

# **LABOUR LAWS AND EMPLOYMENT PRACTICES, AFFECTING CHILDREN, IN CENTRAL ASIA**

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Baseline Survey

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# KAZAKHSTAN

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## 1. Introduction.

The first legislative acts dealing with the special needs of children in Europe and the Russian Empire date from the middle of the 19<sup>th</sup> century, although only in 1919-1924 these issues emerged in the international fora. Since then, children's rights have been gradually defined in the framework of international law. In 1979, UN and NGO representatives formulated the Convention on the Rights of the Child, according to which "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier," who have equal rights regardless of ethnicity, colour, social origin and religion.

Currently, international organizations are particularly concerned about the worst forms of exploitation of children. According to some estimates, over four million of people become victims of trafficking every year, although this is a conservative estimate on account of the stigma attached to this issue in some countries or due to psychological reasons, such as fear. The profitability of trafficking in persons comes in third place after the arms and drugs trafficking, i.e. criminal and transnational proceeds of the criminal groups amount to approximately 7-8 billions of dollars a year. Child labour is an extremely difficult problem and requires immediate comprehensive measures and practical actions by the international community at all levels.

The Republic of Kazakhstan, a member of the international community, officially supports the international initiatives by joining the main international conventions, scrutinizes the existing international recommendations, as well as adjusts and enforces its domestic legislation. Nonetheless, it is evident that adherence to some international laws and legal regulations is frequently only nominal. Most problems, including the worst forms of employment of children, are not regulated adequately and relevant fundamental legislative and other normative legal acts require essential rethinking and revision.

In this connection, while surveying the labour laws and employment practices affecting children Kazakhstan, we will examine the gaps and errors as well as present recommendations. We should note that the existing problems cannot be resolved by passing one or two legal acts concerning the regulation of child labour, since this and other issues are part of a multi-faceted phenomena that requires a comprehensive legislative, social and economic approach.

## 2. Situational Analysis

The Kazakh legislation contains provisions on the employment of minors, such as the age limit, safety measures and various safeguards, although many children work illegally, particularly in the rural areas. The types of labour performed by children include subsistence farming, work in private enterprises, family businesses and others. We should also note that existing official statistics are incomplete.

The Ministry of Labour and Social Welfare of Population, the General Prosecutor's Office, or National Executive Committee for Family and Women or the Ministry of Interior could not provide any statistical data on child labour. The information presented in this report is compiled from various other sources. In reply to an official inquiry from IOM, only the General Prosecutor's Office responded with a letter, dated 05 April 2004 (№ 7-6698-04), stipulating that, at its initiative, an Inter-departmental Commission was set up to elaborate 1) a work plan on the control and prevention of trafficking in 2004-05 and 2) a plan of organizational and operational preventive measures for the detection of

organizations and individuals involved in smuggling and trafficking of persons for the purpose of sexual, labour or other exploitation in 2004-05.

The General Prosecutor's Office approved a set of guidelines on the methods of detection and investigation of crimes connected with trafficking in persons. Special emphasis is placed on the use of child labour. Moreover, in April 2004, the General Prosecutor's Office sent directives on the need to regulate child labour and to eliminate its worst forms of the child labour to all the regions. Furthermore, documentation concerning changes in statistical accounting in the framework of the law on protection of the childhood is currently being prepared. We should also mention that recently the General Prosecutor's Office's has worked most consistently on countering child labour, especially in comparison with other governmental bodies, directly responsible for the realization of the child policy in Kazakhstan. Neither any of the relevant ministries, or the National Executive Committee for Family and Women have responded to official inquiries from IOM in Kazakhstan. We could find no materials on child labour when visiting these institutions in Astana.

According to materials provided by the Ministry of Labour and Social Protection of the Population, an investigation of a number of workplaces and labour protection measures (also pertinent to children) was carried out in the last five years. According to the employees of this ministry, a work plan dealing with these issues will be prepared next year. The Ministry of Justice and the Executive Committee did not offer any information due to "lack of competence" in this field. At the same time, however, the representative of the Executive Committee stated that it functioned as a consultative unit, with no authority to implement special measures or, in fact, information to offer on the topic.

We should also note that the first national census of Kazakh population was carried out in 1999. As of July 2004, the population of Kazakhstan comprised 15,143,70 people. Both the population census and the statistical data in the country were compiled according to the following age criteria: 0-14, 15-59, 60 and older. The number of accounted-for citizens from the first age group was 3,741,6 thousand. The number of children has decreased to 534,6 thousand (as compared with 1999). As illustrated by the official statistics, not all the minors are differentiated from the other population categories and, if we consider that children may be officially employed only starting with the age of 14, this data does not reflect the actual situation. The available statistical data varies significantly depending on the source, season and duration, i.e. frost-free or cold seasons, beginning or end of agricultural seasons, beginning or end of the academic year. At present, the situation has improved, as children's school attendance is monitored.

The serious shortcomings in the area of regulation of employment of minors were discussed at the first meeting of the Legal Policy Council. In particular, the General Prosecutor's office emphasized the following aspects: according to the Law "On the rights of a child in the Republic of Kazakhstan," in 2002-03, the Government of Kazakhstan should have elaborated and approved a program geared towards the protection, development and support of minors. In accordance with Article 51 of the Law, the Government is authorized to designate the governmental body dealing with the protection of children's rights. Moreover, in 2003, the Government should have presented its annual report to the President of the Republic of Kazakhstan. Until today, none of these actions have taken place and there is no single coordination unit that would analyze and guide activities in the area of protection of children's rights in Kazakhstan.

One of the main reasons of the employment of children, both official and unofficial, including all its illegal (criminal) aspects, are the low living standards of the population. In accordance with the existing legislation of the Republic of Kazakhstan, the authorities should support children in need. In principle, the responsibility for the registration of such children lies with the child welfare agencies, although it is not implemented due to lack of a proper legal base. According to the Head of the Department tasked with the control over the activity of government agencies Mr. Andrey Kravchenko, the Kazakh child welfare agencies are severely understaffed, with one employee per, roughly, 29,000 children.

The governmental Inter-departmental Commission that deals with smuggling and trafficking in persons is chaired by the Minister of Justice. In February 2004, the Government of the Republic of Kazakhstan approved a special work plan of preventive measures against trafficking in persons for 2004-05 (as stated above), which envisages cooperation between relevant government agencies and non-governmental organizations. Previously, on 19 September 2002, the position of Human Rights Commissioner was created and approved. It should be noted that these measures are directed towards the elimination of the worst forms of the child labour. Beside the official government structures, some non-governmental organizations are dealing with protection of children and their (labour) rights as well, including the Crisis Centre "Podruga," Almaty Centre for Gender Research, Kazakh Medical Pedagogical Association and others.

Children have become a steady presence in the criminal world, both as victims and perpetrators. For example, children are involved in prostitution under the direction of pimps who are also minor. Last year, 211 cases of crimes committed by children were registered in Astana. These children mostly come from poor or dysfunctional families.

Additionally, as maintained by mass media (and unofficial sources), there are no prosecutions of cases where minors are coerced to work. As a rule, such cases are examined only in the context of related crimes. Perhaps, an exception to the rule should be considered the legal proceedings held in March 2004 in Kyzylorda against Irina Chernomyrdina who was accused of coercing her seven years old daughter to beg. The means received by the child were the major source of livelihood of the whole family consisting of four members. Mrs. Chernomyrdina was sentenced to two years of probation, although the indictment mentioned that the family would subsequently suffer from hunger.

The socio-demographic and economical situation in Kazakhstan is conducive to the use of cheap child labour, both during the agricultural season, irrespective of the educational process and by family and criminal businesses.

### **3. Analysis of Employment Practices Affecting Children**

According to opinion polls, published in mass media, many children work in order to earn pocket money, although for most of these children (and sometimes for their families) this is the only means of earn their livelihood. The most common infringements of labour protection legislation are the employment of minors without individual labour contracts, without parents or guardians present or the compulsory preliminary medical examination, non-observance of work, payment or termination conditions, as well as employment in agricultural sector, which is disruptive to the educational process. Moreover, in private enterprises, violations of labour protection law are more frequent than in state ones.

It important to mention that according to the specific classification of the worst forms of child labour, Kazakhstan is different from the other CIS countries in that there have been no registered cases of use of children in armed conflicts, although other types of labour are quite frequent. This refers, first of all, to child trafficking (see subsection 4.1). On 13 February 2004, a second meeting of the Inter-departmental Commission with smuggling and trafficking of people took place at the Ministry of Justice.

In addition, much remains to be done in the area of homelessness and parental neglect, as the group at risk of involvement in the worst forms of child labour include homeless and abandoned children, and children from so-called asocial (dysfunctional), as well as migrant and refugee families, since they are often either unemployed or involved in criminal activity. The existing legislation of the Republic of Kazakhstan bans the following worst forms of child labour: coercive labour, trafficking of children,

involvement of minors in prostitution or in any other illegal activity. The worst forms of child labour in the framework of statistics on crimes and offences classification are determined by the Ministry of Interior and General Prosecutor's Office of the Republic of Kazakhstan.

## **4. National Legislation**

### **4.1 Constitution**

The Constitution of the Republic of Kazakhstan was passed on 30 August 1995. Its Article 24 enunciates the right to free choice of employment. Forced labour is forbidden, except when performed by imprisoned felons, or in emergency or military situations. All citizens are guaranteed the right to appropriate work conditions in line with safety and hygiene requirements, as well as to non-discriminatory remuneration and social security from unemployment. All citizens have a right to a pre-established number of working hours, annual paid leave and other benefits. We should also mention the following relevant articles:

- Article 27 on the right to childhood protection by the state
- Article 28 on minimum earnings and pension and social security
- Article 29 on the right to protection of health
- Article 30 on the right to free secondary education in state educational institutions.

All these constitutional guarantees are fundamental determinants of the legal policy on child labour and are a starting point for the lawmaking process.

### **4.2 Laws of the Republic of Kazakhstan**

The most important legislative act in the context of labour laws affecting children is the Law "On the rights of the child in the Republic of Kazakhstan," dated 8 August 2002. It is mostly consistent with the international legal instruments and it defines the national policy towards children on the basis of the fundamental rights and best interests of all children. This law provides for the right of children to life, health care, personal freedom, inviolability of dignity, freedom of speech and conscience, information and participation in social life, necessary standards of living, national assistance and property. Articles 16 and 19 guarantee the children's right to freedom of labour and rest, as well as to holidays.

