

**ABDUCTION FOR THE PURPOSE OF FORCED  
MARRIAGE: RIGHTS AND REMEDIES IN  
KYRGYZSTAN**



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# 1 The Nature and Scope of the Problem

## 1.1 Introduction

*We never thought that it would happen to our daughter. Zarema went out with this young man only once. After some days we were informed that she had been kidnapped. Our first thought was to bring her back home. But we respect our traditions, so we decided to leave her in that family for the time being. Later we met Zarema several times. I became more and more certain that she would not be happy in that family. So after two weeks, we brought her back.<sup>1</sup>*

This paper focuses on abduction for the purpose of forced marriage and examines the rights and remedies in Kyrgyzstan. In my research I look at this issue from a human rights perspective and focus on cases of Kyrgyz women from rural areas as 65 per cent of the population in Kyrgyzstan reside in a rural area. The cases used to illustrate the problem are based on findings of previous research.

Abduction for forced marriage is an act of violence against women and is a violation of women's fundamental human rights and freedoms. Violence against women encompasses "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life."<sup>2</sup> Article 2 of the UN Declaration on the Elimination of Violence Against Women further states that "Violence against women shall be understood to encompass, but not limited to, the following: (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs". Violence against women can be seen as a measure of women's vulnerability as well as a critical social mechanism for maintaining women's inequality.

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<sup>1</sup> Zarema's mother, Kyrgyzstan. United Nations Fund for Population Activities (UNFPA), State of the World Population Report (2005)

<sup>2</sup> UN Declaration on the Elimination of Violence Against Women (1993)

Throughout the world, there are practices in the family that are violent towards women and harmful to their health both physical and mental. Forcing women into marriage against her will is one these humiliating practices.<sup>3</sup> Marriages are forced upon young women for various reasons. Strengthening family links, protecting perceived cultural and religious ideals, preventing “unsuitable” relationships, protecting family honor and controlling female behavior and sexuality are some of the reasons given by the Working Group on Forced Marriage.<sup>4</sup>

In the last five decades there has been a proliferation and codification of international human rights instruments and standards. These include the Universal Declaration of Human Rights 1948 (UDHR), the International Covenant on Civil and Political Rights 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), the Convention on the Rights of the Child 1989 (CRC) just to name a few among many other United Nations human rights treaties and conventions.

Since their inception, the universality of human rights and their validity in a given local context have been continuously contested through relativist discourses that brand them as external impositions that are incompatible with local culture. As Yakin Erturk, the Special Rapporteur on violence against women put it “cultural practices that discriminate against women are frequently regarded as belonging to ‘others’, whether they live in a developing country or belonging to local immigrant communities. Embedded into this practice of ‘othering’ is a trend towards isolating violence against women from the wider political and economic environment and the overall concern for women’s rights, empowerment and equality.”<sup>5</sup>

What can be observed in Kyrgyzstan is that Kyrgyz women and especially those from rural areas who have been abducted for marriage are forced to stay with their abductors against their will because of social and cultural pressure coming from families and the community, as well as threats from the offender in some cases. Because the

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<sup>3</sup> R.Coomaraswamy (2002)

<sup>4</sup> Published by the (United Kingdom) Home Office Communications Directorate, June 2000.

<sup>5</sup> Y.Erturk (2007)

practice is so widely embraced, an abducted woman finds herself alone in her bid to fight back – confronted not just by her captor’s family, but at times by her own family members who try to convince her that bride-kidnapping is the Kyrgyz way.

Approaching the problem of forced marriage through abduction from an international human rights law perspective is necessary to framing adequate responses and providing effective redress to victims. First, it makes it possible to argue that state responsibility is incurred for the failure to prevent internationally recognized human rights from being violated, abused by private, non-state actors. It creates an obligation on states parties to the treaties mentioned above to undertake positive acts to protect, respect, fulfill and facilitate the human rights of their citizens and all other individuals within their jurisdiction.<sup>6</sup> Furthermore, international human rights law creates a duty to modify or abolish existing customs or practices which constitute discrimination against women. According to CEDAW Article 5(a) – “State Parties shall take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of sexes or on stereotyped roles for men and women...”

CEDAW Committee in its General Comment 19 regarding the violence against women admits that rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women persist in many rural communities. As party to this international human rights instrument, among many others, Kyrgyzstan has clear treaty obligations to protect, respect, fulfill and facilitate human rights of its citizens and all other persons within its jurisdiction, in addition to the country’s obligations under customary international law.<sup>7</sup>

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<sup>6</sup> A.Eide (2001) p.23

<sup>7</sup> Kyrgyzstan is party to all the seven major international legally binding human rights instruments: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Racial Discrimination, Migrant Workers Convention.

In my study I would like to research the following questions:

1. Has the Kyrgyz Republic effectively implemented its obligations under international and national laws in relation to the right to marry?  
If not, what are the obstacles to adequately legislating and enforcing the relevant laws?
2. What kind of measures can be taken to provide an effective remedy for the violation of the right to marry (examining the cases of bride-kidnapping)?

One of the reasons for examining the issue of abduction for the purpose of forced marriage is that it involves breach of a number of international human rights norms. Most central of these is the right to marry. This includes the right to decide when to marry, whether to marry and whom to marry. Individual autonomy in decision-making with regard to marriage is explicitly guaranteed by the ICCPR: parties to the treaty “undertake to respect and ensure” that “no marriage shall be entered into without the free and full consent of the intending spouses”.<sup>8</sup> The CEDAW Convention reiterates and expands upon this right in Article 16 – “State Parties shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women – (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent...”

Forced marriage involves physical violence, coercion, mental abuse and as well as rape and sexual abuse and intense social pressure. As Hannana Siddiqui of the Southall Black Sisters women’s group from the UK put it, “a forced marriage is a means of controlling female sexuality and women’s autonomy.”<sup>9</sup> The effect of this violence on the

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<sup>8</sup> ICCPR, Article 23 (3)

<sup>9</sup> H.Siddiqui (2000)

physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.<sup>10</sup>

Forced marriage may also be considered to constitute acts of slavery.<sup>11</sup> “Slavery-like practices” have been described as including practices whereby “a woman without the right to refuse, is promised or given in marriage”.<sup>12</sup> Forced marriage also implicates the right to personal liberty and security, the right to freedom from arbitrary detention, the right to privacy as well as the right to access to justice, the right to an effective remedy and the right to freedom from gender-based discrimination.<sup>13</sup> Forced marriage through abduction infringes the right to equality and non-discrimination. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.<sup>14</sup> The basic rationale of the principle of equality and non-discrimination is that the human rights enshrined in the conventions should be guaranteed to everyone irrespective of grounds such as race, color, sex, language and religion unless a reasonable and objective justification for not doing so can be demonstrated.<sup>15</sup>

### 1.1.1 Problem description

The main focus in this study will be on the right to marry. Birth, marriage and death are what constitute most people’s life cycle. But only marriage is a matter of choice. However, many women in Kyrgyzstan, especially those from rural areas, are forced into a marriage. What is happening is that in Kyrgyzstan young women must struggle against the pressures of cultural practice which is discriminatory towards women and show the superior position of men in society.

