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8 September 2022

## **Information on Kyrgyzstan for Consideration by the Human Rights Committee at its 136<sup>th</sup> Session (10 October - 4 November 2022)**

### **Introduction**

1. Equality Now, the Human Rights Movement, Bir Duino-Kyrgyzstan (BDK), Public Association “Ensan Diamond” and PA “Alga” (Chui oblast) respectfully submit this report to supplement the Human Rights Committee (‘the Committee’) review of Kyrgyzstan’s third periodic State Party report during its 136<sup>th</sup> Session (10 October - 4 November 2022). Our joint submission details our concerns with regard to laws related to rape and other forms of sexual violence, as well as harmful practices and procedures and practices which effectively deny access to justice for survivors of gender-based violence and which constitute a violation of the obligations under the International Covenant on Civil and Political Rights (ICCPR). 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; allowing for the direct release of a perpetrator from liability or punishment in certain circumstances; and through the way sexual violence crimes are investigated and prosecuted, including with respect to adolescent girls. This submission also refers to Equality Now’s 2019 report<sup>1</sup> which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.

### **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 membership network of individuals and organisations in over 160 countries. Ending sexual violence, sexual exploitation, harmful practices and achieving legal equality are the main areas of Equality Now’s work.

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<sup>1</sup> Equality Now, *Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia* (2019), available at: [https://www.equalitynow.org/roadblocks\\_to\\_justice](https://www.equalitynow.org/roadblocks_to_justice)

3. The 'Human Rights Movement, Bir Duino-Kyrgyzstan' (BDK) was founded in May 2000 and has as 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 as calling for the implementation of Kyrgyzstan's international obligations in the field of human rights and basic freedoms.
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. The legal provisions and practices detailed in our submission highlight the failure of the State to comply with its obligations under Article 2 (non-discrimination), Article 3 (equality for men and women), Article 7 (prohibition of inhuman treatment) and Article 26 (equality before the law).
7. We reiterate the Committee's Concluding Observations on the second periodic report of Kyrgyzstan and underscore, in particular, the recommendations urging the government to adopt a comprehensive approach to prevent and address all forms of violence against women, including bride kidnapping, spousal rape and domestic violence; to reinforce training of police on preventing and combating violence against women; and to guarantee that cases of violence against women are thoroughly investigated, that the perpetrators are brought to justice and, if convicted, punished with commensurate sanctions, and that the victims are adequately compensated.<sup>2</sup>

### **Definitions of sexual violence crimes enabling impunity for perpetrators**

8. Despite reforms to Kyrgyzstan's Criminal Code in January 2019, the law still provides an inadequate and limited definition of sexual violence crimes leaving many of the coerced and non-consensual acts of a sexual character without any punishment. Article 161(1) of 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. Rape is defined and understood as penile-vaginal penetration and does not recognise penetration by objects or other body parts. A series of aggravating factors and increased punishment is also foreseen. Examples include when sexual intercourse is combined with the

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<sup>2</sup> CCPR/C/KGZ/CO/2, available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKGZ%2fCO%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKGZ%2fCO%2f2&Lang=en)

threat of violence that poses danger to life or health; is committed with particular cruelty towards the victim or her relatives; and results in pregnancy. However, any kind of violence or threat of violence should also be considered aggravating circumstances rather than constituting elements of rape.