Children have the right to work starting with the age of 14, depending on their health, and without harming their physical, moral and mental development. They may only work with the consent of their parents and when not attending school. This right is ensured by job placement services and local inspection authorities. Employers are not allowed to recruit children for hard labour in harmful and/or dangerous working conditions. Employment also must not disrupt the educational process.

Moreover, Article 32 reads that state authorities and local government ought to create necessary conditions for the education, professional training and selection of appropriate work and placement of disabled children, depending on his/her physical state, needs and ability. Legislative acts of the Republic of Kazakhstan can define the benefits of natural and legal persons who employ disabled children.

In addition, the law enunciates the protection of children from the detrimental effects of the social environment, as well as from propaganda and information, harmful to their health, and moral and spiritual development. Children who suffer physical or psychological abuse, violence or other crimes have the right to rehabilitation and social integration assistance. In addition, children must be protected from the detrimental effects of alcohol production and tobacco, drugs, psychotropic or poisonous substances. We should also mention Articles 39, 40, 41, 42, 48 and 49 that deal directly with the

elimination of worst forms of child labour. In accordance with legislation of the Republic of Kazakhstan and international obligations, the state also takes measures to prevent and suppress the smuggling, kidnapping, trafficking of children.

The Law of the Republic of Kazakhstan “On family-type children’s villages and juvenile houses,” dated 13 December 2000, is unique in the CIS and, thus, of particular interest in this context. These villages and juvenile houses are created to fulfil the rights of orphans and children left without parental care to live in a family-like environment and to receive moral, spiritual and life-skills education. Their education is directed towards the observance of the labour rights of youth between the ages of 14 and 23, also in view of child labour issues.

In particular, the law stipulates that the management of juvenile houses should research the labour market, contact organizations interested in employing youth regularly, as well as seek out vacancies in all types of enterprises, especially small ones (Article 25). Moreover, the state provides guarantees for the creation of legal, economical and organizational conditions for the physical, intellectual, spiritual and moral development of these children and of a system of professional orientation, training, and job placement.

Articles 28 and 29 determine the right of persons, between the ages of 16 and 18 who are undergoing social adaptation, to independently manage their wages, scholarships, other income, as well as to conduct petty daily transactions and independently account for them, to make deposits in banks and independently manage them, including deposits in their name, with the consent of children’s village administration.

Some child labour issues are addressed in the Law of the Republic of Kazakhstan “On health protection of citizens of the Republic of Kazakhstan,” dated 1 July 1998. In particular, Article 9 defines the responsibility of employers to create conditions that ensure the health protection of citizens.

Among the more specific legislative acts is the Law of the Republic of Kazakhstan “On labour in the Republic of Kazakhstan,” which entered into force on 1 January 2000. Since its approval, this law has been criticized, not least because of the regulations dealing with the employment of minors. Thus, Article 11 stipulates that persons who reach the age of 16 can sign individual labour contracts. If they finish their secondary education or if they drop out of school, minors may sign individual labour contracts at the age of 15, with the consent of parents or guardians. Children who reach the age of 14 and are enrolled in schools can conclude individual labour contracts as well, albeit with the written consent and signature of one of the parents or guardians, provided that it does not interfere with their school attendance.

Employees between the ages of 14 and 16 can work maximum 24 hours per week, while those between the ages of 16-18 may be employed for up to 36 hours per week. In accordance with Article 48, it is prohibited to recruit persons under the age of 18 for night shifts (between 10pm and 6am) or outside regular working hours. Although before 1 January 2000 employers were bound by law to grant paid leave to students for the duration of their academic obligations, since the coming into effect of the “Law on Labour,” employers can take such decisions independently. It is worth noting that in the old Labour Code of Kazakh SSR (in force until 1 January 2000), child labour regulations were contained in a separate chapter (XIII) on “Youth labour.” The current Law on Labour does not include such a chapter and relevant legal provisions can be found throughout the text of the law.

In this context, another relevant legal instrument is the Law of the Republic of Kazakhstan “On safety and protection of labour,” in force since 28 February 2004. The issue of labour protection of persons under the age of 18 is regulated by Articles 12, 13, 15 and 17, which are specific to labour performed by minors, in addition to provisions of a more general, although still relevant, nature. Persons under the age of 18 are recruited only after passing the obligatory medical examination, at the expense of

employers. The law prohibits the employment of persons under the age of 18 for hard labour and/or in harmful and hazardous working conditions, as defined by appropriate public health authorities and in line with international legal instruments.

In this connection, the Code of Administrative Violations (30 January 2001) establishes sanctions for the infringement by employers of the official labour protection legislation or of job safety rules (Article 89). If a self-employed minor is found in violation of the Code's provisions, the penalty cannot exceed the tenfold monthly calculated index. In the absence of independent earnings or property of the minor, the penalty is imposed on his/her parents or guardians. The minors can also be deprived of their special rights for a period not exceeding one year.

When an administrative penalty is applied in the case of a minor, his/her living conditions, mental development and other factors are taken into account. (The age of a minor is a mitigating circumstance). First-time offenders may be exempt from penalties by the authorized agency investigating such administrative offences. Sanctions of educational nature may be applied as well, including the placement of minors under the supervision of parents or guardians, or specialized governmental agencies etc. The minor can also be required to complete his/her studies or to find employment through the Minors Protection Committee.

The Criminal Code of the Republic of Kazakhstan, passed on 16 July 1997, imposes severe sanctions for the violation of safety, industrial, sanitary or other rules of labour protection, committed by persons responsible for the organization and abidance by these rules in the workplace, in particular when such violations result in death. Part VI contains provisions on the criminal accountability of minors (between 14-18 years of age).

Minors may be sentenced to perform certain types of labour, in compliance with the domestic legislation, for 40 to 160 hours of labour appropriate for a minor, in the time free from studies or primary employment. The duration for implementation of this type of punishment is provided that it does not interfere with his/her studies. Persons under the age of 16 are not allowed to work for more than two hours a day, and persons at the age of 16 up to 18 - for more than three hours a day. This regulation is the subject of controversy among representatives of non-governmental organizations and lawyers, investigating the legal nature of forced labour.

One of the root causes of child labour is the shirking by parents of their responsibility to support their children. The regulations of the Criminal Code provide for the proper punishment of persons who do not fulfil their parental responsibilities, although there are no legal provisions dealing with child prostitution and pornography, or statutory rape. The criminal liabilities for sexual exploitation of children by adults are, however, more stringent now.

Some regulations on child labour are included in the Civil Code of the Republic of Kazakhstan, in force since 1 July 1999. In the framework of civil and legal relations, the following issues were raised by lawyers: 1) Can children be recruited for labour activity in the framework of civil legal agreements, 2) Specific features of civil responsibility, and 3) Material accountability of minors for damages. Significantly, persons bound by civil contractual relationships, are not subject to labour laws, which is interpreted by employers to the disadvantage of children. The area of civil responsibility is regulated by Articles 22 and 23, which reads that minors between 14 and 18 can negotiate labour agreements with the consent of parents or guardians. They are also fully responsible for transactions, concluded in accordance with rules of these articles, as well as for the damage, caused through their acts. As for 14 years old children, transactions are concluded on their behalf by parents or guardians. The third issue is regulated by Article 26, which stipulates that minors between the ages of 14 and 18 (or their parents or guardians) can be held responsible for damage caused by their actions.



## 5. International Legal Instruments Ratified by Kazakhstan

One of the most important conventions relevant to the topic of the survey is the Convention on the Rights of the Child, which entered into force on 2 September 1990 and was ratified by Kazakhstan on 8 June 1994. This Convention is supplemented by two optional protocols, ratified by Kazakhstan on 4 July 2001, namely “On the Sale of Children, Child Prostitution and Child Pornography” and “On the Involvement of Children in Armed Conflicts.”

Kazakhstan ratified the ILO Convention Nr 182 “On the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour” on 26 December 2002. Its provisions, to a certain degree, have been incorporated into the national legislation. Kazakhstan also ratified ILO Conventions Nr 29 “Concerning Forced or Compulsory Labour” and Nr 105 “Concerning the Abolition of Forced Labour”. The ILO Convention Nr 138 “Concerning Minimum Age for Admission to Employment” was ratified on 14 December 2000.

In December 1999, the Ministry of Labour and Social Welfare and ILO undertook negotiations to determine strategies of cooperation in the area of labour and socio-economic issues in 2000-01. As a result, a number of short- and long-term activities were planned and a “Programme of Cooperation between ILO and the Republic of Kazakhstan for 2000-01” was passed by the Government. Moreover, Kazakhstan signed a Partnership and Cooperation Agreement with the European Union on 23 January 1995.

On 10 March 2004, Kazakhstan ratified the “CIS Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Matters” and the appropriate authorities are currently considering related legislative amendments. Another agreement - “On coordinated measures against terrorism, political and religious extremism, transnational crime and other threats to the stability and security of parties” was concluded between Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. It was ratified by Kazakhstan on 9 November 2000. Kazakhstan also signed agreements on mutual legal assistance with other CIS member-states (Russia, Kyrgyzstan, Uzbekistan etc) and in the framework of the Shanghai Organization of Cooperation – with India, Turkey, Mongolia, Pakistan and others.

## 6. Conclusion

This analysis of the legal instruments of the Republic of Kazakhstan, dealing with or relevant to child labour has shown that, irrespective of the magnitude of the problem and the significant number of both domestic and international legal provisions in force, children’s rights (including labour ones) are not properly protected. There is no comprehensive, systematic approach to monitoring and coordinating activities by both governmental agencies and non-governmental organizations. Below are some of the root causes of child labour, as defined in the ILO Global Report on Child Labour (6 May 2002), which are also applicable to Kazakhstan:

- Poverty
- High unemployment rate among adults
- Social exclusion
- Inadequate social security
- Inadequate education (or lack thereof)
- Discrimination
- Family traditions conducive to child labour
- Lack of appropriate legislation
- Cheap and flexible manpower.