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<sup>10</sup> CEDAW, General Recommendation 19 (1992)

<sup>11</sup> UDHR, Article 4; ICCPR, Article 8; ECHR, Article 4

<sup>12</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, Article 1(c)

<sup>13</sup> Y.Erturk (2007)

<sup>14</sup> ICCPR, General Comment 18 (1989)

<sup>15</sup> K.Frostell, M.Scheinin (2001) p.333

The right to marry, including the requirement of free and full consent by each of the intending spouses, is clearly recognized in international and regional human rights instruments and protected by national laws in many jurisdictions.<sup>16</sup> However, traditional and customary practices, exacerbated by ineffective enforcement of the law and inappropriate policies and procedures constrain the practical realization of the right. Forced marriage is a practice which continues to affect women across diverse cultures, traditions, nationalities, races and religions. The CEDAW Committee has found that “there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages... Other countries allow a woman’s marriage to be arranged for payment or preferment...”<sup>17</sup>

CEDAW in its General Recommendation 21 on Equality in marriage and family relations has emphasized a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. Articles 1 and 2 of the UDHR state that all human beings are born free and equal in dignity and rights and that everyone should enjoy human rights without discrimination. Individuals under ICCPR articles 2 and 26 are also guaranteed equal and non-discriminatory treatment. The right not to be discriminated against is so fundamental that it is one of the rights that cannot be set aside (derogated from) under any circumstances.<sup>18</sup>

A forced marriage is conducted without the valid consent of at least one of the parties. It is a marriage in which duress – either physical or emotional – is a factor.<sup>19</sup>

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<sup>16</sup> Universal Declaration of Human Rights, 1948, Article 16(2); United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1964, Article 1(1); International Covenant on Civil and Political Rights, 1966, Article 23(3); International Covenant on Economic, Social and Cultural Rights, 1966, Article 10(1); Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 16(1) (b); European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 12; American Convention on Human Rights, 1969, Article 17(3); African Charter on Human and People’s Rights, 1981, Article 18 and Protocol to the African charter on Human and People’s Rights on the Rights of Women in Africa, 2003, Article 6(a); Arab Charter on Human Rights, 2004, Article 33(1); Family Code of the Kyrgyz Republic, 2003, Article 3

<sup>17</sup> CEDAW, General Recommendation 21 (1994)

<sup>18</sup> ICCPR, Article 4

<sup>19</sup> Forced Marriage: A Wrong Not A Right. A Joint Forced Marriage Unit of the Foreign and Commonwealth Office and Home Office (2006)

According to Black's Law Dictionary abduction is the crime of taking away a female person without her consent by use of persuasion, fraud or violence for the purpose of marriage, prostitution or illicit sex.<sup>20</sup>

The terms abduction, kidnapping or bride-kidnapping in the paper are used to refer to the act of taking a woman or girl against her will through deception or force and using physical or psychological coercion to force her to marry her abductor. The terms kidnapping, bride-kidnapping or abduction as used in the paper indicate that the abduction is non-consensual – that is, that the woman who is kidnapped was not part of the planning of the kidnapping and had not given her consent to the kidnapping or the subsequent marriage free of psychological or physical coercion.

There is a difference between a forced marriage and an arranged marriage. The tradition of arranged marriage has operated successfully within many communities and many countries for a very long time. In arranged marriage the families of both spouses take a leading role in arranging the marriage but the choice whether to accept the marriage remains with the individuals.<sup>21</sup> An arranged marriage is entered into freely by people.

### 1.1.2 The case of the Kyrgyz Republic

The government of Kyrgyzstan has committed itself to taking action to combat and stop violence against women. The fundamental principles of the UDHR are reflected in the Constitution which is the supreme law of the country. By constitutionally enshrining basic human rights and freedoms Kyrgyzstan has been able to overcome the primacy of the State over the individual that characterized the Soviet system. Kyrgyzstan, to its credit, has successfully ratified with no reservations over thirty international conventions and protocols on human rights that guarantee women's equality and right to live free of violence.

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<sup>20</sup> Black's Law Dictionary (2004) p.4

<sup>21</sup> Forced Marriage: A Wrong Not A Right. A Joint Forced Marriage Unit of the Foreign and Commonwealth Office and Home Office (2006)

Nevertheless, abduction for the purpose of forced marriage, which clearly violates a range of fundamental rights guaranteed by the Constitution and different international human rights instruments Kyrgyzstan is part thereof, takes place in all parts of the country be it towns, rural communities or mountain villages. Abduction typically involves a young man and his friends taking away a young woman by deception or force to the home of his parents or a near relative. Abductors, including the intended groom's female relatives, isolate the woman to prevent her from escaping. Overwhelming psychological pressure is brought to coerce the woman to submit to the marriage and remain with her abductor. Sometimes the woman is raped and is thus threatened by the shame of no longer being a pure woman.<sup>22</sup> Once the young woman is raped, she becomes unmarriageable – an unthinkable condition in many societies including Kyrgyz society. As a result “rape-marriages” are often entered into. Rape has profound consequences on an abducted woman's ability to escape her principal kidnapper. Women in Kyrgyzstan who have been raped by their abductors experience rape as a form of coercion: it functions to force a woman to submit to marriage, to prevent her from escaping, and to isolate her from her family and community. When a kidnapped woman is raped in Kyrgyzstan, she is viewed as “ruined”, branded shameful, and is often rejected by her family and community if she seeks to leave her abductor. The family of the women who has been abducted sees it as a disgrace if she returns home. The stigma attached to an abducted woman and associated with rape makes her stay with her abductor.

In its third periodic report of December 2006 submitted by the Kyrgyz Republic to the CEDAW Committee the state party admits the fact that stereotypes continue to exist and affect the role and place of women in Kyrgyz society, politics and family life. They affect the status of women not only in the areas of political representation, decision making and economic activities, but also at the level of everyday life.<sup>23</sup> The state party also admits the fact that bride kidnapping occurs and the fact that percentage of marriages involving abduction of the bride was greater than in 1999-2001.<sup>24</sup> Forcible bride kidnapping occurs in

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<sup>22</sup> R.Kleinbach, M.Ablezova, M.Aitieva (2004)

<sup>23</sup> Third periodic report of the Kyrgyz Republic on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (2007) p.17

<sup>24</sup> Ibid

Kyrgyzstan despite the fact that, under international agreements ratified by Kyrgyzstan, the Criminal Code of the Kyrgyz Republic in Article 155 stipulates punishment for coercing a woman to marry.

According to the research conducted by American and Kyrgyz sociologists from the University of Philadelphia and American University of Central Asia in 2004 the most popular reason offered for the abduction for the purpose of marriage was that people regarded it as “a good tradition”. This research provided evidence that more than a third of ethnic Kyrgyz women have been married by non-consensual kidnapping.<sup>25</sup> This practice has been on the increase since the republic gained its independence in 1991 and is explained by the view of it as a positive expression of Kyrgyz identity.<sup>26</sup>

### 1.1.3 Previous studies

Various articles and reports have been written about the marriage by abduction in Kyrgyzstan and different studies have been carried out mostly from sociological and anthropological perspectives.<sup>27</sup> So far the best-known work dedicated to researching the practice of bride-kidnapping in Kyrgyzstan was conducted by American and Kyrgyz sociologists from the University of Philadelphia and American University of Central Asia in 2004. The importance of my study is that I approach the problem of abduction for the purpose of forced marriage in Kyrgyzstan from an international human rights law perspective and examine the Kyrgyz government’s obligations towards international human rights instruments in relation to the right to marry and examine available remedies, if any, to redress the occurred violation.

### 1.1.4 Structure

This paper examines the Kyrgyz government’s response to the problem of bride kidnapping and its attempts at dealing with the violation of the right to marry approaching the problem from an international human rights law perspective.

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<sup>25</sup> R.Kleinbach, M.Ablezova, M.Aitieva (2004)

<sup>26</sup> L.Handrahan (2000)

<sup>27</sup> G.Karimova, A.Kasybekov (2003); L.Handrahan (2004); B.Pusurmankulova (2004)

The paper consists of four chapters. Chapter one and chapter four present the problem and my conclusion respectively.

In chapter two I discuss an international human rights law in general, the nature of the obligations of state parties under international human rights law and in particular state accountability under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in relation to the right to marry. Liability of the state will be discussed when it comes to the violation of human rights committed in the private realm as acts of private persons that are violent towards women in this particular case or discriminatory against women do not necessarily implicate the responsibility of the state.

In chapter three I give an overview of women's status in Kyrgyz society describe the practice of bride-kidnapping, clarify the responsibilities of the Kyrgyz government and its obligations under the international human rights law in relation to the right to marry and the right to an effective remedy, see whether the relevant laws are clear, accessible and foreseeable and whether the government has succeeded in implementing the right to marry.

#### 1.1.5 Methodology

The qualitative research method will be used which mainly focuses on the literature review. International human rights treaties will be the main source as I will approach the problem of abduction for the purpose of forced marriage from an international human rights law perspective with an emphasis on the right to marry. I will also refer to the three periodic reports submitted by the Kyrgyz Republic and shadow reports submitted by the Kyrgyz non-governmental organizations to the CEDAW Committee and the committee's following concluding observations and recommendations to the state party when examining whether and how the Kyrgyz government succeeded in implementing its international human rights obligations in connection to the right to marry and providing an effective remedy when the violation takes place in addition to examining the relevant domestic laws. When describing the practice and cases of bride-kidnapping in Kyrgyzstan I will refer to the secondary sources, to the findings of previous research mainly conducted by the Human Rights Watch and American and Kyrgyz sociologists from the University of Philadelphia

and American University of Central Asia as well as reports from local women's and human rights NGOs and newspaper articles both national and international.

