

KYRGYZSTAN

Violence against Women: Barriers to Accessing Justice, Fair Trial Rights, and the Right of Peaceful Assembly

DECEMBER 2020





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American Bar Association Center for Human Rights



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ACKNOWLEDGMENTS

This report was prepared by staff attorneys and consultants of the American Bar Association, Center for Human Rights and reflects their views. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case. The Center would like to thank the Bishkek Feminists Initiatives (BFI), a local Kyrgyz NGO, for significant contributions to this report.

Front Cover: At the Women’s March in Bishkek on March 8, 2020, an activist holds a sign reading in English, “The Mayor’s Office should not decide where I protest” while being escorted by police.
Photo Credit: Alexandra Titova

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TABLE OF CONTENTS

BACKGROUND.....1

FAILURE TO INVESTIGATE AND PROSECUTE GENDER-BASED VIOLENCE.....2

THE CASE OF KALIYA ARABKOVA.....2

VIOLATIONS OF FAIR TRIAL RIGHTS IN THE PROSECUTION OF DOMESTIC VIOLENCE SURVIVORS.....4

THE CASE OF GULZHAN PASANOVA.....4

VIOLATIONS OF THE RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION OF THOSE DEFENDING AGAINST GENDER-BASED VIOLENCE.....6

THE 2020 WOMEN'S DAY MARCH.....6

RECOMMENDATIONS.....8



BACKGROUND

This report was prepared to commemorate the International Day for the Elimination of Violence Against Women, 16 Days of Activism, and International Human Rights Day as well as to call attention to the ongoing struggle of many women in Kyrgyzstan who suffer from gender-based violence and discrimination while perpetrators enjoy impunity. Gender inequality and discrimination serve as a root cause of gender-based violence in Kyrgyzstan, a pervasive and persistent concern among human rights activists, including Bishkek Feminists Initiatives (BFI).¹ Kyrgyzstan is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).² The Committee on the Elimination of Discrimination against Women (CEDAW Committee) also has expressed its concerns on these issues in its Concluding Observations on Kyrgyzstan, in which it has emphasized a number of serious shortcomings in the government's efforts to end violence against women and girls and protect their rights.

This report uses three specific cases to illustrate widespread problems in Kyrgyzstan with regard to women's inability to access justice for gender-based violence, violations of women's fair trial rights that result from gender stereotypes and biases in the court system, and the role that the justice system plays in violating women's rights to freedom of association and peaceful assembly.

1 BFI is an NGO founded in 2009 by a group of feminist activists in Bishkek, Kyrgyzstan, based on the principles of collective emancipation, solidarity, mutual support, and non-violence. This grass-roots collective aims to bring feminist values into Kyrgyz society by engaging students, the women's rights movement, LGBT groups, and national and international human rights activists. BFI significantly contributed to this report.

2 UN Office of the High Commissioner for Human Rights (OHCHR), UN Treaty Body Database, Ratification Status for Kyrgyzstan, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=EN.

FAILURE TO INVESTIGATE AND PROSECUTE GENDER-BASED VIOLENCE

Women in Kyrgyzstan who survive gender-based violence face barriers to accessing justice and are often denied justice entirely. The CEDAW Committee has recognized that, globally, women face a number of obstacles in realizing their right to access to justice on an equal basis with men due in part to discriminatory laws, gender stereotyping, and procedural and evidentiary requirements.³ This appears to hold true in Kyrgyzstan. In 2019, a local NGO submitted a report to the CEDAW Committee indicating that, in the majority of cases of gender-motivated violence it documented, women did not file official complaints against the perpetrators because they were afraid of further violence, “pressure from the police and investigating authorities, and court bias[.]”⁴ The report also mentioned that evidentiary requirements, “gender stereotyping[,] and secondary victimi[z]ation through the legal proceedings further deny justice to survivors.”⁵ The case of Kaliya Arabekova illustrates the reality of these obstacles for survivors of gender-based violence in Kyrgyzstan.

The Case of Kaliya Arabekova

Kaliya Arabekova was the victim of gang-rape and torture at the hands of judicial enforcement agents in 2013. Although the men were convicted of the crime in 2015, to date

all three men remain free. Ms. Arabekova has faced continued harassment and threats related to her case. Inherent gender biases and gender-based discrimination within the legal system have favored her perpetrators.⁶ Ms. Arabekova has been denied access to justice and further victimized throughout the process of seeking to enforce her rights, while the men who were convicted of raping and torturing her have enjoyed impunity.