In this context, the following measures need to be taken immediately by the relevant Kazakh authorities:

- The Constitution of the Republic of Kazakhstan should be amended to include a constitutional guarantee of the right to labour, in line with the international legislation.
- Relevant international treaties and agreements should be implemented.
- The provisions of labour legislation, which regulate the labour performed by minors, should be reviewed, amended, where necessary, and implemented.
- The observance of labour legislation applicable to minors should be monitored.
- The use of children to perform household work should be regulated.
- A national programme focused on the employment of minors should be developed. To boost school attendance rates and, if feasible, special education programmes for children who combine work and study should be created.
- The use of child labour for agricultural works should be regulated separately, based on their specific features (seasons, work-rest schedule, daily performance requirements etc).
- An integrated public administration system should be set up to manage the social welfare of minors, including their labour relationships.
- The legal status of the Commission dealing with the protection of the rights of minors should be changed to remove the obstacles to the realization of its direct responsibilities.
- The standards of statistical data collection, also in the field of child labour, should be improved.
- The legal protection of the rights of minors working both on contractual and unregulated bases should be improved.
- A national programme on the elimination of the worst forms of child labour should be developed.
- Particular emphasis should be placed on the education and needs of several categories of vulnerable children.
- Governmental agencies, (non)governmental organizations dealing with children, human rights and labour issues, employers, trade unions, and other relevant, should focus their activities on uncovering and preventing instances of the worst forms of child labour, as well as providing assistance and rehabilitation services to victimized children.

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#### Laws of the Republic of Kazakhstan

Materials provided by the Ministry of Labour and Social Protection and by the General Prosecutor's Office.

# KYRGYZ REPUBLIC

## Bermet Moldobaeva

### 1. Introduction

The following activities were undertaken by the author in the course of this research project:

- Collection of relevant data, legislation, research and mass media items, in line with the objectives of the project.
- Meetings with experts from the Ministry of Labour and Social Protection, the Ministry of Internal Affairs, the Ministry of Education and the Ministry of Health of the Kyrgyz Republic (KR); representatives of the Trade Unions Federation Council; coordinators of UNICEF programmes; NGO representatives.
- Research and analysis of the existing legislation of KR, with the assistance of the Parliamentary and Legislative Centre of the Legislative Chamber of the *Jogorku Kenesh*<sup>1</sup> of the Kyrgyz Republic.

### 2. Situation Analysis

According to official statistics, children and teenagers constitute 38.1 % of the Kyrgyz population.<sup>2</sup> The 1999 population census data indicated that 55.3 % of the population was poor and 80 % lived in rural, predominantly mountainous, areas.<sup>3</sup> These areas are primarily inhabited by the unemployed, elderly and impoverished families with children, which is particularly conducive to the employment of minors in the Kyrgyz Republic.

Since the collapse of the Soviet Union, the use of child labour has become widespread, especially in the southern regions, where tobacco, rice and cotton are cultivated. Furthermore, the labour of children is traditionally used in irrigating, weeding and harvesting work. Almost all the children living in rural areas work on plantations and help their parents in performing all types of labour, including those that may pose health hazards.

The Central Committee of the Trade Union of Agricultural Workers conducted a research on child labour in the Southern regions of Kyrgyzstan, which has shown that 3-4 children worked on cotton or rice cultivation per hectare of land and 7-8 children work on tobacco cultivation per hectare of land. More than 5,000 families and 15,000 children are involved in tobacco growing. An average of up to 125,000 children are involved in agricultural activities in the Djalal-Abad oblast alone.<sup>4</sup>

Moreover, the use of child labour in markets has become frequent due to the emergence and growth of unregulated trading activity and markets. Children are involved in transporting, (un)loading and sale goods and luggage on the streets and in the markets, in addition to collecting bottles and aluminium. There are also children who work as house servants – they clean, wash, cook for and wait on their employers. They also gather firewood and work in gardens.

According to Mr. S. Bozgunbaeva, the Chairman of the Trade Unions Federation Council of Kyrgyzstan: "Based on data provided by specialised trade unions, about 50-60,000 children perform all

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<sup>1</sup> *Jogorku Kenesh* is the Parliament of the Kyrgyz Republic.

<sup>2</sup> National Statistical Committee, "Main results of the first national population census in the Kyrgyz Republic 1999," 2000.

<sup>3</sup> Ibid.

<sup>4</sup> "It is Time for Practical Actions," *Slovo Kyrgyzstana* (government newspaper), 9 January 2004.

types of labour, including heavy labour, although numbers vary, depending on the season. The number of homeless children, who have no contact with their parents, is, according to some data, 20-30,000 and according to other data 15-20,000.”<sup>5</sup>

On 5 December 2003, the Deputy Minister of Labour and Social Protection of the KR, Murat Mambetaliev declared, during a round table that “Child labour in the Kyrgyz Republic is the first practical way of solving problems.” He added that it was impossible to ban the use of child labour in Kyrgyzstan because of articles in the Labour Code, which allowed teenagers to work. The representative of the Employers Federation Alybek Kadyrov stated that children practiced crafts, passed down from generation to generation.

According to the Ministry of Education, nearly 23,000 children of school age do not attend school. Many working children stop attending school at the beginning of spring. According to the Chairman of the Special Committee of the Dordoï market, quoted in “Slovo Kyrgyzstana,”<sup>6</sup> the problem of child labour in Kyrgyzstan was expected to worsen, as many teenagers, with uncompleted education, will join the ranks of unskilled workers.

On 25 August 2003, the Government of the Kyrgyz Republic created a Coordination Council on Child Labour, in order to initiate and coordinate the work of executive branch authorities, local administrations, representatives of public and non-governmental organizations, workers and employers, which would contribute to eradicating the worst forms of child labour, in line with the ILO Convention Nr 182 “Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. The Prime Minister of the Kyrgyz Republic appointed the First Deputy Prime Minister as head the Council. Furthermore, the Government Regulation, dated 14 August 2001, provided for the establishment the New Generation State Programme on Children’s Rights Protection, to be implemented until 2010.

The Coordination Council was set up after a series of seminars devoted to the development of trade unions’ strategy to eradicate child labour in the framework of the international programme, supported by the Activities Bureau of the International Labour Organization. Trade union representatives discussed the root causes of the widespread use of child labour in the economy, markets and agriculture and debated solutions to this problem at regional meetings. One of the solutions proposed at the regional seminars was the introduction of stricter control over child labour, exercised by trade unions, municipal administrations and the public. Poverty alleviation, the development of rural economy and changing traditional attitudes towards child labour (especially in southern regions) are some of the other solutions put forth by the participants at the meetings.

The seminars in southern regions also uncovered other problems, such as servitude (the exploitation of children used to pay off the debts of their parents) and the increase in the number of suicides committed by children, caused by parental abuse and violence. On the upside, one of the trade unions has prohibited the employment of children to work as cargo handlers and hired adults instead, which resulted in the latter’s increased salaries and improved quality of life in general. Other trade unions have created credit unions, supported the development of cooperative communities and the economic cooperation of farmers, which, in turn, resulted in a reduction in manufacturing charges, increase in farmers’ incomes and thus diminished the demand for child labour.

In 2002-2003, the Ministry of Labour and Social Protection of the KR worked on drawing the attention of governmental, non-governmental and public organisations to the problems of child labour. The

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<sup>5</sup> Available at <http://www.kabar.kg/04/Jan/20/49.htm>.

<sup>6</sup> “Child Labour Use by Employers and Authorities in Kyrgyzstan is Increasing,” Information Agency *Kyrgyz Press*, 26 November 2003. Available at [www.kyrgypress.org/03/Nov/26/10.htm](http://www.kyrgypress.org/03/Nov/26/10.htm).

majority of legislative acts regulating the questions of child labour were adopted in 2003 when Kyrgyzstan also ratified the ILO Conventions Nr 150, 184 and 182.<sup>7</sup>

### 3. Analysis of Employment Practices

The protections granted to minors in accordance with the domestic laws have had an adverse impact on their employment opportunities. Employers are reluctant to sign labour contracts with minors because of the associated higher labour costs and lower outputs. They are, however, more willing to employ minors without appropriate labour contracts.

The legal employment of minors is particularly difficult in rural areas. On one hand, the demand for unskilled workers has been decreasing, while, on the other hand, employers either do not have the resources or the wish to train and improve the professional skills of minors. The existing system of vocational training is in crisis and most families cannot afford to pay for their children's training. Compared to other categories of workers, minors, especially girls in rural areas, find it more difficult to improve their professional skills, because of the general situation in the labour market of Kyrgyzstan. In Kyrgyzstan, children are usually employed to perform the following types of labour – in the service or agricultural industries, housework and physical labour.

In 2001, ILO published a report on “Child Labour in Kyrgyzstan,” which examined the root causes of child labour. In the course of the research, 693 children were interviewed. According to its findings, although the laws prohibit employers from signing labour contracts with children younger than 14 of age, 28 % of children between seven and 15 years of age are employed, out of which 56 % are boys and 44 % are girls and 40 % (or 9.5% of the total number of respondents) are employed by their relatives.<sup>8</sup>

Such labour agreements between employers and minors concerning are concluded orally (as confirmed by 96.7 % of the children), thus increasing their vulnerability to exploitation. In many cases, children work in cafes, cafeterias, bakeries, construction sites etc. Children are also hired to work in the fields, trade, transportation and (un)loading goods or luggage. 33.3 % of children confirm violations of the Constitution, and Labour Code, and of their most important rights by employers, while 7.1% are under pressure from employers. The overwhelming majority of working children would prefer to stop working.

When asked what they thought about child labour in Kyrgyzstan, many employers replied that it was caused by the general unemployment situation and that child labour should be tolerated. To a certain, extent, adults have practically withdrawn from solving children's problems and perceive the existing situation is currently irresolvable due to economic reasons.

In addition, employers who hire minors frequently state that children are able to perform certain jobs better than adults, although studies carried out by Russian researchers in enterprises that employ high numbers of child workers, questioned the validity of this argument.<sup>9</sup>

In fact, the use of child labour is motivated not as much by economic efficiency, as by the fact that children are easier to handle than adults. Despite having fewer professional skills, children do not know their rights, cause fewer problems, complain less and are more adaptable. Finally, they are the easiest to sacrifice when difficulties arise.

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<sup>7</sup>Although the ratification instruments have not been deposited with the appropriate bodies yet, the KR government has adopted laws on the ratification of the ILO Conventions Nr 150 and Nr 182.

<sup>8</sup> International Labour Organization, “Child Labour in Kyrgyzstan,” 2001. Available at [www.ilo.ru/ecl/docs/CLKyrgyz\\_ru.pdf](http://www.ilo.ru/ecl/docs/CLKyrgyz_ru.pdf).

<sup>9</sup> Centre for Social and Educational Initiatives, “Russia Eradicates the Worst Forms of Child Labour,” 2003.

Where children are employed illegally, neither they, nor their parents, would complain to the authorities because of the fear of losing their income, however meagre. Besides, some employers are convinced that they are doing their children employees a favour by giving them the opportunity to work and receive a salary.

