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THESIS WORK

“Rights of persons with disabilities in the Kyrgyz Republic:
problems of a state accountability”

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I dedicate the senior paper to my family which helps me in my life to become a person. They believe in me and my abilities as of a person, who is not disabled, but who can live an active life and become useful both to the family and the society.

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TABLE OF CONTENTS

INTRODUCTION	pp 5-7
CHAPTER I	
a) Definition of disability: Social model vs. Medical model of disability	pp. 8- 13
b) Discrimination of peoples with disabilities in KR	pp. 13-16
c) Current situation, statistics on persons with disabilities in KR	pp. 16- 20
CHAPTER II:	
a) Rights of persons with disabilities under International law and National laws	pp.21-25
b) State accountability and state accountability before person with disabilities	pp.25-27
c) State accountability and state accountability before persons with disabilities: definition	pp. 27-28
d) Non – implementations of laws	pp. 27-30
CHAPTER III	
Recommendations on state accountability and implementation of obligations	pp. 31-34
CONCLUSION	p. 35
BIBLIOGRAPHY	pp.36-38

ABSTRACT

The paper examines the issue of the disability as a Human Rights issue, not just a common problem of legislative gaps and economic development in the Kyrgyz Republic. The paper analyses the legal definition and understanding of the disability as it is reflected in the legislation of the Kyrgyz Republic, including the difference between medical model and social model of the disability, and the problems of using medical model. The paper also reveals the issue of non-implementation of laws of the Kyrgyz Republic related to the persons with disabilities. Therefore, the paper scrutinizes specific problem of a state accountability. At the end, it provides specific legal recommendations for the solution of named problem and enable the Kyrgyz Republic to fulfill its international and national obligations before persons with disabilities.

INTRODUCTION

The problem of a state accountability before persons with disabilities is a not simple issue. The issue is connected not only with legal basis, but also with social, political, economic and cultural issues. This thesis paper examines only legal problems connected with the problems of a state accountability and from the Human rights approach. The work provided analyzes the UN Convention on the Rights of Persons with Disabilities and national laws in line with disability challenges and demonstrate that the issues related to the of persons with disabilities shall be solved with the human rights approach.

The main purpose behind this thesis work is that the Kyrgyz Republic shall **ensure the rights** of Persons with disabilities are observed, **ensure the implementation of state obligations** before persons with disabilities (hereinafter “PWD”) by implementing national laws, and to **increase the State accountability** for non-compliance.

The level of disability is increasing in KR

Naming disability	2007 (people)	2008 (people)	2009 (people)	2010 (people)
Children with limited ability of health	20660	20842	21194	22359
People with limited ability of health	21903	23009	24142	25396
People with limited ability of health from common disease	68887	73130	76330	82623
People with limited ability of health, disability were cased due to military services and labor injury.	3511	3295	3085	3020

If the state will not work with disability issues and provide preventative measures the level of disability becomes a warning condition. The present statistic taken from the Ministry of Social Development in KR shows us that there are **2,4% persons with disabilities** out of all population of KR (2010-2011) which is 2,4%¹ after ten years it can increase more than 5%.

¹ The Strategy of Social Protection of the KR for 2012-2014 December 13, 2011 № 755;p.13 <http://www.mlsp.kg/-2012-2015/-----2012-2014-.html>

The Constitution of KR states on the persons with disabilities in article 16 that: “The Kyrgyz Republic shall respect and ensure human rights and freedoms, without discrimination on the basis of sex, race, language, **disability**, ethnicity, belief, age, political and other convictions, education, background, and other circumstances”.

There are a number of Kyrgyz laws on people with disabilities, but these laws are left unimplemented, there are no by laws, instructions, and state accountability measures. Therefore, in this senior paper disability definition and the problems of state accountability are analyzed.

The Kyrgyz Republic signed the Convention on the Rights of Persons with Disabilities on 21 September 2011 (hereinafter the “Convention”) and declared that they would also ratify the Convention. However, ratification of the Convention will not solve all the problems. We know this from the experience of the Kyrgyz Republic. For example, other human rights instruments were ratified, such Conventions as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child in 1994, but there are still myriad problems under women’s and children’s rights.

For that reason, in this paper it is not only advocated for the ratification of the Convention, but also the creation of good legal foundation for the Convention to enforce and implement it in the practice.

The purpose of the work is to indicate and analyze the legal aspect of the situation with disability, and give recommendations how to ensure enforcement of the laws with regard to persons with disabilities and give guidance to the Government, NGOs, and persons with disabilities how to increase a state accountability through disability policy and implementing the laws in effective way.

My research questing is how to ensure the rights of PWD are observed. Answering this question I analyze existing national and international laws and compare with the Convention. Then using concrete articles of laws I provide examples of non-implementations of these laws.

The second question is how to ensure the implementation of state obligations before PWD according to the national laws and international obligations. At the end there will be recommendations to the state provided.

My thesis statement is that the Kyrgyz Republic shall **ensure the rights** of PWD are observed, **ensure the implementation of state obligations** before PWD by implementing national laws. There shall be the **increase of the State accountability** for non-compliance.

My methodologies that I used writing the paper are the following:

- Statutory sources: The list of international human rights treaties in accordance with disability field.
- Doctrinal sources: The report of NGOs about current situation about disability, articles of the experts of disabilities etc.
- Statistical data (statistics of disability in the world, in KR official and non official etc.)
- Interview the experts of disabilities from NGOs and international organizations.
- Comparison the national laws with the Convention.

The first chapter of the senior paper contains definition of disability by the Kyrgyz laws and the UN Convention on the Rights of Persons with Disabilities.² Additionally, the chapter reveals the differences between medical and social model of disability. Discrimination according to disability status in the Kyrgyz Republic and illegality of the discrimination based on disability definition will be demonstrated. Status quo on disability issues will be given.

The second chapter reveals the definition of a state accountability in general and specific legal problems as the state accountability in KR before PWD, non implementations of laws, necessity to increase the state accountability in KR.

The third chapter contains recommendations to the state on how to increase the state accountability and enforce the laws, and to strengthen the public control of implementations of the laws specific to PWD.

The conclusion and the bibliography will conclude the thesis work.

²United Nations Enable is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) in the Division for Social Policy and Development (DSPD) of the Department of Economic and Social Affairs (DESA) at the United Nations Secretariat. The website provides public information on topics related to disability and the work of the United Nations for persons with disabilities.
<http://www.un.org/disabilities/default.asp?navid=14&pid=150>

CHAPTER I

The first chapter of the senior paper discloses different definitions of disability by the Kyrgyz laws and the UN Convention on the Rights of Persons with Disabilities, discrimination based on disability status, status quo on disability issues and the rights of persons with disabilities under international and national law.

a) Definition of disability (medical model of disability v. social model)

This subsection will release the determination of disability and unlock understanding of the definition. For this reason before analyzing disability issues under the legal scope it has to be defined what is disability. However as the report by GIZ stated there is no universal definition of disability: “It’s certainly true that no universal definition of disability exists”³. However, **disability** definition clearly defines according to article 1 of the UN Convention on the Rights of Persons with Disabilities “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

The following paragraph provides the explanations of the terminologies of the article.

“**Long – term impairment** is to determine the change in cognitive impairment and physical functioning among patients who survive severe sepsis, controlling for their presepsis functioning”⁴.

“**A physical impairment** is a condition affecting the body, perhaps through sight or hearing loss, a mobility difficulty.”⁵

“**A mental impairment** is a condition affecting ‘mental functioning’, for example a learning disability or mental health condition such as manic depression.”⁶

“**Intellectual impairment** is a disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills. This disability originates before the age of 18”⁷. Definition of disability to demonstrate physical or mental condition of people with disabilities, but it is not health

³ GIZ and Federal Ministry for Economic Cooperation and development , “ *Disability and development cooperation – 10 facts or fallacies?*” <http://www.gtz.de/de/dokumente/gtz2010-0477en-disability-development.pdf>

⁴ Jama _ the journal of the American Medical Association <http://jama.ama-assn.org/content/304/16/1787.short>

⁵Equality and Human Rights Commission <http://www.equalityhumanrights.com/advice-and-guidance/your-rights/disability/words-used-to-define-disability/a-physical-or-mental-impairment/>

⁶Equality and Human Rights Commission <http://www.equalityhumanrights.com/advice-and-guidance/your-rights/disability/words-used-to-define-disability/a-physical-or-mental-impairment/>

⁷ American Association on intellectual and developmental disability http://www.aamr.org/content_104.cfm

condition. The report of the organization “Centers for Diseases Control and Prevention” says “People with disabilities need health care and health programs for the same reasons anyone else does—to stay well, active, and a part of the community. Having a disability does not mean a person is not healthy or that he or she cannot be healthy”.⁸ Disability it is constant and unchangeable physical or mental condition. Through medical treatment and rehabilitation can amend his state, however cannot change peoples’ constitutional situation. This wrong opinion create lots of issues as discrimination, incorrect legal framework, social attitude etc. These issues will analyze in the chapter.