## **2 International Human Rights Law and State Accountability under the Convention on the Elimination of All Forms of Discrimination Against Women**

### **2.1 International Human Rights Law**

International human rights are those rights vital to individuals' existence – they are fundamental, inviolable, interdependent, indivisible and inalienable rights and predicate to life as human beings. The second World Conference on Human Rights in Vienna 1993 recognized the universality, indivisibility and interdependence of all human rights and the legitimacy of their international protection.<sup>28</sup>

It was not until after the signing of the United Nations Charter in 1945 that international action concentrated on providing comprehensive protection for all individuals against various forms of injustice. The UN Charter in article 1(3) proclaims human rights “for all without distinction as to race, sex, language, or religion” and under article 55(c) the United Nations and its Member States are committed to promoting “universal respect for, and observance of, human rights and fundamental freedoms for all ...”

The international system of promotion and protection of human rights has been substantially developed and strengthened during recent years. International human rights law now comprises an impressive number of standard-setting instruments adopted by universal and regional intergovernmental organizations.

On the universal level these include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966 that together form what is known as the International Bill of Human Rights (the backbone of the UN human rights program); the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and many other UN instruments. On the regional level the human rights system include the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, American Convention on Human

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<sup>28</sup> Vienna Declaration and Program of Action (1993)

Rights of 1969, African Charter on Human and People's Rights of 1981, Arab Charter on Human Rights of 2004.

The UDHR is the first comprehensive human rights instrument to be proclaimed by a global international organization. Although the Declaration has no force of law, it provides "a common understanding" of the human rights and fundamental freedoms referred to in the UN Charter and constitutes "a common standard of achievement for all peoples and all nations..."<sup>29</sup> The UDHR was the source of inspiration and the basis for the UN in making advances in standard setting as contained in the existing international human rights instruments, in particular the ICCPR and ICESCR. These two UN treaties are the most authoritative expression of the contemporary and universally accepted minimum standards of human rights. The ICCPR and ICESCR along with CEDAW, CRC, International Convention on the Elimination of All Forms of Racial Discrimination of 1966 and other UN human rights instruments create binding legal obligations for the States Parties. Therefore, as between them, issues relating to compliance with and the enjoyment of the rights guaranteed by the treaties are matters of international concern and thus are no longer exclusively within their domestic jurisdiction.<sup>30</sup>

The most important principle imbuing and inspiring the concept of human rights is equality and non-discrimination. All the above mentioned human rights instruments state that everyone is entitled to human rights without discrimination of any kind; equality and non-discrimination principle run like a red thread throughout all international and regional human rights instruments and is a fundamental rule of international law.

## 2.2 The Nature of the Obligations of States Parties and State Accountability under the Convention on the Elimination of All Forms of Discrimination Against Women

State responsibility principle is a fundamental principle of international human rights law and international law in general. The international law of state responsibility for

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<sup>29</sup> UDHR Preamble (1948)

<sup>30</sup> Buergenthal (2002) p.44

human rights violations has evolved significantly in recent times. As party to different international human rights treaties the Kyrgyz Republic is legally accountable for breaches of international obligations under international treaty law that are attributable or imputable to the state. The international law of state responsibility for human rights violations developed to require governments to take preventive steps to protect the exercise and enjoyment of human rights, to investigate violation that are alleged, to punish violations that are proven and to provide effective remedies, including the provision of compensation to victims.<sup>31</sup> Modern developments in international human rights law have widened the network of international obligations through state adherence to multilateral human rights conventions, and have thereby enhanced prospects of enforcing state responsibility.<sup>32</sup>

As Asbjorn Eide put it human rights impose three types or levels of obligations on State Parties: the obligation to *respect*, to *protect* and to *fulfill*. In its turn, the obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide*.<sup>33</sup>

The ICCPR in its Article 2 (1) states that each state party to the Covenant “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political and other opinion, national or social origin, property, birth or other status”. Article 2 of the ICCPR creates duties on the part of the State parties with respect to the domestic application and guaranteeing of all rights in the Covenant.<sup>34</sup>

The obligation to respect means that the States parties must refrain from restricting the exercise of the rights enshrined in the human rights treaties where such is not expressly allowed. In contrast to the obligation to respect Covenant rights, the obligation to ensure them is a positive duty. State parties are obligated to take positive steps to give effect to the rights. The obligation to ensure consists of the obligation to protect individuals against interference by third parties and the obligation to fulfill, which in turn incorporates an

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<sup>31</sup> Rebecca J.Cook (1995) p.229

<sup>32</sup> Ibid

<sup>33</sup> A.Eide (2001) p.23

<sup>34</sup> Nowak (2005) p.28

obligation to facilitate the enjoyment of human rights and an obligation to provide services.<sup>35</sup>

Pursuant to article 2(3) ICCPR each State Party undertakes to provide an effective remedy once rights or freedoms of any person are violated and have obligations to safeguard rights institutionally by way of procedural guarantees, the establishment of relevant legal institutions and other legislative, administrative, political or judicial measures.<sup>36</sup>

State that enter international treaty regimes undertake to do more than maintain their domestic law and customary practice. The Vienna Convention on the Law of Treaties provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>37</sup>

By becoming states parties to CEDAW states agree to “condemn discrimination in all its forms.” The preamble to the CEDAW Convention notes that the UN Charter, the Universal Declaration of Human Rights, the Declaration on the Elimination of Discrimination Against Women (the Women’s Declaration), the two international human rights covenants, and UN and specialized agency resolutions, declarations, and recommendations promote equality of rights of men and women.

The CEDAW Convention in Article 2 requires that states parties “condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women...” It is the general undertaking article that applies with respect to rights recognized in Article 5-16 of the CEDAW Convention. Article 2 requires states parties “to ensure” compliance by their governments’ organs with the Convention and “to take all appropriate measures” to effect “the elimination of discrimination in all its forms” by “any person, organization or enterprise” and “to modify or abolish existing laws, regulations, customs and practices.” Analogies may be drawn to Article 2 of the ICCPR and Article 1(1) of the American

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<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Vienna Convention of the Law of Treaties, 1969. Art.27

Convention on Human Rights, both of which require that states parties shall respect and ensure the rights recognized in those respective conventions.<sup>38</sup>

Under the provision of Article 2 of the CEDAW Convention, a state may well be obligated to prevent and deter private acts of discrimination, to investigate and negate their harmful consequences, and to provide for compensation or sanctions for the performance of such acts, for instance, by penalties of a civil or criminal nature.

States are not responsible in principle for the actions of private persons, either natural or artificial legal persons such as private corporations that are incompatible with standards of conduct that states themselves are obliged to observe under customary international law or treaty law that states have voluntarily assumed, including international human rights conventions. Although individuals have achieved status under modern international human rights law, this is as beneficiaries of rights and as litigants against state defendants rather than as perpetrators of wrongs.<sup>39</sup>

International criminal law has considered pirates and more recently international war criminals to be enemies of humankind and individually accountable under international law, but these exceptions prove the general rule that private individuals, corporations, and unincorporated associations are not directly bound by the provisions of international law.<sup>40</sup> Accordingly, individuals whose acts or omissions are incompatible with the terms of the CEDAW Convention, for instance in creating or maintaining discrimination in women's freedom to marry, bear no legal liability on that ground under the CEDAW Convention.

