



## KYRGYZSTAN

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## Introduction and Summary:

1. 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 comprised of individuals and organisations in over 190 countries.
2. Dr Nadejda Prigoda is an Associate Professor at the Department of Civil Law and Process of the Kyrgyz-Slavic University and holds a PhD in Law. She is an independent gender expert and is currently teaching Law at the University. She has experience in providing a gender analysis to draft legislation and has supported the drafting of laws relating to women's rights, violence against women and gender equality.
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 worthy place of women in politics, society and in the family and works towards achieving gender equality in society and the state.
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. In this submission, Equality Now, the Human Rights Movement, Bir Duino-Kyrgyzstan' (BDK), the Public Association 'Ensan Diamond', the organisation 'PA "Alga" (Chui oblast)' and Dr Nadejda Prigoda provide information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. The submission deals with our concerns with regard to laws related to rape and other forms of sexual violence and practices which effectively deny access to justice for 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; 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 is in reference to Equality Now's recent report, "Roadblocks to Justice: How the Law is Failing

Survivors of Sexual Violence in Eurasia”<sup>i</sup> which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.

7. We reiterate the Conclusions adopted during the previous cycle<sup>ii</sup> which enjoyed the support of Kyrgyzstan, and underline the particular recommendations that Kyrgyzstan should strengthen its implementation of legislation aimed at the elimination of violence against women;<sup>iii</sup> investigate complaints and institute criminal proceedings against perpetrators even in the absence of formal complaints;<sup>iv</sup> and prosecute perpetrators of violence and bride-kidnapping.<sup>v</sup>

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

8. Despite reforms to Kyrgyzstan’s Criminal Code in January 2019, it 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.
9. 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 therefore is defined and understood as penile-vaginal penetration meaning that the victim can only be female. A series of aggravating factors and increased punishment is also foreseen. Examples include when sexual intercourse is combined with the 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.
10. Article 162(1) criminalises “pederasty, lesbianism or other deviate actions of a sexual character committed with the use of violence not threatening life or health, or with a threat thereof with respect to a male (or female) victim or other persons or with the use of the helpless state of the victim”. There is no definition of other actions or other forms of penetration in the Criminal Code.
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 relation, 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 a number of ways. 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>vi</sup> In addition, threat of violence is interpreted as entailing an expression of intention to immediately use physical violence or to commit rape. The threat can be expressed verbally or through actions, such as for example 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.

13. 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 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 or compromised mental faculties (for example, if she has dementia, a mental disorder, or is unconscious). 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 cover the situations where the perpetrator could overcome the will of the victim (e.g. perpetrator subjecting victim to systematic domestic violence and making her helpless, or taking her to a deserted area where there was no point of resisting sexual violence).
14. Contrary to international and regional standards, Articles 161, 162 and 163 (which criminalises compulsion to perform sexual actions) 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 the 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.

### **Legal provisions allowing impunity for perpetrators of sexual violence**

15. 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 offence victim and redressed the damage caused”. This Article can be applied in ‘less severe crimes’, such as compulsion to perform sexual actions, compulsion of a person to enter into marriage or de facto marital relations, violation of marriage age legislation in conducting religious ceremonies. Further, according to Article 23(3) of the Criminal Procedure Code, pre-trial proceedings in such criminal cases of private-public prosecution can be terminated due to the parties’ reconciliation in accordance with Article 61 of the Criminal Code.

16. 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, 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 where investigators do not prevent such interference. Further examples include where relatives and representatives of the accused visit the victim at home or in hospital with the purpose of influencing the victim and forcing her to withdraw her complaint. This takes the form of offering money, buying apartments and negotiating with more influential relatives of the victim, often through the assistance of a lawyer. In a number of cases involving adolescent 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 criminal justice processes. Neither do they examine whether reconciliation was the expression of free will, or the result of pressure.
17. 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.
18. 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 don't want him to be imposed lengthy sentences and 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 therefore serve to undermine and prevent survivors of rape and sexual violence from seeking justice.

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

19. The lack of mandatory (ex officio) prosecution for sexual violence, as provided by the law, denies justice to survivors and is contrary to international human rights standards. Article 23 of the Criminal Procedure Code provides that cases of non-aggravated rape (Article 161(1) of Criminal Code) and compulsion to perform sexual actions (Article 163 Criminal Code) qualify as cases of private prosecution. This means they are initiated 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>vii</sup>, local law enforcement authorities are seen to discourage women from filing such claims from the outset and put pressure on her to withdraw the complaint if she has managed to file it, and to postpone initiation of investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim.