The above gave us understanding of disability. The Convention provides the clarification of disability which shows physical, or mental, or sensorial conditions. However in the Kyrgyz law has incorrect understanding of disability which also creates discriminatory approach which will consider in the chapter.

Medical model v. social model

This sub subdivision provides two disability definitions as medical and social model. Explanations of each model, legal issues, and reasons of advocating for social model of disability rather than medical model under the Kyrgyz laws will be provided.

Disability definition has two different concepts: social and medical model of disability. Medical model creates many barriers for the full participation and realization of human rights in a daily life. Mr. Pepijn Trapman states: “The 'medical model' of disability sees the disabled person as the problem. The emphasis is on dependence, backed up by the stereotypes of disability that call forth pity, fear and patronizing attitudes. Usually the focus is on the impairment rather than the needs of the person”.⁹ The chairman of Regional Society of Disabled People Perspektiva Denis Rosa says “The medical model of disability – the notion that a disability is an “illness” and that disabled people needed to be provided with special and separate living, educational and working conditions – prevailed in the Soviet Union”.¹⁰ It was recognized that most of policies contained medical definitions in provide disability and not social. Denis Rosa says that disability is physical or mental limitation which obstructive their daily life, but did not say that absence proper conditions, which limits people, does not let them exercise their rights and people suffer because of discrimination and

⁸ The Surgeon General’s Call to Action to Improve the Health and Wellness of Persons with Disabilities [www.surgeongeneral.gov](http://www.cdc.gov/ncbddd/disabilityandhealth/pdf/whatitmeanstoyou508.pdf) <http://www.cdc.gov/ncbddd/disabilityandhealth/pdf/whatitmeanstoyou508.pdf> p.4

⁹ Pepijn Trapman The Kyrgyz disability guide Everychild’s expert p.7. www.kelechek.kg

¹⁰ Regional Society of Disabled People Perspektiva, AnnualReport2005-2006.pdf <http://eng.perspektiva-inva.ru/files/downloads/annualReport2005-2006.pdf>

obstacles in every sphere of human life. Ms. Oakes states: “Legal definitions of disability have tended to focus on the functional characteristics of those with disabilities rather than social stigma and unfavorable attitudes”.¹¹ I agree with the author that people concentrate just on physical, mental, intellectual or psychological aspect, but not emphasis the abilities of every persons with disabilities however, social model of disabilities recognize that persons with disabilities are human and have the same rights need, equal opportunity for full participation in social life, only what the society and the government has to do is only create a proper condition with a glance the specification of disability: visual, hearing impairment, persons who use the wheelchair, overactive persons, leaning disability, multiple disability etc. Persons with disabilities are the same as other people, only the society has to break their stereotypes including: charity concept, people cannot do something for instance see or hear because of it they are the sick and finally has to seat at home, or in the intuition and receive the disability money. In addition persons with disabilities have to be restored and become a normal people this is a medical model idea.

The author Mr. Grant Carson also supports this idea: “Through the medical model, disability is understood as an individual problem. If somebody has an impairment visual, mobility or hearing impairment, for example their inability to see, walk or hear is understood as their disability”¹². Unfortunately, in the Kyrgyz Republic the policy and legislation is built up on medical model of disability. Article 1 Law of KR “On the Rights and Guarantees of persons with limited abilities of health” Disabled is abnormality of health with persistent disruption in function of body, bringing to the fullest or significant loss of ability to work or existing limits of living activities. This national law offers medical model of disability and vs. the definition of the Convention which: Disability is condition of the person. The problem is absence of the conditions in the society. However, the definition of the Kyrgyz law states that disability is illness which should be restored. The problem is person with disability. For instance, two members of the Association of parents of disabled children (ARDI) (hereinafter ARDI) with the diagnose cerebral palsy which have only special body conditions with full intellectual abilities went to the ordinary school in Bishkek the administration of the school #11 estimated to the correction class because they cannot write fast as other children. This is a medical model which included in national legislation and furthermore applied in the policy as maintained by disability. To conclude it **disability is illness which should be restored. The**

¹¹ Oakes, Wayne Thomas. Perspectives on Disability, Discrimination, Accommodations, and Law : A Comparison of the Canadian and American Experience. New York, NY, USA: LFB Scholarly Publishing LLC, 2004. p 3.

<http://site.ebrary.com/lib/aucentralasia/Doc?id=10159271&ppg=13> Copyright © 2004. LFB Scholarly Publishing LLC

¹² Grant Carson the social model of disability p.6 <http://www.ukdpc.net/library/Social%20Model%20of%20Disability2.pdf>

problem is person with disability. It is a huge issue that in our country disability is not treated from social side, but only medical.

However, **Social model** of disability recognizes that society has a lot of barriers, which put obstacles in the way for fully participation in the society, enjoy life and use the human rights on the practical way. The expert Pepijn Trapman thinks: “This does not make you any less of a human being. But most people have not been brought up to accept us as we are. Through fear, ignorance and prejudice, barriers and discriminatory practices develop which disable us. The understanding of this process of disablement allows disabled people to feel good about them and empowers us to fight for our human rights”¹³ and the author Grant Carson says that “The social model was created by disabled people themselves. It was primarily a result of society’s response to them but also of their experience of the health and welfare system which made them feel socially isolated and oppressed. The social model is about the barriers that disabled people face. For example, if a wheelchair-user cannot climb stairs, then a ramp or a stair lift should be fitted. If a blind person cannot read written information then the solution is to provide it in an alternative format such as audio or Braille”.¹⁴ It means the society have problems, but not people with disabilities. In other words the society has no good conditions for full participation in public life, and the society is full of barriers, which is defined by social model as a problem.

The main idea of this concept is that a social model of disability does not recognize a person as a problem, a person who has the same rights, opportunities, feelings, desires, abilities to do the same thing as ordinary people including: study, work, have a rest, use transportation, communication, go to shopping, marriage and everything according to human life. But for this dream to come true, the society has to have good conditions: accessible buildings, transport, public place, positive attitude to all people including persons with disabilities, and treat them the same way as all other people around us. Every person has right to live independently and have right to choose: what kind of schools to go to – special or ordinary, what kind of job to get. Social model of disability discloses that even if person has physical defect, his whole personality is normal – his mind, will and emotion, soul and spirit, and needs similar things to enjoy his daily life. Physical disability is not mental disability or human capacity even if mental disability is not a cross for exclusion in the society. Disability is different and levels also diverse. For instance, some are able to go without any methodical or medical supports, afterward for more heavy disabilities technical, educational, personal support for help

¹³ Pepijn Trapman The Kyrgyz disability guide Everychild’s expert p.7-8

¹⁴ Grant Carson the social model of disability p. 18 first para
<http://www.ukdpc.net/~ukdpcnet/ukdpc/library/Social%20Model%20of%20Disability2.pdf>

people live in a daily life is needed. It is just an instrument to help people with different disabilities to fully participate in the society, however, in the Kyrgyzstan legislation, policy and relationship in the society full of stigma and stereotypes including as disability is an illness, full limitations because persons with disabilities are not able to do the same things as ordinary people, nondisabled are hero and do charity for them. It is a wrong theory which breaks people's life and do not let them exercise their rights for a good life. If the Kyrgyz policy would use social model of treating disability in legislation, relationship, economical, social, cultural, etc. life, in the society will a strong acceleration for a full-fledged life.

Medical model is prevailing in the national legislation

The analysis reveals different medical and social model of disability this is a table of comparison of these definitions of disability according to the national law Article 1 Law of KR “On the Rights and Guarantees of persons with limited abilities of health” and Article 1 UN Convention on People with disabilities.

