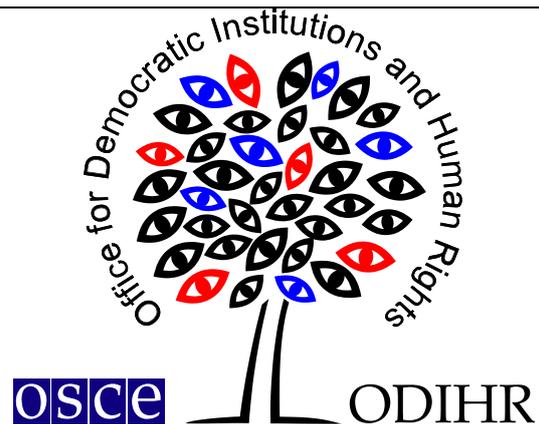


Warsaw, 15 August, 2006

Opinion-Nr: GEND –
KGZ/069/2006(MASz)

www.legislationline.org



Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality

based on an unofficial English translation of the draft Amendments provided by the OSCE Centre in Bishkek

TABLE OF CONTENTS:

1. INTRODUCTION

2. SCOPE OF REVIEW

3. EXECUTIVE SUMMARY

4. ANALYSIS AND RECOMMENDATIONS

4.1. General Provisions and Definitions in the Law

4.2. Objective, Scope and Principles of the Law

4.3. Government Policy of Gender, Monitoring and Reporting

4.4. Gender Equality in Public Administration

4.5. Gender Equality in Economic and Social Relations

4.6. Gender Equality in Labour Relations

4.7. National Mechanism for Ensuring Gender Equality

4.8. Procedure for Consideration of Violation of the Principle of Gender Equality

5. ADDITIONAL COMMENTS AND RECOMMENDATIONS

1. INTRODUCTION

1. By letter dated 8 June 2006, the Special Representative for Gender Equality of the President of the Kyrgyz Republic in Jogorku Kenesh, Government and Judicial Bodies, made a request to the Head of the OSCE Centre in Bishkek for an expert evaluation by the OSCE ODIHR of the Draft Law of the Kyrgyz Republic on Introduction of Changes and Amendments to the Law on Fundamentals of State Guarantees for Gender Equality of 12 March, 2003 (hereinafter also referred to as “Draft Law”).

2. Further, the OSCE Centre in Bishkek transferred the request to the OSCE ODIHR and this “Opinion on the Draft Law On Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality” (hereinafter “Opinion”) has been drafted as a response thereto.

2. SCOPE OF REVIEW

3. This Opinion does not equate to a full and comprehensive review, rather it has been drafted to serve as considerations which should be taken into account in light of international standards and practice in the field of gender equality to which the Republic of Kyrgyzstan has committed or may seek to commit.

4. Further to the above, it must be borne in mind that the Opinion has been drafted based on an unofficial translation commissioned by the OSCE Centre in Bishkek, from which some errors in interpretation may result. The Opinion has also been drafted based on a version of the Draft Law, which does not clearly demarcate the changes made (the amendments) and has been presented as a unified text, thus the OSCE ODIHR had to denote the changes based on the difference in the two translations. Errors in the described process may have also occurred. Additionally, it ought to be stated that the Draft Law has been reviewed in isolation of any other legislation which may be pertinent to the issue at hand.

5. In this regard, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any recommendations and comments to the Draft Law that the OSCE ODIHR may wish to make on the Draft Law in the future.

3. EXECUTIVE SUMMARY

6. The Draft Law presents a unique opportunity to amend the exiting legislation on gender equality, by drawing on the lessons learned from the implementation of the current provisions and drawing upon developments and trends in international practice. This Draft Law should therefore, seek not only lay down legal principles and ensure compliance with international standards, but moreover refine national mechanisms which would give effect to the principles and thereby ensure not only *de jure* but also *de facto* equality of opportunity between men and women.¹

¹ OSCE participating States affirmed their goal to achieve not only *de jure* but *de facto* equality of opportunities between men and women and the promotion of effective measures to that end, as early as the Moscow Concluding Document, 1991, paragraph 40.4.

