

Draft

Law of the Kyrgyz Republic

« On state guarantees in the area of provision of equal rights and opportunities for men and women »

The present Law establishes state guarantees in ensuring equal rights and opportunities to persons of a different sex in political, social, economic, cultural and other areas of life; it is designed to protect women and men against discrimination on the basis of sex and aimed at establishing progressive (modern) democratic relations between men and women based of the national traditions.

Chapter I

General provisions

Article 1. Basic definitions used in the present law

Temporary special measures are the measures of organizational, legislative, and institutional nature aimed at providing support to persons of one of the sexes in the most discriminative spheres of life subjected to gender stereotypes and absence of gender culture.

Gender is a social aspect of relations between men and women which is manifested in all spheres of life, including politics, economy, law, ideology and culture, education and science.

Gender analysis is the process of evaluation of an impact on women and men of existing or proposed programs, legislation, political agenda of the government in all spheres of public life.

Gender-based discrimination is any difference, exception or preference, which limit rights and interests of persons on the basis of sex and weakens or nullifies the acknowledgement, enjoyment and enforcement of equality of rights among men and women in political, economic, social, cultural, civil or any other areas of public life.

Gender Indicators are indexes or measurements which employ quantitative and qualitative indicators for summarizing gender-related developments occurring in the public sphere during a certain period of time.

Gender Relation is a nature of behavior and treatment between persons of a different sex in the process of communication or implementation of various types of joint activities.

Gender Approach (mainstreaming) is a strategy by means of which interests and experience of women and men become an integral aspect for the development, performance, monitoring and evaluation of policies and programs in all political, economic, labor, social and other spheres so that inequality between men and women is not perpetuated.

Gender Policy is a governmental and a public policy aimed towards ensuring equality in mutual relations between persons of a different sex.

Gender representation is the presence of persons of a different sex in an organization in the established proportion.

Gender statistics is the statistics that reflects relevant positions of persons of a different sex in all spheres of social and political life and accentuates gender problems and relations in the society.

Gender equality is an equal legal status of women and men and equal opportunities for the enjoyment of these rights, allowing persons of both sexes to use their abilities to participate without any impediments in political, economic, labor, social, public and cultural spheres of life.

Equality of rights, obligations and responsibility of persons of a different sex means equality of these rights, obligation and responsibility before the law, except for the mitigating circumstances established by the legislation of the Kyrgyz Republic.

Gender stereotypes are the perceptions of people in relation to capabilities of boys and men, of girls and women.

Gender-based analysis is monitoring and public/ legal analysis of the national legislation, as well as inspection of drafts of normative legal acts with a view of determining their conformity with the gender legislation.

Household work is a form of labor activity aimed at satisfaction of needs of family. Household work is one of the types of socially useful and productive work which underpins the human and social potential of the country.

Quotas are one of the types of temporary special measures expressed in the legally required level of representation of persons of both sexes in political institutions, in the sphere of labor relations and other spheres, which can be discontinued upon the gradual achievement of the balanced representation of men and women in governmental bodies and institutions of local self-government.

Violation of equal rights is an active or passive behavior of humiliation, contempt or restriction of rights or rendering of privileges in based on a person's sex.

Subjects of gender equality are public, political, economic and other social relations subjected to legal regulation.

Outright gender discrimination is the discrimination which directly indicates a person's sex.

Affirmative action is a policy aimed at the elimination of the disbalance between opportunities for women and men to realize the equal rights given to them by the Constitution and laws.

Equal opportunities represent the system of means and conditions required for the achievement of true gender equality.

A relation based on an equal partnership is the cooperation or joint participation in the governmental and public life based on equal terms of persons of a different sex.

Latent gender discrimination is the discrimination without a direct indication of a person's sex.

Sexual harassment is immoral behavior, as well as illicit actions of sexual character in relation to persons of a different sex, expressed verbally (threats, intimidations, obscene remarks) or physically (touches, pat), humiliating and insulting the person subject to labor, official, material, family and other dependence.

