

Kyrgyzstan

1. Discrimination in the family

a) Overarching legal framework for marriage

The Family Code regulates marriages in Kyrgyzstan and only confers legal validity to those registered at a state registry office (art. 11). Without additional civil registration, religious marriages (Islamic '*nikeh*' ceremonies) and informal unions thus do not benefit from the provisions of the code, despite the fact that Islamic marriage ceremonies are viewed as legitimate in the eyes of the parents and community. In this context the United Nations (UN) has asked the government to expedite the adoption of the amended Act on Religious Belief and Practice so that religious marriages can only be administered after a formal marriage (CEDAW and CESCR, 2015).

Forced marriage – defined as the act of forcing a woman to marry or to continue her marriage – is strictly prohibited and criminalised through fines, prison terms of 3-5 years, and up to 7 years' imprisonment in the case of bride kidnappings (Criminal Code art. 155). Despite these provision forced marriages are widespread, especially in rural and remote areas (CEDAW, 2015), with recent reports indicating that 32 bride kidnappings occur each day on average and that young girls sometimes resort to suicide to escape such acts (UNDP, 2016). Bride kidnapping is accepted in society and often undertaken for socio-economic reasons, which is why the UN has urged the government to carry out educational and awareness-raising campaigns on the criminal nature and harmful effects of bride kidnapping, and to adopt measures for law enforcement and judicial authorities (CEDAW, 2015). The practice of bride kidnapping violates women's rights in many ways as kidnapped women are seen as 'belonging' to their husband's family, in turn restricting their freedom of movement, access to education, employment etc. (CESCR, 2015).

In terms of policy responses to the widespread practice of bride kidnapping, the government has included specific objectives in the 2015-2017 National Action Plan on Gender Equality, namely training of military personnel to conduct gender equality trainings within the army, studies on societal attitudes towards the issue, and awareness-raising among school pupils.

b) Child marriage

The legal age of marriage for women and men is 18 years (age of majority), although minors can get married at 17 years of age with the authorisation of local authorities (Family Code art. 14), in which case they are no longer legally considered as minors (Civil Code art. 56). Moreover, judges can reject claims for the annulment of a marriage concluded by a minor if they deem it to be in the minor's best interest (Family Code art. 30 para. 2). Forced marriages of minors under 17 years of age are criminalised (up to 3 years' imprisonment), with higher prison sentences handed out in the case of bride kidnapping (5-10 years' imprisonment) (Criminal Code art. 154).

Despite these provisions child marriage is widely accepted in Kyrgyz society and often even arranged by parents to ease the financial burden at home (Amnesty International, 2016). Child marriages are rarely reported from fear of social stigma (UNDP, 2016) and are prevalent within all ethnic groups, and in all regions of the country (UNFPA, 2014). Moreover, Muslim religious leaders ('*mullahs*') often marry minors without checking their age (HRW, 2015).

In this context, the President of Kyrgyzstan recently signed a law in November 2016 that criminalises underage religious marriages through 3-5 years' imprisonment for anyone involved in organising or officiating the celebration, parents and clergy included (UNDP, 2016). The 2015-2017 National Action Plan on Gender Equality also sends a strong message condemning child marriage, with specific objectives linked to raising general awareness about the harmful effects of the practice and educating military personnel on the matter.

c) Household responsibilities

Under the Family Code both spouses share household duties, including domestic work (art. 32 and 41), and are equal to one another (art. 32). Women thereby have the same rights as men to be the head of the household and to choose where to live. The Code further stipulates the principle of equality between parents in relation to their children (art. 66), according to which mothers have the same right as fathers to legally represent their children (art. 69 para. 1). The Code specifies that parental authority can be exercised from 16 years of age if the parent is a minor (art. 67 para. 2).

Despite these provisions men are traditionally considered as the head of the household whilst wives are in a position of subordination and stereotypically tasked with housework and childcare (CEDAW, 2015). Wives must also live with their husband's family and often require permission from their husband to leave the family home (Amnesty International, 2016). Moreover, women in non-registered marriages cannot prove guardianship of their children without their husband's confirmation (CESCR, 2015).

d) Divorce

The Family Code provides women with the same rights as men to file for divorce, either unilaterally or through mutual consent (art. 17), and prohibits husbands from divorcing during their wives' pregnancy and in the 12 months following the delivery (art. 18). Moreover, child custody is jointly determined by the parents and can be granted by the court to either parent if an agreement cannot be found among them. In this case the court takes into account numerous factors including the child's attachment to each parent and their personal situation (e.g. profession, work schedule, wealth, social status of parents) (art. 70 para. 2).

