 | 492 | - |
| others | 93 | 60 | 33 | 93 | 60 | 33 |

Thus, there is no specified general information over the country on the rate of domestic violence. Besides, there is no comparative statistics analyzing the data over different years, that would identify the increases or decreases the rate of domestic violence. There is no information specified over the regions on the country in order to identify the regions where the Government has to conduct more activities on elimination of domestic violence.

Inadequate funding for shelters and crisis centers

Another problem lies in financial support of shelter and crisis centers, since the Law does not have provision of funding of these institutions, it only states that shelters and crisis centers should help women. “The lack of funding was mentioned as one of the five key problems with the implementation of the law on domestic violence in a fact sheet distributed by the Parliamentary Committee on Youth, Gender Politics, Gymnastics and Sports at the June hearing on domestic violence.”⁵⁶

It is worthy to note, that there are 13 crisis centers and 2 shelters per 5,500,000 people within the country.⁵⁷ Some shelters receive partial funding from government, however there are none fully governmental shelters and crisis centers. The majority of them are funded by international organizations and private donations.

“Alexandra Eliferenko from the Association of Crisis Centers told Human Rights Watch: “Funding is a big problem for the crisis centers. Only the crisis center Sezim receives some support from the authorities. We do not have a single state-run crisis center in Kyrgyzstan.”⁵⁸

⁵⁶ Kyrgyzstan Reconciled to Violence State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan www.hrw.org/en/reports/2006/09/26/reconciled-violence

⁵⁷ Crisis Centers of Kyrgyzstan www.un.org.kg/index2.php?option=com_resource&task...no...

⁵⁸ Ibid.

Lack of awareness of law enforcement authorities

Another reason for weak implementation of legislation on domestic violence is lack of knowledge and awareness of law enforcement bodies, such as police, Public Prosecutor offices, Courts, and Ombudsmen apparatus. The CEDAW Committee has expressed its concern many times about the “continuing hidden nature of domestic violence and the inadequate performance of the police in dealing with the reporting from the victims.⁵⁹” The law enforcement officials are merely aware about the Law on domestic violence, and since the protection mechanism introduced by this law is new to the community, there are case when the policemen do not know how to initiate the proceedings. Article 10 of the Law identify the measure that should be carried out by the police in reaction to domestic violence. However, due to the lack of awareness the effectiveness of these measures is weakening. The police should be aware of the procedure on how to accept and register of the reports on domestic violence in a family, they should know how to monitor and operate in such cases, police members should have sufficient knowledge to give the counseling to the victims when they approach to police, they should know how to submit the protective order, to explain procedure of start of proceedings on criminal responsibility, to help to a victim of violence with transportation to public health services, safe place or social crisis centers, take measures in prevention of violence in a family; take all s necessary measures to accuse the abuser, to prepare the documents necessary to the time restrictive order, and also how to prepare the necessary documents to be send the court; to cooperate with the local establishments of social security working with families that are at risk of domestic violence.

However, policemen consistently not in a condition to execute its duties which are so clearly identified the Law. It has been observed that when women address to police, policemen often do not register the complaints, do not provide the temporary restraining orders, or do not seriously investigate a case. with a view of suit. “ Instead, they often encourage women to reconcile with their abusers.”⁶⁰ This results in lack of trust that the police will adequately operate to stop domestic violence.

⁵⁹ LEGAL ANALYSIS OF THE LEGISLATION REGULATING RELATIONS IN PROTECTION OF WOMEN FROM VIOLENCE IN KYRGYZSTAN. Perspective Author: Ruslan Khakimov United Nations Division for the Advancement of Women http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Ruslan%20Khakimov%20revised_.pdf

⁶⁰ Human Rights Watch Memorandum: Domestic violence in Kyrgyzstan http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HRW_cedaw42.pdf