Article 2. Goals and objectives of the present Law

The goal of the present Law is the achievement of parity status of women and men in all spheres of life of a society.

The objectives of the present Law are to provide the persons of a different sex the following:

- equality of rights, duties and responsibilities;
- equality of opportunities;
- equal partner relations in all spheres of life;
- equality in family relations;
- equality and non-discrimination in political, social, economic, labor and other activity;
- equality of outcome.

Article 3. Principles of the present Law

The present Law is based on the following principles:

- observance and implementation of the norms of international law in the field of gender equality;
- democracy;
- rule of law;
- responsibility and accountability of all agencies in the implementation of the gender policy;
- assistance of a civil society in promotion of the gender policy.

Article 4. Scope of the present Law

The present Law is applied to the citizens of the Kyrgyz Republic, to the foreign citizens and persons without citizenship that have permanent or temporary residence on the territory of the Kyrgyz Republic, to the legal persons and the government in a person of governmental bodies and institutions of local self-government.

In the event that the international contracts and agreements, to which the Kyrgyz Republic is a participant and which have been enacted through the legally mandated order, provide for different rules than stipulated by the present law and by other normative legal acts containing norms of gender equality, the rules of the international agreements shall be applied.

Article 5. Legislation of the Kyrgyz Republic in the field of gender relations

Legislation of the Kyrgyz Republic in the field of gender relations is based on the Constitution of the Kyrgyz Republic and on the international contracts which have been enforced in the order established by the law, and consists of the present Law, the laws adopted according to it and the other normative legal acts of the Kyrgyz Republic

Article 6. Prohibition of gender discrimination

Both explicit and implicit gender-based discrimination shall be prohibited in any field of activity in relation to persons of different sex.

The subjects of gender equality, who have committed explicit or implicit gender discrimination, shall be made liable according to the legislation of the Kyrgyz Republic.

The following is not gender discrimination:

- establishment of differences in regulation of relations, pertaining to the functions of childbirth and breast feeding;
- conscription of men in the circumstances provided by laws of the Kyrgyz Republic
- adoption of temporary special measures on the basis of the present Law aimed at achieving actual equality in political, economic, labor and other social relations subject to the legal regulation;
- peculiarities of a labor protection of women and men in relation to protection of their reproductive health;
- affirmative actions.

Behavior of persons based on norms of common law, traditions and culture which contradict the requirements of the present Law and the norms of international law in the field of gender equality is not allowed.

Norms of common law, traditions and cultures containing the elements of gender discrimination are not supported.

Article 7. Governmental policy on gender equality

The governmental policy on gender equality shall be developed and implemented by the governmental bodies and institutions of local self-government in accordance with the democratic principles and with participation of civil society and private sector.

The following are the areas of governmental policy on gender equality:

- formation, enhancement and development of normative legal base ensuring gender equality;
- Establishment of institutional mechanisms for gender equality;
- development and implementation of the targeted state programs aimed at achieving gender equality;
- adoption of temporary special measures aimed at eliminating disbalance between opportunities of women and men;
- integration of gender mainstreaming into national, governmental and local programs and development strategies;
- protection of the society against information, popularization and propaganda, aimed at violating the principles of gender equality;
- fostering and popularizing the culture of gender equality;
- observance of the universally recognized principles and norms of international law and international obligations of the Kyrgyz Republic in relation to the gender equality.

Article 8. Monitoring and reporting of the implementation of gender-equality policy

Monitoring and evaluation of the implementation of gender-equality policy is carried out by the governmental bodies, institutions of local self-government, Ombudsman (Akyikatchi) and civil society on the basis of gender indicators approved by the Government of the Kyrgyz Republic.

Transparency of the implementation of gender-equality policy is provided by all subjects referred to in the above paragraph.

