



Committee on the Rights of the Child Secretariat
Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52 rue des Pâquis
CH-1201 Geneva
Switzerland
Submitted through [Child Rights Connect](#)

Information on Kyrgyzstan for Consideration by the Committee on the Rights of the Child at its 94th Pre-Sessional Working Group (6 - 10 February 2023)

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Introduction:

1. We respectfully submit this report to supplement Kyrgyzstan's combined fifth and sixth periodic State Party review by the Committee on the Rights of the Child ('the Committee') during its 94th Pre-Sessional Working Group. In our submission, Equality Now, the 'Human Rights Movement, Bir Duino-Kyrgyzstan' (BDK), the Public Association 'Ensan Diamond, 'PA 'Alga' (Chui oblast)', Positive Dialogue and the PU 'Center for the protection of children' (CPC) detail concerns with regard to laws related to sexual violence and procedures and practices which effectively deny access to justice for girls survivors of sexual violence. Specifically, Kyrgyzstan's legal system provides a number of opportunities for perpetrators to escape criminal liability or punishment, namely through the way sexual violence crimes are defined and through the way sexual violence crimes are investigated and prosecuted. This submission covers issues particularly relevant to Article 19 (protection from all forms of violence and sexual abuse); Article 24 (right to health and protection from harmful practices); and Article 34

(protection from sexual exploitation and sexual abuse) of the Convention on the Rights of the Child and the Committee's General Comments No. 13 (2011) 'The right of the child to freedom from all forms of violence'; and Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices.

Information about the authors of the submission

2. **Equality Now** is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our network of individuals and organisations in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now's work. This submission is in reference to Equality Now's 2019 report, "Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia"¹ which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.
3. **The 'Human Rights Movement, Bir Duino-Kyrgyzstan' (BDK)** was founded in May 2000 and has a mission to protect human rights, with a particular focus on the freedom of association and advocacy for the protection of human rights defenders in Kyrgyzstan through culture and art. The main goal of the BDK is to support the practical implementation of the humanitarian articles of the Helsinki Declaration of 1975 and other international legal documents, as well.
4. **The Public Association, 'Ensan Diamond'** works in the field of women's rights and gender studies, with a particular focus on violence against women and women's health. It advocates for a place where women can participate equally in politics, society and in the family, and works towards achieving gender equality in the country.
5. **The organisation 'PA "Alga" (Chui oblast)'** has as a mission to improve the socio-economic status and living conditions of rural women through leadership development and women's potential, increasing opportunities for their self-realisation, as well as through increasing women's participation in sustainable development and protecting their rights. The organisation provides comprehensive support to rural women, their families and rural communities through the development of various skills, providing information and training, as well as developing social partnerships and undertaking advocacy.
6. **Positive Dialogue** is a non-profit human rights organisation founded in 2011. The Foundation was established to strengthen the dialogue between the state and the population, so that the state would effectively fulfill its obligations to the citizens, and the citizens would respect and trust the state. The fund carries out its work in the city of Osh. The main priorities are: Providing free legal assistance to vulnerable groups (victims of gender and domestic violence; people in conflict with the law; injecting drug users; people with mental health problems; HIV+; poor citizens; the elderly; children left without parental care; children with developmental disabilities; children from risk groups); Monitoring of places of detention and restrictions of freedom in the south of Kyrgyzstan to prevent illegal detentions and torture by law enforcement agencies; Monitoring of trials in criminal cases of torture and gender crimes.

¹ Available at: https://www.equalitynow.org/resource/roadblocks_to_justice/

7. **PU “Center for the protection of children” (CPC)** is a non-governmental organisation with extensive (more than 20 years) experience in social work with children of internal migrants in difficult life situations (street children, working children; children facing various types of violence; children who have dropped out of school or who are not able to attend school due to difficult situations in families, and other children in DLS). Carrying out activities for the revitalisation and social mobilisation of families in DLS and internal migrant families resided in the new settlements around Bishkek, the organisation involves the most active representatives of its target groups (children, parents, community activists) in solving problems at school, community, local and national levels; organises discussion platforms involving all stakeholders to discuss problems and sensitive issues; and provides the active representatives of the target groups with support in assessing needs and conducting advocacy campaigns. The advocacy campaigns can often target not only local authorities, but also the state bodies at different levels and the Parliament of the Kyrgyz Republic.