States are responsible, however, not only for the effects deliberately achieved by different state organs, but also for their failures to act appropriately to meet the international obligations by which the states are bound by customary or treaty law, even when the substantive breach originates in the conduct of private natural or legal persons. Although a state is not internationally responsible for a private act of gender discrimination, it is bound to undertake means to eliminate or reduce and mitigate the incidence of private discriminations, and to achieve the result that such private

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<sup>38</sup> Rebecca J.Cook (1995) p.230-231

<sup>39</sup> Ibid

<sup>40</sup> Ibid

discrimination should never recur.<sup>41</sup> State parties to the CEDAW Convention under Article 2(e) are required to undertake “all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”

State responsibility arises when a state fails to act appropriately under its municipal law to punish and/or allow compensation for violation of human rights. A state bears similar liability when it has failed to act to prevent anticipated violation of human rights. A state will not be directly accountable for the behavior of private individuals or agencies, but their behavior indirectly implicates the state through its lack of due diligence in awareness of the risk of violation of human rights, or the failure of its punitive and/or compensatory responses to such violations. Indeed, a state may be considered to have facilitated an international wrong or to be complicit in its commissions when the wrong is of a pervasive or persistent character.<sup>42</sup>

The law on state responsibility has been developed beyond its classical origins by international human rights tribunals to apply to international human rights conventions. The Inter-American Court of Human Rights established this in its important *Velasquez Rodriguez* decision in 1988 when it imposed liability on Honduras for lack of due diligence in preventing unexplained “disappearances”. Liability of the state arose through its failure to keep the obligation “to ensure” respect for human rights, whose violation in the form of “disappearances” could not be attributed either to state officers or private persons.<sup>43</sup>

Where state responsibility does not arise directly, therefore, a state may nevertheless be internationally responsible for its failure, usually through its executive branch of government but potentially through its judicial or legislative branches, to act appropriately in anticipation of or in consequence of private acts. The responsibility of the state is to respond appropriately to potential or actual private conduct and to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.<sup>44</sup>

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<sup>41</sup> I.Vledder (2005) p.23

<sup>42</sup> M.Agosin (2001) p.87

<sup>43</sup> R.J. Cook (1995) p.238

<sup>44</sup> Ibid

The state must accordingly investigate, correct, compensate, and appropriately punish private violations of human rights, including those expressed in the CEDAW Convention.

Responsibility of a state is particularly significant when human rights are implicated, because the principal beneficiaries of international human rights are private individuals, who are as vulnerable to the depredations and discrimination of their peers as to those of officers of the state. The responsibility of states is not simply not to engage in human rights violations themselves, but to meet international obligations to deter and condemn such violations initiated by private persons.<sup>45</sup> State responsibility includes taking appropriate action to prevent objectionable private action, to monitor private acts that constitute violations, for instance through human rights monitors and police monitors, and to sanction and remedy acts of violation that are identified.<sup>46</sup>

States are required under Article 16 of the CEDAW Convention to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. CEDAW General Recommendation 19 on Violence Against Women makes clear that “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.<sup>47</sup> It explains that – Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.<sup>48</sup>

The CEDAW General Recommendation 19 requires states parties to take “appropriate and effective measures to overcome all forms of gender-based violence, whether by private or public act”. It further requires states parties to CEDAW ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-

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<sup>45</sup> I. Vledder (2005) p.23

<sup>46</sup> Ibid

<sup>47</sup> CEDAW General Recommendation 19 (1992)

<sup>48</sup> Ibid

sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the CEDAW Convention.<sup>49</sup> With respect to family violence, the Recommendation obligates states parties to provide criminal penalties and civil remedies, to remove the defense of protection of family honor by legislation, and, among other programs, to provide support services for victims of violence including incest. States are internationally responsible not simply to legislate against such wrongs, but to make their legislation effective through their judicial, police, and other organs of state power.

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<sup>49</sup> Ibid

### 3 Abduction for Forced Marriage in Kyrgyzstan

#### 3.1 Overview of women's status in society in Kyrgyzstan

I would like to touch upon the women's status in Kyrgyz society in a nutshell before discussing the practice of abduction for forced marriage or bride kidnapping in Kyrgyzstan.

Society in Kyrgyzstan still remains highly patriarchal. When Kyrgyzstan was part of the former Soviet Union, the Soviet state tried to transform the patriarchal nature of Central Asian society. In addition to providing women with new opportunities for education and employment, the state attempted to reduce gender inequality by banning a number of discriminatory marriage practices that limited a woman's freedom of choice, including child betrothals, arranged marriages and kidnap for marriages, polygamy, the payment of bride wealth and levirate. The Soviet State established official procedures for marriage and divorce. The age of sixteen was set as the minimum age of marriage; later the minimum age of marriage was increased to eighteen.

For Kyrgyzstan, the transition to a market-based economy has exposed previously hidden gender-based violence, including domestic violence and rape, and fostered other kinds of gender violence, such as trafficking in women and forced prostitution. The alarming decline in the economic well-being of the Kyrgyz women contribute to the steady rise of violence against women in both the public and private spheres.<sup>50</sup>

Bride-kidnapping, like domestic violence and trafficking is hard to document in a transition country like Kyrgyzstan. The difficulty is not that it is new to the country or denied by the government, but rather that it is so commonplace. A survey of 1,000 women in Bishkek, the capital city of Kyrgyzstan, found that 89.2 per cent had been abused – by husbands, partners or relatives. Violence against women is so widespread in both private and social environments that there is the impression that “non-violent existence” is impossible.<sup>51</sup>

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<sup>50</sup> Bending the bow: Targeting Women's Human Rights and Opportunities (2002) p.76

<sup>51</sup> Ibid

The CEDAW Committee in its two concluding comments to the initial and second periodic reports submitted by the Kyrgyz Republic that were reviewed in 1999 and 2004 expressed its concern about the status of women in Kyrgyzstan, growing rates of poverty among women, rising female unemployment and women's low status in the labor market.

The Kyrgyz government's own reports to the CEDAW Committee acknowledged that the barriers to the achievement of women's equality in the country included "the growth of poverty and unemployment, a low level of social protection, the low participation of women in decision-making, and the persistence of gender stereotypes and traditions..." In its third periodic report to the CEDAW Committee the state party reporting about the gender roles and stereotypes admitted the fact that despite the Family Code of the Kyrgyz Republic has set the minimum marriageable age at eighteen years, according to the research data of the Crisis Centers, the number of precocious marriages is growing. And the reasons for such marriages in most cases are again poverty, unemployment, low income, as well as unique national and cultural patterns.

The CEDAW Committee expressed concerns about persistence of discriminatory cultural practices and stereotypes relating to the roles and responsibilities of women and men in all areas of life, and the deep-rooted patriarchal attitudes, which undermine women's social status and are an obstacle to the full implementation of the Convention. The CEDAW Committee urged the government of Kyrgyzstan "to monitor carefully the persistence of discriminatory cultural practices and stereotypes and intensify its efforts to eliminate them." It further urged the government "to take action to change stereotypical attitudes and perceptions as to men's and women's roles and responsibilities."

## 3.2 Bride-kidnapping

### 3.2.1 Background

Abduction for forced marriage or bride-kidnapping is one of the pervasive forms of violence against women in Kyrgyzstan. Since the collapse of the Soviet Union in 1991 when the country attained its independence the practice of bride kidnapping has been revived with vigor in the country. Although statistics as such are not available, great

numbers of women and girls in Kyrgyzstan have experienced this serious violation of their most fundamental human rights. The research conducted by Russell Kleinbach, Mehrigul Ablezova and Medina Aitieva provided evidence that more than a third of ethnic Kyrgyz women have been married by non-consensual kidnapping and in fact the practice of abduction for forced marriage have been steadily increasing for the past forty to fifty years. Sociologists, leaders of human rights non-governmental organizations and government official experts in this area agree that the phenomenon is on the rise.<sup>52</sup> Bride-kidnapping is a crime in Kyrgyzstan, but goes unpunished in practice. It causes women physical and psychological harm.

The practice of bride-kidnapping for some time has been widely accepted in the published literature as a Kyrgyz traditional practice. There is, however, no consensus among Kyrgyz people as to whether or not bride kidnapping should be considered a “Kyrgyz tradition”.<sup>53</sup> The roots of the bride-kidnapping practice are murky. Like many revised traditions, tracing the origins is a difficult task.

Many Kyrgyz believe that some centuries ago, when Kyrgyz tribes led a nomadic existence, men from one tribe would steal women from nearby enemy tribes to weaken their rivals. Some say that Kyrgyz males kidnapped marriageable young women from neighboring tribes in order to wipe out enemies and increase their own clans. Others say that in previous centuries abduction of a girl was the only way for a loving couple to get married if they could not do it when the parents did not give their approval and consent or because of money problems. Low social status would not allow a poor man to marry a girl from a wealthy family. The whole family would oppose this kind of mismatch so to speak. And the way out for a loving couple to get married in this kind of situation was to organize an abduction of a girl.