7. In summation, it is recommended that:
 - A. the definition of “gender mainstreaming” should include also a reference to legislation [par.8];
 - B. the definition of gender discrimination should include a reference to both direct and indirect discrimination [par.10];
 - C. the definition of “affirmative action” as compare with “special measures” should be clarified [par.11];
 - D. the purpose of the Draft Law include also the aim of establishing national machinery (or mechanism) for achievement of gender equality [par.14];
 - E. Article 6 of the Draft Law includes clear criteria for both direct and indirect (explicit and implicit) gender discrimination [par 17, 18 and 19];
 - F. an Article specifically prohibiting sexual harassment (not only in the workplace) is included and that the burden of proof be on the alleged discriminator to prove that the sexual harassment did not take place [par.22 and 23];
 - G. Article 7 should specify that the Government is also obliged to adopt the National Action Plan on Gender Equality [par.24];
 - H. Article 8 should set out concrete monitoring and reporting requirements of bodies, reporting cycles and stipulate the body to which such reports must be submitted [par.25 and 26];
 - I. Article 9 should be clarified [par.28];
 - J. in amending the Electoral Code to introduce quotas, the system of double quotas is considered [par.31];
 - K. the Draft Law sets out concrete steps for improvement of the situation of women in relation to property rights [par.33];
 - L. the Draft Law includes a specific reference to accessibility of the health service and the possibility of introducing special measures to improve the health situation of Kyrgyz women [par.34 and 35];
 - M. the Draft Law regulates the responsibility of small businesses (where there are less than ten employees for gender discrimination [par.38];
 - N. the Draft Law set up the procedure for filing complaints in relation to wage discriminations [par.41];
 - O. the Draft Law to establish parental leave to take care of children as gender neutral [par.44];
 - P. the entire section on the national mechanism be revised to ensure that (1) the body which is to be the core of the national mechanism be identified in the law; (2) the composition of the body is established by the law; (3) the method of election of persons to the body is set out; (4) to whom the body will be responsible to; (5) the voting procedure within the body for taking decisions and;(6) there is a formalized manner in which non-governmental organizations be part of or participate in the work of the body. [par 46, 47, 48, 49, 50, 51, 52 and 53];
 - Q. gender mainstreaming be a core responsibility of the body [par 55];
 - R. the consequences for failing to enforce the Draft Law should be spelled out more clearly [par.58];
 - S. the Draft Law should establish an independent body responsible for accepting individual claims of gender discrimination and competent to submit claims *ex officio* [par.59 and 60];

- T. the Draft Law should include a clear and well described complaints procedure, as a separate section [par.61];
- U. the Draft Law clearly states the redress and compensation available to victims of harassment and gender discrimination [par.61];
- V. in addition to the Draft Law, the crime of domestic violence is appropriately legislated for [par. 62];
- W. the Draft Law should include provisions on equality in education [par.63];
- X. the Draft Law should include the role and responsibilities of the media in the promotion of gender equality [par.64];
- Y. the Draft Law considers including provision which would require training and education on gender quality issues and gender mainstreaming for person in the public administration [par.65];
- Z. the Draft Law is accompanied by a regulatory and financial impact assessment [par 66 and 67].

4. ANALYSIS AND RECOMMENDATIONS

4.1. General Provisions and Definitions in the Law

8. It is welcomed to have an expanded list of definitions in the Draft Law, which would guide those responsible for implementing the law, in its interpretation. In particular, the definition of “gender approach (mainstreaming)” is one of importance, as the concept should be a general approach to ensuring gender equality in Kyrgyzstan. It may be considered to include in the definition a direct reference to fact that gender mainstreaming concerns and should be a process of assessing not only inequality in policies and programmes of the State but also legislation².

9. It is recommended that in order to further improve Article 1 of the Draft Law, which lays down the definition of terms used throughout the law, some further definitions may be added and those already existing, clarified or refined.

10. Further to the recommendation made above, the definition of “gender discrimination”, as one of the most important definitions of the Draft Law should be expanded to include a clear definition of direct discrimination and indirect discrimination (which presumably is the purpose of the definition of “latent gender discrimination”). This is particularly important since Article 6 of the Draft Law on prohibition of gender discrimination attracts liability for acts which fall within the definition.

11. The definition of “affirmative action” in the Draft Law is understood as describing ‘temporary special measures’, as prescribed by the Convention on the Elimination of all forms of Discrimination Against Women (hereinafter referred to as

² “Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including **legislation**, policies and programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences and integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.” See: Official Records of the General Assembly, Fifty-fifth Session, Supplement No.3 (A/52/3/Rev 1), chapter IV, paragraph 4.