Overview

8. In its previous concluding observations,² the Committee was seriously concerned about: (a) the growing number of cases of sexual exploitation and abuse of children; (b) the culture of covering up problems of sexual violence in public educational and medical facilities and even in bodies responsible for child protection; (c) the absence of mechanisms in the State party to identify, detect and protect children who are victims of sexual violence; (d) the inaction of law enforcement agencies, reportedly corrupt, in registering cases of child sexual abuse and the mishandling of such cases; and (e) the child not being able to apply directly to the authorities for protection, but only through parents or legal guardians, who at times maybe perpetrators themselves. The situation largely remains the same.
9. The Ministry of Internal Affairs reports that since the beginning of 2022, 55 cases of sexual violence against children were registered.³ In January 2022, the Deputy Minister of Education and Science, Nadira Dzhusupbekova, reported that in 2021, 118 children were sexually abused.⁴ In 80% of cases, perpetrators are either relatives or friends.⁵ According to the statistics provided by the Supreme Court of Kyrgyzstan, in 2021, 179 children suffered from criminalised types of violence (85 from physical violence and 84

² Concluding observations on the combined third and fourth periodic reports of Kyrgyzstan, Committee on the Rights of the Child, 2014, CRC/C/KGZ/CO/3-4.

³ Available at:

<https://kloop.kg/blog/2022/06/07/mvd-s-nachala-goda-v-kyrgyzstane-zaregistrovali-bolee-400-faktov-nasiliya-v-ot-noshenii-detej/>

⁴ Available at:

<https://kloop.kg/blog/2022/01/31/v-kyrgyzstane-417-detej-podverglis-fizicheskomu-ili-seksualnomu-nasiliyu-v-2021-godu-zamministra-obrazovaniya/>

⁵ Available at:

<https://kloop.kg/blog/2021/01/27/polovina-seksualnyh-posyagatelstv-v-otnoshenii-detej-proishodit-doma-ili-v-gostyah-mvd-kyrgyzstana/>

from sexual violence).⁶ For the same period of time, 166 individuals were convicted for crimes against children and 54 criminal cases were terminated.⁷ Nonetheless, the official statistics on violence against children, particularly on sexual violence against girls, is the tip of the iceberg.

10. On 30 June 2022, several amendments introducing tougher penalties for sexual violence crimes against children were adopted.⁸ However, that is not enough to ensure access to justice for girls. In Kyrgyzstan, much of the violence perpetrated against children (including girls) goes underreported and unchallenged due to shame and fear of publicity, fear of public condemnation, lack of knowledge about their rights, lack of trust in the law enforcement system, lack of child-friendly reporting mechanisms.

Definitions of sexual violence crimes enabling impunity for perpetrators

11. The Criminal Code defines rape as sexual intercourse with the use of violence not threatening life or health, or of a threat thereof, with respect to the victim or with the use of the helpless state of the victim (Article 154(1)). Rape is defined as penile-vaginal penetration and the victim can only be female. Rape of a child aged 14-18 is a crime under Article 154(3)(2) and rape of a child under 14 years old is a crime under Article 154(4).
12. According to Kyrgyz law, violence and threat of violence, as elements of rape, are in practice interpreted only by physical means, rather than also psychological or economic harm or of any other form of coercion. In addition, ‘threat of violence’ is interpreted as entailing an expression of intention to immediately use physical violence. The threat can be expressed verbally or through actions, such as the showing of weapons or other objects that could cause harm, and must be perceived by the victim as real and imminent. Threats directed to the future (as opposed to immediate threats) that could paralyse and overcome the resistance of the victim are not considered in this interpretation.
13. The “helpless state of the victim” is considered to be a “state which prevents the victim from understanding the meaning of the actions they are subjected to or to resist those actions due to various reasons, such as age, disability, mental issues, being under the influence of alcohol or drugs, etc. A lack of resistance on the part of the victim, if not connected to this conventional understanding of “helpless” state, means the crime will not be classified as rape”.⁹

⁶ The Supreme Court of Kyrgyzstan, Report on minors who are victims of violence (2021), available at: <http://sot.kg/statistics/main/index.php>

⁷ The Supreme Court of Kyrgyzstan, Report on perpetrators of violence against minors (2021), available at: <http://sot.kg/statistics/main/index.php>

⁸ Information available at:

https://www.president.kg/ru/sobytiya/novosti/23079_vneseni_izmeneniya_v_ugolovniy_kodeks_kirgizskoy_respubliki_predusmatrivayushie_ughestochenie_otvetstvenosti_vinovnih_lic_za_deyaniya_protiv_polovoy_neprikosnovnosti_ghizni_i_zdorovya_detey