The National Plan on actions on achievement of gender equality in the Kyrgyz Republic for 2002-2006 and for 2007-2010 included activities on police and judges trainings. In the course on the time many training programs such as special course on gender policy in its curriculum by the Academy of the Ministry of Internal Affairs, OSCE community policing program in Bishkek⁶¹ and others were introduced to the community. However, the majority of training programs for law enforcement authorities are organized on voluntary basis that results in low number of participants of these trainings. “So far, there are no mandatory training programs dealing specifically with the different forms of violence against women for incoming and existing neighborhood police, judges or prosecutors”⁶². In the Alternative Report prepared by the Forum of Women’s NGOs to the Third Periodic report to CEDAW of Kyrgyz Republic it has been noted that “only very generally mentions awareness-raising activities among law enforcement officials with data of what percentage of law enforcement officials from police departments passed training or participated in such activities.”⁶³

Lack of trust in law enforcement bodies

As it was mentioned above women lack confidence in turning to police for protecting themselves in cases of domestic violence. The reasons can be very different, starting with social attitude towards legal remedies in protesting rights. The social attitude is that people unwillingly address the police for protection, especially when it concerns some private relationships. Many studies have ascertained that the majority of population of Kyrgyzstan “view police with suspicion and have little faith that they will be fair or that it is worthwhile to turn to them for help”⁶⁴. So, the problem is in public trust in police and courts, that affected by high rate of bureaucracy and corruption. People believe that law enforcement bodies protect interests of “rich and powerful” people.

⁶¹ Human Rights Watch Memorandum: Domestic violence in Kyrgyzstan
Stable URL : http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HRW_cedaw42.pdf

⁶² Kyrgyzstan Reconciled to Violence State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan www.hrw.org/en/reports/2006/09/26/reconciled-violence

⁶³ Concluding comments of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/kyrgyzstan/Kyrgyzstan-CO-1.pdf

⁶⁴ About 27 percent of the residents of the Pervomaisky district in Bishkek said they viewed corruption as among the main causes for shortcomings in police work. About 50 percent said police give preferential treatment to friends or those who offer them money. About 29 percent doubted the honesty of police officers. Executive summary of the report on social research. Kyrgyzstan Reconciled to Violence State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan www.hrw.org/en/reports/2006/09/26/reconciled-violence

In the context of domestic violence the reasons remain to be the same, that women do not believe that police or the court can properly react to problem. ““I never went to the police, it’s pointless,” said Aida A., grandmother of two, who has lived in a violent marriage for 25 years and has been hospitalized for head trauma due to beatings by her husband.⁶⁵

Besides women believe that in the case of addressing to police or other authorized body, they will just increase the possibility to be subject of domestic violence. Women do not believe that the Government is able to protect the, since after the expiration of the order she will stay with her husband. Since the social attitude expects that all private problems should be solved in private way. So, it is a shame for women to recognize that she has been beaten by her partner publicly. Also, women that grow up in the society that accepts domestic violence as an unavoidable part of relationships, they accustomed to this kind of attitude at home. As the researches⁶⁶ has revealed the most women who have been subjected to violence by their husbands are women that are economically dependent on their husbands. Those women do not work, or even if they do, the salaries are very low, so they remain to depend on husbands. Women are afraid to protect themselves, since they believe that it will result in divorce. The financial problems such as where to live, how to feed children stop women from addressing to police.

Another reason that women do not initiate criminal proceeding on the fact of rape, beating, infliction of harm is that women are afraid that is the husband will discover it, they will be under more violence. Also, as it was mentioned above the financial problems, women believe that they will not be able to afford an attorney, pay all the expenses needed for the proceedings. Even in the case when the police have started the proceeding of criminal liability, the case can be closed by the request of the husband who can give a bribe for it. As one policeman said that “ the person only pays money to the local policeman to close a case. People pay various quantity, about 500 som . ”⁶⁷ So, again it is a corrupted system that breaks the rules.

Also the in the report prepared by Human Rights Watch “Reconcile Violence” the fact that policemen themselves are the abusers of their women was mentioned as another reason for weak implementation of Laws. It was noted that it was confirmed by the Presidential Council on Women, Family, and Gender Development that in the families of police workers the

⁶⁵ Kyrgyzstan Reconciled to Violence State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan www.hrw.org/en/reports/2006/09/26/reconciled-violence

⁶⁶ Ibid.

⁶⁷ Ibid.

probability of domestic violence occurrence is very high. The nature of policemen's work is aggressive and nervous, the reflection takes place at home. Since the policemen are being the representative of the abuser, the chance that policemen will cooperate with the victims of violence for protecting them is very low.