According to the records of a German anthropologist Fannina Halle, the act of abduction of a woman by a man takes place in other regions such as Turkmenistan, Kazakhstan and the Caucasus too. For example, in the Caucasus the Cherkess also kidnap woman in almost the same manner as the Kyrgyz. If, for instance, a Kabard man (the

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<sup>52</sup> Third periodic report by the Kyrgyz Republic to the CEDAW Committee (2007) p.18

<sup>53</sup> Kleinbach et al (2005) p.191

Kabards are an ethnic group living in the northern Caucasus) resolved to marry a girl whom he had already chosen, the typical plan of campaign for the capture was devised. He assembled his friends, armed and mounted like himself, and went with them to a place where the girl was bound to pass on the way to the well, or elsewhere. There he remained in hiding until the girl of his choice came in sight. The man then swung her on to his saddle with a firm grip and the booty was carried to his relatives or friends in a wild gallop. If the bitterly offended parents of the bride did not immediately give chase – and that was seldom of much use – the bride’s whereabouts were kept secret until mutual negotiations led to an agreement (1938). Fannina Halle described the practice of bride-kidnapping in Central Asia and according to her records the instances of abduction of women were simply “symbolic relics” of a more prevalent and violent practice.<sup>54</sup>

According to another research conducted by Cynthia Werner on *Women, Marriage and the Nation-State: The Rise of Nonconsensual Bride Kidnapping in Post-Soviet Kazakhstan*, 80 per cent of marriages in Southern Kazakhstan throughout the 1990<sup>th</sup> happened as a result of abduction of women.<sup>55</sup>

The study conducted by American and Kyrgyz sociologists from the University of Philadelphia and American University – Central Asia in 2004 found that the most popular reason offered for bride-kidnapping was that people regarded it as “a good tradition”.<sup>56</sup>

Kyrgyz nongovernmental organizations have toured the countryside with public awareness campaigns aimed at convincing villagers that bride-kidnapping is a crime. Their efforts have made little headway. “We get a lot of resistance,” said Elmira Shishkarayeva of Winrock International, a nongovernmental organization that has conducted such campaigns. “People say, ‘We live in a patriarchal society, and this is the only way. Our young people do not have opportunity to meet or date each other. If you say this is such a bad tradition, suggest something new’,” Shishkarayeva said.<sup>57</sup>

According to Lori Handrahan, who conducted another study on men who participate in bride-kidnapping in Kyrgyzstan, the increase in incidents of bride-kidnapping

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<sup>54</sup> F.Halle (1938) p.92

<sup>55</sup> C.Werner (2004) p.83

<sup>56</sup> Kleinbach et al (2005) p.192

<sup>57</sup> A. Rodriguez (2005)

since the Soviet period can be explained by men's view of it as a positive expression of Kyrgyz identity marker that was denied the Kyrgyz by Soviet rule.<sup>58</sup> During Soviet times there was a penalty for bride kidnapping. Although still illegal by Criminal Code of the Kyrgyz Republic, article 155, the practice is rampant in the country's male-dominated society.

In September 2006 Human Rights Watch published the results of a year-round research on the issue of domestic violence and forcible abduction of women for marriage in Kyrgyzstan. The results of the research show that the problems of domestic violence as well as abduction for forced marriage have long been neglected by government officials. Many law enforcement and other state officials view kidnapping for forced marriage as a useful tradition and not a serious crime. In most cases they do not take action to stop violence against women, to help women obtain safety from abusers, or to investigate and prosecute such a violation in accordance with the law. Instead, state agents often block women's access to justice, encourage women to reconcile with their abusers, and allow violence against women to continue with impunity. Too often, government officials try to justify their inaction, their failure to enforce the law by claiming that the practice of abduction for forced marriage is too entrenched or too widely accepted by Kyrgyz society and is therefore insurmountable.<sup>59</sup>

Article 2 of the Women's Convention clearly states: "State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women..."

The Declaration on the Elimination of violence against Women, solemnly proclaimed by the General Assembly in its resolution 48/104, also states clearly, in article 4, "State should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination".

Bride-kidnapping takes place mostly within the ethnic Kyrgyz community in the country which comprises the majority of the population. Human Rights Watch reports that

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<sup>58</sup> L.Handrahan (2004)

<sup>59</sup> Human Rights Watch (2006) p.2

abduction of women also occurs among ethnic Uzbeks in Kyrgyzstan, but this appears to be rare. Lori Handrahan's study "Hunting for women: Bride-kidnapping in Kyrgyzstan" found that 100 per cent of those who kidnapped were ethnic Kyrgyz.<sup>60</sup>

The alternative report submitted by the Council of Non-Governmental Organizations (which is comprised of seven local NGOs) to the Second Periodic Report by the Kyrgyz Republic to the CEDAW Committee provides evidence that, for example, in Naryn province (in the northeast of the country) out of 100 women interviewed, 62 were forcibly abducted by their present husbands. Forced marriages are accompanied by rape and as a result set up unequal relations between the so-called spouses, especially in their sexual life, on reproductive rights issues, and often lead to the breakup of marriage itself. In the same Naryn province, for example, in 2002 according to the data of local NGO Bakubat, 197 marriages were registered. And 67 marriages out of 197 broke up in the course of a year, and these marriages were formed as a result of forcible abduction of women.<sup>61</sup>

According to the report by Human Rights Watch several government officials who spoke to them contended that bride-kidnapping was a tradition and that it was almost always consensual. With some exceptions, officials failed to acknowledge that abduction of women for forced marriage is a serious crime and that the state has an obligation to punish the perpetrators and prevent future incidents. Officials from the Office of the Ombudsman, the government agency responsible for advocating for the rights of citizens of Kyrgyzstan, when interviewed by Human Rights Watch, defended the practice of bride-kidnapping, contending that it is a tradition, and that women therefore ultimately consent to it. In his interview with Human Rights Watch on the issue of abduction for forcible marriage, Mamat Momunov from the Ombudsman's Office said that the Office receives no appeals because people regard abduction for marriage as a tradition. A senior police officer from Jalal Abad province also interviewed by Human Rights Watch admitted that there was abduction for marriage and presented it as a useful institution that facilitates marriage, commenting, "Of course there is kidnapping, without this marriage does not happen".

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<sup>60</sup> L. Handrahan (2004)

<sup>61</sup> Alternative Report to the Second Periodic Report by the Kyrgyz Republic to the CEDAW Committee (2003) p.12

Quoting a government human rights official explaining the role that he says abduction plays in ensuring that women get married, he said “I am a Kyrgyz man who grew up here and on the one hand I see abduction as a violation of the rights of a woman who then cannot marry the man of her choice and she loves, but also many women are very shy, their behavior is different, especially in the villages. We advise women not to associate with men. Our girls do not know how to deal with men. When they grow up, they do not know what to do. Some women are grateful to be kidnapped; otherwise they say they would never get married and have children, so I look at it from that angle. I do not support bride abduction myself.”<sup>62</sup>

As the report rightly points out a consequence of regarding bride-kidnapping a tradition is that it becomes part of the unwritten social charter and is deemed above criticism. Tursunbek Akun, who was recently elected as the Ombudsman by the Parliament, then back in 2005 President Kurmanbek Bakiev’s advisor on human rights policy talking about bride-kidnapping said, “Most problems are resolved by the ‘law of the people’. So people regard the law of the people as higher than the written law.”<sup>63</sup>

The discussion whether abduction of women for marriage is a traditional practice or not has important consequences for the rights of women in Kyrgyzstan. As experts from Human Rights Watch and other local human rights non-governmental organizations voice it some government officials in Kyrgyzstan who do not object abduction of women and assume it to be a tradition or voluntarily may not consider it a discriminatory practice, may not be motivated to work to end it, despite the fact that Kyrgyzstan is party to the CEDAW Convention and article 16 of the Convention clearly sets out the framework for marriage and family relations, based on twin principles of freedom of choice and equality within the marriage. The CEDAW Convention in article 2(f) clearly calls for governments to take action to eliminate discrimination rooted in customs and traditions.

