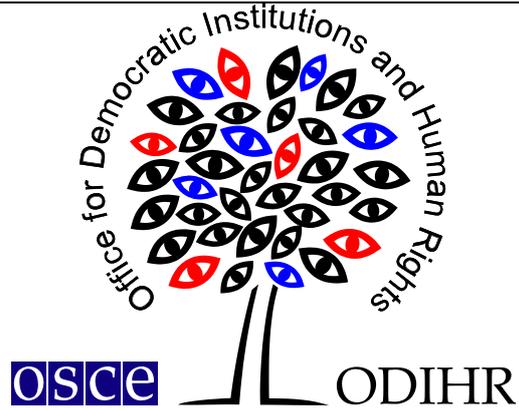


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**OPINION ON THE DRAFT LAW
OF THE KYRGYZ REPUBLIC
ON SAFEGUARDING AND PROTECTION
FROM DOMESTIC VIOLENCE**

**based on unofficial English translation of the draft law provided by
the OSCE Centre in Bishkek**

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Annex: Draft Law of the Kyrgyz Republic on Safeguarding and Protection from Domestic Violence

I. INTRODUCTION

1. *On 7 July 2014, the Minister of Social Development of the Kyrgyz Republic sent an official letter to the OSCE Centre in Bishkek requesting the review of the draft Law “On Safeguarding and Protection from Domestic Violence” (hereinafter “the Draft Law”).*
2. *On 5 August 2014, the OSCE Centre in Bishkek forwarded the request to the Director of the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”), along with the unofficial English translation of the Draft Law, which is annexed to this Opinion.*
3. *On 7 August 2014, the OSCE/ODIHR Director responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with OSCE commitments and international human rights standards.*
4. *This Opinion was prepared in response to the above request from the Minister of Social Development of the Kyrgyz Republic. The OSCE/ODIHR conducted this assessment within its mandate as established by the OSCE Action Plan for the Promotion of Gender Equality, which states that “[t]he ODIHR, in co-operation with other international organizations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments”.¹*

II. SCOPE OF REVIEW

5. The scope of this Opinion covers only the Draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing prevention and protection from domestic violence, and the prosecution of perpetrators in the Kyrgyz Republic.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, the Opinion focuses more on areas that require amendments or improvements rather than on the positive aspects of the Draft Law. The ensuing recommendations are based on international standards related to the prevention of and protection from domestic violence, and prosecution of perpetrators, as well as on relevant OSCE commitments. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
7. This Opinion is based on an unofficial translation of the Draft Law provided by the OSCE Centre in Bishkek, which is attached to this document as an Annex. Errors from translation may result.

¹ OSCE Action Plan for the Promotion of Gender Equality adopted by OSCE Ministerial Council Decision No. 14/04, MC.DEC/14/04, 7 December 2004. See also OSCE Ministerial Council Decision 15/05 on Preventing and Combating Violence against Women, MC.DEC/15/05, 6 December 2005, which calls on OSCE participating States to, amongst others, “ensure that all female victims of violence will be provided with full, equal and timely access to justice and effective remedies” and “adopt and implement legislation that criminalizes gender-based violence and establishes adequate legal protection”.

8. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to legislation and policy regarding the prevention and protection from domestic violence, as well as prosecution of perpetrators in the Kyrgyz Republic, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

9. At the outset, it should be noted that this Draft Law contains many positive aspects and is overall compliant with international standards related to the prevention of and protection from domestic violence, and prosecution of perpetrators. In particular, it is welcome that the Draft Law outlines in detail the respective roles and responsibilities of various government entities, judicial bodies, the media and civil society, which should all be involved in any domestic violence case.
10. At the same time, the Draft Law could be improved in a number of ways, to make sure that it will also be implemented in practice; one way of ensuring this would be to link it to a more comprehensive legal reform, particularly of the criminal and criminal procedure codes to clearly demonstrate the State's "zero tolerance" attitude towards domestic violence offences.
11. In order to ensure the compliance of the Draft Law with international standards and to render certain provisions more effective, the OSCE/ODIHR thus has the following key recommendations:
 - A. to clearly delineate in the Draft Law which cases will trigger criminal liability and which ones will not, and make cross-references to the relevant provisions of the Criminal Code, and avoid overlaps between the Draft Law and the Criminal Code; [pars 37 and 78]
 - B. to consider amending:
 - 1) the provisions of the Criminal Code to ensure that acts of domestic violence are criminalized and subject to adequate and dissuasive penalties which are higher than the ones provided for similar criminal offences committed outside of a domestic context; and introduce provisions criminalizing the violation of restraining and protection orders; [pars 76-77]
 - 2) the Criminal Procedure Code to include gender-sensitive and child-sensitive procedural measures, provide for the issuance of restraining and protection orders, and more generally ensure consistency of the provisions of the Draft Law with the provisions of the Criminal Procedure Code; [pars 80-82]
 - C. to supplement the Draft Law to state the criteria and conditions for appointment of the members of the Authorized Body (Article 8) providing for gender-balanced representation and specifying the consequences for infringement of the gender balance requirement; and consider including representatives from civil society; [pars 28-29]
 - D. to clearly state in Article 20 of the Draft Law that the conciliation procedure before the court of elders should only be possible for cases which do not fall under the scope of criminal legislation; [pars 43-45]
 - E. to expressly state in Article 22 par 2 of the Draft Law that access to funding by NGOs shall include foreign and international sources, as well as private entities,

and provide in Article 22 par 3 that NGOs have the discretion to decide whether to comply with reporting requirements; [par 33]

- F. to broaden the nature and scope of the restrictive measures included in restraining orders issued by the interior affairs bodies according to Article 32 of the Draft Law; [par 58]
- G. for the policy and law makers and all stakeholders to:
 - 1) carry out a proper evaluation of the implementation of the existing legislation on domestic violence as well as a full impact assessment of the regulatory and non-regulatory measures required for the full implementation of the Draft Law and National Action Plan on Violence Against Women, including a financial impact assessment, and clearly state in the Draft Law the modalities for funding their implementation and identify the source of funding; [pars 19-23]
 - 2) ensure direct and meaningful participation of civil society and all other stakeholders throughout the process of development, implementation, monitoring and evaluation of plans and legislative changes on preventing and combating domestic violence, including the Draft Law and amend Articles 21 and 22 of the Draft Law to that effect; [par 24] and
 - 3) ensure that all measures are supported by broader comprehensive social and economic policies ensuring gender equality in all areas of public and private life, also aimed at strengthening women's economic independence. [par 40]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on Preventing and Combating Domestic Violence

- 12. Over the last twenty years, the notion of an obligation for States to adopt legal and other measures to protect individuals from domestic violence, provide them with assistance, and punish the perpetrators, has become increasingly prevalent, both at the national and international levels. This development has been encoded in a number of international instruments and this issue that was previously considered a “private” or “family” matter has become the responsibility of the State.
- 13. Although the UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”)² does not directly mention violence against women, or domestic violence which is a type of violence against women, its Article 2 stipulates that “State Parties condemn discrimination against women in all its forms”, and obliges States to eliminate, through all appropriate measures, such discrimination. The UN Committee on the Elimination of All Forms of Discrimination against Women clarified that gender-based violence constituted discrimination within the meaning of Article 1 of

² UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Kyrgyz Republic acceded to this Convention on 10 February 1997.

- the CEDAW.³ The Committee specified that this referred to “violence that is directed against a woman because she is a woman or that affects women disproportionately”.
14. The UN General Assembly also issued a Declaration on the Elimination of Violence against Women,⁴ in which it explicitly affirmed that violence against women constituted a violation of women’s human rights and urged States to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons”.
 15. OSCE participating States have likewise confirmed the importance of addressing violence against women, through the adoption of an Action Plan for the Promotion of Gender Equality (2004), which includes directives to the OSCE structures to develop activities for the prevention of all forms of gender-based violence.⁵ More specifically, the OSCE Ministerial Council Decision on Preventing and Combating Violence against Women (2005) calls on OSCE participating States to, amongst others, “adopt and implement legislation that criminalizes gender-based violence and establishes adequate legal protection” and “ensure that all female victims of violence will be provided with full, equal and timely access to justice and effective remedies”.⁶
 16. While the Kyrgyz Republic is not a member State of the Council of Europe (hereinafter “the CoE”), the Opinion will also refer, as appropriate, to CoE instruments, particularly the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “the Istanbul Convention”)⁷ and its Explanatory Report, since they may serve as useful and comprehensive reference documents on the issue of prevention of and fight against domestic violence. Since the Istanbul Convention is also opened for accession by other non-CoE member States, the Kyrgyz Republic may consider ratifying this instrument.
 17. Additionally, a number of non-binding recommendations and guidelines/tools have been elaborated at the regional and international levels which contain a higher level of detail and provide examples of good practices for developing national action plans and legislation pertaining to the prevention of and fight against domestic violence.⁸
 18. Based on international and regional standards, four main aspects can be distinguished when talking about domestic violence, namely prevention, protection, prosecution, and partnership/multi-agency co-operation. These areas reflect the integrated human rights-

³ See par 6 of the General Recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination Against Women, passed at the CEDAW Committee’s 11th session (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

⁴ UN Declaration on the Elimination of Violence against Women, UN General Assembly Resolution 48/104, A/48/49 (1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm>.

⁵ See Chapter 4, par 44 (2004 OSCE Action Plan for the Promotion of Gender Equality).

⁶ See par 4 of the OSCE Ministerial Council Decision No. 15/05 on Preventing and Combating Violence against Women, MC.DEC/15/05, 6 December 2005, available at <http://www.osce.org/mc/17451?download=true>.

⁷ CoE Convention on preventing and combating violence against women and domestic violence, Council of Europe Committee of Ministers, CM(2011)49 final, 7 April 2011 (hereinafter “the Istanbul Convention”) which entered into force on 1 August 2014, and its Explanatory Report, available at <http://conventions.coe.int/Treaty/EN/Reports/Html/210.htm>. See also the CoE Recommendation Rec(2002)5 of the Committee of Ministers to CoE Member States on the protection of women against violence adopted on 30 April 2002.

⁸ 2012 UN Women Handbook for National Action Plans on Violence against Women (hereinafter “2012 UN Women Handbook for National Action Plans on VAW”), available at <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/7/HandbookNationalActionPlansOnVAW-en%20pdf.pdf>; 2012 UN Women Handbook for Legislation on Violence against Women (hereinafter “the 2012 UN Women Handbook for Legislation on VAW”), available at http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf.

based approach referred to as the “four P approach”.⁹ The following review will address these aspects in separate sections on prevention, protection and prosecution, while integrating the aspect of partnership and co-operation, as appropriate. The OSCE/ODIHR understands “protection” to include assistance to victims of domestic violence.

2. General Comments

2.1. Impact Assessment and Participatory Approach

19. First, it must be highlighted that one of the concerns raised by the UN Committee against Torture in its 2013 Concluding Observations on the Kyrgyz Republic was that the “existing law prohibiting domestic violence and bride-kidnapping is not implemented in practice”.¹⁰ While the lack of political commitment and of appropriate training of law enforcement officials and of the judiciary,¹¹ as well as insufficient budget allocation,¹² were already invoked to explain the lack of implementation, proper monitoring and evaluation of the implementation of the existing legislation would also be beneficial. Unless this has already been carried out, it would be advisable to conduct such monitoring and evaluation prior to finalizing the Draft Law, as the related findings could help identify gaps and ensure that they are addressed in the Draft Law.
20. Moreover, various human rights bodies have noted the low level of reporting on domestic violence cases and the lack of information provided about the prosecution of cases in the Kyrgyz Republic.¹³ As in other countries, one of the main challenges in domestic violence cases is attrition (i.e., the phenomenon whereby domestic violence cases are not processed through the criminal justice system and do not result in a criminal conviction) which often stems from different causes and sources, either victim-related or criminal justice system-related. Victims of domestic violence may be unwilling to report the crimes to the authorities for a number of reasons, including threat or intimidation, language barriers, mistrust of authorities, feelings of humiliation or shame, insecurity about immigration status, or lack of awareness of the legal framework and protective measures, among others.¹⁴ Lawmakers and stakeholders should analyze the factors behind such low levels of reporting, since this could inform the need for potential legislative changes, as well as other policy interventions.¹⁵

⁹ *Op. cit.* footnote 7, pars 63 and 116 (Explanatory Report to the Istanbul Convention).

¹⁰ See par 18 of the Concluding Observations of the UN Committee against Torture (20 December 2013) on the Kyrgyz Republic (hereinafter “2013 Concluding Observations of the UNCAT Committee on the Kyrgyz Republic”), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fKGZ%2fCO%2f2&Lang=en.

¹¹ *ibid.* par 18 (2013 Concluding Observations of the UNCAT Committee on the Kyrgyz Republic).

¹² See par 11 of the List of Issues and Questions in relation to the 4th CEDAW Periodic Report of the Kyrgyz Republic, CEDAW/C/KGZ/Q/4, 25 July 2014, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKGZ%2fQ%2f4&Lang=en.

¹³ *Op. cit.* footnote 10, par 18 (2013 Concluding Observations of the UNCAT Committee on the Kyrgyz Republic). See also par 11 of the Concluding Observations of the UN Human Rights Committee (23 April 2014) on the Kyrgyz Republic (hereinafter “2014 Concluding Observations of the Human Rights Committee on the Kyrgyz Republic”), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKGZ%2fCO%2f2&Lang=en.

¹⁴ See for instance par 26 of *T.M. and C.M. v. Republic of Moldova*, ECtHR judgment of 28 January 2014 (Application No 26608/11), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140240#{"itemid":\["001-140240"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140240#{).

¹⁵ See the draft of the European Union Handbook of Best Police Practices on Overcoming Attrition in Domestic Violence Cases, December 2012 (hereinafter “2012 EU Handbook on Overcoming Attrition in Domestic Violence Cases”), available at <http://www.eucpn.org/download/?file=EUHndbookAttritionDomViol.pdf&type=3>.

21. Furthermore, although the prevention of and fight against domestic violence require legislative measures, certain supplementary measures may not need to be addressed in laws. Thus, unless this has already taken place, **policy-makers and other stakeholders should carry out a proper impact assessment of the necessary and pertinent regulatory and non-regulatory measures.** As mentioned in ODIHR's 2014 Preliminary Assessment Report of the Legislative Process in the Kyrgyz Republic, "[r]egulatory impact assessment is an important tool to ensure high quality of regulation throughout the entire cycle of policy making, beginning from problem analysis and designing the assumptions of a legal act and ending with evaluation and monitoring. It aims at assisting policy makers in adopting efficient and effective regulatory options (including the "no regulation" option), using evidence-based techniques to justify the best option".¹⁶
22. In that respect, the OSCE/ODIHR welcomes the fact that an action plan on violence against women has been developed, which is in line with recommendations at the international level.¹⁷ However, it appears that large parts of this Action Plan could so far not be implemented due to budgetary constraints.¹⁸ Should this not have taken place already, it would therefore be advisable **to also conduct a full financial impact assessment to analyze the funding needed to implement the national action plan, including measures relating to domestic violence, as well as to ensure the implementation of the Draft Law.**¹⁹ In this context, it is reiterated that cases of domestic violence lead to quite significant costs for any state; such costs have been estimated globally to lie between 1.2 and 2 percent of a state's Gross Domestic Product.²⁰ This estimate does not take into account the major physical, mental, health, sexual and reproductive, and maternal health issues caused by domestic violence.²¹ A recent study has shown that each case of domestic violence with fatalities costs the Kyrgyz Republic more than 1.6 million soms (approximately 23,000 euros).²²
23. Given the increased costs caused to the state budget by the implementation of the Draft Law, including, but not limited to victims' support services, data collection and analysis, public information and awareness-raising and capacity development initiatives targeting public officials/servants, this Draft Law requires long-term, sustainable funding.

¹⁶ See par 37 of the 2014 OSCE/ODIHR Preliminary Assessment Report of the Legislative Process in the Kyrgyz Republic, April 2014, available at http://www.legislationline.org/download/action/download/id/5391/file/246_Legis_Assessment_April%202014_en.pdf.

¹⁷ *Op. cit.* footnote 8, Section 3.2.1 (2012 UN Women Handbook for Legislation on VAW).

¹⁸ *Op. cit.* footnote 12, par 11 (2014 List of Issues for CEDAW Periodic Report of the Kyrgyz Republic).

¹⁹ *Op. cit.* footnote 8, Section 3.2.2 (2012 UN Women Handbook for Legislation on VAW).