⁹ Equality Now, ‘Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia’ (2019), p. 14, available at:

14. Article 155(1) criminalises acts that do not involve penile penetration of the vagina. ‘Assaults of a sexual nature’, which do not fall under the definition of rape in the Criminal Code of Kyrgyzstan, still require the sexual act to have been committed with the use of violence, threat of violence or abusing the helpless state of the victim. However, in contrast to the behaviour criminalised under the definition of rape, this provision applies to penile and non-penile penetration of other orifices and can also be committed by persons of the same sex. Assaults of a sexual nature against a child aged 14-18 are a crime under Article 155(3)(2) and assaults of a sexual nature against a child under 14 are a crime under Article 155(4).
15. The Criminal Code of Kyrgyzstan distinguishes rape and assaults of a sexual nature and coercion into acts of a sexual nature. Under Article 156(1), this latter crime involves any of the types of behaviour criminalised by the offences of rape and assault of a sexual nature, but that have been committed using either blackmail or the use of the material or other dependence of the victim. Coercion is classified as a less serious crime than rape or assaults of sexual nature. The problematic assumption behind these definitions is a myth that rape and assault of a sexual nature must involve physical force. This presumption ignores other means that perpetrators use to commit sexual acts against the will of the victim.
16. The new Criminal Code of Kyrgyzstan (from 28 October 2021 No. 127)¹⁰ views the crime of sexual intercourse with a person below 16 years in the context of morality and the spiritual health of a person.¹¹ Article 157 (“Sexual acts with a child under sixteen years of age”) defines sexual intercourse with a person under sixteen years of age by a person who has reached the age of eighteen years as “an action of sexual character with a child who has not reached the age of sixteen years”. This definition fails to consider the crime as a serious violation of a minor’s right to sexual inviolability (while framing it as a crime against morality), and has damaging implications that the minor herself consented, wanted or even initiated sexual intercourse. The crime can only be committed by an adult over the age of eighteen who knew that the victim was under the age of sixteen.
17. The way the above articles define sexual violence against children and the manner in which the criminal justice system operates falls short of international human rights standards in a number of ways. In particular, the prosecution of rape is overwhelmingly limited to situations where the victim has physical evidence of injuries and can prove physical resistance to sexual intercourse. When such evidence cannot be secured, or when sexual violence was committed without using physical force, there is very little chance that the perpetrator will be brought to justice.

https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia_Rpt_ENG_-_Web.pdf?1547485403

¹⁰ Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/112309#unknown>

¹¹ Chapter 24

18. On 30 June 2022, several amendments were introduced:¹² parole shall no longer not apply to a person sentenced to imprisonment for committing an offence against the life or sexual integrity of a child (Article 89 of the Criminal Code); amnesty shall no longer apply to defendants and those convicted of rape and assaults of a sexual nature committed against a person known to be a minor (Article 7 Law No. 7 “On Amnesty and Its Application” from 20 January 2017). While the press release says that “the perpetrators of the above-mentioned crimes [against the sexual integrity and spiritual and moral health of children] will not be exempt from criminal liability based on the statute of limitation”,¹³ in fact, according to Article 58 of the Criminal Code, the statute of limitation is no longer applicable only to crimes under Article 154(3)(1), Article 154(4), Article 155(3)(1) and Article 154(4). Rape of and assaults of a sexual nature against a child aged 14-18 (if these acts did not result in pregnancy or unintentional grievous bodily harm), coercion into acts of a sexual nature, sexual intercourse with a person below 16 years, bride kidnapping, forced marriage, compulsion to enter into actual marital relations are still subject to the statute of limitation. The statute of limitation provisions do not take into account the fact that child victims of sexual abuse may report the abuse after a long period of time.¹⁴
19. According to Article 82 of the Criminal Code, supervised probation does not apply to persons convicted of crimes against sexual immunity and sexual freedom of a child. This restraint does not apply to children who committed a crime against the sexual immunity of children aged 14 to 18. Therefore, this norm does not allow adults to be put on supervised probation, but courts interpret it otherwise – they release criminals if the victim is aged 14 to 18.¹⁵

Child and forced marriage and bride kidnapping

20. The Committee, in its concluding observations on the combined third and fourth periodic reports of Kyrgyzstan, was concerned about “the continuing widespread practice of bride-kidnapping of underage girls and that cases often remain unreported by the victims owing to social stigma and pressure. The Committee was also concerned about the increasing numbers of early marriage of girls forced by parents owing to social and economic difficulties”.¹⁶ The Convention on the Rights of the Child expressly protects a child’s right to freedom from any form of physical or emotional abuse and to the realization of their development to the greatest extent possible. Bride kidnapping, forced and child marriage are clear violations of these rights. Moreover, the Committee on the Elimination of Discrimination against Women (CEDAW) underlined the responsibilities