9. 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. There is no definition of economic violence under the Civil or Criminal Codes.<sup>3</sup> 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, while ignoring threats directed to the future (as opposed to immediate threats) that could paralyse and overcome the resistance of the victim.
10. In cases where rape is alleged but there is no additional serious physical harm, the courts often dismiss the case as they will interpret the lack of additional physical violence and lack of resistance of the victim as consent to sexual intercourse. It is common practice that nobody, including law enforcement and the courts, will believe that a rape was committed when there is no shouting, witnesses, resistance or additional injuries. The "helpless state of the victim" is included in the law as an alternative element to the requirement for additional violence on the part of the perpetrator, but there is no definition or explanation in the law as to what this entails. In practice, this element has often been applied in cases where the victim has a physical disability, psycho-social needs or compromised mental faculties (e.g. the victim is unconscious because of a health condition or the influence of substances). The court will, in these cases, question whether the victim had the ability to understand the situation enough to be able to resist the perpetrator. In these cases, the perpetrator has the responsibility to be aware of her "helpless state". Therefore, "helpless state" has very limited application and does not even cover the clear situations where the perpetrator could overcome the will of the victim (e.g. perpetrator subjecting victim to systematic rape within the context of domestic violence and making her helpless, or taking her to a deserted area where any resistance could be even more dangerous or futile).
11. Compulsion to perform sexual relations, Article 163, is classified as a less serious crime than the ones provided above. It envisages "Compulsion to Perform Sexual Actions, Compulsion of a person to enter into sexual relations, pederasty, lesbianism, or the commission of other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the use of material or any other dependence of the victim, in the absence of indicia of crimes provided for by Articles 161 and 162 of this Code."
12. The above articles fall short of international human rights standards in several ways.

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<sup>3</sup> However, reference to economic violence is made in the Law on the Prevention and Protection from Family Violence, and is defined as the deliberate failure of one family member / equivalent family member to carry out the maintenance of another family member / equivalent person, and also intentionally depriving or limiting the right to receive dispositions of property or income intended by law to a person, and / or the use of funds and property by a trustee to the detriment of the principal.

Most notably, this article is equivalent to rape and the legislation of Kyrgyzstan currently allows for two different rape crimes, one of which calls for more serious penalties on conviction (Article 161), while the other (Article 163) is called compulsion rather than rape and is defined as a light crime committed in circumstances other than with the use of force and threat of immediate force and helplessness. This reinforces the myth that rape always involves physical force. Additionally, maintaining an alternative rape charge that does not demand proof of physical force outright rejects the idea of any affirmative consent.

13. A similar two-crime approach in Spanish law (which distinguished between sexual assault, including rape, and sexual abuse, including penetration) that undermines the seriousness of certain acts rape, has been criticised by GREVIO, which stated that this approach illustrates an “improper understanding of the use of force and intimidation and the reactions this may trigger in victims of rape.”<sup>4</sup> Moreover, the approach of downgrading certain acts of rape to “less serious crimes”, as provided in Article 163, enables impunity of perpetrators by subjecting these acts to certain exemptions (as examined in para 14 below).
14. Contrary to international and regional human rights standards, Articles 161, 162 and 163 do not include the lack of voluntary and genuine consent on the part of the victim as a constituent element for sexual violence crimes. As well as neglecting the importance of willing consent, the reviewed sexual violence laws do not enumerate a wide range of coercive circumstances that can paralyse the will and the actions of the victim, such as abuse of trust and authority and situations of dependence as highlighted above, but also deceit. This in practice means that 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 additional physical force, there is very little chance that the perpetrator will be brought to justice. These provisions run counter to CEDAW’s General Recommendation 35 which provides that States should ensure that a “definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances”,<sup>5</sup> and as further defined in the CEDAW Communications of *Vertido v The Philippines*<sup>6</sup> and *R.P.B. v The Philippines*.<sup>7</sup>

### **Failure to provide mandatory prosecution for sexual violence**

15. The lack of mandatory (ex officio) prosecution for sexual violence in the law denies justice to survivors and is contrary to international human rights standards.<sup>8</sup> Article 23 of the Criminal Procedure Code provides that crimes of rape (Article 161(1) of the Criminal Code) and compulsion to perform sexual actions (Article 163 of the Criminal Code) qualify as crimes of private-public prosecution. This means they are initiated

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<sup>4</sup> GREVIO Baseline Evaluation Report Spain, para. 220.