<u>MEDICAL MODEL DEFINITION</u>	<u>SOCIAL MODEL DEFITION</u>
<p>Article 1 Law of KR “On the Rights and Guarantees of persons with limited abilities of health”</p> <p>Disabled is abnormality of health with persistent disruption in function of body, bringing to the fullest or significant loss of ability to work or existing limits of living activities.</p> <p>Conclusion: Disability is illness which should be restored. The problem is person with disability.</p>	<p>Article 1 UN Convention on People with disabilities</p> <p>The Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</p> <p>Conclusion: Disability is condition of the person. The problem is absence of the conditions in the society.</p>

The main Kyrgyz law defines disability as a health issue and establishes policy in accordance with it. This is a medical model of disability because if we analyze each sentence of the article which

determines disability as **abnormality of health** which connected to **persistent disruption in function of body**, exclusion of mental, intellectual and other disabilities and we see the result is **limitation of living activities**.

However, the article 1 of UN Convention on the Rights of Persons with Disabilities which signed by the state 21 September 2011, says us that it is not health issue but condition of body, not a health condition and this definition gives us full reasons of exclusion and nullifying disability from society. This is absence of proper conditions for people with disabilities as positive attitude as ordinary people, to remove different barriers as steps, curb no Brails material and so on which violate human rights because this is obstacles distinction, exclusion which prohibited under Constitution of the Kyrgyz Republic in **article 16 says that the state** shall respect and ensure human rights and freedoms, without discrimination on the basis of sex, race, language, **disability**, other circumstances, national laws. For instance, law of KR “On the Rights and Guarantees of persons with limited abilities of health”. As a result, social model of disability has to apply in the legislation and state policy, rather than medical model.

The subchapter told to us about different concept of the definitions as medical and social model of disability which included understanding and policy of each model, legal issues, and finally the reasons of choosing a social model of disability than medical model under the Kyrgyz laws.

b) Discrimination of peoples with disabilities in KR

The subchapter discloses the discrimination’s issues. The subchapter determines wrongfulness of actions based on discrimination. The discrimination is a substantive breach of human rights.

The Convention on the Rights of Persons with Disabilities and its Optional Protocol states to “Note that the principle of non-discrimination is probably the fundamental principal of human rights law and the focus of several other human rights treaties (CERD - International Convention on the Elimination of All Forms of Racial Discrimination; CEDAW-Convention on the Elimination of All Forms of Discrimination Against Women).

Human rights law protects against:

- Direct discrimination – Human rights law protects against discrimination in law (for example, in legislation) or in fact (for example, refusal to admit a child with disability into a school on the basis of the disability).

- Indirect discrimination – Human rights law protects against measures that appear not to make any distinctions but in reality, when applied to two people in different circumstances (eg a person with disabilities and a person without disabilities), discrimination occurs”.¹⁵

In the Kyrgyz Republic discrimination is a huge problem. For example: children with disabilities who use wheelchair cannot go to a regular school because of steps, inaccessible transport etc. These are barriers which close opportunities for the children to get a good education. Therefore, person with disabilities also cannot find good jobs, even if they find a work place, due to disability, employers refuse to hire them or try to find reasons to fire them. Yana Ratoklya, who graduated from the course in 2004, said that despite her new skills and hard work, she has found it impossible to get employment at either state-run or private clinics. “We cannot compete with non-invalids,”¹⁶ Kyrgyzstan the Human rights report says “Persons with disabilities often had difficulty finding employment because of negative societal attitudes and high unemployment among the general population. The lack of resources made it difficult for persons with disabilities to receive adequate education. Social facilities for persons with mental disabilities were strained severely, because budgets have fallen and workloads remained heavy”.¹⁷ These are real stories of people who meet discrimination in their life every day. Sergei a very smart young man who reads lots of books and he said his story in the seminar in 2008, the topic was “The right of labor” and he said he worked in one of the Bishkek restaurants as a waiter and very often he used to hear from the administration of the restaurant such kind of words: You frighten off our visitors, your gait is terrible we can't sacrifice our good name for your sake, please go away Sergei came to the manager of one company; however, the director also found lots of reasons for discharge him from the company. Unfortunately, there are many examples of this type.¹⁸ “This is examples from Russian Federation: “Many barriers to employment still remain: lack of physical access or special accommodations at the workplace, disabled people are still are paid minimal wage, but not expected to work (above all, in cities where there is quota legislation), there is little or no accessible transportation, employers still hold many stereotypes about people with disabilities; disabled people themselves still experience low self-esteem and are often not prepared to independently enter the work force, and when they enter the workforce, they fail due to a lack of support. All of these barriers and work disincentives also

¹⁵ United Nations Enable is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) in the Division for Social Policy and Development (DSPD) of the Department of Economic and Social Affairs (DESA) at the United Nations Secretariat. The website provides public information on topics related to disability and the work of the United Nations for persons <http://www.un.org/disabilities/default.asp?navid=15&pid=162>

¹⁶ Disabled Workers Claim Discrimination <http://iwpr.net/report-news/disabled-workers-claim-discrimination> 7 para

¹⁷ Kyrgyzstan Human Rights Report, Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status <http://www.ncbuy.com/reference/country/humanrights.html?code=kg&sec=5>

¹⁸ The example was taken from the seminar: “The right of labor” 2008 from Association of parents of disabled children

confront students with disabilities leaving technical schools or universities, with often nobody available to help them secure a job and hold it”¹⁹. This is discrimination under disability when people disability unable to get proper job. This is not only legal issue; it is first of all negative attitude of the society. This fact proved by nonofficial information that only NGOs hire persons with disabilities as workers. Example it is my colleagues who work in disability NGOs as Movement of young people with disabilities, the centre “Akak”, Fund “Legal help to disability people”.

To understand the phenomena of discrimination we should look at Article 2 of the Convention which gives the definition: "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”²⁰. It includes all forms of discrimination, including denial of reasonable accommodation; For instance: “Discrimination against persons with disabilities may take various forms, which range from blatant” discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination, such as *de facto* exclusion and isolation deriving from physical and social barriers. “Disability-based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights by persons with disabilities”²¹ “Discrimination on the basis of disability means any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, on an equal basis with others, of all human rights and fundamental freedoms, and includes the denial of reasonable accommodation. Discrimination occurs, for example, II. The Convention on the Rights of Persons with Disabilities when a woman is not allowed to open a bank account on the grounds that her disability would not allow her to manage her money”²²

The Constitution of the Kyrgyz Republic, article 16 says that discrimination based on disability is prohibited, but practically this norm is dead. Solution is to build new practices where discrimination

¹⁹ Creating a Job Placement Model for Young Disabled People <http://eng.perspektiva-inva.ru/?114> third para

²⁰ Article 2 of UN The Convention on the Rights of Persons with Disabilities

²¹ See Committee on Economic, Social and Cultural Rights, General Comment no. 5

Navanethem Pillay, Nations Human rights Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No.17,p.7.http://www.aifo.it/english/resources/online/books/cbr/reviewofcbr/THE%20HUMAN%20RIGHTS%20DIMENSION%20OF%20DISABILITY%20_2_.pdf

²² Navanethem Pillay, Human Rights report “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17” p.19p http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

based on disability will be legally bad and morally unacceptable. Also one of the big problems of disability is based on medical model of disability. From the UN report “Attributing the problem to the child perpetuates the problem of discrimination and reinforces an ability-based hierarchy where disabled children are regarded as less worthy. As a disabled child is considered deficient, the approach of the medical model is to try to ‘fix’ the child to make him or her as “normal” as possible. In this way disabled children themselves are made to feel like there is something fundamentally wrong with them”.²³ Finally, Ms. Navanethem Pillay United Nations High Commissioner for Human Rights says that” The discrimination they face is widespread, cutting across geographical boundaries and affecting people in all spheres of life and all sectors of society.”²⁴ To conclude in the Kyrgyz Republic people with disabilities expose to different kind if discrimination direct and indirect discrimination. Therefore,

Ms. Navanethem Pillay state to protect persons with disabilities it is about adopting measures persons with disabilities, marginalize persons with disabilities. It is also about putting in place the policies, laws and programmes that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities.

The subchapter disclosed of disability with discrimination’s issues which also indicated negative legal consequence of discrimination in our country. The section was determines wrongfulness of actions based on discrimination.

c) Current situation, statistics on PWD in KR

This subchapter is going to reveal the common problems of disability with other words, the picture of the real situation of the disability spheres. Disability issues are more social foundation rather than legal, however, I will show you disability challenges trough the legal side. The main point of the work is to consider failure of the social policy in accordance with disability and disadvantages of the Kyrgyz legislation in this issue.