“CEDAW”)³ and it is welcomed. Unless by reason of translation, and for the purposes of clarity and consistency, the term is recommended to be renamed “special measures”.

12. The definition of “sexual harassment” is welcomed. In order to fully effect the prohibition on sexual harassment, the Draft Law should not stop at simply defining this form of gender discrimination, but include an explicit provision on its prohibition. This recommendation will be discussed below.

13. It is not clear why there exists a necessity to include a definition of “violation of equal rights” Also, unless by reason of translation, the difference between the definition of “gender equality” and “equality of rights” is not clear, and further what the intention behind the inclusion of two very similar terms seems to be. The definition of “subjects of gender equality” should also be clarified, as it seems the primary subject of gender equality are physical persons. Lastly, the definition of the concept “relation based on equal partnership” is quite unclear, and would require further amendment.

4.2 Objective, Scope and Principles of the Law

14. In addition to the main purpose of ensuring gender equality articulated in Article 2 of the Draft Law it is recommended to include also the purpose of establishing machinery (or mechanism) for achievement of gender equality in Kyrgyzstan. This is proposed as the stated purpose of any law, sheds light on the manner in which its entirety should be interpreted.

15. Regarding Article 3, which stipulates the principles on which the it is based may be supplemented to include the principle of non-discrimination. It is particularly welcomed that the participation and assistance of civil society has been included as a principle of the Draft Law. Members of civil society and in particular, non-governmental organizations dealing with issues which impact on gender equality, are a very valuable source for both shaping policy on ensuring gender quality, as well as implementing measures to ensure the effectiveness of the policy.

16. The amendments to Article 4 of the Draft Law are welcomed in particular, as they clearly stipulate application of the Draft Law to foreign citizens, persons without citizenship (stateless persons), persons having permanent or temporary residence on the territory of the Kyrgyz Republic, to legal persons (understood as corporations and associations), persons working in government bodies and local self-government.

4.3 Prohibition on Gender Discrimination

17. Article 6 on the prohibition of gender discrimination is one of the most pivotal articles in the Draft Law. For this reason it is recommended to be drafted in a lucid manner by stating what acts constitute direct (explicit) gender discrimination and the

³ Article 4 of G.A.res. 34/180, 34, UN.GAOR Supp. (no.46) At 193, U.N.Doc A/34/46. in force Sept 3 1981. states that “ 1. Adoption by States of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued once the objectives of equality of opportunity and treatment have been achieved”. The afore cited Convention was ratified by the Republic of Kyrgyzstan on 10 February, 1997.

acts that constitute indirect (implicit) gender discrimination. The article is proposed to include clear criteria for acts which constitute direct and indirect discrimination which would be particularly important in the context of complaints filed on the basis of this provision, further interpretation by the relevant bodies, authorities, including judicial authorities and finally, redress and compensation for the aggrieved individual.

18. Following from the above, it is recommended for the Draft Law to stipulate that direct gender discrimination occurs when there is a causal connection between the sex (gender) of the aggrieved person and any less favourable treatment accorded to them. Such provision should state also that there is no intention or motive required on the part of the person discriminating (hereinafter “discriminator”) for the prohibited act to occur. Therefore, the Draft Law could state that gender discrimination takes place where a person is treated less favourably by reason of their gender, a characteristic which pertains generally to persons of a certain gender, or a characteristic which is imputed to persons of a certain gender. Moreover, the Draft Law could (by way of a non-exhaustive list) stipulate acts of direct discrimination. These are recommended to include discrimination on the ground of marital status, pregnancy, or potential pregnancy and family responsibilities as well as sexual harassment.

19. With regard to indirect (implicit) discrimination, the provision is recommended to state the criteria upon which an act may be deemed as indirect discrimination. That is, the provision may provide that indirect discrimination occurs when the discriminator imposes or proposes to impose a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same sex (gender) as the aggrieved person. This may be subject to the exception of instances when any such act is reasonable in the circumstances. The limits of ‘reasonability’ would thus also need to be established.