<sup>5</sup> CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

<sup>6</sup> *Karen Tayag Vertido v The Philippines*, CEDAW, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010)

<sup>7</sup> *R.P.B. v The Philippines*, CEDAW/C/57/D/34/2011, Communication No. 34/2011

<sup>8</sup> CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

upon a claim by the victim and can be terminated by a victim, for example, in cases of reconciliation with the defendant, or because the victim faces too much pressure and feels compelled therefore to withdraw. Such legal provisions deny justice to survivors because the survivor, rather than the state, is required to bear the burden of the criminal proceeding, including when it comes to the collection of evidence required to prove the circumstances of the crime. According to a report by UNDP,<sup>9</sup> local law enforcement authorities are seen to discourage women from filing such claims from the outset and put pressure on them to withdraw the complaint if she has managed to file it, and to postpone the initiation of the investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. Moreover, the experience of the authors of this submission shows that victims are under great pressure by their close relatives, influential acquaintances, representatives of authorised state bodies working in the protection of the rights of children, 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.

### **Other legal provisions allowing impunity for perpetrators of sexual violence**

16. Contrary to international human rights standards, Kyrgyz law allows impunity for perpetrators of sexual violence if they have ‘reconciled’ with the victim. According to Article 61 of the Criminal Code, a perpetrator can be exempt from criminal liability if he “reached an agreement with the victim and redressed the damage caused”. This Article may be applied for the “less serious crimes” which have been provided for by Article 23 of the Criminal Procedure Code, including offences defined in Article 163 of the Criminal Code (‘Compulsion to sexual acts’) and Article 161(1) on rape without any aggravating circumstances. There appears to be a conflict between the Criminal Code, which classifies at least some forms of rape as a serious offence, for which reconciliation would not normally be possible. In addition, since the Criminal Procedure Code provides that rape is subject to public-private prosecution which applies for ‘less serious’ offences, this also leaves room for reconciliation to be reached. These discrepancies essentially help to ensure that the offender can be released from criminal liability for rape without aggravating circumstances. They should be amended so that rape, irrespective of whether there are any aggravating circumstances, is always considered a ‘serious’ crime and subject to public prosecution.
17. Reconciliation is often used and abused with the result that perpetrators of sexual violence escape any form of criminal punishment or repercussions for their criminal behaviour, including avoiding a criminal record. In practice, based on the legal practice of the authors of this submission, lawyers and relatives of the accused make various attempts to obstruct the victim’s access to justice and force the victim and her relatives to reconcile. There has been evidence that investigators do not prevent such interference. Further examples include where relatives and representatives of the accused visit the victim at home or in the hospital with the purpose of influencing the victim and forcing her to withdraw her complaint. This takes the form of offering money, buying property and negotiating with more influential relatives of the victim, often through the assistance of a lawyer.
18. The experience of the authors of this submission also suggests that in a number of

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<sup>9</sup> Analysis conducted within the framework of the UNDP project ‘Prevention of gender-based violence in Kyrgyzstan’, implemented with financial support from the US State Department.

cases involving adolescents and younger girls, many parents are not able to withstand such pressure and come to an agreement with the accused or his family. In such cases, law enforcement bodies fail to take any active measures to protect survivors of sexual violence from coercion throughout the criminal justice process. Neither do they examine whether reconciliation was the expression of free will or the result of pressure.

19. In addition, victim-blaming attitudes and sympathy towards perpetrators, prevalent in society and law enforcement, pose serious obstacles to 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 don't want him to be sent to prison with a lengthy sentence, whereas 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 beliefs and practices, therefore, serve to undermine and prevent survivors of rape and sexual violence from seeking justice.

#### **Additional barriers to justice for sexual violence**

20. 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, then the case will be dropped. Additionally, when the same victim has experienced several forms of violence, the perpetrator is more likely charged for the 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.
21. 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.
22. According to the Law on State Guaranteed Legal Aid, free legal assistance in criminal cases can be provided for victims with a very low income, as well as persons with certain forms of disability, single mothers raising a minor, and minors. Therefore, victims of sexual violence, if they don't meet the "very low income" criteria, are not eligible for free legal aid. According to a study on judicial practice, the majority of victims of sexual violence were found not to have been granted legal aid because of not meeting the above criteria, while the accused party had at least one legal counsel and, in some cases, even three. Most often, complainants are left without legal assistance due to their inability to pay for the services of a lawyer. While the prosecutor should bear the responsibility of properly prosecuting the crime and therefore protecting the interests of the complainant, private-public prosecution

rules place the burden on the victim and, in practice, there are a number of cases where the accused was convicted only after the intervention had been made by the centres for the protection of the rights of victims, which provided legal assistance and support in court. This shows the ineffectiveness of the State in protecting the interests of society of fairness, justice and the rule of law, while most of the victims don't have the financial means to hire private lawyers, which puts them personally in a disadvantageous position as compared to the defendant.

