

TrialWatch,¹ an initiative of the Clooney Foundation for Justice (CFJ), presents this submission to the UN Human Rights Committee (the Committee) in advance of its review of compliance by Kyrgyzstan with the International Covenant on Civil and Political Rights (ICCPR).

TrialWatch has monitored several trials in Kyrgyzstan.² In particular, through its partnership with the American Bar Association Center for Human Rights, TrialWatch monitored the trial of Ms. Gulzhan Pasanova, a domestic violence survivor who was convicted of causing grievous bodily harm to her husband that resulted in his death, despite her credible claim of self-defense.³

The TrialWatch Fairness Report on Ms. Pasanova's case found that the prosecution "relied on archaic gender stereotypes to make its case, suggesting, among other things, that Ms. Pasanova was lying about domestic violence, that she would not have stayed with [her husband] if she had truly been abused, and that any abuse that did occur was Ms. Pasanova's fault." The court did not allow Ms. Pasanova to call witnesses who could have testified about her husband's previous abusive behavior and her state of mind on the night of the incident and did not address the history of domestic abuse in its judgment. Ms. Pasanova was also placed in pretrial detention based solely on the severity of the alleged crime. Additional details regarding the report's findings are included as Annex A.

Ms. Pasanova's case exemplifies a broader concern: How domestic violence survivors are treated in court when accused of violence against an intimate partner. This Committee is already seized with the issue.⁴

In response to the Committee's List of Issues, the Government of Kyrgyzstan indicated that 23 of 248 women detained at Stepnoye prison had been convicted under Articles 130 (criminalizing murder) or 138 (criminalizing causing grievous bodily harm),⁵ in the context of domestic violence. Further, the Minister of Labor and Social Development has asserted that 89% of

¹ The Clooney Foundation for Justice (CFJ) advocates for justice through accountability for human rights abuses around the world. TrialWatch's mission is to expose injustice, help to free those unjustly detained and promote the rule of law. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

² See also <https://mobile.twitter.com/TrialWatch/status/1559261807071600641> (discussing the case of Kamil Ruziev).

³ See ABA Center for Human Rights, TrialWatch Report: Kyrgyzstan v. Gulzhan Pasanova (2020), https://www.americanbar.org/content/dam/aba/administrative/human_rights/kyrgyzstan_vs_gulzhan_pasanova.pdf. Following her conviction, TrialWatch filed an *amicus curiae* brief supporting her appeal. See Clooney Foundation for Justice Files Amicus Brief in the Appeal of Gulzhan Pasanova in Kyrgyzstan, May 12, 2020, available at <https://cfj.org/wp-content/uploads/2020/05/Clooney-Foundation-for-Justice-Files-Amicus-Brief-on-Trial-of-Gulzhan-Pasanova-in-Kyrgyzstan.pdf>. After exhaustion of her domestic appeals, in collaboration with Covington & Burling LLP and Mukhaiekhon Abduraupova, TrialWatch took Ms. Pasanova's case to the UN Committee on the Elimination of Discrimination Against Women, where the matter is pending. See Kyrgyzstan Court Violated Domestic Abuse Survivor's Rights, September 10, 2021, available at <https://cfj.org/wp-content/uploads/2021/09/ENG-Pasanova-CEDAW-Press-Statement-10-Sep-2021.pdf>.

⁴ In this Committee's List of Issues, it asked Kyrgyzstan to "provide detailed information on the number of women prosecuted for acting in self-defence and on the outcomes of their trials." See UN Human Rights Committee, *List of issues in relation to the third periodic report of Kyrgyzstan*, UN Doc. CCPR/C/KGZ/Q/3, June 18, 2021, ¶ 10.

⁵ These are Articles 122 and 130 in the latest version of the Criminal Code, respectively.

female prisoners convicted of murder or attempted murder had suffered from domestic violence.⁶ Additionally, figures obtained from the General Prosecutor’s Office relating to 2021, based on a written request by Mukhaiekhon Abduraupova, Ms. Pasanova’s counsel during her trial, indicate that more women than men were accused of murder,⁷ causing grievous bodily harm,⁸ and causing less grievous bodily harm⁹ in the context of domestic violence.¹⁰ The response of the General Prosecutor’s Office is attached as Annex C.