People with disabilities, especially children have lots of difficulties in their lives. They do not receive rehabilitation, education services, etc. In this case people with disabilities are isolated and suffering in Kyrgyz Republic according to the information from the Association of parents of disabled-children in Kyrgyzstan, the research conducted among parents of disabled children shows: “20,800

²³ Assessment of the situation of children with disabilities in Kyrgyzstan, 2008 http://biasfree.org/assessment_disabled_children_kyrg.pdf p.14 1 para

²⁴ Navanethem Pillay, Human Rights report “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17” p. 7 http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

disabled children in the country Over 66% live in rural areas There are only 10 child psychiatrists in the country (9 of them are in the capital) Average child disability benefit is about 900 soms. 84% of mothers we interviewed do not work 42% of them said their disabled children do not receive education. A little over 50% of disabled children we asked rarely go outside their home Problems of disability touch all sphere of human life”²⁵ Under these results we can say that more than 50% of children with disabilities and their families are excluded from the society and live without any perspectives for the future. The report of United Nation Children’s Fund UNICEF declares that: “There were around 91,000 disabled people of different categories in the Kyrgyz Republic as of the end of 2001; of who 15,700 were disabled children aged less than 16 years, or 17% of the total. About 16.7% of the disabled children have infantile cerebral palsy (ICP). Each year, about 1,500 children are recognized as disabled for the first time in their life”²⁶

This paper mentions problems of employment, the statistic shows that: “The unemployment is a big concern in Kyrgyzstan. Especially it sharply affected families with disabled children. According to other figures, based on PRA/PCA, about **78%** of parents do not work or do not have regular job. One of the main reasons according to 2007 UNICEF research is looking after a child with a disability (72%); as well as staying at home for a long time decreases professional skills and knowledge of mothers, in addition employers are not willing to offer a job, when they come to know about a disabled child of a prospective employee”²⁷. All of these problems were determined by their parents, who have to care about children with disabilities themselves. For instance: mother gives a birth to a child with disability and she has to leave her job to take care after the child. The husband usually leaves the family and does not give any support. The mother cannot find a job because she has to take leaves to take care after her child, who frequently gets sick.²⁸ The Ministry of social protection states that 22.5 thousand children with disabilities in the Kyrgyz Republic receive social security benefits every month for instance: in April 2011 the Government decided to increase the size of the monthly allowances from 1500 up to 3 thousand soms, which represents 1.5132 billion soms from the budget.²⁹ However 3,000 soms do not solve daily need of disability. In December 2008 during the press-conference in Bishkek the members of the Association of disabled children addressed to the President of the Kyrgyz Republic considers possibility of inclusion of the people taking care after

²⁵ A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

²⁶ Children and disability in the Kyrgyz Republic Co-ordinator: Imankadyr Rysaliev National Statistical Committee, Bishkek MONEE Country p.4 [http://www.unicef-irc.org/research/ESP/CountryReports2002/kyrgyz\(final\).pdf](http://www.unicef-irc.org/research/ESP/CountryReports2002/kyrgyz(final).pdf)

²⁷ A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

²⁸ The information was taken from Association of disabled children from private consultation report.

²⁹ В Кыргызстане ежемесячные социальные пособия получают 22,5 тыс. детей с ограниченными возможностями UN Unicef web site: http://www.baldar.kg/index.php?option=com_content&view=article&id=1339:-----225-----&catid=38:2009-12-24-19-17-51&Itemid=140

their disabled children to the category of working people. Association thinks that this amendment should be included in the Law “On the rights and guarantees of people with disabilities”: “This means that there will be record in the work-record book, years of service, monthly salary paid, allocations to pension fund and others. If the person taking care of the disabled child will be considered as working this is do not provide solution jet. The Ministry states that the payment for the parents the result of the situation will be considered in 2013³⁰. For this reason sometimes parents have to choose: keep the child in the family or give him/her for Government custody. If this amendment is done, there will be less social orphans and more children will have the chance to recover, which is possible only within the family”³¹.

Disability problems are crossing issues and require complex solution. The Kyrgyz Government do not provide solution jet. Independent research work from the Association of parents of disabled children in Kyrgyzstan conducted a research among parents of disabled children. “The statistics shows that 64% of mothers of disabled children do not work. As for disabled children, 34% study at special institutions, 12% visit rehabilitation centers, only 6% study at mainstream schools; 48% are not covered by education in districts of Bishkek”³². It means that education system is inaccessible for most children with disabilities. 48% is not included to the education system of the Kyrgyz Republic. In this case NGOs have to mobilize powers and together with the Ministry of Education of the Kyrgyz Republic work to include children with disabilities in educational process.

The absolute majority of public places are not accessible to disabled children (schools, universities, cinema, libraries, cafés, etc.) as they were built without consideration of disabled persons' needs. In educational establishments there are no lifts, slopes, and one of the main barriers is the attitude of teachers and schoolchildren. Consequently many children and young people do not have opportunities to receive ordinary schooling not to mention quality education”³³ Every examples clearly determine that persons with disabilities nullifying and isolated from the society. Another word they can fully exercise their rights as right to movement, right to education, right to worketc which violated human right laws.

The families who have children with disabilities are very poor. For example: “Families who have children with disabilities live over poverty line. The Association employees came to the families and

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³¹ Mustaphar Tuirsunov http://www.open.kg/ru/theme/analit/?theme_id=170&id=674

³² A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

³³ A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

saw that most of them eat noodles every day, instead tea they use leaves and boiled them. Some houses are in an emergency condition. This is not even accessible for the children and people with disabilities; it is dangerous for their lives. For instance, many families survive on a child's disability benefit. At the moment the minimum living expenditure is 3,200 soms for one person, whereas maximum disability benefit is about 1200 soms which is 37,5% of the minimum living expenditure³⁴. Anyway inflation and prices go up, while benefits are usually raised in a year time. Therefore, mothers of disabled children still belong to vulnerable groups of population along with disabled people, since both of them have to stay at home. Parents and their children left along distressed and cannot go out of vicious circle of poverty which affects their health and self-esteem³⁵. According to the parents they eat only bread and noodles, sometime bread rare enjoy.³⁶ The government has to increase financial support to such kind of families through projects, business sectors, philanthropies etc.

The first problem is a statistical issue and the issue of weakness of collaboration between ministries they have no uniform policy according to statistical data and they indicates different situation in their reports. This chaos aggravates the situation because people with disabilities cannot protect their rights because every ministry says it is not their obligations. "One of the big problems of the government is the absence of common statistics and different ministers show different information on disability³⁷". The second and consist issue is weak collaboration and partnership between ministries. They usually say it is not their responsibility or it is only their work. However disability is not only responsibility of the Ministry of social protection of people but also the Ministry of Education, Ministry of Health, Local self-management, NGOs and so on. Disability is connected to all fields of human life.

All these problems make life of persons with disabilities very difficult. In addition, national laws cannot protect them and people with disabilities have to decide their problems themselves. In this case, it will be very good not just to sign the Convention on the Rights of Persons with Disabilities, but also ratify and create good legal basis with real mechanisms of its realization.

Finally, legal basis is able to create a proper social strategy to improve life of persons with disabilities.

³⁴ See the same

³⁵ A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

³⁶ The information was taken from private interview of the members of the Association of parents of disabled children.

³⁷ A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>

Rights will practice when the state actors, non state actors, society will promote and live with lawful principles and exercise their rights. Nevertheless, all conventions will ratify it not signify that laws will become apply and situation became much better. First of all need political will to enforce laws through to provide financial resources, create sanctions mechanisms the state actors and none the state actors those who violated laws and human rights. It is good to make available stimulation for the state actors and none state actors who follow the laws and to impart conditions to people with disabilities which help elder people, mothers with babies, etc.

”Problems with requires interagency corporation the authorized state bodies in the sphere of social protection, construction, interior, education and science, labour, employment, migration and health are still unsolved. The issues of providing access of the disabled to the objects of the infrastructure, buildings, promote their employment, tasks coordination of the work on the improvement of the situation with homeless and neglected children, as well as the problem of the full access of socially vulnerable persons to education and health care services require revision”³⁸.As result the different Ministers would work together and available resources, aware of the importance of such work because of society's problems are cross-cutting in nature. The problem of education is not only a problem of one of the Ministry of education, or social. Questions should not only be on the shoulders of the Ministry of social protection of population of the Kyrgyz Republic. I will give an example: children with disabilities who use wheelchair have right to go to school. For solving this issue has to The Ministry of education create a proper condition for education a special children. However, how create this condition; need social medical psychologist teachers workers etc. In this situation you can see necessity of team work. Unfortunately, the ministers think only own field and do not see that children and people suffer.

