

Forum of Women's NGOs of Kyrgyzstan



# **ACCESS TO JUSTICE FOR VICTIMS OF BRIDE KIDNAPPING IN KYRGYZSTAN**

**Forum of Women's NGOs of Kyrgyzstan**

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## Forum of Women's NGOs of Kyrgyzstan

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The study is conducted by "Forum of women's NGOs of Kyrgyzstan" with the financial support of OXFAM Novib as part of the project "Women's access to justice in the countries of Central and Eastern Europe and Central Asia", a regional initiative coordinated by KARAT Coalition.



### 1. Summary

This research in the area of women's access to justice was made under the Karat Coalition initiative with financial support from OXFAM Novib, and it is part of the project on implementation of the CEDAW in five countries of the region (2010-2012). This is in a way continuation of the project implemented by the KARAT in 2008-2009, aimed at advancement of the Optional Protocol to CEDAW in eight countries in the region. On the basis of the gained experience KARAT concluded that more attention is needed to conditions determining women's access to justice at the national level, because it has a significant impact on access to international mechanisms on human rights. That is why KARAT Coalition and its partners decided to make a pilot research, which can show real opportunities of women in using law and procedures in the national justice framework. Because of the limited resources and narrow timeframe the research was only in some areas of violations of women's rights. These areas were determined individually directly by the organizations – partners in Azerbaijan, Kyrgyzstan, Poland, Tajikistan and Uzbekistan.

This research is not targeted to show a full picture of women's access to justice in countries covered by the project. It is aimed at identification of a need in gender approach to this issue by using a gender analysis of women's experience in violation of their rights, where their capacity to protect and claim their rights with a help of legal measures is seriously limited because of their dependent and vulnerable position in the society.<sup>1</sup>

Forum of Women's NGOs of Kyrgyzstan conducted research on women's access to justice with respect to bride kidnapping in 2011. The research was part of the regional initiative under the coordination of the KARAT Coalition. The goal of the research was to identify real opportunities and challenges of women in using laws and procedures in the national justice framework and international mechanism in the area of human rights. The research is aimed at identification of a need in gender approach to the issue of bride kidnapping as a concrete form of violation of women's human rights. Forum of Women's NGOs of Kyrgyzstan focused on access to justice by using a gender analysis of women's experience in violation of their rights.

The research covered the following provinces of the Kyrgyz Republic: Chui province, Osh province, Isyk-Kul province, Djalal-Abad province. So the research was conducted in four out of seven provinces of Kyrgyzstan. The research findings are based on interviews of 27 victims of bride kidnapping. In addition, a survey was held among 12 practicing lawyers and women's rights defenders representing women's NGO from all four participating provinces.

The Forum of Women's NGOs of Kyrgyzstan states that despite ratification of the CEDAW and other international conventions related to women, despite the fact that in 2003 Kyrgyzstan adopted the Law "On social-legal protection from domestic violence" and despite that bride kidnapping is a crime in compliance with the Criminal Code, the existing legal framework has not improved women's access to justice in regard to bride kidnapping. In Kyrgyzstan not a single complaint was registered related to violation of women's rights in compliance with CEDAW and not a single complaint was submitted to the Committee for Elimination of Discrimination against Women in compliance with the CEDAW Optional Protocol.

Legislation reforms and the State's policy efforts, though with no financial support, to eliminate discrimination against women have not resulted in better protection of women's rights and failed in counteracting the upsurge of patriarchal attitude to women during the transition period to market economy accompanied by growing poverty, fundamentalism, migration, corruption and poor performance of law enforcement bodies. Women's organizations are the sole actors in communities to address bride kidnapping.

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<sup>1</sup> Concept developed by KARAT Coalition

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### Laws

According to the law, in Kyrgyzstan bride kidnapping is a crime, but in reality it goes unpunished, there is a kind of impunity for this crime in the country. Bride kidnapping is a severe violation of women's rights.

### Culture

One of the main "driving" factors of violation of women's rights in the form of bride kidnapping is patriarchal acceptance of the bride kidnapping and rooted social stereotypes.

The other factor is weak law enforcement. Among other "driving" factors are poverty and low social status of victims.

In the situation of growing violence against women, women's organizations started working on VAW issues and their work contributes to the visibility of the problem.

### State

In recent years Kyrgyzstan's state gender equality machinery was weakened, and currently in the country there is no separate specialized state agency to protect women's rights, represent women's interests and to advance gender equality in political, economical and human rights areas.

Despite the international commitments, State actions for women's rights protection are not supported by the state budget. There is a lack of financing of the work addressing women's rights violations.

The Government should instruct local authorities, self-governance bodies and courts of elders to conduct awareness raising work in the communities about criminal responsibility for bride kidnapping.

Best efforts should be made to transform public attitude towards violence against women, especially bride kidnapping, through public awareness raising campaigns and educational programs to change stereotypes and traditional attitude towards all forms of violence against women with active involvement of local authorities, self-governments, village women's councils and courts of elders.