Reports indicate that fathers often fail to provide child support after divorce and are never sanctioned (Institute for War and Peace Reporting, 2017). This situation recently led Kyrgyz legislators to draft a law in February 2017 that prevents men from leaving the country if they fail to pay child support. The law also allows for their driving and hunting licenses to be withheld and extends child support obligations to 21 years of age (Institute for War and Peace Reporting, 2017). At the time of writing the draft law had not been signed by the President.

e) Inheritance

Under the law women enjoy the same rights as men to inherit land (Land Code art. 37) and non-land assets (Civil Code art. 1118-1166). Both spouses / parents and all children have equal rights as first line of heirs, as do siblings, half-siblings and grandparents on both sides as second line of heirs. Gender equality is maintained among subsequent lines of heirs. Whilst testators cannot disinherit their children, they can do so for their surviving spouse (Civil Code art. 1127 para. 4).

In practice, women have unequal access to inheritance (CESCR, 2015) as men are usually considered the heirs to family land (FAO, 2016). Whilst each family member owns a share of the family's plot of

land, women rarely sell their plots back to their family when leaving the home (e.g. after marriage), resulting in male family members inheriting their share (FAO, 2016). Moreover, as the law prohibits the division of land plots under 5 hectares (Land Code art. 72), surviving spouses often cannot claim their share of land (Djusaeva, 2012).

2. Restricted Physical integrity

a) Violence against women

Violence against women (VAW) is widely underreported in Kyrgyzstan because it is considered a private matter, with victims risking social exclusion for speaking out (HRC, 2014). In this context victims mostly rely on the health-care system and on *aksakal* courts (HRC, 2014). 13 community crisis centres are reportedly open to victims of gender violence, but only one receives state funding and women lack access to shelters (CEDAW, 2015).

VAW is criminalised through the prism of domestic violence. At the policy level VAW features heavily in the 2015-2017 National Action Plan on Gender Equality, with the government committing to amending relevant legislation and to training law enforcement officials to both uniformly apply the legislation and effectively investigate gender violence. Other measures include the creation of an inter-agency coordination mechanism for VAW prevention and response, the establishment of a free hotline for victims of gender violence, and enhanced data collection and dissemination.

b) Domestic violence

The 2003 Law on domestic violence addresses physical, psychological, sexual and other forms of violence in the family, including the act of threatening to harm the physical or personal development of a child (art. 1 and 5). The notion of family encompasses de facto partners and cohabiting former spouses, but does not extend to current or former non-cohabiting spouses, partners or relatives (art. 1), thereby creating a gap in protection for victims.

Under the law victims are entitled to legal and medical assistance, to be transported to medical facilities, to stay in emergency shelters, to file a complaint with police or prosecutors and to submit an application to instigate a criminal investigation, unless they chose to through the informal justice system (art. 6). The right to free accommodation is granted for 10 days after which any expenses must be paid by the perpetrator (art. 11). The police can issue temporary restraining orders for immediate and short-term protection from the abuser (15 days), while courts can issue longer-term protection orders (for up to 6 months). Survivors can also receive counselling and other forms of social support from numerous institutions including crisis centres, family centres, shelters, hostels, centres for the elderly and disabled, rehabilitation centres and charities (art. 14).

Perpetrators of domestic violence face penalties ranging from fines to 15 years' imprisonment, depending on the nature of the act (Criminal Code art. 97, 105, 111, 129, 153), and even life sentences for certain crimes committed with aggravating circumstances. However, many cases are filed as administrative offenses or low-level criminal offenses with minimal penalties (CESCR, 2015; HRW, 2015), and penalties can be reduced through conciliation procedures (Criminal Code art. 69). The frequent referral of cases for mediation by *aksakal* courts is more problematic however, especially in the event of serious bodily harm, as perpetrators cannot be punished to the fullest extent of the law given the limited sanctions that these informal courts can issue (CESCR, 2015; HRW, 2015).

The Parliament is currently reviewing the law to fill several gaps, namely the unclear division of responsibility between state and non-state actors on the one hand, as well as between state and local governments on the other (HRW, 2015). The proposed draft law aims to further protect survivors of domestic violence by allowing third parties to report cases, by providing for police to issue automatic three-day temporary restraining orders against perpetrators upon receipt and confirmation of complaints, and by allowing courts to report the offense to the perpetrator's workplace (HRW, 2015).

The draft bill was scheduled for parliamentary reading in November 2016 but has not been reviewed at the time of writing. It is one of several measures listed in the 2015-2017 National Action Plan on Gender Equality to address domestic violence. Other planned actions include the setting up of a free hotline for victims of domestic violence, the establishment of 12 committees on domestic violence prevention in Osh and Chui Oblasts, publication of data on domestic violence on government websites, and support for non-state actors (e.g. issuing of grants and drawing up of a manual on minimal standards).