¹² Information available at:

https://www.president.kg/ru/sobytiya/novosti/23079_vneseni_izmeneniya_v_ugolovniy_kodeks_kirgizskoy_respubliki_predusmatrivayushie_ughestochenie_otvetstvennosti_vinovnih_lic_za_deyaniya_protiv_polovoy_neprikosnovenosti_ghizni_i_zdorovya_detey

¹³ *ibid*

¹⁴ WHO, ‘Guidelines for medico-legal care for victims of sexual violence’, section 7, pp. 75-77, available at:

<https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf?sequence=1&isAllowed=y>

¹⁵ More information available at:

<https://cabar.asia/en/kyrgyzstan-in-six-of-nine-cases-offenders-against-sexual-immunity-avoid-actual-imprisonment>

¹⁶ Para. 37

of Kyrgyzstan under Article 16(2), read with Articles 5 (a), and 10, 12, to protect girl victims of bride kidnapping from being forced into illegal child marriage with adverse effects on their education, health and development.¹⁷

21. Bride kidnapping (kidnapping of a person with the purpose of marriage, Article 172) is treated as a distinct crime from forced marriage (Article 174) and from compulsion to enter into actual marital relations (Article 173), which is in line with the requirements of international human rights standards.¹⁸ However, it is often the case that bride kidnapping will end with the woman or girl marrying the man because of pressure from the family and society that she has no other option and her chances of being able to find a husband otherwise will have been significantly reduced if she was held overnight at the perpetrator's house. As a result, the number of bride kidnappings reported to local law enforcement authorities is smaller than is actually the case, but it is challenging to ascertain the exact prevalence of this practice. Bride kidnapping is frequently followed by rape which is used as a tool for preventing the victim from leaving. In such situations, the 'family' is then considered to have been 'created', so rape is not investigated, effectively ignoring the fact that the woman has been forced to marry and thereby exonerating the rape.
22. According to data released in 2018 by the Ministry of Internal Affairs, over the past five years, there have been 895 reports of bride kidnapping, however, only 168 cases were investigated as criminal cases.¹⁹ In 2021, 560 cases of abduction and forced marriage of women were registered. Of those, only 82 cases were taken to court; 460 cases were dismissed.²⁰ The existing legal framework, weak implementation of the law and prevailing social norms, which the State fails to effectively address, leaves forced marriage and bride kidnappings prevalent in Kyrgyzstan. These practices disproportionately affect adolescent girls, giving rise to further gender-based and sexual violence offences. Bride kidnappings and the lack of adequate response by authorities became very evident in May 2018 in a high-profile case of 19-year-old Burulai Turdalieva who had reported her abduction and was subsequently killed by her abductor at the police station.²¹

¹⁷ Report of the inquiry concerning the Kyrgyz Republic under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/KGZ/1, 2018, para 79(b)

¹⁸ Ibid 18

¹⁹ Information available at: https://rus.azattyk.org/a/kyrgyzstan_ala-kachuu_kidnapped/29862644.html

²⁰ Information available at: <https://www-test.undp.org/kyrgyzstan/press-releases/new-criminal-code-amendments-punishment-bride-kidnapping>

²¹ Near Bishkek, a 30-year-old bus driver Mars Bodoshev and his friends kidnapped 19-year-old Burulai. The girl was kidnapped not far from the parental home, almost in front of her relatives. Parents immediately appealed to the police. The car was detained, the abductors and their victim were taken to the district police office. The police left the kidnapper and Burulai alone in the same office. Mars Bodoshev took advantage of the situation and killed his 'failed' bride. In February 2019, the city court sentenced the perpetrator to 20 years in prison and awarded more than \$11,000 in favour of the family of the victim as compensation of moral and material damages. Information about the case is available at: <https://www.hrw.org/news/2018/05/31/young-womans-murder-kyrgyzstan-shows-cost-tradition>