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## Forum of Women's NGOs of Kyrgyzstan

### **2. Acronyms**

ZAGS – Record of act of the civil status

CEDAW – Convention of the elimination of all forms of discrimination against women

KR – Kyrgyz Republic

NGO – nongovernmental organization

DIA – Departments of Interior Affairs

UN – United Nations

LSG – Local self governance

BPFA- Beijing Platform for Action

CC – Criminal Code

CPC – Criminal Procedural Code

Forum – Forum of Women's NGOs of Kyrgyzstan

### **3. Introduction**

## Forum of Women's NGOs of Kyrgyzstan

Since 2008 KARAT Coalition's program on women's rights has been focused on strengthening the implementation of the CEDAW in the region<sup>2</sup> on the basis of the partnership relations with women's NGOs in Armenia, Azerbaijan, Belorussia, Georgia, Kyrgyzstan, Moldova, Tajikistan, Ukraine and Uzbekistan. Activities held in 2008-2009 were aimed at facilitating implementation of the Optional Protocol to the CEDAW (OP CEDAW) and support of women's NGOs, for application of these tools for women's rights advancement. During this process specific cases of discrimination against women were reviewed from the perspective of the future basis of the claims for submission to the CEDAW Committee in accordance with the OP. This work showed what challenges and barriers hinder women's access to procedures foreseen by the OP and prevent victims and women's groups from submitting appeals to the Committee. Significant portion of these barriers is linked with the requirement to exhaust domestic means of legal protection of victims of discrimination based on gender.<sup>3</sup>

In Kyrgyzstan CEDAW and its OP are practically not used for protection of women's rights. Kyrgyzstan joined the KARAT program because in Kyrgyzstan women's access to justice is challenged in many ways, including poor legislation implementation, impact of patriarchal stereotypes, low level of awareness of legal rights among women and of many actors in the area of women's rights advancement. This was indicated in the Forum's shadow report on CEDAW implementation in Kyrgyzstan in 2008 ([www2.ohchr.org/english/bodies/cedaw/cedaw42.htm](http://www2.ohchr.org/english/bodies/cedaw/cedaw42.htm)), as well as in the Concluding Comments of the CEDAW Committee in 2008.

In Kyrgyzstan, bride kidnapping was identified and selected as the main research subject for the research of women's access to justice. This choice was made on the basis of the Forum's previous work on VAW, monitoring of VAW, spread of this crime, low level of protection of women from this crime. Women - victims of bride kidnapping suffer from low or no access to justice despite existence of the laws against bride kidnapping. Especially vulnerable to this crime are young women and girls living in rural areas. It is important to note that at the political decision making level the State has done a lot, de jure women's rights are protected by State laws. Kyrgyz Republic joined majority of international instruments for women's rights protection and adopted quite a number of domestic laws for women's rights protection. For many years Forum's work on monitoring of the de facto situation on women's rights shows that there is a big gap between politically declared protection and factual or real application of many laws in practice by women or women's organizations. This means that it is time to question the practical aspects of application of women's right protection tools or in other words access to justice for women. As law enforcement officers recognize it is difficult to bring bride-kidnapping cases to the court level. Women are afraid of the publicity. Ministry of the Interior informed only about four facts of initiating a criminal case on the Criminal Code article on bride kidnapping for the period of six months of the 2009! At the same time information from women's NGOs and crisis centers indicate higher numbers of bride kidnapping, especially in villages. Information on bride kidnapping was collected for the period of 2009 – 2011.<sup>4</sup> In villages kidnapping of young women and girls is becoming widespread with the purpose of forced marriage. From year to year this "tradition" breaks lives of women, forcing them to marry without their consent and will.

State bodies dealing with marital relations states that out of ten forced marriages six break down during the first year of marriage. It is a big concern that underage girls who have not yet finished secondary school are kidnapped. This tendency is noted again in the rural areas.

This particular project was designed to review and analyze the status of access to justice for young women who are vulnerable to this form of violence as bride kidnapping, which is widespread in Kyrgyzstan.

### 3.1 Problem description

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<sup>2</sup> Region of the Central and East Europe and Central Asia

<sup>3</sup> The Concept of the project designed by KARAT Coalition

<sup>4</sup> Results of monitoring of CEDAW implementation– Forum of Women's NGOs of Kyrgyzstan (2009-2011)

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The research focuses on bride kidnapping - an extreme form of violence against women in Kyrgyzstan - the country, which declares itself a democratic state and has various laws for women's rights protection. Equality of men and women in KR is formulated in the country's Constitution and in many laws and regulations. Kyrgyzstan is facing transitional challenges. Due to the loss of the communist ideology and growing impact of the religion there is a tendency to narrow down women's roles into positions limited to the role of only mother and wife, thus limiting educational, economic and political rights and opportunities for women in the society.