According to employers, the main benefit of child labour is that the children start valuing money at a young age, since they earn it themselves, instead of begging or stealing. Child labour is perceived as mutually profitable: children receive wages and employers have at their disposal cheap labour force and derive moral satisfaction from the idea of helping children.

Based on the results of the ILO research and numerous mass media publications, we can state, with a degree of confidence, that there exists a high demand for labour performed by minors, particularly in the informal sectors of the economy. This prevents the state from supervising the working conditions and nature of children's work, through labour inspections, which is conducive to various infringements of the rights and interests of working children by employers.

## **4. Analysis of National Legislation**

### **4.1. Existing Legislation**

The basic labour issues in the Kyrgyz Republic are regulated by the Labour Code. The state guarantees the right to work to all citizens of the KR, including to minors, as set forth in the chapter "Young Workers" of the Labour Code.

For example, according to Article 317, it is prohibited to conclude labour contracts with persons younger than 16. However, such a labour contract could be concluded with a person who has reached 14, with the written approval of parents (guardians), for performing light work, provided that it is not harmful to his/her health and development, and does not affect their school attendance.

Article 318 defines the rights of minors (persons younger than 18) in labour relations, where employed minors benefit from equal rights and special protections established by the current Code and agreements on labour protection, working hours, holidays etc.

Article 319 describes the types of labour that cannot be performed by persons under 18, which includes work in harmful/dangerous conditions, under ground, or work that might have a negative impact on their moral development, such as in gambling, nightclubs, and gambling, or work in alcohol and tobacco industries.

The last Governmental Regulation on "The list of industries, occupations and heavy work with harmful working conditions, where using workers under 18 is prohibited" was approved on 2 July 2001. The control over the implementation of the Regulation was assigned to the State Labour Inspectorate of the Ministry of Labour and Social Protection of KR. The list attached to the Regulation contains more than one thousand occupations, including manual irrigation of cotton, harvesting, transporting and processing of tobacco.

Furthermore, in compliance with Article 320, minors can only be employed after passing a preliminary, and subsequent annual medical examinations until they reach the age of 18, at the expense of the employer. According to Article 321 minors are not allowed to work overtime, during the night and holidays, while Article 322 stipulates that they must be granted 31 calendar days of annual paid holiday.



Article 328 provides additional guarantees to minors regarding the termination of labour contracts. In addition to meeting the general requirements for dismissal, the termination has to be approved by the State Labour Inspectorate of the Ministry of Labour and Social Protection and the *rayon* (district) Commission on Children's Affairs.

The "Law on Safety in the Workplace," which regulates health and safety issues in the workplace was adopted by the Legislative Chamber of the *Jogorku Kenesh* of the Kyrgyz Republic on 19 June 2003. It is an integral part of the Labour Code of the Kyrgyz Republic and of the Constitution of the Kyrgyz Republic. It applies to all employees and employers.

Chapter IV of this Law determines the measure of state supervision and control over the observance of labour protection legislation. In compliance with Article 17, the State Labour Inspectorate has this responsibility as well as the right to discipline employers who do not abide by the labour protection requirements.

The "Law on the Observance and Protection of the Rights of Minors," adopted by the Legislative Chamber of *Jogorku Kenesh* on 26 October 1999 spells out the fundamental rights of minors, including the right to work. Articles 1, 2 and 3 stipulate that children younger than 18 are considered minors in the Kyrgyz Republic and also define the state guarantees and constitutional rights of the minors.

According to this Law, the state protects minors against all exploitation, strenuous and harmful or dangerous work, by applying economic, legal, social, medical and educational measures. The section on fundamental rights defines the right of minors to work and provides guarantees for their labour protection. Article 18 guarantees the equal rights and special protections of minors in labour relations, while Article 19 prohibits the employment of minors compulsory and/or hazardous work in enterprises, institutions, organisations, including in cooperative enterprises, families etc. It is prohibited to involve students in agricultural and other work, not connected to the educational process during the academic year.

On 27 January 2000, the Legislative Chamber of the *Jogorku Kenesh* of Kyrgyz Republic adopted the "Law on the Basis of the State Policy Concerning Youth" that defines the purposes, principles, basic directions and organisational measures for implementing the State Policy Concerning Youth. It is necessary to note that this law only deals with issues relevant to minors between the ages of 14 and 18.

Article 16 defines priority state measures for creating job opportunities for minors, in particular for those seeking employment upon reaching the age of 16 and after graduating from an educational institution, and also minors, who have reached the age of 14, during after-school hours. State institutions, within the limits of their competence, available funds and opportunities, should assist the organisations providing vocational orientation and training, including job creation and quota setting, to minors who reach the age of 14. Article 23 of the Law provides for the legal protection of minors. Any direct or indirect limitation of the rights and freedoms of minors, except for those stipulated by the legislation, are illegal and punishable by law.

The "Law on the Protection of Population's Health," dated 2 July 1992, contains general, legal, economic and social provisions on the protection of population health and determines the role of state institutions, enterprises, organisations, officials and citizens in contributing to and strengthening the health of the Kyrgyz population.

Article 21 outlines the right of children to health protection. Thus, the state protects children's rights and interests, guarantees their rights to suitable living conditions in order to ensure their physical, spiritual, moral and social development. State institutions and employers guarantee the development of a wide network of special medical institutions for children and bear the responsibility for improving the health of children who are under their care. In compliance with Article 28, all citizens are obliged to

take care of children's health, physical, spiritual and moral development and instil in them the habits of a healthy lifestyle.

On 26 June 2003, the Legislative Chamber of the *Jogorku Kenesh* adopted the Family Code of the Kyrgyz Republic. In compliance with its Article 61, a child has the right to protect his/her rights and legitimate interests. The protection of children's legitimate interests and rights is carried out by their parents (or guardians) and, in exceptional cases set forth in the current Code, by the Departments of Trusteeship and Guardianship, public prosecutors and courts. Officials of organisations and other citizens, who become aware of threats to the life or health of a child and/or of violations of his/her rights and legitimate interests, have to inform the Department of Trusteeship and Guardianship in the district where the child resides. Upon receiving such information, the Departments of Trusteeship and Guardianship have to undertake the necessary measures to protect the child's rights and interests.

Should the information about such a threat to the life of a child or his/her health be confirmed, the Department of Trusteeship and Guardianship has the right to remove the child from the residence of his/her parents or guardians immediately. The immediate removal procedure is executed by the Department on the basis of an appropriate order issued by the local State Administration (Article 82).

The "Law on State Benefits," adopted on 11 February 1998 by the Legislative Chamber of the *Jogorku Kenesh*, calibrates the amount of financial support, guaranteed by the Constitution of the Kyrgyz Republic, to families and citizens in need, and physically disabled citizens if they are entitled to pensions.

In compliance with Article 7, the following categories of families and citizens have the right to the standard monthly benefits:

- a) Children under 16 (elementary school students - before graduation, until they reach 18);
- b) Students of professional educational institutions, students of technical colleges and professional educational institutions younger than twenty-one (except for those enrolled in long-distance evening or contract-based classes);
- c) Disabled citizens.

In compliance with Article 8, standard monthly benefits are provided to families in need and individuals if their cumulative per capita average income does not exceed the guaranteed minimum level of consumption per each member of the family.

## **4.2. Analysis**

The legislation of the Kyrgyz Republic is built on universal labour law and operates under certain socio-economic conditions. These conditions in many respects determine the opportunities for citizens of Kyrgyzstan, including minors, to secure their labour rights. In practice, there are numerous violations of labour legislation and the main reason for this is the absence of mechanisms for implementing the norms of legislation.

The issues of child labour in Kyrgyzstan are regulated at two levels: international and national. In compliance with national labour legislation, minors benefit from special protections, in line with their psychological and physical features, which enable them to combine work and education. The Kyrgyz national legislation on children and labour is generally compatible with the relevant ILO Conventions and the United Nations Convention on the Rights of the Child. In practice, however, there are numerous violations of labour legislation due to difficulties in their implementation.

Nonetheless, the law enforcement mechanisms are weak and numerous departmental instructions, regulations and rules are complicated and inconsistent and thus inefficient. Law enforcement bodies

have the right to detain and send children who are begging for money on the streets or cleaning shoes, to a Children's Reception Centre, identifying them as homeless by their appearance, although they do not have any valid methods for identifying whether a child is indeed homeless.

The existing situation concerning child labour in Kyrgyzstan attests the need to create protection mechanisms, to introduce international standards to national legislation, and to involve institutions supervising the issues of children's rights into solving the problems of working children.

Child labour in Kyrgyzstan is rooted in the economic and political situation. It is evident that Kyrgyzstan does not currently have the tools to eradicate all forms of child labour, while the system geared towards protecting working children is in its embryonic stage.

## **5. Conclusion**

Child labour in Kyrgyzstan is largely the result of cultural, historical, social and economic conditions, and therefore state mechanisms should be more flexible and factor in local realities. In addition, there is a direct link between economic and family relations. Children have to work, along their parents and siblings, in order to contribute to their families' income, starting with the age of five.

Although eradicating child labour completely is an unrealistic goal at this stage of KR's economic development, the creation of a coordination agency on child labour, consisting of state, international and non-governmental organizations, which would concentrate their activity on the following target groups, is indispensable:

- Children involved in heavy forced labour or bound by debt servitude
- Children involved in dangerous types of labour
- Small children involved in any kind of work
- Girls, who are frequently exposed to latent exploitation or violence.

The entire set of problems connected to using child labour can be solved only on the basis of coordinated actions undertaken by the state, NGOs, IOs and the public. Thus, the measures should be focused on 1) preventing child labour, 2) freeing children from performing heavy and dangerous work and 3) providing alternative sources of income for them and their families.

In addition, measures should be directed at improving the working conditions of children and eradicating the worst forms of labour, which harm the physical, mental and spiritual development of a child.

The government needs to develop and adopt a well-defined policy on eliminating the exploitation of working children. A national policy and an action programme to combat child labour should be part of the overall policy on national and socio-economic development, aimed at alleviating poverty and improving the lives of Kyrgyz children.

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## Annex 1 – Media items

*The slaves of the big city*

Vechrniy Bishkek (Bishkek) 20.08.2002

- Come and buy! Tomatoes, cucumbers - fresh, local! Very cheap, - a small boy briskly invites us to the heap of vegetables on the asphalt. He is, at best, seven or eight. The new academic year is approaching, but this kid will not be going to school. The burden of taking care of the family is already on this little boy's fragile shoulders.