Moreover, even when the criminal proceeding is initiated, law enforcement authorities do not take in seriously. They fail to take necessary steps to investigate domestic violence complaints, because they believe that the women will withdraw her complaint. It is caused by the actual problem when victims who addressed to police later in few days they request to stop the proceedings. The reasons can be as mentioned above financial dependence, fear of being criticized by the community and others.

The domestic violence typically concerns family "dispute", "conflict" or it is considered to be a private family business. The woman speaking about the family problems in a society or complaining of beating, is usually considered as «the bad wife» and criticized for "scandal" inflating. As the violence problem in a family is not discussed, this problem is not admitted or raised in the Kyrgyzstan society and as a result women usually suffer in silence.

Aksakal Courts and Domestic Violence

Aksakal courts is one of the institutions that also can review the disputes in Kyrgyz Republic. It is composed of community elders that review community matters, including family problems. This institutions has a legal base since 2002 when the Law on Aksakal Courts was adopted. These courts operate on a district or neighborhood level and cooperate with local administrations and courts. Members of the aksakal courts are elected by local population and local government for the term of three years. They have a competence to hear and solve civil cases and other cases that are sent to them by local courts. These court are effective enough because of social pressure, since the representatives of aksakal courts are respected and well know persons. And the decision of aksakal courts are mostly followed by people because of peer-pressure and social pressure, since the whole closer community is aware of the problem. Article 6 of the Law "On Social-Legal Protection from Domestic Violence" included aksakal courts in the list of institution where the victim of domestic violence can address. It could be a good way of eliminating domestic violence, since Kyrgyz society is more community based rather than individualistic. However the problem is that the members of aksakal court themselves view domestic violence as very private matter, and also their attitude it that violence a common practiced case. Therefore, in majority cases concerning domestic violence

the court advises to victims to reconcile with the violence, they say that patience is a virtue. Thus aksakal courts did not contributed much in elimination of domestic violence.

Recommendations

After the analysis of Kyrgyz legislation on domestic violence and identifying the reasons of weak implementation the recommendations will be proposed.

The recommendation for the improvement of the implementation of the Law “on Social-Legal Protection from domestic violence”

It is necessary in more detailed way identify the duties of all subjects involved in protection of persons who suffered from domestic violence. Categories of subjects obliged to give the information on the facts of domestic violence should be extended. It included the list of persons who has the right to address with the complaint to law-enforcement bodies for delivery of the protection order. In the recent Law the subjects are victim or her representative. In the new edition this list should include bodies of Office of Public Prosecutor, Department on support of a family and children, educational bodies and public health services, specialized establishments of social service, NGOs, citizens who are engaged in enterprise activity on social service of persons. As an effect above listed persons will be able report the cases of domestic violence, initiate the issue of temporary restraining orders. In the cases when a women unaware of this mechanism, in the cases when a women is forced by family members to reconcile the violence it would appear as external assistance to her. The fact that the police will start to investigate and interview the victims and abuser, it can frightening and put to shame on the abuser to continue to committee violence.

The Law states that the protective issue can be issued by the police or court. The temporary restraining order is issued by police after the registration of the complaint written by the victim or her representative at the police station. The additional recommendation would be to allow to register the complaint about violence in the state or private medical institution, also shelters and crisis centers which will refer it to police, in regional judicial authority on the medical institution location. This also could promote the implementation of the Law, since abused person feels more confident with the support of medical personal and others supporters to report domestic violence case.

The term of temporary restraining order could be prolonged, since as the statistic show the court orders that are issued for the term of 1-6 months are used very rarely. The term of temporary restraining order is up to 15 days; however the prolongation up to one month would automatically straiten the measure and keep the abuser in tension.

Besides, the list of subject of domestic violence should also be expanded. According to article 5 of the Law the list of subject against whom the violence is carried out includes

members of a family, and also the relatives living together with members of a family. It should include as well persons who are actually in marriage relations by common law, who live without legal registration, persons who give the maintenance to the dependent, parents of spouses, sons-in-law, daughters-in-law and other relative that might live apart, however be a subject of the violence. Also it should include dating relationships, when a couple might not live together, however the male partner still commit violence against his dating partner. Also unrelated persons living in the family should be included such as nannies, and worker employed to work in the house.