On the night of December 30, 2013, Ms. Arabekova was gang-raped and beaten by three employees of the judicial system in the Talas region.⁷ She had been contacted by a bailiff, who had a writ of execution for an order to recover alimony from her ex-husband, Mr. Akmatbekov.⁸ The bailiff told Ms. Arabekova to meet him and that he would bring the money that he had obtained from Akmatbekov.⁹ He arrived at the arranged meeting place with two men Ms. Arabekova did not know, asked her to get into a car, and brought her to an unknown apartment in the city of Talas, where the three men raped her, beat her, and locked her up in a dark toilet until morning.¹⁰

The Government criminally charged the defendants for this and, on May 21, 2015, the Sokuluk District Court sentenced them each to eight years in a maximum security prison for gang

- 3 CEDAW Committee, General Recommendation on Women’s Access to Justice, CEDAW/C/GC/33 (July 23, 2015), para. 3.
- 4 Harm Reduction Network Association and Others, Joint Submission: Alternative Report for the 76th CEDAW Session (June 29-July 9, 2020), *Situation of Women Who Face Intersecting Forms of Discrimination in Kyrgyzstan* (June 15, 2020), para. 7, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=KGZ&Lang=EN.
- 5 Equality Now and Others, *Information on Kyrgyzstan for Consideration by the Committee on the Elimination of Discrimination against Women at its 76th Pre-Sessional Working Group (11-15 November 2019)* (Sept. 30, 2019), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=KGZ&Lang=EN.
- 6 See, e.g., *id.* (discussing “victim-blaming attitudes and sympathy towards perpetrators, prevalent in the society and law-enforcement” in Kyrgyzstan).
- 7 Amnesty Int’l, *Amnesty International Report 2015/16: The State of the World’s Human Rights* [hereinafter Amnesty Int’l Report] 225 (2016), <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>.
- 8 Information provided by Kaliya Arabekova’s lawyer.
- 9 *Id.*
- 10 *Id.*

rape.¹¹ However, the judge refused to order the arrest of the men while their appeal was pending, despite Ms. Arabekova's "repeated complaints about the threats she was receiving."¹² According to Amnesty International's investigation of the case, on the night of July 21, 2015, Ms. Arabekova was subsequently assaulted, threatened and raped for the second time in her own home "by two masked men, one of whom she was able to recognize as her initial assailant."¹³

Despite clear evidence, including the results of a comprehensive forensic biological examination that corroborated Ms. Arabekova's testimony regarding the first rape, the Supreme Court quashed the sentence of the Sokuluk District Court (trial court) and sent the case for further investigation to the Talas Prosecutor's Office.¹⁴ In 2018, the Talas City Court and the Talas Regional Court acquitted the defendants.¹⁵ Ms. Arabekova sought assistance from the Ombudsman and the Deputy Ombudsman, who appealed to the Prosecutor General and the Chairman of the Supreme Court. According to the Ombudsman, the original verdict of the Sokuluk District Court was fair and the decisions by the Talas courts were the result of corruption: "The Sokuluk District Court delivered a fair sentence, condemning each official to eight years in prison. In the Talas region, we believe that due to corruption, the victim, K. Arabekova, could not achieve justice."¹⁶

Despite this appeal from the Ombudsman, the legal proceedings to challenge the acquittal and the separate legal proceedings to bring criminal charges on the second rape have been plagued with unreasonable delays and inaction on the part of officials. Proceedings were brought to public appeal to the President of the Kyrgyz Republic on behalf of Ms. Arabekova on the basis of violations of her right to a fair, objective, impartial trial, as required by the Constitution of the Kyrgyz Republic.¹⁷

On June 3, 2019, the Supreme Court of the Kyrgyz Republic finally began cassation hearings on the verdict of the Talas regional and city courts, which acquitted the three men who raped Ms. Arabekova.¹⁸ On July 15, 2019, the Supreme Court quashed the acquittals issued by the Talas City Court and Talas Regional Court. The Supreme Court found that the Talas City Court and the Talas Regional Court did not fully examine the case materials and the factual circumstances of the case. It ordered a new trial in compliance with the requirements of the Criminal Procedure Code.¹⁹ Because of the COVID-19 pandemic, the new trial has not yet taken place.

Although Ms. Arabekova may finally be on the road to justice, it should not have taken this long or been this difficult to put the men who raped her in prison. This case illustrates widespread biases in Kyrgyzstan's judicial system that severely delay or altogether prevent rape survivors from receiving justice.