In 2004, a study of bride-kidnapping for marriage (alakachuu) was conducted in one village to confirm the accuracy of the results of previous studies that describe the characteristics and frequency of bride kidnapping. The 2004 study included all women of one village so that we may also determine any patterns of change in frequency and consent level for different age groups. The questionnaire used in this study had been filled out previously by 300 respondents in 1999. In 2001, a shorter version, covering the questions of age, ethnicity, and consent was filled out by approximately 550 respondents. These two previous surveys were filled out by respondents from six of the seven oblasts in the country. According to research of 1999 and 2001 the evidence is that approximately 50 per cent of ethnic Kyrgyz marriages were the result of kidnappings, of these up to 66 per cent were non-consensual (sometimes bride kidnapping may be consensual). The first two studies concluded that approximately 33 per cent of ethnic Kyrgyz women were married against their will as a result of bride kidnapping. The 2004 data showed that 80 per cent of Kyrgyz marriages in this village are the result of kidnappings, of which 57 per cent are non-consensual. Based on the cumulated data from the three studies, we estimate that approximate 35–45 per cent of married ethnic Kyrgyz women are married against their will as a result of bride kidnapping.<sup>5</sup>

Bride kidnapping in the KR is a specific critical violation of women's rights. It is especially wide spread in rural areas where the majority of the country's population lives. Young rural girls are kidnapped to marry against their will. Bride kidnapping is a crime by law, but in practice it goes unpunished. This is related to people's mentality and stereotypes. Law enforcement officers do not consider bride kidnapping a crime. Bride kidnapping practice is welcomed and encouraged by relatives of the kidnapper. Often it is promoted by parents of the kidnapped girl because it is considered a "shame" to return home after being kidnapped. The girl's parents and relatives persuade her to consent to marry the kidnapper to avoid gossip, cursing from the kidnapper's family and bad reputation among friends, neighbors and villagers.

Bride kidnapping is spread mainly among ethnic Kyrgyz. This crime is observed in all provinces of the country, more in rural and less in urban areas. According to the data of some women's NGOs, 60 per cent and sometimes up to 80 per cent of bride kidnapping occurs in villages. In cities it is close to 40 per cent. Normally, girls under 25 become victims of bride-kidnapping.<sup>6</sup> The research found that 90 per cent of victims did not know their kidnappers.

Consequences of bride kidnapping are grave. This crime results in irreparable psychological and physical damages to women's health. During bride kidnapping a group of men captures a woman with force and pushes her into a car. Normally, this group as well as the bridegroom are drunken. At home of the kidnapper she is met by the bridegroom's relatives, who persuade her to stay. If the girl begins to resist she is isolated so that she cannot run away. Big psychological pressure is made on the girl. Many psychological tools are used: threats of cursing if she leaves, shame for her parents, stigma in the community. Even if the girl decides to leave it is often her parents who force her to stay in the home of her kidnapper. They cover the girl's head with a scarf which symbolizes that the girl is ready to become a wife of the kidnapper. After this a moldo (an Islamic clergyman) is invited to conduct a nikah (Islamic marriage ceremony). Even knowing about the fact of bride kidnapping and despite the girl's disagreement, he anyway conducts the nikah. According to the observations of women's NGOs, such marriages are often not registered in ZAGS. As a result, in the situation of divorce a woman is not entitled to any part of the jointly gained property and children do not have relevant documents.

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<sup>5</sup> Kidnapping for marriage (ala kachuu) in a Kyrgyz village, Russell Kleibach, Mehrigiul Ablezova and Medina Aitieva - Central Asian Survey, June 2005, 24/2

<sup>6</sup> Human Rights Watch "Reconciled to Violence. State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan" September 2006, Volume 18, #9 (D)



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Another strong psychological factor is girl's parents' consent to such marriage. A 23 year old girl said that her parents forced her to stay in the kidnapper's house and told her that otherwise she would bring shame on them in front of the community. Practically all interviewed women cited a saying: "A stone should remain where it fell" which was told to them by their parents. Parents gave their consent on the marriage without asking the girl's consent. A 20 year old woman, who was able to escape, said that her parents sent her back to the home of the kidnapper because of the fear of shame. This woman had to agree and go back to her kidnapper's house. All girls stated that parents' authority is not questioned by them. That is why often many of these girls stay in the house of the kidnapper. Later many of them found out that parents from both sides made deals. In other words, the girl's parents were paid a bride price by a kidnappers' family. Only one of the interviewed victims was not afraid to leave. Her parents supported her decision. She filed a case to the court, at present the case is under investigation.

All interviewed girls noted their psychological sufferings were connected with a fear to make a family with an absolutely unknown man. For example, a kidnapper of one of the interviewed girls was mentally ill, she learned later. His parents doubted their son would marry in a normal way so they kidnapped her.

The most stressful and psychologically depressing fact is that nobody asks for a woman's consent. She is not participating in the decision making of her own future destiny. After several hours of physical struggle a headscarf is forcefully wrapped around the exhausted woman's head, which is a sign for further actions of the kidnapper's relatives. She is forced to go to bed with him. If the woman continues resisting she is beaten. After the kidnapper rapes his victim she is considered to be his wife. After being raped girls think that there is no future for them and she has no way back home and no place to go. In case if the girl is from a poor family she really has no place to go. Some of the interviewed women said that beating and psychological violence continued during their family life.

Such marriages are made by inviting moldo to conduct a nikah. A woman from a northern part of Kyrgyzstan told that during such a ritual despite her loud protests moldo pretended that he did not see and hear her resistance and went on conducting the marriage ritual. Later he explained to the people present at the ritual that this woman simply was shy to say openly about her willingness to marry.

Another woman said that she stayed in the kidnapper's home because her parents could not pay her tuition fee for the next year. She told that her family lives below poverty line. In general, the issue of poverty was raised every time during conversation about the consent of relatives. Many of the interviewed women said that if their parents were wealthier they would have not agreed to leave their daughters with kidnappers.

