

SEXUAL VIOLENCE AND DISABILITY IN KYRGYZSTAN: LAW, POLICY, PRACTICE AND ACCESS TO JUSTICE



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About the authors

'Ravenstvo' Union of Persons with Disabilities is a user-led public association formed in 2004 to improve the lives of people with disabilities in Kyrgyzstan. It began operating at the national level in 2019, when its head office relocated to Bishkek after more than a decade of working from and within the Issyk-Kul Region. The organization takes a human-rights-based approach to promoting inclusivity in government and civil society, by influencing policy and practice and by breaking down stereotypes and stigmas against persons with disabilities.

For more information, visit www.ravenstvo.kg

Bir Duino - The Bir-Duino Kyrgyzstan Human Rights Movement (BDK) is a public association that was formed as a successor to the 'Citizens against Corruption' human rights center. Its mission is to protect human rights and freedoms in Kyrgyzstan by facilitating the practical implementation of the humanitarian articles of the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe (OSCE), and to promote the upholding of Kyrgyzstan's other obligations in the area of human rights and fundamental freedoms.

For more information, visit www.birduino.kg

Equality Now is an international human rights organization that works to protect and promote the rights of all women and girls around the world. Its campaigns are centred on four programme areas: Legal Equality, End Sexual Violence, End Harmful Practices and End Sexual Exploitation, with a cross-cutting focus on the unique needs of adolescent girls. It combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit women and girls, both now and in the future.

For more information, visit www.equalitynow.org

In addition to the efforts of these partner organizations, the compilation and publication of this report has involved significant and valuable contributions by the following individuals:

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We acknowledge that cultural and personal preferences vary with respect to the language and terminology used around disability and identity. The language and terminology used in this report is in line with the UN Convention on the Rights of Persons with Disabilities.

CONTENTS

2 ABOUT THE AUTHORS

4 INTRODUCTION

- 4 Sexual violence, gender, and disability in Kyrgyzstan
- 5 About this report

6 ASELYA'S STORY

8 FINDINGS

- 8 **Legal barriers**
 - 8 Inadequate laws and legal definitions around rape
 - 8 Inappropriate application of the statute of limitations
 - 9 Burdensome and discriminatory evidentiary standards
 - 9 Private-public prosecution as an obstacle to justice
 - 10 Ineffective pre-investigation as an obstacle to justice
- 11 **Procedural barriers**
 - 11 Lack of fair, affordable access to disability support
 - 11 Lack of identification and assessment of vulnerable individuals
 - 11 Lack of accessible information about sexual violence and how to report it
 - 12 Lack of access to crisis shelters, healthcare, and social support
 - 12 Lack of affordable, accessible legal support
- 13 **Socio-cultural barriers**
 - 13 Harmful attitudes towards disability
 - 13 Coercion or pressure to keep silent or withdraw complaints
 - 14 Lack of understanding of consent in relation to intellectual disability
 - 14 Institutionalization

16 ZARIMA'S STORY

18 GOVERNMENT MEASURES AND RECOMMENDATIONS

- 18 Positive progress in Kyrgyzstan to date
- 19 National and international obligations and standards
- 20 Recommendations

22 NATALYA'S STORY

23 APPENDIX

- 23 Standards and Obligations

INTRODUCTION

Sexual violence, gender, and disability in Kyrgyzstan

Globally, an estimated 736 million women have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their life.¹ For women and girls with disabilities, the risk of experiencing sexual violence is even higher.

According to research by the UN Population Fund Sexual & Reproductive Health Agency, between 40% and 68% of girls with disabilities experience sexual violence before the age of eighteen, including by family, intimate partners, caregivers and institutional facilities.² Some women and girls, including those who are deaf or deafblind or who have intellectual disabilities, may be at particular risk due to isolation, dependency and oppression.³

Disability can be understood as the social effect of the interaction between individual impairment and the social and material environment, and can involve physical, psychosocial, intellectual or sensory differences that may or may not come with functional limitations.⁴ The category of 'people with disabilities' represents a highly diverse group: the vulnerability of women and girls with disabilities to sexual violence is inextricably linked with compounding factors such as minoritization, socioeconomic inequality, age discrimination, geographical isolation, and illiteracy.⁵

The situation in Kyrgyzstan

In Kyrgyzstan, gender-based violence against all women is widespread.⁶ But despite official statistics indicating that 40% of the estimated 203,000 people with disabilities in Kyrgyzstan are women and girls, little is known about the scale and extent of sexual violence against women and girls with disabilities specifically. Official statistics on victim-survivors of various abuses (sexual violence, domestic violence and abusive marriage practices) do not include any information about disability, nor are there any official or non-governmental studies that would show the real prevalence of sexual violence against women and girls with disabilities.

Until more comprehensive, detailed information is collected, the scale, extent, and nature of sexual violence against women and girls with disabilities will not be

adequately understood or appropriately addressed through improvements to policy and practice in Kyrgyzstan.

Alongside the absence of reliable data to inform gender- and disability-specific preventative measures or interventions, access to justice by survivors is significantly impeded by barriers relating to gender and disability within the criminal justice system in Kyrgyzstan.

Very few cases of sexual violence at all reach the criminal justice system in Kyrgyzstan. According to the Ministry of Internal Affairs, of the 604 cases of sexual violence that were registered in 2021, more than half (53%) were closed on the basis of "the absence of a legally defined crime."⁷ According to the figures provided by the General Prosecutor's Office in relation to rape in 2021, out of a total of 632 cases, 75% were closed, 21% were brought before the courts, and 4% were pending/remained in progress.⁸

About this report

This report aims to identify and analyse some of the legal, procedural, and socio-cultural barriers to the prevention of sexual violence against women and girls with disabilities in Kyrgyzstan, as well as barriers affecting access to support and justice for survivors. It concludes with a series of recommendations designed to inform efforts by the government of Kyrgyzstan to overcome these barriers in line with its international human rights obligations.

In the absence of any official data on the prevalence, distribution, and nature of sexual violence against women and girls with disabilities in Kyrgyzstan, this report draws upon publicly available evidence from legislative, administrative and judicial policy and practice, including court records from litigated rape cases involving women and girls with disabilities. It is also informed by direct evidence and testimony of survivors from across seven regions of Kyrgyzstan – including the case studies presented below, all of which are sourced from the professional networks and organizations with which the report authors are affiliated.

This report identifies serious gaps and challenges in both legislation and implementation in Kyrgyzstan's alignment with international human rights standards to which it is party, such as the Convention on the Rights of People with Disabilities (CRPD). It also highlights the gendered and disability-based exclusion, discrimination, stereotyping, and prejudicial treatment that is experienced by women and girls with disabilities in Kyrgyzstan.

It notes the positive progress that has been made to date (see Section 3.1), but reveals the urgency with which the government of Kyrgyzstan must act to overcome barriers to the prevention of sexual violence against women and girls with disabilities, and to provide survivors with access to both support and justice.

“40-68% of girls with disabilities experience sexual violence before the age of 18”

1 See UN Women, 'Facts and figures: Ending violence against women', available at: <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

2 Management Sciences for Health & UNFPA, We Decide Young Persons with Disabilities: Equal Rights and a Life Free of Violence (May 2016).

3 See CRPD Committee, 'General comment No.3 (2016) on women and girls with disabilities', CRPD/C/GC/3, para. 33

4 See Article 1 of the Convention on the Rights of Persons with Disabilities

5 See CEDAW, GR No. 35, para. 12.

6 See CEDAW Committee, 'Concluding observations on the fifth periodic report of Kyrgyzstan', (CEDAW/C/KGZ/CO/5), paras. 21, 41.

7 See Radio Azattyk, 'A protest against violence against women was held in Bishkek' (8 July 2022), available at: <https://rus.azattyk.org/a/31934628.html>

8 Of the 473 closed cases, 13.7% were closed following a reconciliation between the parties, 7.61% due to the lack of a formal application to press charges, and 77.38% on the basis that the criteria according to which an act is deemed to constitute an offence had not been satisfied (i.e. the fact of rape remained unproven). Further information available at: <https://www.prokuror.kg/ru>

ASELYA'S STORY

Aselya⁹ was born in 1996 with a severe form of cerebral palsy, learning difficulties, and a visual impairment. She was denied admission to school because of her disabilities. After losing her parents when she was young, Aselya went with her siblings – an older brother, Sergey,¹⁰ and a younger sister – to be raised by their abusive grandparents. Eventually, Sergey was no longer able to withstand the abuse at home and fled from the family's village to Kyrgyzstan's capital, Bishkek.

After Aselya turned 16, her grandfather and uncle who lived with them, began raping her and threatened to kill her if she told anyone about the ongoing sexual abuse. As she was not in school, received no visits from social services, and was unable to contact the police, Aselya was extremely vulnerable and the perpetrators were able to continue their abuse unchecked.