23. The sexual history of the victim, as well as her relationship status with the accused, often comes under scrutiny at all stages of the proceedings. This information, deliberately or not, is evaluated to assess whether she is a "worthy" victim and has been truly damaged by the rape. Often victims are asked personal questions that are not related to the case and which suggest the victims themselves were to blame for the attack. Until 2018, the recommendations for the investigation of crimes against sexual integrity and sexual freedom highlighted the importance of determining the moral character and psychological status of the victim. A practical guide developed in 2018<sup>10</sup> establishes guidelines more in line with international standards but further efforts need to be made to bring the guidelines into full compliance with human rights standards and train investigation officers to ensure their correct and effective implementation.
24. Investigators and other representatives of the internal affairs bodies, the Prosecutor's Office, the courts, healthcare providers and the State-guaranteed Legal Aid often demonstrate prejudicial beliefs based on gender stereotypes about victims of sexual violence which leads to discrimination and violation of their rights. Examples of this, as evidenced by the experience of the authors of this submission, include the manner by which officers of the Department of Internal Affairs interrogate victims and the nature of the interrogation process, the provision of legal aid and health care services.
25. It has been reported that victims of sexual violence are not being informed about their rights, the available support assistance services, or about the pre-trial proceedings. At the same time, each victim is repeatedly reminded of the criminal liability for false testimony which shows authorities' innate distrust toward victims of sexual violence. There is also evidence that there were cases of unjustified refusal of reports of sexual violence and the investigative process being intentionally delayed. Additionally, victims often lack access to legal advice and counselling on their rights throughout the legal proceedings, there are delays in conducting certain investigative measures that could collect important evidence, grave crimes tend to be re-classified to being less serious offences without legal justification and criminal cases are unjustly terminated.
26. 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. 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. Moreover, victims' right to

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<sup>10</sup> ПРАКТИЧЕСКОЕ ПОСОБИЕ Под общей редакцией Первого заместителя министра внутренних дел Кыргызской Республики генерал-майора милиции Омурзакова С.А. для сотрудников следственной службы ОВД Кыргызской Республики по эффективному расследованию гендерных преступлений, совершенных в отношении женщин и несовершеннолетних.

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 collude with the defendants and cases are subsequently withdrawn. According to the research by the Akyikatchy (Ombudsman) of the Kyrgyz Republic, up to 86% of cases of sexual violence against children are terminated after reconciliation of the parties following compensation for material and moral damage or due to the refusal of the child's legal representatives to press or pursue charges.<sup>11</sup>

27. As reported by the authors of this submission, victims of sexual violence are provided medical care only if they have health insurance. If this is the case, the victim is assigned to a specific primary-level healthcare institution 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, must be covered by the victim herself. There are no forensic medical experts in certain regions of the Republic, resulting in a number of victims of sexual violence not having any access to a forensic medical examination, or a belated examination (survey) and the seizure of biogenic evidence. Forensic expert laboratories are located remotely from district divisions denying victims of sexual violence equal access to the opportunity to provide such evidence of their sexual assault.
28. Moreover, reports have been made regarding the poor material and lack of technical support by regional specialised units in carrying out examinations of survivors of sexual violence (lack of gynaecological chairs, gynaecological instruments, disposable sheets, etc.). Not every unit has conditions that ensure confidentiality and security, taking into account the needs of survivors of sexual violence. 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).