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<sup>62</sup> Human Rights Watch (2006) p.88

<sup>63</sup> Ibid.

### 3.2.2 Pattern of Abduction

Abduction itself is an act of physical assault. Kidnapping of women for marriage is carried out in several different ways and each woman's experience of kidnapping is unique, but there are some elements that are common to most abductions for forced marriage.

Bride-kidnapping is perpetrated by group of men who capture a young woman, usually below the age of 25, through deception and physical force and take her to the home of the intended groom. The woman may be abducted from home or she may be kidnapped from another location, such as a workplace, a café, a party or right from the streets. Sometimes the men are people she has met prior to the incident; sometimes the abductors are complete strangers. Kidnappers, including the intended groom's family isolate the women to prevent her from escaping. Overwhelming psychological and sometimes physical pressure is brought to bear – chiefly by the kidnapper's female relatives who coerce to compel the abducted woman to “agree” to the marriage and submit to having the marriage scarf placed on her head which is the sign that she consents to marry her abductor.<sup>64</sup> The psychological pressure to submit to the marriage and remain with the abductor in some cases also comes from the natal family of the woman who see it as a disgrace if she returns home. The woman's opinion and wishes are completely ignored in this situation. Sometimes the young woman is raped soon after being taken to the abductor's house, so that she will feel shame and feel unable to return to her parent's home. Many young women who are raped by their kidnappers experience despair and hopelessness and convinced that they have no choice but to stay. The extended consequences of the rape on her prospects for escape are therefore both real and perceived – the woman sees herself as tainted and, anticipating being rejected by her family and community, feels compelled to remain with her kidnapper and rapist.

Observers point out that if a woman spends one full night in the abductor's home, she is considered no longer “pure”, regardless of whether she is still a virgin. Turganbubu Orunbaeva, whose NGO in Naryn province advocates for an end to bride-kidnapping, has worked on cases in which parents refused to help their daughters escape abduction because they, and their community, saw the young women as “ruined and thus unmarriageable any

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<sup>64</sup> The scarf is called a *jooluk* in Kyrgyz. L.Handrahan (2004) p.209

longer”. Orunbaeva said that in one case a young girl was kidnapped and “after three days was no longer a virgin and so her parents refused to let her leave the forced marriage.”<sup>65</sup>

According to reports of Bishkek based Sezim Crisis Center marriages that take place following bride abductions are not always registered with the state. In most cases a Muslim cleric conducts a religious wedding ceremony and/or a wedding feast is held. And in case of divorce women have no rights to community property, and children are not eligible to alimony payment.<sup>66</sup>

Findings of Human Rights Watch provide evidence that many young women and girls are taught by their families and influenced by their community not to leave their abductor’s home if they are kidnapped. A set of popular proverbs are employed to deliver the message that women should submit to an abduction if kidnapped, that they should not seek to escape, and that leaving will bring them unhappiness for the rest of their lives. NGO leaders and government officials who spoke to Human Rights Watch agree that these social messages can predispose women to submit to a kidnapping, regardless of their own wishes.

Two popular sayings along these lines, referenced by people Human Rights Watch interviewed, were: “When a stone is thrown, it stays where it lands” and “once you have crossed the threshold, you cannot go back.” According to Tursunbek Akun, now the Ombudsman, “These sayings mean that if you exit the house, something bad will happen. Mothers and grandmothers tell the girl not to leave if she is kidnapped and they use these proverbs as instructions. Girls therefore stay, because they were told these messages and it affects them.”<sup>67</sup> Abductors including female relatives of the intended groom, who take part in the abduction, employ these sayings to coerce the kidnapped woman to stay and agree to marry her kidnapper.

In her interview with B.Bekeshova, a local journalist from *The Ayalzat* newspaper, Asel M., who was kidnapped by strangers at age 18 and taken to a remote area, said, “If

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<sup>65</sup> Human Rights Watch (2006) p.106

<sup>66</sup> Forgotten Women of Kyrgyzstan. Gender Studies, Central Asian Network <http://www.genderstudies.info/hist/hist7.php> (visited 16 December 2007)

<sup>67</sup> Human Rights Watch (2006) p.113

you are kidnapped, you must stay. If you decide to leave, you will be cursed with a bad life.”<sup>68</sup>

Shoira S., interviewed by Human Rights Watch, also spoke of the psychological power of curses. Recalling her own experience of being kidnapped, she said, “The senior female relatives of my present husband put bread and salt across the doorway, so I could not leave, otherwise it would be a bad omen for me, a curse.”<sup>69</sup>

Farida F., kidnapped at age 19, described the pressure put on her by her abductors as intense, and said she gave in when she recalled the messages she had received growing up. She said: “A lot of women of older age are gathered around me. There is also another custom: If a girl does not want to marry a particular man and she disagrees, these women are asked to come over and to “prepare” the girl morally, either trying to convince her by putting moral pressure on her or sometimes hypnotizing her. So you can probably imagine how that feels, when a girl is alone trying to defend herself and there are all these people around her, all saying, ‘You should agree, because this is right, it is according to our customs and traditions. God himself decided that it should be this way,’ and so on and so forth. At that moment I remembered my grandmother’s words: ‘If it happens to you this way, just let it be. It means that it must be your destiny then, it must be the way of your happiness.’ Of course, it was very difficult for me to put up with it, but I had to. Although later on I greatly regretted that I did it.”<sup>70</sup>

Kamil Baialinov, one of the representatives of Kyrgyzstan, during the consideration of the second periodic report submitted by the state party to the CEDAW Committee in January 2004, speaking about bride-kidnapping said that the data on polygamy and bride-kidnapping in the report related to cases that had been heard before a court. He admitted that regrettably those cases represented only the tip of the iceberg since offences were often not reported to the law enforcement authorities. Mr. Baialinov also noted that under the Constitution of the Kyrgyz Republic, direct interference by the State in citizens’ private

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<sup>68</sup> B.Bekeshova interview with Asel M. (2004)

<sup>69</sup> Human Rights Watch interview with Shoira S. (2006) p.114

<sup>70</sup> Human Rights Watch interview with Farida F. (2006) p.115

lives was not permitted. That provision, according to him, was an obstacle to efforts to combat this phenomenon, the practice of bride-kidnapping.<sup>71</sup>

### 3.3 Available remedies in Kyrgyzstan

This section reviews the nature, scope and extent of available remedies in Kyrgyzstan after abduction has taken place. I will focus on judicial protection examining in turn constitutional petitions for the protection of fundamental rights, criminal and family laws and their effectiveness.

#### 3.3.1 Writ petitions for protection of fundamental rights

Abduction for the purpose of forced marriage clearly violates a range of fundamental rights guaranteed by the Constitution. The government of Kyrgyzstan has committed itself to taking action to combat and stop violence against women. The fundamental principles of the UDHR are incorporated in the Constitution, which is the supreme law of the country. The Constitution guarantees the right to life and personal liberty, safeguards on arrest and detention and a prohibition of slavery. It also secures the rights to equality before the law, equal protection of the law and the prohibition of discrimination on the grounds of sex, religion, race, ethnicity, origin, language or other status. In addition, torture and all forms of cruel, inhuman and degrading punishment are prohibited in the country.

In Kyrgyzstan the High Court may make orders to direct persons performing functions in connection with the affairs of the country to refrain from doing anything they are not permitted to do, or to do anything that they are required by law to do or to declare that any act done or proceeding taken has been done or taken without lawful authority and is of no lawful effect.<sup>72</sup> The court may also make orders directing such persons or authority to enforce any of the fundamental rights guaranteed by the Constitution. Such petitions

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<sup>71</sup> Second periodic report of the Kyrgyz Republic to CEDAW (2004)

<sup>72</sup> Applications for enforcement of fundamental rights may be brought under Constitution of the Kyrgyz Republic 1993, Article 21(5)

may be filed by any aggrieved person, a category which has been held to include any person or organization acting in the public interest.<sup>73</sup> Such applications may provide a useful avenue to challenge the failure of state authorities to take necessary action to address aspects of abduction for forced marriage.