Thus, expanding the list of subject will eliminate the possibility of leaving victims that are not enlisted in article 5 of the Law. This will allow them to protect themselves against violators by using the special mechanism provided in the Law.

Another recommendation would be to define separately categories of subjects which, are obliged to give the information on the facts domestic violence for the purpose of collecting adequate data in every region. Recently the National Statistical Committee gathers the information from different law enforcement bodies and provides general reports, not identifying the type of violence nor the statistics on specific regions of the country. As I have mentioned above, identification of high risk regions could be used in proposing not general plans, measures and activities in the country, but in proposing specialized measures taking into consideration the peculiarities of the region.

In addition the list of special measures imposed by protective orders can be expanded. The law provides the following specific measure:

- prohibition to the abuser to make any violent actions against the victim
- restriction on access to minor children
- regulation of inadmissibility of direct and indirect contacts with the victim
- obligation to pay cost of treatment suffered from violence
- the offer to the person who has committed an act of domestic violence to leave a residing place,
- The prohibition to get and use fire-arms or other types of weapon defined by court,
- The requirements to leave a residing place irrespective of who owns the given property

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Specific measure can be in the form prohibition to the abuser to make any violent actions

⁶⁸ Art 27 of the Law “on Social- Legal Protection from domestic violence”

against the victim, restriction on access to minor children, regulation of inadmissibility of direct and indirect contacts with the victim, obligation to pay cost of treatment suffered from violence.

This list of measure also can be expanded. One of the most appropriate measure would be mandatory courses on counseling about domestic violence. This measure would oblige the abuser to go through a course of training with psychologists and lawyers that could council about the harm that they cause to family members psychological and physical. The aim of this measure is to explain to abusers and change the attitude. Since the previous measures can frighten the abuser, however it will not change his attitude. The proposed measure can as well be not very effective, however it will have not only legal measure, but also the measure that would contribute to the modification of social norms and stereotypes.

Recommendations in Criminal remedies

Kyrgyz Republic Criminal Code does not identify domestic violence as a special type of crime. However, it constitutes grave violation of human rights which should be differentiated from other crimes. The *introduction of the criminal provisions* deeming domestic violence as a crime would recognize this violence as a serious breach of human rights in Kyrgyzstan. It would set up a stricter standard for law enforcement bodies in investigating the complaints on domestic violence. Besides it would increase the probability of bringing to justice the perpetrator.

Mandatory arrest of abuser. Besides recognition of domestic violence as a crime, the mandatory arrest of perpetrators should be introduced. As the Law “On social- legal protection from domestic violence” introduces only protective order with special measures. However, in cases when the aggressive abuser is at the moment committing domestic violence, the mandatory arrest would be the most appropriate. The police authorities should have the competence to file a suit and immediately arrest the abuser to stop the violence.

The most famous experiment on mandatory arrest was conducted in United States of America, which is called the Minneapolis Domestic Violence Experiment by Sherman and Berk in 1984.

In this experiment the most appropriate response to domestic violence were determined.

The measures that were compared were:

- arresting the suspect,
- ordering one of the parties out of the residence,

- advising the couple⁶⁹.

As a result it was reported that the domestic violence cases were almost by 50 percent when the abuser was arrested. The suggestion of the experiment was to use arrest in most domestic violence cases.⁷⁰ And it could be suggested To Kyrgyz republic to introduce proarrest policy in cases of domestic violence.

Additional recommendation to criminal code amendments would be introduction of criminal sanctions for violation of protective orders. As mentioned above, the penalty for breach of protective order is in Administrative Code that imposes only fine or administrative arrest. The criminal penalty would decrease the probability of infringement of the order. This would lead to better compliance with the special measures provided in the protective orders.

With introduction of criminal remedies the establishment of special prosecution units in Public prosecutors offices would also strengthen the protection mechanisms. Since the cases of domestic violence are not acknowledged by law enforcement bodies as serious violation, the investigation procedure usually lack an adequate measures. Therefore, the members of these unites will be specialized in domestic violence crimes, giving domestic violence cases high status⁷¹.