In 2020, Sergey discovered that Aselya was being raped and took her to safety in Bishkek, where she received support from a local non-profit organisation. He wrote a formal report to the law enforcement officials about Aselya's case, but was ignored. The case only came to the attention of authorities after Sergey published a video on social media exposing the abuse she had been subjected to. An investigation into the rape was launched in 2021, prompted by work from the authors of this report. However, the investigation was closed shortly after it began due to a supposed lack of evidence, so the case did not make it to trial.

Aselya's own account of her abuse was disregarded by investigators because of harmful stereotypical views they held about whether or not a victim with disabilities is aware of what has happened to them. Interviews with her grandmother, sister, and medical and social workers were also not taken into account. Excerpts from Aselya's medical record were also ignored, and a discriminatory forensic examination focused only on evidence of physical injuries, despite these no longer being visible by the time the examination took place.

Commissioning a medical-psychiatric psychological expert assessment requires the investigator to issue a decree. But whether or not one can be carried out depends on what

⁹ Names have been changed.

¹⁰ Ibid.



is available in the city or village where the victim lives. For example, it is not possible to perform this type of assessment in the city of Jalal-Abad, meaning that it has to be performed in the nearest suitable location, the city of Osh, around 100 km away, traveling to which requires considerable time and financial resources.

Another obstacle preventing Aselya from accessing justice was the assumption by authorities that she did not require legal assistance because the state was on her side. These misjudgments were compounded by the investigators' inadequate knowledge of best practices regarding working with victims who have experienced trauma, and the absence of any clearly articulated, human rights compliant methodologies for investigating sexual abuse of people with disabilities. These shortfalls, alongside Aselya's vulnerabilities relating to her disabilities, led to the failure of state authorities to prosecute her abusers.

“Aselya’s own account of her abuse was disregarded by investigators because of harmful stereotypical views they held about whether or not a victim with disabilities is aware of what has happened to them.”

FINDINGS

Legal barriers

Inadequate laws and legal definitions around rape

Rape is inherently a violent act, and there should be no requirement in law to demonstrate that the perpetrator used additional violence or force. International human rights standards and international criminal law have evolved over the years to coherently and firmly recognise that a definition of rape based on needing to prove physical violence, coercion, threats and/or resistance does not adequately provide access to justice to survivors.¹¹

The legislation of Kyrgyzstan fails to provide a consent-based definition of rape.¹² Instead, the constituent elements of rape (Article 154 Criminal Code) and assault of a sexual nature (Article 155 Criminal Code) are violence, or the threat of violence, or abusing the helpless condition of the victim. “Violence” is narrowly interpreted as the use of physical force, excluding psychological or economic harm or any other form of coercion, while the lack of clarification on the meaning or interpretation of the term “helplessness” overlooks many other reasons that resistance may not be possible. The crime of compulsion/coercion into sexual intercourse (which carries a lesser penalty) or other acts of a sexual nature (Article 156 of the Criminal Code) does not incorporate the consent element either, as the means for this crime are blackmail or the use of the financial or other dependence of the victim.

In the context of disability, while in certain circumstances rape can still be prosecuted under the provision of abusing the helpless condition of the victim, it is important that there should also not be an automatic presumption that a person with a mental/intellectual disability is helpless, “except for the situations where a specific form of disability hinders an individual to comprehend the situation and express voluntary consent”.¹³

When it comes to minors,¹⁴ the law also criminalizes sexual intercourse with a person under sixteen years of age by a person who has reached the age of eighteen years (Article 157). Problematically, under the new Criminal Code of Kyrgyzstan (which entered into force by the Law of 28 October 2021 No. 126),¹⁵ this crime is viewed in the context of morality and the spiritual health of a person. 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 consented, wanted or even initiated sexual intercourse.

Inappropriate application of the statute of limitations

A statute of limitations is a law that sets the amount of time (usually specified in years) that a victim has to come forward and report a crime before prosecution is no longer possible. In sexual violence cases, statutes of limitations present an additional barrier to justice.

Despite several positive amendments to the Kyrgyz Criminal Code in 2022,¹⁶ some grave abuses against children are still subject to the statute of limitations. These include rape 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 and compulsion to enter into actual marital relations.¹⁷ Limitations also continue to exist for adult victims. The statute of limitation provisions do not take into account that victims may only disclose or report sexual abuse after a long period of time.¹⁸ The various factors that contribute to late disclosure often disproportionately affect women and girls with disabilities.¹⁹

Having no rigid requirements of the statute of limitations for sexual offences, including rape, would not only help to end statutory impunity, but also send the signal that rape is a serious issue which should never escape punishment.

Rape is inherently a violent act, and there should be no requirement in law to demonstrate that the perpetrator used additional violence or force.

Burdensome and discriminatory evidentiary standards

Kyrgyzstan maintains burdensome and discriminatory evidentiary standards in cases of sexual violence and this is further exacerbated when the victim has a disability. This is provided under the law and is enforced by established practice. In the overwhelming majority of cases, sexual violence crimes are prosecuted only when physical injuries are found on the body of the victim, as well as biological materials associated with a sexual act.

Investigators and judges are more inclined to trust forensic examinations. If a forensic examination does not identify injuries on a victim’s body or signs of violence (including, for example, if a long time has passed since the abuse was committed), the victim’s testimony, especially if she has a mental disability, may not be believed, even if the disability does not affect the person’s ability to comprehend the events that happened to her.

The Code of Criminal Procedure provides²⁰ that during the investigation of the alleged sexual violence, a psychological/psychiatric examination of survivors with disabilities be conducted 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 and guidelines free from sexual violence myths and gender-based stereotypes. If deemed “unreliable”, the survivor’s account is automatically discounted, which leads to the dismissal of the case. These layers of discrimination and failure properly to investigate rape in all cases result in impunity for the perpetrator and creation of a culture of impunity for sexual violence generally.

²⁰ Article 178(2)(4)

Private-public prosecution as an obstacle to justice

Some criminal cases in Kyrgyzstan (including non-aggravated rape and non-aggravated assault of sexual nature) are subject to private-public prosecution, that is investigation in these cases begins only at the proactive request of the victims or their legal representatives.

This is a challenge for all survivors of sexual violence. The legislation of Kyrgyzstan does however provide that the State should initiate investigation and prosecution of sexual violence against particularly vulnerable women and girls. Under Article 24(3) of the Code of Criminal Procedure, an investigator or prosecutor should initiate pre-trial proceedings, including in relation to sexual violence, without the need for any pro-active complaint from a victim if she is “unable to defend her rights and lawful interests due to her dependence, helplessness or other reasons”.

Article 155 (clause 2, part 2 of the Code of Criminal Procedure of the Kyrgyz Republic establishes that the prosecutor and investigator have the right, on their own initiative, to initiate proceedings on a case of crimes of private-public prosecution in cases where the act affects the interests of a person who is in a helpless or dependent state or for other reasons is unable to independently exercise his rights.

These provisions are particularly helpful when it comes to women and girls with disabilities and especially those who have suffered abuse by their own lawful representatives, relatives and carers. However, it is not properly implemented in practice and women and girls with disabilities are rarely afforded the protection provided by the law.

¹¹ CEDAW Committee, ‘General recommendation No. 35’ (2017); CEDAW Committee, Karen Tayag Vertido v the Philippines (CEDAW/C/46/D/18/2008); Prosecutor v Jean-Paul Akayesu (Judgment), ICTR-96-4-T (2 September 1998); Prosecutor v Kunarac, Kovac and Vukovic (Judgment), IT-96-23 & IT-96-23/1-A (12 June 2002); UN Women, ‘UN Handbook for Legislation on Violence against Women’ (2012); UN Women, ‘Virtual Knowledge Center to End Violence against Women and Girls’, ‘Legislation’ section, at: <http://www.endvawnow.org/en/modules/view/8-legislation.html>

¹² Equality Now, ‘Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia’ (2019), and ‘Sexual Violence Laws In Eurasia: Towards a consent-based definition’ (2023)

¹³ Equality Now, ‘Roadblocks To Justice’ (No. 89), p. 9

¹⁴ Equality Now, ‘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’ (1 November 2022)

¹⁵ Criminal Code of Kyrgyzstan, at: <http://cbd.minjust.gov.kg/act/view/ru-ru/112309#unknown>

¹⁶ President of Kyrgyzstan, ‘The Criminal Code of the Kyrgyz Republic was amended to increase the liability of perpetrators for acts against the sexual inviolability, life and health of children’ (11 August 2022)

¹⁷ 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 155(4)

¹⁸ WHO, ‘Guidelines for medico-legal care for victims of sexual violence’ (2003), section 7, pp. 75-77

¹⁹ Ibid.

Ineffective pre-investigation as an obstacle to justice

The Code of Criminal Procedure of the Kyrgyz Republic (clause 50, article 5) provides for a pre-investigation stage from the moment a complaint or report of a crime is registered in the Unified Register of Crimes () until a decision is made to initiate a criminal case or to refuse to initiate a criminal case. The order of the pre-investigation and the decisions taken based on its results are defined in Article 153 of the Code of Criminal Procedure.