### **Further harm to adolescent girl survivors of sexual violence and forced marriage**

29. Kyrgyz criminal law views the crime of sexual intercourse with a person below 16 years (statutory rape) in the context of morality and the spiritual health of a person rather than a gross violation of human rights (Chapter 26 of the Criminal Code (Crimes against Spiritual and Moral Health of a Person)). Article 164 defines sexual intercourse with a person under sixteen years of age by a person who has reached the age of eighteen years as an “act of sexual character with a person 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 (not a crime against morality), and in practice has derogatory implications that the minor herself consented, wanted or even initiated sexual intercourse for which an adult man is

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<sup>11</sup> <https://ombudsman.kg/files/docs/reports/2016/violence-against-children.pdf>



'falsely' being held accountable.

30. More than 400 cases of violence against children have been registered in Kyrgyzstan since the beginning of 2022. Nurzhan Adylova, the head of the Department of the Public Security Service of the Ministry of Internal Affairs, reported that 55 of these 400 cases involve cases of sexual violence.<sup>12</sup> In January 2022, the Deputy Minister of Education and Science, Nadira Dzhusupbekova, confirmed that in 2021, 417 children were identified who had been subjected to violence and abuse, including 118 children who had been sexually abused.<sup>13</sup> In January 2021, the Ministry of Internal Affairs reported that 80% of children affected by sexual violence had been violated by their friends and relatives.<sup>14</sup> At the same time, the Ministry noted that half of the cases of sexual abuse against children occurred within the home or while visiting their friends or family. The analysis conducted by the Kyrgyz Association of Women Judges revealed the fact that the proportion of rape cases dismissed in courts reaches 60%.<sup>15</sup> The Courts decided to terminate 36% of cases concerning underage children and 21% of cases concerning minors, despite the fact that the legislation does not permit such termination.
31. Bride kidnapping (kidnapping of a person with the purpose of marriage, Article 175) is treated as a distinct crime from forced marriage (Article 177) and to compulsion to enter into actual marital relations (Article 176). In April 2019, amendments to the Criminal Code entered into force and the punishment for kidnapping a bride without her consent was increased to 10 years of imprisonment and a fine of 3,000 US dollars. Despite this improvement in the legal framework, in practice, it is often the case that bride kidnapping will end with the victim marrying the kidnapper. The reason is society's attitude that the chances for a young woman to get married is significantly reduced if she was held overnight at the perpetrator's house, suggesting that intercourse, even when without consent, has taken place. 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.
32. 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. Despite 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, when 19-year-

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<sup>12</sup> Among these 55 registered cases of sexual violence, 19 cases involved rape, 5 were attempts of sexual violence, 23 were attempts of sexual violence against underage girls, as well as 8 cases of indecent assault.

<sup>13</sup> <https://kloop.kg/blog/2022/01/31/v-kyrgyzstane-417-detej-podverglis-fizicheskomu-ili-seksualnomu-nasiliyu-v-2021-godu-zamministra-obrazovaniya/>

<sup>14</sup> <https://kloop.kg/blog/2021/01/27/polovina-seksualnyh-posyagatelstv-v-otnoshenii-detej-proishodit-doma-ili-v-gostyah-mvd-kyrgyzstana/>

<sup>15</sup> Report on the study of judicial practice in the Kyrgyz Republic on crimes against women and girls. PA "KYRGYZ ASSOCIATION OF WOMEN JUDGES" <https://kawj.kg/wp-content/uploads/2019/08/Analyticheskii-Otchet-%D0%B1%D0%BB%D0%BE%D0%BA-RU.pdf>

old Burulai Turdalieva complained about having been kidnapped and was subsequently stabbed and killed by her abductor at the police station.<sup>16</sup>

33. According to the research done through a UNDP project,<sup>17</sup> more than 20% of marriages in the Kyrgyz Republic were the result of bride kidnapping; with an additional 6% comprising forced marriages that did not involve bride kidnapping (as defined in Article 177) . 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 recorded throughout Kyrgyzstan, to varying degrees.<sup>18</sup>
34. The age of marriage prescribed under the law is 18 years for both sexes (Article 14 of the Family Code) and violating the age of marriage is criminally punishable in all circumstances (registered, non-registered, de facto, religious). However, there is no available information about how often the prohibitions (Art. 176-178 of the Criminal Code) are enforced. In a study conducted by UNFPA,<sup>19</sup> cases of early marriage among girls were recorded in all regions, but particularly prevalent in Naryn and Chui oblasts (around 13%), while Bishkek recorded a prevalence rate of 2%. Early marriages in rural areas are 2.5 times more common than in urban areas.