²⁰ See page 25 of the Paper "Intimate Partner Violence: Economic Costs and Implications for Growth and Development" (2013) commissioned by the World Bank Group, available at <http://www.worldbank.org/content/dam/Worldbank/document/Gender/Duvvury%20et%20al%202013%20Intimate%20Partner%20Violence%20Economic%20Costs%20and%20Implications%20for%20Growth%20and%20Development%20Jan%202014.pdf>. Various categories of costs are taken into consideration (e.g., costs for health and medical care, police interventions, criminal justice systems and prison costs, social services, operation and management of shelters and crisis services, indirect costs due to decrease productivity, etc.). See also the UN Women Virtual Knowledge Centre to End Violence against Women and Girls (<http://www.endvawnow.org/en/articles/301-consequences-and-costs.html>) and the CoE Overview of Studies on the Costs of Violence against Women and Domestic Violence (26 October 2012), available at http://www.coe.int/t/dghl/standardsetting/convention-violence/Background%20info/Overview%20of%20studies%20on%20the%20costs%20of%20violence%20against%20women%20and%20domestic%20violence_INTERNET%20VERSION.pdf.

²¹ Available from <http://www.who.int/mediacentre/factsheets/fs239/en/index.html>.

²² See the 2013 Report on the Costs of Domestic Violence in the Kyrgyz Republic, as part of the EU-UN project on promoting good governance for social justice, available at <http://www.kg.undp.org/content/dam/kyrgyzstan/Publications/gender/UNDP-kgz-How-much-violence-in-a-family-costs.pdf>.

According to Article 80 par 3 of the Constitution of the Kyrgyz Republic, the Government has to determine the source of funding for draft laws.²³ Aside from Article 19 par 3 of the Draft Law which allocates local funds to the implementation of relevant anti-domestic violence and social programmes, **the Draft Law does not clearly state the modalities for funding its implementation or identify relevant sources of funding for actions undertaken by other entities under Article 6 of the Draft Law. It should be supplemented to that effect, while bearing in mind good practices from other countries.**²⁴ Furthermore, to enhance the impact of new legislation, gender-responsive budgeting²⁵ at the national and local levels could also be envisaged, together with adequate training of relevant government staff.

24. Moreover, recommendations at the international level highlight the need for direct and meaningful involvement of civil society (including women survivors,²⁶ women and men from marginalized groups and non-governmental organizations) and other stakeholders, both at the highest decision-making levels and across all levels, throughout the legislative process.²⁷ Various articles of the Draft Law refer to the involvement of certain entities in policy and legislative developments, but mostly at the central high level, and not at the operational level. Thus, there is no mention of the involvement/consultation of police officers, prosecutors, medical staff and social workers, nor of the media or civil society, including victims/survivors. **All the above-mentioned stakeholders should be fully informed and consulted throughout the drafting/amendment process of the Draft Law, and of other policy or legislative/regulatory initiatives pertaining to domestic violence. This should be reflected in the Draft Law.** Public discussion and an open and inclusive debate will increase all stakeholders' understanding of the various factors involved, enhance confidence in the adopted policy and legislative measures, and ultimately improve implementation of the new legislation.
25. Finally, the amendment of the legal framework pertaining to domestic violence alone is unlikely to be sufficient if not accompanied by adequate amendments to the criminal and criminal procedure codes (see pars 39, 50, 62-69, 75-78 and 80-82 *infra*), given the

²³ See par 28 (2014 OSCE/ODIHR Preliminary Assessment Report of the Legislative Process in the Kyrgyz Republic).

²⁴ Good practice in other countries suggest that the legislation should clearly include a general obligation on the Government to provide an adequate budget for implementation, with secondary legislation or other governmental decision expressly stating on a yearly basis for the earmarking of a determined special annual budget by the ministries involved (e.g. Ministry of health, social development, internal affairs); see the section on "Funding Implementation", UN Women Virtual Knowledge Centre to End Violence against Women and Girls, available at <http://www.endvawnow.org/en/articles/852-funding-implementation.html?next=136>. For instance, the legislation could mandate, as is done in some countries, that a certain percentage of the total budget of the respective government authority be specifically utilized for gender-related interventions; see *op. cit.* footnote 8, Section 3.6.5 (2012 UN Women Handbook for National Action Plans on VAW).

²⁵ i.e., a gender-based assessment of budgets incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality (see page 5 of the 2009 CoE Handbook on Gender-Budgeting: Practical Implementation, available at [http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/CDEG\(2008\)15_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/CDEG(2008)15_en.pdf)).

²⁶ For the purpose of this opinion, the term "survivor" is used where appropriate, in non-legal settings, to refer to persons who have suffered from violence while the term "victim" is used in its legal sense in connection with criminal proceedings and internationally recognized "victims' rights".

²⁷ *Op. cit.* footnote 8, Section 3.3.2 (2012 UN Women Handbook for National Action Plans on VAW). See also page 44 of the 2014 UNODC Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women (hereinafter "2014 UNODC Blueprint for Action on VAW"), available at http://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

commitments undertaken by the Kyrgyz Republic²⁸ and recommendations made in other international soft law instruments.²⁹

2.2. Co-ordination at National and Local Levels, including Partnership with Civil Society Organizations

26. As regards co-ordination in the field of prevention of and protection from domestic violence, including assistance to victims, practice varies greatly from country to country, ranging from a multidisciplinary structure established by legislation with a clear and broad mandate to looser structures established through a series of protocols or memoranda of understanding amongst criminal justice stakeholders and other actors.³⁰ Whatever the form chosen, multi-sectoral and multi-agency co-ordination both at national and local levels has been highlighted as being key to facilitate prevention, protection of victims and prosecution of perpetrators.³¹
27. It is welcome that Article 8 of the Draft Law has identified an “authorized state body” (hereinafter “the Authorized Body”) to take overall responsibility for the co-ordination, monitoring and evaluation of the activities of entities working on the prevention and fight against domestic violence. **It is noted, however, that while many bodies are required to report to the Authorized Body once a year, the prosecution service is not; it may be advisable to supplement Article 10 in that respect.** Moreover, little is said in the Draft Law about the composition and functioning of such an entity. It is important to note that the Authorized Body’s profile and political strength will have a significant impact on its potential to carry out its role in an effective manner.³²
28. Article 7 par 3 provides that the Government has the authority to appoint the members of the Authorized Body. While the Draft Law does not need to outline all the details of the criteria and conditions for appointment, it would be advisable to **expressly state the overarching principles for appointment, and that the rules and procedures will be further defined in secondary legislation to be elaborated, presumably by the Government.** The Draft Law should also reflect recommendations made by the CEDAW Committee,³³ and the UN Beijing Platform of Action³⁴ on ensuring women's equal access to and participation in political and public life by **providing for a balanced representation of both genders in the composition of the Authorized Body.** Such requirements should be introduced, as appropriate, in both the nomination process, as well as in the rules and procedures governing the appointment to the above-

²⁸ See par 4 of the OSCE Ministerial Council Decision on Preventing and Combating Violence Against Women (2005) which calls on OSCE participating States to “adopt and implement legislation that *criminalizes* gender-based violence”.

²⁹ See par 4 of the UN General Assembly Resolution 61/143 of 19 December 2006 on the intensification of efforts to eliminate all forms of violence against women which stresses the need to criminalize all forms of violence against women, available at http://www.un.org/womenwatch/daw/vaw/A_RES_61_143.pdf.

³⁰ *Op. cit.* footnote 27, page 93 (2014 UNODC Blueprint for Action on VAW).

³¹ See e.g., *op. cit.* footnote 8, Sections 2.1.1 and 3.3.1 (2012 UN Women Handbook for National Action Plans on VAW).

³² *ibid.* Section 3.3.3.1 (2012 UN Women Handbook for National Action Plans on VAW).

³³ See pars 33-34 of the Concluding Observations of the CEDAW Committee (14 November 2008) on the Kyrgyz Republic (hereafter “2008 Concluding Observations of the CEDAW Committee on the Kyrgyz Republic”), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKGZ%2fCO%2f3&Lang=en.

³⁴ See Strategic Objective G.1. “Take measures to ensure women's equal access to and full participation in power structures and decision-making” of the Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en>.

- mentioned posts.³⁵ Additionally, in order to be effective, such provisions should indicate the consequences for infringement of the gender balance requirement, which could be, for instance, the annulment of the appointment of members from the over-represented gender.³⁶
29. Given the mandate of the Authorized Body and the recognized key role that civil society is playing in the prevention from domestic and assistance to victims,³⁷ a certain number of members of such a body could be representatives of civil society. **The Draft Law should specify the criteria for selection of civil society representatives and a mechanism for a fair, professional and transparent competition.**³⁸ Additionally, the lawmakers and stakeholders should ensure adequate financial, administrative and human resources, so that the Authorized Body can fulfil its mandate.
30. It is positive that Article 8 of the Draft Law provides that the Authorized Body is responsible for the co-ordination of the development of standards (understood as standard operating protocols or other standard documents) on the provision of services and assistance to victims of domestic violence. Article 19 of the Draft Law further provides that local self-government bodies shall ensure interagency co-ordination and interaction with other entities working in this field at the municipal level via the establishment of special bodies or local committees. However, the Draft Law does not specify the respective roles and responsibilities (for instance for processing information, assessing problems/risks, developing and implementing individual action plans, and evaluating the effects of the interventions)³⁹ of the different entities involved in these local co-ordination/interaction mechanisms/teams. In particular, the body/person meant to lead and co-ordinate these efforts should be clearly designated. Consequently, **Article 19 of the Draft Law should state the composition of such coordination mechanisms⁴⁰ and specify which entity shall have the lead appointment and co-ordination role, while clarifying the respective roles and responsibilities of the entities involved.** This is necessary because, often times, domestic violence cases are emergency situations where rapid referral and coordination is essential.

³⁵ For instance, in cases where public bodies or organizations nominate candidates for appointment, certain countries have introduced an obligation to always propose two nominees, a woman and a man (e.g. the example in Denmark, Appendix IV to the Explanatory Memorandum on CoE Recommendation Rec(2003)3).

³⁶ As an example, according to the new French Law on Equality between Men and Women dated 23 July 2014 (currently being challenged before the Constitutional Council), the appointments of the members of the executive board of certain administrative bodies shall be annulled if gender balance is not respected (except for appointments of members from the under-represented gender); at the same time, the annulment of the appointments will not render null and void the decisions that may have already been adopted by said body; see <http://www.assemblee-nationale.fr/14/ta/ta0398.asp>.

³⁷ *Op. cit.* footnote 8, Section 3.3.2 (2012 UN Women Handbook for National Action Plans on VAW).

³⁸ See, as comparison, the draft rules governing the nomination and selection processes of the members of the Commission on the Disciplinary Responsibility of Judges in the Kyrgyz Republic and recommendations made by the OSCE/ODIHR and the European Commission for Democracy Through Law (Venice Commission) in pars 80-81 of the Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic, 16 June 2014, English version available at http://www.legislationline.org/download/action/download/id/5424/file/248_JUD_KYR_16%20June%202014_en.pdf and Russian version available at http://www.legislationline.org/download/action/download/id/5445/file/248_JUD_KYR_16%20June%202014_ru.pdf.

³⁹ See, for instance, pages 31, 36 and 40 of European Crime Prevention Network, Toolbox Series No. 4 on “Tackling Domestic Violence in the EU: Policies and Practices” (December 2013), available at <http://www.bukstipri.lt/uploads/1112.pdf>. See also <http://www.endvawnow.org/en/articles/405-coordinated-community-response.html?next=406> and the example of Finland and the program to support municipalities in developing coordinated responses to domestic violence, page 85 of the OSCE Compilation of Good Practices “Bringing Security Home: Combating Violence against Women in the OSCE Region” (2009) (hereinafter “2009 OSCE Compilation of Good Practices on Combating VAW”), available at <http://www.osce.org/gender/37438?download=true>.

⁴⁰ For instance, representatives from the police/interior affair bodies, social development bodies, health care institutions, education organizations if applicable, prosecution and civil society organizations.

31. Article 22 of the Draft Law expressly envisions the participation of non-governmental organizations (hereinafter “NGOs”) and citizens in the prevention and protection from domestic violence, which is much welcomed. Unless a result of faulty translation, it is unclear why such participation should be limited to citizens only, and is not open to any individual. Article 22 par 1 (3) further provides for the interaction of NGOs and citizens with other entities working in this area. Given the critical role that NGOs play in running services for victims of domestic violence, e.g. helplines and victim crisis centers and/or shelters,⁴¹ it may be advisable for the Draft Law to envision a more systematic approach for the government entities to partner with NGOs in these areas of work. Moreover, domestic violence may also have a potential impact on private entities/businesses and there are growing discussions at the international level to encourage employers to join the fight against domestic violence,⁴² particularly in terms of raising awareness among employees and adopting workplace policies to support employees who have experienced domestic abuse.⁴³ The Draft Law and other relevant legislation could thus be supplemented to provide for more explicit involvement of NGOs and private businesses, and define their roles.
32. In particular, in order to ensure effective co-operation between the state and civil society, it would be advisable, unless they already exist, **to set up NGO-Government partnership mechanisms either in policy documents or in relevant primary or secondary legislation. These should include clear rules to guarantee the objectivity and transparency of the process of selecting NGOs for such partnerships**, while not infringing on the freedom of association. In any case, even if certain NGOs implement support services to victims of violence, this should not release States from their responsibility to protect victims, and their overall accountability for support services. To ensure the full and meaningful participation of all stakeholders through co-operation structures (e.g., working groups, networks, public-NGO partnership, and other co-operation mechanisms), such structures should have sufficient powers and resources to influence direction and decision-making; this needs to be balanced with the need for NGOs to retain their independence and capacity to hold government accountable.⁴⁴
33. Article 22 par 2 of the Draft Law expressly states that such NGOs “may, in compliance with legislation, receive funding from state and municipal budgets or other sources”. While the right of access to funding is to be exercised within the juridical framework of domestic legislation, such legislation should be consistent with international human rights standards.⁴⁵ **Even though the reference to “other sources” in Article 22 par 2 of the Draft Law may potentially include foreign and international sources, as well as funding from private entities, it may be preferable to include an express**

⁴¹ See e.g. *op. cit.* footnote 39, pages 96 and 99 (2009 OSCE Compilation of Good Practices on Combating VAW) which refer amongst others to the Austrian experience which is considered as a good practice, where intervention centers funded by the Federal Ministry of the Interior and the Ministry for Women but operated by women’s NGOs have been established in each province of the country for the purpose of coordinating police and social service activities and to take a proactive approach to assisting victims.

⁴² See e.g. the summary of discussions during the 57th session of the ILO Commission on the Status of Women on the impact of domestic violence in the workplace, 6 March 2013, available at http://www.ilo.org/gender/Events/WCMS_208336/lang--en/index.htm.

⁴³ See e.g. the 2011 Guidelines “Domestic Violence Abuse is your Business – Guidance for Developing a Workplace Policy” prepared by the Equality and Human Rights Commission in Wales, available at http://www.equalityhumanrights.com/sites/default/files/documents/Wales/guidelines_on_a_domestic_abuse_workplace_policy.pdf.

⁴⁴ *Op. cit.* footnote 8, Section 3.3.2 (2012 UN Women Handbook for National Action Plans on VAW).

⁴⁵ See par 56 of the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Law amending the Law on Non-Commercial Organisations and other Legislative Acts of the Kyrgyz Republic, 16 October 2013, available at http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Oct%202013_en.pdf.

reference to such sources, in accordance with recommendations at the international level.⁴⁶ Article 22 of the Draft Law further refers to the obligation for NGOs to provide information on their activities upon request of the Authorized Body. While the state may legitimately request information on the activities of NGOs in this field, for instance to inform its future planning, any reporting requirement should not be too burdensome or costly or create an environment of excessive State monitoring over the activities of NGOs, which would inhibit their functional autonomy and independence.⁴⁷ In any case, this reporting requirement should be similar to that of other authorities involved in domestic violence protection mechanisms.

34. Finally, co-ordination is critical to providing victims' support in the most effective manner and preventing "secondary victimization", i.e., situations where victims suffer further harm not as a direct result of the criminal act but due to the manner in which the institutions and other individuals deal with the victim. The aim should be to create an integrated, multi-faceted and cooperative system where victims/survivors are assisted in locating the support services they need, and perpetrators have fewer opportunities to evade justice.⁴⁸ In that respect, certain good practices have been recognized, such as "one-stop" services⁴⁹ or the development or extension of national referral mechanisms already covering victims of trafficking of human beings, to provide multi-disciplinary and joint, but at the same time clearly-defined, responses and interventions to domestic violence cases.⁵⁰ **The drafters and stakeholders should discuss the possibility and costs associated with the introduction of such mechanisms in the Kyrgyz Republic.**

2.3. Definition of Domestic Violence

35. The definition of "domestic violence" in Article 1 of the Draft Law includes a wide array of acts committed by a family member against another, not only of a physical nature but also of a sexual, psychological or economic nature, which is in line with international standards. However, the definition of "domestic violence" under Article 1 (10th indent) only refers to "actions" without specifying that these should encompass some sort of violence; such reference should be included. Further, some other provisions of the Draft Law only refer to actions affecting life and/or health of the victims/survivors (e.g. Articles 24 and 25) and it would be advisable to ensure consistency and refer systematically to life and/or "physical and/or mental health" to ensure that psychological violence is treated seriously.

