



Вау Вибой
ИШТИРОК



Tajikistan

Submission to the UN Universal Periodic Review
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Introduction and Summary

1. **Equality Now** is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organisations in over 160 countries.
2. **The League of Women with Disabilities "Ishtirok"** was founded in 2005 and is working in Tajikistan to promote equal rights and opportunities for girls, women and children with disabilities. The aims of the organization are to empower the target groups, to advocate for increasing their independence and to battle prejudice and condescending attitudes towards people with disabilities in the wider society. One of the main goals is also the promotion of a human rights based approach in working with people with disabilities.
3. **Public Fund "Your Choice"** was founded in 2014. The Fund works in Tajikistan to promote the development of the civil society and a constitutional, democratic and social state in Tajikistan through the implementation of projects and programs aimed to develop social participation, social partnership and responsibility of authorities. The key objective of the Foundation is to contribute to human rights protection and promotion of human rights in the Republic of Tajikistan, in particular for women and children, raising the legal culture of the population by promoting basic standards and the implementation of human rights, especially for women and children, established by the international community and proclaimed in various international conventions.

4. During the previous UPR cycle, Tajikistan received 29 recommendations to strengthen and improve measures regarding women's rights protection. From these recommendations, twelve of them related to preventing and eliminating violence against women,¹ five of them addressed the need to eliminate deep-rooted stereotypes regarding women,² two of them recommended the training of officials, such as law enforcement, medical personnel and jurists, to ensure gender sensitive treatment of survivors³ and five of the recommendations related to ensuring women have access to justice.⁴
5. This submission outlines the challenges in the criminal justice system and the legislation of Tajikistan in addressing sexual violence crimes and provides recommendations for improving access to justice for sexual violence through improving legislation and criminal justice procedures. Developing effective criminal law mechanisms for the elimination of sexual violence is a fundamental step in achieving substantive and transformative equality for women and girls in Tajikistan.

Definitions of sexual violence crimes and sentences are not compliant with international human rights standards

6. Rape (as defined in the Criminal Code Article 138⁵) and other analogous crimes that should by their nature be regarded as rape (Criminal Code Articles 139⁶ and 140⁷) are defined as requiring force and are not based on **the lack of free and voluntary consent of the victim**, as required by international human rights standards, including the Istanbul

¹ Australia (Rec. 115.29), Lithuania (Rec. 115.65), Norway (Rec. 115.66), Republic of Korea (Rec. 115.67), Brazil (Rec. 115.68), Italy (Rec. 118.22), Singapore (Rec. 118.27), Paraguay (Rec. 118.28), Spain (Rec. 118.29), Switzerland (Rec. 118.30), Czech Republic (Rec. 118.31) and Sweden (Rec. 118.32). The recommendations were supported or accepted by Tajikistan.

² Lithuania (Rec. 115.31), France (Rec. 115.37), State of Palestine (Rec. 115.39), Togo (Rec. 115.40), and Norway (Rec. 115.66). The recommendations were supported by Tajikistan.

³ Spain (Rec. 115.64) and Lithuania (Rec. 115.69). The recommendations were supported by Tajikistan.

⁴ United Arab Emirates (Rec. 115.28), France (Rec. 115.37), Paraguay (Rec. 118.28), Czech Republic (Rec. 118.31), and Sweden (Rec. 118.32). The recommendations were supported or accepted by Tajikistan.

⁵ Article 138 – 1) Rape, that is sexual intercourse with the use of violence or with the threat of violence towards the woman or other persons, or with the use of the helpless condition of the woman... - shall be punishable by imprisonment for a term of three to seven years.

⁶ Article 139 - 1) Pederasty, lesbianism or other actions of sexual character with the use of violence or with a threat thereof with respect to a male (or female) victim or to their family or with the use of the helpless state of the victim... - shall be punishable by imprisonment for a term of five to seven years.

⁷ Article 140 – Compulsion of a person to enter into sexual intercourse, pederasty, lesbianism, or the commission of other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the use of subordinate, material or any other dependence of the victim... - shall be punishable by imposing a fine in the amount of five hundred to seven hundred estimated standard units, correctional labor for a term of up to two years, or imprisonment for a term of up to two years

Article 139 – Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature: *Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature, committed under the threat of damaging property, disclosing defamatory information, information representing private life or such information that may substantially affect the right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence, – shall be punished by a fine or imprisonment for a term of up to three years, with or without restriction of the rights regarding weapons.*

⁸ Article 36 of the Istanbul Convention.