The legislation has introduced the concept of an investigating judge who has the right to exercise control over the investigation and consider complaints from participants in the criminal proceedings.

However, this new institution of the investigating judge does not yet live up to the expectations placed on it as an independent control body. Judicial practice shows that appealing against the decisions made by the investigator or the prosecutor in relation to women and girls with disabilities does not produce any effect.

In practice, the court relies on the decisions of the investigator or prosecutor and very seldom challenges the decisions made by them, including whether or not to take investigative action.

Bribery and corruption are very serious risks. As local lawyer Khusanbay Saliev, Director of the Osh Office of Bir Duino, explains:

“Usually the first thing perpetrators do is bribe experts, and the prosecutor, referring to this expert, refuses to initiate a criminal case. This vicious practice is very difficult to challenge. When we complain to the investigating judges, they refuse us, claiming they do not have the authority to give instructions to investigators, although the Code of Criminal Procedure does not clearly prohibit this. So, the victim at the stage of pre-investigation, being a witness, has no rights to present evidence, and the perpetrator will not be jailed because the prosecutor or the investigator have not made a decision about whether a crime has taken place. And if it is decided that there is no crime, then any detention will be considered illegal”.

Women and girls with certain types of disabilities mostly live in isolation and lack information about hotlines and emergency numbers that can be used to report sexual violence.

Procedural barriers

Lack of fair, affordable access to disability support

The right to access affordable services is often violated for persons with disabilities, which further contributes to increasing their vulnerability to violence and abuses. Children with intellectual disabilities are particularly disadvantaged.²¹ According to Human Rights Watch:

“Although a May 2022 presidential decree increased the monthly social benefit payments to adults and children with disabilities, Kyrgyz authorities have largely ignored their human rights commitments to persons with disabilities. A governmental council established to implement the Convention on the Rights of Persons with Disabilities failed to meet even once in 2022. There is a lack of affordable rehabilitation centers and there have been reports that families have to pay bribes to get a disability certificate—a prerequisite for receiving benefit payments—due to corruption within the system”.²²

Lack of identification and assessment of vulnerable individuals

Kyrgyzstan has a special regulation on the procedure for identifying children and families in difficult life situations,²³ which defines a child at risk as “a child whose parents (or persons *in loco parentis*²⁴) do not fulfill their duties to raise, educate and/or support the children and/or negatively influence their behavior, or mistreat them and lead an antisocial life.”

The identification of children who are at risk is carried out by regional divisions of the authorized body for child protection together with the executive bodies of local government, through communication with district government agencies, organizations, and citizens; by obtaining information from the media; and through scheduled activities such as door-to-door visits, interdepartmental raids,²⁵ events, gatherings, and public meetings.

When a child at risk is identified, relevant authorities have to conduct a comprehensive assessment and develop a draft individual work plan with the family and/or an individual plan for child protection. However, according to local experts’

21 UNICEF Kyrgyzstan, ‘Children and Youth with Disabilities in Kyrgyzstan’ (2021), at: https://www.unicef.org/kyrgyzstan/media/7251/file/Situation%20Analysis%20of%20children%20and%20adolescents%20with%20disabilities%20in%20Kyrgyzstan_Russian.pdf, p. 11

22 Human Rights Watch, Kyrgyzstan Events of 2022, at: <https://www.hrw.org/world-report/2023/country-chapters/kyrgyzstan>

23 Order to identify children and families who are in a difficult life situation, 22 июня 2015 года № 391, at: <http://cbd.minjust.gov.kg/act/view/ru-ru/97689>

24 i.e. those in the position of a parent, with a parent’s rights, duties and responsibilities, as determined by competent authority; e.g. a relative, legal guardian or person with whom the child resides.

25 Activities carried out jointly by several government bodies to identify people (adults or children) who are in a difficult life situation.

26 Amnesty International, ‘Родственники принимают все решения: как одеваться, что есть, выходить или не выходить из дома’. Как живут в Кыргызстане женщины с инвалидностью, пережившие домашнее насилие, at: <https://eurasia.amnesty.org/2021/06/29/rodstvenniki-prinimayut-vse-resheniya-kak-odevatsya-chto-est-vyhodit-ili-ne-vyhodit-iz-doma-kak-zhivut-v-kyrgyzstane-zhenshiny-s-invalidnostyu-perezvivshie-domashnee-nasilie/>

opinion, the identification of children at risk, especially those with disabilities, is rarely properly conducted, if at all.

There is no one specific law or policy to identify adults at risk of being subjected to violence, with the powers and obligations to identify such cases provided for in the Laws “On the Protection from Domestic Violence” and “On the Fundamentals of Crime Prevention” and in the Regulations of the Ministry of Labour, Social Security and Migration of the Kyrgyz Republic, which include the duty to create a network of social services that organize at the local level the identification, assessment of needs, social support of citizens, families and children in difficult life situations. However, service providers have low awareness of the challenges faced by those with disabilities and are guided instead by traditional and medical models.

Lack of accessible information about sexual violence and how to report it

The inaccessibility of information on sexual and reproductive health and rights in Kyrgyzstan makes it difficult for women and girls with disabilities to properly identify abusive behavior and seek redress. As a consequence, many sexual violence cases are uncovered mostly at the point when a woman or a girl is pregnant. In one case, when a girl became pregnant as a result of rape, she and her mother found out about it only when she was 5 months pregnant.

Women and girls with certain types of disabilities mostly live in isolation (at home or in institutions) and lack information about hotlines and emergency numbers that can be used to report sexual violence. Measures are not undertaken by government agencies, including social service personnel, to proactively inform them about how to seek help if they are in trouble and monitoring is not routinely or effectively carried out (as required by the Regulation on the procedure for identifying children and families in difficult life situations).

The situation is further exacerbated by the fact that many women and girls with disabilities live in poverty, do not have access to the internet and are unable to obtain information available through this means unless NGOs, of which there are few engaged in this work, know of their existence and directly reach out to them.²⁶ Furthermore, the information

that is available on how to report sexual violence is not provided in an accessible format, and the reporting/complaint mechanisms themselves are not disability-, age- or gender-sensitive.

Even when women and girls with disabilities decide to and seek to report sexual abuse, it is frequently difficult for them to do so. A lack of accessible transportation prevents women with some physical disabilities, especially wheelchair users, from traveling to a police station, a hospital, or a crisis center in case of need. Additionally, criminal justice and services facilities, such as police stations and forensic testing centers, are also generally physically inaccessible and do not provide comprehensive services for those with disabilities, for example blind or deaf women, with the result that important evidence is never obtained, easily lost or overlooked.

Lack of access to crisis shelters, healthcare, and social support

According to figures from the Ministry of Labour, Social Support and Migration,²⁷ there are only 15 shelters and crisis centers in the country that serve victims of violence in general, including women and girls with disabilities, although even these are not fully equipped to provide specialised disability support. Even if in the capital Bishkek these centers can be reached by public transport, in the regions, particularly remote areas, transport access is a huge problem. Therefore, frequently victims cannot physically access any kind of help except through NGOs which already have extremely limited capacity.

The situation is particularly challenging when sexual violence is committed by a family member or when the victim lives in a residential institution. In these cases, survivors are often forced to live with their abuser and/or endure ongoing abuse, and may fear reporting the abuse because this might lead them to lose the caregivers on whom they depend.

Women and girls with disabilities who are survivors of sexual violence also often lack access to ongoing healthcare and social support services, including those aimed at supporting their physical and psychological recovery and social reintegration.

Neither forensic medical experts nor any other actor have a duty under the law to inform the victim about any services available to prevent any physical consequences of

sexual violence (sexually transmitted infections, unwanted pregnancy) in the first 72 hours after the violence, including about her right to safe abortion.

There is no interdepartmental or intersectoral coordination of assistance and redirection of victims of sexual violence to other specialists who could provide them with comprehensive assistance, including psychiatric care and psychological support, medical services, safety/security and access to social support. One-stop centers also do not exist, meaning victims are sent to various medical institutions to receive the necessary medical care, which is a lengthy, expensive, stressful and frequently re-traumatizing process.

Victims of sexual violence also lack comprehensive access to health services if they do not have health insurance. If a victim without insurance applies to a medical institution for help, she will only be assigned to a specific primary-level healthcare institution if there are obvious physical injuries or a sexually transmitted infection, including HIV. Such services are very basic however and any additional tests and examinations necessary for diagnosis and forensic medical reports, as well as treatment, have to be covered by the victim herself.

A forensic examination can also present a risk of further traumatization. There is no automatic right for a victim to choose the sex of the examining expert, the availability of professional services is extremely limited, and good protocols are not known to be followed. This is a particular risk with respect to women and girls with disabilities, who are given no additional assistance that may be needed to help them navigate and understand these processes.