23. According to research,²² more than 20% of marriages in the Kyrgyz Republic were a result of bride kidnapping and the proportion of forced marriages (as defined in Article 174) was 6%. The abduction of women for marriage in rural areas occurs almost two times more than in urban settlements. Marriages conducted through the abduction of women without their consent are noted throughout Kyrgyzstan, to varying degrees.²³ The practice takes place more commonly among girls who have had either no education or only primary education and among poorer households.
24. The minimum age of marriage is legally set at 18 years for both sexes (Article 14 of the Family Code) and violating the age of marriage is criminally punishable in all circumstances (whether the marriage is registered, non-registered, de facto, religious). Under Article 14(2), “if there are valid reasons, the executive local authorities of the place of residence of persons wishing to marry may, at the request of such persons, lower the marriageable age for men and women by not more than one year on the basis of a commission opinion of the territorial divisions of the authorised state child protection authority”. In a study conducted by UNFPA,²⁴ cases of early marriage among girls were noted in all regions, but particularly prevalent in Naryn and Chui oblasts (around 13%), while 2% took place in Bishkek. Early marriages in rural areas are 2.5 times more common than in urban areas.
25. However, according to the statistics provided by the Supreme Court of Kyrgyzstan, in 2021, 0 individuals were convicted under Article 175 of the Criminal Code (“Violation of the law on the age of marriage in religious rites”), two individuals were convicted under Article 176 (“Bigamy or Polygamy”), and 21 individuals were convicted under Article 178 (“Parents’ evasion of child maintenance”).²⁵
26. According to local experts, the main reason for early marriages is poverty, tradition and non-compliance with the law on the minimum age of marriage.²⁶ In 2022 alone, in the

²² UNDP project on the ‘Prevention of gender-based violence in Kyrgyzstan’. Data presented at the presentation of the results of the medico-demographic study at the conference “Achievements and Further Steps of the Internal Affairs Bodies of the Kyrgyz Republic in a Systemic Approach to the Prevention of Gender and Family Violence” in Bishkek (2018), available at: <https://crdp.asia/prezentatsiya-itogov-proekta-profilaktika-gendernogo-nasiliya/>

²³ UNFPA Kyrgyzstan, National Survey Results ‘Gender in Society Perception Study’ (2016), available at: https://kyrgyzstan.unfpa.org/sites/default/files/pub-pdf/GSPS_english.pdf

²⁴ *ibid*

²⁵ The Supreme Court of Kyrgyzstan, Report on perpetrators of violence against minors (2021), available at: <http://sot.kg/statistics/main/index.php>

²⁶ In the fall of 2022, an analysis of this problem in the “Amir Temur” provided that the reasons are: 1. Parents avoid responsibility for upbringing, education, clothing and food and, most importantly, responsibility for the girl’s spiritual world, her moral qualities and principles. Parents do not want to ‘invest’ in education of girls because all ‘profits’ from it will go to the husband’s family. 2. After the clashes between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan in 2010 conflict, the threat of possible sexual violence persists and exists. Therefore, this region believes that it is necessary to marry a girl as soon as possible and ‘get rid of the responsibility’. 3. Influence of religion, i.e., all residents practice Islam and raise their daughters in this direction. After completing the 9th grade girls are sent to madrassas, for various short-term (1 to 3 months) courses: sewing, cooking, home care, etc. In each family, a girl since her childhood is brought up to be obedient to men and the elders in the family, to be a servant and a worker. 4. Poverty. There are many families in this area with difficult economic and housing conditions. When a family struggles with basic needs, parents do not pay attention to their children's education, especially and even more so

“Amir Temur” district, Osh city, local authorities received 10 applications from parents for lowering the marriage age and permission to marry. Three applications have already been granted and the rest are under consideration. In the summer of 2022, an early marriage between a 16-year-old girl and a 40-year-old man was recorded and prevented in the "Amir Temur".

27. Also, according to local experts, in Kyrgyz society, the value of official marriage is decreasing and civil partnerships and religious marriages are becoming more and more popular. Clergymen issue a certificate of religious marriage registration. This also leads to a practice of men marrying multiple women and girls which is a crime under Article 176 (“Bigamy and Polygamy”).

Sexual violence against girls with disabilities and children in closed institutions