Governmental bodies, institutions of local self-government, legal persons of all forms of ownership submit reports on implementation of gender-equality policy in the order and on the basis of the special forms approved by the Government of the Kyrgyz Republic

Oversight of the reporting is carried out by the governmental bodies, institutions of local self-government, heads of legal persons and the authorized governmental body responsible for the implementation of the gender-equality policy.

Chapter II

Guarantees of gender equality in public administration and civil and municipal service

Article 9. Guarantees of gender equality in public administration

The government guarantees and establishes equal opportunities to persons of different sex for their participation in public administration by ensuring the provision of equal gender representation in all branches of government through legal, organizational and other mechanisms and establishes the responsibility for the failure to observe provisions of the present Law.

Article 10. Guarantees of gender equality in public administration and civil and municipal service

Persons of different sex have equal rights, duties, responsibilities and equal opportunities for joining civil service and municipal service and for the further work in governmental and municipal bodies.

Heads of governmental bodies and institutions of local self-government are obliged to provide equal access for the persons of different sex to civil and municipal service according to their abilities and professional skills.

Employees representing one sex should not prevail among the staff members of governmental bodies and institutions of local self-government. The system of quotas for the positions in the governmental bodies and institutions of local self-government (no more than 70 % of personnel structure, including, at a level of decision-making) is provided by normative legal acts of the Kyrgyz Republic.

Persons of different sex that within 3 years have not been promoted and assigned for training with the purpose of further improvement of their professional skills, have the right to request and receive from the head of governmental body and institutions of local self-government a written substantiation of the reasons of such actions as well as the data concerning experience and qualification of the person that was appointed (employed, promoted) for the position claimed by them or was assigned for training.

Employment for the vacant posts in the civil service and municipal service, including senior positions, is based on competitions, in which persons of different sex participate to an equal extent and on equal terms.

Heads of the governmental bodies and institutions of local self-government should develop career-development policies in view of gender policy.

Announcement of competitions only for persons of one sex is not allowed.

Violation of the requirements provided by the present Article entails a cancellation of illegal decisions or results of competition for vacant posts.

In the event when two candidates of different sex for the vacant post of the civil or municipal service have won the competition under equal conditions, the candidate of the sex which is insufficiently represented in the given body should be hired.

Administrative liability shall be applied for those that have violated provisions of this present Article according to the legislation of the Kyrgyz Republic.

Article 11. Guarantees of equal suffrages

Men and women have equal rights for participation in elections of the head of the state, of the supreme governmental bodies and institutions of local self-government.

Participation of political parties in elections requires guaranteed representation in the lists of candidates of persons of both sexes.

Electoral rights of citizens of the Kyrgyz Republic and guarantees of such rights, relations pertaining to the preparation, participation and conduct of elections for governmental bodies and institutions of local self-government as well as measures of stimulation and support of political parties in observance of gender representation shall be established by the electoral legislation of the Kyrgyz Republic.

Chapter III

Guarantees of gender equality

in economic and social relations

Article 12. Equal access to all forms of ownership

The state guarantees to the persons of different sex implementation of their property rights.

The state provides persons of different sex with equal opportunities of access to all forms of ownership.

Article 13. Equal access to carrying out of business activity

The state guarantees to persons of different sex equal access to carrying out of business activity.

Gender discrimination is prohibited in carrying out of business activity.

At the state and local levels, in view of relevant statistics, the affirmative action for elimination of the disbalance in business activity of women and men can be carried out by means of encouragement of business activity.

Article 14. Equal access to management of the enterprises

The state ensures equal opportunities of access to management of enterprises (business entities) for persons of different sex.

Gender-based discrimination in the field of management of enterprises (business entities) is not allowed.

Article 15. Equal access to land use

The government provides persons of different sex with equal rights for use of land, which is granted or is handed over for use for unlimited time (without indication of the term) or for the use within limited period of time (temporarily).

Rights to land are equally protected for persons of both sex.

Article 16. Equal access to social privileges

Persons of different sex, provided they have the right, shall enjoy equal access to social privileges.