Domestic violence in Kyrgyzstan is a serious challenge for gender equality given the high prevalence of female victims and life-threatening injuries, the many forms of family violence (including food deprivation and being locked out in the cold), and underreporting (CESCR, 2015). Indeed, women who speak out or leave abusive partners are seen as ruining their family and the upbringing of their children, bringing shame onto themselves and their extended family (HRW, 2015).

Compounding these problems is the inadequate number of shelter spaces, the low levels of funding for NGOs to provide critical support to survivors of domestic violence, the lack of a specialised police unit dealing with domestic violence, and the common practice of police refusing to accept complaints (HRW, 2015). In Bishkek for example, the only shelter reportedly receiving government funding has 15 spots on offer for a city population of approximately 950 000 (HRW, 2015).

c) Rape

Art. 129 of the Criminal Code defines rape as “the act of committing sexual intercourse against a person's will through the use of mental or physical violence, the threat of their application to the victim or to others, or by taking advantage of the helpless state of the victim”. Rapists face 5-8 years' imprisonment and extended sentences in several cases, including if they are the parent or teacher of the victim. Marital rape is not specifically criminalised however, despite its prevalence (HRC, 2014).

The 2015-2017 National Action Plan on Gender Equality aims to curb sexual violence and other forms of VAW, including by conducting a study on societal attitudes towards sexual violence and sexual exploitation of women and girls.

d) Sexual harassment

The 2008 Law on State guarantees for gender equality states that ‘the employer has no right to pressurize or persecute people of different sex on the grounds that they refuse [sexual advances from the employer] or file a complaint against the employer for gender discrimination.’(art. 21). The law does not specify the applicable penalty but states that employers found guilty of sexual harassment are liable under national legislation, that the moral and material damage shall be compensated to the employee by the court, and that the court can oblige an employer to reemploy a person who was unfairly dismissed for refusing sexual advances. The 2015-2017 National Action Plan on Gender Equality contains measures targeting sexual harassment, such as a study on the violation of women's rights in the workplace, so that sexual harassment can be defined and recommendations established to amend the current legislation.

e) Female genital mutilation

There is no evidence of female genital mutilation in Kyrgyzstan (UNICEF, 2016).

f) Abortion

Abortion is regulated by the Law on reproductive rights (Law No. 148 of 4 July 2015) which provides medical practitioners with the right to perform an abortion during the first 12 weeks of pregnancy at the woman's request, until 22 weeks for 'social reasons', and any time for medical imperatives (art. 16). Minors under 16 years of age require the consent of their parents to abort (art. 16) and forced abortions are illegal (art. 14 para. 3). Although abortion is legal it is not covered by public health insurance, leading many women to resort to unsafe abortions (CESCR, 2015). Moreover, obstetricians lack training, and access to adequate sexual and reproductive health services is limited (CEDAW, 2015).

More

Sexual exploitation of girls and women (especially prostitutes) is widespread and often perpetrated by the police, leaving victims with limited assistance (CEDAW, 2015). Moreover, women in prostitution do not have access to shelters or crisis centres and are often the subject of forced testing for HIV/AIDS and other sexually transmitted diseases (CEDAW, 2015). In this context the 2015-2017 National Action Plan on Gender Equality aims to prevent sexual exploitation of girls and women through legislative measures and a study on societal attitudes towards the issue.

Moreover, Kyrgyzstan adopted a National Action Plan on Human Trafficking for the period 2013-2016 and increased the minimum jail sentence from three to five years (Criminal Code art. 124). However, no coordinating body is tasked with implementing the national action plan and there is no available data on the number of complaints received and investigations carried out (CEDAW, 2015). A follow-up action plan for the period 2017-2020 is being discussed and foresees actions to further improve the legislation on human trafficking, to establish a national referral mechanism and to increase public awareness of the issue, among other measures (United Nations website, 2017).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The Civil, Family and Land Codes each provide women with the same property and land rights as men, before and during marriage (Civil Code art. 222-223 and 1118-1166; Family Code art. 35-38; Land Code art. 6 and 37-38): women thus have the same rights to own, use, dispose of, mortgage, inherit and make decisions over property and private land. These provisions are reinforced by the 2008 Law 'on State guarantees for gender equality' which provides all Kyrgyz and foreign citizens with equal access to all forms of ownership (art. 12) and the same right to use land (art. 13). However, women's rights over joint property differ when they are not in a registered marriage, in which case they are not entitled to any marital property as these marriages are not recognised by the state, contrarily to women in formal marital relations (Family Code art. 35-38).