⁴⁶ See par 8 of the 2013 Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf.

⁴⁷ *ibid.* pars 15 and 38 (2013 Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association). See also *op. cit.* footnote 45, par 69 (2013 OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Law amending the Law on Non-Commercial Organisations of the Kyrgyz Republic).

⁴⁸ *Op. cit.* footnote 8, Section 3.5.2 (2012 UN Women Handbook for National Action Plans on VAW). See also the example of the UK Multi-Agency Risk Assessment meetings focusing on the safety of high-risk domestic violence victims to build a picture of the victim/survivor's situation and jointly devise a risk management plan to reduce the harms faced by the victim and their families (page 61 of the 2012 UN Women Handbook for National Action Plans on VAW).

⁴⁹ For instance, the United Kingdom has established centres that provide immediate comprehensive and coordinated forensic, counselling and medical services to adults who have experienced rape or sexual assault, thus reducing the stress of having to deal with multiple service providers and criminal investigators (see *op. cit.* footnote 39, page 83 (2009 OSCE Compilation of Good Practices on Combating VAW)).

⁵⁰ See the example of Moldova (page 68 of the CoE Compilation of Contributions from Members States on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level, 3 February 2014, available at http://www.coe.int/t/dghl/standardsetting/equality/05conferences/2013ParisHearingAccessJustice/Documents/Compilation_revised_03_02_14.pdf) and Albania (see Report of the Working Group on the Universal Periodic Review on Albania to the Human Rights Council, A/HRC/27/4, 7 and 21 July 2014, available at http://ap.ohchr.org/documents/dpage_f.aspx?c=3&su=15).

36. The Draft Law also contains a broad definition of the persons falling under its scope by including a broad notion of “family members”, including relatives by blood, marriage or adoption, former spouses and foster parents or assimilated, and of “persons who qualify as family members”, including “persons being in *actual* marital relations” and “other relatives living in the same household”. While this is overall compliant with international standards, good practices suggest to **specify that the joint residence of the perpetrator and the victim is not required for certain acts to qualify as “domestic violence”, so that also non-cohabiting relationships and cases where the cohabiting relationship has ceased are covered.**⁵¹ Article 1 of the Draft Law should be supplemented accordingly.
37. As regards the definition of “domestic psychological abuse” (Article 1, 8th indent), it is unclear why it also refers to “actions leading to the deterioration of mental and *physical* health” which would appear to fall under the scope of physical violence. It is recommended to remove the reference to the “physical” impact of such violence. At the same time, the definition of “domestic physical violence” provided in Article 1 (13th indent) of the Draft Law seems to fall under what is understood to constitute “economic violence” in certain countries (e.g., denying means of subsistence, deprivation of various clothing and food, deprivation or restriction of freedom of movement).⁵² Further, as mentioned in par 26 *supra*, cases of physical and sexual violence should in principle be exclusively covered by criminal legislation. More specifically, the definition of “domestic sexual violence”⁵³ may potentially cover all crimes covered by Chapter 18 of the Criminal Code on “Crimes Against Sexual Immunity and Individual Sexual Freedom”. This overlap of provisions of the Draft Law and of the Criminal Code would appear to be contrary to the principles of legal certainty and foreseeability, whereby an individual should be able to foresee the consequences of a given action based on the provisions of the law.⁵⁴ **To avoid overlaps and enhance clarity, the Draft Law should clearly delineate which cases will trigger criminal liability and which ones will not, and should include cross-references to relevant provisions of the Criminal Code.**
38. As regards the definition of “victims of domestic violence”, it is generally acknowledged that children may also be considered victims of domestic violence when witnessing violent acts against others, given the traumatizing effects of witnessing, but not being able to prevent or end such violence.⁵⁵ The definition of “**victims of domestic violence**” in Article 1 of the Draft Law should be expanded accordingly.
39. As regards acts of violence committed against children, it must be pointed out that one of the recommendations made by the UN Committee against Torture in its 2013 Concluding Observations was for the Kyrgyz Republic to explicitly prohibit corporal punishment of children in all settings, including at home.⁵⁶ In order to send a clear zero-

⁵¹ See for reference *op. cit.* footnote 7, par 42 (Explanatory Report to the Istanbul Convention). See also *op. cit.* footnote 8, Section 3.4.2.2 (2012 UN Women Handbook for Legislation on VAW). See also, for example, the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) which defines domestic relationships broadly to include relationships with a spouse or former spouse, non-marital relationships, non-cohabiting relationships, romantic and sexual relationships, as well as relationships between family or household members, such as ascendants, descendants, persons related by blood, persons residing together and minors or disabled individuals under guardianship or custody.

⁵² See various definitions of “economic violence” or “economic abuse” at <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>.

⁵³ Article 1 of the Draft Law defines “domestic sexual violence” as “an action committed by a family member [or assimilated] infringing upon sexual immunity or sexual freedom of another family members [or assimilated]”.

⁵⁴ See e.g. par 34 of *Rekvényi v. Hungary*, ECtHR judgment of 20 May 1999 (Application No 25390/94), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58262#{"itemid":\["001-58262"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58262#{).

⁵⁵ See e.g., as reference *op. cit.* footnote 7, par 27 (Explanatory Report to the Istanbul Convention).

⁵⁶ *Op. cit.* footnote 10, par 21 (2013 Concluding Observations of the UNCAT Committee on the Kyrgyz Republic).

tolerance message and ensure compliance with international standards and good practices,⁵⁷ **the Criminal Code should expressly prohibit corporal punishment of children in the family context, and in other settings. The Draft Law could include express cross-references to such a provision.** Sanctions for such offences should be adequate, proportionate and dissuasive. The adoption of such a new provision should also be accompanied by adequate awareness-raising and educational campaigns about the negative impact of corporal punishment on children.

3. Prevention

3.1. Legal and Institutional Framework on Gender Equality and Anti-Discrimination

40. Various international and regional instruments have recognized that violence against women, including domestic violence, “is both a cause and a consequence of discrimination” and that “it is structural in nature”.⁵⁸ Research shows that there is a direct relationship between levels of gender inequality, adherence to gender stereotypes, and the prevalence of violence against women and domestic violence.⁵⁹ Guarantees of women’s rights to education, decent employment, health, an adequate standard of living, access to economic resources and participation in political and public life, as well as programmes aimed at eliminating gender stereotypes,⁶⁰ are all preconditions for substantive equality in law and in practice,⁶¹ and the elimination of domestic violence in the long run. Therefore, any legislative reform to prevent domestic violence should be accompanied by a broader comprehensive approach to raise awareness, promote gender equality and support the empowerment of women in all spheres of life. This could also help reduce the dependence of women on potential perpetrators, which often constitutes one of the reasons for female victims’ unwillingness to report cases of domestic violence or press charges.⁶²
41. It is noted that the Draft Law does not mention the Gender Equality Body established in accordance with gender equality legislation of the Kyrgyz Republic; based on

⁵⁷ See pars 2, 16 and 34 of the Committee on the Rights of the Child General Comment No. 8 (2006) on the right to protection from corporal punishment and other cruel or degrading forms of punishment which highlights “the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children” and that “explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or ‘smack’ or ‘spank’ a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed ‘discipline’ or ‘reasonable correction’”.

⁵⁸ See par 38 of the 2013 Report of the UN Working Group on the issue of discrimination against women in law and in practice (A/HRC/23/50) adopted on 19 April 2013 (hereinafter “2013 Report of the UN Working Group on the issue of discrimination against women in law and in practice”), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50_EN.pdf. See also par 62 of the 2014 Report of the Special Rapporteur on violence against women, its causes and consequences, 28 May 2014, A/HRC/26/38, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/38.

⁵⁹ *Op. cit.* footnote 8, Section 3.4.1 (2012 UN Women Handbook for National Action Plans on VAW).

⁶⁰ This has been raised as a particular concern in the Kyrgyz Republic (see pars 23-24 of the 2008 Concluding Observations of the CEDAW Committee on the Kyrgyz Republic).

⁶¹ See pars 53-54 of the 2013 Report of the UN Working Group on the issue of discrimination against women in law and in practice. See also examples of good practices from various countries in facilitating women’s participation in political life pages 55-56 of the Global Report for the UN Working Group on the issue of discrimination against women in law and in practice “Women in Political and Public Life” (2012), available at http://www.ohchr.org/Documents/Issues/Women/WG/PublicPoliticalLife/WG_Global.docx. See also par 79 of the 2011 Report of the UN Special Rapporteur on violence against women, its causes and consequences, on the Multiple and Intersecting Forms of Discrimination and Violence against Women, 2 May 2011, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26.pdf>.

⁶² *Op. cit.* footnote 7, par 118 (Explanatory Report to the Istanbul Convention).

international recommendations, it would, however, be important to link any initiatives in the area of domestic violence to the national gender equality machinery.⁶³ It is recommended that **the drafters and stakeholders discuss and supplement the Draft Law to define the role to be played by the Gender Equality Body in preventing and combating domestic violence, as appropriate.**

42. Moreover, the lawmakers and all stakeholders should ensure that the policy, legal and institutional gender equality and anti-discrimination frameworks in the Kyrgyz Republic, particularly pertaining to gender equality and anti-discrimination, adequately address such issues. In line with the recommendations made by the CEDAW Committee in its 2008 Concluding Observations on the Kyrgyz Republic,⁶⁴ if not done already, the state should also “put in place a mechanism for systematic gender-based analysis for draft laws and programmes”.
43. Furthermore, Article 20 of the Draft Law refers to the responsibilities of the court of elders⁶⁵ to “review and settle cases on domestic violence in compliance with the legislation of the Kyrgyz Republic”. It is not clear which cases of domestic violence will fall under the jurisdiction of the general courts, as per Article 9 of the Draft Law, and which would fall under Article 20. In that respect, the UN Human Rights Committee, in its 2014 Concluding Observations on the Kyrgyz Republic⁶⁶ highlighted the risk that decisions of the court of elders in family matters may adversely affect women and recommended that fair trial rights should be guaranteed and that human rights training should be provided to the members of such courts. The UN Special Rapporteur on Violence Against Women, in her 2010 report on the Kyrgyz Republic, noted that cases of violence against women which would normally potentially fall under the scope of the Criminal Code are instead brought before community dispute mechanisms (the court of elders). These mechanisms promote reconciliation, which often happens at the expense of women’s protection, given the inability of such courts to issue protection orders, provide support and assistance to victims or order the detention of the abuser.⁶⁷
44. Consequently, **it is important to clearly delineate in the Draft Law which domestic violence cases fall under the competence of the courts of elders and which should be addressed through the formal justice system. The conciliation procedure before the court of elders should only apply in cases which do not fall under the scope of criminal legislation; this should be expressly stated in Article 20 of the Draft Law.** It is worth pointing out in this context that Articles 110 and 112 of the Criminal Code provide that persons committing battery or other violent actions, or intentionally inflicting harm, causing physical pain (but not leading to a short-time health disorder or insignificant steady loss of working ability), “shall be sentenced by a fine up to 30

⁶³ *Op. cit.* footnote 8, Section 3.6.4 (2012 UN Women Handbook for National Action Plans on VAW).

⁶⁴ *Op. cit.* footnote 33, pars 11-12 (2008 Concluding Observations of the CEDAW Committee on the Kyrgyz Republic) which suggests the introduction of “provisions on the rejection of proposals for appointments that do not comply with the principle of gender-balanced representation”.

⁶⁵ Court of elders are understood to be elected, self-governing community bodies, established on a voluntary basis, that review cases referred to them by courts, procurators, internal affairs agencies and other State authorities and their officials under the established procedure (see par 240 of the second Periodic Report of the Kyrgyz Republic to the Human Rights Committee, 23 May 2012, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKGZ%2f2&Lang=en).

⁶⁶ See *op. cit.* footnote 13, par 19 (2014 Concluding Observations of the Human Rights Committee on the Kyrgyz Republic).

⁶⁷ See par 83 of the 2010 Report of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, A/HRC/14/22/Add.2, 28 May 2010, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.Add.2_en.pdf.

- minimum monthly wages or by up to 3 months of arrest”. This implies that at least cases of sexual violence, as well as any case of physical violence, however slight, should be dealt with by a criminal court.
45. As regards economic and psychological violence, it seems that currently, the Criminal Code does not specifically address such offences. Regional and international documents and practices seem to suggest that economic and psychological violence, and stalking, may be covered by non-criminal sanctions⁶⁸; at the same time, practices show that the criminalization of psychological violence and of stalking is on the rise.⁶⁹ The lawmakers and stakeholders should discuss whether or not to criminalize such conduct (see par 78 *infra*). If they choose to do so, then this would mean that all acts of domestic violence would constitute criminal acts that should be dealt with by criminal courts, and not the court of elders. In general, in order to guarantee the application of fair trial rights to cases heard by the court of elders, **the respective victim of domestic violence should have the opportunity to appeal the decision of the court of elders to an independent and impartial tribunal established by law.** The victim of domestic violence should be informed by the court of elders of this right to appeal.⁷⁰
46. Moreover, a reporting mechanism should be in place to effectively monitor the decisions of the court of elders relating to cases of domestic violence, and more generally for other cases as well. **Article 20 of the Draft Law should be supplemented to ensure that disaggregated data on domestic violence cases is collected and communicated to the central body in charge of data consolidation/a centralized integrated database** (see also comments relating to data collection in pars 54-56 *infra*). Finally, it would be advisable to expand training in the field of prevention and protection from domestic violence mentioned by the Draft Law, e.g. those by the Ministry of Justice (Article 15), to cover the members of the courts of elders and supplement the Draft Law accordingly. Women participation in the courts of elders should also be promoted.⁷¹ All the above-mentioned proposed amendments would be in line with recommendations made by the UN Special Rapporteur on Violence Against Women in her 2010 Report on the Kyrgyz Republic.⁷²
47. Article 4 of the Draft Law refers to the principles on which the Draft Law is based but does not include a clear anti-discrimination statement, either directly or by reference to other legislation. In the context of preventing and combating domestic violence, women’s, and other victims’ experience of violence is often shaped by factors such as their race, colour, religion, political or other opinion, national or social origin, property, marital status, gender identity, sexual orientation, HIV/AIDS status, migrant or refugee

⁶⁸ See, as a reference, pars 179-186 of the Explanatory Report to the Istanbul Convention.

⁶⁹ For instance, 40 out of 47 member states of the Council of Europe have a criminal offence of psychological violence and 35 now penalise stalking (see page 14 of the 2013 Analytical study of the results of the 4th round of monitoring the implementation of the Recommendation (2002)5, available at <http://www.coe.int/t/dghl/standardsetting/convention-violence/Docs/Analytical%20Study%20ENG.pdf>).

⁷⁰ See section 6.2 of the OSCE/ODIHR Legal Digest of International Fair Trial Rights (2012), available at <http://www.osce.org/odihr/94214?download=true>. See also *op. cit.* footnote 8, Section 3.1.5 (2012 UN Women Handbook for Legislation on VAW).

⁷¹ *ibid.* par 92 (2010 Report of the UN Special Rapporteur on VAW on the Kyrgyz Republic). See *op. cit.* footnote 39, pages 74-75 (2009 OSCE Compilation of Good Practices on Combating VAW).

⁷² *ibid.* par 92 (2010 Report of the UN Special Rapporteur on VAW on the Kyrgyz Republic) which states that the Government of Kyrgyzstan should “[t]reat violence against women as a criminal offence and investigate and prosecute cases within the formal justice system” and “[e]stablish effective monitoring systems of decisions by *Aksakal* [court of elders] courts, a policy of strengthened cooperation and engagement with them and promote female participation”.

status, age, disability or other status.⁷³ It would be advisable **to supplement Article 4 of the Draft Law by including such an anti-discrimination statement.** Furthermore, it is noted that the Kyrgyz Republic has signed though not yet ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”).⁷⁴ Given that persons with disabilities are particularly vulnerable to violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,⁷⁵ the lawmakers and stakeholders should consider including in the Draft Law, and other legislation as appropriate, additional legal, social and medical services that would be accessible for persons with disabilities, including age-appropriate accommodations and access to justice, in line with Articles 12 and 13 of the CRPD.

48. Finally, law enforcement bodies should focus on ensuring an adequate number of female law enforcement officers, including at high levels of decision-making and responsibility.⁷⁶ In this way, law enforcement bodies in the Kyrgyz Republic would be a reflection of Kyrgyz society and adhere to the needs of both men and women.⁷⁷ Article 11 of the Draft Law and/or other legislation, as appropriate, should be supplemented to that effect. At the same time, while it may be true that victims of domestic violence, who are often female, would feel more comfortable being interviewed by female officers, ODIHR would advise against forming all female law enforcement units that solely address cases of domestic violence. Rather, both men and women who work in the police side by side and are first responders in emergency situations such as domestic violence, should be trained to speak to victims and provide immediate assistance.