20. The enumeration of instances which may not be considered as gender discrimination, in Article 6 of the Draft Law are welcomed. The instance of ‘peculiarities of labour protection of women and men in relation to their reproductive health’ is somewhat ambiguous, however, for as long as these instances are clearly defined in labour legislation, such enumeration may suffice. It is also not clear what the difference between ‘affirmative actions’ and ‘temporary special measures’ might be, especially given the fact that the definition of ‘affirmative actions’ found in Article 1 of the Draft Law seems to describe a similar form of measures. This difference is recommended to be clarified.

21. The enumeration of the instances which do not constitute gender discrimination could be supplemented by adding the situation where it is an occupational qualification to be of a certain gender or where duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex- for instance, the job of a model for men’s clothing, or an actor’s part in a movie, advertisement, theatre production, etc.. This has been articulated in Article 17 of the Draft Law and is proposed to be inserted into this Article also.

22. The occurrence of sexual harassment, in particular in the workplace, but not only, has dramatic effects on equality of men and women in the workplace. Sexual harassment is also a very particular type of gender discrimination, which in many

OSCE participating States, in exacerbated circumstances of its occurrence, may lead to criminal sanctions. For these reasons, it is recommended to include a separate provision regulating instances of sexual harassment. In consequence any act which would fall outside the scope of sexual harassment could nevertheless be considered as discrimination based on gender. Another consequence of including the prohibition under general provisions, would be to ensure that sexual harassment is not only punished in the workplace, but also outside thereof, as appropriate (for instance at educational institutions).

23. Further to the above, the Draft Law is recommended to not only define but also establish sexual harassment as unlawful, providing in later provisions the manner of recourse, for victims, the responsibility and liability of for instance, employers in prevention of the occurrence and protection of employees who are exposed to sexual harassment and finally sanctions and punishment for the perpetrators of this form of discrimination. It is also recommended for the burden of proof to be reversed in the case of sexual harassment – which would mean that it would be the burden of the discriminator to prove that his or her acts did not amount to sexual harassment.

4.4 Government Policy on Gender Equality, Monitoring and Reporting

24. Article 7 of the Draft Law is welcomed, in particular the amendments which task the government with establishing institutional mechanisms for ensuring gender equality, adopting temporary special measures aimed at ensuring equal opportunities for men and women and integrating the gender mainstreaming approach. It is proposed also to be added that the government adopts national actions plans on gender equality.

25. Article 8 on monitoring and reporting on the implementation of policies on gender equality is of great importance in practice. The OSCE Action Plan for the Promotion of Gender Equality, recommends participating States to utilize gender analysis and monitoring mechanisms to assess the impact of gender policies and strategies, so that constraints on their full implementation may be identified and addressed⁴. Therefore, in order for the Article to have not only the requisite declaratory effect, but also to be implemented in practice it should be developed by establishing concrete reporting obligations of various branches of government, for instance, quarterly, annual etc., and it should identify to which body such reports ought to be sent. The Article could also be supplemented by secondary legislation at a later stage, which would set out the exact criteria for reports and deadlines for submission. This kind of adjustment to the Article would ensure that the article is more conducive to practical implementation and not simply declaratory in nature.

26. Article 8 discussed above is also recommended to be linked with the obligations of the National Mechanism described in Chapter V of the Draft Law, in particular the body described in Article 25 of the Draft Law should be a recipient of the reports, seeing as one of the obligations of this body is to publish annual reports on the enforcement of the Draft Law.

⁴ Paragraph 42, Decision No.14/04 2004 OSCE Action Plan for the Promotion of Gender Equality, MC.DEC.14/04 7 December, 2004.

4.5 Gender Equality in Public Administration

27. The amendments to both Article 9 and Article 10 of the Draft Law are welcome.

28. The amendment to Article 9 establishes responsibility for the failure to observe provisions of the Draft Law by all branches of Government. It is not clear however, what this liability entails, and this is recommended to be clarified (in this or later provisions)

29. The main amendments to Article 10 are the introduction of quotas and promotion guidelines. The issue of quotas has generally been discussed on an international scale with regards to electoral quotas and representation in the legislature. However, the quota system introduced by the Article refers to public administration and introduces a gender-neutral quota of not more than 70 per cent of any gender being represented in a particular body, institution or local self-government. Importantly, the article also refers to the level of decision-making, which is often under-represented by women. In particular, in accordance with the statistics provided in the 2002 Second Periodic Report of the Kyrgyz Republic to the Committee on Elimination of Discrimination Against Women⁵, women are severely under-represented in the field of foreign affairs, which would require special attention given the requirement laid down by Article 8 of CEDAW⁶

30. The benchmarks for a system of promotion in the public service are welcome as too is the retaining of recruitment processes based on equal opportunities for both men and women and most importantly, recourse for the aggrieved person, in case of an administrative decision which violates the law.