Convention,⁸ the European Court of Human Rights,⁹ the jurisprudence of the Committee on the Elimination of Discrimination against Women (CEDAW),¹⁰ the International Criminal Court (ICC),¹¹ the Inter-American Court,¹² the International Criminal Tribunal for Rwanda (ICTR)¹³, the International Criminal Tribunal for the Former Yugoslavia (ICTY),¹⁴ the Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI),¹⁵ and the Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights.¹⁶ UN Women guidelines also underscore that rape and sexual assault laws should not require evidence of additional force as rape itself is a violent act and that additional violence should be considered an aggravating factor.¹⁷

7. The definition of rape under Tajikistan law focuses on the use of violence, threat of violence and abusing the helplessness of the victim, rather than focusing on the absence of the free and voluntary consent assessed in the context of surrounding circumstances. Moreover, the legislation does not provide a broad range of coercive circumstances through which sexual violence crimes is considered to have been committed.
8. Lack of criminalisation of non-consensual sexual acts leaves room for the possibility of certain acts of a sexual nature to go unpunished or classified as a crime of less gravity (under Article 140). Examining the lack of consent is especially important, but is not limited to, situations where sexual violence is committed within the context of an unequal power relationship or of a coercive environment where violence is ongoing (including domestic violence), where even if the victim “consents”, the consent may not be free and voluntary, as indicated by the CEDAW, Istanbul Convention and other standards outlined above.
9. The sexual violence crimes, that should be treated equivalently to rape, provided under Article 140 of the Criminal Code are treated as less serious crimes and envisage disproportionately low punishments - the minimum punishment under Article 140 is a fine, while the maximum sentence is two years in prison. Since the crimes are classified as less serious, in addition to the fact that the punishment does not correspond with the gravity of the crime, perpetrators are provided by law with a number of opportunities to escape criminal responsibility altogether.

⁸ Article 36 of the Istanbul Convention.

⁹ M.C. v Bulgaria (No. 39272/98) para. 181

¹⁰ CEDAW Committee, General recommendation No. 35. CEDAW Committee, Vertido v Philippines, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); R.P.B. v Philippines, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

¹¹ ICC Rules of Procedure and Evidence; Articles 7(2) and 8(2) of the ICC Elements of the Offences; Article 7 (1) (g)-1,

Elements of Crimes, International Criminal Court, 2011; Katanga ICC-01/04-01/07, Decision on the Confirmation of Charges,

30 September 2008, § 440; Bemba ICC-01/05-01/08-3343, 21 March 2016, §§ 105-106

¹² Case of Fernandez Ortega et al v Mexico, Judgment of May 15 2011, Interpretation of judgment on preliminary objection, merits, reparations and costs.

¹³ The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Trial Chamber 1, 2 September 1998 7 Prosecutor v Kunarac, Kovac and Vukovic (No. IT-96-23& IT-96-23/1-A)

¹⁴ Prosecutor v Kunarac, Kovac and Vukovic (No. IT-96-23& IT-96-23/1-A), ICTY, 12 June 2002

¹⁵ Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012);

¹⁶ OEA/Ser.L/11.710 MESECVI/CEVI/DEC.4/14 (19 Sept. 2014).

¹⁷ UN Women, ‘Handbook for legislation on violence against women’, 2012, p. 24

Failure to provide mandatory prosecution and dropping of charges based on “reconciliation”

10. The lack of mandatory (ex officio) prosecution for sexual violence in the law denies justice to survivors and is contrary to international human rights standards. As noted by the CEDAW Committee in its General Recommendation 35, states should “ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties”.¹⁸
11. Article 24 of the Criminal Procedure Code of Tajikistan provides that rape qualifies as a crime of private-public prosecution. The article explains that under private-public prosecution, the case is “initiated upon an application of the victim of the crime or their legal representative. In case of reconciliation of the victim of the crime with the defendant and remedy of the harm caused to the victim, prosecution shall be terminated.” Such legal provisions deny justice to survivors because the survivor, rather than the state, is required to bear the burden of the criminal proceeding, including when it comes to the collection of evidence required to prove the circumstances of the crime. Such provisions give the opportunity to law enforcement authorities to discourage women and girls from filing such claims from the outset and put pressure on her to withdraw the complaint if she has managed to file it, and to postpone initiation of investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. Moreover, victims are under great pressure by their close relatives, influential acquaintances, representatives of authorised state bodies working in the protection of the rights of children, as well as doctors and lawyers to either withdraw their complaint or not file a complaint. The law enforcement authorities fail to protect survivors from such pressures, maintaining the barriers to reporting.

Discriminatory corroboration rules to prove sexual violence

12. The justice system applies overly burdensome and discriminatory evidence requirements and corroboration rules for bringing perpetrators to justice for sexual violence. Such practice leaves many forms of sexual violence unpunished and runs contrary to the CEDAW, Istanbul Convention and international human rights standards, including the European Court of Human Rights suggesting that any “rigid” approach to the prosecution of sexual offences “risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy.”¹⁹
13. In particular, in the overwhelming majority of cases, sexual violence crimes are prosecuted and perpetrators are being convicted only when physical injuries are found on the body of the victim, as well as biological materials associated with a sexual act. Such practice leaves the vast number of sexual violence acts to go unpunished in practice,

¹⁸ CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

¹⁹ M.C. v. Bulgaria, para. 166; See also Explanatory Report of the Istanbul Convention, para. 191. See also: Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia, Equality Now, 2019, p.11

because the authorities are solely investigating sexual violence crimes where the perpetrator used physical force and the victim physically resisted. This is contrary to international human rights standards.