Lack of affordable, accessible legal support

Even though Kyrgyz law²⁸ provides that free legal aid is available to individuals with physical (I and II groups)²⁹ and psycho-social disabilities, victims in practice are often not even informed of this right. In addition, when a state-appointed lawyer is involved in the case, such lawyers often lack interest, motivation or expertise in effectively representing the client with disabilities and such legal services are very much under-resourced by the Government.

Lawyers who could provide pro bono support to women with disabilities are rare, especially outside the capital. Often, NGOs working on a specific case have to invite lawyers from the capital to undertake more sensitive cases, as local lawyers from small communities often share connections

or relations with perpetrators, so may face pressure and threats.

Lack of access to legal support is a particular issue for women and girls with disabilities, who may need additional support to access and navigate the criminal justice system. Survivors with disabilities are not guaranteed adequate reasonable accommodation,³⁰ including appropriate services provided with the same level of respect and accessibility to which every person is entitled due to insufficient qualifications and ignorance of the needs of persons with disabilities.

Negative and outdated attitudes toward disability in Kyrgyz society persist, with women and girls with disabilities typically being viewed exclusively as 'sick people' who need only treatment rather than support.

Socio-cultural barriers

Harmful attitudes towards disability

Negative and outdated attitudes toward disability in Kyrgyz society persist, with women and girls with disabilities typically being viewed exclusively as 'sick people' who need only treatment rather than support. Basic human rights such as the right to education, the right to reproductive and sexual health, economic, political and cultural rights are effectively denied and ignored, meaning women and girls with disabilities experience multiple discrimination on the basis of sex and on disability, and sometimes also on the basis of ethnicity and age.

Harmful stereotypes and discriminatory attitudes also contribute to under-reporting of sexual violence: it is still very difficult to talk about violence against women or girls

with disabilities openly because of the stigma attached. The credibility of women with disabilities is often questioned, leading to their accusations being dismissed. For example, women with disabilities are perceived as being asexual. The misconception that "women with disabilities do not have sex" results in discriminatory attitudes on the part of law enforcement authorities when girls and women with disabilities report sexual violence, with comments recorded such as "why would they be subjected to gender-based violence when they are not sexually active?", "who would want to have sex with a woman with a disability?", or even "be thankful that he paid attention to you. Who would have looked at you otherwise?"

Law enforcement personnel are often reluctant to open cases involving women and girls with disabilities. This may be due to a lack of knowledge on how to obtain witness statements – for example, investigators often do not understand and/or ignore how age and disability affect victims' ability to answer questions and engage in criminal proceedings.

There is also a lack of gender sensitivity within the criminal justice system, and the work of law enforcement personnel is detrimentally influenced by gendered prejudice,³¹ including against women with disabilities, for example that they are inclined to lie or are incapable of understanding what has happened to them. These prejudices, together with victims' lack of awareness of their rights, mean that even cases reported to the authorities rarely progress.

Perpetrators therefore commit sexual abuse with overwhelming impunity against women and girls with disabilities which pushes women and girls with disabilities into a cycle of further abuse and also leads to the invisibility of the abuse.

Coercion or pressure to keep silent or withdraw complaints

Another major reason for the low rates of reporting and prosecuting of sexual abuse in Kyrgyzstan is because victims are frequently under great pressure to keep sexual abuse secret due to "uyat", the culture of shame – the idea one must not bring shame on family and relatives. Law enforcement bodies commonly fail to protect survivors from such pressures, while the added pressure of complex and often degrading reporting procedures can intimidate survivors with disabilities and/or discourage them from pursuing justice.

²⁷ The Ministry of Labour, Social Support and Migration of Kyrgyzstan, 'Addresses and phone numbers of crisis centres for women in Kyrgyzstan,' at: <https://mlsp.gov.kg/2020/01/13/adresa-i-kontaktnye-telefony-krizisnyh-centrov-dlya-zhenshin-po-kyrgyzstanu/>

²⁸ Law No. 201 of 16 December 2016 On State-Guaranteed Legal Aid

²⁹ Law of Kyrgyz Republic on Guaranteeing State Legal Aid, Law of 16 December 2016, No 201, at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111480?cl=ru-ru>

³⁰ Under Art. 2 of the CRPD, "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

³¹ 'Report on identification of negative stereotypes against women and men with disabilities and rural women' (2018) and 'Stereotypical conceptions of women and men with disabilities,' at <https://mlsp.gov.kg/gendernaya-politikaz/>

Victims also often face pressure from authorities, including representatives of authorized state bodies working in the protection of the rights of children, police officers, as well as doctors and lawyers, to withdraw their complaints. This can be for a number of reasons including negative and harmful stereotypical attitudes towards victims of sexual violence, nepotism, bribery, exploitation of a victim's illiteracy and other vulnerabilities due to their marginalised status and unwillingness to bear the burden of appointing a new guardian.

Local experts provided an example of a case where a girl was raped. Her family belongs to a vulnerable group of a local ethnic minority. According to neighbours, her older sister was also subjected to sexual violence. The family had to contend with the fact that the perpetrator has three lawyers (one of them being a former judge) and that his relatives work in various law enforcement agencies.

In cases like these, which often occur in more rural communities, NGOs may invite lawyers from Bishkek to represent victims because local lawyers can be under pressure from relatives and others not to go against perpetrators who typically have more social power.

Lack of understanding of consent in relation to intellectual disability

In Kyrgyzstan, as in many other countries, there is a widespread lack of understanding about consent as it applies to women and girls with intellectual disabilities. This creates problems in identifying and responding appropriately to sexual violence committed against this group.

Advice to professionals from AEQUITAS³² on dealing with issues of consent in cases involving allegations of sexual violence against women and girls with disabilities provides helpful guidance and can be summarised as follows:³³

There are two separate issues that need to be assessed in relation to victims with intellectual disabilities.³⁴ Firstly, whether their disability affects their competency to testify in Court; and secondly, whether their disability affects their ability to consent to sexual activity. They may have the capacity to testify, but lack capacity to consent to sexual activity, and vice versa.

32 A nonprofit organization focused on developing, evaluating, and refining prosecution practices related to gender-based violence and human trafficking, at: www.nsvrc.org/organizations/1652

33 The Prosecutors' Resource on Sexual Violence Cases Involving Victims with Intellectual Disabilities, AEQUITAS, at: <https://aequitasresource.org/wp-content/uploads/2019/09/Prosecutors-Resource-on-Sexual-Violence-Cases-Involving-Victims-with-Disabilities-1.pdf>

34 Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, pp. 24-27.

35 E.g. A Local Authority v. H., EWHC 49 (COP), Case No: COP11895254, Approved Judgment, 27 January 2012, para. 23.

36 Special Report of Ombudsman of Kyrgyz Republic "The rights of children in the Republican Children's psychiatric hospital" (Ivanovka vil., Chui region)

37 CRC Committee, 'Concluding observations on the combined third and fourth periodic reports of Kyrgyzstan', CRC/C/KGZ/CO/3-4

"Competency" refers to the victim's ability to distinguish truth from falsehood, to understand the duty to tell the truth, and to communicate in a manner that can be understood. All adults are generally presumed to be competent to testify; however, when the victim has an intellectual disability, it may be necessary to conduct a forensic examination to determine competency (note this should never be understood as examining credibility of the victim).

To assess "capacity to consent" (as opposed to "competency"), consideration must be given to the victim's understanding of a sexual act, as well as their understanding of the unique circumstances surrounding it. It may be helpful to examine whether the victim is able to effectively communicate their decision to consent or to refuse to engage in the sexual activity, and whether they have a basic understanding of the mechanics and consequences of the physical act, and that some risks can be reduced by precautions such as a condom.³⁵

It is important to note that many persons with intellectual disabilities have the capacity to consent to sexual activity under non-exploitive conditions. People with intellectual disabilities, who are capable of making informed decisions, are as entitled to enjoy non-exploitive intimate relationships as persons without disabilities, even in cases where others might find it difficult to accept that the person with the disability was acting freely.

Institutionalization

In 2017, the Ombudsman of the Kyrgyz Republic published a report on the conditions in residential institutions that documented regular physical, sexual and psychological violence against children by both staff and other children.³⁶ However, very little has since been done to implement the recommendations of the report aimed at addressing this.

In its concluding observations on the combined third and fourth periodic reports of Kyrgyzstan,³⁷ the UN Committee on the Rights of the Child (CRC) highlighted widespread torture and ill-treatment of children in closed institutions, and the deaths of children with disabilities in care institutions caused by the neglect of their health and a lack of monitoring mechanisms, including a lack of any independent public inspection of children's institutions.

Human Rights Watch identified similar problems in relation to children in residential institutions³⁸ (which, according to the local experts, are applicable to all residential institutions for women with disabilities) – including a lack of confidential complaint mechanisms. It found that in some institutions, cell phones are explicitly forbidden and are taken away by caretakers or other staff members, with calls only being made in front of caregivers.