3.2. Awareness-raising, Capacity Development, Education and Preventive Prevention and Treatment Programmes

49. It is welcome that the Draft Law mentions that various entities, including the Authorized Body, are in charge of carrying out or participating in public information and awareness-raising campaigns (Articles 8, 11, 12, 13, 14, 18, 21 and 22 of the Draft Law). The involvement of the media under Article 21 of the Draft Law is positive, given its central role in reporting on cases of domestic violence and informing public debate. However, **it is important that the fundamental principle of the independence of the media and the freedom of the press be respected; a clear statement to that effect should be added under Article 21 of the Draft Law.**⁷⁸ Article 21 par 5 of the Draft Law refers to staff development programmes for reporters and journalists on safeguarding and protection from domestic violence, which is welcome; however, such a provision could further specify that such persons will be trained on how to portray gender sensitive

⁷³ *Op. cit.* footnote 8, Section 3.1.3 (2012 UN Women Handbook for Legislation on VAW). See also, for reference, Article 4 par 2 of the Istanbul Convention, which states that measures to protect the rights of victims shall be secured without discrimination on any ground, and par 87 of the Explanatory Report to the Istanbul Convention.

⁷⁴ UN Convention on the Rights of Persons with Disabilities (hereinafter “the CRPD”), adopted by General Assembly resolution 61/106 on 13 December 2006. The Kyrgyz Republic signed the CRPD 21 September 2011.

⁷⁵ See the Thematic Study on the Issue of Violence against Woman and Girls and Disability, Report of the Office of the UN High Commissioner for Human Rights, 30 March 2012, available at <http://www.ohchr.org/Documents/Issues/Disability/ThematicStudyViolenceAgainstWomenGirls.pdf>.

⁷⁶ See pars 190 and 192 of Strategic objective G.1. (Take measures to ensure women's equal access to and full participation in power structures and decision-making) of the Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at <http://www.un.org/womenwatch/daw/beijing/platform/decision.htm#object2>.

⁷⁷ See for reference *op. cit.* footnote 7, par 258 (Explanatory Report to the Istanbul Convention).

⁷⁸ See e.g. *op. cit.* footnote 7, par 97 (Explanatory Report to the Istanbul Convention).

- messaging and how to handle information and report on such cases accurately, while respecting confidentiality and privacy of the victims/survivors.⁷⁹
50. The Draft Law also contains various provisions relating to education measures as well as training, including staff development programmes, of professionals dealing with victims of domestic violence and/or perpetrators, which is overall positive. It must be highlighted again that adequate and sufficient financial and human resources should be ensured to cover the related costs. More generally, international good practices have shown that specialization of services provided by the police, prosecution service and courts, and their training, tend to increase reporting, trust and engagement of the victims of domestic violence with the criminal justice system.⁸⁰ **The lawmakers and stakeholders should discuss establishing more systematically specialized investigative units, staffed by trained men and women, to respond to reports of domestic violence, provided that sufficient funds are available.** The Criminal Procedure Code and other relevant legislation could be supplemented to that effect.
51. It is worth mentioning that the child’s right to be heard has particular relevance in situations of domestic violence, as it plays a preventive role against all forms of violence in the home and family.⁸¹ It is therefore particularly important to ensure the right of children to express their views in every decision that affects them, as stated in Article 12 of the UN Convention on the Rights of the Child. The fact that a child is very young or in a particularly vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, is stateless etc.) does not deprive him or her of this right, nor should it reduce the weight given to a child’s views in determining his or her best interests.⁸² Therefore, Article 4 of the Draft Law should be supplemented to also include these aspects as general principles guiding the implementation of the Draft Law.
52. Moreover, child-sensitive provisions should specify that all entities involved, particularly the police, prosecutors and courts, shall keep the child informed about the process and seek his/her views regarding the way forward at all stages of the investigations, prosecution and court proceedings, as well as afterwards. Moreover, any decision concerning a child must be duly and explicitly motivated, and include all factual circumstances, elements relevant for the best-interests assessment, and how these elements have been weighed in the given case.⁸³ **Articles 28, 30 and 32 of the Draft Law should be supplemented to that effect** and all professionals involved should be adequately and systematically trained on and sensitized about children’s rights.⁸⁴
53. The Draft Law envisions certain measures concerning perpetrators such as the development of special prevention programmes for perpetrators (Article 23 (1)) and of “correctional programmes” which may be one of the measures included under protection orders taken by a court (Article 32 par 1 (4)) to be implemented by social development bodies (Article 12). Article 37 par 8 of the Draft Law further permits the perpetrator to

⁷⁹ See the Guidelines of the International Federation of Journalists for reporting on violence against women (2008), available at http://www.ifj.org/fileadmin/images/Gender/Gender_documents/IFJ_Guidelines_for_Reporting_on_Violence_Against_Women_EN.pdf. See also *op. cit.* footnote 8, Section 3.5.4 (2012 UN Women Handbook for Legislation on VAW).

⁸⁰ See *op. cit.* footnote 15, page 10 (2012 EU Handbook on Overcoming Attrition in Domestic Violence Cases).

⁸¹ See par 63 of CRC Committee General Comment No. 13 on the right of the child to freedom from all forms of violence (2011).

⁸² See par 54 of the General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (hereinafter “CRC Committee General Comment No. 14 (2013)”), available at http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

⁸³ *ibid.* pars 97-98 (CRC Committee General Comment No. 14 (2013)).

⁸⁴ *ibid.* (CRC Committee General Comment No. 14 (2013)).

seek information about “correctional programmes”. While programmes that work with perpetrators are considered a good practice,⁸⁵ **the Draft Law could also expressly include the possibility for perpetrators to voluntarily attend such programmes (not only seek information about them); psychological treatment or treatment of addictions should also be included as part of the “correctional programmes”**. It is important that such programmes are developed and implemented in close co-ordination with services for survivors⁸⁶ to ensure victims/survivors’ safety; this could be added in relevant provisions of the Draft Law.

3.3. Data Collection

54. The Draft Law⁸⁷ provides for data collection/keeping of records relating to domestic violence cases, and their publication, by various bodies (e.g., the Ministry of Interior and internal affairs bodies, the Authorized State Body in charge of Social Development, the Authorized State Body in charge of Health Care, the Authorized Educational Body, the Ministry of Justice and local self-government bodies). Chapter 4 of the Draft Law further specifies that the National Statistical Committee is in charge of co-ordinating statistical activity and of providing instructive and methodological materials to guide the data collection and processing of statistical information. These provisions are welcome since the collection of data on domestic violence cases is key to informing the design and implementation of evidence-based policies, as well as budgeting for services provided to victims of domestic violence.
55. However, while various provisions refer to the dissemination/publication of statistical data by the above-mentioned bodies, they do not require them to be analyzed and consolidated beforehand by the National Statistical Committee. In order to ensure the reliability of published data/statistics and avoid potential contradictions between the information published by these various bodies, **it would be advisable to supplement Chapter 4 of the Draft Law to regulate more precisely the conditions for the publication of the said data on the websites of the respective entities**. Moreover, the National Statistical Committee should be responsible for training staff from all government agencies involved in data collection on domestic violence; Article 38 of the Draft Law should be supplemented accordingly.⁸⁸
56. Article 40 of the Draft Law further details the guiding principles for data collection. Good practices in terms of data collection on domestic violence cases generally recommend that data should, at a minimum, be disaggregated by sex, age, and type of violence and should indicate the relationship between the perpetrator and the victim (current/former partner, marital status, cohabitation or not, family relationship).⁸⁹ **While Article 40 of the Draft Law covers some of these aspects, it does not refer to the**

⁸⁵ See *op. cit.* footnote 39, page 91 (2009 OSCE Compilation of Good Practices on Combating VAW).

⁸⁶ *ibid.* See also par 104 of the Explanatory Report to the Istanbul Convention; the example of Ireland Domestic Perpetrator Intervention Programmes (http://ec.europa.eu/justice/gender-equality/files/exchange_of_good_practice_es/ie_discussion_paper_en.pdf); Guidelines to develop standards for programmes working with male perpetrators of domestic violence – EU Daphne II programme, available at http://archive.work-with-perpetrators.eu/documents/standards/wwp_standards_2008_vers_1_1.pdf?sprache=standards%2Fwwp_standards_2008_vers_1_1.pdf&submit=Download.

⁸⁷ E.g., Article 11 par 1 (9) and par 2 (3), Article 12 par 1 (19), Article 13 par 1 (8) and (11), Article 14 par 1 (13), Article 15 (10) and Article 19 (6).

⁸⁸ See Section 3.2 of the Recommendations on pages 21-23 of the CoE Study on Administrative data collection on domestic violence in CoE member states (2008) available at [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC\(2008\)Study_en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC(2008)Study_en.pdf).

⁸⁹ *ibid.* Recommendations on pages 21-23 (2008 CoE Study on Administrative data collection on domestic violence).

disaggregation by sex and age and should be amended accordingly. Other data collected could also include information about disabilities, if any,⁹⁰ whether there are children or other family members at risk, or whether there is a weapon in the household, as is done in other OSCE countries such as the United States. The development of a unique integrated database on gender-based violence is generally considered to be a good practice at the international level.⁹¹

4. Protection and Support

4.1. Restraining and Protection Orders

57. Article 25 of the Draft Law provides for restraining orders issued by interior affairs bodies; Article 26 par 1 further specifies that “the confirmation of a domestic violence incident shall serve as grounds for issuing a restraining order” and that the interior affairs bodies shall verify the information contained in the report made by the victim. However, it is unclear which criteria will be applied when doing so, or whether further evidence may be required from the victim. **Good practices at the international level suggest that live testimony or a sworn statement of the complainant/survivor should constitute sufficient evidence for the issuance of a protection order and that no further evidence should be required from the victim/survivor.**⁹² **Article 26 of the Draft Law should be clarified in that respect.**
58. The nature of the restrictive measures included in such restraining orders is not specified in detail and only limited to the “prohibition to commit acts of domestic violence” and “the prohibition of direct and indirect contacts with victim of domestic violence” (Article 29). **In order to guarantee the security of victims on the spot, it would be advisable to broaden the scope of the restrictions to include ordering the offender to temporarily vacate the family home/residence, regardless of who is the owner of the premises.** While Article 32 par 1 (1) of the Draft Law already allows this for protection orders issued by a court, such measures should also be possible for orders issued by interior affairs bodies.⁹³ **The nature and scope of these measures could be further extended, to include the confiscation of weapons,⁹⁴ the order that the**

⁹⁰ See par 53 of the Thematic Study on the Issue of Violence Against Woman and Girls and Disability, Report of the Office of the UN High Commissioner for Human Rights, 30 March 2012, available at <http://www.ohchr.org/Documents/Issues/Disability/ThematicStudyViolenceAgainstWomenGirls.pdf>.

⁹¹ See par 31 of the Report of the UN Secretary-General to the General Assembly on Intensification of efforts to eliminate all forms of violence against women, 2 August 2010, available at http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/65/A_65_208.pdf

⁹² *Op. cit.* footnote 8, Section 3.10.7 (2012 UN Women Handbook for Legislation on VAW).

⁹³ See e.g., Article 21 of the Law on Domestic Violence Protection of Montenegro (2010) which specifies that the removal from residence may be ordered against the perpetrator “irrespective of the title and other rights that abuser and victim may have to the place of residence or other premises, if there is risk of reoffending”, available at <http://www.legislationline.org/topics/country/57/topic/7>. For instance, based on Article 13 and Article 14 of the Law on Counteracting Domestic Violence of the Republic of Poland, in cases where all conditions of committing an act of domestic violence (as defined by the law) are met, the police may take the perpetrator into custody or alternatively, issue a protection order for the victims of the violence, once the perpetrator is removed from home. The protection order may consist in the prohibition of contact with the victim of the violence. *Official Journal 05.180.1493, Law on Counteracting Domestic Violence of 29 July, 2005*. See also the UN Secretary-General’s in-depth study on violence against women (2006) regarding the Austrian Protection against Violence Women Act (1997) which mentions the Austrian Act, based on which the police may impose an expulsion or ban from the home immediately upon request of the occupants of the residence, as a promising and good practice example of legislation mandating restraining or removal orders available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>.

⁹⁴ See par 7 of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at <https://www.unodc.org/documents/justice-and-prison->

perpetrator should keep a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member, granting temporary custody of children to the non-violent parent,⁹⁵ and/or requiring the payment of certain costs and fees.⁹⁶

59. Courts may issue protection orders (Article 30 to 32 of the Draft Law) for the duration of one to six months upon the request of a victim or his/her representative, or of the public prosecutor upon request of the person concerned “if [he/she] cannot apply for a valid reason”) or of a municipal subdivision of state bodies in charge of children, in case a minor is involved. In cases where the public prosecutor requests a protection order (Article 30 par 2), it would be advisable **to clarify what is meant by “valid reason” (i.e. when the victim is considered incapable of applying for such order him/herself).**
60. The content of protection orders issued by courts is relatively comprehensive; however, it could be further enhanced by offering the possibility of additional restrictions similar to the ones mentioned in par 58 *supra*, where not already included. Such orders are apparently issued in accordance with the civil procedure of the Kyrgyz Republic (see Articles 30 par 3 and 33 par 1), either independently from other proceedings or linked to case involving administrative responsibility for committing an act of domestic violence (Article 31 par 1 of the Draft Law). This is in line with international recommendations which suggest that protection orders should be available to complainants/survivors regardless of whether they institute other legal proceedings.⁹⁷ It is unclear, however, whether the civil procedural law of the Kyrgyz Republic expressly envisions such protection orders; if not, it may be advisable to include them.
61. In addition, the Draft Law does not specifically contemplate the protection of relatives of the victim, other witnesses, social workers or other persons assisting the victim. The provisions of the Draft Law could be adapted accordingly, since these persons, due to their association with the victim, may also be in need of protection.⁹⁸
62. Recommendations and good practices at the international level also recommend that the issuance of protection orders be available in both criminal and civil proceedings, so that the victim does not need to go through several judicial processes to obtain such protective measures.⁹⁹ The Criminal Code and/or other legislation as appropriate should be supplemented to that effect.

[reform/crimeprevention/Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.pdf](#).

⁹⁵ *Op. cit.* footnote 27, page 41 (2014 UNODC Blueprint for Action on VAW).

⁹⁶ *Op. cit.* footnote 8, Section 3.10.3 (2012 UN Women Handbook for Legislation on VAW). See also par 29, Part IV, “A Framework for Model Legislation on Domestic Violence”, Report of the Special Rapporteur on violence against women, its causes and consequences (1996) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/104/75/PDF/G9610475.pdf?OpenElement>. This could include e.g., regulating the offender’s access to dependent children, compelling the offender to pay the victim’s medical bills, restricting the unilateral disposal of joint assets, prohibiting the perpetrator from using or possessing firearms or other specified weapons; granting the victim possession or use of an automobile, or other essential personal effects; granting temporary custody of children to the non-violent parent with due consideration for the safety of the children; denying visitation rights, or specifying visitation under supervision; requiring the payment of certain costs and fees.

⁹⁷ *Op. cit.* footnote 8, Section 3.10.2 (2012 UN Women Handbook for Legislation on VAW).

⁹⁸ See par 35, Part IV, “A Framework for Model Legislation on Domestic Violence”, Report of the Special Rapporteur on violence against women, its causes and consequences (1996) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/104/75/PDF/G9610475.pdf?OpenElement>.

⁹⁹ *Op. cit.* footnote 8, Section 3.10.3 (2012 UN Women Handbook for Legislation on VAW).