In practice, strong patriarchal attitudes prevent women from enjoying their rights to property, family land and pastures. Men have control over livestock, property and pastures as they are seen as the head of the household, which is why livestock brought into a marriage by a woman tends to be merged with her husband's assets (Giovarelli R. et al., 2016) and women's rights to pastures are secured through their male relatives (Giovarelli R. et al., 2016). Women also generally cede their share of family land to male family members after getting married or leaving the house for another reason

(FAO, 2016). Their applications for land plots are also frequently denied and made dependent upon their marital status (CESCR, 2015). Female bids are also excluded from pre-selected bids (Djusaeva, 2012) and if women do end up accessing land, their plots generally end up being smaller and of poorer quality (Djusaeva, 2012).

Restrictions to women's land and property rights are further compounded by legal illiteracy, unregistered marriages (absence of legal documentation), and the fact that divorced wives and female widows cannot claim their right to plots measuring less than 5 hectares as such plots are indivisible under the law (Land Code art. 72) (Djusaeva, 2012).

b) Secure access to formal financial resources

Women enjoy the same rights as men to open bank accounts at formal financial institutions and to obtain credit, regardless of their marital status (1997 Law on banks and banking in Kyrgyzstan, art. 50 and 52). There is no legal requirement for women to obtain a man's consent or signature to do so (LDP, 2013). In 2014 women accounted for 50-80% of all lending in micro-financing institutions (LDP, 2013). Some banks, such as Biatushum, provide free collateral loans to women to help them start businesses, while several donor-funded projects are targeting female entrepreneurship and financial literacy (LDP, 2013), and the government is supporting gender-based approaches in credit institutions (2015-2017 National Action Plan on Gender Equality). There is no legal requirement for a man's consent for a woman's credit application. However, the Family Code provides that the ownership, use and disposal of joint-property (including its use as collateral) must be made by the mutual consent of both spouses (paragraph 1 of Article 36 of the Family Code of Kyrgyzstan).

There are concerns however that the 2013 Law 'restricting money lending activities' will disproportionately affect women by limiting the capacity of micro-institutions to lend money, potentially leading to a black market (LDP, 2013).

c) Workplace rights

The Labour Code and 2008 'Law on State guarantees for gender equality' aim to promote women's labour rights. However, women cannot carry out 'heavy work' nor 'work in dangerous conditions', as per a government-classified list (Labour Code art. 218).

Employers must provide employees with the opportunity to balance work and family life but cannot request information on their private life nor discriminate among employees or applicants based on their marital status, pregnancy or family responsibilities (2008 Law art. 5 and 18). In this light employers cannot terminate the contract of female employees during their pregnancy or before their child reaches 3 years of age (or 14 in the case of single mothers), except if their contract expires or in the event of liquidation (Labour Code art. 310). Employers found guilty of gender discrimination can be obliged by the court to (re)employ the person who was unfairly dismissed / refused work (2008 Law art. 19). Moreover, sexual harassment at work is prohibited and employers must take measures to prevent it (2008 Law art. 21).

Mothers and single fathers are entitled to 126 days of paid maternity leave (70 days pre-natal and 56 days post-natal) (Labour Code art. 307). These rights are extended for employees working in the mountains, or in the case of complicated or multiple births. Adoptive parents are also entitled to take leave until their baby is 70 days old (Labour Code art. 307). 100% of wages are paid during the first 10 days of leave, after which the employee receives ten times the minimum wage (ILO). Additional unpaid leave can be granted at the expiry of maternity / paternity leave, until the child reaches 3 years of age

(Labour Code art. 137). Moreover, female employees nursing babies under 3 years must consent in writing to doing night shifts or overtime (Labour Code art. 97 and 100).

Under Labour Code art. 218, it is forbidden to use the labour of women and persons under eighteen years of age at hard work and work under deleterious and dangerous conditions as well as persons for whom the above work is not recommended on account of bad health. A list of hard work and work under deleterious and dangerous conditions for which it is forbidden to use the labour of women and persons under eighteen years of age is approved by the government of Kyrgyzstan

Women's labour rights are protected through equal rights as men to manage businesses and create legal entities (2008 Law art. 14-16), and the government aims to promote female entrepreneurship under the 2015-2017 Action Plan on Gender Equality through diverse measures including the setting up of a National Advisory Centre delivering individual coaching and providing women with access to technological equipment.