Members of a family enjoy equal access to temporary unemployment benefits, maternity and childrearing benefits, or to entitlements granted to caretakers for elderly or disabled family members.

Chapter IV

Gender equality in labor relations

Article 17. Freedom of choice of labor activity

An employer, in lieu of the implementation of the relevant work, should ensure gradual advancement of the gender-equality representation.

Employer has the right to carry out affirmative actions aimed at achieving balanced ratio of women and men in different spheres of labor activity as well as among different categories of workers.

The current provision does not apply to individual businessmen, legal entities with number of people less than 10 persons.

Employer irrespective of forms of ownership is obliged to ensure that work conditions are equal for persons of both sexes.

Employers are prohibited to offer in their vacancy announcements the work only to women or only to men, except for specific work which can be carried out exclusively by persons of certain sex as well as to impose different conditions, to demand from persons who seek for a job, data on their private life, plans concerning birth of children.

The state regulates a phased reduction of the list of harmful industries by encouraging the companies with any form of ownership, through the system of taxation and through the investment policy, to use environmentally friendly technologies and operations.

An employer is obliged to provide the persons of both sexes with an opportunity to combine the labor activity with family duties.

Article 18. Equality in salaries

Persons of different sex compete on equal terms and have equal salaries provided they have equal qualification and enjoy equal working conditions.

Reduction in payment or deterioration of working conditions on the basis of sex is considered as manifestation of gender-based discrimination.

Article 19. Guarantees of equality in case of dismissal

In case of cancellation of the labor contract with the employer (reduction of the staff, including in connection with reorganization of a company) number of the dismissed persons of one sex should be proportional to the existing number of the personnel.

Article 20. Guarantees of the recognition of the household work

The state recognizes the household work.

Household work forms, supports and develops health, work capacity and cultural needs of members of family.

Household work is carried out by members of a family on a voluntary basis.

The state provides fair compensation for the household work to pregnant women or parents with young (below 3 years of age) children, or to those children who provide care for their aged parents, through providing guarantees in the area of education, public health services, labor relations, access to resources and information according to the legislation of the Kyrgyz Republic.

The state initiates, encourages and cooperates with the civil society and with a private sector in the sphere of development of services in relation to household work.

Household work cannot constitute the bases for gender-based and other forms of discrimination of members of family and can be carried out equally by persons of different sex.

Article 21. Prevention and suppression of gender-based harassment in employment and liability for gender-based discrimination

The employer has no right to expose employees of different sex to pressure or persecution on the basis that an employee has rejected the employer in his sexual harassments or have filed the complaint against the employer for gender-based discrimination.

In case of rendering pressure or harassing employees on the basis of gender stereotypes, including sexual harassment, the employer shall be made liable according to the legislation of the Kyrgyz Republic.

Employer is obliged to take measures on avoid cases of sexual harassments.

Employer shall be made liable according to the legislation of the Kyrgyz Republic in the event that due to his/her illegal actions the employee was compelled to leave the service.

In the event that the fact of gender-based discrimination has been established the moral and material damage shall be compensated to the employee by court.

Court has the right to oblige the employer to employ the person that was refused in employment on the basis of gender-based discrimination and to re-employ the person that was dismissed due to gender-based discrimination.

Chapter V

Gender equality observance mechanism

Article 22. Competence of the President to determine gender policy

The President of the Kyrgyz Republic determines the main directions of gender-equality policy.

The President within the limits of his or her powers appoints and nominates candidates to all governmental bodies in view of gender representation of no more than 70 % of persons of one sex.

The President has the right to introduce temporary special measures in order to ensure gender-equality policy implementation.

Article 23. Competence of the Jogorku Kenesh of the Kyrgyz Republic on gender equality assurance

Jogorku Kenesh of the Kyrgyz Republic by means of adopting the laws forms a legal basis for the state policy of gender equality in all spheres of the governmental and public life.