Two girls from the remote district of the southern part of Kyrgyzstan agreed to marry their kidnappers because otherwise they would not be able to meet or acquaint with boys or men themselves. They explained that in their villages there are no clubs or other entertainment places where youth could meet.

Small percentage of women who escaped forced marriage seeks psychosocial assistance or legal aid. Specialists of the Sezim crisis center informed that overwhelming majority of cases is linked with consequences of marriages through nikah that are not registered by law. "Such marriages have dramatic implications: children born in such marriages do not have birth certificates, women cannot claim for property division if they want to divorce," stated Bubusara Ryskulova, director of the Sezim crisis center.

Majority of the divorced women whom we interviewed noted that the main reason for their divorce was non-compatibility, and a root of this non-compatibility is forced marriage through bride kidnapping.

In general, it is necessary to note that victims of bride kidnapping were reluctant or refused to speak about their situation, especially, if bride kidnapping involved rape.

Many victims of bride kidnapping stated that the situation can be changed for the better, firstly, if relatives of the kidnapper did not participate in bride kidnapping and forced actions, secondly, if their own parents

would allow them to return home, and thirdly, if moldos did not conduct nikah. All interviewed women that the biggest barrier for returning to home are stereotypes and prejudices of the society.

In recent years, kidnapping of underage girls for forced marriages is on the rise. "Early marriages are dangerous because a person due to immaturity does not realize adult concerns that put on the young shoulders and that totally new life started. Not everyone can cope with this. Understanding and realization of the problem comes with years when a woman is busy with endless duties of children and household. She compares lives and successes of people surrounding her and then follows a deep psychological crisis. And without timely help she is not able to overcome the crisis," states Director of the Chance Crisis Center Alexandra Eliferenko.<sup>7</sup> A kidnapped girl is not only psychologically abused, she is also beaten and raped. This leads to depression and sometimes to suicide. In the beginning of 2011 two victims of bride kidnapping in the Issykkul province committed suicide.

In addition to the above implications, it is important to note economic dependence of victims of bride kidnapping. Many of them do not continue their education and as a result cannot find decent jobs. Ultimately, they are not able to support financially themselves and their children if they decide to leave their husbands. Economic dependence forces women to put up with humiliation and violence from her husband and his relatives.

### **3.2 Social, cultural, historical, traditional, religious and other prerequisites of violation of women's human rights**

#### Historical and traditional prerequisites

Bride kidnapping is viewed as an old tradition inherited from our ancestors. But there is no confirmation of this fact in history. Traditionally marriages were made by the agreement of both families. There was a tradition of formal marriage proposal, but not a bride kidnapping tradition. Often many officials, some law enforcement officers and the society support the idea that bride kidnapping happens with a girl's consent. Moreover they state that if there was a forced bride kidnapping, a victim would report to the police or other law enforcement agencies. Some officials state that for kidnapped girls it is a chance to marry, otherwise where she would find a husband. So some people treat bride kidnapping as a tradition and it becomes part of the customary law. Practically no criminal cases related to bride kidnapping were initiated.

#### Economic prerequisites

Based on the information and data from women's NGOs and women's rights defenders who participated in the research we can state that one of the preconditions is economic benefits of bride kidnapping. This reason is mentioned by young people in rural areas who say that in such case expenses related to wedding party are significantly reduced. Southern women's NGOs activists state that a girl is kidnapped if she does not want to marry, bride kidnapping is very convenient when it is necessary to marry.

#### Social prerequisites

One of the reasons for such violence against women is informational vacuum in which rural youth lives, young rural people do not know laws and are illiterate in legal issues. Formally access to justice in the case of bride kidnapping is not limited. But nevertheless victims do not report to law enforcement agencies due to many factors. First of all, as the research found, victims themselves do not know about their rights and opportunities to protect their rights. We see legal illiteracy of women, who even do not suspect that there is a criminal responsibility and punishment for bride kidnapping.

#### Cultural prerequisites

The research shows, if a victim of bride kidnapping files a complaint to law enforcement agencies, she refers most often to beating and psychological pressure, but not the fact of kidnapping. In such cases only articles of the Criminal Code related to body injuries of different severity may be applied.

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<sup>7</sup> Results of monitoring of CEDAW implementation, Forum of Women's NGOs of Kyrgyzstan (2009-2011)

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Crime investigators and police officers state that even if a victim registered her complaint with the law enforcement agency after several days victims themselves enter into a peaceful agreement with violators as a result of mediation of parents on both sides.

When victims of bride kidnapping report to the police with body injuries, forensic examination should be conducted and urgent medical services should be provided. According to the law "On social and legal protection from domestic violence" police officers must take such women to medical and social service centers, but this is not done. The research found that this provision of the law is not implemented due to lack of funding. The law "On social and legal protection from domestic violence" does not provide for a protection mechanism for bride kidnapping victims.

Another reason for victims not reporting to the police is that they are isolated and watched in the house of the kidnapper. By the time when she gets a chance to easily move around evidence of beating and rape disappears and it is difficult to prove abuse. Hopelessness forces a woman to stay in the house of the kidnapper.