4. Restricted Civil liberties

a) Citizenship rights

Under the 2007 Law on Citizenship children acquire Kyrgyz citizenship at birth if both parents are Kyrgyz or if one of the two parents is, in which case both parents must consent in writing (art. 12). Citizenship is also granted to previous Soviet citizens who have resided in Kyrgyzstan for five years (art. 5 para. 2). There are no legal dispositions on citizenship acquisition when marrying a Kyrgyz national, although the law specifies that Kyrgyz citizenship is retained when marrying a foreigner or in the event that the other spouse changes nationality (art. 8 para. 1 and 2). The law stipulates that no Kyrgyz citizen can be deprived of his/her citizenship or right to change citizenship but prohibits dual citizenship with any neighbouring countries (art. 22). In practice however, many Kyrgyz citizens living in Russia are said to have acquired Russian citizenship without losing Kyrgyz citizenship (LandInfo, 2013).

Local registration offices ('ZAGS') and municipal authorities ('*aiyul okmutu*') are responsible for registering births and issuing free birth certificates (LandInfo, 2013). Registration can be requested by either parent, whether married or not (Family Code art. 54 para. 2). However, there is no registration system available in the provinces of Osh and Jala-Abad, and women without passports reportedly face difficulties in registering their children (HRC, 2014).

In relation to identification and travel documents, women and men have equal rights to apply for ID (LandInfo, 2013) and to obtain passports for their minor children under 16 years of age (Government order No. 359 on passports (15 June 2015), art. 2).

b) Voting

The right to vote in Kyrgyzstan is granted to all citizens aged 18 and over (Constitution, art. 2 para. 4), and there are no reports of traditional practices restricting this right.

c) Political voice

Women have the same rights as men to stand for Presidency, to be elected to the *Jogorku Kenesh* (national parliament), or to become a judge of the Supreme Court and its Constitutional Chamber (Constitution art. 62 para. 2, art. 70 para. 2, art. 94 para 5 and art. 97 para. 2). Women also have the

same rights as men to work for a local government or court (Constitution art. 94 para. 8 and Constitutional law on presidential and Jogorku Kenesh elections art. 3 para. 1). Moreover, the law specifies a 30% quota for either sex on the electoral lists of the *Jogorku Kenesh* and local governing bodies, with an additional obligation for local parties to ensure that there are no more than two positions between women and men on the list (Constitutional law on presidential and Jogorku Kenesh elections art. 60 para. 3; Act No. 98 on local council elections art. 49 para. 7). A 30% quota for either sex is also specified for the appointment of judges to the Supreme Court and Constitutional Court, and for members of the government, the Accounting Chamber and the Central Committee on Elections (2008 Law on State guarantees for gender equality, art. 23).

In practice female representation has progressed at the national level but still lags behind at the local level, with women accounting for only 35.1% of municipal deputies (HRC, 2014) and 4.7% of rural self-governing bodies (CEDAW, 2015).

d) Access to justice

Under the formal justice system women and men have the same capacity to sue or be sued (Civil Procedure Code art. 40 para. 1), and their testimonies carry equal weight in civil, criminal and family courts. However, the precarious condition of judicial premises is a general constraint for the population (UNDP, 2013) and women's lower economic status constitutes an additional challenge, as they often cannot afford to hire attorneys or pay state legal fees (FAO, 2016).

Alongside the formal justice system, the Kyrgyz Constitution provides for the creation of an informal justice mechanism based on community-level '*aksakal courts*' (art. 59) which hear family and moral disputes (e.g. relating to land, livestock, water, divorce, property division) and increasingly deal with domestic violence, bride kidnapping and unregistered marriages (FAO, 2016). Especially used in rural and remote settings to assist villagers who would otherwise lack access to justice, these courts are free of charge and resolve disputes through mediation carried out by community leaders ('*aksakals*').

The UN has raised concerns that *aksakals* lack legal knowledge and base decisions on customary law, thus jeopardising the right to fair trial (HRC, 2014). The absence of enforcement mechanisms and limited jurisdiction and authority of the courts pose further problems, as women with a low status in society run the risk of not being able to enforce favourable decisions. Moreover, the predominance of men in *aksakal* roles increases the risk of perpetuating patriarchal views about women's roles and the family structure (FAO, 2016).

The government has set out to expand access to justice for women through various measures listed in the 2015-2017 National Action Plan on Gender Equality, namely by developing training material to ensure that judges uniformly apply the law in criminal cases involving women and girls. This is in line with the 2013-2017 National Development Plan (which sets out to strengthen the rule of law, build public confidence in the legal system, simplify access to justice and increase legal literacy) and with the 2014-2017 Special Government programme on the development of the judicial system. Moreover, the 2016 Law on State-funded legal aid (No. 201) provides single mothers and fathers raising minor children with the right to apply for free legal aid (art. 8 para. 2).

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