63. To avoid a situation where the alleged perpetrator fails to attend the court hearing, and in line with international good practice,¹⁰⁰ **it would be advisable to supplement Article 30 of the Draft Law to provide that these orders may be issued on an *ex parte* basis** (i.e., even in the absence of and without representation of the respondent party). In such cases, the fair trial rights of the perpetrator should be respected, including the right to be served with the protection orders and the right to appeal (which includes the right to be informed about possibilities of appeal).¹⁰¹ Article 33 par 1 of the Draft Law provides that the protection order shall become effective immediately after the judgment was read (before it is officially served on the parties). **If the court order is issued on an *ex parte* basis, the protection order should be served on the perpetrator prior to becoming effective. Article 33 of the Draft Law should be amended to that effect.**
64. Overall, it would be useful to establish a consolidated registration system or database for protection orders, so that the police or criminal justice officials can quickly determine whether such an order is in force (or whether other orders have been issued in the past), and take immediate action upon infringement of the order.¹⁰² For instance, some countries oblige courts to notify a special entity in charge of a database that centrally collects information on all issued orders.¹⁰³ It is unclear whether this exists already and Article 33 of the Draft Law does not specify this, **nor does the Draft Law provide for a system whereby interior affairs bodies are informed about court orders, in order to monitor their implementation, and possibly even sanction their violations. The lawmakers and stakeholders should discuss how to best formulate relevant provisions in the Draft Law.**
65. Article 27 par 4 of the Draft Law sets out administrative responsibility for perpetrators that do not abide by the provisions of the restraining orders issued by interior affairs bodies. Article 33 par 2 of the Draft Law provides that the judgment issuing a protection order shall be enforced in compliance with the legislation on enforcement proceedings of the Kyrgyz Republic. However, it is not clear which type of liability is applicable in case of a violation of protection orders issued by a court. At the international level, it has been acknowledged that criminalizing the violation of restrictive or protective orders is extremely important to ensure the effectiveness of legislation.¹⁰⁴ Consequently, it would be important **to introduce in the Criminal Code, as appropriate, provisions criminalizing the violation of restraining and protection orders issued by the interior affairs bodies and courts respectively, and to include in the Draft Law a cross-reference to such provisions.** Moreover, the consequences (liability and penalties) of violating restraining and protection orders should be systematically indicated in writing in the orders themselves, to ensure that the alleged perpetrator is

¹⁰⁰ *Op. cit.* footnote 8, Section 3.10.4 (2012 UN Women Handbook for Legislation on VAW).

¹⁰¹ *Op. cit.* footnote 7, par 272 (Explanatory Report to the Istanbul Convention).

¹⁰² See par 16 (h) of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

¹⁰³ See e.g., Article 34 of the Law on Domestic Violence Protection of Montenegro, available at <http://www.legislationline.org/topics/country/57/topic/7>.

¹⁰⁴ See page 9 of the UN Expert Group Meeting on Good Practices in Legislation on Violence Against Women, Expert Paper by Cheryl A. Thomas on Legal Reform on Domestic Violence in Central and Eastern Europe and the Former Soviet Union, 17 June 2008, available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Cheryl%20Thomas\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Cheryl%20Thomas).pdf). See also Section 3.10.9 of the UN Women Handbook for Legislation on VAW and page 40 (2014 UNODC Blueprint for Action on VAW).

aware of them. Articles 27, 29 and 33 of the Draft Law should be supplemented to that effect.

4.2. Victims'/Survivors' Rights

66. It is essential to adopt a victim-centered approach to strengthen crime prevention and criminal justice responses to domestic violence.¹⁰⁵ Such an approach focuses on assisting victims in their engagement with the criminal justice process, rather than holding them responsible for any “reluctance” to cooperate with the criminal justice system.¹⁰⁶
67. Article 5 of the Draft Law specifically concerns the rights of victims of domestic violence, which include the possibility to “seek legal, social, medical, psychological assistance and protection from domestic violence from state authorities, local self-government bodies and other entities providing protection from domestic violence, within the scope of their competence”. While this extensive list of rights is positive, it may be useful to also include key protective measures which are recommended at the international level,¹⁰⁷ either in the Draft Law or in other relevant legislation (including the Criminal Procedure Code).
68. More generally, according to international standards, victims enjoy a number of rights in criminal proceedings,¹⁰⁸ e.g., the right to compassionate treatment, including respect for their dignity,¹⁰⁹ to have their views and concerns presented and considered at appropriate stages of the proceedings, without prejudice to the accused and consistent with the relevant national criminal justice system,¹¹⁰ to be informed about their rights, including protective measures, and about the scope, timing and progress of the investigations and judicial proceedings.¹¹¹ Additional rights include the provision of information on the possibility and procedure to obtain full and effective reparation (i.e., restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition), as well as on the existence of a State Compensation Scheme, if it exists.¹¹² It is important that the duty to inform applies not only to the police, prosecutors and courts, but also to other state entities such as social and health care services and victim support services, which are often the first point of contact of the victim with public

¹⁰⁵ *Op. cit.* footnote 27, page 34 (2014 UNODC Blueprint for Action on VAW).

¹⁰⁶ *ibid.* page 34 (2014 UNODC Blueprint for Action on VAW).

¹⁰⁷ This includes, for instance, the introduction of protective measures to help reduce the risk of confrontation between victims and perpetrators at all stages of the criminal proceedings, including investigations on police premises, unless such contact is necessary or useful for the proper conduct of proceedings (see Article 56 par 1 (i) of the Istanbul Convention and pars 290 and 292 of the Explanatory Report to the Istanbul Convention) and the possibility for the victims of domestic violence to choose, where possible, the gender of the police officer or other criminal justice official to whom he or she would like to speak (See par 16 (l) of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice as adopted by the UN Economic and Social Council Resolution 2010/15 and available at <http://www.un.org/en/ecosoc/docs/2010/res%202010-15.pdf>), among others.

¹⁰⁸ See the 1985 UN Basic Principles of Justice for Victims of Crime; see also Annex to the UN Economic and Social Council (ECOSOC) Resolution 2005/20, 22 July 2005 (hereinafter “2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”), available at http://www.un.org/en/pseataskforce/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf.

¹⁰⁹ *ibid.* Principle 4 (1985 UN Basic Principles of Justice for Victims of Crime).

¹¹⁰ *ibid.* Article 6(b) (1985 UN Declaration on Victims of Crime). See also *op. cit.* footnote 108, Article 21 (2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).

¹¹¹ *ibid.* Articles 5 and 6(a) (1985 UN Declaration on Victims of Crime). See also *ibid.* Article 19 (2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).

¹¹² *Op. cit.* footnote 8, Section 3.8.2 (2012 UN Women Handbook for Legislation on VAW). See also OSCE/ODIHR Opinion on Compensation of Damages for Victims of Criminal Acts in Montenegro (26 July 2014), available at <http://www.legislationline.org/documents/id/19167>.

authorities.¹¹³ **The Draft Law should be supplemented to include, where not already provided, such a duty to inform under the respective provisions relating to the roles and responsibilities of the said entities.** As mentioned, victims of domestic violence should also be able to apply for full and effective reparation for damages suffered as a result of any acts of domestic violence through civil, administrative or criminal law and should also, to the extent possible, be provided with free legal assistance for that purpose (see par 72 *infra*).¹¹⁴ This should be clearly stated in the Draft Law.

69. Finally, child victims and witnesses, who are of a suitable age to testify, should have their privacy protected as a matter of primary importance. Information related to a child's involvement in the justice process should be protected,¹¹⁵ e.g. by maintaining confidentiality and restricting disclosure of information that could lead to the identification of a child victim/witness, anonymizing the child's personal data in documents and records, and protecting him/her from undue exposure to the public. It would be advisable **to supplement the Draft Law and other relevant legislation, such as the Criminal Procedure Code, accordingly.**

4.3. Assistance and Support Services to Victims, and Liability of Government Entities

70. To be effective, victim support should meet a number of fundamental criteria. It needs to be available before, during and after criminal proceedings, and from the earliest possible time onwards, irrespective of whether the crime has been reported.¹¹⁶ Access to support should be easy, without involving excessive procedures and formalities, and victims should be assisted by well-trained professionals capable of providing prompt and well-targeted assistance.¹¹⁷ **The Draft Law should also explicitly foresee that translation of documents and interpretation services are provided, as needed, in order to ensure full access to justice and avoid secondary victimization.**¹¹⁸
71. Article 37 of the Draft Law provides for social and psychological assistance to the victims of domestic violence, including through the provision of accommodation services, in principle free of charge. It is understood that currently, the Kyrgyz Republic does not have a sufficient number of adequately resourced shelters.¹¹⁹ In some countries, for instance Norway, the law requires certain municipalities to provide a 24-hour shelter service for victims/survivors of domestic violence (also providing counselling and other support), utilizing loan schemes offered by the Norwegian State Housing Bank.¹²⁰ The Kyrgyz lawmakers and stakeholders should discuss and consider whether introducing such a duty for certain local government authorities would be advisable, given the

¹¹³ See Article 4 of EU Directive 2012/29/EU and par 6.2 of the Appendix to CoE Recommendation Rec(2006)8.

¹¹⁴ See as reference Article 30 of the Istanbul Convention.

¹¹⁵ *Op. cit.* footnote 108, pars 26-28 (2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).

¹¹⁶ See page 25 of the Report by the Centre for European Policy Studies on Local and Regional Good Practices on Victims' Rights (2011), available at <http://cor.europa.eu/en/documentation/studies/Documents/local-regional-good-practices-victims.pdf>.

¹¹⁷ *ibid.* (2011 Report by the Centre for European Policy Studies on Local and Regional Good Practices on Victims' Rights).

¹¹⁸ *Op. cit.* footnote 8, Section 3.9.3 (2012 UN Women Handbook for Legislation on VAW). See also for reference Article 56 par 1 sub-par h) of the Istanbul Convention and par 286 of the Explanatory Report to the Istanbul Convention.

¹¹⁹ i.e. one shelter/refuge place for every 10,000 inhabitants (see *op. cit.* footnote 8, Section 3.6.1 (2012 UN Women Handbook for Legislation on VAW)). *Op. cit.* footnote 13, par 11 (2014 Human Rights Committee Concluding Observations on Kyrgyzstan).

¹²⁰ *Op. cit.* footnote 8, page 48 (2012 UN Women Handbook for National Action Plans on VAW), referring to the example of the Norway Action Plan on Domestic Violence (2004-2007).

- national context. Additionally, as mentioned in pars 22-23 *supra*, a proper financial assessment of victim support services should take place prior to their establishment according to the Draft Law.
72. The provision of legal assistance is expressly addressed in Article 35 of the Draft Law, which is welcome. However, it is not expressly stated that this should be provided free of charge. As acknowledged in the UN Handbook for Legislation on Violence against Women, many good practices have emerged in legislating for the provision of free legal aid and the right of the complainant/survivor to independent legal counsel and support,¹²¹ such as interpretation services. **The lawmakers and stakeholders should consider, as possible, specifying in Article 35 of the Draft Law that such legal aid services, including interpretation services, shall be provided free of charge. This could help ensure full access to justice and avoid secondary victimization.** The 2014 UNDOC-UNDP Handbook for Policymakers and Practitioners on Early Access to Legal Aid in Criminal Justice Processes (2014) could serve as a useful basis to this discussion.¹²² Finally, children should have access to legal aid under more generous conditions than adults, and legal aid should be accessible, age-appropriate and responsive to the specific legal and social needs of children.¹²³
73. The Draft Law also includes an obligation to report cases of domestic violence against children or persons declared legally incompetent by court (in both of these cases reporting should be mandatory), and reporting requirements in cases involving adult victims, which should depend on the consent of the victim. As regards the role of the interior affairs bodies/police as stated in Article 25 of the Draft Law, it is also welcome that the provision includes a wide array of protective and support measures. They are overall in line with international good practices.¹²⁴
74. Finally, Article 41 of the Draft Law provides for the responsibility of the various state entities and their officials for failure to abide with or properly implement the Draft Law “as prescribed by the legislation of the Kyrgyz Republic”. As it stands, the provision is very vague and does not specify whether this involves disciplinary, administrative or criminal liability.¹²⁵ Generally, it would be helpful for persons and entities applying the law to know what type of behaviour would constitute a violation of the law and what the consequences of such violations would be. **The type of liability incurred by the said**

¹²¹ *Op. cit.* footnote 8, Section 3.9.3 (2012 UN Women Handbook for Legislation on VAW).

¹²² UNDOC-UNDP Handbook for Policymakers and Practitioners on Early Access to Legal Aid in Criminal Justice Processes (2014), available at http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/13-89016_eBook.pdf. See also 2013 Research Paper on Present Legal Framework and Best Practices on “Improving Protection of Victims’ Rights: Access to Legal Aid” Comparative review, available at <http://victimrights.eu/wp-content/uploads/2013/06/Report.pdf>.

¹²³ See Principles 3 par 22 and 11 par 35 of the 2010 UN Principles and Guidelines on Access to Legal Aid.

¹²⁴ See *op. cit.* footnote 8, Section 3.10.6 (2012 UN Women Handbook for Legislation on VAW). See also par 55 of CRC Committee General Comment No. 13 on the right of the child to freedom from all forms of violence (2011). In order to ensure proper reporting, the CRC Committee recommends that disciplinary or administrative proceedings against professionals for neglectful or inappropriate behaviour in dealing with suspected cases of child maltreatment (either internal proceedings in the context of professional bodies for breaches of codes of ethics or standards of care, or external proceedings) should be in place. See also par 7 of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

¹²⁵ The principle of liability of state authorities which provides for the obligation to diligently prevent, investigate and punish acts of domestic violence is stated, amongst others, in Articles 5 and 29 of the Istanbul Convention and par 162 of the Explanatory Report to the Istanbul Convention.

entities and officials should be specified in the Draft Law, along with cross-references to other pertinent legislation.

5. Investigation and Prosecution

5.1. Liability of the Perpetrator, Investigation and Prosecution

75. Article 25 of the Draft Law refers to the procedure of administrative or criminal prosecution of a perpetrator of domestic violence and Articles 30 par 4 and 31 par 1 outline relevant administrative court rulings. It is recalled that the Human Rights Committee, in its 2014 Concluding Observations on the Kyrgyz Republic, specifically recommended a thorough investigation of cases of violence against women, that perpetrators be brought to justice and, if convicted, punished with commensurate sanctions, and that victims be adequately compensated.¹²⁶ In addition, international standards and good practices emphasize the importance of adopting a comprehensive legislative approach, encompassing the criminalization of all forms of violence against women and the effective prosecution and punishment of perpetrators.¹²⁷ For instance, the Istanbul Convention expressly provides that State Parties shall ensure that certain specific acts of violence against women and domestic violence are criminalized.¹²⁸ Practice varies greatly in different countries with regard to the choices made by policy and law makers between using general criminal laws but considering violence in the domestic context as an aggravating factor (leading to higher penalties) or introducing into the penal code a specific offence criminalizing domestic violence.¹²⁹
76. In any case, it is of particular importance to expressly acknowledge in the Draft Law the [potentially] criminal nature of acts of domestic violence. Regardless of the special circumstances surrounding such acts, they often fulfil the elements of one or several crimes already punishable under the Criminal Code.¹³⁰ **The Draft Law should be supplemented to state that, at the very least, acts amounting to physical and sexual violence between family members shall be exclusively subject to criminal liability and shall include a cross-reference to the provisions of the Criminal Code.** It is understood that the Criminal Code does not contain specific provisions addressing “Domestic Violence” or providing for aggravating circumstances (and penalties) in cases a criminal offence is committed in a domestic setting. Rather, some aspects of domestic violence may potentially be dealt with under various provisions of the

¹²⁶ *Op. cit.* footnote 13, par 11 (2014 Concluding Observations of the Human Rights Committee on Kyrgyzstan).

¹²⁷ Recommendation (2002)5 states that Member States should: “classify all forms of violence within the family as criminal offence”; The Ministerial Council’s Decision on Preventing and Combating Violence against Women 2005, MC DEC/15/05 of 6 December 2005 urges participating States “to adopt and implement legislation that criminalizes gender-based violence and establishes adequate legal protection; UN General Assembly resolution 61/143 of 19 December 2006 on the intensification of efforts to eliminate all forms of violence against women stresses the need to criminalize all forms of violence against women. See also *op. cit.* footnote 8, Section 3.1.2 (2012 UN Women Handbook for Legislation on VAW).

¹²⁸ See Articles 33 to 43 of the Istanbul Convention requiring the criminalization of the acts of psychological violence (Article 33) if the State party has not made a reservation in that respect, stalking (Article 34) if the State party has not made a reservation in that respect, physical violence (Article 35), sexual violence, including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38), and forced abortion and forced sterilisation (Article 39).

¹²⁹ See Section 1.3.3 on page 22 of the European Institute on Gender Equality on the Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women Victim Support (2012), available at <http://eige.europa.eu/sites/default/files/Violence-against-Women-Victim-Support-Report.pdf>.

¹³⁰ E.g., particularly the criminal offences listed under Chapter 16 (Crimes against Life and Health) and Chapter 18 (Crimes against Sexual Immunity and Individual Sexual Freedom).