11 Amnesty Int'l Report, *supra* note 7, at 225.

12 *Id.*

13 *Id.*

14 *Supra*, note 8.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

VIOLATIONS OF FAIR TRIAL RIGHTS IN THE PROSECUTION OF DOMESTIC VIOLENCE SURVIVORS

The devaluing of domestic violence survivors' experiences is a widespread problem in Kyrgyzstan. This is evidenced by the rarity of investigation and prosecution of domestic violence complaints, the shaming of survivors who speak out, and the many obstacles that survivors face in the judicial system. Not only do domestic violence survivors who manage to access the courts face discrimination and gender stereotypes while seeking justice, but the justice system also discriminates against domestic violence survivors who come before the courts as defendants. In prosecuting such cases, the system fails to protect women's right to a fair trial, as illustrated in the case of Gulzhan Pasanova.

The Case of Gulzhan Pasanova

Ms. Gulzhan Pasanova, a domestic violence survivor, was sentenced to nine years in prison for the death of her husband, which took place during an altercation in which Ms. Pasanova's husband threatened her, threw a knife at her, and hit her on the head.²⁰ According to the ABA Center for Human Rights, which monitored Ms. Pasanova's trial through TrialWatch, an initiative of the Clooney Foundation for Justice, the trial violated her right to equality before the law and numerous international standards on the right to

a fair trial, including: (i) the right to call and examine witnesses; (ii) the right to be presumed innocent; (iii) the right to an impartial tribunal; and (iv) the right to an appeal.²¹ According to the ABA Center for Human Rights, "these violations affected the outcome of the trial and/or resulted in significant harm to Ms. Pasanova[.]"²²

Throughout their marriage, Ms. Pasanova's husband had subjected her to "severe psychological and physical abuse."²³ On at least one occasion, Ms. Pasanova's husband beat her "so severely that she lost consciousness and required hospitalization."²⁴ At trial, Ms. Pasanova's legal team "presented significant, credible evidence that she had been subjected to years of domestic violence at the hands of her husband" and additional evidence related to "her state of mind at the time of the incident."²⁵ Counsel argued that Ms. Pasanova had acted in self-defense, warranting an acquittal, or, alternatively, was "in a state of 'extreme emotional distress' stemming from long-term abuse, thereby diminishing her criminal responsibility."²⁶ Defense counsel requested to call a number of witnesses in support of these theories, "including neighbors who were familiar with the history of abuse and ambulance workers who attended the scene and could speak to Ms. Pasanova's demeanor."²⁷ However, the court

20 Clooney Foundation for Justice and Covington & Burling LLP, *Amicus Brief in Support of Ms. Gulzhan Pasanova* [hereinafter Amicus Brief] 11-12 (May 12, 2020), <https://cfj.org/wp-content/uploads/2020/05/CFJ-Amicus-Brief-in-Support-of-Pasanova-G.-12-May-2020-English.pdf>.

21 ABA Center for Human Rights TrialWatch Fairness Report: *Kyrgyzstan v. Gulzhan* [hereinafter Fairness Report] 2, 10 (April 2020), https://www.americanbar.org/content/dam/aba/administrative/human_rights/kyrgyzstan_vs_gulzhan_pasanova.pdf; see also ICCPR arts. 2, 14 and 26; CEDAW arts. 2, 15; Amicus Brief, *supra* note 20.

22 Fairness Report, *id.* at 2.

23 Amicus Brief, *supra* note 20, at 2.

24 *Id.* at 11-12 (internal citation omitted).

25 Fairness Report, *supra* note 21, at 2.

26 *Id.* at 3. The prosecution argued that Mr. Isakov had not abused Ms. Pasanova and that her actions warranted the highest possible penalty under Article 138(3)(1): 10 years' imprisonment.

27 *Id.*



An activist is arrested by police at the Women’s March in Bishkek on March 8, 2020. Photo Credit: Aidai Erkebaeva

denied these requests, “deeming the proposed witnesses irrelevant to the case.”²⁸ Ultimately, the court convicted Ms. Pasanova, sentencing her to nine years in prison. An appellate court upheld Ms. Pasanova’s conviction and the Supreme Court upheld the appellate court’s decision.

The court’s refusal to consider evidence that Ms. Pasanova acted in self-defense and its denial of her counsel’s request to call and examine witnesses violated Ms. Pasanova’s right to a fair trial and contravened best practices. In Kyrgyz courts, there is little to no consideration given to the violence suffered by women who defend themselves, thus making it impossible to mount a full and adequate legal defense. However, best practices indicate that courts should take prolonged domestic violence into account in determining guilt and appropriate sentences in cases where victims have

a history of harming their abusers.²⁹ This position has been affirmed by the Special Rapporteur on Violence Against Women.³⁰

This case highlights a problem that is not specific to one case alone, but rather reflects a larger pattern of victim-blaming in Kyrgyzstan’s justice system.³¹ Women who are subjected to violence face discrimination in treatment by the police and the courts, and in instances where they defend themselves from domestic abuse, they are treated as the perpetrator and subjected to harsher sentences compared to men.³² The normalization of domestic violence against women in Kyrgyzstan and the legal system’s rejection of self-defense or diminished responsibility for victims of such violence demonstrate a failure on the part of the State Party to implement the guarantees under the ICCPR and CEDAW.