28. In its General Comment No. 9 (2006), the Committee noted that children with disabilities belong to one of the most vulnerable groups of children especially vulnerable to violence.²⁷ Girls with disabilities are even more vulnerable to discrimination and, therefore, the Committee requested States parties to, when necessary, take extra measures to ensure that girls with disabilities were well protected, had access to all services and were fully included in society.²⁸
29. In Kyrgyzstan, the vulnerability of girls with disabilities to violence is exacerbated by insufficient protections in sexual violence laws, the stigmatisation of survivors, and specific discriminatory procedures applied in cases when the victim has a disability. For example, during the investigation of the alleged sexual violence, disabled survivors have to undergo a psychological/psychiatric exam to assess their supposed competency in order to determine if their testimony can be considered reliable. The methodology applied for such determinations fall short of scientific standards and good practice, since forensic bureau specialists lack training. If deemed “unreliable,” the survivor’s account is automatically tossed out, which leads the court to dismiss the case. Over-reliance on such examinations is discriminatory, since the practice automatically denies justice to survivors because of their disability.
30. At the same time, law enforcement personnel often lack knowledge in methodologies for obtaining witness statements from girls with disabilities. This, together with common stereotypical prejudices at the intersection of disability, sex and age throughout the process, and a lack of communication with the survivor about her rights, means the system often fails to take cases forward and so, even with respect to the cases that are reported, perpetrators (usually those who are in a care-taking position over a victim) can commit sexual violence against girls with disabilities with impunity. In addition, survivors with disabilities are not guaranteed reasonable accommodation, including the

for girls. That is why there are many young people who have barely finished school. Teenage girls often have to perform hard and low-paying jobs.

²⁷ CRC, General Comment No. 9, paras. 8, 42 and 44

²⁸ *ibid*, para. 10

proper services that would enable them to navigate the criminal justice system with the level of respect and accessibility that every person is entitled to.

31. For example, a young woman with disabilities was raped by a family member when she was a minor. Due to her disability, she faced multiple barriers in reporting, including her inability to reach the police and the lack of proactive visits from social services, so the authorities failed to uncover the continuous abuse that she suffered. It was only when her brother posted a video on social media about her situation, revealing the violence perpetrated against her, that her case became public.²⁹
32. In its concluding observations on the combined third and fourth periodic reports of Kyrgyzstan, the Committee highlighted the following problems: widespread institutionalisation of children with disabilities and that institutions are often located far from their family home; deaths of children with disabilities in care institutions reportedly owing to the neglect of their health and the lack of monitoring mechanisms to prevent such incidents; widespread torture and ill-treatment of children by the representatives in closed institutions. Independent public inspection of children's institutions is unavailable. Children in care institutions are subjected to abuse, including sexual abuse, and no assistance is given to the child victims of that abuse.
33. All women and girls who are survivors of sexual violence have to overcome a number of obstacles (legal, institutional, psychological, physical, economic, etc.) on their way to justice and protection. Women and girls with disabilities face even greater difficulties because, as already noted, they are subject to intersectional discrimination. These difficulties are not only manifested in imperfect legislation, lack of standardised methods of investigating sexual violence against women and girls with disabilities, unsuitable infrastructure of law enforcement and other government agencies for people with disabilities, lack of transport and economic accessibility, lack of accessibility to health care, lack of adequate housing, failure to provide reasonable accommodation, insufficient number of interpreters, etc., but are also further exacerbated due to prevalent gender stereotypes and prejudices against women and girls with disabilities.

Burdensome evidential requirements in sexual violence cases against girls, revictimisation during criminal proceedings and lack of children-sensitive justice

34. In cases where rape or assault of a sexual nature is alleged but there is no evidence of additional serious physical harm, the courts often dismiss the case as they will interpret the lack of additional physical violence as consent to sexual intercourse. It is common

²⁹ Information about the case is available at:

https://www.equalitynow.org/news_and_insights/sexual-violence-and-intersectionality-demanding-access-to-justice-for-women-with-disabilities-in-kyrgyzstan/

There is another case of Mirgul (name changed), 16, has a disability. The fact that she had been raped only came to light after they found out she was pregnant. When the girl was asked who raped her, she pointed to a neighbour.

However, the local authorities and the police ignored the case. Information about the case is available at:

<https://rus.azattyk.org/a/31801891.html>

belief, including among law enforcement and the courts, that sexual violence cannot be committed if there is no shouting, witnesses, resistance or additional injuries.