31. Article 11 on guarantee of equal suffrage, raises the important issue of guaranteeing representation of men and women on lists of candidates for elections. Although the article continues to state that (rightly so) this shall be regulated in the Electoral Code of the Republic of Kyrgyzstan, what should be borne in mind at this point, is that international best practice has found that it may not always suffice to merely require that both women and men appear on party lists. A system of double quotas has been introduced in some OSCE participating States, such as Belgium, whereby, it is required for there to be not only a certain percentage of women on the electoral list, but also there is a requirement on the placement of candidates on the list, so that for instance, women are not placed at the bottom of each list, thereby reducing chances for election. These “placement mandates” or rules about the order of candidates, should be borne in mind when introducing the quota system into electoral legislation⁷.

⁵ Page 33, CEDAW/C/KGZ/2 see: <http://www.un.org/womenwatch/daw/cedaw/reports.htm#k>,

⁶ Article 8 of CEDAW states that: „State Parties shall take all appropriate measures to ensure women , on equal terms with men and without any discrimination, the opportunity to represent their governments at the international level and to participate in the work of international organizations”.

⁷ Please see: Institute for Democracy and Electoral Assistance (IDEA)Global Database for Quotas for Women: <http://www.quotaproject.org/aboutQuotas.cfm>

4.5 Gender Equality in Economic and Social Relations

32. This Chapter of the Draft Law is also of great significance to the empowering of women in Kyrgyz society. The Second Periodic Report of the Kyrgyz Republic to the Committee on Elimination of Discrimination Against Women⁸ describes a rather bleak situation regarding the situation of rural women in particular, in terms of property ownership and self-employment, and thus compliance with Article 16(h) of CEDAW⁹. The 2002 Second Periodic Report of the Kyrgyz Republic to the Committee on Elimination of Discrimination Against Women¹⁰ mentions that there is little awareness amongst the population, including and especially, the female population, of the benefits that property ownership provides. That is, the possibility to take out loans¹¹, where property is often required as security, to establish small businesses and create conditions for self-employment.

33. In view of the above, and the obligation of the State to secure these rights, the provisions in the Draft Law may be expanded to include more detailed steps to be taken towards a change in the legal framework on ownership of property, its acquisition or disposal, for women, with a direct reference to amendments that would need to be made in family and property legislation of the Kyrgyz Republic.

34. Article 16 is recommended to be supplemented with concrete principles on equality of access to health services, other public services and facilities, as well as the social benefits described such as unemployment benefits maternity leave and entitlements for taking care of elderly, disabled or ill family members. In addition, the Article may include the principle of equal access to memberships in clubs, associations and organizations¹².

35. What is of particular concern is the health situation of women in Kyrgyzstan and the mortality rates of both the mother giving birth and the infant, which were also provided in the 2002 Second Periodic Report of the Kyrgyz Republic to the Committee on Elimination of Discrimination Against Women¹³. It would seem fitting specifically provide for equal access to health services in particular, in this section of the Draft Law. Given the described situation of health, it may also be considered to introduce interim special measures on improving the situation.

⁸ CEDAW/C/KGZ/2 see: <http://www.un.org/womenwatch/daw/cedaw/reports.htm#k>

⁹ Article 16 states: “1. State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:[...] (h) The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for valuable consideration”.

¹⁰ CEDAW/C/KGZ/2 see: <http://www.un.org/womenwatch/daw/cedaw/reports.htm#k>

¹¹ Article 13 CEDAW states: “1.State Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: [...] (b) the right to bank loans, mortgages and other forms of financial credit[...].”

¹² ¹² Article 13 CEDAW states: “1.State Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: [...] (c) the right to participate in recreational activities, sports and all aspects of cultural rights [...]”