One of the serious factors affecting women's decision not to seek justice is stigma and deep stereotypes. The public and law enforcement officers disapprove when victims of bride kidnapping and their families file complaints against perpetrators. Interviewed women stated that they did not report to law enforcement agencies because of fear of stigma and possible revenge from the family of the kidnapper. Another reason for not reporting to the police is that kidnapped women feel or consider themselves guilty that they accepted pressure and gave in to forced marriage. They see themselves as accomplices in the crime of the bride kidnapping and think that they do not have grounds to demand justice.

The CEDAW Committee expressed concern at the continuing hidden nature of domestic violence and the inadequate performance of the police in dealing with reporting from the victims.

The 2008 Kyrgyz Republic's State Periodic Report to CEDAW, paragraph 105, states that hotlines for women - victims of bride kidnapping or marriage arranged by parents are set up. In fact, there is no hotline in the country specifically for victims of bride kidnapping. There is one general hotline related to one of the crisis centers. Other hotlines are run by various NGOs and are supported by various grants. When the project funding is over, hotline ceases to exist.

In the National Action Plan on Achievement of Gender Equality in the Kyrgyz Republic bride kidnapping was not specifically included as an area of concern.

### **4. Research Findings**

#### **4.1. Review of the national gender sensitive and anti discriminatory legislation in the context of violations of women's rights**

Review and discussion of various national and international laws and instruments related to protection of women from violence against women with women's NGOs, activists, lawyers, and community women showed gaps in legislation and legal practice that hinder women's access to justice.

The principle of gender equality is formulated in the Constitution of the Kyrgyz Republic, Chapter 2, Article 13. It contains a clear norm that men and women have equal freedoms and rights as well as equal opportunities for their realization.

This article states that in the Kyrgyz Republic all people are equal in front of the law and court. Nobody can be subject to any discrimination, infringement of freedoms and rights on the basis of origin, gender, nationality, race, language, religion, political and religious beliefs, or any other circumstances of personal or public character.

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Article 22 of the Constitution provides equal application of laws on rights of citizens to all citizens without creation of any advantage or privilege, except stated by the Constitution or laws on social protection of citizens.

Criminal Code (CC) of the Kyrgyz Republic 9 (Article 134) envisages responsibility for violation of citizens' equality, that is directly or indirectly violates or limits rights and freedoms of people based on gender, nationality, language, origin, residence, religious and other beliefs, association with public organizations, that causes harm to lawful interests of a citizen.

The Parliament of the Kyrgyz Republic (Jogorky Kenesh) adopted the law "On the Basis of State Guarantees of Gender Equality Provision" on 12th March of 2003. It is aimed at provision of equal rights and opportunities for people of different gender in social, political, economic, cultural and other areas of life, to protect men and women from gender discrimination. The Law aims at ensuring progressive democratic relations between men and women on the basis of national traditions and state guarantees of gender equality. Adoption of this law allowed inclusion of the principle of equal opportunities into the national legislation.

On the 25th March of 2003, the Kyrgyz Parliament adopted the law "On social-legal protection from domestic violence" aimed at social and legal protection of victims of domestic violence. The law is aimed at creating the social and legal system of protection of family members from domestic violence and provides victims of domestic violence protection based on international standards in the area of human rights. The law is aimed at creating enabling conditions for healthy family relations with a special attention on the State's role to protect underage and elderly members of the family from domestic violence. For the first time in the Kyrgyz legislation there appear norms on special means of social and legal protection from domestic violence, that include a temporary protection order and judicial protective order. Articles 21-27 of this law determine conditions for issuing special means as well as the procedure for their issuance.

According to the Criminal Code of the Kyrgyz Republic (Article 129), rape is punished by imprisonment for 5 to 8 years. Violent actions of sexual character, sexual acts with violence or threat to use violence against a disabled person are punished by imprisonment for 5 to 8 years. Criminal responsibility for rape provided for in Article 129 of the Criminal Code cannot be relieved through reconciliation with the victim in accordance with Articles 10, 12 and 66 of the Criminal Code because it is classified as a private-public crime in the Criminal Procedural Code (CPC), paragraph 3, Article 26.

According to Article 153 of the Criminal Code polygamy is punished by imprisonment up to two years.

According to Article 155 of the Criminal Code, forcing a woman to marry or stay in marriage or bride kidnapping with a purpose of marriage against her will as well hindering a woman to marry is punished with a fine in the amount of one hundred minimum monthly salaries or by imprisonment up to five years.

The Criminal Code norms effective until January 1, 1998, provided punishment for paying a bride price: 2 years of imprisonment or 2 years of correctional labor. The bride's relatives were also punishable for accepting the bride price: 2 years of imprisonment or 2 years of correctional labor in addition to recovery of the bride price sum as the state revenue. The current legislation does not provide for criminal responsibility for a bride price.

Kyrgyzstan partially implemented its obligations with regard to violence against women by adopting gender sensitive legal framework including:

- Family Code providing for equality in the area of personal and property rights
- Administrative Code
- Legislation on legal procedure and procedural law
- Labor Code

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- Decree of the President of the KR # 136 "On measures for improvement of the gender policy" aimed at reduction of qualitative differences in social positions of women and men, at elimination of barriers for development of equality between women and men, at increasing capacity and competitiveness of women and men
- Elections Code of the KR (a citizen can elect and can be elected regardless of gender)
- Law of the KR "On Education"

However, it is important to note that all these acts are not harmonized with each other and it significantly complicates women's access to justice.