Addressing child marriage

14. The age of marriage in Tajikistan is set at 18 years. However, Art. 13.2 of the Family Code of the Republic of Tajikistan allows, in exceptional cases, a reduction in the age of marriage by one year, at the request of persons wishing to marry. The reduction of the age of marriage is decided by a court. Exceptional cases in which to reduce the age of marriage are not established by law and judges make such decisions based on their convictions.
15. In 2019, UN Women Tajikistan reviewed 547 court decisions allowing early marriage registration for the period of 2017-2018. The study showed that taking into account the statistics on unregistered marriages, it can be assumed that the official statistics on early marriages are incomplete and the actual number is higher than recorded. The same study found that courts do not use gender-sensitive approaches in their rulings, and disregard the rights of those entering into marriage, especially of girls, namely the voluntariness of the marriage union, the interests of the child, and the right to independent decision-making. Only in isolated cases have the courts examined if girls would have the opportunity to continue studies if they married below the age of marriage.
16. There have been no studies on the impact of early marriage on violence against girls and young women. However, community organisations that provide services to domestic violence victims indicate that the likelihood of violence in early marriages is higher than in other marriages. In this case, the young daughter-in-law is used as “a free domestic servant.”

17. Recommendations:

Change definition of rape and ensure its mandatory prosecution by the State:

- Amend the definitions of rape and other acts of sexual nature (Criminal Code Articles 138, 139 and 140), in order for these definitions to be based on **free, genuine and voluntary** consent, in the context of the surrounding circumstances and include a wide range of coercive circumstances where consent cannot be considered to have been given, in accordance with international human rights standards;
- Ensure that force is not a required element of the crime of rape but rather an aggravating factor;
- Take all necessary steps to ensure that all crimes of sexual violence are punished based on their gravity and **remove the possibility of solely imposing fines, conditional sentences, community service, or other possibilities to escape responsibility under the law;**
- Amend Article 24 of the Criminal Procedure Code of Tajikistan to ensure ex officio (public) prosecution of all sexual violence crimes and that proceedings may continue even if the victim has withdrawn her accusation or statement and abolish the requirement that a victim has to initiate criminal proceedings (private-public

prosecution).

Ensure criminal justice response from a gender perspective and free from stereotypes:

- Make sure that all reports of rape or other acts of sexual violence are taken seriously and investigated promptly, thoroughly and impartially, from a gendered perspective and free from stereotypes;
- Ensure that all evidence is properly collected and that cases are decided for prosecution based on their merits rather than any prejudicial stereotypical views of the victim or any other reason which would effectively deny access to justice to victims;
- Require that all investigations be context-based taking into account the local dynamics concerning gender norms, gender inequality and structural discrimination in order to uncover any gendered nature of the crime.

Remove discriminatory corroboration practice:

- Make sure that perpetrators can be held to account in cases where the perpetrator did not use physical force and do not limit convictions to cases where the perpetrator used physical force, the victim physically resisted and biological material of the perpetrator is found on the body of the victim;
- Repeal burdensome evidence and corroboration requirements and ensure that there are no strict corroboration requirements for the testimony of a victim to be considered credible, reliable and sufficient as a basis for conviction.

Ensure data collection and training:

- Conduct regular trainings for law enforcement, medical and forensic personnel and judiciary on the specific nature of sexual violence crimes and interaction with victims, with a specific focus on eliminating gender stereotypes and avoiding secondary victimisation;
- Collect, analyse and publish administrative data on sexual violence crimes, disaggregated based on sex, age, ethnic origin, nationality status, immigration status, disability, sexual orientation and gender identity, involvement in prostitution and other indicators of vulnerability;
- Collect, analyse and publish disaggregated data on the attrition rate of sexual violence crimes, which would involve researching the reasons why reported cases of sexual violence do not reach the stage of conviction;
- Collect, analyse and publish disaggregated data on the relationship between the perpetrator(s) and the victim and whether the sexual violence crime was linked to other forms of violence against women and girls, including but not limited to domestic or intimate partner violence, femicide, disappearance, forced pregnancy and the like;
- Collect, analyse and publish disaggregated data on the number of sexual violence cases reported, the time taken to conclude a case after its reported, the number of

cases prosecuted, the number of convictions and the conviction rate, and the penalties given on conviction.

Addressing child marriage:

- Introduce amendments to the Family Code of the Republic of Tajikistan to exclude the possibility of lowering the age of marriage;
- Maintain consistent statistics of underage and teenage pregnancies;
- Train gynaecologists in the identification of violence among girls and ensure appropriate services;
- Conduct systematic training sessions with gynaecologists on responding to cases of sexual and gender based violence and eliminating discriminatory attitudes.