The subdivision considered the information of the status quo and the difficulties which connected disability issues and moreover are more social institution rather than legal, however, it was defined the weakness of the national legislation and also incapacity of the social protection system.

³⁸Strategy for the Development of Social Welfare of the Kyrgyz Republic for 2012-2014 were approved by the Government of the Kyrgyz Republic "13" December 2011 № 755p 6

CHAPTER II

The second chapter will include scope of a legal framework; however, the laws are not effective because they are left unimplemented. The chapter will provide examples of the violations of human rights of people with disability in KR. Therefore, people with disability still suffering. As a result we have to provide other legal options and change the approach of the national legislation. The specific legal solutions will provide in the third chapter.

In 1994, the Kyrgyz Republic ratified the UN Convention on the Rights of the Child. Article 23 states about rights of children with disabilities, and obligation of the state to provide necessary conditions for children and to offer the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Kyrgyzstan has signed the Convention on the Rights of Persons with Disabilities on 21st of September 2011. This is very important step for the Kyrgyz Republic. The state recognizes substance of disability issues. In the International Disability Alliance Disability-analysis of UPR Working Group reports in the Universal Periodic Review 8th Session 3-14 May 2010 the states which members of the International Disability Alliance have given to the Kyrgyz Republic to sign and ratify the Convention and the Optional Protocol.³⁹ Since acquiring its sovereignty, the Kyrgyz Republic has acceded to 22 international human rights treaties within the framework of the United Nations and its specialized agencies⁴⁰ However, the Convention will work only when solve problems with consolidations between state agencies, civil society which will discovered in this paper. Also Seigei Chumak says: “To include as many as possible people with disabilities into legislative bodies and execute permanent monitoring of implementation of the Convention”.⁴¹

a) The list of international and national instruments

International

Kyrgyzstan ratified almost all treaties concerning Human rights issues. Singing or ratification it is a will of a state to follow its obligations in the own country and before the international community.

³⁹ Disability -analysis of UPR Working Group Reports, International Disability Alliance Disability-analysis of UPR Working Group reports Universal Periodic Review 8th Session3-14 May 2010 p.2

⁴⁰UN Human Rights Instruments
<http://www.unhchr.ch/tbs/doc.nsf/0/5a11e970678c0feb8025678200522b93?Opendocument>

⁴¹ Sergei Chubak, Belarus Republic, International Conference on the Convention on the Rights of Persons with Disabilities: equal towards opportunities in 21-23 November 2011, Karven Issyk – Kul, Kyrgyzstan.

However, it is not enough because every country is independent and sovereign and policy and his realization depend from the state. Created laws related to disability issues, but laws just instruments which use to solve social, economical, cultural challenges etc. However, it is not enough because every country is independent and sovereign and policy and its realization depended from the state. In the paper will demonstrate legal problems of a state accountability though weakness of working governmental system.

1. “The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced”⁴².
1. The Convention on the Rights of the Child; “The Convention then became legally binding in September 1990, after 20 States had ratified it. Many countries ratified the Convention very soon after it was adopted and others continued to ratify or accede to it, making it the most widely ratified human rights treaty. Nearly all States are now parties. Somalia and the United States have not yet ratified the Convention but have signed it, indicating their support”⁴³. Kyrgyzstan ratified the Convention on the Rights of the Child on January 12, 1994⁴⁴ the Kyrgyz republic took obligation before the children and it is accountability of the state to take all necessary measures to protect them on legal level and implementation them in practical way.
2. “Kyrgyzstan ratified The International Covenant on Civil and Political Rights in and The International Covenant on Economic, Social and Cultural Rights in 07.10.94 Civil and Political Rights is the main covenant which fixed the definitions of civil and political rights and freedoms, defined the exclusive grounds and conditions for the limitation of each right,

⁴²United Nations Enable is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) <http://www.un.org/disabilities/default.asp?id=150>

⁴³United Nations Children's Fund (UNICEF); Path to the Convention on the Rights of the Child http://www.unicef.org/crc/index_30197.html

⁴⁴Representing Children Worldwide <http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/kyrgyzstan/frontpage.htm>

establishing minimum guarantees for safeguarding these rights by a state party. ICCPR introduced the differences in the rights that refer to each human being and to citizens only”⁴⁵

3. The Convention against Discrimination in Education; Convention Against Discrimination in Education – the Kyrgyz Republic accepted 03.07.1995

“The fundamental principles of non-discrimination and equality of opportunity in the domain of education, established in the Convention, are essential in the process of Education for All (EFA). The Convention of 1960 has thus naturally become the cornerstone of this high priority domain for UNESCO. In order to achieve equal opportunity for all in the domain of education, we have much work ahead of us to ensure that education becomes truly inclusive, in particular by effectively reaching the unreached--especially the poor, marginalized and vulnerable groups, children and young people denied equal access to education, rural populations, etc”⁴⁶

National legislation

The national legislation grants Human rights freedoms to all people without discrimination. The main point is discrimination based on disability is prohibited.

However, it is only de jure situation. De facto indirect, direct discrimination is existed which were indicated in the first chapter. Although prohibition which based on the Constitution gives a strong legal approach protecting human rights and freedoms of people with disabilities.

1. Constitution of Kyrgyz Republic **Article 16** Fundamental human rights and freedoms are inalienable and belong to each person from birth. Human rights and freedoms are of superior value. They act directly and define the meaning and the content of the activity of legislative, executive power and self governance bodies. Constriction 27 June 2010
2. Law of KR “On the Rights and Guarantees of persons with limited abilities of health ” Article 4 Legislation on the rights and guarantees of persons with limited abilited of health от 3April 2008 N 38
3. Bishkek 28 December 2011 года N 1456-V Resolution of Jogorku Kenesh of KK

⁴⁵ Kyrgyzstan and UN core Human rights treaties, brochure http://prava.kloop.kg/files/2010/11/Booklet_en.pdf p.6

⁴⁶ Yves Daudet Pierre Michel Eisemann Professors at the Université Paris I Panthéon-Sorbonne Right to education COMMENTARY ON THE CONVENTION AGAINST DISCRIMINATION IN EDUCATION (ADOPTED ON 14 DECEMBER 1960 BY THE GENERAL CONFERENCE OF UNESCO) <http://unesdoc.unesco.org/images/0014/001412/141286e.pdf> p.4

“On implementation the law on rights and guaranties people with limited abilities of health, 3April 2008 N 38

It is guided by part 5 article 77 Constitution of the Kyrgyz Republic, and for the purpose of securing to with limited abilities of health to give equal opportunities with other citizenship in realization the rights and the freedom. Eliminating of limitation is in their vital activity. Creating the conditions is for their integration in to the society which let them to live full life and active participate in the economical, political, and cultural life of the society and full fill civil ditties which were indicated by the Convention on the Rights of Persons with Disabilities

1. To take measures to purchase in 2012 traffic lights with sounds signals, for people with visual impairments to indicate time when they have to cross the streets.
2. Take measures step-by - step prohibition on affirmation designing to build buildings and constrictions without the standards requires of the accessibility for people with limited abilities of health in 2012.
3. To take to establish prohibition to buy public transportation without special equipments to people with limited abilities of health.
4. The Prosecutor General of the Kyrgyz Republic to promote strong supervision to implementations of the laws and other normative legal acts of KR which related to disabilities.
5. Ombudsman of KR to accomplish the Parliamentary has to control an observance the rights and the freedoms to people with limited abilities of health.
6. Inspection the fulfillments the resolution to entrust to the Committee of Jogorku Kenesh of KR on Human rights, equal opportunities and nongovernmental organizations (NGOs) to the Deputy of the Jogorku Kenesh Mr. Dustan Bekeshev.
7. Legislation on the rights and guarantees of persons with disabilities is based on of the Constitution and consists of this Law, other normative legal acts and entered in the prescribed manner by virtue of international treaties to which the Kyrgyz Republic

This list is not exhaustible and the ministries do not create require laws, although positive side is in 2011 was created the strategy of development of social protection 2012-2014 years and 25 February 2011 N 44-p instruction Government of the Kyrgyz Republic established interagency task force with the most active and progressive representative of nongovernmental organization (NGO). If this strategy will have financial support and to realize in practice it will be very good social breakthrough and how disability activists Mr. Seigei Chumak said: “We need to create consolidation among people who are interested to enforce these laws”.⁴⁷

As stated by this Kyrgyzstan created a legal framework takes responsibility under people with disabilities, nonetheless, The Kyrgyz Republic has to establish **ensure the implementation of state obligations** before PWD by implementing national laws. Unfortunately, Kyrgyz laws on people with disabilities, but these laws are left unimplemented. Why the law is sleeping and no mechanism of implementation will describe on second chapter of the paper.

