

## **Brief overview: Kyrgyzstan legislation and access to education for children with intellectual and other disabilities**

Additional information to ICCO within the HealthProm proposal

Azat Israilov, HealthProm

Bishkek 28 Sep 2010

This study is an attempt to provide a brief overview on the current Kyrgyzstan legislation that guarantees access for children with intellectual and other disabilities to one of the basic services – education, specifically to preschool and school education.

\* \* \*

Kyrgyzstan's 'disability'<sup>1</sup> legislation according to some experts has been considered as one of the most advanced in Central Asia. However, a modest overview of the current state of affairs or deep research on whether legislation is implemented shows that there is still a massive gap between what is written down and what is working on practice.

According to the latest 2010 study by EFCA-ICCO, "[w]ithin the Kyrgyz legal system, all people are in theory guaranteed equal access to government services and have special entitlements for healthcare, social protection and education, including discounts on utilities. In reality, however, the system fails to provide adequately for persons with special needs. The prevalent medical model of disability focuses on the “disease” or what is wrong with persons with disabilities rather than on their rights and support needs. As a result, persons with disability find themselves arbitrarily prevented from voting and accessing education, healthcare and social protection." (Access to Basic Services for Children with Intellectual Disabilities in Kyrgyzstan, EFCA-ICCO 2010)

\* \* \*

Kyrgyzstan legislation concerning disability consists of the Constitution, the Law On the Rights and Guarantees of Persons with Disabilities (2008), other relevant legal regulations and acts as well as international treaties. Moreover, Kyrgyzstan laws specify that ratified by the Kyrgyz parliament international treaties take precedence over the national legislative provisions.

Kyrgyzstan was one of the first countries in CIS to ratify in 1994 the UN Convention on the Rights of the Child, in 1995 the UN Convention Against Discrimination in Education and much more later in 2006 to adopt The Children’s Code of the Kyrgyz Republic.

UN Convention on the Rights of the Child (1990) article 2.1 states that the government "...shall respect and ensure the rights ...to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The document articulates the principle of “the BEST INTEREST of the child” (article 3) and recognises that "a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child’s active participation in the community" (article 23.1) The Convention highlights “[r]ecognising the special needs of a disabled child, assistance extended ... shall be provided free

---

<sup>1</sup> Disability in this case refers to legislation that defines, regulates and addresses disability issues whether directly or indirectly.

of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services... (article 23. 3.)

The UN Convention Against Discrimination in Education (1960) does not specifically mentions disability but it calls for eradicating all forms of discriminations and requires governments to provide equal, universal, appropriate and free access to basic education for everyone.

The UN Millennium Development Goals programme was signed by the republic in 2000. Within this programme Kyrgyzstan "ensures that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling" (2<sup>nd</sup> MDG.)

On 23 November 2001 The inter-parliamentary Assembly of the Eurasian Economic Community (EAEC) adopted a model law on the Education for Persons with Disabilities which meant to become a basis for national laws on education for persons with disabilities in countries members of EAEC, including the Kyrgyz Republic.

\* \* \*

The new 2010 Constitution of the Kyrgyz Republic in article 16.2 states that among other listed forms of discrimination nobody can be discriminated on the basis of disability. Article 45 affirms the right of everyone to have education and articulates that general basic and secondary education in state educational establishments is obligatory and free of charge.

The 2006 Children's Code of the Kyrgyz Republic is based on the fundamental principles of the UN Convention: equality, non-discrimination and on the protection of children's rights (article 3) However the article 3 fails to acknowledge discrimination on the basis of disability. Nevertheless the article 33 recognises the right of disabled children for mainstream education free of charge or where appropriate for special education.

The Code enabled establishment of the Family and Child Support Department that aims not only to protect the child's rights but to coordinate the work of various government agencies. "This is of particular importance because in Kyrgyzstan the child protection system is fragmented with different responsibilities within the various ministries." (UNICEF, Assessment of situation of children with disabilities 2007.) Its one of the duties include: "providing all range of services on protection of the rights and legitimate interests of children in crises situation, including the prevention services, rehabilitation and services on reintegration into society" and "providing assistance to the guardians, foster or adoptive families." (article 17.)

The main legal document on disability is The law On the Rights and Guarantees of Persons with Disabilities adopted in 2008. It guarantees access to education for persons with disabilities. "The state guarantees for the persons with disabilities the necessary conditions for having access to information, education and vocational training. Educational institutions, jointly with the agencies of social protection and health care, ensure pre-school and out-of-school education of children with disabilities, getting general secondary education, primary vocational, middle vocational and higher professional education in accordance with an individual rehabilitation program." (article 33.) Article 39 ensures home education and tuition if attending mainstream educational establishments is not possible: "In cases when it is not possible to carry out education and tuition of the children with disabilities in the educational institutions of general type or specialized institutions, education and tuition takes place at home if parents express wish to have such form of tuition."

The articles 15, 16 of the Law On Education (2003) and the articles 4, 18 of the law On Pre-school Education (2009) guarantee general education for all children (even from all walks of life) which is again obligatory and free of charge in state establishments.

Moreover The Law On Education calls for creation for children with physical and intellectual disabilities "...special groups, classes and establishments providing treatment, care and education, social adaptation and integration into society." (article 33)

The Law On Pre-school Education provides a definition of inclusion and makes some legal provisions for education of children with disabilities.