¹³ CEDAW/C/KGZ/2 see: <http://www.un.org/womenwatch/daw/cedaw/reports.htm#k> It is duly noted that the statistics provided were current for the year 2002, and may have improved from that time.

4.6 Gender Equality in Labour Relations

36. In general, the amendments to Article 17 of the Draft Law are welcome.
37. In particular, the ability of employers to install special measures to ensure gender equality in the workplace is considered a positive development.
38. It is not clear from the paragraph which states that the Draft Law does not apply to legal entities with less than ten employees, how the responsibility of these employers would be regulated. It is recommended to clarify this in the law, in particular, since small business is often a form of employment in many areas of the economy.
39. The paragraph concerning vacancy announcements in Article 17 is particularly welcomed.
40. It is not clear what might be the relevance of the paragraph commencing with the words “The State regulates a phased reduction of the list of harmful industries..” in a law which regulated gender equality issues. The paragraph seems to lay down principles for environmentally friendly operations of companies, and may well be suited in environmental laws of the State. This paragraph is proposed to be reconsidered.
41. Article 18 is welcomed and it is proposed that those persons who are discriminated against by receiving less pay for the same work and qualifications for the job, have a clearly demarcated procedure for filing a complaint.
42. Article 20 on the guarantee of recognition of housework is welcomed. It is also welcomed that the Article recognizes the possibility of household work to be carried out by either a man or a woman. However, in fact, it is mostly women who carry out this form of unpaid work. It can be said that failing to value women’s unpaid work can produce subtle wage discrimination (economic discrimination) by devaluing women’s work as a whole. The invisibility of unpaid work in the home and the fact that the housework and child care are seen to be part of a “woman’s role” contributes to gender inequality in the labour market and to female poverty. For instance, in the labour market, work that is similar to that traditionally done “for free” at home (including cooking, child care, cleaning) also attracts particularly low wages in the market economy. This kind of result is to a great part unjustified, when it is considered that child care is a demanding and high skilled occupation¹⁴.
43. The lack of recognition of work in the house as valuable may also lead to for instance another form of economic discrimination, which is lack of access to credit loans (also mentioned above in relation to property rights) and services such as pension schemes. For this reason, it is may be considered to make Article 17 more specific by including explicit language on access to pensions schemes.
44. Further measures which may be considered in relation to this Article is for parental leave to be gender neutral. Whereby either the man or the woman could take time off work to take care of the family and home. Additionally, employment should seek to be family friendly, and career equity may be promoted, to ensure that not only men are traditional careers with long working hours and higher pay, but that they too

¹⁴ See: GPI Atlantic, “Gender Equality in the Genuine Progress Index” Made to Measure Symposium, Halifax, October 3-6, 1999, page 7.

are able to share the household work with women. Such aims and measures to implement them may be considered in the Draft Law.

45. Article 21 on sexual harassment is welcomed. As mentioned above, sexual harassment is recommended to be included in the general section of the law, as it is applicable not only in the workplace, but also in educational institutions, associations and other public institutions, which do not constitute part of the labour force. Employers might also be tasked with undertaking preventative measures and provide a forum for conciliation (through for instance, staff representative, labour unions).

4.7 National Mechanism for Ensuring Gender Equality

46. One of the most important aims of the Draft Law should be for it to establish a clear, effective, national mechanism for implementing the provisions of the Draft Law. According to the Beijing Platform for Action¹⁵ “A national machinery for the advancement of women is the central policy-coordinating unit inside government. Its main task is to support government-wide mainstreaming of gender equality perspective in all policy areas...” The Beijing Platform for Action also described the essential elements which would ensure the functioning of the mechanism, which include “(a) location at the highest possible level in government, falling under the responsibility of a Cabinet minister; (b) Institutional mechanisms that facilitate, as appropriate, decentralized planning, implementation, and monitoring with a view to involving non-governmental organizations and community organizations from the grass roots upwards; (c) sufficient resources in terms of budget and professional capacity; (d) opportunity to influence development of all government policies.”¹⁶

47. As already stated, the Draft Law presents an excellent opportunity to create a clear legal framework and national machinery for promoting and ensuring de facto implementation of gender equality. For this reason, it is a general recommendation to revise this section of the Draft Law, to ensure precise demarcation and identification of the enacted bodies, their composition, election, and responsibilities, including with regard to the National Action Plan on Gender Equality for the Kyrgyz Republic which is not mentioned in the Draft Law. More specific recommendations follow.