28 *Id.*

29 See PENAL REFORM INTERNATIONAL, “Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?” (2016), https://cdn.penalreform.org/wp-content/uploads/2016/04/Women_who_kill_in_response_to_domestic_violence_Executive_summary.pdf; Cheryl A. Terrance et al, *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome* 88 N.D. L. REV. 921, 936-937 (2012).

30 U.N. Hum. Rts. Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Mission to Tajikistan, U.N. Doc. A/HRC/11/6/Add.2 (April 29, 2009), para. 37, <https://www.refworld.org/docid/4a0bda662.html>.

31 Fairness Report, *supra* note 21, at 10 (“According to Human Rights Watch, the victim-blaming that pervades society extends to the courtroom, which may explain judicial resistance to applying Kyrgyz laws on self-defense, lesser offenses, and mitigating factors.”).

32 See *id.* (citing UNDP, *What is the Cost of Domestic Violence?* (2012), at 8).

VIOLATIONS OF THE RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION OF THOSE DEFENDING AGAINST GENDER-BASED VIOLENCE

Local civil society organizations have been active in raising awareness about the issue of violence against women and pushing for reform in Kyrgyzstan for many years. Yet, in doing so, they themselves have faced discrimination, harassment, and arrest for their attempts to exercise their rights to freedom of association and assembly.³³ This is exemplified by the arrest and illegal detention of participants of the 2020 Women’s Day March in Bishkek.

The 2020 Women’s Day March

On March 8, 2020, International Women’s Day, a coalition of Kyrgyz activists organized a peaceful march to call attention to gender-based violence in Kyrgyzstan.³⁴ On the day of the march, organizers and participants gathered in Victory Square in Bishkek. Just before the march began, a crowd of masked men wearing traditional Kyrgyz felt hats attacked the participants—throwing eggs, stomping on balloons, ripping banners, and pushing participants and journalists to the ground—injuring many and disrupting the

peaceful event.³⁵

Instead of intervening to stop the attack, police officers arrested approximately 70 protest participants, mostly women, and took them to the district police station, where the participants were detained for several hours.³⁶ The police did not inform them of the grounds for their detention or provide them access to lawyers.³⁷ Some detainees reported physical abuse by law enforcement officers.³⁸ Police officers also separated an estimated nine people, mainly organizers of the march, and charged them with violating Article 82 of the Code of Violations for disobedience of a lawful demand of law enforcement officers.³⁹

Even before the events of March 8th, government authorities had tried to shut down the march with unlawful restrictions on the right to peaceful assembly. On February 24, 2020, organizers notified the Bishkek City Hall that they would hold an annual March Against Violence Against Women in the Pervomaisky District of Bishkek

33 Freedom of association and the right of peacefully assemble are protected by the ICCPR. See ICCPR, arts. 21, 22; see also Human Rights Comm., General Comment No. 37: Article 21: Right of Peaceful Assembly, U.N. Doc. CCPR/C/GC/37 (July 27, 2020). The right to peacefully assemble is also protected by the Constitution of the Kyrgyz Republic. See KYRGYZSTAN CONST. art. 34.

34 See HUMAN RIGHTS WATCH, *Kyrgyzstan: Women’s Activists Detained, Investigate Attacks on Marchers* [hereinafter Human Rights Watch Report] (Mar. 11, 2020), <https://www.hrw.org/news/2020/03/11/kyrgyzstan-womens-activists-detained#>.

35 *Id.*

36 *Id.*; Statement, Office of the Akykatch (Ombudsman) of the Kyrgyz Republic, *A Number of Police Officers in the Sverdlovsk Region of Bishkek Should Be Disciplined for Ignoring the Kyrgyz Republic’s Ombudsman (Akykatch) Act* [hereinafter Ombudsman Statement] (Mar. 9, 2020), https://ombudsman.kg/index.php?option=com_content&view=article&id=1499&catid=18&lang=ru&Itemid=330. Only a handful of the masked attackers were arrested. See Human Rights Watch, *Kyrgyzstan: Women’s Activists Detained*.