Analysis of the criminal legislation and other normative and legal acts showed that there are no discriminatory norms in relation to women.

### **4.2 Analysis of relevant laws and normative and legal acts in terms of their effectiveness and accessibility for women**

As shown above, for such a severe crime as bride kidnapping a kidnapper can get away from punishment by paying a fine. In case of physical and psychological abuse Article 111 of the Criminal Code can be applied. In this case punishment will be imprisonment from 3 to 7 years if the crime was committed against a kidnapped person or a hostage. If a bride was beaten it is possible to apply Article 112 of the Criminal Code of the KR – intended light damage to health.

As mentioned earlier in Kyrgyzstan's law against domestic violence the problem of bride kidnapping is not addressed, it only mentions that one of the principles of the law is "protection from religious, cultural and other customs, able to bring harm to family relations".

According to Article 155 of the Criminal Code, forcing a woman to marry or stay in marriage or bride kidnapping with a purpose of marriage against her will as well as hindering a woman to marry is punished with a fine in the amount of one hundred minimal monthly salaries or by imprisonment up to five years.

Criminal Code norms, that were effective until January 1, 1998, stipulated responsibility for paying bride price, in the subsequent edition of the Criminal Code this crime was addressed and punishment was formulated in Article 114 of the CC. In the current legislation there is no criminal responsibility for paying and taking a bride price. Thus, for such a severe crime as bride kidnapping a kidnapper gets away with a fine. The laws do not envisage state compensation to victims of domestic violence or of bride kidnapping.

Women – victims, according to the law, can rely on assistance from social protection bodies. But, in fact, state social protection agencies do not provide assistance to victims of bride kidnapping. The only agencies that provide assistance to victims of domestic violence and bride kidnapping are crisis centers supported by inconsistent grants from international donors.

Up until now there is a lack of official statistics on the number of victims of bride kidnapping. It would be much better for work with victims if there was in place an effective working institutional machinery for women's empowerment and women's rights protection. Unfortunately such institutional machinery was extremely weakened during the last decade and practically is not able to serve victims' needs. This state body could focus on improving access to justice for affected women and developing and implementing a state program on women's economic, political and social status and in practice to fulfill national and international commitments for women's rights protection.

### **4.3 Status of the CEDAW in the national legislation: theory and practice**

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Kyrgyzstan ratified CEDAW in 1997. The Convention as other ratified international instruments is a binding legislation of the country.

CEDAW statements are reflected in the national legislation of the KR. It is important to note that at present there is a significant gap between practice and theory.

The level of awareness about the nature of the indirect discrimination and the concept of the real and substantial equality enshrined in the convention remains extremely low among state officials, law enforcement officers, those who work in the judicial system, and among the public.

Recommendations of the CEDAW Committee related to bride kidnapping made in 2004 continue to be ignored by the State at the implementation level. For example, in Articles 160-170 it was recommended to organize information and advocacy campaigns with the purpose to eliminate cases of bride kidnapping and to hold training of leaders of local communities: court of elders, women's councils, youth councils on elimination of bride kidnapping and polygamy. These recommendations were not implemented.

Monitoring of implementation of the international documents (CEDAW, BPFA, UN SCR 1325, etc.) in the country showed that neither lawyers nor women's rights defenders use international law in the judicial practice. One of the reasons is a lack of State actions in information dissemination about ways to use CEDAW and OP CEDAW and CEDAW General Recommendations. Analysis of the questionnaires showed lack of programs covering all aspects of the CEDAW and its OP designed for prosecutors, judges, lawyers and others who work in the justice system.

CEDAW recommendations were not adequately implemented.

### **4.4 Analysis of barriers on the way to women's access to justice**

#### Psychological Barriers

One of the findings of the research is that psychological barrier is a serious barrier to women's access to justice. Relatives of the kidnapper use various methods of psychological pressure such as persuading that all women get married through abduction because it is a tradition and women are promised to have a happy family life. If a girl is hard to persuade, methods of intimidation are used: she is told that if she does not agree to marry she would be disgraced and unhappy.

A kidnapped woman shared with interviewer that when she decided to leave the house of the kidnapper, an older woman lay in front of the door with some bread next to her. The girl was not able to step over the older woman because that would be an outrageous act of disrespect for the elderly and overstepping bread is equal to sacrilege. A 16 year old girl, who wanted to leave a kidnapper's house told that she was threatened that she would never marry because she would not be considered "pure virgin" because she had been in the house where they wanted to put a scarf on her head. A headscarf symbolizes a woman's marital status. That is why all kidnappers' efforts are aimed at putting a scarf on the girl's head. An 18 year old girl - victim from a Southern province was told that if she takes off and throws away the headscarf, she would be cursed and she would be unhappy for the rest of her life. In addition, kidnapper's relatives threaten to spread rumors about her, that she shamed her parents, who had not brought her up to be obedient and follow traditions.

In addition to physiological pressure, widely used methods are isolation of the woman from outsiders who can assist her to escape, forcing her to write a letter to her parents informing them of her consent to marry and sometimes beating.