The subchapter included national legal basis before persons with disabilities. Legal foundation in the Kyrgyzstan has good nondiscriminatory approach based on the Constitution. The national laws has to keep that principle as a main point because discrimination still existed and the national legislation has to be modify because of discriminatory approach which connected with medical model of disability.

b) State accountability and state accountability before PWD: definition

This subdivision tells about the definition and the understanding of a state accountability principle. The legal problems of the state accountability, The Convention gives to PWD mechanism of eliminating the problems of a state accountability and increase the level of responsibility before PWD.

Accountability of state bodies local self administrations and their stuff and other individuals, and legal entities⁴⁸. This is private and common responsibility. Private is responsibility for own work and common responsibility are for whole activity. Dubnick, Melvin J said that accountability is prompted by laudable objectives— to demonstrate that institutions are doing their jobs effectively

⁴⁷ Sergei Chubak, Belarus Republic, and International Conference on the Convention on the Rights of Persons with Disabilities: equal towards opportunities in 21-23 November 2011, Karven Issyk – Kul, Kyrgyzstan.

⁴⁸The strategy of the social protection of the population населения of the Kyrgyz Rpublic on2012-2014 which affirmed by the Resolution of the Government of KR 13 December 2011 №755p.2.

and to show that they are open and responsive to the public.⁴⁹ For instance: in the nongovernmental organizations (NGOs) chairman or leader to manage a whole work and every person carry out accountability for own job as teacher, lawyer, bookkeeper, etc., and whole to achieve missions of organizations. This is very important to have private and common responsibility. Even personal accountability is more valuable since effect, for the reason that personal responsibility gives more much essential than common. For example: child with disability which uses wheelchair cannot go to a regular school this state representative to order to The Ministry of Education request to build a slope and to reconstruct toilet. To call commission and recognize needs of the child and personally control the situation of the child. If in Kyrgyzstan will is such personal responsibility the situation will be much better. However, common responsibility gives double results and systematic reforms. This is task about practical cooperation and partnership. “A new version of the Constitution of the Kyrgyz Republic was adopted on 23 October 2007 through a public referendum². Article 12.3 of the Constitution proclaims that “international treaties which have been ratified by the Kyrgyz Republic and other norms and common principles of the international law shall be a constituent part of the legal system of the Kyrgyz Republic”. The Kyrgyz Republic contains a separate chapter on human rights encapsulating key fundamental rights and freedoms usually contained in the bill of rights”.⁵⁰ Article 2 states that the basic principles are of state policy of persons with disabilities. Public policy of KR against persons with disabilities based on the following principles:

- Respect for human and civil rights of persons with disabilities;
- Prohibition of discrimination on account of the limited capacity of health; Governments have three levels of obligation: to respect, protect and fulfil every right.

- To *respect* a right means refraining from interfering with the enjoyment of the right.
- To *protect* the right means enacting laws that create mechanisms to prevent violation of the right by state authorities or by non-state actors. This protection is to be granted equally to all.
- To *fulfil* the right means to take active steps to put in place institutions and procedures, including the allocation of resources to enable people to enjoy the right. A rights-based approach develops the capacity of duty-bearers to meet their obligations and encourages rights holders to claim their rights.⁵¹ The main national law of disability indicates human rights approach. This means that the state recognizes that disability topic is a human rights

⁴⁹Dubnick, Melvin J. (Editor); Frederickson, H. George (Editor). *Accountable Governance : Problems and Promises*. Armonk, NY, USA: M.E. Sharpe, Inc., 2010. p vii. <http://site.ebrary.com/lib/aucentralasia/Doc?id=10448729&ppg=8>

⁵⁰Joint UN country teams in the Kyrgyz Republic submission for the Up processes².http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KG/UNCT_UPR_KGZ_S08_2010_UnitedNationsCountryTeams.pdf
Cairo Consensus forged at the 1994 International Conference on Population and Development (ICPD) is underpinned by human rights principles., The Human Rights-Based Approach<http://www.unfpa.org/rights/approaches.htm>

relation which has to be solving in the society. However, it does not indicating by the national policy, other laws, in disability strategy. Even if the civil society state about necessity of ratification trough different conferences and round tables as: However, do not declare about human rights issues in cases of breaching and none implementing of laws in the problems. Finally, the violations are still exist.

“For effective realization of the Convention there must be strong coordination between leaders of nongovernmental organizations, who work with disability issues and activists of NGOs”⁵² This is really important working together. When NGOs not just looking for, or giving recommendations but will monitoring, controlling mainly participation in realization of social policy which has to be based on human rights approach.

This subdivision tells about the definition and the understanding of a state accountability principle. The legal problems of the state accountability, The Convention gives to PWD mechanism of eliminating the problems of a state accountability and increase the level of responsibility before PWD.

c) Non – implementation of laws

The chapter provides us de jure existing rights and protection, and de facto incapability in exercising their human rights to accessibility public place, right to education, right to medical services etc.. The main point is to change the national legislation, policy and approach which related to disability issues.

Law of KR “On the Rights and Guarantees of persons with limited abilities of health “gives the legal policy however, as it was analyzed in the first chapter the “spirit of law” based on medical model, therefore, the law is not effective and existed only by the paper. The evidence of the failure of the laws will show by some examples which based on the law and the real examples from persons with disabilities, the NGOs, reports and the journalist experience who is an ordinary person to carried out the test “One day one the wheelchair “. The main point is the challenges come from unimplemented of laws and it created negative legal consequences.

For example in the Law of KR “On the Rights and Guarantees of persons with limited abilities of health” is in article 43 states that the state authorities, local state administrations and local

⁵² Sergei Chubak, Belarus Republic, International Conference on the Convention on the Rights of Persons with Disabilities: equal towards opportunities in 21-23 November 2011, Karven Issyk – Kul, Kyrgyzstan.

authorities, legal entities regardless of ownership are obliged to create conditions for persons with disabilities to access housing, social, administrative and industrial buildings, facilities and premises, places of recreation and other cultural and entertainment facilities and unhindered use of public transport and transport communications, communications and information, free orientation and movement.

No access to public places in KR

De facto situation is There is no access to **public places**: roads, buildings: no slopes, elevators, Brail, sound signals etc. However, more than 42% children rarely go outside (ARDI)⁵³.

The right of access to infrastructure Article 43 states Guarantee access by persons with disabilities health to infrastructure and transport communications states guarantee access by persons with disabilities to infrastructure and transport links says the state authorities, local state administrations and local authorities, legal entities regardless of ownership are obliged to create conditions for persons with disabilities to access housing, social, administrative and industrial buildings, facilities and premises, places of recreation and other cultural and entertainment facilities and unhindered use of public transport and transport communications, communications and information, free orientation and movement.

Forum “The world a suitable for children’s life” the alumnus of the Rehabilitation center Bektur Duishenov who said: “Even to come upstairs to the Forum were problematic” nobody hear us, no slopes the conditions at the schools. It is too heavy to receive a diploma we want to live as other children”⁵⁴Public places do not access for people with disabilities sidewalk, steps, plumb. The journalist of the internet information Center 24 Olga Cheban says that “Not easy for disabled people to move on the wheelchair every step full of obstacles, as steps, holes, sidewalk, so on and how about the law, on these roads do not walks disabled people”.⁵⁵ This is a very good example why it is necessary to have a state accountability before person with disabilities. Without increasing the state accountability the situation of isolation and none freely use public transportation, go schools, shopping, to library, restaurant will just on the paper.

The chapter provided us de jure existing rights and protection, and de facto incapability in exercising their human rights to accessibility public place, right to education, right to medical services etc.. The

⁵³ “A brief analysis of the questionnaires of parents of disabled children” Bishkek, January 2009, Association of parents of disabled children.

⁵⁴ Elvira Kozubekova, Kaba information agency, article “The shoking therapy for the clerk” http://www.kelechek.kg/ru/usefull/useful/shok_terapia/

⁵⁵ Olga Cheban, 24 KG, information agency “One day on the wheelchair” by 29 March 2008. http://www.kelechek.kg/ru/usefull/useful/odin_den_na_inva_koliaske/

main point is to change the national legislation, policy and approach which related to disability issues.