Ms. Abduraupova also conducted an informal survey of defense lawyers involved in similar cases. The results were consistent with the findings in Ms. Pasanova’s case: lawyers reported that women arrested for violence against an intimate partner were nearly always held in pretrial detention and that prior abuse was reportedly almost never considered by prosecutors or by the court.¹¹ Additional details regarding these findings are included as Annex B.

Based on TrialWatch’s experience with Ms. Pasanova’s case and the additional data gathered by Ms. Abduraupova, the Committee should take the opportunity of Kyrgyzstan’s review to seek clarity on how prosecutors and courts address self-defense claims where women are accused of violence against an intimate partner and how they treat allegations of prior abuse in this regard—from the investigation through the trial and until sentencing.

Recommendations

We encourage the Committee to ask the following questions during its review of Kyrgyzstan:

1. Investigation & Pre-Trial Detention

- a. What guidance (if any) exists for law enforcement bodies – particularly the police – with respect to when and how to consider allegations of prior domestic violence when investigating cases of women accused of violence against an intimate partner?
- b. What guidance (if any) exists for courts in determining whether a woman accused of a serious crime, but who alleges self-defense or a history of abuse, should be placed in pre-trial detention?

2. Charging Decisions

⁶ Nina Teggarty, Domestic Violence and Murder in Kyrgyzstan, *Pacific Standard Magazine*, November 8, 2017, available at <https://psmag.com/social-justice/domestic-violence-leads-to-murder-in-kyrgyzstan>; see also Penal Reform International, *Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules at 7 (2015)*, available at https://cdn.penalreform.org/wp-content/uploads/2015/04/Added-value-of-the-Bangkok-Rules-briefing-paper_final.pdf.

⁷ 11 women vs. 9 men.

⁸ 8 women vs. 3 men.

⁹ 37 women vs. 12 men.

¹⁰ The figures from the General Prosecutor’s Office also show that less severe accusations of ‘murder in a state of extreme emotional distress’ and ‘causing grievous bodily harm in a state of extreme emotional distress’ were not made in the context of domestic violence under the 2021 Code. See Annexes A and B for discussion of these less severe charges.

¹¹ In fact, in response to the Committee’s List of Issues, the Government of Kyrgyzstan identified only one case where it appears that the defendant was charged with ‘murder in a state of extreme emotional distress’ after having been subjected to domestic violence.

- a. What explains why women appear to be accused of murder, causing grievous bodily harm, and causing less grievous bodily harm more frequently than men in cases raising issues of domestic violence?
 - b. In cases of women accused of violence against intimate partners, what guidance exists as to whether prosecutors should charge more severe offenses (such as murder) versus less severe offenses (such as murder ‘in a state of extreme emotional distress’)? In the last four years, how often did prosecutors charge more severe offenses versus less severe offenses?
3. **Legal Clarity**
 - a. What guidance exists defining: (a) “extreme emotional distress” under Articles 123 (murder in a state of extreme emotional distress) and 133 (causing grievous bodily harm in a state of extreme emotional distress) and (b) “justifiable self-defense” under Article 46 of the Kyrgyz Criminal Code, including when and how each should be applied?
 - i. Are appropriate bodies considering better defining these terms through law or guidance?
4. **Trial Proceedings**
 - a. In relevant cases over the last four years, how often have women accused of violence against intimate partners called their own expert witnesses to testify regarding their mental state at the time of the incident? What guidelines exist as to when judges should accept or deny requests by defense counsel to call key witnesses and/or commission psychiatric/medical examinations relevant to allegations of prior abuse?
 - b. In relevant cases over the last four years, how often have judges requalified charges of murder or causing grievous bodily harm to lesser offenses on the basis of prior abuse?
5. **Case Disposition:** What is the rate of conviction over the last four years in cases of women accused of violence against intimate partners in the context of prior abuse? For comparison, what is the rate of conviction over the last four years in cases of individuals themselves accused of domestic violence?
6. **Sentencing:** In light of the admonition by the UN Special Rapporteur on Violence Against Women, Its Causes, and Consequences that “[w]hile recognizing the gravity of their crimes, women’s criminality under situations of extreme abuse and violence needs to be treated with diligence, and their cases must be assessed in light of mitigating circumstances,” what steps has the Government of Kyrgyzstan taken to ensure that prior abuse is considered a mitigating circumstance at sentencing?
 - a. In cases involving allegations of prior abuse, how often do prosecutors seek a sentence in the upper half of possible penalties under the offense charged?
 - b. How often do courts impose a sentence in the upper half of possible penalties?
 - c. In how many cases over the past four years has abuse been cited as a mitigating factor at sentencing by the court?
7. Finally, since its last review, what steps has the Government of Kyrgyzstan taken to combat gender stereotypes in investigations, prosecutorial decision-making and judicial proceedings, in particular prosecutions of women accused of violence against an intimate partner?