### 3.3.2 The laws against abduction for forced marriage

The right to marry is explicitly protected by legislation. Under the 2003 Family Code, the marriage will be void if it lacks either party's free consent. Parties to the marriage should be of marriageable age. The age of eighteen is set as the minimum age of marriage.<sup>74</sup>

Forcing any person into a marriage is a punishable offence under the criminal law of the country. Article 155 of the Criminal Code outlaws non-consensual marriage by abduction. It says "Forcing a woman to marry or to continue a marriage or kidnapping her in order to marry without her consent" will be punished under the law. The prescribed penalty is a fine in the amount of 100 to 200 times monthly wage or up to five years in prison.<sup>75</sup> (The minimum monthly wage in Kyrgyzstan in 2007 was about 350 soms, equivalent to about \$9.71).<sup>76</sup>

Zhanna Saralaeva from the Association of Women Leaders of Jalal Abad and Kaniet Crisis Center, in her interview with Human Rights Watch expressed the view that the option of a fine for such a serious crime is outrage on justice. "It is crazy that there is only a 35,000 soms fine for abduction. He takes her, rapes her, and throws her out and gets just a fine," said women's rights activist Zhanna Saralaeva.

Sociologist Medina Aitieva of American University-Central Asia agrees: "The penal code should be much clearer on the punishment for abduction. For most serious

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<sup>73</sup> The recognition by the courts of the Kyrgyz Republic of the principles of public interest litigation, whereby persons who are not directly affected by an alleged violation of fundamental rights nevertheless have standing to file a writ petition, opens up the possibility of NGOs being petitioners in such cases.

<sup>74</sup> Family Code, 2003 Article 13

<sup>75</sup> Criminal Code of the Kyrgyz Republic, 1997

<sup>76</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices – 2007: Kyrgyz Republic," March 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100616.htm> (visited May 1, 2008).

crimes you get a jail sentence, but for abduction they give the option of a fine. Accomplices and other complicit should also get jail time and people should be aware that they run a risk by being part of such an act.”<sup>77</sup>

Other laws, in particular article 111 of the Criminal Code, can also be employed to hold kidnapers to account for the violence against women that often accompanies abduction. Article 111 criminalizes the infliction of physical or psychological suffering on a person through systematic beatings or other violence. The prescribed penalty of up to three years in prison is increased to up to seven years if the violence is committed against “a person who had been abducted or taken hostage.” Other relevant aggravating circumstances include when the violence is committed by a group or by group acting under a conspiracy. Criminal Code article 112, “Purposeful infliction of light damage to health,” can also be relevant to some cases of kidnapping.<sup>78</sup>

The 2003 Law on Social-Legal Protection from Domestic Violence is essentially silent on the issue of forced marriage. Article 4 states that one of the principles guiding this law is “protection from religious, cultural and other customs that may harm family relationships,” but makes no further references that could be construed as providing specific protection against the practice of bride-kidnapping.

### 3.4 Obstacles to enforcing the law

On the face of it, the above mentioned remedies appear sufficient to meet the state’s international obligations to provide effective protection against abduction for forced marriage. However not enforcing the law and obstacles to accessing the law severely limits its impacts in addressing this issue.

The CEDAW Committee has stated its concerns about the continuing existence of bride abduction for forced marriage and polygamy in Kyrgyzstan, despite laws against these practices. It said, “The Committee recommends action without delay by the State party to enforce its laws penalizing these practices. The Committee also recommends that

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<sup>77</sup> Human Rights Watch (2006) p.120

<sup>78</sup> Ibid

the State party take comprehensive and effective measures, including the training of the judiciary and law enforcement officials and public awareness raising campaigns, to eliminate these practices.”<sup>79</sup>

According to the shadow report to the Second Periodic Report by the Kyrgyz Republic to the CEDAW Committee submitted by the Council of NGOs in 2003 little, if any, implementation of the Family Violence Law has been evident, primarily due to the lack of mechanism for its implementation and its non-compliance with other existing legal act. The adoption of the law has not been adequately publicized and large segments of the population are practically unaware of its existence. More disturbingly, the report says, employees of law-enforcement, judicial and state bodies fail to use or apply the law in practice. In a survey conducted by the Association of Crisis Centers of 150 law-enforcement personnel and criminologists, judges, teachers and doctors, only 15 percent responded positively to the question, “Do you know that the law on violence in the family was adopted?”<sup>80</sup>

Those responsible for law enforcement do not regard the abduction of women and girls for forced marriage and domestic violence as serious crimes. The shadow report to the CEDAW Committee quotes a client at Umut Crisis Center, “...together with my husband we walked along the avenue, and we got in a fight. My husband started beating me. A policeman who happened to pass by pulled us apart and politely advised him to do it at home. I hate policemen. No one can protect me...”<sup>81</sup>

Local law enforcement officials who spoke to Human Rights Watch did not view abduction of women for forced marriage as a law enforcement issue at all. One senior police officer said, “Abduction, it is just called this. Ninety-nine percent of women agree to the kidnapping. I kidnapped my wife...” A senior police official from another major city said, “Abduction of women for marriage – oh, they only do this by agreement. This is following traditions. If there is no agreement, then people will file a complaint.”<sup>82</sup>

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<sup>79</sup> CEDAW Committee Concluding Comments to the Second Periodic Report of the Kyrgyz Republic (2004)

<sup>80</sup> The shadow report to the Second Periodic Report by the Kyrgyz Republic to the CEDAW Committee submitted by the Council of NGOs (2003) p.11

<sup>81</sup> Ibid

<sup>82</sup> Human Rights Watch (2006) p.121

As Human Rights Watch reports it referring to local NGO leaders, police are generally indifferent to the problem of abduction for forced marriage. The failure of police to act on behalf of victims of forced marriage through abduction is closely connected with women's lack of trust in police and the problem of rampant police corruption. When Human Rights Watch asked what steps the police are taking to prevent abduction for forced marriage, Turganbubu Orunbaeva of Bakubat NGO from Naryn province said, "The police have no role in this so far."<sup>83</sup>

Indifference from the law enforcement bodies, women's lack of trust in police, corruption perpetuate the cycle of crime, arbitrariness of the law and impunity for violent crimes against women.

Prosecutions for the crime of bride-kidnapping are extremely rare. "Kyrgyzstan is advanced in law protection, but not in implementing it. One of the problems is that the mentality of local people is not ready. For example, we helped one young girl to cancel her marriage by a court decision in northeastern Tiup village. But it had negative social consequences. She became an outcast in the village and had to move to Karakol city. The community was angry that she broke with 'tradition'," said Julien Pellaux, a communication and advocacy officer at UNFPA Kyrgyzstan in his interview with IRIN.<sup>84</sup>

According to Olga Klementieva, a lawyer from Chance Crisis Center, few victims of kidnapping for forced marriage turn to the police.<sup>85</sup> The psychological pressure, fear of social stigma, and fear of retaliation that so effectively prevent a woman from fleeing a man's home after she is abducted also work to dissuade her from reporting the crime of kidnapping to the authorities.<sup>86</sup> As Medina Aitieva said in her interview with Human Rights Watch, "Most women do not go to the police because they are afraid of the negative consequences and condemnation of their families; and many are dependent on others and cannot risk upsetting them. If a woman's parents are willing to fight for her, then it can be

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<sup>83</sup> Human Rights Watch (2006) p. 122

<sup>84</sup> Integrated Regional Information Networks (IRIN), a project of the UN Office for the Coordination of Humanitarian Affairs. <http://www.irinnews.org/report.aspx?reportid=33759> (visited 2 May 2008)

<sup>85</sup> Human Rights Watch (2006) p. 120

<sup>86</sup> Ibid

pursued, but usually the parents are more concerned about how society views them than they are about fighting for their children.”<sup>87</sup>

Even in the rare instances when a woman can overcome barriers and file a complaint, and when police register the woman’s complaint, activists charge, the authorities fail to prosecute cases of abduction. Turganbubu Orunbaeva of Bakubat NGO from Naryn spoke about her research into the issue, saying that out of 860 women interviewed about kidnapping, only three had brought criminal cases. In those three cases, she said, the men were not punished: “The women gave statements to the police and then the statements never went to the court; the parents found common agreement and the women remained without justice.”<sup>88</sup>