Experts stress that any kind of child labour should be considered exploitation. Children should be sitting at school desks and reading smart books, playing ball in the yard and growing up to be a worthy part of the present generation. Nobody has a right to deprive them of their childhood.

However the socio-economic situation in Kyrgyzstan favours the development of child exploitation in all respects. Children beg for money on the streets, collect empty bottles, making a living for themselves and their homeless parents. And even if the statistics hide the true picture and refer to some 600 working children, there is nobody amongst us who will believe such desultory figures. Actually the number of working children exceeds the statistics.

We managed to have a conversation with one of the boys – little Altynbek from Osh oblast, on one of our streets. This little man moved to Bishkek with his family: parents, two brothers and little sister. The money their father earned was insufficient. They were half-starving. So the kid started cleaning shoes on the street.

- I earn quite decent money, - he says proudly. – From 70 to 100 som a day. It suffices. I am good at inviting people and it helps.

But child labour is not a chance to let a child earn a living, it is not useful work experience or training for a craft that combined with school education, would improve the present condition of the child. Using child workers is nothing but an abuse of authority.

- Today all forms of child labour are widespread in our country, - says a member of the Trades Union Federation Council of Kyrgyzstan Sagynbek Apsaliev, in a conversation with VB reporters. - Children are exposed to physical, psychological or sexual violence. The majority of children work in the agricultural sector, at all stages of tobacco manufacturing and rice cultivation. Children are always in demand: where else can one find such a cheap workforce. You see, because children do not understand the value of their work and being deceived by an employer, they could work all day long in a field for one flat cake or an ice-cream. For example, adults earn between 50-100 som a day on tobacco plantations and a child earns only 5-10. It is insulting.

Many children become slaves. The mechanism of the servitude is very simple. For example, some cunning employers demand the birth certificate supposedly for official registration when they hire the children (in fact it is a pledge). The little slaves are promised stable earnings. Having handed over the only document the kid possesses s/he falls into servitude. And the employer starts fining the kid at every opportunity. As a result, having worked for a one-month trial period, the little slave receives nothing because the money goes to pay the fines. The kid is lucky if there is anybody to intercede and upbraid the employer. But it practically never happens.

The majority of working children come from dysfunctional families. Their parents are either alcoholics, or drug addicts, or in prison. The child, deprived of parental care, easily falls into slavery, starts selling drugs, or becomes involved in prostitution. Meanwhile the level of crime grows and robberies become more frequent. According to law enforcement officers, the little gangsters are sometimes even more dangerous than adults. They are like lonely wolves ready to tear their victim to pieces.

Unfortunately, today the little workers are not protected in any way. In spite of the fact that our republic has ratified the Convention on Children's Rights, little has changed since then. On the contrary, the scale of using child workers is increasing. It is a real threat and a serious problem for the gene pool of the nation. The little hard workers have a huge array of diseases starting from early childhood: stomach ulcers, itches and mental retardation.

Recently the trade and public nutrition, agrarian and industrial sector and food-processing industry Trade Unions of Kyrgyzstan decided to develop a complex programme to eradicate child labour. All interested Ministries and institutions should take part in it. It is also planned to carry out sociological

research this autumn in three southern oblasts of the Republic, in the course of which it is hoped to define the precise number of working children.

But the children do not feel any better if the government adopts and ratifies different conventions, laws and legislation. It is easy to adopt piles of documents, but in practice to pull children out from that precipice of violence and discrimination in which they are compelled to live, is much more difficult. No charities are capable of coping with this problem quickly. A state policy is necessary.

It is difficult to implement, since commercial interests and market requirements are involved. But it is necessary to unite and start a purposeful movement to eradicate child labour. Otherwise the future generation will be completely lost to us.

*Jobs for adults and a real childhood for children*  
Slovo Kyrgyzstana (Bishkek) 05.08.2003

Professional associations, particularly the trade, public nutrition and consumer cooperatives trade unions, which started dealing with the very topical issue for Kyrgyzstan of the eradication of the worst forms of child labour last year and are still focused on it. They also continue to study how to cope with it more efficiently in modern conditions. Another seminar, organised by the International Labour Organization (ILO) and the International Trade Union network on this issue, was held recently.

What connections do our trades unions, which protect the interests of adults, have with the problems of children? There is a direct connection. First of all because there is a considerable group of underage Kyrgyzstan citizens involved in the workforce in its worst forms - compulsory, heavy work, sexual and criminal activity.

It would be superfluous to explain how hazardous such "work" is for children's health, how humiliating for their dignity, exploitative and limiting in terms of educational opportunities! Having direct contact with the labour market and a wide network of members, the trade unions movement has a unique opportunity to reach the source of the child labour problem, define its causes and influence the situation for the better.

Today the participants of the seminar – heads of the central and oblast Trade Unions Committees, Chairmen of Trade Unions and regular activists, have the opportunity to analyse the situation and develop a strategy and position concerning this problem, while having real data at their disposal. The Chairman of the United Trade Union of Bishkek markets A. Novikov presented the results of the anonymous survey of 182 children, who work in the Dordoi, Bereket and Alamedin markets and in the subways, in order to earn money for food.

So what do the little workers do? Most are traders - 61 children (33 %), there are also quite a lot of beggars - 45 (24 %). Up to 20 % are loaders; 8-12 % look after yards; 4 % wash cars and 6 % clean shoes...

Note that the children involved are not simply minors, but children: their average age is 4-12. The beggars are between four and seven years old and the majority are girls. They get very little money for their wearisome work and take it home. They have to take it home, because very often the children, as it turned out, are the breadwinners in the family: Only one of the parents is employed in the families of 37 % of respondents, 38 % of the respondents say that neither their mother nor father are employed and have to stay at home.

See the paradox: the children who are enduring all those hardships are at the same time the “reason” for their parents’ unemployment. Child labour is very cheap and attractive for the employers. They refuse to employ adults and instead gladly hire minors.

Is there a way out? Naturally, the participants of the seminar see it in increasing jobs where adults - someone's parents - have an opportunity to work and are not compelled to send their children to earn a piece of bread. But it is not the only way.

It is very important to prohibit the use of child workers everywhere in Kyrgyzstan (and not only in Kyrgyzstan - the problem is acute all over the world). This is not just a declarative statement. You see, in that case the adults would take the children’s jobs and that would be good for both the children and adults. “Children should go to school, and adults - to work.” Let’s say “no” to child labour!” – this is how international trade union movement puts it.

Yes, child labour is inextricably connected to the employment of the adult population. That is why this problem became a trade union concern, as they are responsible to society for the observance of the basic labour standards and legislation by employers. The main objective is to stop the exploitation of children and replace them with adult workers.

This work could be started now at an initial level. The Merchants Trade Union, with the help of local trades unions, is inclined to strengthen the activity concerning labour contracts between the administration of markets and associations of workers, in which an indispensable provision should be the prohibition of child labour; to conduct explanatory work.

According to the participants of the seminar, ratification of Convention Nr 182 “On the prohibition and immediate measures for eradicating the worst forms of child labour” by our country has a very significant role. The recommendation accompanying this document advises the countries, which ratified the new Convention, to declare the use of the worst forms of child labour a criminal offence and introduce criminal sanctions against violators. The Bill on ratification was introduced for consideration in the *Jogorku Kenesh*, at the initiative of the Kyrgyz trade, public nutrition and consumer cooperatives trade union and the government. We hope that it will be adopted by autumn.

ILO wants the Convention to be ratified by as many countries as possible. This would enable it to start fulfilling an international campaign to establish an immediate ban on using the worst forms of labour. Such international support would be very helpful to our trades unions.

Participants of the seminar are convinced that, in general, it is necessary to undertake a whole range of measures to improve the situation of Kyrgyzstan’s population. Here, the leading role should be played by the KOR. The struggle against poverty is very closely connected to eradicating the worst forms of child labour.

Defining the objectives for future has not concealed the current issues, such as the need to create a support fund for working children. A trade union charity would be a good support to the little workers.

*There is a new position being created in the State Inspectorate for Labour Protection of Kyrgyzstan – a Children’s Labour Protection Inspector*

News agency KABAR (Bishkek), 05.12.2003

A new position will be created in the State Inspectorate for Labour Protection of Kyrgyzstan – child labour protection inspectors. This was reported by the Deputy Minister of Labour and Social Protection – Kuban Mambetaliev - at the round table called “Child labour in Kyrgyzstan: the first practical experience of solving the problem.” The need to introduce a new position is preconditioned by time, since given the state of market relations and the financial difficulties of the population child

labour is used very widely. According to him, there are cases of using child workers without the appropriate legal registration. Uncovering the violations of the rights of working children remains a problematic issue. Besides, it is prohibited by a Government Regulation of Kyrgyzstan to conduct sudden checks, and employers can simply hide such facts. On farms, where child workers are used from an early age, remain outside the State Inspectorate's vision. K. Mambetaliev said, that after Parliament ratifies the International Labour Organization Convention concerning the Prohibition of and Immediate Measures to Eradicate the Worst Forms of Child Labour, it would be possible to raise the question concerning conducting sudden checks by the State Inspectorate for Labour Protection.

*UNICEF is against child labour in Kyrgyzstan*  
KYRGYZINFO (Bishkek), 12.11.2003

The office of UNICEF in Kyrgyzstan, together with the Kyrgyz Government, has introduced a joint project for 2000-2004. It is a programme connected to children's development and the health of young children. This agency of the United Nations has already allocated 6.5 million US dollars for this purpose. The programme is designed to train and prepare the personnel of the social services and expand family consultations concerning children who do not have parental supervision. Moreover it implies preparing the medical and teaching personnel to evaluate cases of child abuse and methods of preventing such abuses. Besides, the personnel of judicial institutions will be trained to give legal support to children. In addition, UNICEF is cooperating with some young people's NGOs concerning this question.

An office of the New Generation programme has also been opened in the Ministry of Labour and Social Protection of the KR, with the support of UNICEF. According to ministry officials, the basic purpose of the project, which will last till 2010, is to create conditions, which would guarantee the survival, growth and comprehensive development of young citizens. The programme also involves executing the international convention signed by Kyrgyzstan on children's rights.



# TAJIKISTAN

Samira Rakhimova

## 1. Introduction

Child labour is one of the dominant features of the modern Republic of Tajikistan (RT), although there are neither official statistics nor comprehensive research on the number of working children and the situation of child labour in Tajikistan in general. The primary purpose of this research is the analysis of the most common employment practices and national labour laws affecting children.