Annex A – The Case of Gulzhan Pasanova

Ms. Gulzhan Pasanova is a domestic violence survivor. On 19 November 2019, Ms. Pasanova had an altercation with her husband: according to Ms. Pasanova, he accused her of infidelity, threatened her, and threw a knife at her. Scared, she struck him with a reinforcing rod. He ultimately died of his injuries. According to the TrialWatch Report on her case by staff at the American Bar Association Center for Human Rights, “[t]he testimony of witnesses, corroborated by Ms. Pasanova’s medical records, indicates that she was subjected to prolonged physical and psychological abuse at the hands of [her husband].”¹²

Ms. Pasanova was charged with causing grievous bodily harm resulting in death under Article 138(3)(1) of the Kyrgyz Criminal Code. The court ordered her placed in pretrial detention based solely on the severity of the crime.¹³ At trial, the defense argued that Ms. Pasanova had acted in self-defense and should be acquitted on this basis. Alternatively, the defense argued that she should have been charged under Article 141 of the Criminal Code, which proscribes grievous bodily harm committed due to “extreme emotional distress,” rather than under Article 138(3)(1).

The prosecutor by contrast suggested that Ms. Pasanova bore all responsibility. The Fairness Report on the case recounts that the prosecutor stated of the alleged abuse, “[n]o one forced Pasanova to give herself away, she chose [her husband] herself” and argued that “[i]f you do not want to live with your husband, get a divorce. Why kill him then?”¹⁴ The Report notes that the prosecutor asserted that Ms. Pasanova could not have been in “extreme emotional distress” at the time of the incident due to the fact that such heightened states “last only one minute.”¹⁵ In closing statements, the prosecutor asked the court to impose the maximum penalty under Article 138(3)(1) – ten years imprisonment.

The court largely ignored the defense’s arguments. In fact, the defense sought to call neighbors and ambulance workers with whom Ms. Pasanova had interacted on the night in question, in order to corroborate her prior abuse and as evidence of her mental state at the time of the altercation with her husband, but the court denied these requests. The court also denied a request for an additional psychiatric examination as to Ms. Pasanova’s mental state at the time. Instead, the court found Ms. Pasanova guilty under Article 138 and sentenced her to nine years in prison—nearly the maximum penalty provided under the law. The convicting judgment gave no consideration to the possibility that she had acted in self-defense.

The Fairness Report on the case concluded that the proceedings had violated Ms. Pasanova’s fair trial rights, including her right to call and examine witnesses, her right to be presumed innocent,

¹² American Bar Association Center for Human Rights, TrialWatch Report: Kyrgyzstan v. Gulzhan Pasanova (2020), available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/kyrgyzstan_vs_gulzhan_pasanova.pdf; see also *id.* (“A forensic examination conducted as part of the investigation, for example, found bruises and a scar on Ms. Pasanova’s body from previous incidents.”).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

her right to an impartial tribunal, and her right to appeal, and that “the conduct of both the prosecutor and the court violated Ms. Pasanova’s right to freedom from discrimination.”¹⁶

¹⁶ *Id.*

Annex B – Survey of Defense Lawyers

Between April and June 2022, Mukhaiekhon Abduraupova, an experienced human rights lawyer, conducted a brief survey of 8 legal practitioners who have represented women prosecuted for murder or causing grievous bodily harm against an intimate partner in the context of domestic violence or in situations of potential self-defense. In total, these lawyers – who were retained either by the defendant’s family and friends or as part of the state legal aid system – reported having defended 18 such cases. Several patterns emerged, which are consistent with Ms. Pasanova’s case.