48. The amendments to Article 22 are welcomed. Comments on the quota system introduced also by Article 10 and provided above, are also applicable to this, Article 22.

49. The amendments to Article 23 are welcomed, and comments on the quota system introduced also by Article 10 and provided above, are also applicable to this, Article 23.

50. Regarding Article 23, it is also considered a positive amendment to task the Jogorku Kenesh to consider the necessity to budget for measures to ensure gender equality. Assumably, this is the purpose of the final paragraph of the article. Unless

¹⁵ Paragraph 201 : Platform for Action and the Beijing declaration: Fourth World Conference on Women, Beijing, 1995. New York, United Nations Department of Public Information, 1996.

¹⁶ Paragraph 201 : Platform for Action and the Beijing declaration: Fourth World Conference on Women, Beijing, 1995. New York, United Nations Department of Public Information, 1996.

by reason of translation, this final paragraph is however, proposed to be clarified, to ensure that the task of the Jogorku Kenesh is clear.

51. With regard to Article 24 it is not entirely clear why the National Council of Women, Family and Gender development under the President of the Kyrgyz Republic has been abolished. Assumingly, this body is being replaced by the body which is established by Article 25 of the Draft Law. It would also be beneficial to add that the Government is responsible for adoption of the National Action Plan on Gender Equality for the Kyrgyz Republic.

52. Regarding the authorized State body for gender equality and its competencies described in Article 25, it is strongly recommended to firstly, identify the body in a more precise manner. Secondly, the Draft Law should contain an article which would describe the composition of the authorized body. Thirdly, the Draft Law should indicate the manner in which persons are elected or chosen to be members of the authorized State body. Fourthly, the Draft Law should establish a Head or Chairperson of the authorized State body, which Chairperson would be responsible for its work and responsible for reporting on its work, assumingly, directly to the President of the Republic. Fifthly, the Draft Law could also describe the voting procedure within the authorized State body, which would facilitate the taking of decisions. These amendments to the Draft Law are strongly recommended.

53. Regarding the composition of the authorized State body, and considering that it would be the main body for policy making on gender equality, it would be beneficial for the Draft Law to formalize the involvement of civil society, or more precisely, non-governmental organizations in the national machinery. For instance, by permitting members of non-governmental organizations to come within the composition of the authorized State body, would bring to life and implement the co-operation and policy development function that is attributed to non-governmental organizations in Article 27 of the Draft Law¹⁷.

54. A further point regarding composition, would be to ensure that various relevant branches of government are included, for instance, representative of the Ministry of Foreign Affairs, Labour, Health, Education, Justice, Media etc.,

55. Concerning the competences of the authorized State body, this should include specifically, the responsibility to ensuring gender mainstreaming in each of its tasks and the tasks assigned to branches of government which it has responsibility to monitor and report upon. Furthermore, the national machinery should have the possibility to ensure that those bodies who are not meeting for instance, reporting requirements, or employ discriminatory measures are held accountable.

¹⁷ Please see: Stocktaking study of the effective functioning of national mechanisms for gender equality in Council of Europe member states, Directorate General of Human Rights, Strasbourg, 2004 CDEG(2004)19, page 19, where it is stated that “Another focus that tends to gain more and more importance is the dimension of co-operation with civil society, namely with NGOs dealing with women’s rights or human rights. Recognized as essential partners in the social change, that is the ultimate objective of equality policies, **the co-operation with these organization and the creation of institutionalized channels for dialogue and support is, in a significant number of cases explicitly included in the mandate of institutional mechanisms.** A co-operation that is also one form of accountability of actions developed, obstacles found and progress achieved, and which is also a responsibility of institutional mechanisms”.

56. Article 29 on review of legislation and drafts of normative legal acts is welcomed. In practical terms, secondary legislation could be introduced which would provide legislators with clear instructions on how to conduct a gender equality impact statement on the laws which fall within their responsibility.

57. Article 30 which assigns the National Statistical Committee of the Kyrgyz Republic with collecting gender-disaggregated statistics is welcomed. The collection and further, the analysis of statistics, is important in identifying trends, and monitoring the success of measures taken to ensure gender equality.