- Criminal Code, and may constitute aggravating circumstances due to conduct that targets child victims, pregnant women or certain dependent persons.¹³¹
77. At the same time, given that Article 1 of the Criminal Code expressly provides that “[n]ew laws envisaging criminal responsibility are subject to incorporation into this Code”, **draft legislation seeking to amend/supplement the Criminal Code could be introduced in tandem with the Draft Law, which could establish a separate criminal offence of domestic violence** just like the existing article in the Criminal Code specifically criminalizing trafficking in human beings. If **accompanied with harsher penalties for crimes involving domestic violence than for similar violence-related crimes in a non-domestic context**,¹³² these new criminal provisions would clearly demonstrate the State’s “zero tolerance” attitude towards domestic violence offences. Alternatively, where not already covered by current provisions, **the existence of a domestic relationship between a perpetrator and a victim could also be considered in a more systematic manner as an aggravating circumstance in the respective articles of the Criminal Code, in particular as concerns the situation of spousal rape** (insofar as this fact does not already form part of the constituent elements of the offence).
78. Administrative liability may still be provided for remaining acts of domestic violence, such as those amounting to psychological or economic abuse. It must be highlighted however that state practices tend to suggest that criminalization of psychological violence and of stalking is on the rise (see par 45 *supra*).¹³³ In any case, the Draft Law or other relevant legislation should clearly state the nature of the liability incurred and related penalties. According to the principles of legal certainty and foreseeability, an individual should be able to foresee the consequences of a given action based on the provisions of the law; the provisions of the Draft Law and of the Criminal Code should therefore not both regulate the liability of individuals for the same or very similar conduct.¹³⁴
79. Furthermore, the introduction of sentencing guidelines may also help ensure that sentences imposed on perpetrators are commensurate with the gravity of the crimes.¹³⁵ As regards investigation and prosecution, it must also be highlighted that legislative measures are often ineffective unless accompanied by changes in law enforcement standards, values and conduct.¹³⁶ Good practices in that respect recommend, for

¹³¹ E.g. criminal offences committed against a woman knowingly pregnant (Article 55), murder of a person knowingly helpless or a juvenile (Article 97), intended physical trespass committed against a woman knowingly pregnant or towards a person or person’s family members in connection with service or public duty of such person (Article 104), Rape committed towards a juvenile or a young child (Article 129), etc.

¹³² *Op. cit.* footnote 8, Section 3.11.1 (2012 UN Women Handbook for Legislation on VAW); see also Recommendation No. 9 from the UN Women Virtual Knowledge Centre to End Violence Against Women and Girls, available at <http://www.endvawnow.org/en/articles/445-criminal-sanctions-and-sentencing-provisions-.html> which states that “[l]egislation should specify that penalties for crimes involving domestic violence should be more severe than similar non-domestic violence-related crimes. This sends the important message that the state will treat a domestic violence crime as seriously, if not more seriously, than a crime against a stranger”.

¹³³ For instance, 40 out of 47 member states of the Council of Europe have a criminal offence of psychological violence and 35 now penalise stalking (see page 14 of the 2013 Analytical study of the results of the 4th round of monitoring the implementation of the Recommendation (2002)5, available at <http://www.coe.int/t/dghl/standardsetting/convention-violence/Docs/Analytical%20Study%20ENG.pdf>).

¹³⁴ See e.g. par 34 of *Rekvényi v. Hungary*, ECtHR judgment of 20 May 1999 (Application No 25390/94), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58262#{"itemid":\["001-58262"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58262#{).

¹³⁵ *Op. cit.* footnote 8, Section 3.11.1 (2012 UN Women Handbook on Legislation against VAW). For elements to be included in Sentencing Guidelines, see *op. cit.* footnote 27, pages 84-85 (2014 UNODC Blueprint for Action on VAW). See also Section 3.11.2 of the 2012 UN Women Handbook on Legislation against VAW.

¹³⁶ Available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_i

instance, the introduction of pro-arrest policies and victimless prosecution¹³⁷ and various tools developed at the international level could help encourage consistent police responses to incidents of domestic violence.¹³⁸ Guidelines could also be developed for the exercise of prosecutorial functions, provided that they do not encroach upon the independence and autonomy of prosecution services.¹³⁹

5.2. Procedural Measures and Protection from Re-victimization

80. Article 11 par 2 (6) of the Draft Law provides that the interior affairs bodies “refer the victim of domestic violence, with his/her consent, to medical examination, forensic examination”; in cases where the victim is a minor, “he/she will be referred to medical examination, forensic examination without the consent of the parents of legal representatives”. It must be pointed out that Article 199 par 4 of the Criminal Procedure Code provides that, with certain exceptions, “forensic expert analysis involving a victim, and also of a witness, shall be conducted with their consent or consent of their legal guardians, which must be given by such persons in writing”. The two provisions seem to contradict each other; according to Article 2 of the Criminal Procedure Code, in such situation, the provisions of the Criminal Procedure Code should prevail. It is therefore recommended to consider amending the Criminal Procedure Code to ensure consistency.
81. In order to protect the rights of the victim, it would be advisable to ensure that physical examinations undertaken without the consent of the victim/injured party shall be based on a court order.¹⁴⁰ Exceptionally, in cases of *flagrante delicto*, physical examinations should also be allowed upon the decision of criminal investigation bodies, which should then be obliged to report on the examination to a pre-trial judge, within a short period of time such as 24 hours. It is also recommended to prescribe additional safeguards, for instance that searches of body cavities should only be performed by a doctor with respect for victim’s dignity and in the least intrusive manner.¹⁴¹ **The Criminal Procedure Code and other legislation as appropriate should be supplemented accordingly.**
82. Additionally, in cases of sexual offences, victims will often be required to undress as part of forensic medical examinations. In such circumstances, the examination should be carried out and attended only by individuals of the same sex as the suspect/defendant/witness. Article 201 of the Criminal Procedure Code, which provides

[n the Field of Crime Prevention and Criminal Justice.pdf](#). See also page 3 of the 2010 UN Handbook on Effective Police Responses to VAW, available at http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf.

¹³⁷ *Op. cit.* footnote 15, page 10 (2012 EU Handbook on Overcoming Attrition in Domestic Violence Cases). See also *ibid.* page 44 (2010 UN Handbook on Effective Police Responses to Violence against Women). See also *op. cit.* footnote 8, Section 3.8.3 (2012 UN Women Handbook for Legislation on VAW).

¹³⁸ See par 8 of the 2011 UN Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. See also *ibid.* page 44 (2010 UN Handbook on Effective Police Responses to VAW), and the 2006 Model Policy for Police Responding to Domestic Violence Calls developed by the International Association of Chiefs of Police, available at www.theiacp.org/portals/0/pdfs/DomesticViolencePolicy0606.doc.

¹³⁹ See pars 44 and 55 of the European Commission for Democracy through Law (Venice Commission) Report on the Independence of the Judicial System – Part II: The Prosecution Service (2010), available at http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf.

¹⁴⁰ See e.g. par 22 of the 2013 OSCE/ODIHR Opinion on the Draft Law on Amendments and Additions to the Criminal Procedure Code of Serbia, available at http://www.legislationline.org/download/action/download/id/4337/file/224_CRIM_SRB%20CPC%204%20March%202013_en.pdf.

¹⁴¹ *Op. cit.* footnote 27, page 72 (2014 UNODC Blueprint for Action on VAW).

hat “[a]ny investigator shall be authorized to be present at an expert examination enforcement”, should therefore be amended. The Criminal Procedure Code could also provide that photos of a victim’s injuries be taken only with the victim’s consent.¹⁴² Finally, **the Criminal Procedure Code should be reviewed to ensure that special protection measures taking into account the best interests of the child are provided throughout the whole justice process**, i.e. from the detection of the crime and the submission of the complaint, through investigation, prosecution, and trial to post-trial procedures.¹⁴³

83. Regarding forensic examination of sexual abuses, it may also be worth mentioning that many countries have developed specific protocols and specialized evidence collection kits for the investigation of rape or other forms of sexual abuse.¹⁴⁴

6. Final Comments

84. Regarding the final provisions under Chapter VI of the Draft Law, it is laudable that this Draft Law expressly repeals the 2003 Domestic Violence Law and provides for a clear timeline (six months) for the Government to render its regulatory framework compliant with the Draft Law. The timeline is, however, relatively short, and could be expanded, also following a review of other acts pertaining to domestic violence that could be in conflict with the Draft Law.
85. To ensure the effective implementation of the Draft Law, it may be helpful to develop a list of secondary legislation and other relevant documents (e.g., the standard tools/protocols, the form of the restraining order issued by interior affairs bodies) which could be appended to the Draft Law with a defined and realistic adoption schedule. Such by-laws and documents should ideally be ready for adoption at the same time as the Draft Law.

[END OF TEXT]

¹⁴² *ibid.* page 71 (2014 UNODC Blueprint for Action on VAW).

¹⁴³ See the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009) available at http://www.unicef.org/ceecis/UNDOC-UNICEF_Model_Law_on_Children.pdf.

¹⁴⁴ *Op. cit.* footnote 136, pages 55-58 (2010 UN Handbook on Effective Police Responses to VAW).

ANNEX

Draft

THE LAW
Of the Kyrgyz Republic
On Safeguarding and Protection from Domestic Violence

Chapter 1. General Provisions

Article 1. Basic Definitions

The following concepts are utilized in the current Law:

Safe place shall be defined as an area or premises (crisis centre, shelter, etc.) that poses no risk, in the opinion of a victim of domestic violence or his/her legal representative, to his/her life or health;

Counselling and prevention centre (crisis centre) shall be defined as an agency providing social and psychological, as well as legal and medical assistance to victims of domestic violence, in compliance with the legislation. A shelter may be established on the premises of the counselling and prevention centre;

Restraining order shall be defined as a document providing state protection to victims of domestic violence and invoking application of certain measures of the current Law to the perpetrator of domestic violence;

Victim of domestic violence shall be defined as a family member or a person who qualifies as a family member that suffered from domestic violence;

Suppression of domestic violence shall be defined as measures intended to stop domestic violence and providing protection of life, health, honour and dignity of victims of domestic violence;

Persons who qualify as family members shall be defined as persons being in actual marital relations; a person providing maintenance to a disabled or minor dependent and the disabled or minor dependent himself/herself; parents of spouses; other relatives living in the same household;

Prevention of domestic violence shall be defined as a system of social, legal, medical, psychological, awareness, informational and other measures implemented by the entities safeguarding and providing protection from domestic violence and intended to identify and eliminate causes and conditions that create a risk of domestic violence;

Domestic psychological abuse shall be defined as a threat of physical, sexual, economic abuse, as well as the deliberate deprecation of honour and dignity, coercion to committing crimes or life-threatening actions, or actions leading to deterioration of mental and physical health;

Domestic sexual violence shall be defined as an action committed by a family member/a person who qualifies as a family member, infringing upon sexual immunity or sexual freedom of another family member/a person who qualifies as a family member;

Domestic violence (family violence) shall be defined as deliberate physical, psychological, economic, sexual action or threat of actions committed by a family member/a person who qualifies as a family member against another family member/person who qualifies as a family member;

Specialised social service shall be defined as an entity, institution, regardless of the organizational and legal forms of ownership, providing social services and assistance to victims of domestic violence;

Shelter (temporary accommodation centre for victims of domestic violence) shall be defined as an entity providing secure, temporary housing to victims of domestic violence. Shelters are organised separately for women and men;

Domestic physical violence shall be defined as a direct or indirect deliberate action of one family member/a person who qualifies as a family member against another family member/person who qualifies as a family member, deprivation of vital life functions, deprivation or restriction of freedom of movement, residence, food, clothes, coercion to hard physical labour, as well as evasion of obligations to provide maintenance and care;

Family members shall be defined as spouses, parents and children, grandmothers/grandfathers and grandsons/granddaughters, legal guardians/custodian and their wards, adoptive parents and adopted children, foster parents and foster children, other persons fostering children in compliance with the established legislation, former spouses, stepmothers/stepfathers and stepdaughters/stepsons, brothers and sisters (full siblings and half-siblings), actual educators and actual foster children;

Domestic economic violence shall be defined as deliberate failure of a family member/a person who qualifies as a family member to perform his/her obligations to maintain another family member/person who qualifies as a family member, as well as deliberate deprivation or limitation of a right to receive or dispose of property or profits that are subject to the person by law.

Article 2. Legislation of the Kyrgyz Republic on safeguarding and protection from domestic violence

The legislation of the Kyrgyz Republic on safeguarding and protection from domestic violence is based on the Constitution of the Kyrgyz Republic, consists of the current Law and other regulatory acts of the Kyrgyz Republic, as well as international treaties that have become effective in compliance with the legislation and to which the Kyrgyz Republic is a party.

Article 3. The scope of the Law

1. The current Law determines the legal principles of prevention and suppression of domestic violence, safeguarding and protection of victims of domestic violence.

2. The current Law covers family members and persons who qualify as family members residing in the same household.

Article 4. Principles of the Law

1. The current Law is based on the following principles:
 - 1) Compliance with the legislation and international standards in the field of human rights and gender equality;
 - 2) Equal access to safeguarding and protection from domestic violence;
 - 3) Prevention of religious, cultural and other customs contributing to domestic violence;
 - 4) Responsibility for committed acts of domestic violence;
 - 5) Preventive focus;
 - 6) Responsibility of state authorities and local self-government bodies for observance of citizens' rights to safeguard and protection from domestic violence;
 - 7) Public participation in protection from domestic violence;
 - 8) Provision of protection from domestic violence regardless of the fact of initiation of criminal case or administrative proceedings.

Article 5. Rights of victims of domestic violence

1. A victim of domestic violence may seek legal, social, medical, psychological assistance and protection from domestic violence from state authorities, local self-government bodies and other entities providing protection from domestic violence, within the scope of their competence.

2. The reasons and procedure for safeguarding, provision of assistance and protection from domestic violence shall be defined by the current Law and by other regulatory acts.

Chapter 2. Entities providing protection from domestic violence

Article 6. The scope of entities providing protection from domestic violence

The entities providing protection from domestic violence shall be:

- 1) The Government;
- 2) The authorised state body responsible for coordination of activities of entities safeguarding and providing protection from domestic violence as determined by the Government;
- 3) The court;
- 4) The prosecutor's office;
- 5) Interior affairs bodies;
- 6) Social development bodies;

- 7) Public healthcare institutions;
- 8) Educational institutions;
- 9) Justice institutions;
- 10) Authorised body for protection of children;
- 11) The Ombudsman (Akyikatchy);
- 12) Local state administrations;
- 13) Local self-government bodies;
- 14) The court of elders;
- 15) Mass media and electronic publications;
- 16) Commissions for children affairs and other state and non-governmental bodies within their competences.

Article 7. The authority of the Government to safeguard and protect from domestic violence

The Government shall exercise the following authority to safeguard and protect from domestic violence:

- 1) To develop and implement a single public domestic violence safeguarding and protection policy;
- 2) To define the authority of state executive bodies in the field of safeguarding and protection from domestic violence;
- 3) To appoint the public authorised body responsible for coordination of activities of entities safeguarding and providing protection from domestic violence and approves its status;
- 4) Within the scope of its competence, to adopt regulatory acts, as well as to initiate draft laws designed to safeguard and protect from domestic violence;
- 5) To control the activity of the executive state bodies in the field of safeguarding and protection from domestic violence;
- 6) To provide organisational and other assistance to local self-government bodies in order to contribute to their activities in the field of safeguarding and protection from domestic violence;
- 7) To establish the national standards on provision of service and assistance in the field of safeguarding and protection from domestic violence;
- 8) To exercise other powers related to safeguarding and protection from domestic violence in compliance with the legislation of the Kyrgyz Republic.

Article 8. The authorised state body responsible for coordination of activities of entities safeguarding and providing protection from domestic violence

In order to exercise the powers defined by the Government of the Kyrgyz Republic, the authorised state body responsible for coordination of activities of entities safeguarding and providing protection from domestic violence (hereinafter referred to as the Authorised Body) shall:

- 1) Coordinate the activities of state bodies, local self-government bodies and legal entities, regardless of types of ownership, related to development and implementation of a single national policy of protection from domestic violence in the Kyrgyz Republic;
- 2) Coordinate the development of draft laws and other regulatory acts, national programmes and other documents related to safeguarding and protection from domestic violence, raise points on these issues to the Government;
- 3) Collect, integrate and analyse domestic violence data, evaluate the efficiency of the system of measures to safeguard and protect from domestic violence, and raises points on its improvement;
- 4) Provide methodological, informational, consulting, and organisational assistance to the entities safeguarding and providing protection from domestic violence;
- 5) Coordinate the development of standards of the provision of service and assistance to safeguard and protect from domestic violence;
- 6) Monitor and evaluate the activities of entities safeguarding and providing protection from domestic violence;
- 7) Organize scientific and other research on issues of domestic violence;
- 8) Carry out informational and awareness campaigns on the issues of safeguarding and protection from domestic violence;
- 9) Provide information on safeguarding and protection from domestic violence to mass media and electronic publications;
- 10) Draw and publish annual reports on enforcement of the current Law;
- 11) Provide access to information on safeguarding and protection from domestic violence, including via posting on its website;
- 12) Give recommendations to the entities safeguarding and providing protection from domestic violence on how to improve their activities in the field;
- 13) Provide assistance to the entities safeguarding and providing protection from domestic violence with raising extra-budgetary funds and development of cooperation with international and other entities;
- 14) Carry out other activities in the field of safeguarding and protection from domestic violence, within its competence.