- **Pre-Trial Detention:** In nearly all cases, the court imposed a form of pre-trial detention – most often in a detention facility, although at least one woman was placed under house arrest.
- **Critical Importance of Ability to Call Witnesses and Obtain Expert Examinations:** Defense lawyers reported mixed success in having their requests to call key witnesses or obtain psychiatric or medical examinations granted by the court. As in Ms. Pasanova’s case (whose requests were denied), one defense lawyer reported that the judge denied their requests to call witnesses or obtain psychiatric examinations that might have shown ‘extreme emotional distress’ or supported a self-defense argument; that case, like Ms. Pasanova’s, ended in a guilty verdict and prior abuse was not taken into account at sentencing. On the other hand, in the one case a respondent identified in which the judge requalified the offense to a lesser one, the court did allow a psychiatric examination.
- **Prosecutors Ignore Alleged Domestic Violence:** Defense lawyers did not recount a single case where the prosecution took into account allegations of prior abuse as a mitigating factor when asking the court for a sentence.
- **Courts Ignore Alleged Domestic Violence:** All except one lawyer reported that allegations of domestic violence were not considered or even mentioned in judgments finding their clients guilty.
- **All Cases Ended in a Guilty Verdict:** Defense lawyers did not recount a single case that ended in an acquittal.
- **Lengthy Sentences:** The lawyers reported that their clients received lengthy sentences, generally ranging from 5 to 14 years imprisonment.

Only one case was identified in this survey in which the original charge was requalified to a less severe charge. In that case, the court granted defense counsel’s petition to call experts and further ordered an additional psychiatric examination geared toward establishing whether the defendant was in ‘extreme emotional distress.’ The accused was later released from criminal liability under a state amnesty.

Annex C – Statistics Provided by the General Prosecutor’s Office, for 2021

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**КЫРГЫЗ РЕСПУБЛИКАСЫНЫН
БАШКЫ ПРОКУРАТУРАСЫ**



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13.05.2022 № 22/50-09-2-09-09-00296

На № _____ от _____

Председателю правления
Общественного фонда
«Позитивный диалог»
Абдурауповой М.

г.Ош, ул.Ленина, 313/5

Управление правовой статистики и учетов Генеральной прокуратуры Кыргызской Республики, рассмотрев Ваш запрос за №09 от 08.04.2022 года о предоставлении сведений о зарегистрированных в автоматизированной информационной системе «Единый реестр преступлений» уголовных делах в отношении мужчин и женщин по фактам убийства и причинение вреда здоровью и жизни своим супругам в контексте домашнего насилия за 2021 год, направляет сведения по вышеуказанным фактам, зарегистрированным в АИС «ЕРП» за 2021 год, в виде таблицы согласно приложению.

Приложение: Таблица на 2 листах.

Заместитель
начальника управления

А.Усупбеков

Исп.: И.Маатов
тел.: 0312-56-70-19

Статьи УК КР	Количество зарегистрированных сообщений/заявлений в АИС «ЕРП» о преступлениях в отношении женщин и мужчин по причинению вреда здоровью и жизни	В отношении мужчин	В отношении женщин
УБИЙСТВО			
Уголовный кодекс КР (в ред. от 2017 г.)			
Статья 130. Убийство	9	4	5
Из них прекращено	1	1	-
Статья 131. Убийство в состоянии аффекта	1	1	-
Из них прекращено	-	-	-
Статья 132. Убийство при превышении пределов необходимой обороны либо при превышении мер, необходимых для задержания лица, совершившего преступление	-	-	-
Из них прекращено	-	-	-
Статья 135. Причинение смерти по неосторожности	-	-	-
Из них прекращено	-	-	-
Уголовный кодекс КР (в ред. от 2021 г.)			
Статья 122. Убийство	11	5	6
Из них прекращено	-	-	-
Статья 123. Убийство в состоянии аффекта	-	-	-
Из них прекращено	-	-	-
Статья 124. Убийство при превышении пределов необходимой обороны либо при превышении мер, необходимых для задержания лица, совершившего преступление	-	-	-
Из них прекращено	-	-	-
Статья 127. Причинение смерти по неосторожности	-	-	-
Из них прекращено	-	-	-
ПРИЧИНЕНИЕ ВРЕДА ЗДОРОВЬЮ			
Уголовный кодекс КР (в ред. от 2017 г.)			
Статьи УК КР	Количество зарегистрированных сообщений/заявлений в АИС «ЕРП» о	В отношении мужчин	В отношении женщин