The methodology of the research included:

- Study of reports, materials made by available by the International Organization for Migration (IOM)
- Review of news items and official records published in mass media
- Analysis of relevant activities carried out by state authorities, international and non-governmental organizations
- Interviews with representatives of state authorities, international and non-governmental organizations
- Analysis of the domestic legislation acts and norms and overview of their compliance with the international legal documents that were signed and ratified by Tajikistan.

The following institutions provided data for this research:

- Ministry of Foreign Affairs
- Ministry of Labour and Social Protection
- Committee on Youth Affairs
- Committee on Women and Family Affairs.

## 2. Situation Analysis

Tajikistan's labour market has changed drastically with the country's painful transition to the market economy. A sharp drop in industrial production has led to massive job losses in the state sector. As the demand for labour has declined, the supply of manpower has grown due to rising unemployment and population growth.

Tajikistan is mainly an agricultural economy - more than half of the working population is employed in the agricultural sector, followed by the service and manufacturing sectors. The private sector is at an early stage of development and it is mostly comprised of informal family businesses and street trade. Private firms and farms employ only 7 per cent of the labour force, which, in turn, constrains the development of a well-functioning labour market. Much of the economy is still controlled by the state, state enterprises and collective farms. The state sector, which would also allow for the employment of more people, is shrinking due to lack of funds. Against this background, the existing labour market and poverty can be linked to the excess supply of labour force and the underdeveloped market mechanisms.

The excess supply of labour is caused by the following factors:

- (i) tremendous demographic pressure set off by high (although currently falling) birth rates; and

(ii) lack of demand for labour force that would absorb the supply. The formerly Soviet labour absorption mechanisms do not function any longer, while the new market mechanisms are too weak to guarantee the absorption of a significant part of the excess labour force supply. Currently, it is “absorbed” by overt and hidden unemployment, subsistence agriculture and street trading. The result is a huge labour slack concentrated among younger people and labour market entrants. The labour slack, in turn, leads to the loss of potential income and depressed economic growth.<sup>1</sup> A more recent phenomenon - labour migration - plays a special role by helping to absorb and ease social discontent.<sup>2</sup>

Prior to Tajikistan’s independence, there existed a comprehensive system of social welfare benefits. With a guarantee of full employment, unemployment was unheard of. For those unable to work, an extensive system of disability and retirement benefits was in place, and families with young children were receiving generous child benefits. Such coverage was universal and almost every household was eligible for at least one type of assistance. In addition to cash benefits, there were numerous “benefits-in-kind,” including free pre-school and child care, free or heavily subsidized holiday camps, subsidized housing and utilities, free cultural and sport facilities, and generous maternity leaves. Over the past decade, the ability of the Government to fund social protection has been severely curtailed. Today, there are only two types of welfare benefits in Tajikistan: an income-based cash compensation program for low-income families; and retirement benefits for the elderly, disabled and bereaved (those who have lost family members). Women and children have been hit particularly hard by the collapse of the social system, which often made up a significant part of the household resources.<sup>3</sup>

Furthermore, more than 80% of the predominantly rural population of 6.5 million in Tajikistan now lives below the poverty line. According to the State Statistical Agency of the Republic of Tajikistan, the average wage in the republic is 24.1 *somoni* (US\$ 8.80).<sup>4</sup> Tajikistan has a relatively young and rapidly growing population, with 48 percent under 18 years of age and a rate of natural population increase of just under 2 per cent per annum. Most families in Tajikistan have many children. Moreover, parents and children, grandparents, daughters-in-law and sons-in-law very often live together in traditional family units. The growing economic hardship has led families to increasingly count on the income derived from children’s informal work, mainly performed in the street after school hours. Children usually work in the market places, streets and other public places, which increases their vulnerability to prostitution and trafficking. Although the Tajik legislation provides for free education for everyone, almost all the schools charge their students for textbooks and meals, and some have even introduced fees to supplement (or replace) the wages of the teachers, unpaid by the state.

A significant school dropout rate has been observed, especially among girls. According to official data, cases of bonded and forced labour are very rare, though in practice, girls are frequently forced to marry at an early age and find themselves in the domestic service of their husbands’ families, where they have to carry out arduous work in isolation, during excessively long hours, while frequently enduring physical and sexual abuse. The major problem facing national authorities lies, however, in the increasing number of children “helping” their parents in rural areas and the growth of “self-employment” of children in the urban informal sector. In addition, school non-attendance increases in autumn (September-October), when students from rural areas are sent to the fields for cotton picking, and again in winter, when schools have inadequate heating and electricity. In the course of agricultural work, they are exposed to many risks, associated with heavy work and use of chemicals.<sup>5</sup>

Most of the current legislation on labour laws is the legacy of the Soviet system and it has undergone almost no changes since the collapse of the former Soviet Union. The national legislation that regulates youth employment includes the Constitution, Labour Code, the Law “On protection of

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<sup>1</sup> World Bank, “Poverty Assessment,” 1999, p. 30.

<sup>2</sup> IOM, “Labour Migration from Tajikistan,” 2003, p. 8.

<sup>3</sup> Falkingham, J., “Women in Tajikistan,” Asian Development Bank, 2000, p. 17.

<sup>4</sup> State Statistical Agency Report, 2002, p. 35.

<sup>5</sup> UNICEF, “The Right to Education: Creating Child-Friendly Schools in Central Asia,” 2002, p. 70.

labour in the RT” and legislative acts on labour protection. The Labour Code (passed in 1997) defines the basis of the state policy in the sphere of labour relations and guarantees the labour rights of citizens, as well as the observance of the legal interests of employees, employers and the state. The law of the RT "On protection of labour in the Republic of Tajikistan" (passed in 1991) contains basic regulations on the constitutional rights of citizens to the protection of their health during labour activity. It also regulates the relations in the sphere of protection of labour between all the subjects in compliance with the norms of international law and legislation of the RT. The Criminal and Administrative Codes contain provisions on the violation of labour laws. Furthermore, numerous other legislative acts are in place to ensure the observance of labour laws.

### 3. Analysis of Employment Practices

#### 3.1 Street Children

According to unofficial estimates, 45%-55% of children from the 10-14 age group, especially from low-income families, are engaged in physical labour. In rural areas, the percentage is even higher, at 60% to 75%.<sup>6</sup> Depressed by hard work and in search of a better life, children leave their homes to move closer to urban areas, where they beg or trade in the streets.

The number of children begging or working in the streets has increased, both in Dushanbe and other large cities in Tajikistan. They are, in some instances, orphans, but in most cases they had previously lived either with their families who have migrated to the city, or with relatives. Many street children had lived only with their mothers after their fathers were killed in the conflict. The NGO “Society and Child Rights,” which works with street children to help them re-enrol into schools, estimates at least 3,000 street children live and work in Dushanbe. Some of these children are from so-called dysfunctional families, with alcohol and drug addition problems. In recent years, it has become commonplace for young boys under 12 years of age to offer hauling services at bazaars, as well as car wash and other services outside bazaars, at shops, airports and train stations and shining shoes on street corners. Both boys and girls sell sunflower seeds, fruits, sweets and other homemade goods to supplement their families’ incomes. Older girls frequently help their mothers who sell home-grown or purchased produce in the bazaars.

Street children generally work from five to ten hours per day, without days off and vacations and most of them are constantly tired. The findings of the survey carried out by the NGO “Zerkalo”<sup>7</sup> showed that the working day of the street children was too long and that the work performed by them was hard, tiresome and harmed their health. It is particularly difficult in summer, because of the exhausting heat. Also, some of these children are malnourished.

All the working children come into contact with employees from the so-called “power structures.” According to the respondents of the survey, carried out by ‘Zerkalo,’ these interactions cannot be considered friendly - an opinion shared by 40.2% of the respondents. Policemen often expel the children from markets, although 59.8% have managed to establish friendly relations with representatives of official structures, competitors and clients. In order to improve their working conditions, they have to apply a constructive approach to interacting with people.<sup>8</sup>

The monthly income of these children is 25-30 *somoni* (US\$ 10), which, on one hand, is higher than the salary of a leading scientific worker or the salary of a teacher in a secondary school. On the other hand, though, 30 *somoni* is a meagre payment for the children’s hard and exhausting labour. Only one third of

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<sup>6</sup> UNICEF, “Collection of Materials on the First National Report on Realization of the Convention on the Right of the Child by the Republic of Tajikistan,” pp. 154-155.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

the children earn more than 3 *somoni* per day, while a sack of flour costs 50-60 *somoni*. Some of the children are saving money to establish their own business or buy new clothes. Others dream to buy an apartment or start their own family. A survey of the parents of working children has shown that the money earned by children boosts family income.<sup>9</sup>

As a consequence of the increasing number of working children, school non-attendance has been growing as well. In reality, some children who are enrolled cannot attend schools regularly and, as the costs associated with education go up, this number may be expected to rise. Many poor families are unable to purchase textbooks, school uniforms, and to cover transport expenditures, while, conversely, children are able to supplement the family income by working. Thus, growing poverty and social stratification have effectively led to the exclusion from education of children from poor families.

Although there is no official data on non-attendance and dropout cases, some studies have been carried out by international organizations. UNDP estimates that the average dropout rates for grades between two and nine are between two and six per cent, although, when data is disaggregated, it appears that in 1996 alone, 20 per cent of the boys and 25 per cent of the girls dropped out of school. Nationwide, one in five children does not attend school. According to the ADB (Asian Development Bank) study (2000), one third of the surveyed children, aged between seven and 15, reported that they did not attend school for two or more weeks during a single academic year. According to the 2002 NADO (Non-Attendance and Dropout) study, which surveyed 100 schools in all regions of Tajikistan, including 387 students, 386 parents, 147 teachers and 38 local authorities and was carried out with the support of UNICEF, UNESCO, and the Ministry of Education, 13.7% of surveyed children of elementary school age and 11.7% of surveyed children of secondary school age do not attend school. Both studies (ADB, 2000; NADO, 2002) showed that there was a clear relationship between a household's financial resources and the ability to pay for textbooks, uniforms and other costs associated with education. The NADO study (2002) revealed that 59.3 % for surveyed parents could not cover all education expenses for their children. Furthermore, the larger the number of children in a family, the higher is the percentage of children not attending school (NADO, 2002).<sup>10</sup>

The 1993 Law on Education lowered the age of compulsory education from 11 to nine years. Nine years of education now allow students to graduate. The proportion of students going on to 10<sup>th</sup> grade and above in 1997 was only 52.8 per cent (compared to the rate in 1991). This is a serious problem because students with only nine years of education and no skills training may find it hard to compete in the job market.<sup>11</sup>

### 3.2 Children Working at Home

Tajik children perform a considerable share of household chores as well, thus contributing significantly to family income. These responsibilities have fallen more heavily on children's shoulders as a result of the civil war and harsh economic conditions. Children who did more than four hours of housekeeping chores in the household or who did other family work are considered to be "currently working." Overall, 25 per cent of children are classified as currently working. Domestic work may entail cooking, shopping, cleaning, washing clothes, fetching water, and caring for siblings. Slightly more than half of children do these tasks for less than four hours a day (56 per cent), while 16 percent spend more than four hours a day on such tasks. Overall, girls are more likely than boys are (18 per cent versus 14 per cent) to do domestic work for more than four hours a day.<sup>12</sup>

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<sup>9</sup> Ibid, pp. 35-36.