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 by authorities and investigators to evaluate the impact of rape on a victim's psychology and the subsequent trauma she endures, which influences 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 for 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 is subsequently ignored.
21. It is still common 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 specificity 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 if they have a very low income, as well as persons with certain forms of disability, single mothers raising a minor, and minors. However, 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, victims are left without legal assistance due to their inability to pay for the services of a lawyer. Even though it is the responsibility of the prosecutor to properly prosecute the crime and therefore protect the interests of the victim, in practice there are a number of cases where the accused was sentenced only after the intervention of the centres for the protection of the rights of victims, which provided legal assistance and support in court. This shows the ineffectiveness of the prosecution in defending the interests of the victims, while most of the victims don't have financial means to hire private lawyers, which puts them in a disadvantageous position as compared to the defendant.
23. The sexual history of the victim, as well as her relationship status with the perpetrator, 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. The practical guide introduced in 2018<sup>viii</sup> establishes clearer guidelines in line with international standards but further efforts need to be made to train investigation officers to ensure its correct and effective implementation.

### **Further harm to adolescent girl survivors of sexual violence and Forced Marriage**

24. 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, according to Chapter 26 of the Criminal Code. 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 “action 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 (while framing it as a crime against morality), and has derogatory 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.
25. Bride kidnapping (kidnapping of a person with the purpose of marriage, Article 175) is treated as a distinct crime to forced marriage (Article 177) and to compulsion to enter into actual marital relations (Article 176), which is in line with the requirements of the Council of Europe’s Istanbul Convention. However, it is often the case that bride kidnapping will end with the woman or girl marrying the man because 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 relatively small, and 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.
26. Despite the existing legal framework, weak implementation of the law and prevailing social norms, which the state fails to affectively 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 lack of adequate response by authorities became very evident in May 2018, when 19-year-old Burulai Turdalieva complained about having been kidnapped and was subsequently stabbed and killed by her abductor at the police station.<sup>ix</sup>
27. According to research,<sup>x</sup> more than 20% of marriages in the Kyrgyz Republic were as a result of bride kidnapping and the proportion of forced marriages (as defined in Article 177) 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.<sup>xi</sup> The practice takes place more commonly among girls who have had either had no education or only primary

education, and among poorer households.

28. The age of marriage 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's no available information about how often the prohibitions (Art. 176-178 of the Criminal Code) are enforced. In a study conducted by UNFPA,<sup>xii</sup> 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.

### **Recommendations for Action by the Government of Kyrgyzstan**

Equality Now, Associate Professor Dr Nadejda Prigoda, Human Rights Movement, 'Bir Duino-Kyrgyzstan' (BDK), Public Association, 'Ensan Diamond' and PA "Alga" (Chui oblast) respectfully call on the government of Kyrgyzstan to:

- 1) Ratify the Council of Europe's Convention on Preventing and Combating violence against women and domestic violence (Istanbul Convention);
- 2) Amend Articles 161, 162 and 163 of the Criminal Code to ensure that the definitions of sexual violence crimes are in compliance with CEDAW and the Istanbul Convention and cover all forms of sexual acts committed without the victim's voluntary, genuine and willing consent, and include a wide range of coercive circumstances;
- 3) Amend Article 23 of the Criminal Procedure Code of Kyrgyzstan to ensure mandatory (ex officio) prosecution of sexual violence crimes and abolish the requirement that a victim has to initiate criminal proceedings;
- 4) Amend Article 61 of the Criminal Code of Kyrgyzstan to abolish the possibility for dismissing sexual violence cases based on reconciliation of the parties;
- 5) Ensure that investigators, prosecutors and judges are trained according to a gender-sensitive methodology for investigating and prosecuting sexual violence; ensure deterrent sanctions for perpetrators and effective remedies and rehabilitation for survivors;
- 6) Abolish burdensome evidence requirements to prove sexual violence and investigative practices that contribute to secondary victimisation of women (such as examining prior sexual history of the victim) and that are not absolutely necessary for establishing the facts of the case;
- 7) 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;



- 8) Design and implement effective criminal and other policies to fight child marriages and bride kidnappings and sexual violence resulting from these practices;
- 9) 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, LBT women) and that they can access justice without obstacles;
- 10) 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 by victims' sex, age, relationship to the perpetrator, ethnicity and belonging to any vulnerable groups.

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<sup>i</sup> The Report can be referenced at [https://www.equalitynow.org/roadblocks\\_to\\_justice](https://www.equalitynow.org/roadblocks_to_justice)

<sup>ii</sup> Report of the Working Group on the Universal Periodic Review, HRC twenty ninth session, A/HRC/29/4, 9 April 2015

<sup>iii</sup> As put forward by the Czech Republic, A/HRC/29/4 para 117

<sup>iv</sup> As put forward by Albania, A/HRC/29/4 para 117

<sup>v</sup> As put forward by Slovenia, A/HRC/29/4 para 117

<sup>vi</sup> However, reference to economic violence is made in the Law on the Protection 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

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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.

<sup>vii</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.

<sup>viii</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.

<sup>ix</sup> May 27, 2019 marks exactly one year since the tragic death of Burulai Turdalieva, a young woman who was stabbed in the police office. It was a widely covered case. 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>x</sup> <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>xi</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>xii</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)