58. Article 31 on the consequences of failure to enforce the present Law, would benefit from further clarification. The Article as it stands, makes it difficult to decipher, who submits the a request for implementation and enforcement to whom. As mentioned above, it may be useful to empower the authorized State body with the power to enforce certain obligations such as reporting, collection of statistics, implementation of measures. It is also unclear in what manner persons who have violated the provisions of the law would be “held accountable” under Article 31.

4.8 Procedure for Consideration of Violation of the Principle of Gender Equality

59. It is contended that the Draft Law presents a unique opportunity to set up a clear complaint procedure for individual claims, by firstly, the establishment of one specific body who would be responsible for reviewing individual claims of gender discrimination, and would also be able to bring claims *ex officio*. As it stands, Article 33 provides many possibilities, but it is not precise to whom an individual may turn with their claim and in what case. In order to function in practice, this provision needs to be deeply revised, and it should reflect a well thought out procedure for bringing claims and receiving redress.

60. For instance, some OSCE participating States have established a Special Commissioner on Gender Equality, or a Gender Ombudsperson dealing solely with gender discrimination claims. It is proposed that in the case that a separate, independent institution is not established, that could challenge also the decisions and measures taken by government bodies, the Ombudsperson should receive clear jurisdiction in this field prescribed by law.

61. It is highly recommended that the Draft Law would further benefit from outlining the *required procedure for filing a claim*, the weight and enforcement value of decisions taken by an independent commissioner, or other, and the possibilities for appeal, redress and compensation for damages result from the gender discrimination.

5. ADDITIONAL COMMENTS AND RECOMMENDATIONS

62. It is recommended that with the aim of compliance with recommendations of the OSCE¹⁸ and United Nations¹⁹ acts of violence, in particular, domestic violence are appropriately legislated for. It is worth stating that violence against women, particularly in the home is a serious obstacle to equality between women and men, and indeed perpetuates inequality by relegating women into a position of fear and inferiority. The clear and specific definition of acts which may constitute domestic violence, definition of the relationships within which domestic violence may occur and introduction of procedural provisions which would provide effective assistance and remedies to the victims of violence and to the family affected by the violence, would serve to promote attitudinal change within the family, which indisputably is the core of equality between men and women.

63. It may be beneficial for the Draft Law to include provisions on gender equality in education and access thereto. True gender equality in the sphere of education would entail more than simply reiterating the principle of equality of access. Given that the education system is one of the main conduits for social and cultural patterns, this provisions could seek to at the very least instruct a regular review of school curricula²⁰ in order to ensure that it promotes gender equality and does not perpetuate gender stereotypes, thus providing a way to bring to life and implement Article 5 and Article 10(c) of CEDAW²¹.

64. It is clear that just as educational facilities are a conduit for social and attitudinal patterns, so too is the mass media. The mass media has the potential to transfer images of “womanhood” and “manhood” and the concept of equality of women and men. It would therefore be relevant to consider introducing provisions which would regulate their role in the formulation and negation of negative stereotypes and providing a platform for awareness raising on gender equality.

¹⁸ Chapter IV/Point 42, of OSCE Ministerial Council Decision No.14/04, on the OSCE Action Plan for the Promotion of Gender Equality, which refers to the elimination of all forms of violence against women.

¹⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, E/CN.4/1996/53.

²⁰ Such review may include, but not be limited to, and evaluation of existing (and/or non-existing) components of primary, secondary, and tertiary educational structures, such as; course curricula, admission processes, retention processes, level promotion processes, formal complaint procedures and hiring procedures etc.,

²¹ Article 5 states that: “State Parties shall take all appropriate measures: (a) to modify 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 inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;” Article 10 (c) states: “State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education [...] (c) The elimination of any stereotyped concept of the roles of men and women at all levels in all forms of education by encouraging coeducation and toher types of education with will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;”

65. It is clear that in order for all bodies of public administration to implement the Draft Law, training and education on gender equality and gender mainstreaming is required.

66. Regarding implementation of the Draft Law in practice, it is recommended to conduct a thorough regulatory impact assessment which would identify the legislation and regulations which would require amendments in order to comply with the provisions set out in the Draft Law.

67. It is also recommended to conduct a thorough financial impact assessment in order to ensure that sufficient funds are allocated, in a realistic manner to the activities proscribed by the Draft Law.

[END OF TEXT]