<sup>10</sup> UNICEF, "The Right to Quality Education: Creating Child-Friendly Schools in Central Asia," pp. 69-70.

<sup>11</sup> UNICEF, "Societies in Transition: A Situation Analysis of the Status of Children and Women in the Central Asian Republics and Kazakhstan," p. 132.

<sup>12</sup> UNICEF, "The Status of Women and Children: Tajikistan, 2000 Multiple Indicator Cluster Survey," p. 26.

The 1998 report on “Modern Gender Statistics in the Republic of Tajikistan,” published by the State Statistical Agency in Dushanbe, suggested that poverty and family traditions widened the gender gap, with the enrolment and attendance of girls falling behind those of boys. Due to material hardships, many people in rural areas cannot ensure equal education opportunities for their children, and so they make the traditional choice of favouring sons. Girls often stay at home to care for their younger siblings, to perform household tasks or agricultural work. Some members of poor rural communities believe that there are actually financial benefits to keeping female children uneducated and thus they actively choose to keep their daughters at home. In 2001, 63,3% of boys and only 36,7% of girls have finished the eleventh grade.<sup>13</sup> In 1998, 89 girls (vs. 100 boys) were enrolled in lower secondary education.<sup>14</sup> In post-compulsory education (technical and vocational education), the number of boys fell by 28%, whereas the number of girls fell by 53%, resulting in a significant gender gap.<sup>15</sup> In higher education, women constitute approximately a quarter of all students, a statistic that underlines the growing differential between young men and women in Tajikistan (SSA (State Statistical Agency), 1998). The analysis of the TLSS found the gender gap in net enrolment rates for 12-16 year olds to be higher in urban areas than in rural areas, with 89 percent of boys enrolled compared with 75 per cent of girls in urban areas and 90 percent of boys and 80 percent of girls in rural areas.

A study conducted by the Association of Women with University Education in 2002 suggests that the following main factors underlie the rising non-attendance of girls:

- Increasing poverty levels (as reported by 44.8% of teachers and 54.5% of parents surveyed)
- Increasing education costs (10.1% of teachers and 13.3% of parents)
- Decreasing prestige of education (10.9% of parents)
- Re-emerging traditional gender roles in families and communities (7.6 % of teachers).<sup>16</sup>

The perception of gender roles has become more conservative and, as a consequence, it affects the rate of girls’ education enrolment, attendance and learning achievements. According to the initial results of the MLA (Monitoring of Learning Achievement) study (2002), every fifth student participating in the survey thinks that it is a girl’s responsibility to take care of and clean the house. More alarmingly, 57% of surveyed parents “absolutely agree” that it is more important to educate boys rather than girls, explaining that “school payments (for boys) are good investments” into the future (MLA, 2002). Girls’ attitudes to education have become less positive. Approximately 40% of the girls themselves believe that their education will not directly influence their success in life.<sup>17</sup>

### **3.3 Agricultural Work Performed by Children**

A significant number of younger children assist their parents in their regular employment. This is quite common in the rural areas and especially on cotton plantations, where children can be found working during all seasons and stages of cultivation and harvest. This form of child labour is considered “family assistance” and it is not subject to the general laws governing age of employment.

The practice of having children work in the cotton fields by the educational establishments still exists in Tajikistan. Although, based on international law, child labour should not be allowed, according to unofficial data, children pick about a fourth part of the cotton produced in Tajikistan. Few

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<sup>13</sup> UNDP, “Millennium Development Goals,” p. 22.

<sup>14</sup> Falkingham, J., “Women in Tajikistan,” Asian Development Bank, 2000, p. 58

<sup>15</sup> Ibid, p. 62

<sup>16</sup> Association of Women with University Education, “Education of Girls in the Republic of Tajikistan: Experience, Problems and Solutions,” p. 38.

<sup>17</sup> UNICEF, “The Right to Education: Creating Child-Friendly Schools in Central Asia,” p. 78-79.

international and humanitarian organizations, represented in Tajikistan, have raised this issue, as cotton is the only source of legal income of the peasant family in this agricultural agrarian country.<sup>18</sup>

In January 2004, IOM and the Centre for Educational Reforms “Pulse” published the report “Children in the Cotton Fields.” The survey was carried out in three cotton-growing districts of Tajikistan - Zafarobod district of Sughd *oblast* (region), Pyandj and Vosse districts of Hatlon *oblasts* - 142 parents and 140 schoolchildren of 9-11 grades were surveyed.

Every year, at the start of the cotton-picking season, a special governmental commission launches its work in oblasts, in cooperation with city and district local authorities. In the fields of the Hatlon region, for example, out of the 210-215 thousands cotton pickers, 150 were schoolchildren from 6-11 grades. Cotton is mainly picked by hand by the local population, although in some districts, including the surveyed Zafarobod, child labour from other cities and districts is used.

The research also showed that the highest index of the average child picker (Vosse district) is 335 kg per season. It means that, on average, each student earns 50 *somoni* (about US\$ 17). Most children think that, despite supplementing the family budget, cotton picking is not a considerable source of income.

Only 4,2 % of students think that cotton picking has a positive impact on their health, while 16,5 % are convinced that it has none and 47,5 % are sure that it has a negative effect on both their general well-being and health. 76,6% of parents, on the other hand, stated that cotton picking had an adverse effect on the health of their children. Most of those who consider that their child's health does not deteriorate (23,4%) are parents, who own land plots. 69% of parents, however, do not remember the date of the last medical examination of their children, and 24,6 % are sure that their children are examined once a year. As many parents from rural areas cannot ensure equal education opportunities for their children, and so they make the traditional choice of favouring sons. Girls often stay at home to care for their younger siblings, to perform household tasks or agricultural work.<sup>19</sup>

The Deputy Chief of the Department of Education of the Zafarobod District H. Holiknazarov strongly stated that Tajik authorities “[...] do understand that cotton growing is one of the important economic policies of the country, but we do have to seriously think about what is more important in the end - cotton or a healthy nation. Despite the regulations of availability of one physician/nurse per school, almost everywhere this position is vacant.”<sup>20</sup>

The Chief of the Department of Technical Cultures S. Bahridinov thinks that up to 40%-50% of the cotton is picked annually by schoolchildren and students.<sup>21</sup> Although cotton-picking season lasts from 60 to 90 days, practically all the heads of Departments of Education report a 100% implementation of the academic programs in schools. In these circumstances, however, it is unlikely that the entire academic curriculum is covered during the school year, even if, in some schools, the winter and spring holidays are shortened.

According to the findings of the research, the majority of students (51,8 per cent) spend in the cotton fields about two months, 34 per cent - up to three months, 9,2 per cent - more than three months. Furthermore, 39 per cent of the surveyed students study on their own, 20,6 per cent attend additional classes organized by the schools, 7,8 per cent pay for private tutoring, while 25,5 per cent do not attempt to make up for the lessons. Nonetheless, despite the best efforts of the students, they cannot cover the academic program on their own. The results of this survey have showed that almost 53 per cent of the parents think that cotton picking had negative influence on the their children's education,

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<sup>18</sup> Hairullin, M., Tajik Diary Part III “Yearly \$600 million is transferred from Russia to Tajikistan,” New Newspaper, December 15, 2003.

<sup>19</sup> IOM, “Children in the Cotton Fields,” 2004, pp. 15 –16.

<sup>20</sup> Ibid, p. 17.

<sup>21</sup> Ibid, p. 7.

and 36 per cent chose the answer “very badly.” The same opinion is held by 87,2 per cent of the students.<sup>22</sup>

Such practices, regardless of their negative impact on children’s education and health, are motivated by the economic crisis and the resulting inability of the parents to support their children, while schools are forced by the local authorities to involve children into cotton picking campaigns. Also, it is not less important to take into consideration the significant disparities between the cities and rural areas, where the efforts to provide day-care and pre-school facilities have always been less successful.

### 3.4 Trafficking and Exploitation of Children

The available information on sexual exploitation in Tajikistan contains references to cases of “hidden” prostitution, where destitute parents force their children to prostitute themselves. It is also reported that girls are victims of abduction and trafficking, and that government action is required to respond to this problem.<sup>23</sup>

According to the Ministry of Interior (MoI), cases of child trafficking, sexual exploitation of minors and organized prostitution have become more frequent.<sup>24</sup> This type of crimes usually has an organized character. MIA has operative data about the existing active transnational organized groups, specialized in trafficking young women from low-income and vulnerable families to the countries of Middle East, Turkey, Israel, Spain, Russia and others. As of January 2004, there were about 80 young Tajik women in UAE (United Arab Emirates) involved in sexual trade.<sup>25</sup> There was also a case of a woman who sold three girls from Dushanbe to a sheikh Dubai for the price of US\$ 4,000 per night. The head of the press service of the MIA, Kh. Asoev stated that after the representatives of MIA started to monitor the flights to UAE, the criminal groups started using other channels of transportation of “live commodities” (Russia, Uzbekistan, Kyrgyzstan).<sup>26</sup>

Child prostitution in urban areas usually thrives at market places, parks and other places of people agglomeration. There was a case when a 12-year-old girl was selling 7- and 8-year-old girls for US\$ 2 near one of the local cinemas. Kh. Asoev thinks that prostitution flourishes in Tajikistan, because it is not criminalized. When apprehended, girls pay a minimal administrative fine and then go back to the streets. The State Commissions on the Minors does not take any actions to eradicate this phenomenon, and sometimes even conceals these facts in order not to worsen the criminal statistics in the regions. Meanwhile sexual exploitation of minors is indissolubly connected with the criminal activities, such as organized crime, drug trafficking etc.