No right to medical services

Article 21 on Guarantee health of persons with disabilities abilities of the Law on rights and guarantees of People with limited abilities of health is examined in this paragraph. Persons with disabilities have the right to health, the prevention of disability, health care, rehabilitation, and provision of medicines, orthopedic products, and individual means of transportation in accordance with the legislation of the Republic of health, as well as the program of state guarantees for the citizens of KR of health care approved by the Government of KR.

However, it is not determination of disability, diagnosis, any specialists, and special medical equipments. Weakness is preventative mechanisms of disability. This fact were justified by the NGO “Ravenstvo” trough research report “Observance of the Rights of Patients with Disabilities in Issyk-Kul Province” which says: “Health care institutions considered in our survey have not made adjustments to accommodate and receive disabled patients. None of the health care institutions undertook adjustments to accommodate disabled people in wheelchairs; the conditions in these hospitals do not meet the requirements needed for full rehabilitation of the disabled”⁵⁶. Failure of medical serves was proof by the interview respondent who says: “I am disabled with a group I disability (the disabled in this group are recorded with the MSCE as ‘incapable’ and they do not have the right to work). I have a young son, that is why I had to transfer to the second group of disability to be able to work, but then, due to aggravation of my health condition I decided to return to the group of disability that was assigned to me initially. I spent the whole day there waiting in line to be re-examined, although I showed up early. Eventually, the MSCE (MSCE – Medical-social commission of experts) chairman, having called me in, humiliated me with his questions and attitude, which caused me to go into a deep depression that took me a very long time to recover from.”²⁸ *Guljan (a pseudonym), an interviewee with a group I disability, Issyk-Kul province*:⁵⁷

The research results: “Neither public establishments, nor health care institutions tasked with providing for the needs of different groups of the population are adjusted to provide service to disabled patients. The offices of various specialists (dentists, gynecologists, urologists, proctologists,

⁵⁶ Public Association “Ravenstvo” Issyk_Kul province Union of the disabled Observance of the Rights of Patients with Disabilities in Issyk-Kul Province A research report conducted with the support of the Soros Foundation Kyrgyzstan and Law and Health Initiative of the Open Society Institute Public Health Program http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/kyrgyz_20081120/raven_20081120.pdf , p.34

⁵⁷ See the same p13

obstetricians, and others) are not equipped to receive disabled patients”⁵⁸. The same situation with right to have education, access to work etc.. In the same law gives rights, however, it is only pepper based. The Kyrgyz Republic has to create under laws, reservations instructions. etc.. To implement the laws and to give part of their obligation for the non governmental organizations trough give them right to provide alternative services equal with the state. The issue of a problem of a state accountability is from the corruption and poor performance of public agencies. In the Kyrgyz Republic assign primary importance to gain money, the cause of it poverty and low economic ability of the country. It is not a secret to enter a child to school parents have to pay some amount of money. Rates of assessment are different. And the parents of schoolchildren pay every month some amount of money. Conversely, children with disabilities do not pay money for study. Kids with disabilities are not profitable people; instead schools have to spend money for these children because for the children need special conditions pro learning. Administration of public school of school violate Law of Education, article 3 the right of the Education

and law of rights and guarantees people with disabilities article 33-42 if they do not bring these kids, no any legal punishment or sanctions. This opinion is also supported by the chairman of the Association of disabled children (ARDI) says: “Without concrete plan and action to implements this plan with team work cannot be a good effects.

It is not exhaustible legal examples it is just a few illustrations of the non – implementation of the national laws. The subchapter indicated that Law of KR “On the Rights and Guarantees of persons with limited abilities of health “gives the legal policy however, the “spirit of law” based on medical model, therefore, the law is not effective and existed only by the paper. The evidence of the failure of the laws defined by some examples which based on the law and the real examples from persons with disabilities, finally the most important point is the challenges come from unimplemented of laws and it created negative legal consequences.

The subchapter included the list of international and national obligations of KR before persons with disabilities. It demonstrated the laws are not effective because they do not have force and they are left unimplemented. The chapter provided examples of the violations of human rights of people with disability in KR. As a result we had to provide other legal options and change the approach of the national legislation. The specific legal solutions will be provided in the third chapter.

⁵⁸ See the same p.35

CHAPTER III

Solutions and Recommendations

This chapter provides legal recommendations to improve the problematic issue of non-implementation of laws on disabilities. To create a new view, and to establish an advance through the following recommendations are provided.

Ratification of the UN Convention on the Rights of Persons with disabilities and Optional Protocol

Ratification the Convention undertakes to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability through reporting the state and shadow from NGOs which working with disability issues, and ratification Optional protocol gives individuals to write individual complains about violations of the state before persons with disabilities This instrument is very good legal approach to monitoring current situation and to call to the Kyrgyz Republic to take accountability and full fill their obligation under the Convention and its Optional Protocol. “The Convention on the Rights of Persons with Disabilities endorses this model and takes it forward by explicitly recognizing disability as a human rights issue”.⁵⁹ “Viewing disability from a human rights perspective involves an evolution in thinking and acting by States and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others’ decisions but holders of rights”.⁶⁰

Bring into conformity the national legislation and policies

Bring into conformity the national legislation and policies with the Convention Ensure that social model of disability is applied within the legislation and state policy, rather than medical model. To change “spirit of law” from medical approach to social through applying the idea and concept of the Convention this uses social model of disability. As the result the legislation will based on human rights style “It is also about putting in place the policies, laws and programmes that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities”.⁶¹ Furthermore “States that ratify the Convention are legally bound to treat persons with

⁵⁹ Navanethem Pillay, Human Rights report “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17” p. 8 http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

⁶⁰ See the same p.9 http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

⁶¹ See the same p.11 http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

disabilities not just as victims or members of a minority, but as subjects of the law with clearly defined rights. They will have to adapt their domestic legislation to the international standards set forth in the treaty".⁶²

Authorized body for social sphere - the Ministry of social Development of the Kyrgyz Republic

Authorized body responsible for the social spheres is the Ministry of social Development of the Kyrgyz Republic. The Resolution of the Ministry says that A "Ministry of Kyrgyz Republic on Social defense of population(further is Ministry) is the public organ of executive power, carrying out social politics in the field of social defense socially of unprotected categories of citizens, families and children, being in a difficult vital situation" .⁶³ This is changing their policies and methods from medical model of disability to social model of disability. To control implementations of laws and social policies by the Ministries and the states agencies like the Ministry of Educations, Ministry of Health and so on. It increases the level of a state accountability to oversight the realizations the laws in the practical way.

Implementation of the existing Strategy on social protection by the Ministry of Social Development (MSD)

Existing Strategy on social protection by the Ministry of Social Development (MSD) for its implementation ensure: the cooperation between different agencies, allocate special budget delegate authority to the Ministry of Social Development of the Kyrgyz Republic to control functions. To give the Ministry the power to monitor activity of other state agencies how their implement laws concerning to disability. For instance: the Ministry of Heath to provide medical services, the ministry of Education to distribute educational services and etc..

These measures give a very good legal basis to collaborate different state and non state legal entities work together to execute their accountability before PWD, and to give legal power the authorized Ministry to oversee the implementation the legislation and to call to account for the state representatives.

⁶²United Nations Enable is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) in the Division for Social Policy and Development (DSPD) of the Department of Economic and Social Affairs (DESA) at the United Nations Secretariat. The website provides public information on topics related to disability and the work of the United Nations for persons with disabilities.

<http://www.un.org/disabilities/default.asp?id=476>

⁶³ The resolution of the Ministry social development of The Kyrgyz Republic about Ministry 20 February 2012 №121 <http://www.mlsp.kg/agentstvo/polagency.html>

Law of the Kyrgyz Republic on prosecutor's office

Law of the Kyrgyz Republic on prosecutor's office, dated form 17 July 2009 N 224 Article 1 says that the Prosecutor of the Kyrgyz Republic is a central government authority that oversees the strict and uniform enforcement of laws and other normative legal acts of the Kyrgyz Republic. **Recommendation to eestablish in Prosecutor General's Office special department** ensuring implementation of laws related to disability rights to control and involvement of liability to state's body, legal entities if their do not full fill their obligation under the Kyrgyz legislation. If to establish a special department which is able to check creation and implementation of laws which based on the Convention's principles and have the power bring to trial, to make an answerable for unlawful actions or inactions.