Human Rights Watch concluded there is "a serious risk that institutionalized children, whose legal representatives are the institution administration or parents with whom they may not be in regular contact, may be limited in their protection from potential violations of their rights".

A 2013 report by the Kyrgyz Coalition against Torture noted that "the main 'care' for people with mental disabilities is still to place them in psycho-neurological residential institutions, which have all the hallmarks of places of detention and unacceptable conditions of confinement. Often they remain there for life, without any medical justification, and are subjected to inhuman treatment, including exploitation".³⁹

Women admitted to psychiatric hospitals (public or private) under the guardianship and responsibility of the State are particularly exposed to situations of abuse due to their reduced ability to report or others' disbelief of their word. The Inter-American Commission on Human Rights (IACHR) has noted for example that the characteristics of sexual violence in health institutions require special procedures for complaint, investigation, and judicial processes.⁴⁰ However such procedures have not been formalized or followed in Kyrgyzstan.

In 2018, in its preliminary observations on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur highlighted that "[a] comprehensive long-term health strategy needs to be developed in order to decrease and eventually eliminate reliance on large segregated institutions, including psychiatric hospitals and residential institutions. Independent mechanisms should continue to monitor these institutions to ensure the provision of decent conditions that allow for children and adults to live in dignity, with no space for abuses or violations".⁴¹

38 Human Rights Watch, Требуя инклюзии Институционализация и барьеры на пути к образованию для детей с инвалидностью в Кыргызстане (2020), at: https://www.hrw.org/sites/default/files/media_2020/12/kyrgyzstan1220ru_web.pdf, p. 37

39 СОБЛЮДЕНИЕ ПРАВА НА СВОБОДУ ОТ ПЫТОК И ЖЕСТОКОГО ОБРАЩЕНИЯ В ИВС, СИЗО, ПСИХИАТРИЧЕСКИХ И ДЕТСКИХ УЧРЕЖДЕНИЯХ КЫРГЫЗСКОЙ РЕСПУБЛИКИ, отчет о результатах мониторинга (2013), at: https://notorture.kg/wp-content/uploads/2019/11/soblyud-e-prava_na_svoob-u_ot_py-tok_i_zhest-go_obrashch-ya_v_ivs_sizo-ru_2013.pdf, p. 56

40 "Access to justice for women victims of sexual violence: education and health," IACHR (2011)

41 Preliminary observations by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Dainius Pūras on his Country Visit to Kyrgyzstan, 22 to 31 May 2018, at: <https://www.ohchr.org/en/statements/2018/05/preliminary-observations-special-rapporteur-right-everyone-enjoyment-highest>

42 UNICEF Kyrgyzstan, 'Children and Youth with Disabilities in Kyrgyzstan' (2021), at: https://www.unicef.org/kyrgyzstan/media/7251/file/Situation%20Analysis%20of%20children%20and%20adolescents%20with%20disabilities%20in%20Kyrgyzstan_Russian.pdf, p. 55

In 2021, UNICEF Kyrgyzstan concluded that "investigations into cases of violence and abuse against children belonging to marginalized groups remain the exception rather than the rule." According to the experts interviewed, children with disabilities, especially those in residential institutions, perceive abuse as the norm, have no experience in filing complaints against their abusers and are generally not believed. An opaque legal framework, a lack of effective institutional response protocols and often direct conflicts of interest (where a legal guardian is also the abuser) result in a dismally low number of complaints.⁴²

Despite the Ombudsman having identified all these issues in its 2017 report, no meaningful interventions have been made to address them. In 2022-2023 the Ombudsman Institute together with the League of Children's Rights Defenders Public Foundation and with the support of UNICEF carried out monitoring of the human rights situation of children in 11 residential institutions.

In March 2023, when reporting on the preliminary results of the monitoring, the Ombudsman Abdrakhmatova noted the ongoing reports of violence against children from residential institutions, many of which have not resulted in prosecutions despite recommendations to investigate every allegation of torture and ill-treatment in residential institutions of any type. Even where cases have been brought, she noted that "the prosecutor's office and the courts do not follow such cases through to the end" and that a lack of appropriate support for victims means many children who are subjected to abuse are ultimately "forgotten" by the system.



ZARIMA'S STORY

Zarima⁴³ is a 15-year-old girl with cerebral palsy who was raped over the course of a year and forced into sexual relations by an adult man, who also beat her and threatened to kill her and her mother. The man had a criminal record but had been granted parole following his most recent conviction and released on probation.

The sexual abuse began in 2021, with the last episode occurring in February 2022. The girl's mother reported the crimes to the police, who conducted an investigation and referred the case to court under Article 157 of the Criminal Code ('Actions of a sexual nature with a child below the age of sixteen'). The case was admitted to court for trial in March 2022.

At the outset of the proceedings, Zarima faced intersectional forms of discrimination. The court forbade her from testifying in Russian, her mother tongue, but as she is not of Kyrgyz ethnicity, Zarima has a poor understanding of legal terminology in the Kyrgyz language. The court's ban was despite Article 40(4)(2) of the Criminal Procedure Code,

under which victims have the right to testify in their native language or a language of which they have good command. As such, Zarima's right to a fair trial was breached even before it had begun.

The trial was delayed on numerous occasions for various reasons: witnesses failed to attend, there was no lawyer to represent the accused, the accused was not delivered to the court from the pre-trial detention centre, a replacement judge was appointed, a replacement defence lawyer was appointed and requested an adjournment to familiarise himself with the case, the prosecutor failed to attend several hearings and a new prosecutor was appointed.

Despite the general rule under Article 283 of the Criminal Procedure Code, that a criminal case relating to a serious offence (which includes the offence of "Actions of a sexual nature with a child below the age of sixteen") must be resolved on its merits by a judge within a period of two months, Zarima's case was delayed beyond this period for reasons that, while perhaps individually legitimate, when

taken together appear to indicate a dereliction of duty by the court.

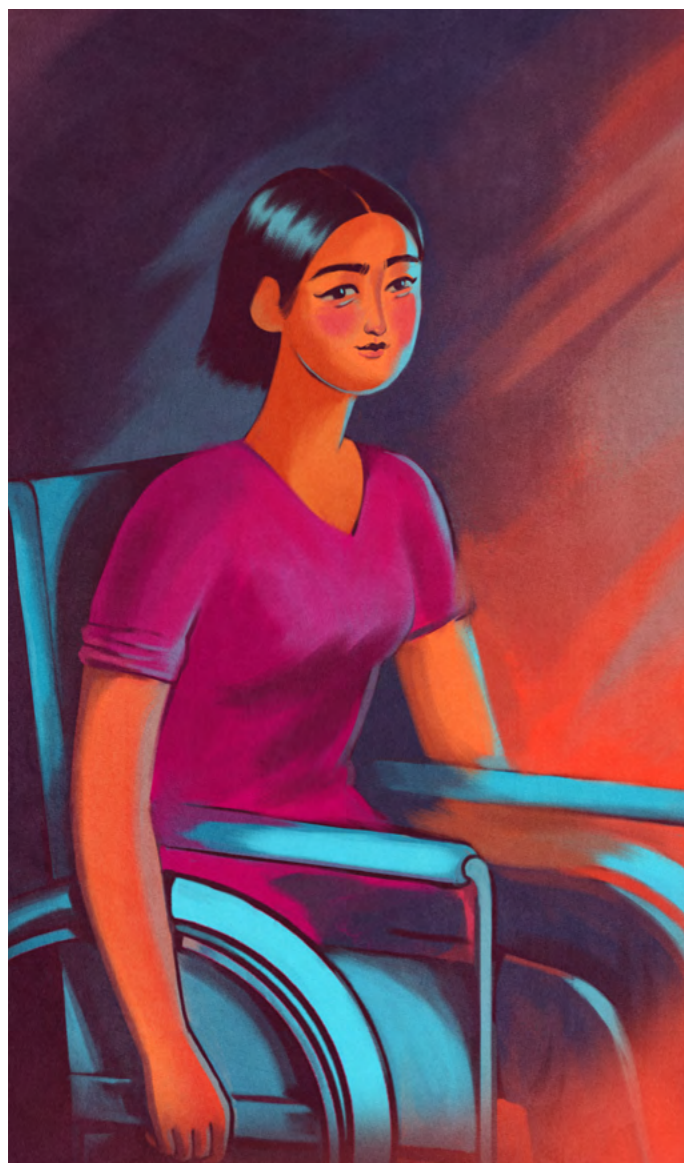
Throughout this time, Zarima was not provided with any protection. The accused was able to call and write to her on WhatsApp and threaten her, with the aim of forcing her to write a new statement and to withdraw the allegation. Threatening violence is a crime in Kyrgyzstan (Art.139 of the Criminal Code) and there are measures provided under law to preserve the safety of victims (Criminal Procedure Code, chapter 9) and a law 'On protection of the rights of parties to criminal court proceedings', which include victims. Despite these protection provisions, none were used in Zarima's case. Indeed, the law 'On protection of the rights of parties to criminal court proceedings' is not fully functional and many victims, lacking knowledge and legal support, are not able to make use of it, or else law enforcement authorities fail to act. Zarima could have been helped as a juvenile victim and saved re-traumatisation if her testimony had been deposed by the investigating judge (permitted under Art.207(7) of the Criminal Procedure Code). Why this was not done is unclear.