In article 1 it defines:

- "inclusion is the process of working with children with special needs" and
- "inclusive education is education which vulnerable categories of children, including with special needs, are provided access to and creation of conditions for their education are considered."

Pre-school education according to this Law aims to early identify individual needs in development of a child and provide appropriate special or inclusive education (article 4). The article 5.4 confirms that parents can decide whether their child should receive education in the pre-school establishment or at home. The articles 19.3 and 19.4 go further by declaring that children with special needs have the right to visit educational establishments on a flexible basis (and free of charge) and are provided by necessary means and social services to receive care, education and development in accordance with a Government decree.

The Presidential Decree No.390 About Child Protection and Support dated 30 August 2007 specifies that the Government should provide access to pre-school and school education to a maximum number of children with special needs.

There is a number of other legal acts and various government-funded programmes in regards to education within the Ministry of Education and Science such as: Preschool Educational System Development Programme, Development of Young Children of Preschool Age, Rural School, National Action Plan on Education for Everyone and so on.

However, two legal documents can be considered as the most significant that serve as "gatekeepers" between children with disabilities and guaranteed education and consequently integration into society. One is the Government's Act on Psychological, medical and pedagogical consultations (PMPK) dated 21 June 1999, the other is the Government's Act No.915 on Medical and Social Expert Commission (MSEK) dated 31 December 2002.

If MSEK (under the State Agency on Social Provision) has mostly to do with defining and giving disability categories and in some cases technical assisting devices and equipment (as well as to develop an individual rehabilitation programme for each child which has never been implemented), PMPK (under the Ministry of Education) can make a decision based on the group assessment and a child's diagnosis whether a child can manage to study or not. Both these institutions' regulations and principles of work are based on a medical model of disability which sees a disability as a medical problem. Services in both establishments provided are free of charge and at certain periods of time and locations. Only the capital has both MSEK and PMPK regularly working.

It needs to be noted despite being medical and social, MSEK also aims to "...provide assistance to the disabled in getting equal opportunities in life, education and employment..." (article 5 of the Act on MSEK).

There are certain contradictions between these regulatory documents and institutions's roles on the one side and the Constitution, laws and international treaties on the other side.

Currently there are projects that may affect the educational sector and relevant legislation; the Ministry of Education for the last 2 years has been implementing the project on inclusive education called "Increasing access to quality basic education for children with special needs" funded by the Asian Development Bank. It is of very significant importance as after piloting the project in 35 mainstream schools and 3 internats for children with disabilities (special boarding schools) in all the regions, the Ministry will hopefully roll out inclusive education programme to the rest of the country and will initiate new laws or improve current legislation concerning provision of access to basic education for children with disabilities.

\* \* \*

The current legal system on education for children with disabilities is very progressive and is consistent with the international documents. 2007 UN Convention on the Rights of Persons with Disabilities has not been ratified yet by Kyrgyzstan but there are talks that it could be signed in the near future.

According to the officials and studies by local and international organizations there are many issues that hinder the realization of the disability legislation in Kyrgyzstan but most important include:

- the 'main' disability document - the law On the Rights and Guarantees of Persons with Disabilities reflects the medical model of disability (the definition of a disability considered as a medical problem);
- no or lack of further legal regulatory framework that details the rights, responsibilities and implementation in various legal acts and regulations;
- no or very often lack of clear implementation mechanisms of the current legislation;
- no or lack of funding for implementation of the laws; there is a popular excuse by officials that has been quoted/heard since probably gaining independence: 'We don't even have enough money for normal people';
- no real punishment mechanisms for not implementing the laws and discrimination against children with disabilities;
- no multidisciplinary, inter-sectoral (or multi-agency) approach toward legislation for and education of children with disabilities;
- various government agencies provide different levels of support: usually isolated, inconsistent and fragmented. Even a separate government agency quite often does not provide full support guaranteed by the laws;
- often stigma, discrimination or misunderstanding contribute to creating inappropriate laws;
- ignorance or lack of access or awareness of own rights by parents of children with disabilities which contribute to denying their rights;
- almost no participation of parents led groups and NGOs in discussing and developing relevant legislation;
- no single database of children with disabilities in the country which distorts the statistics and if there is collated data it does not provide information on the real needs of children;
- no comprehensive and cohesive national policy on disability.

Regrettably most children with disabilities are almost in the same situation as 20 years ago and they still "...face overwhelming discrimination in all aspects of life. Unfortunately,

discrimination against disabled children too often goes unnoticed due to a widespread tendency to locate the problem in the individual child. Disabled children are “pathologised” in the sense that they are viewed as unable to enjoy equal rights.” (UNICEF, Assessment of situation of children with disabilities 2007).

The Kyrgyzstan's legal system needs to be reviewed and renewed; there is one of the important things that can bring about necessary changes much closer and which is difficult to describe in legal terms – a positive attitude based on the rights-based approach among representatives of government structures toward children with disabilities.

This existing situation has enforced various disability NGOs to seek ways of cooperation to protect their rights and after the April 2010 events there is hope that together with a new government and a new parliament they will make access for many children with disabilities to guaranteed education a reality.