	преступлениях в отношении женщин и мужчин по причинению вреда здоровью и жизни		
Статья 138. Причинение тяжкого вреда здоровью	4	1	3
Из них прекращено	-	-	-
Статья 139. Причинение менее тяжкого вреда здоровью	42	10	32
Из них прекращено	24	8	16
Статья 140. Причинение тяжкого вреда здоровью при превышении пределов необходимой обороны, а равно при превышении мер, необходимых для задержания лица, совершившего преступление	-	-	-
Из них прекращено	-	-	-
Статья 141. Причинение тяжкого вреда здоровью в состоянии аффекта	-	-	-
Из них прекращено	-	-	-
Статья 142. Причинение тяжкого вреда здоровью по неосторожности	2	1	1
Из них прекращено	1	1	-
Уголовный кодекс КР (в ред. от 2021 г.)			
Статья 130. Причинение тяжкого вреда здоровью	7	2	5
Из них прекращено	-	-	-
Статья 131. Причинение менее тяжкого вреда здоровью	7	2	5
Из них прекращено	-	-	-
Статья 132. Причинение тяжкого вреда здоровью при превышении пределов необходимой обороны, а равно при превышении мер, необходимых для задержания лица, совершившего преступление	-	-	-
Из них прекращено	-	-	-
Статья 133. Причинение тяжкого вреда здоровью в состоянии аффекта	-	-	-
Из них прекращено	-	-	-
Статья 134. Причинение тяжкого вреда здоровью по неосторожности	-	-	-
Из них прекращено	-	-	-

Statistics from the automated records system provided by the General Prosecutor's Office, for 2021

Articles of the Criminal Code of Kyrgyzstan	Number of recorded filings/statements in the Automated System on crimes with respect to women and men involving harm to health and life	with respect to men	with respect to women
GRIEVOUS BODILY HARM			
Criminal Code of Kyrgyzstan (version of 2017)			
Article 138. Grievous bodily harm terminated	4 -	1 -	3 -
Article 139. Less grievous bodily harm terminated	42 24	10 8	32 16
Article 140. Grievous bodily harm when exceeding justifiable defense and measures necessary for apprehending the person committing the crime terminated	- -	- -	- -
Article 141. Grievous bodily harm in a state of extreme emotional disturbance terminated	- -	- -	- -
Article 142. Grievous bodily harm through carelessness terminated	2 1	1 1	1 -
Criminal Code of Kyrgyzstan (version of 2021)			
Article 130. Grievous bodily harm terminated	7 -	2 -	5 -
Article 131. Less grievous bodily harm terminated	7 -	2 -	5 -
Article 132. Grievous bodily harm when exceeding justifiable defense and measures necessary for apprehending the person committing the crime terminated	- -	- -	- -
Article 133. Grievous bodily harm in a state of extreme emotional disturbance terminated	- -	- -	- -
Article 134. Grievous bodily harm through carelessness terminated	- -	- -	- -
MURDER			
Criminal Code of Kyrgyzstan (version of 2017)			
Article 130. Murder terminated	9 1	4 1	5 -
Article 131. Murder in a state of extreme emotional disturbance terminated	1 -	1 -	- -

Statistics from the automated records system provided by the General Prosecutor's Office, for 2021

Article 132. Murder when exceeding justifiable defense and measures necessary for apprehending the person committing the crime	-	-	-
terminated	-	-	-
Article 135. Causing death through carelessness	-	-	-
terminated	-	-	-
Criminal Code of Kyrgyzstan (version of 2021)			
Article 122. Murder	11	5	6
terminated	-	-	-
Article 123. Murder in a state of extreme emotional disturbance	-	-	-
terminated	-	-	-
Article 124. Murder when exceeding justifiable defense and measures necessary for apprehending the person committing the crime	-	-	-
terminated	-	-	-
Article 127. Causing death through carelessness	-	-	-
terminated	-	-	-