In July 2022, emotionally and physically drained by the proceedings, Zarima stated that she did not want to attend court hearings as she was too tired. She asked her mother to attend court alone and submit a new statement. With both Zarima and her mother facing pressure from the prosecutor, as well as by relatives of the defendant and by village residents, her mother refused and said she would not attend court. The court refused to accept a statement from a juvenile without her lawful representative's involvement and the case did not proceed.

Since Zarima's abuser had beaten her, raped her and threatened to kill her when she was just 15 years old, this case should properly have been opened under Art.154(3) of the Criminal Code, which is rape (sexual intercourse with use of violence not endangering life and health, or threats to inflict such violence against the victim or other parties; or equally by taking advantage of the victim's vulnerability) committed against a child aged between 14 and 18. However, the case was mismanaged from the beginning and, once again, a victim has been denied due process and access to justice.

⁴³ Names have been changed.

GOVERNMENT MEASURES AND RECOMMENDATIONS



Positive progress in Kyrgyzstan to date

The structural, systemic and social barriers faced by women and girls with disabilities in reporting and seeking access to justice for sexual abuse (as described throughout this report) mean that perpetrators can often act with overwhelming impunity. However, it is important to note that some measures have been taken by the Kyrgyz Government to address gender-based violence against women, including against women with disabilities.

In May 2019, Kyrgyzstan ratified eight core international human rights instruments including the UN Convention on the Rights of Persons with Disabilities (CRPD), which specifically provides that States shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.⁴⁴

In March 2022, the Ministry of Justice circulated a draft Human Rights Action Plan for 2022-2024 for comments.⁴⁵ Suggestions put forward by the authors of this report included introducing improved measures to protect persons with disabilities in institutions from abuse (including sexual violence) and to ensure that abusers of persons with disabilities in institutions face justice, alongside recommendations for increased data collection and improved disaggregation, including by disability, for clearer information and analysis. The final version, published in November 2022, contained some positive steps, such as:

- preparation of proposals for amendments to the Criminal Code to ensure that the definitions of the types of crimes related to sexual violence comply with the UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (para. 63);

⁴⁴ See CRPD, Article 16

⁴⁵ Ministry of Justice, Human Rights Action Plan for 2022-2024, N1537, 08.03.2022, at: <http://koormtalkuu.gov.kg/ru/view-mpa/1537?comment=324&ver=1537&block>

- preparation of proposals for amendments to the Code of Criminal Procedure for mandatory criminal prosecution of crimes related to sexual violence (para. 64);
- ensuring the implementation of norms and rules on the conditions of keeping people in psychiatric hospitals (para. 40); and
- setting up and ongoing monitoring in educational and residential care institutions of anonymous boxes for filing complaints of violence, including sexual abuse, with hotline numbers and a timely response to children's complaints (paras. 58 and 59).

Progress has also been made as a result of the 2022 Federal Law "On State-Guaranteed Legal Assistance" No. 91, by which free legal aid is to be made available to persons in Kyrgyzstan with the 1st and 2nd groups of disability,⁴⁶ persons with mental disabilities, children, victims of domestic violence and elderly people living in state-run social institutions.⁴⁷

In June 2022, tougher penalties were introduced for crimes involving sexual violence against children,⁴⁸ by which parole will no longer apply to a person sentenced to imprisonment for committing an offense against the life or sexual integrity of a child,⁴⁹ while amnesty will no longer apply to those convicted of rape and sexual assaults of minors.⁵⁰ In addition, according to Article 58 of the Criminal Code, the statute of limitation is no longer applicable to crimes including aggravated rape and aggravated assault of a sexual nature.⁵¹

Promising work is also underway to develop a procedure for assisting victim-survivors of sexual abuse based on the 'single window' principle, which would ensure the

compliance of forensic medical examinations with new legislation, and which could potentially be adapted for victims with disabilities. However, plans have not progressed beyond the development of statutory documents, with progress stalled by negotiations over land and building allocation.

Other positive steps taken by the Kyrgyzstan government in recent years include:

- the adoption of a new version of the Law "On Protection from Domestic Violence";
- tightening of legislation for crimes against sexual integrity, life and health of children and the development of amendments to various related criminal legislation in 2022;
- the creation of the Council on the Rights of Women, Children and Gender Equality under the Speaker of Parliament, and the Department for the Prevention of Domestic Violence as part of the Public Security Service of the Ministry of Internal Affairs; and
- the implementation of measures to increase gender sensitivity and competence of law enforcement officers and judges, including the development and introduction of methodological manuals on the investigation of acts of violence.

However, women and girls with disabilities in Kyrgyzstan remain unacceptably vulnerable to sexual violence and face multiple barriers to appropriate care, support, and legal recourse.

National and international obligations and standards

Under the international conventions that Kyrgyzstan has ratified, it has the obligation to address sexual violence and provide access to justice for all survivors. This includes providing adequate and accessible support for women and girls with disabilities.

A detailed list of the national and international obligations and standards to which Kyrgyzstan must continue to be held accountable is included as an Appendix to this report.

⁴⁶ According to the "Regulation on recognition of a citizen as a person with disabilities" adopted by the Government of the Kyrgyz Republic No. 675 of 14 December 2016, 231.

⁴⁷ For criminal cases involving children, legal aid is provided by lawyers with specialized training on children's cases, but not necessarily with knowledge of disability.

⁴⁸ Information available at: https://www.president.kg/ru/sobytiya/novosti/23079_vneseni_izmeneniya_v_ugolovniy_kodeks_kirgizskoy_respubliki_predusmatrivayushie_ughestochenie_otvetstvennosti_vinovnih_lit_za_deyaniya_protiv_polovoy_neprikosnovennosti_ghizni_i_zdorovya_detey

⁴⁹ Article 89 of the Criminal Code

⁵⁰ Article 7 Law No. 7 "On Amnesty and Its Application"

⁵¹ Articles 154(3)(1) and 154(4) and Articles 155(3)(1) and 155(4)

Recommendations

We offer the following recommendations to the government of Kyrgyzstan, based on an analysis of the evidence we have presented throughout this report:

- Amend the definition of rape so that it is based on the lack of genuine and voluntary consent, and put in place victim-centred guidelines on how consent should be understood, including in relation to survivors with disabilities.
- Make sure that women and girls with disabilities who are victims of sexual violence are provided with all reasonable accommodations necessary to report incidents of sexual violence, and are properly assisted throughout the criminal justice process.
- Ensure that families of women and girls with disabilities are given priority to be regularly visited by social services with the purpose of, among others, detecting instances of abuse and neglect. Ensure that social workers have undergone specialised and gender-sensitive training so as to be able to identify sexual abuse. If abuse is identified, initiate criminal proceedings even in the absence of the complaint of the victim as already provided by the law.
- Ensure that all criminal justice professionals, including investigators, prosecutors, judges, lawyers, and forensic experts, receive sufficient training and guidance for working with and providing support to survivors of rape, including and particularly to those with disabilities, which includes addressing all negative stereotypes.
- Ensure that complainants of sexual violence have any appeals during the pre-investigation stage fairly heard and evaluated.
- Remove burdensome evidentiary standards to prove sexual violence, in particular abolish legal provisions and practices that endorse drawing adverse inference from any psychological and psychiatric examinations.
- Put in place victim-centred and age- and disability- specific support services for survivors of sexual violence, including shelters, crisis centres and measures for rehabilitation and social reintegration.

- Introduce measures to protect women and girls with disabilities, including in institutions, from abuse, including sexual violence, and to ensure that perpetrators are brought to justice. This would include, but not be limited to, creation of a safe, easily accessible and confidential mechanism for reporting violations in residential institutions and an independent public inspection of residential institutions, with a broad mandate, including that of detecting facts of sexual violence.
- Collect administrative data on violence against women disaggregated at minimum based on sex, age and disability of the victim.
- Amend Article 58 of the Criminal Code to ensure that no sexual offence committed against a minor is subject to statute of limitations and remove rigid statutes of limitations in relation to adults, particularly persons with mental disabilities. The principle of inevitability of punishment should apply to perpetrators of violence. The responsibility for restoring justice should be borne by the state, not by the victims.
- Conduct, in consultation with civil society, public information campaigns to dismantle rape myths and negative stereotypes of people with disabilities, particularly women and girls survivors of sexual violence.
- Ensure the State provides victims of sexual violence fair and effective compensation for the harms done to them as well as a civil process through which to recover damages from the perpetrator.
- Recommend that the Ministry of Internal Affairs of the Kyrgyz Republic provide for an increase in the representation of women in internal affairs and investigative bodies to support a more positive environment for victims of violence, including sexual violence.
- Train investigators, prosecutors and lawyers on international standards with respect to criminal justice treatment for women and girls, survivors of sexual violence, including with respect to disability, including through regular courses at the Academy of the Ministry of Internal Affairs of the Kyrgyz Republic.