Jogorku Kenesh of the Kyrgyz Republic within the limits of the competence appoints in view of representation of no more than 70 % of persons of one sex the following posts:

- judges of the Constitutional Court of the Kyrgyz Republic;
- judges of the Supreme Court of the Kyrgyz Republic;
- members of the Central Election Committee on Elections and Referenda of the Kyrgyz Republic,
- auditors of the Accounting Chamber of the Kyrgyz Republic .
- members of the Government of the Kyrgyz Republic

Jogorku Kenesh of the Kyrgyz Republic at least once a year shall hear the governmental report on the state of affairs in the field of gender equality. The report is presented by the Government of the Kyrgyz Republic in the order determined by the Jogorku Kenesh of the Kyrgyz Republic, and is subject to publication in the mass media.

Jogorku Kenesh of the Kyrgyz Republic accepts for consideration the state budget of the Kyrgyz Republic and the Report on the implementation of the budget provided that the gender analysis is available.

Article 24. The competence of the Government of the Kyrgyz Republic in the area of gender equality assurance

The government of the Kyrgyz Republic within the limits of its powers:

- participates in the development and ensures implementation of the uniform state policy in the Kyrgyz Republic, aimed at achieving gender equality in all spheres of public life;
- creates targeted state programs on gender equality, ensures implementation of such programs;
- provides funds for actions for the implementation of the state policy in the field of gender equality through the state budget, extra-budgetary sources and other sources allowed by the legislation of the Kyrgyz Republic;
- directs and supervises activities of executive agencies of the government for protection and observance of gender equality;
- develops annual report on the status of gender equality in the Kyrgyz Republic.

Article 25. The competence of the authorized state body in the field of gender policy

The authorized state body in the field of gender-equality policy, undertakes the following tasks within the limits of its powers:

- carries out a uniform state policy for gender-equality;
- coordinates activities of state bodies, institutions of local self-government and legal persons of all forms regardless of their form of ownership, for the implementation of the national policy, aimed at achieving gender equality in the Kyrgyz Republic;
- provides information and carries out educational activity in the field of promoting gender-equality;

- carries out control over observance of the international obligations of the Kyrgyz Republic in the field of gender equality as well as development of national reports according to the international requirements;
- ensures the integration of gender aspects into the national policy and in state programs;
- assists in carrying out gender analysis of the legislation and drafts of normative legal acts;
- promotes the establishment of state mechanisms fostering achievement of gender equality in all spheres of social, economic and political life;
- carries out registration and accounting of all facts of violation of gender equality;
- coordinates activities of bodies involved in the resolution of dispute related to violations of gender equality;
- carries out monitoring of the enforcement of the present Law;
- carries out control over enforcement of the present Law;
- publishes annual reports on enforcement of the present Law.

Article 26. Activity of institutions of local self-government in the area of gender policy implementation

Institutions of local self-government carry out activities for the development and implementation of the gender-equality policy, coordinate their actions with activities of the executive branches of government agencies in order to support relevant state, regional and local programmes.

Article 27. Civil society participation in the promotion of gender policy

Civil society organizations:

- participate in the development and implementation of decisions made by the governmental bodies and institutions of local self-government in support of gender equality policies;
- represent and protect rights of citizens in courts and other governmental bodies;
- nominate and support candidates, whose programs include protection of principles of gender equality ;
- have the right to receive from appropriate governmental bodies and institutions of local self-government the methodological, information and other support in accordance with the and in the order established by the governmental regional and local programs, which are aimed on elimination of gender discrimination;
- register the facts of violations of gender equality and submit the authorized governmental body with gender development information for the purpose of carrying out of monitoring in the area of gender equality assurance;
- carry out monitoring of enforcement of the present Law.

Organizations of civil society have the right to develop annual public reports.

Article 28. Implementation of oversight and control over enforcement of the present Law

Oversight of the due and uniform enforcement of the present Law is carried out by the State Office of Public Prosecutor of the Kyrgyz Republic

Civil society organizations carry out public control over the enforcement of the present Law.