### Recommendations for Kyrgyzstan

We respectfully urge the Committee to make the following proposed recommendations to the government of Kyrgyzstan regarding the violations of the Convention addressed in this submission:

- a) **Amend Articles 161 and 162 of the Criminal Code** to ensure that the definitions of sexual violence crimes are in compliance with international human rights standards and cover all forms of sexual violence acts committed without the victim's voluntary, genuine and willing consent;
- b) Abolish Article 163 (compulsion) and integrate it into Article 161 (rape), since acts envisaged in Article 163 amount to rape, and define sentences that correspond to the gravity of the crime;
- c) **Amend Article 23 of the Criminal Procedure Code** to ensure ex officio (public) prosecution of all sexual violence crimes and abolish the requirement that a victim has to initiate criminal proceedings (private-public prosecution);

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<sup>16</sup> 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 ROVD (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 the collection of more than \$ 11,000 in favour of the family of the victim as moral and material damages.

<sup>17</sup> UNDP project on the 'Prevention of gender-based violence in Kyrgyzstan' <https://crdp.asia/prezentatsiya-itogov-proekta-profilaktika-gendernogo-nasiliya/>

Данные озвучены на презентации результатов медико-демографического исследования на конференции «Достижения и дальнейшие шаги органов внутренних дел КР в системном подходе к профилактике гендерного и семейного насилия» в Бишкеке, 2018 г.

<sup>18</sup> Отчет по результатам исследования «Гендер в восприятии общества» (2018 год). [https://kyrgyzstan.unfpa.org/sites/default/files/pub-pdf/GSPS\\_Russian\\_Final%20report.pdf](https://kyrgyzstan.unfpa.org/sites/default/files/pub-pdf/GSPS_Russian_Final%20report.pdf)

<sup>19</sup> Gender in Society Perception Study, 2016: [https://kyrgyzstan.unfpa.org/sites/default/files/pub-pdf/GSPS\\_english.pdf](https://kyrgyzstan.unfpa.org/sites/default/files/pub-pdf/GSPS_english.pdf)

- d) **Amend Article 61, 23 and 26 of the Criminal Code** to abolish the possibility of discontinuing sexual violence cases based on reconciliation of the parties;
- e) **Ensure that investigators, prosecutors and judges are trained** according to a gender-sensitive methodology for investigating and prosecuting sexual violence;
- f) **Ensure deterrent sanctions** for perpetrators and effective remedies and rehabilitation for survivors;
- g) **Abolish burdensome evidence requirements** to prove sexual violence and investigative practices that contribute to secondary victimisation of women (such as examining the prior sexual history of the victim) and that are not absolutely necessary for establishing the facts of the case;
- h) **Ensure awareness-raising campaigns**, including among law enforcement, about the criminal nature of all forms of sexual violence (including marital rape and statutory rape) and that violence is not justified in any circumstances;
- i) Design and implement effective criminal and other policies to prevent and address **child marriages and bride kidnappings** and sexual violence related to these practices;
- j) **Ensure that the intersecting forms of discrimination are understood** of women and girl survivors of sexual violence belonging to vulnerable groups (including women with disabilities, ethnic minorities, women in prostitution, and LBT women) and that they can access justice without obstacles;
- k) **Collect and publish disaggregated statistics on forced marriages, bride kidnappings and marital rape**, as well as comprehensive statistics about all forms of sexual violence desegregated at a minimum by victims' sex, age, relationship to the perpetrator, ethnicity and belonging to any vulnerable groups;
- l) **Adopt an Anti-Discrimination Law** prohibiting all forms of discrimination and ensuring effective legal mechanisms for protection, remedy and redress;
- m) **Ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**.