NATALYA'S STORY

Natalya⁵² has cerebral palsy, epilepsy, learning difficulties and has never attended school. At the age of 15, she was raped by a 70-year-old neighbor. After some time, her mother Saliha⁵³ noticed that Natalya had a swollen belly and took her to a doctor, who confirmed that the girl was in the fifth month of pregnancy. Natalya soon began to bleed and was admitted to hospital. She underwent an operation, but the fetus could not be saved.

Saliha, who has a low level of education and is also vulnerable, reported her daughter's pregnancy to the police, but officers failed to act. As Natalya is a child with disabilities, they did not believe her when she said she had been raped. Natalya repeatedly identified her neighbor as the perpetrator, but a criminal case was only opened after evidence was made available from expert examination of biological samples involving a DNA analysis.

Kyrgyzstan does not have the technical facilities to perform a DNA analysis, so samples have to be transported to Russia or Kazakhstan. This process caused considerable delays in investigating Natalya's case. The analysis was also very expensive and was only possible after people donated money to Natalya's family through a crowdfunding appeal with the participation of the authorized representative of the region.

Some in the community and on social media began to blame Saliha, criticizing her for not caring for Natalya and for being unaware of the rape until she noticed her daughter's pregnancy. The family also faced pressure from the perpetrator, whose son and daughter-in-law worked in the regional law enforcement, when he tried to thwart the investigation by attempting to divert suspicion onto other people.

Thanks to the DNA analysis, genetic experts were able to confirm the paternity of the fetus. As a result, charges were brought against him, and the criminal case was sent to court. However, the investigation only progressed and made it to trial after a commission was created under the Commissioner for Children's Rights, which took control of Natalya's case, and a working group was established to examine the case and identify impediments to the investigation.

Approximately one year after Natalya was raped, the court found the defendant guilty in February 2023 and sentenced him to 11 years in prison. The perpetrator's lawyers filed an appeal, claiming that the convict pleads not guilty and they will demand that all charges be dropped.

52 Names have been changed.

53 Ibid.

APPENDIX

Standards and Obligations

What are the international human rights standards applicable to Kyrgyzstan?

UN Convention on the Rights of Persons with Disabilities (CRPD)

States Parties shall take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.⁵⁴

States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems and to other facilities and services open or provided to the public, both in urban and in rural areas.⁵⁵ Such access should be seen from the perspective of equality and non-discrimination⁵⁶ and is a vital precondition for the effective enjoyment of many rights covered by the CRPD.⁵⁷

Safe houses, support services and procedures must all be accessible in order to provide effective and meaningful protection from violence, abuse and exploitation to persons with disabilities, especially women and children.⁵⁸

State parties are recommended to provide training for families and caregivers, all relevant professionals, particularly law enforcement officials, social workers and health professionals on recognising all forms of exploitation, violence and abuse, and communicate and work effectively with persons with disabilities who are victims of violence. The training should include effective reporting measures with a view to ensuring that persons who are exposed to violence are taken seriously and that investigation, prosecution and sanctioning of perpetrators are conducted effectively to prevent recurrence.⁵⁹

54 CRPD, Article 16(2)

55 CRPD, Article 9(1)

56 CRPD Committee, 'General Comment No. 2', CRPD/C/GC/2, para. 34

57 CRPD Committee, 'General Comment No. 2', CRPD/C/GC/2, para. 36

58 CRPD Committee, 'General Comment No. 2', CRPD/C/GC/2, para. 37; CRPD Committee, 'General comment No.3 (2016) on women and girls with disabilities', CRPD/C/GC/3, para. 48

59 CRPD Committee, 'Concluding observations on the initial report of Morocco', CRPD/C/MAR/CO/1, para 35(b); CRPD Committee, 'Concluding observations on the initial report of Montenegro', CRPD/C/MNE/CO/1, para 33(b)

International instruments further provide for specific guarantees for children with disabilities

General comment No 9 (2006) on the rights of children with disabilities of the Committee on the Rights of the Child under the UN Convention on the Rights of the Child

Children with disabilities belong to one of the most vulnerable groups of children (paras. 8 and 44). Children with disabilities are five times more likely to be victims of abuse (para. 42). Girls with disabilities are even more vulnerable to discrimination and, therefore, State parties are requested to, when necessary, take extra measures to ensure that girls with disabilities are well protected, have access to all services and are fully included in society (para. 10).

The particular vulnerability of children with disabilities may be explained inter alia by possible communication or intellectual impairments they may have, where they subsequently may be ignored, disbelieved or misunderstood should they complain about abuse (para 42(c)).

In addition to the legislative measures recommended with regard to non-discrimination, the Committee recommends that States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in article 23 of the Convention (para. 17).

The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets (para. 30).

States parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as: (g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles; (h) Take all necessary legislative measures required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continues to live in a safe and healthy environment; (i) Ensure the treatment and re-integration of victims of abuse and violence with a special focus on their overall recovery programmes (para. 43).

What does the CRPD Committee say about State obligations to combat violence against women and girls with disabilities, including sexual violence?

CRPD Committee, General comment No. 3 (2016) on women and girls with disabilities

The obligation to protect means that States parties have to ensure that the rights of women with disabilities are not infringed upon by third parties. Thus, States parties must take all appropriate measures to eliminate discrimination on the basis of sex and/or impairment by any person, organisation or private enterprise. It also includes the duty to exercise due diligence by preventing violence or violations of human rights, protecting victims and witnesses from violations, investigating, prosecuting and punishing those responsible, including private actors and providing access to redress and reparations where human rights violations occur. For example, States parties could promote the training of professionals in the justice sector to make sure that there are effective remedies for women with disabilities who have been subjected to violence (para. 26).

States parties should combat multiple discrimination by, inter alia: (a) Repealing discriminatory laws, policies and practices that prevent women with disabilities from enjoying all the rights enshrined in the Convention, outlawing gender- and disability-based discrimination and its intersectional forms, criminalising sexual violence against girls and women with disabilities, prohibiting all forms of forced sterilisation, forced abortion and non-consensual birth control, prohibiting all forms of forced gender- and/or disability-related medical treatment and taking all appropriate legislative steps to protect women with disabilities against discrimination (para. 63).

What have other UN Committees highlighted to Kyrgyzstan on violence against women and girls, including sexual violence?

Committee Against Torture, Concluding observations on the third periodic report of Kyrgyzstan, CAT/C/KGZ/CO/3 (November 2021)

The Committee is concerned by the continued high prevalence of violence against women, in particular domestic violence, and the very low number of investigations into such cases (para. 18).

Kyrgyzstan should: (a) Ensure that all cases of violence against women are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims or their families receive redress, including adequate compensation; (c) Ensure that victims of violence against women benefit from protection, including restraining orders, and have access to medical, social and legal services, including psychological counselling, redress, rehabilitation, safe and adequately funded shelters throughout the country and assistance in finding other accommodation; (d) Ensure that law enforcement personnel, judicial authorities and medical and social workers are provided with appropriate training to deal with such cases; (e) Enhance awareness-raising efforts to sensitise the public to such phenomena (para. 19).

Human Rights Committee, Concluding observations on the third periodic report of Kyrgyzstan under the International Convention on Civil and Political Rights, CCPR/C/KGZ/CO/3 (October 2022)

The Committee remains deeply concerned at the high number of suspended investigations into sexual and gender-based violence and the low number of corresponding convictions. In addition, the Committee is concerned about the lack of state-supported shelters for victims of domestic violence (para. 23).

Kyrgyzstan should (para. 24): (c) Increase and strengthen support services and protection for women and girls who have experienced violence, through the provision of shelters, non-judgmental medical treatment, psycho-social counselling and all other support services in line with best practices such as the Istanbul Convention.

CEDAW Committee, Concluding observations on the fifth periodic report of Kyrgyzstan, CEDAW/C/KGZ/CO/5 (November 2021)

The Committee remains concerned about the high incidence of gender-based violence against women in the State party (para. 21).

The Committee recommends that Kyrgyzstan: (a) Reviews the Act on Protection and Defence against Domestic Violence to ensure that it covers all forms of gender-based violence and takes into account the special needs of disadvantaged and marginalised groups of women, including women with disabilities; (d) Ensures that all cases of gender-based violence are effectively investigated and prosecuted, that perpetrators are adequately punished; (f) Ensures women's and girls' access to justice and encourages reporting of gender-based violence to law enforcement bodies, including through affordable – or if necessary, free – legal assistance, relaxing of the burden of proof, and affordable access to forensic evidence, and continue to build the capacity of judges, prosecutors, the police and other law enforcement officers on gender-sensitive investigation and interrogation methods; (g) Strengthen victim support services and protection, including round-the-clock hotlines, adequate shelter, medical treatment, psychosocial counselling and economic support throughout the State party; (h) Intensifies awareness-raising among the general public on the criminal nature of all forms of gender-based violence, including domestic and sexual violence, and the need for women to be able to report such cases to law enforcement authorities without fear of reprisals, stigmatisation or revictimisation (para. 22).