Article 9. Responsibilities of the court to protect from domestic violence

The court shall consider and settle cases related to domestic violence in compliance with the current Law and other laws of the Kyrgyz Republic.

Article 10. Responsibilities of the prosecution authorities to safeguard and protect from domestic violence

The prosecution authorities shall carry out the following responsibilities related to safeguarding and protection from domestic violence:

- 1) Oversight of compliance with the legislation on protection from domestic violence;
- 2) Monitors the completeness and timeliness of recording and registration by interior affairs bodies of reports on cases of domestic violence;
- 3) Participates in development of standards of provision of services and assistance in the field of safeguarding and protecting from domestic violence;
- 4) Appeals to court for protection of the rights and interests of victims of domestic violence in cases covered by the legislation;
- 5) Carries out staff development for the officers of prosecutor's office in the field of safeguarding and protection from domestic violence;
- 6) Exercises other authority in the field of safeguarding and protection from domestic violence in compliance with the regulatory acts of the Kyrgyz Republic.

Article 11. Responsibilities of the interior affairs bodies to safeguard and protect from domestic violence

1. For the purpose of exercise of authority defined by the Government of the Kyrgyz Republic, the Ministry of Interior Affairs shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic;
- 2) Organise activity of the interior affairs bodies to prevent, safeguard and protect from domestic violence;
- 3) Participate in the development of regulatory acts and other documents in the field of prevention of and protection from domestic violence;
- 4) Develop performance standards for the interior affairs bodies in the field of safeguarding and protection from domestic violence and oversee the execution of these standards;
- 5) Introduce the issues of protection from domestic violence into curricula of educational institutions of the interior affairs bodies, provide professional training, retraining, staff development and other relevant types of trainings in the field of safeguarding and protection from domestic violence;

- 6) Monitor activities of the interior affairs bodies, related to safeguarding and protection from domestic violence;
- 7) Interact with other entities safeguarding and providing protection from domestic violence;
- 8) Submit annual report, as well as information on its activities in the field of safeguarding and protection from domestic violence to the Authorised Body;
- 9) Post statistical and other information on the activities of the interior affairs bodies related to protection from domestic violence on its website.

2. The interior affairs bodies shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Suppress domestic violence;
- 2) Monitor the execution of the restraining order conditions, as well as contribute to the enforcement of a court order prohibiting or restraining a perpetrator of domestic violence from direct or indirect contacts with minor children;
- 3) Keep record of perpetrators of domestic violence;
- 4) Notify the appropriate entities safeguarding and providing protection from domestic violence on detected cases of domestic violence against minor children;
- 5) Notify the appropriate entities safeguarding and providing protection from domestic violence on cases of domestic violence reported by the victims of domestic violence with their consent;
- 6) Refer the victim of domestic violence, with his/her consent, to medical examination, forensic examination. If a minor child has suffered from his/her parents or other legal representatives, he/she will be referred to medical examination, forensic examination without the consent of the parents of legal representatives;
- 7) Interact with other entities safeguarding and providing protection from domestic violence;
- 8) Hold preventive and awareness campaign among the population in the field of safeguarding and protection from domestic violence;
- 9) Carry out other activities in the field of safeguarding and protection from domestic violence, within their competence.

Article 12. Responsibilities of social development bodies to safeguard and protect from domestic violence

1. For the purpose of exercise of authority defined by the Government of the Kyrgyz Republic, the authorised state body in charge of social development shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic violence;

- 2) Organise activity of social development bodies to safeguard and protect from domestic violence;
- 3) Participate in the development of drafts of regulatory acts and other documents in the field of safeguarding and protection from domestic violence;
- 4) Develop performance standards for social development bodies in the field of safeguarding, protection and provision of assistance in the sphere of domestic violence, and monitor the execution of these standards;
- 5) Approve the procedure of provision of social services by specialised social services in the field of safeguarding and protection from domestic violence;
- 6) Monitor compliance with the standards of social services by state and local organisations and authorities in the field of safeguarding and protection from domestic violence;
- 7) Coordinate the activities of social development bodies and authorities in the field of safeguarding and protection from domestic violence;
- 8) Ensure methodological and consulting assistance in the field of safeguarding and protection from domestic violence to the municipal social development bodies;
- 9) Ensure organisation and development of state and local specialised social services providing social services in the field of safeguarding and protection from domestic violence;
- 10) Organise staff development programmes for social development workers on detection, prevention and protection from domestic violence;
- 11) Develop standard correctional programmes for perpetrators of domestic violence and provide assistance in their introduction to municipal social development bodies;
- 12) Determine the procedure of detection, registration and recording of domestic violence cases for social development bodies;
- 13) Monitor the activities in the field of safeguarding and protection from domestic violence carried out by social development bodies;
- 14) Post information on specialised social authorities that provide social services in the field of safeguarding and protection from domestic violence, standards of services and procedure of their provision on its website, in mass media and electronic publication;
- 15) Provide local social development bodies that provide protection from domestic violence with methodological and consulting assistance;
- 16) Carry out activity to attract financial, technical and other assistance not prohibited by the legislation in the field of safeguarding and protection from domestic violence;
- 17) Interact with other entities safeguarding and providing protection from domestic violence;
- 18) Submit annual report, as well as information on its activity in the field of safeguarding and protection from domestic violence to the Authorised Body;
- 19) Post on its website statistical and other information on the activities of social development bodies in the field of safeguarding and protection from domestic violence.

2. Social development bodies shall carry out the following responsibilities to safeguard and protect from domestic violence:

1) Provide social services and assistance in the field of safeguarding and protection from domestic violence;

2) Notify interior affairs bodies of detected cases of domestic violence with consent of a victim of domestic violence;

3) Monitor and analyse the needs of victims of domestic violence in receiving social services and assistance;

4) Implement correctional programmes for perpetrators of domestic violence;

5) Carry out awareness campaigns in the field of safeguarding and protection from domestic violence;

6) Interact with other entities safeguarding and providing protection from domestic violence;

7) Submit reports on activities in the field of safeguarding and protection from domestic violence to the state social development body;

8) Carry out other activities in the field of safeguarding and protection from domestic violence within their competence.

Article 13. Responsibilities of public healthcare bodies to protect from domestic violence

1. For the purpose of exercise of powers set forth by the Government of the Kyrgyz Republic, the authorised public healthcare body shall carry out the following responsibilities to safeguard and protection from domestic violence:

1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic violence;

2) Organise activity of public healthcare bodies to safeguard and protect from domestic violence;

3) Participate in the development of drafts of regulatory acts and other documents in the field of safeguarding and protection from domestic violence;

4) Develop and implement in the practice of healthcare institutions the standards for public healthcare institutions in the field of safeguarding and protection from domestic violence and provision of assistance in the field of domestic violence and monitor the execution of these standards;

5) Monitor activity of public healthcare bodies in the field of safeguarding and protection from domestic violence;

6) Organise training and retraining of health care workforce in the issues of prevention of domestic violence and provision of health care in cases of domestic violence;

7) Participate in the information and awareness campaigns in the field of safeguard and protection from domestic violence;

8) Collect data in the field of provision of medical care and sanitary service in cases of domestic violence;

9) Interact with other entities safeguarding and providing protection from domestic violence;

10) Submit annual report, as well as information on its activity in the field of safeguarding and protection from domestic violence to the Authorised Body;

11) Post statistical and other information on activities of interior affairs bodies in the field of safeguarding and protection from domestic violence on its website.

2. Public healthcare institutions shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Provide necessary medical care, including medical rehabilitation, if necessary, to the victims of domestic violence;
- 2) Provide necessary medical care, including medical rehabilitation, if necessary, for the perpetrators of domestic violence in compliance with the legislation;
- 3) Notify the interior affairs bodies about the cases of victims seeking assistance from healthcare bodies and provision of medical care with their consent within twenty-four hours. Consent of the victims is not required in cases of domestic violence against minor children, or in other cases as provided by the legislation;
- 4) Issue an extract from medical record or medical chart, where all bodily injuries or marks of violence have been recorded in writing, to a patient or other persons in compliance with the legislation;
- 5) Participate in the implementation of activities on prevention of domestic violence;
- 6) Interact with other entities safeguarding and providing protection from domestic violence;
- 7) Carry out other activities related to safeguarding and protection from domestic violence within their competence.

Article 14. Responsibilities of educational bodies to safeguard and protect from domestic violence

1. For the purpose of exercise of powers set forth by the Government of the Kyrgyz Republic, the authorised educational body shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic violence;
- 2) Organise activity of educational bodies to safeguard and protect from domestic violence;
- 3) Participate in the development of drafts of regulatory acts and other documents in the field of safeguarding and protection from domestic violence;

- 4) Develop performance standards for educational bodies in the field of safeguarding, protection and providing assistance in the field of domestic violence and monitor the execution of these standards;
- 5) Monitor and analyse activity of educational bodies related to the needs of students who fell victim to domestic violence, in obtaining social services and assistance;
- 6) Include the issues of safeguarding and protection from domestic violence into the national educational standards in the context of human rights;
- 7) Train educational staff to detect, prevent and protect from domestic violence;
- 8) Develop educational and instructional programmes for parents (or persons substituting them) and children in prevention and suppression of domestic violence and monitor and evaluate their implementation;
- 9) Carry out informational and awareness campaigns in the fields of safeguarding and protection from domestic violence;
- 10) Organise consultations students who fell victim to domestic violence;
- 11) Interact with other entities safeguarding and providing protection from domestic violence;
- 12) Submit annual report, as well as information on its activity in the field of safeguarding and protection from domestic violence to the Authorised Body;
- 13) Post statistical and other information on activities of educational bodies in the field of safeguarding and protection from domestic violence on its website.

2. Educational organisations, regardless of their types of ownership and levels of education, shall carry out following responsibilities to protect from domestic violence:

- 1) Notify interior affairs bodies, prosecutor's office and local subdivisions of the authorised state body responsible for protection of children of detected facts of domestic violence against minor children;
- 2) Implement educational and instructional programmes for parents (or persons substituting them) and children in prevention and suppression of domestic violence;
- 3) Make the trainees and their legal representatives aware of unacceptability of domestic violence and measures to protect from it;
- 4) File legal actions to restrict parental rights of persons who have committed acts of domestic violence against minor children;
- 5) Monitor and analyse the needs of victims of domestic violence in social services and assistance;
- 6) Interact with other entities providing protection from domestic violence;
- 7) Carry out other activities in the field of safeguarding and protection from domestic violence within their competence.

Article 15. Responsibilities of state judicial bodies to safeguard and protect from domestic violence

For the purpose of exercise of powers set forth by the Government of the Kyrgyz Republic, the Ministry of Justice shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic violence;
- 2) Participate in the development of drafts of regulatory acts and other documents in the field of safeguarding and protection from domestic violence;
- 3) Develop performance standards for the provision of legal services in the field of safeguarding and protection from domestic violence and monitor the execution of these standards;
- 4) Develop and place tenders for state social orders for provision of legal assistance to the victims of domestic violence;
- 5) Participate in dissemination of legal information in the field of safeguarding and protection from domestic violence;
- 6) Participate in staff development programmes for the officials of state judicial bodies in the field of safeguarding and protection from domestic violence;
- 7) Contribute to the organisation of staff development programmes for lawyers in the field of safeguarding and protection from domestic violence;
- 8) Interact with other entities safeguarding and providing protection from domestic violence;
- 9) Submit annual report, as well as information on its activity in the field of safeguarding and protection from domestic violence to the Authorised Body;
- 10) Post statistical and other information on activities of state judicial bodies in the field of safeguarding and protection from domestic violence on its website.

Article 16. Responsibilities of the Authorised Body for protection of children to safeguard and protect from domestic violence

For the purpose of exercise of powers set forth by the Government of the Kyrgyz Republic, the Authorised Body for protection of children shall carry out the following responsibilities to safeguard and protect from domestic violence:

- 1) Participate in the development and implementation of a single national policy on safeguarding and protection from domestic violence;
- 2) Organise, coordinate and control the activity of its municipal subdivisions in the field of safeguarding and protection from domestic violence;

- 3) Participate in the development of drafts of regulatory acts and other documents in the field of safeguarding and protection from domestic violence;
- 4) Implements a set measures for safeguarding and protection of children who fell victim to domestic violence in compliance with the current law, Children's Code, and other regulatory acts of the Kyrgyz Republic;
- 5) Post information on specialised social authorities providing services to safeguard and protect children who fell victim to domestic violence, standards of services and procedure of their provision on its website, in mass media and electronic publications;
- 6) Provide its municipal bodies and other bodies in the system of child protection in the field of safeguarding and protection from domestic violence with methodological and consulting assistance;
- 7) Interact with other entities safeguarding and providing protection from domestic violence;
- 8) Submit annual report, as well as information on its activity in the field of safeguarding and protection of children from domestic violence to the Authorised Body.

Article 17. Responsibilities of the Ombudsman (Akyikatchy) to safeguard and protect from domestic violence

The Ombudsman (Akyikatchy) shall:

- 1) Accept and review the appeals of citizens of the Kyrgyz Republic, foreigners and stateless persons residing in the Kyrgyz Republic, or their representatives, of decisions or acts (omissions) of state authorities, local self-government bodies, state officials, and public officers in the field of protection from domestic violence in compliance with regulatory acts;
- 2) Explain to an applicant the procedure for filing an appeal to a competent state authority, or local self-government body to protect their rights and freedoms in the field of domestic violence;
- 3) Apply to state authorities, local self-government bodies, or state official after the review of the applicant's appeal with a petition for initiation of disciplinary or administrative proceedings or criminal proceedings against a state official whose decisions or acts (omissions) are deemed to contain violations of human rights and freedoms in the field of safeguarding and protection from domestic violence;
- 4) Based on the results of review of applicants' petition, with their consent or consent of their legal representatives, apply to court for protection of rights and freedoms violated by decisions or acts (omissions) of state authority, local self-government body or state official in the field of protection from domestic violence;
- 5) Monitor the guarantees of human rights and freedoms in the field of safeguarding and protection from domestic violence;

- 6) Prepare special reports on the issues of domestic violence and/or include these issues in the annual reports on the state of observance of human and civil rights and freedoms;
- 7) Carry out information campaigns on the issues of human and civil rights in the field of domestic violence.

Article 18. Responsibilities of local state administrations to safeguard and protect from domestic violence

Local state administrations shall:

- 1) Ensure coordinated activity of municipal subdivisions of the ministries, state committees, administrative agencies and other state bodies of the Kyrgyz Republic, their interaction with local self-government bodies, and execute state control of their activity within delegated functions and authority in the field of safeguarding and protection from domestic violence;
- 2) Coordinate activity of municipal subdivisions of the ministry, state committees and administrative agencies in the field of safeguarding and protection from domestic violence;
- 3) Develop and approve policy documents for safeguarding and protection from domestic violence, control their execution;
- 4) Summarise and analyse domestic violence data on domestic violence received from local self-government bodies in compliance with the legislation;
- 5) Organise staff development programmes for the officials of local state administrations and local self-government bodies on issues of safeguarding and protection from domestic violence;
- 6) Interact with other entities safeguarding and providing protection from domestic violence;
- 7) Carry out information and awareness campaigns on the issues of safeguarding and protection from domestic violence.
- 8) Attract financial, technical and other support in compliance with the legislation to implement the programmes for safeguarding and protection from domestic violence;
- 9) Submit annual consolidated report on activity in the field of safeguarding and protection from domestic violence to the Authorised Body;
- 10) Provide the Authorised Body with information on safeguarding and protection from domestic violence.

Article 19. Responsibilities of local self-government bodies to safeguard and protect from domestic violence

Local self-government bodies shall:

- 1) Develop, approve and implement programmes for prevention of domestic violence;
- 2) Develop the standards of services and assistance provision for local self-government bodies in the field of safeguarding and protection from domestic violence;
- 3) Allocate funds in the local budget for the implementation of relevant programmes aimed at prevention of domestic violence and the establishment of specialised social services providing civil protection and safeguarding from domestic violence;
- 4) Organise provision of special social services on issues of safeguarding and protection from domestic violence;
- 5) Review information on cases domestic violence and take measures to protect from domestic violence;
- 6) Keep record of domestic violence statistics;
- 7) Ensure interagency coordination and interaction of entities providing protection from domestic violence, at the municipal level via establishment of special bodies – local committees for safeguarding and protection from domestic violence;
- 8) Notify interior affairs bodies about potential threats of domestic violence incidence;
- 9) Participate in staff development programmes for local self-government officials on protection from domestic violence;
- 10) Provide the Authorised Body with information on safeguarding and protection from domestic violence.