35. According to para. 51 of the Committee's General Comment No. 13, the investigation of instances of violence must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. However, Kyrgyzstan lacks any gender and child-sensitive methodology to investigate sexual violence crimes which means girls are being re-victimised in the process. As a result, necessary and relevant evidence for filing charges may not be collected.
36. The Committee in its concluding observations on the combined third and fourth periodic reports of Kyrgyzstan expressed concerns about the lack of a child-sensitive approach to child victims and witnesses of crimes by untrained personnel who are often dismissive of a child's testimonies.
37. The secondary victimisation of girl survivors of sexual violence during criminal proceedings is common and can be attributed to the following factors, including as below:
 - a. During investigations, neither video nor audio recordings of the interviews are being made, resulting in victims being forced to repeat their testimony several times which serves to re-traumatise and, frequently, re-victimise them.
 - b. Victims are being forced to provide their testimony in the presence of other persons in the police department because the Department of Internal Affairs does not have separate offices for receiving applications from victims of sexual violence.
 - c. Girls are often questioned multiple times by different officials (usually men), who often use sexist and humiliating language. In the case of adolescents, the investigation often goes beyond the circumstances to collect a lot of irrelevant to the case but intrusive information about the victim's private life, her experience of intimate relationships, etc.
 - d. Moreover, victims' right to confidentiality and safety is further breached when defendants are not imposed restrictions by the criminal justice system to visit the victim, for example at their home or in the hospital. The purpose of such visits is generally to influence the victims to withdraw their complaints. As many parents cannot withstand the pressure, they frequently collude with the defendants and cases are subsequently withdrawn.
38. There is limited access to justice for child victims of crimes, who are totally dependent on their legal representatives such as parents and legal guardians.
39. Burdensome evidence requirements, gender stereotyping and secondary victimisation throughout the legal proceedings further deny justice to survivors. There are no clear criteria or adequate awareness of authorities and investigators to evaluate the impact of rape on a victim's psychology and the subsequent trauma she endures, which may

influence her behaviour throughout the criminal proceedings. The victim is often blamed for having “provoked” the rape. There have been examples of situations where the Prosecutor orders a psychiatric examination of the victim to determine her propensity to lie and fantasise. If the psychiatrist determines that she does (even though psychiatrists should have no authority to do so), then the case will be dropped. Additionally, when the same victim has been subjected to several forms of violence, the perpetrator is more likely to be charged for the violent crimes not constituting sexual violence, which then is ignored. Such prevailing attitudes undermine the importance of gender-sensitive proceedings in ensuring access to justice for survivors of sexual violence.

40. Additional barriers for survivors include the common practice that investigators collude with the accused’s lawyers and there are also examples where the perpetrators were themselves police officers. Compounding this is the lack of understanding of the gendered nature of the crime of rape and the negligible number of female investigators and gender-sensitive men who work in law enforcement.

Lack of services for survivors of sexual violence

41. Existing legislation largely does not provide support and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration.
42. Under Federal Law No. 201 from 16 December 2016 “On State-Guaranteed Legal Aid”, free legal aid is available to minors and their parents (guardians, custodians) in the interests of the child. However, in practice, victims are often not even told about this right. Also, state-appointed lawyers often either are not interested in effective protection of victims’ rights (one of the reasons is low pay rates) and/or do not have the requisite or specific expertise. There is a lack of pro bono lawyers, especially outside the capital. Often CSOs have to invite lawyers from the capital, because many local lawyers cannot effectively represent interests of victims in the communities, because they are subject to pressure and threats in these communities.
43. Under Article 78(1) of the Code of Criminal Procedure, in order to protect the best interests of the child victim, authorities shall order that the child victim be questioned by a psychologist or a teacher and recorded on audio and video recording devices for further use in legal proceedings. However, there is an acute shortage of trained psychologists, especially in the rural and remote regions and, therefore, the quality of psychological assistance is often low. In fact, psychologists invited to participate in such investigations as required by law lack sufficient knowledge and skills to help the child and the investigation. Local experts provide information that some experts may write that children have sexual fantasies.
44. As reported by the authors of this submission, victims of sexual violence are provided medical care only if they have health insurance. If there is no insurance, the victim is assigned to a specific primary-level healthcare institution only if there are obvious physical injuries or infection with STIs, HIV etc. Such free medical and sanitary care is

provided only to a limited extent, however. Additional tests and examinations necessary for diagnosis and forensic medical reports, as well as treatment, have to be covered by the victim herself.

45. Currently, it is not the responsibility of a forensic medical expert to inform the victim about any services available to prevent consequences of sexual violence (STIs, unwanted pregnancy) in the first 72 hours after the violence and about their right to safe abortion, as well as their right to receive medical, psychological, legal and social assistance. There is no interdepartmental and intersectoral coordination of assistance and redirection of victims of sexual violence to other specialists to provide them with comprehensive assistance, including psychiatric care and psychological support, medical services, safety/security and access to social support. Victims are sent to various medical institutions to receive the necessary medical care (at the choice of an expert or the victim).
46. The pandemic, the economic crisis, and the rise in inflation have shown that children from poor families do not have access to state benefits. According to the National Statistical Committee of the Kyrgyz Republic, in 2021, 40.5% of children aged 0-17 years old lived in poverty. Despite this, state benefits are either unavailable or inaccessible for many families in acute need, particularly to young children, which further exacerbates the risk of minors to be subjected to sexual and other forms of violence and exploitation.