Another protection mechanism could be victim-initiated prosecutorial actions⁷². The Indianapolis Domestic Violence Prosecution Experiment conducted by researcher Ford in 1991, 1993 showed that in cases when the victim is empowered with the threat of prosecution of her abuser, the possibility of further violence decreases. This mechanism provides a domestic violence victim with the warrant on initiating arrest of the abuser. “The threat of prosecution may have a greater deterrent effect compared with the more typical deterrence model in which threats are contingent on the dynamics and processes of legal institutions⁷³”. Therefore it is a suggestion to try a this mechanism in Kyrgyzstan.

⁶⁹ The Criminalization of Domestic Violence: Promises and Limits. NIJ Research Report, published: January 1996
By Jeffrey Fagan

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid

⁷³ Ibid.

Training of law enforcement authorities

Special training to police, prosecutors, judges, attorneys, and social workers should be introduced in a mandatory manner. For now the legislation provides only trainings on voluntary basis, that causes in low participation in trainings. This training should implement a deep understanding of legislation that is already adopted by weakly implemented. The training should be on a periodical manner due to the changes in the personal. Also every law enforcement institution has to develop their own regulations, guidelines, instructions, manuals and standards on implementation of the legislation. While trainings the participants should receive information on how to register, file the necessary documents within their competence.

Social changes through awareness raising and education

Special programs aimed in increasing public awareness on the issues of gender equality, women rights, domestic violence should be introduced. This programs would change the social attitude and prevent the occurrence of domestic violence. It can include mandatory courses in the schools, universities and other educational institutions. It may be as an additional themes to be discussed during courses as “Human being and Society”. Also the media can play an important role in these programs. Special documentary movies, reels, posters, articles in the magazines and newspaper could be distributed. This would help in modifying the stereotypes and promote life of women without violence. This new developments should be reflected in the law for stronger implementation.

Stronger control and evaluation of the Implementation of Domestic Violence Laws

As it was noticed the adoption of laws in not enough to eliminate a problem. An actual implementation of these laws results in elimination. Therefore, a proper monitoring of implementation of laws is needed. This will keep the competent authorities in accountability for their o legal obligations. Besides, it will allow to identify the effective measures and shortcomings of the legislation. This will allow to make revision of the Laws in order to improve them and whether the laws are effective enough to decrease the violence. Thus it is recommended introduce provisions on State monitoring system in the law.

Support programs to survivors

The need for supportive program is very high. It was mentioned that one of the reasons why abused women do not turn to police is the financial dependence on the abuser. Women feel unprotected since they do not have their own way of earning money for living. It is caused by the fact that a lot of girls get married in early age without continuing studying in higher education. They lack knowledge on how to work, where to work and etc. Therefore, supporting

programs that aimed not only in providing financial support and shelters, but aimed in educating women and acquirement of skills will greatly influence lives of victimized women. Programs providing courses on sewing, cooking, and other skilled works should be introduced. They would learn how to open private enterprises, how to cooperate with other businesses. This programs shall include information on paper work, such as execution of documents.

Conclusion

As this paper has demonstrated, despite to the fact that Kyrgyzstan has adopted a special Law “On Social-Legal protection from domestic violence” and other legislative norms domestic violence remains to be a serious problem in Kyrgyzstan. Kyrgyzstan’s experience shows that the governmental commitment for proper implementation is needed. The emphasis should not fall on the most innovative measures for effective implementation of laws. It should be identifies the best measures that would work in this society, among these population. The above mentioned recommendations attempt to identify proper solutions for better implementation of laws on domestic violence in Kyrgyzstan. There are no ideal approaches on elimination of domestic violence over the world, it depends on culture, stereotypes, religion, governmental commitment and other factors. However, every effort made for the elimination of domestic violence is good, since is it one of the steps that the State has taken on its long fight against human rights violations. As the analysis has shown not only legal measure should be taken, it requires a combination of different approaches in order for the new legislation to be effective. The challenge of Kyrgyzstan is in strengthening its system in order to provide better protection of women. This aim of this paper was to analyze the current legislation on domestic violence and propose recommendation that could be useful in future. It can be noted that Kyrgyzstan has a created good legal framework in protecting women rights, in particular protection from violence. However, women still face this problem in everyday life. Therefore, there is a need for improvement of legislation.

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