One obstacle a woman faces when trying to pursue a criminal case against her abductor is the perception that if she succumbed to the pressure brought to bear on her and in the end submitted to the marriage and stayed at the home of her abductor, then she cannot hold her kidnappers accountable for their actions against her. She is seen as complicit in the kidnapping and is told she cannot bring a case against her abusers. For example, Dinara A., who lived with her abductor for nine months, said that when she later consulted a lawyer about her options for bringing a case for the kidnapping and beatings by her sister-in-law, the lawyer said that she had waited too long: “The lawyer at the shelter said that after nine months of marriage I cannot say that I was forced and abducted. The lawyer said I should have written a statement earlier and gotten a medical exam when the sister-in-law beat me.”<sup>89</sup>

Government officials responsible for human rights on a national level resist responsibility to stop abduction for forced marriage, and instead put the burden on women victims to ensure that the law is followed. “Women should be the initiators of complaints, they should appeal. Not if girls are kidnapped and then agree to stay, but if she feels that there was a violation of her rights,” said one official from the Ombudsman’s office to the

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<sup>87</sup> Human Rights Watch (2006) p.123

<sup>88</sup> Human Rights Watch (2006) p.124

<sup>89</sup> Ibid

Human Rights Watch, revealing at the same time his perception that women who agree to stay with their abductors have not experienced violation of their rights.”<sup>90</sup>

Forced marriage through abduction as an act of violence against women is a violation of women’s fundamental human rights. The government of the Kyrgyz Republic has committed itself to taking action to stop violence against women. As was mentioned earlier, Kyrgyzstan has successfully ratified over thirty international instruments that guarantee women’s equality and right to live life free of violence. The government of the Kyrgyz Republic has clear obligations under international human right law to protect women from violence perpetrated by state agents and private actors. Article 2 of the CEDAW, which Kyrgyzstan ratified back in 1997, clearly states that states parties to the treaty are obligated to provide remedy for violation of women’s rights by any person, organization and enterprise and to exercise due diligence in investigation and prosecuting such wrongs. So, the Kyrgyz government under general international law and specific human rights covenants is responsible for private acts when it fails to act with due diligence to investigate and punish forcible abduction of women for marriage and redress the occurred violation of the right to marry.

Declaration on the Elimination of Violence against Women in article 4 spells out the obligation of states to “condemn violence against women” and that “states should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.” Like article 2 of the CEDAW Convention and General Recommendation 19 of the CEDAW Committee, the Declaration on the Elimination of Violence against Women in article 4 further states that states parties should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish act of violence against women, whether those acts are perpetrated by the State or by private persons.”

As Radhika Coomaraswamy, the former UN Special Rapporteur on Violence against Women, its causes and consequences, stated “In the context of norms recently established by the international community, a State that does not act against crimes of

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<sup>90</sup> Human Rights Watch (2006) p.127

violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.”<sup>91</sup>

The failure of the Kyrgyz government to adequately respond to stop forcible abduction of women for marriage, to provide effective remedy for the victims and generally to protect women’s rights constitutes a breach of its obligations under different international human rights instruments as well as domestic laws.

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<sup>91</sup> R.Coomaraswamy (2002)

## 4 Conclusion

The objective of the paper is to highlight the issue of abduction for the purpose of forced marriage and the rights and remedies in Kyrgyzstan and examine whether the Kyrgyz Republic has effectively implemented its obligations under international and national laws in relation to the right to marry. Obstacles to adequately legislating and enforcing the relevant laws are also examined as well as measures that can be taken to provide an effective remedy to redress the violation of the right to marry.

Abduction for the purpose of forced marriage (the bride-kidnapping practice in Kyrgyzstan) is a violation of women's fundamental human rights. Because of social and cultural pressure that comes from families and the community Kyrgyz women and especially those from rural areas who have been kidnapped for marriage are forced to stay with their principal abductors against their will. Rural women are especially at risk of gender-based violence because traditional attitudes regarding the subordinate role of women persist in many rural communities.

The government of Kyrgyzstan has committed itself to taking action to stop violence against women. Forced marriage is clearly prohibited under the criminal code of Kyrgyzstan. Abduction for forced marriage violates fundamental rights safeguarded in the Constitution, the supreme law of the country where fundamental principles of international human rights law like equality and non-discrimination are enshrined. Moreover, the Kyrgyz Republic as a state-party to many international human rights instruments has an obligation under international law to take appropriate action to address forced marriage. International human rights framework establishes the primacy of women's right to live a life free of gender-based violence. Forced marriage through abduction as one of the forms of gender-based violence seriously inhibits women's ability to exercise rights and enjoy freedoms on a basis of equality with men. International human rights law emphasizes equality of all human beings and that everyone should enjoy human rights without discrimination whatsoever.

The Kyrgyz Republic has ratified numerous international human rights instruments and is thus legally obligated to protect, respect, fulfill and facilitate human rights of its

citizens and of other individuals within its jurisdiction. But what can be observed in Kyrgyzstan is that young women must struggle against the pressures of cultural practice which is discriminatory towards women and show the superior position of men in society. International human rights law emphasizes that states cannot invoke any cultural, traditional, religious discourses to justify their failure or inability to promote and safeguard their citizens' human rights and those of aliens on their territories.

Abduction for forced marriage violates a whole range of international human rights norms such as the right to equality and freedom from gender-based discrimination, the right to personal liberty and security, the right to privacy, the right to freedom from arbitrary detention, and in the first place the right to marry with free and full consent of each of the intending spouses, the right that is clearly recognized in international and regional human rights instruments and protected by domestic laws in many jurisdictions. Forced marriage involves coercion, physical violence, sexual abuse and intense social pressure.

International human rights instruments apply to violence perpetrated by state organs. States are not responsible in principle for the actions of private persons be it natural persons or legal entities. But as it was pointed out in the paper, under general international law and specific human rights instruments such as the CEDAW Convention, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish act of violence, and for providing legal remedies.

The government of Kyrgyzstan has failed to uphold and fulfill its duties under international human rights law as well as its own Constitution and domestic laws to protect women's fundamental human rights, particularly the women's right to marry with free and full consent. The government of Kyrgyzstan has committed itself to providing effective remedies through its competent judicial, administrative and legislative bodies. As the paper highlights, the state has failed to provide effective remedies to redress the violation of human rights of its citizens and nowhere is this failure more evident than in the case of women's rights to marry, particularly demonstrated through the practice of bride-kidnapping.

The paper highlights the limits of the formal law in affecting the lives of people on the ground. Four main factors can be pointed out here: one is that the law in order to be followed must be accepted, internalized and legitimated by the people on whom it is to be applied. Secondly, the law must have an enforcement mechanism that is effective and just. The study also points out to a third problem that is: not only some people not respect women's rights but also government officials as part of Kyrgyz society have different view on women's rights. The paper also highlights the issue that when countries come out of oppressive rules, such as the soviet rule as in the case of Kyrgyzstan, then they try to manifest their identity by trying to revive customs that may have been alive at some point earlier but were dying now as society has moved on. Traditional practices that violate human rights and are inconsistent with international human rights law must not be sustained. The government of Kyrgyzstan has clear obligations under international human rights law to modify or abolish existing customs and practices which constitute discrimination against women.

The government of the Kyrgyz Republic and local non-governmental organizations should take concerted and immediate action to put an end to this abusive and humiliating practice, the practice of bride-kidnapping or forced marriage through abduction. The Kyrgyz government should ensure that law provides adequate, accessible and affordable enforcement procedures and legal remedies for violation of women's human rights. The authorities should ensure improvement of police investigations and the training of police officers to bolster prosecutions of perpetrators and accomplices of abduction for forced marriage. The state should undertake special awareness-raising as well as human rights education campaigns targeted at women, potential and actual victims of bride-kidnapping, to enhance women's awareness of their rights and to ensure that women can avail themselves of procedures and remedies for violation of their rights under the international human rights instruments that Kyrgyzstan has ratified and domestic laws.

Gender-sensitization training for all authorities dealing with the problem of bride-kidnapping is very important. Authorities in Kyrgyzstan should ensure development of support, financial and otherwise, for women's crisis centers and shelters and for local NGOs that provide assistance to victims of gender-based violence including the forcible

abduction of women for marriage. It is very important to introduce education and public information programs to help eliminate stereotyped attitude that hinder women's equality and change attitude concerning the roles and status of men and women in Kyrgyz society.

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