Psychological pressure made on the kidnapped girl results in her fear of shame and stigma in the community and that her own family would reject her. Very often parents of a kidnapped girl insist that she should stay and marry the kidnapper because traditionally the community will shame them if their daughter returns home. Negotiations between the two families result in an agreement about marriage and

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thus the way back home is cut off for the girl. The final scene in an act called "good old tradition" is the first night. The intimidated girl, driven into a corner, unable to inform her family about her abduction, desperate and exhausted from psychological and physical abuse, becomes a victim of rape. This is a final strike in every bride kidnapping story. After being raped, the victim does not try to escape and seek help because she believes there is no way back now: if a kidnapped girl stays overnight at the kidnapper's house even if there was no sexual contact, she will be considered his wife. Besides, girls believe that if they gave in to psychological pressure and consented to marriage they have no right to seek justice.

Another important factor is traditional upbringing of girls based on respect for the elderly, humility and obedience. As a result, girls are susceptible to psychological pressure.

Threats from the kidnapper and his family are also one of the important factors. As a result, many victims are afraid of reporting to the police.

Hence, psychological pressure is an effective way of influencing the abducted girl resulting in few reports to law enforcement agencies from victims.

### Legal illiteracy

The research revealed that all interviewed women, who had been kidnapped to marry, were not aware of their rights and protection mechanisms. They stated that if they knew that the Criminal Code provides for punishment for bride kidnapping they would have reported to law enforcement agencies. Insufficient education, low level of general literacy as well as legal literacy, information vacuum, especially in rural areas are barriers to access to justice.

Another important factor is a lack of confidence, low self-esteem and as a result, fear of reporting to law enforcement agencies.

### Weak response from law enforcement agencies

Law enforcement agencies and local self-government bodies do not consider bride kidnapping as a crime. They believe bride kidnapping is a tradition, a part of customary law, and therefore, not subject to criticism. As a result, law enforcement agencies and other government officials consider it a traditional practice and not an act of discrimination against women. Therefore, they believe they are not obliged to fight it.

State agencies responsible for investigation of cases of bride kidnapping, forced marriage and polygamy do not initiate investigation and prosecution on such cases under the excuse that formal complaints were not filed.

A negative role is played by information in the media about methods used by law enforcement agencies which confirm public distrust towards these agencies. Also, women are afraid of being dragged into a long litigation process.

Law enforcement agencies support the practice of bride kidnapping. Their unwillingness to fight this practice is demonstrated already at the initial stage when a victim comes to the police to report about the crime. Police officers try to persuade the victim from reporting telling her that bride kidnapping is a custom and tradition and that such problems should be resolved in the family. District police investigative officers told our research team that normally both sides reconcile and agree on a bride price. They gave an example from their practice when they responded to the complaint and detained the kidnapper and placed him in a temporary detention facility. After several hours the parties (parents of the kidnapper and parents of the kidnapped girl) had a peaceful agreement and forced the girl to withdraw the complaint. The girl's parents admitted that they did not want publicity and bad reputation. Thus, the police explain their failure to control this crime alleging that bride kidnapping is a deep-rooted cultural tradition. A lack of trust towards law enforcement agencies and mass corruption result in inaction of these agencies to protect women from violence.

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### Economic barriers

According to the official statistics, the level of unemployment among women is higher than among men. Many women stay at home housekeeping and caring for children, especially in rural areas. Traditionally, men control finances. Rural women have limited access to resources and limited opportunities to continue their education due to remoteness of areas and a lack of state support. This exacerbates their poverty status and lowers their social status. In addition, low wages is a significant manifestation of gender inequality. Average women's wages are lower than men's wages.

Economic barriers in the form of poverty and a low social status prevent women from reporting to law enforcement agencies.

### Religious barriers

There has been a revival of Islam after independence in Kyrgyzstan. At the initiative and with financial support of Islamic countries such as Turkey, Kuwait and others, now every village has a mosque and Islamic schools (medrese) emerged in the country. Many young women wear a hijab, attend religious schools and follow Islamic rules.

One of the factors related to bride kidnapping is that moldos conduct nikah without checking whether the woman consents to marry. Also, nikah is normally conducted on the first day of bride kidnapping. Moldos conduct nikah irrespective of whether they have state registration of their marriage or not. As a result, kidnapped women do not see a way back. They believe that nikah obliges them to tie their lives with their abductor and they do not seek justice because they did not speak up during the nikah ceremony.

### **Conclusions**

According to the law, bride kidnapping in Kyrgyzstan is a crime, but in reality it goes unpunished. The Forum of Women's NGOs of Kyrgyzstan states that despite ratification of the CEDAW and other international conventions related to women, despite the fact that in 2003 Kyrgyzstan adopted the Law "On social-legal protection from domestic violence" and despite that bride kidnapping is a crime in compliance with the Criminal Code, the existing legal framework has not improved women's access to justice in the situation of bride kidnapping. In Kyrgyzstan not a single complaint was registered related to violation of women's rights in compliance with CEDAW and not a single complaint was submitted to the Committee for Elimination of Discrimination against Women in compliance with the CEDAW Optional Protocol.