Administrative Code

Establishing legal approach is in the *Administrative code establish the chapter: Responsibility for breach of obligations before* rights of Persons with disabilities. On the legal basis does not any sanction of non implementation of laws, therefore, need to create mechanism of implementation troughs establishing legal approach in the *Administrative code establish the chapter: Responsibility for breach of obligations before* rights of Persons with disabilities. This legal compute is useful methods because the state, legal entities and individuals will fear to violate rights of persons with disabilities and full fill their obligations because the outcome of the violations are serious.

To increase level of state accountability and to strength transparency of activities the different state and none state agencies have to over existing Public Monitoring 25 February 2011 N 44-p.

"Organizations that encourage and allow public participation, share substantial information so their publics can make informed decisions, give balanced reports that hold them accountable, and open themselves up to public scrutiny, are more likely to be trusted."⁶⁴

Working group

The order of the Government of KR to develop a Strategy for the Development of Social Welfare KR for 2012-2015 (hereinafter - the Strategy) and a single course of conduct on social development, stabilization and improvement of living standards of the population: Created an interagency working group of experts (hereinafter - the Working Group) Council under MSD ((hereinafter -The ministry

⁶⁴ Katie Delahaye Paine *article* "Without transparency you can't have trust. And *without trust, you can't govern*" August 24, 2009, <http://kdpaine.blogs.com/themeasurementstandard/2009/08/how-to-measure-transparency-and-open-government.html>

of Social Development) Establish specific by laws on their authorities and power to monitor activities of MSD. Working group is a helpful technique to monitor, and give references to solve the issues to the state. Members grant reports which indicate a real situation according to disability. However, the main is to analyze and control the national legislation and policy and to account for responsibility under PWD.

This chapter was significant in providing the recommendations to improve the problematic sides of non-implementation of laws.

Conclusion

The purpose of the senior was to show disability issues are not just obstacles and gaps in the national legislation, but it is a human rights issue. The paper indicates that violations of human rights of PWD is a very immense topic. Kyrgyzstan breaches basic human rights of persons with disabilities because KR does not take enough legal measures to fulfill their obligations. One of the reasons is a historical and systematic discrimination of people based on wrong disability definition, based on medical model. The issue of discrimination of PWD is supported by the United Nations High Commissioner for Human Rights, Navanethem Pillay states “Women, men and children with disabilities are too often amongst the most marginalized in all societies and face unique challenges in the enjoyment of their human rights. For a long time it was assumed that such challenges were the natural and unavoidable consequence of their physical, mental, intellectual or sensory impairment”.⁶⁵

With the ratification of the UN Convention and the Optional Protocol and implementation of offered recommendations in this thesis paper the state accountability will increase and the violations of rights of PWD will decrease. The Kyrgyz Republic has to ensure the rights of PWD are observed, ensure the implementation of state obligations before PWD by implementing national laws. There should be increased State accountability for non-implementation of international and national obligations. Such provided recommendations as implementation of existing Strategy on social protection by the Ministry of Social Development, establishment of separate department within the prosecutor's office specifically on PWD, amendment of the Administrative Code of KR and imposition of specific administrative liability on PWD, and establishment of specific mandate and financial resources of existing Working group will enhance the state accountability and implementation of laws on PWD in the Kyrgyz Republic.

The hope is that this paper can help the state and other interested stakeholders modify the national policy and legislation in accordance with the human rights of persons with disabilities and fulfil right of PWD not only in declarative basis.

⁶⁵ Navanethem Pillay, Human Rights report “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17” p. 5 http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf

Bibliography

International Conventions

- The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. The Convention entered into force on 3 May 2008 articles, 1, 2,3 The Convention on the Rights of the Child; Convention on the Rights of the Child
- Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 Entry into force 2 September 1990, in accordance with article 49, 23
- International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49
- International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

National legislation

- Constitution of Kyrgyz Republic Constitution of the Kyrgyz Republic 27 June 2010 articles 16, 77
- Law of KR “On the Rights and Guarantees of persons with disabilities” Law of KR On the Rights and Guarantees of persons with limited abilities of health 3 April 2008 N 38
- Resolution of the Kyrgyz Republic On execution of the legislation on the rights with limited abilities of health 28 December 2011 N 1456-V
KR Law on Education

Secondary sources:

- Pepijn Trapman The Kyrgyz disability guide Everychild’s expert p.7. www.kelechek.kg
- Grant Carson the social model of disability p.6
<http://www.ukdpc.net/library/Social%20Model%20of%20Disability2.pdf>
- Briefing Paper 31 December 2007 Voice for accountability: Citizens, the state and realistic governance <http://www.odi.org.uk/resources/docs/576.pdf> p.2

- Oakes, Wayne Thomas. Perspectives on Disability, Discrimination, Accommodations, and Law : A Comparison of the Canadian and American Experience. New York, NY, USA: LFB Scholarly Publishing LLC, 2004. p 3.
<http://site.ebrary.com/lib/aucentralasia/Doc?id=10159271&ppg=13> Copyright © 2004. LFB Scholarly Publishing LLC
- GIZ and Federal Ministry for Economic Cooperation and development , “ *Disability and development cooperation – 10 facts or fallacies?*” <http://www.gtz.de/de/dokumente/gtz2010-0477en-disability-development.pdf>
- Equality and Human Rights Commission <http://www.equalityhumanrights.com/advice-and-guidance/your-rights/disability/words-used-to-define-disability/a-physical-or-mental-impairment/>
- American Association on intellectual and developmental disability http://www.aamr.org/content_104.cfm
- The Surgeon General’s Call to Action to Improve the Health and Wellness of Persons with Disabilities [www.surgeongeneral.gov
http://www.cdc.gov/ncbddd/disabilityandhealth/pdf/whatitmeanstoyou508.pdf](http://www.cdc.gov/ncbddd/disabilityandhealth/pdf/whatitmeanstoyou508.pdf) p.4
- Disabled Workers Claim Discrimination <http://iwpr.net/report-news/disabled-workers-claim-discrimination> 7 para
- Kyrgyzstan Human Rights Report, Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status <http://www.ncbuy.com/reference/country/humanrights.html?code=kg&sec=5>
- The example was taken from the seminar: “The right of labor ” 2008 from Association of parents of disabled children
- Creating a Job Placement Model for Young Disabled People <http://eng.perspektiva-inva.ru/?114> third para
- Navanethem Pillay, Human Rights report “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17” p.19p http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf
- Assessment of the situation of children with disabilities in Kyrgyzstan, 2008 http://biasfree.org/assessment_disabled_children_kyrg.pdf p.14 1 para
- Regional Society of Disabled People Perspektiva, AnnualReport2005-2006.pdf <http://eng.perspektiva-inva.ru/files/downloads/annualReport2005-2006.pdf>

- National Statistical Committee, Bishkek MONEE Country p.4 [http://www.unicef-irc.org/research/ESP/CountryReports2002/kyrgyz\(final\).pdf](http://www.unicef-irc.org/research/ESP/CountryReports2002/kyrgyz(final).pdf)

Other sources

- The Strategy of Social Protection of the KR for 2012-2014 December 13, 2011 № 755;p.13 <http://www.mlsp.kg/-2012-2015/-----2012-2014-.html>
- United Nations Enable is the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities (SCRPD) in the Division for Social Policy and Development (DSPD) <http://www.un.org/disabilities/default.asp?navid=14&pid=150>
- Jama _ the journal of the American Medical Association <http://jama.ama-assn.org/content/304/16/1787.short>
- A brief analysis of the questionnaires of parents of disabled children made by Association of parents of disabled children <http://kelechek.kg/ru/usefull/research/>
- The information was taken from Association of disabled children from private consultation report.
- The Information is about monthly child benefit of disability UN Unicef web site: http://www.baldar.kg/index.php?option=com_content&view=article&id=1339:-----225-----&catid=38:2009-12-24-19-17-51&Itemid=140
- Muzaphar Tursunpov http://www.open.kg/ru/theme/analit/?theme_id=170&id=674
- In Kyrgyzstan, children in wheelchairs banned to appear on the Presidential Children's New-Year Show 24.kg news agency by Anastasia BENGA, <http://eng.24.kg/community/2011/12/28/22250.html>
- <http://kelechekplus.kloop.kg/2012/01/11/nepristupny-j-kreml-v-ky-rgy-zstane-ne-pustili-devushku-s-invalidnost-yu-v-klub/> _ Informational sources for disability in Kyrgyzstan