Article 29. Gender examination of the legislation and drafts of normative legal acts of the Kyrgyz Republic

Gender analysis is conducted to examine and identify facts of violations of gender equality in laws, other normative legal acts of the Kyrgyz Republic as well as in the national, governmental and local programs, as well as to harmonize the national legislation with norms of international agreements in the field of gender equality, which have been enacted in the order established by the law.

Gender analysis is carried out by the governmental bodies, institutions of local self-government and civil society organizations.

In the event that it was established that the normative legal act does not comply with the principle of observance of equal rights and opportunities among women and men the Opinion on the gender analysis of a given act shall be forwarded to the body which has passed such a normative legal act.

Procedure of gender analysis is provided by normative legal acts.

Gender analysis of the drafts of normative legal acts of the Kyrgyz Republic is conducted in order to eliminate violations of gender equality principles, and to guarantee the provision of equal rights and opportunities to persons of different sex in political, social, economic, labor, cultural and other areas of life, to protect men and women against discrimination on the basis of sex.

Gender examination of the drafts of normative legal acts of the Kyrgyz Republic is carried out by the governmental bodies and by the institutions of local self-government acting as initiators of development of the drafts.

The Opinion of the examination/gender analysis is an obligatory component of a package of documents attached to the draft of a normative legal act made available for consideration.

Article 30. Gender statistics

The National Statistical Committee of the Kyrgyz Republic administers collection of gender-disaggregated statistics in the Kyrgyz Republic.

State bodies, institutions of local self-government and heads of legal entities regardless of forms of ownership are obliged to submit to the National Statistic Committee of the Kyrgyz Republic appropriate information on gender issues.

Article 31. Consequences of failure to enforce the present Law

In case of identifying facts of violation of gender equality, the bodies that carry out control and oversight of the enforcement of the present Law, have the following rights:

- to submit to the governmental bodies, institutions of local self-government and heads of legal entities, regardless of forms of ownership, written instructions for elimination of these facts of violation of gender equality with a deadline for implementation;
- to utilize possibilities presented by the legislation of the Kyrgyz Republic in order to ensure gender equality;
- to make accountable those persons that have violated the provisions of the present Law;
- to publish through the mass media the names of those legal entities, regardless of their forms of ownership, which violate the provisions of the present Law.

Article 32. Liability of officials for violation of the present Law

Officials of state bodies and institutions of local self-government, state and municipal organizations, conducting organizational - administrative or administrative functions as well as heads and other staff of organizations undertaking similar functions shall be made liable for violations of the provisions of the present Law according to the legislation of the Kyrgyz Republic

Chapter VI

Procedures of consideration of gender equality violations

Article 33. Procedures of consideration of the facts of gender equality violations

Appeals addressed to the following subjects form part of the procedure for consideration of the facts of gender discrimination, sexual harassments, intimidation, persecution and other forms of violation of gender equality:

- to the President of the Kyrgyz Republic
- to the Jogorku Kenesh of the Kyrgyz Republic ;
- to the Government of the Kyrgyz Republic;
- to the Ombudsman (Akyikatchi) of the Kyrgyz Republic
- to institutions of local self-government;
- to courts;
- to authorized state body in the field of gender policy;
- to employers;
- to civil society organizations;
- to law enforcement bodies.

The above mentioned subjects carry out consideration of the facts of gender-based discrimination in the order and terms established by the legislation of the Kyrgyz Republic

Article 34. Enactment of the present Law

The present Law shall come into force from the date of official publication.

Following the adoption of the present Law, the government of the Kyrgyz Republic shall:

- bring normative legal acts in conformity with the present Law in the period of three-months;
- address organizational issues stemming from the present Law;
- submit to the Jogorku Kenesh of the Kyrgyz Republic proposals on bringing the current legislation in conformity with the present Law in the period of six-months;

Revoke the following:

- The law of the Kyrgyz Republic «On state guarantees for ensuring gender equality» dated March, 12, 2003, # 60.

President of the Kyrgyz Republic