37 Human Rights Watch Report, *supra* note 34.

38 *Id.*

39 Ombudsman Statement, *supra* note 36; Human Rights Watch Report, *supra* note 34.



A volunteer is arrested by police at the Women’s March in Bishkek on March 8, 2020. Photo Credit: Igor Kovalenko, TASS Agency

in honor of International Women’s Day.⁴⁰ City Hall accepted the notice; however, in the days before the march, the Pervomaisky District Court issued a new ban on all rallies, peaceful gatherings, and other public events in Bishkek until July 1, 2020.⁴¹ The court purportedly based its decision to ban public gatherings, including the Women’s Day March, on the coronavirus pandemic. However, at the time, no cases of COVID-19 had been reported in the country. The first case of COVID-19 in Kyrgyzstan was identified on March 18, 2020.⁴² By March 8, the ban on public gatherings by the Pervomaisky District Court had been voided by the Prosecutor General.⁴³

Regardless of whether a ban on public gatherings and protests might have been a permissible restriction on the right to peaceful assembly on public health grounds, during the hearing, city authorities justified the ban on the basis that the

march was an event that could evoke feelings of anxiety and insecurity amongst the public rather than on any legally permissible grounds. During the hearing, representatives of the Pervomaisky District administration alleged that the slogans being used by the organizers of the march were dangerous to morality and against traditional values.⁴⁴ Because this does not constitute a legal basis for restricting an assembly, the actions taken by the state authorities with respect to the 2020 Women’s Day March—including the arrest and illegal detention of the march participants—were unwarranted and violated the participants’ rights to peaceful assembly and freedom of association under the ICCPR and the Kyrgyz Constitution.⁴⁵

The treatment of the 2020 Women’s Day March participants demonstrates the risk associated with advocating for women’s rights and for an end to gender-based violence in Kyrgyzstan.

40 Statement, Office of the Attorney General of the Kyrgyz Republic, *The Prosecutor’s Office Considers Illegal and Unreasonable Ban on the Rally in the Center of Bishkek Until July 1*, <https://www.prokuror.kg/news/4238-prokuratura-priznala-nezakonnym-i-neobosnovannym-zapret-na-miting-v-tsentre-bishkeka-do-1-iyulya.html>.

41 Human Rights Watch Report, *supra* note 34.

42 See DISASTER RESPONSE COORDINATION UNIT, *Kyrgyzstan: COVID-19 Response, Weekly Situation Update* (July 24, 2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/Weekly%20situation%20update%2024%20July%202020.pdf>. On March 22, 2020, the government declared a state of emergency. *Id.*

43 Information provided by BFI’s lawyer.

44 The particular slogans the administration argued were offensive included, for example, “My body my business,” “I’m trans and I’m proud of it,” “I won’t serve your tea” (referencing a tradition when women have to serve tea to their husbands). Fairness Report, *supra* note 21.

45 Kyrgyzstan’s law enforcement representatives apparently took advantage of the novel coronavirus pandemic to restrict the BFI protestors’ rights including rights to peaceful assembly, expression, association, and political participation. Article 21 of the ICCPR provides for the rights of free assembly and any restriction to this right must i) comply with the law; and ii) be necessary in a democratic society in the interests of a limited number of reasons, including public safety and the protection of public health.

RECOMMENDATIONS

Kyrgyzstan's legal system continues to fail local women by not adequately protecting them and instead actively violating their rights and impeding their access to justice. On this International Day for the Elimination of Violence against Women, the Government of Kyrgyzstan should take decisive steps to comply with its obligations under CEDAW and the ICCPR and to adhere to the recommendations issued previously by the CEDAW Committee.

The government should take all appropriate measures to ensure that the rights contained in these treaties are afforded to all women and girls without discrimination and to take additional steps needed to protect women and girls from all forms of discrimination and violence by public and private individuals. To this end, the government should:

- put in place comprehensive measures to prevent violence against women and girls and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished;
- ensure that its existing legal framework in this context is effectively applied, in particular by law enforcement personnel;
- ensure that the Kyrgyz judiciary effectively strengthens existing legal mechanisms so as to ensure that the fair trial rights of domestic violence survivors facing charges are properly protected;
- ensure that Kyrgyz law recognizes defenses such as self-defense and/or diminished responsibility for violence survivors and that judges and lawyers are adequately trained, resourced, and supported in applying such defenses; and
- condemn the arrest and illegal detention of the 2020 Women's Day March participants and urge relevant officials to conduct an independent and impartial investigation into the actions of law enforcement officers and third parties.



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