CRC Committee, Concluding observations on the combined third and fourth periodic reports of Kyrgyzstan, CRC/C/KGZ/CO/3-4 (June 2014)

The CRC 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 (paras. 28, 35, 45).

What do international standards say specifically about the right to access to justice and the prevention of discrimination for people with disabilities in the justice system?

Two concepts should be considered:

- (i) **Reasonable accommodation** is defined as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.⁶⁰ Denial of reasonable accommodation constitutes discrimination,⁶¹ which means reasonable accommodation should be provided from the moment a person with disabilities requires it.⁶² Providing reasonable accommodation can help to remove barriers that prevent or discourage persons with disabilities from interacting with the justice system.⁶³ Reasonable accommodation can be any individualised support⁶⁴ including in the form of suitable health care⁶⁵, the provision of assistance or relocation to a different office, adjusting medical procedures or implementing specific communication methods⁶⁶ for persons with disabilities encountering the justice system. Reasonable accommodation should also be provided in the penal system and in place of detention.⁶⁷ In addition, reasonable accommodation should be made for persons with disabilities who wish to enter justice system-related professions. Examples of such accommodation are accommodating justice-related education programmes, certification and licensing examinations and processes, providing all necessary support for ensuring the equal participation of persons with disabilities in the jury system.⁶⁸ One of the major requirements made by the CRPD Committee to the member States with regard to reasonable accommodation, is to incorporate a definition of disability-based discrimination that explicitly addresses all forms of discrimination, including the denial of reasonable accommodation in all areas of life.⁶⁹
1. (ii) **Procedural accommodation** is defined as all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others.⁷⁰ Similar to reasonable accommodation, the denial of procedural accommodation constitutes discrimination. However, unlike the former, procedural accommodations are not limited by the "disproportionate" or "undue burden".⁷¹ Examples of procedural accommodation are, but are not limited to, adaptation of the venue, appropriate waiting spaces, modifications to the method of questioning in appropriate circumstances, allowing persons with disabilities to be accompanied by family members or close friends, providing technical support (assistive devices, voice, text and video-based telecommunication procedures, screen reader software, sign language interpretation, etc)⁷² for witness, guaranteeing physical accessibility to buildings, transportation and communication when they fail to ensure the enjoyment of the right to access for persons with disabilities.⁷³

The rights of women and girls with disabilities in relation to ensuring reasonable accommodation, equal recognition before the law (Article 12 of CRPD) and effective access to justice (Article 13 of CRPD) require careful consideration and acceptance of witness testimony based on the individuals' circumstances rather than on a blanket rejection or dismissal of testimonies of persons with disabilities. Article 13(1) expressly mentions that state parties have to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.⁷⁴

60 CRPD, Art 2

61 CRPD, Art 2

62 CRPD Committee, General Comment 6(2018) on equality and non-discrimination (26 April 2018) CRPD/C/CC/6, para 24(b)

63 CRPD Committee, Concluding observations on the initial report of Turkmenistan (13 May 2015) CRPD/C/TKM/CO/1, para 24

64 Committee, Concluding observations on the initial report of Norway (7 May 2019) CRPD/C/NOR/CO/1, para 28

65 Committee, Concluding observations on the initial report of Slovenia (16 April 2018) CRPD/C/SVN/CO/1, para 23

66 Andrea Broderick and Delia Ferri, International and European Disability Law and Policy (CAMBRIDGE, 2019) 105

67 Committee, Concluding observations on the initial report of France (4 October 2021) CRPD/C/FRA/CO/1, para 30

68 Special Rapporteur on the rights of persons with disabilities, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (2019) 22

69 CRPD Committee, Concluding observations on the initial report of Turkmenistan (13 May 2015) CRPD/C/TKM/CO/1, para 10; CRPD Committee, Concluding observations on the initial report of Turkey (1 October 2019) CRPD/C/TUR/CO/1 para 12; CRPD Committee, Concluding observations on the combined second and third reports of the Republic of Korea (9 September 2022) CRPD/C/KOR/CO/2-3, para 12(d); CRPD Committee, Concluding observations on the initial report of Japan (9 September 2022) CRPD/C/JPN/CO/1, para 13(b); CRPD Committee, Concluding observations on the initial report of Estonia (5 May 2021) CRPD/C/EST/CO/1, para 12(d)

70 Special Rapporteur on the rights of persons with disabilities, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (2019) 9

71 Ibid.

72 Special Rapporteur on the rights of persons with disabilities, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (2019) 16

73 Special Rapporteur on the rights of persons with disabilities, 'International Principles and Guidelines on Access to Justice for Persons with Disabilities' (2019) 14

74 CRPD, Art 13(1)

Landmark decisions of CEDAW Committee on violence against women disabilities

In **R. P. B. v the Philippines** (2014), an author who was deaf and mute was raped by a neighbour when she was 17 years old. Five years after the rape the accused person was acquitted. The CEDAW Committee found that the Philippines violated the rights of the author under article 2 (c), (d) and (f), read in conjunction with article 1 of the CEDAW and the CEDAW Committee's General Recommendations Nos 18 and 19. In particular, the Committee noted that the national court failed to consider her vulnerability as a deaf girl and to provide reasonable accommodation on this basis and failed to conduct the proceeding without undue delay (para. 8.2). Recalling **Karen Tayag Vertido v the Philippines (2010)**, the Committee noted that for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner (para. 8.3). The Committee confirmed its position from General Recommendation No 19 that women with disabilities are considered as a vulnerable group who suffer from double discrimination and, therefore, emphasised that "it is crucial to ensure that women with disabilities enjoy effective protection against sex and gender-based discrimination by States parties and have access to effective remedies" (para. 8.3). The Committee highlighted that the compliance of the State party's obligation to banish gender stereotypes on the grounds of article 2(f) of the CEDAW needed to be assessed not only in light of gender but also age and disability sensitivity applied in the judicial handling of the author's case (para. 8.8).

In **L.R. v Republic of Moldova** (a domestic violence case), the CEDAW Committee in its general recommendations to the Republic of Moldova recommended to ensure that all women and girls, including in particular older women, Roma women and girls and women and girls with disabilities, are protected from violence and have access to immediate means of redress (para. 14(b)(xi)(a)).

What do international standards say on gender stereotyping in the criminal justice system against women and girls with disabilities?

CRPD Committee, General comment No. 3 (2016) on women and girls with disabilities

17. Discrimination against women and girls with disabilities can take many forms: (a) direct discrimination; (b) indirect discrimination; (c) discrimination by association; (d) denial of reasonable accommodation; and (e) structural, or systemic, discrimination. Irrespective of the form it takes, the impact of discrimination violates the rights of women with disabilities:

(e) Structural, or systemic, discrimination is reflected in hidden or overt patterns of discriminatory institutional behaviour, discriminatory cultural traditions and discriminatory social norms and/or rules. Harmful gender and disability stereotyping, which can lead to such discrimination, is inextricably linked to a lack of policies, regulations and services specifically for women with disabilities. For example, owing to stereotyping based on the intersection of gender and disability, women with disabilities may face barriers when reporting violence, such as disbelief and dismissal by the police, prosecutors and courts. Likewise, harmful practices are strongly connected to and reinforce socially constructed gender roles and power relations that can reflect negative perceptions of, or discriminatory beliefs regarding, women with disabilities, such as the belief that men with HIV/AIDS can be cured by engaging in sexual intercourse with women with disabilities. The lack of awareness, training and policies to prevent harmful stereotyping of women with disabilities by public officials, be they teachers, health service providers, police officers, prosecutors or judges and by the public at large can often lead to the violation of rights.

Women with disabilities are subject to multiple discrimination not only in the public realm, but also in the private sphere, for example, within the family or in relation to private social service providers. International human rights law has long acknowledged State party responsibility for discrimination perpetrated by private, non-State actors. States parties must adopt legal provisions and procedures that explicitly recognise multiple discrimination to ensure complaints made on the basis of more than one ground of discrimination are considered in determining both liability and remedies (para. 18).

The obligation to fulfil imposes an ongoing and dynamic duty to adopt and apply the measures needed to secure the development, advancement and empowerment of women with disabilities. States parties must adopt a twin-track approach by: (a) systematically mainstreaming the interests and rights of women and girls with disabilities in all national action plans, strategies and policies concerning women, childhood and disability, as well as in sectoral plans concerning, for example, gender equality, health, violence, education, political participation, employment, access to justice and social protection; and (b) taking targeted and monitored action aimed specifically at women with disabilities. A twin-track approach is essential for reducing inequality in respect of participation and the enjoyment of rights (para. 27).

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