Societal and law enforcement attitudes allowing impunity for perpetrators of sexual violence and failure of the government to address those attitudes

47. In Kyrgyzstan, there is limited access to justice for child victims of crimes, who are totally dependent on their legal representatives such as parents and legal guardians. Moreover, when victims turn to law enforcement to report sexual violence, they are under great pressure by their close relatives, influential acquaintances, representatives of authorised state bodies working in the protection of the rights of children, police officers, as well as doctors and lawyers to either withdraw their complaint or not file a complaint. The law enforcement bodies fail to protect survivors from such pressures, maintaining the barriers to reporting.
48. In addition, victim-blaming attitudes and sympathy towards perpetrators, prevalent in the society and law-enforcement, pose serious obstacles in reporting sexual violence. In situations not as serious as the ones resulting in death, members of the local community try to justify the actions of the perpetrator as they do not want lengthy sentences to be imposed on him and for him be sent to prison, where fellow inmates from the “criminal world” could severely abuse him as a form of retribution for committing sexual violence. There have also been examples where victims’ lawyers have faced intimidation, physical abuse and threats, and were even physically assaulted during court sessions by friends and relatives of the defendant. Such provisions and practices serve to undermine and prevent survivors of rape and sexual violence from seeking justice.

Recommendations

- Legislative and policy measures:
 - Ensure that existing legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration;
 - Amend the Criminal Code to ensure that rape and assault of a sexual nature are based on lack of consent rather than force and that lack of resistance is not interpreted as consent;
 - Ensure that the issue of “consent” of a minor under 16 is immaterial and not examined in practice. Sexual acts committed by adults against children under the age of 16 should be treated as rape and entail sentences commensurate to the gravity of the crime;
 - Amend Article 58 of the Criminal Code to ensure that all cases of rape of and assaults of a sexual nature against a child, coercion into acts of a sexual nature, sexual intercourse with a person below 16 years, bride kidnapping, forced marriage, compulsion to enter into actual marital relations are not subject to the statute of limitations;
 - Amend the criminal code to ensure that its provisions are not applied, either on a formal or informal basis, for avoiding escaping responsibility for perpetrators of sexual violence crimes at any stage of the proceedings;
 - Constantly review, improve and effectively implement criminal and other policies to fight child marriages and bride kidnappings and sexual violence resulting from these practices;
 - Oblige all children’s institutions to establish easy access to individuals or organisations to which they can report in confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children;
 - Ensure existence of independent public inspections of children’s institutions, with a broad mandate, including that of detecting facts of sexual violence.

- Increasing access to justice and support services:
 - Abolish burdensome evidence requirements to prove sexual violence and investigative practices that contribute to secondary victimisation of girls;
 - Ensure that child survivors of sexual violence are sufficiently supported throughout the legal proceedings, including through the provision of free legal aid, psychological and social assistance and safe housing;
 - Ensure that independent, safe, effective, accessible and child-sensitive complaint and reporting mechanisms are available to girls. Ensure that child victims of violence are treated in a child-friendly and sensitive manner throughout the criminal justice process, taking into account their personal situation, needs, age, gender, disability, their evolving capacities and fully respecting their physical, mental and moral integrity;

- Avoid secondary victimisation of girls throughout the criminal proceedings, including by reducing the number of interviews, moving away from intrusive expert examinations, applying victim protection measures throughout the proceedings and preserving the confidentiality of victims;
- Eliminate discriminatory norms against children that restrict the exercise of their rights to access state benefits and child protection measures;
- Ensure provision of public cash benefits do not fall below the guaranteed minimum income for young children on a universal basis;
- Education and training
 - Ensure that investigators, prosecutors, judges, lawyers and psychologists are trained based on a gender-sensitive and child-sensitive methodology for investigating and prosecuting sexual violence, including against girls;
 - Ensure awareness raising campaigns, including among law-enforcement, about the criminal nature of all forms of sexual violence and that violence is not justified in any circumstances;
- Awareness-raising
 - Disseminate multi-format materials to inform girls about their human rights and the availability of mechanisms for access to justice for sexual violence and harmful practices;
 - Integrate educational programmes on women's rights and sex and gender equality, including legal literacy programmes, into curricula at all levels of education which emphasise the crucial role of children, including girls', access to justice.