Bride kidnapping is a severe violation of women's rights and its effective control requires further legislation improvement and effective enforcement of the laws.

The main "driving" factor of violation of women's rights in the form of bride kidnapping is mentality of the society and rooted social stereotypes. The other factor is poor law enforcement. This is connected to lack of financing of the laws and other legal acts. State and local budgets do not allocate funds for organization of activities for prevention of bride kidnapping.

Among other "driving" factors is poverty and low social status of victims. Research results showed low level of knowledge and awareness about the CEDAW among lawyers and human rights defenders, protecting women's rights. There is a lack of parliamentary control over implementation of the laws.

### **Recommendations**

- Institutional machinery for women's empowerment and women's rights protection should be strengthened. The existing institutional machinery was extremely weakened in the last decade and it is not able to serve victims' needs. This state body should focus on improving access to justice for women – victims of bride kidnapping and developing and implementing the state program on women's economic, political and social status and fulfilling national and international commitments for women's rights protection.



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- To improve women's access to justice in Kyrgyzstan legislation reforms and enforcement of existing laws should be implemented. The Law on Social-Legal Protection from Domestic Violence and other relevant legislation of the Kyrgyz Republic such as the Criminal Code, the Administrative Code, the Family Code and other legislation related to Domestic Violence and bride kidnapping need to be amended and harmonized to remove contradictions between the laws. Introduction of changes to the law "On social-legal protection from violence in the family", specifically, to provide guarantees of protection from bride kidnapping will help to use this law to prevent bride kidnapping.
- Participants in bride kidnapping, including organizers of kidnapping, those who make psychological pressure on a kidnapped woman, as well those who knew but did not report about bride kidnapping should be held responsible for the crime of bride kidnapping. Stronger and clearer punishment mechanisms for kidnappers should be established.
- To strengthen Article 155 of the Criminal Code of the Kyrgyz Republic on "Forcing or preventing a woman to marry", punishment for aggravating circumstances, such as infliction of bodily injury, causing somebody to commit suicide, collusion, collective crime and aiding and abetting should be introduced into the Criminal Code.
- Regular gender expertise and review of the current legislation aimed at fighting violence against women should be conducted; and "Law on social and legal protection from violence in the family" should be strengthened by ensuring funding mechanisms for implementation of the law.
- The State should ensure enforcement of the laws related to bride kidnapping. The State should improve police performance in dealing with bride kidnapping in order to ensure that the rights of victims of bride kidnapping and all other forms of violence against women are properly protected. Systematic training programs for the judiciary, law enforcement agencies, prosecution agencies, health care and social protection institutions and teachers should be conducted to raise awareness on the issue of bride kidnapping as one of severe forms of violence against women, as well as on the CEDAW and national legislation in the area of domestic violence, gender equality and women's human rights.
- Training in women's rights with special focus on domestic violence and bride kidnapping should be provided to courts of elders, women's councils and local self-government officials.
- Monitoring and analysis of the effectiveness of using existing legal mechanisms and tools, including monitoring of use of international laws such as CEDAW and OP CEDAW is essential in order to improve women's access to justice.
- To control violence against women adequate funding should be allocated from the government budget in compliance with the 2003 Law on Fundamentals of State Guarantees for Gender Equality, where Article 24 states that the government shall "fund activities to implement the state policy on gender equality from the state budget and other funding sources not prohibited by legislation of the Kyrgyz Republic", including establishment of a compensation mechanism for victims of violence against women; local self-governments should be made responsible for allocation of funds from the local budget to address violence against women.
- Funding should be allocated from the state budget for implementation of the National Plan of Actions on gender equality.
- Representatives of clergy (molodo) and ZAGS officers should make sure that a woman is marrying on her own will and that she is not forced to marry, and inform law enforcement bodies about suspected cases of bride kidnapping.
- Legislation should be adopted banning representatives of clergy to conduct Islamic marriage ceremony without presenting a certificate of marriage registration.

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- Government should introduce gender equality courses into the school and university curricula.
- Direct assistance to women-victims of violence should be provided: health care services for victims of bride kidnapping should be improved. Currently there is a need in creation of state crisis centers with free legal and medical services for such women.
- It is necessary to hold regular collection and publication and public use of official statistical data on bride kidnapping. It requires improving the process and building capacity of the government agencies to generate, use and publish data on domestic violence, including bride kidnapping nationally. Collected data should be used for raising public awareness.
- To raise public awareness of the women's rights and mechanisms for women's rights protection the State should develop and implement an information and communication campaign targeted on women. The campaign should include information about criminal punishment for bride kidnapping, relevant articles of the Law on domestic violence. Information should be disseminated in the Kyrgyz and Russian languages all over the country, including rural areas, through TV, radio and print media.
- The Government should instruct local authorities, self-governance bodies and courts of elders to conduct awareness raising work in the communities about criminal responsibility for bride kidnapping.
- Best efforts should be made to transform public attitude towards violence against women, especially bride kidnapping, polygamy, sexual violence, domestic violence and human trafficking through public awareness raising campaigns and educational programs to change stereotypes and traditional attitude towards all forms of violence against women. Special focus should be made that domestic violence, forced marriage, bride kidnapping and sexual violence are human rights violations, and not just a "women's issue".