Article 20. Responsibilities of the court of elders to safeguard and protect from domestic violence

The court of elders shall review and settle cases on domestic violence in compliance with the legislation of the Kyrgyz Republic.

Article 21. The authority of mass media and electronic publications in the field of safeguarding and protection from domestic violence

1. Mass media and electronic publications shall:
 - 1) Interact with other entities safeguarding and providing protection from domestic violence;
 - 2) Spotlight the issues of safeguarding and protection from domestic violence and form a negative image of any forms of violence in public consciousness;
 - 3) Upon request of the Authorised Body provide information on their activity in the field of safeguarding and protection from domestic violence;
 - 4) Ensure that their editorial policy prevents propaganda of gender racism and violence;

5) Participate in staff development programmes for reporters and journalists on safeguarding and protection from domestic violence;

2. Mass media financed by the state or municipal budgets shall post information on safeguarding and protection from domestic violence within the broadcasting time or print space devoted to social advertising.

Article 22. Participation of non-governmental organisations and citizens in safeguarding and protection from domestic violence

1. Non-governmental organisations and citizens have the right to:

1) Provide social, legal, juridical, psychological and other support and assistance in the field of safeguarding and protection from domestic violence in compliance with the legislation, including:

- a) Inform the victims of domestic violence about their right to seek protection from state bodies or public organisations;
- b) Provide appropriate consultations to the victims of domestic violence;
- c) With the consent of the victims of domestic violence, report cases of domestic violence to the interior affairs bodies, prosecutor's office, local self-government bodies, and social protection bodies, except for the cases concerning minors or persons who have been declared legally incompetent, in such cases reporting to the above mentioned bodies is compulsory;

2) Carry out information and awareness campaigns on protection from domestic violence;

3) Interact with other entities safeguarding and providing protection from domestic violence.

2. Non-governmental organisations safeguarding and providing protection from domestic violence may, in compliance with the legislation, receive funding from state and municipal budgets or other sources;

3. Non-governmental organisations safeguarding and providing protection from domestic violence shall provide information on their activity in the field of safeguarding and protection from domestic violence upon request of the Authorised Body.

Chapter 3. Safeguarding and protection from domestic violence

Article 23. Prevention of domestic violence

Domestic violence shall be prevented by all entities safeguarding and providing protection from domestic violence within their competences.

The preventive measures shall include:

- 1) Development and implementation of programmes for prevention of domestic violence, including special programmes for the victims of domestic violence, for the perpetrators of domestic violence, and for other persons;

- 2) Prevention talks, consultations, including hot lines, in order to prevent the repeated acts of domestic violence, as well as to ensure security of the victim;
- 3) Registration and recording of perpetrators of domestic violence;
- 4) Control over the enforcement of the restraining order;
- 5) Informing the perpetrators of domestic violence about unacceptability and illegality of domestic violence, as well as measures for safeguarding and protection from domestic violence;
- 6) Awareness campaigns, measures related to safeguarding and protection from domestic violence designed to protect civil rights and freedoms, to promote non-violent and conflict-free behaviour, prevention of discrimination against any person.

Article 24. Suppression of domestic violence

1. Types of suppression of domestic violence:
 - 1) Taking immediate measures to remove the threat to life or health of a victim or other family members or persons who qualify as such;
 - 2) Detention of a perpetrator of domestic violence in compliance with the law;
 - 3) Issue and extension of a restraining order;
 - 4) Holding the perpetrator of domestic violence liable in compliance with the law;
 - 5) Immediate placement to a secure place with consent of a victim of domestic violence facing threat to life and health.
2. Types of suppression of domestic violence set forth in part one of the current article shall be implemented by the interior affairs bodies.
3. Local self-government bodies and social development bodies shall provide assistance to the interior affairs bodies in immediate placement of victims of domestic violence to a secure place.
4. Other entities safeguarding and providing protection from domestic violence may provide assistance to the interior affairs bodies in immediate placement of victims of domestic violence to a secure place.

Article 25. Actions of the interior affairs bodies to respond to reported cases of domestic violence

1. The interior affairs bodies shall:
 - 1) Receive and file a report of domestic violence case from any person;
 - 2) Arrive at the scene of a domestic violence incident and perform the following actions:
 - a) Take measures to suppress domestic violence;

- b) Interview the parties involved;
 - c) Explain the procedure of issuing and extending the restraining order, and procedure of administrative or criminal prosecution of a perpetrator of domestic violence;
 - d) Explain to a victim of domestic violence his/her right to receive assistance from entities safeguarding and providing protection from domestic violence;
 - e) Provide a victim of domestic violence with information on specialised social services;
 - f) Organise, if necessary, transportation of a victim of domestic violence to a medical facility or other secure place;
 - g) Issue a restraining order and monitor the execution of its conditions;
 - h) Upon application of a victim of domestic violence, extend the restraining order and monitor the execution of its conditions;
 - i) In case of domestic violence against minor children, immediately report about it to the authorised body for protection of children and an officer of interior affairs bodies who works with minor children;
 - j) With the consent of a victim of domestic violence, report the case to municipal subdivisions of social development bodies within three days from the moment of restraining order extension;
 - K) Act as necessary to hand over materials to bring a perpetrator of domestic violence to administrative or criminal responsibility.
2. An officer of interior affairs body has the right of unhindered access to the premises and properties of citizens if there is evidence that there are family members whose life and health are threatened, to take actions to suppress domestic violence.

Article 26. Grounds for issuing a restraining order

1. The confirmation of domestic violence incident shall serve as grounds for issuing a restraining order.
2. Domestic violence incident shall be confirmed by the interior affairs bodies via verifying the information contained in the domestic violence report.
3. The restraining order shall be issued to a victim of domestic violence and a perpetrator of domestic violence aged 18 and above.

Article 27. Issuing and extending the restraining order

1. The restraining order shall be compulsorily issued for three days by the interior affairs body at the place of residence of a perpetrator of domestic violence within twenty-four hours of domestic violence incident.

2. Upon the application of a victim of domestic violence, the restraining order may be extended for thirty days by the interior affairs body.

3. An officer of the interior affairs bodies shall have a perpetrator of domestic violence give written acknowledgment stating that the latter has read the conditions of the restraining order and consequences of failure to abide by it.

4. A perpetrator of domestic violence who was issued a restraining order shall abide by the conditions thereof. Failure of a perpetrator of domestic violence who was issued a restraining order to abide by the conditions thereof shall involve administrative responsibility and not terminate its validity.

5. Information on issuing a restraining order shall be submitted to an officer of the interior affairs body in charge of the restraining order enforcement control.

6. Information on issuing a restraining order shall be submitted to municipal social development bodies and local self-government bodies with the consent of a victim of domestic violence.

7. Issuing, extension of a restraining order or denial of these actions may be appealed to interior affairs body or court.

Article 28. Restraining order for the victims of domestic violence under the age of eighteen or persons who have been declared legally incompetent by court

1. The restraining order for victims of domestic violence under the age of eighteen or persons who have been declared legally incompetent by court shall be issued to their legal representative or municipal subdivisions of the authorised state bodies for protection of children, or an officer of the interior affairs bodies who works with minor children.

2. On behalf of persons under the age of eighteen, as well as persons who have been declared legally incompetent by court, their legal representative or municipal subdivisions of the authorised state bodies for protection of children, or an officer of the interior affairs bodies who works with minor children may apply for the extension of the restraining order for thirty days.

3. Information on issuing a restraining order shall be submitted to municipal subdivisions of the authorised state bodies for protection of children, municipal social development bodies, and local self-government bodies.

Article 29. Conditions of the restraining order

1. The restraining order shall stipulate the following conditions:

- 1) Prohibition to commit acts of domestic violence;
- 2) Prohibition of direct and indirect contacts with a victim of domestic violence;

2. The restraining order shall contain information on the right of a victim of domestic violence to apply to court with requests listed in article 32 of the current Law.

3. The form of the restraining order shall be approved by the Government of the Kyrgyz Republic.

Article 30. Filing a statement of claim to the court for domestic violence

1. The right to file claim to the court for protection of rights and legitimate interests of a victim of domestic violence shall be granted to:

1) A victim of domestic violence, or his/her representative;

2) Public prosecutor;

3) Municipal subdivisions of the authorised state bodies for protection of children if a victim of domestic violence is a minor child or a person who has been declared legally incompetent by court.

2. The statement of claim for protection of rights and legitimate interests of a victim of domestic violence may be filed by public prosecutor only at the request of a person concerned, if such a person cannot apply to court for a valid reason. The statement of claim for protection of rights and interests of a legally incompetent person, including minor child, may be filed without their consent.

3. The statement of claim on the case related to domestic violence shall comply with requirements of civil procedural law of the Kyrgyz Republic.

4. A copy of a restraining order or a copy of court ruling to bring a person to administrative responsibility for committing an act of domestic violence shall be attached to the statement of claim as required by paragraphs 1-6, part 1, article 32 of the current Law.

Article 31. Term of filing and processing the statement of claim

1. As required by paragraphs 1-6, part 1, article 32 of the current Law, the statement of claim may be filed within six months of the date of issue of a restraining order or the effective date of a court ruling to bring a person to administrative responsibility for committing an act of domestic violence. As required by paragraph 7, part 1, article 32 current Law, the statement of claim shall be filed within the term specified by the legislation of the Kyrgyz Republic.

2. The statement of claim for cases related to domestic violence shall be reviewed by court within ten days from the date of receipt of the statement of claim by court, excluding time stipulated by the civil procedural law of the Kyrgyz Republic for initiation of proceedings and preparation of a case for adjudication.

Article 32. Requests for a court ruling

1. Persons specified in part 1, article 30 the current Law may apply to court with one or several claims to a perpetrator of domestic violence:

1) To temporarily leave the joint residence regardless of who owns the residential properties;

2) To prohibit or restrict direct and/or indirect contacts with minor children;

- 3) To prohibit departure from the Kyrgyz Republic;
 - 4) To attend the correctional programme for perpetrators of domestic violence;
 - 5) To submit information on the committed act of domestic violence to the workplace of a perpetrator of domestic violence;
 - 6) To prohibit the acquisition of weapons in compliance with the gun law;
 - 7) Other requirements specified in the applicable legislation of the Kyrgyz Republic.
2. Restriction of rights as requested according to paragraphs 1-3, part 1 of the current article shall be imposed by court for one to six months.
3. Restriction of rights as requested according to paragraph 6, part 1 of the current article shall be imposed by court for five years.

Article 33. Enforcement of court decisions

1. A court decision made in compliance with the requirements stated in paragraphs 1-6, part 1, article 32 of the current Law shall become effective immediately after the judgement was read. The procedure for filing an appeal of the judgement shall be set forth in the civil procedural law of the Kyrgyz Republic.
2. A judgement shall be enforced in compliance with the legislation on enforcement proceedings of the Kyrgyz Republic.
3. A copy of judgement delivered as requested in paragraph 3, part 1, article 32 of the current Law shall be forwarded to the border security bodies of the Kyrgyz Republic within three days of the effective date of judgement.
4. A copy of judgement delivered as requested in paragraph 5, part 1, article 32 of the current law shall be forwarded to the workplace of a perpetrator of domestic violence within three days of the effective date of judgement.
5. A copy of judgement delivered as requested in paragraph 6, part 1, article 32 of the current law shall be forwarded to the authorities responsible for issuing permits to acquire, keep, bear arms, within three days of the effective date of judgement.

Article 34. Assistance to the victims of domestic violence

Assistance provided to the victims of domestic violence shall cover legal, social, medical, psychological and other kinds of assistance.

Article 35. Legal assistance to the victims of domestic violence

1. Legal assistance shall cover consultations, preparation of legal documents, representation on behalf of victims of domestic violence in courts and other state bodies, other kinds of legally significant activities defined by the legislation.
2. The entities obliged to provide legal assistance in compliance with the current Law shall be the interior affairs bodies, prosecutor's office, the Ombudsman (Akyikatchy).
3. Legal assistance may be provided by other entities specified in the current Law.
4. Legal assistance guaranteed by the state shall be provided as prescribed by the respective law.

Article 36. Medical assistance to the victims of domestic violence

1. Victims of domestic violence shall be provided with all kinds of medical and sanitary assistance defined in the health protection law of the Kyrgyz Republic.
2. Entities obliged to provide medical assistance in compliance with the current Law shall be the state and municipal healthcare institutions.
3. Medical assistance to the victims of domestic violence may be provided by persons who qualify for private medical practice.

Article 37. Social and psychological assistance to the victims of domestic violence

1. Social and psychological assistance to the victims of domestic violence shall cover:
 - 1) Measures of social protection;
 - 2) Assistance in obtaining the necessary documents and social allowances in compliance with the legislation;
 - 3) Consultation by social worker, psychologist;
 - 4) Provision of a secure place in specialised social services to ensure the safety of victims of domestic violence;
 - 5) Assistance in social rehabilitation;
 - 6) Social work with families where the acts of domestic violence have been detected;
 - 7) Other kinds of social and psychological assistance.
2. Entities obliged to provide social and psychological assistance shall include specialised state and municipal authorities providing social services: counselling and prevention centres (crisis centres), shelters for victims of domestic violence, as well as other institutions in compliance with the legislation on social public services.
3. Social and psychological services to the victims of domestic violence may be provided by other organisations, including specialised services established to provide social and psychological assistance and rehabilitation related to domestic violence.

4. The reason for provision of social and psychological assistance shall be the request of such assistance by victims of domestic violence, either personally or via other bodies providing protection from domestic violence.
5. Domestic violence protection services shall be provided to a victim of domestic violence according to the list specified by applicable law.
6. A victim of domestic violence has the right to be placed to a state/municipal shelter for secure temporary accommodation. Living in the shelter shall be free of charge on the basis of agreement according to the provisions of the charter or regulations of the shelter.
7. A victim of domestic violence has the right to obtain information on opportunities of training, professional development and retraining, employment and other forms of social rehabilitation;
8. A perpetrator of domestic violence has the right to apply to social development bodies for information on correctional programmes on changing violent behaviour.

Chapter 4. Statistical monitoring and reporting of domestic violence

Article 38. Statistical monitoring of domestic violence cases

1. The authorised agency for statistics in the field of safeguarding and protection from domestic violence shall be the National Statistical Committee of the Kyrgyz Republic.

2. The National Statistical Committee shall ensure coordination of statistical activity of state bodies, local self-government bodies and counselling and prevention centres by coordinating the list and structure of indicators, statistical and accounting forms, order of collection, frequency and processing of statistical information, as well as instructive and methodological materials required for the implementation of institutional statistical works in the field of domestic violence.

3. The National Statistical Committee shall provide public authorities and local self-government bodies with statistical information on domestic violence, ensure dissemination and public access to statistical information on domestic violence by issuing statistical compendia, publications, fact sheets, reviews, website posts, as well as through other ways.

Article 39. Statistical monitoring of responsibilities of entities safeguarding and providing protection from domestic violence

Entities safeguarding and providing protection from domestic violence shall, within their competences:

- 1) Maintain statistical monitoring, reporting and analyse their data on domestic violence;
- 2) Submit statistical reports on domestic violence to state statistical authorities;
- 3) Work to disseminate statistical information on domestic violence, including posts of statistical and other data on domestic violence on their websites.

Article 40. Statistical reporting of domestic violence

Statistical reporting of domestic violence shall include gender-specific indicators demonstrating the number of recorded acts of domestic violence and/or reported acts of domestic violence disaggregated by types of violence; by types of measures taken, social and demographic data on perpetrators of domestic violence and victims of domestic violence, as well as on the level of relationship between the victim and perpetrator of domestic violence, and other statistical data.

Chapter 5. Responsibility for failure to abide by the current Law

Article 41. Responsibility for failure to abide by the current Law

Entities safeguarding and providing protection from domestic violence and their officials shall be responsible for failure to abide or for improper abidance of the current Law as prescribed by the legislation of the Kyrgyz Republic.

Chapter 6. Final Provisions

Article 42. On effectiveness of the current Law

1. The current Law shall be effective upon the expiry of ten days after the date of official publication.

2. Unless and until other laws and regulatory acts of the Kyrgyz Republic are brought into compliance with the current Law, the laws and regulatory acts shall be effective to the extent that does not conflict with the current Law.

Article 43. Bringing regulatory acts into compliance with the current Law

1. The law of the Kyrgyz Republic “On social and legal protection from domestic violence” dated March 25, 2003, #62 (Erkin Too newspaper, dated April 4, 2003, issue #24) shall become null and void.

2. Within six months the Government of the Kyrgyz Republic shall:

- Bring its regulatory acts into compliance with the current Law;
- Raise points to the Jogorku Kenesh (Parliament) of the Kyrgyz Republic on bringing the legislative acts into compliance with the provisions of the current Law.

Adopted by the Jogorku Kenesh (Parliament) of the Kyrgyz Republic

President of the Kyrgyz Republic A. Atambaev