Trafficking of children for the removal of organs was also reported. According to law enforcement officials, however, such cases seem to be few, since the technology to perform the required surgery is not available in Tajikistan and children have to be trafficked out of Tajikistan for the operation.<sup>27</sup>

There has been little attention to these problems until recently. In Tajikistan, there are no state and public institutions that can effectively protect children from sexual violence and render assistance to the victims. The Criminal Code defines and determines the liability for sexual violence, sexual intercourse with persons under 16 years old, rape, initiation and keeping organizations for these services, but in practice conviction and prosecution for such crimes is infrequent.

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<sup>22</sup> Ibid, p. 18.

<sup>23</sup> UNICEF, “Societies in Transition: A Situation Analysis of the Status of Children and Women in the Central Asian Republics and Kazakhstan,” p. 164.

<sup>24</sup> “Is child prostitution in Tajikistan a reality?”, *Asia-Plus #4* (210), 29 January 2004.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> IOM, “Deceived Migrants from Tajikistan, A study of Trafficking in Women and Children,” 2001, p. 16.

There is almost no information on cases of child bondage, forced or bonded labour. The Director of the NGO “Tong” (Uzbekistan) Valentina Chupik reported that cases of sale of exchange for goods of girls by their parents have become more frequent in the districts bordering with Uzbekistan.

## **4. Labour Laws Applicable to Children**

### **4.1 Constitution**

The Constitution guarantees the right to labour, free choice of profession, work, protection of labour and social guarantees from unemployment, as well as equal wages for the equal work. Forced labour and the involvement of women and children in hazardous and underground work are prohibited by Article 35.

### **4.2 Labour Code**

Article 7 of the Labour Code envisages equal possibilities for all citizens of Tajikistan in the labour sphere. Any distinction, inadmissibility or preference, refusal to employ on the grounds of race, skin colour, age, sex, religion, social origin and etc. and any other distinction, which leads to violation of inequality in labour relations are prohibited.

The minimum age of employment in Tajikistan is 15 years. In exceptional cases, with the consent of the parents and the Commission on Youth Affairs of the local council, children aged 14 years or older may be allowed to work, but only “as trainees performing uncomplicated work” (Article 174). Children between 15-18 years of age are not allowed to work more than 35 hours per week, and children who are 14-15 years are limited to a 24-hour working week. The working hours of students may not exceed half of the age-appropriate periods stipulated above, in the course of the academic year (Article 178). The wages of workers under 18, who have shorter working days, should be equal to the wages of full-time workers in similar positions (Article 179). The employment of persons under 18 for detrimental, hazardous and underground work is prohibited (Article 177). Article 181 forbids the employment of children for night shifts (between 10pm and 6am), overtime work, as well as during weekends and holidays. All persons under the age of 21 should be employed after undergoing a compulsory medical examination (Article 146). Employees have the right to ask for additional medical examinations if their deterioration of health is caused by working conditions. If the worker refuses to pass a medical examination or does not follow its recommendations, the employer does not have the right to allow him/her to perform his/her duties. All persons under 18 years of age are entitled to an annual paid vacation of 30 working days (Article 180).

The Labour Code provides employment guarantees for the graduates of schools and the employers are obliged to employ them according to the established quota by the Employment Service (Article 175). Article 176 equates the rights of minors in the labour sphere to those of adults.

The termination of a labour agreement (contract) with a worker under the age of 18, initiated by the employer, can be carried out only with the consent of the local labour and employment authority, and the Commission on Minors Affairs (Article 182). Parents and guardians, as well as other relevant authorities, have the right to request the termination of a labour agreement with minors under 18 if the labour performed threatens their health or causes any other harm (Article 183). Workers, who study in educational institutions and vocational schools, have the right to supplementary paid vacations, shorter working hours and other privileges (Articles 186, 187 and 188).



Forced labour is prohibited by the Article 8, except when performed during military service and in extreme circumstances.

### **4.3 Criminal Code**

Article 154 determines the punishment for the infringement of safety measures or other rules of protection of labour by a person responsible for their observance. Article 175 stipulates the liability for the failure to ensure the safety of life and health of children by a person employed for such a purpose, or by a person performing these duties based on special instructions or who has taken upon himself/herself such duties voluntarily.

The sentences for the sale or purchase of a person with the purpose of involving them into sexual and/or criminal, military activities, pornographic business, forced labour, slavery or customs similar to slavery, bonded labour or adoption with the purpose of commerce are contained in Articles 130 (1) and 167. The Code contains no articles on child prostitution or pornography, although the involvement of a minor in “anti-social” actions, such as prostitution. (Article 166). The same action committed by a parent, teacher or other individual who is legally responsible for a minor, is punishable by up to three years of imprisonment, with the deprivation of the right to hold certain jobs (Article 166 (2)).

Tajik legislation does not contain a definition and, thus no legal provision, of “unaccompanied minor.”

### **4.4 The Law “On protection of labour in the Republic of Tajikistan”**

The right to labour protection applies to students and pupils in the course of their industrial practice and training at or employment by enterprises and organizations, or participation in agricultural labour. Article 17 prohibits using the labour of persons under 18 years of age in underground, hard labour, in harmful working conditions, and also if lifting and carrying of heavy weights are required, as well as in other cases determined by law. Persons under 18 years of age are not allowed to operate equipment, which does not have a safety certificate, or to work during night shifts. Article 16 gives citizens the right to compensation for damage connected with injury to health incurred during employment.

The law "On protection of labour" provides for the right of citizens to information about the working conditions and the right to decline from performing work if a threat to their health or life is evident. It also determines the responsibility for violations of the labour protection law and other normative acts.

### **4.5 The Law “On education”**

Article 19 of the Law of the RT “On education” prohibits the disruption of the direct duties of pedagogical workers in state educational establishments and the involvement of pupils and students in agricultural and other labour activities, not connected with the academic process.<sup>28</sup> Nonetheless, this article is largely ignored by the regional, city/district authorities, departments of education, heads of educational structures. The Ministry of Education has repeatedly expressed its concerns and this issue was on the agenda of the special meeting of the government on 1 January 2003. According to the protocol of this meeting, the labour of pupils and students in the cotton fields is prohibited. The control over the implementation of this decision was assigned to the Minister of Agriculture and

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<sup>28</sup> The Law of RT Nr 335 from 14 December 1996.

Education, who also acts as the First Deputy of Prime Minister. The Decree Nr 87, issued by the Minister of Education on February 14, 2003 stipulates that all chiefs/heads of regional, city and district Departments of Education have to put into practice this decision.

In accordance with the requirements of the ILO Conventions and recommendations, the Government of the RT has issued and approved “The list of categories of labour and professions with harmful working conditions.” It gives employees the right to reduced working days and additional annual vacations.

Labour laws pertinent to children are enforced through a general system of labour inspections, although the labour inspections at the Ministry of Labour and Social Protection and the trade unions have taken up many resources and thus marginalized the issues related to child labour. Furthermore, child labour inspections are neglected, not least due to the general institutional weakness of labour inspectorates. They are too small for the number of establishments they have to cover. The inspectors are often underpaid and insufficiently trained. Inefficiency and sometimes corruption are the main problems of labour inspection services. Their budget is so limited that inspectors cannot travel outside the major cities, essentially making it impossible to monitor the agricultural industry, which is the largest sector employing children, in addition to being particularly conducive to hazardous conditions and bonded labour.

In 2001, in order to strengthen the state control over the observance of laws on labour, rules on protection of labour, standards and norms of industrial safety, the Government of the RT issued the resolution on the establishment of the State Labour Inspection at the Ministry of Labour and Social Protection of the Population. The effective realization of one of functions of inspectors – receiving and considering complaints about labour infringements and taking measures to eliminate these violations- would be a real step towards the prevention of abuse of labour rights by employers.

Article 32 of the Convention on Rights of the Child binds states to take legislative, administrative and social measures to ensure the right of children to protection against economic exploitation and performance of work that can be dangerous to their health or disrupt their school attendance, or can cause damage to their health and physical, intellectual, spiritual, moral and social development. Articles 27 and 174 of the Labour Code of the RT define the minimum employment age and Article 178 sets forth the required duration of a working day for persons under 18 years of age. In practice, these guarantees are not observed, because the fine stipulated by Article 41 of the Administrative Code of the RT for such violations ranges between one and ten minimal wages (US\$ 2,5 up to US\$ 25).

National laws or rules or competent authorities should collect registries or other documents, maintained and filed by employers (duly certified if possible) that would specify the name and age, date of birth of persons under 18, hired by the employer (Article 9 of the 1973 ILO Convention Nr 138 “Concerning Minimum Age for Admission to Employment,” Article 6 of the ILO Convention Nr 79 “Concerning the Restriction of Night Work of Children and Young Persons in Non-Industrial Occupations” and Article 6 of the ILO Convention Nr 90 “Concerning the Night Work of Young Persons Employed in Industry”). Such a practice would allow employers to present, upon demand, the evidence of age of all children working in their enterprises.

The Control Commission under the Prime Minister of the Government of the RT, through its resolution from 26 February 1999 (Protocol 2-4-16), tasked the Population Employment Centre with studying child labour issues and to develop the necessary mechanisms in order to assist minors to combine work and study legally. In particular, the last session of the *Majlisi Oli* (Tajikistan’s main legislative body) adopted amendments and addenda to the Law on Employment of the Population. According to these amendments the Population Employment Centre should register all children below the age of 15 without a permanent place of work, as unemployed. Whenever possible they should be provided with work or placed into special professional technical schools or granted allowances.

Tajikistan acceded to all the ILO Conventions ratified by the former Soviet Union. When relevant normative and legal acts are adopted, the ILO Conventions are taken into consideration. It is necessary to note that in the conditions created by the market economy of a country in transition, it is difficult to monitor the observance of labour law and norms, and therefore, infringements of requirements of the Labour code and other related legislative acts of the RT are frequent.

## 5. Conclusion

The Tajik legislation contains provisions on the minimum employment age, as well as the protection of children under 18 from labour conditions that might endanger their health, safety or morals, in line with the international legal standards. Nonetheless, in reality, there is a clear disparity between the law and the practice. Frequently, children are required to work, which has a negative impact on their education and endangers their health and general well-being. Furthermore, in view of the growing number of children working in the streets and public places, it is necessary to ensure that appropriate measures are taken to supervise working children under 18 years of age and to prosecute employers or other responsible adults for infringement of labour protection laws or rules.

The legal approach tends to work only to the extent to which the enforcement of existing laws allows. Enforcement problems are acute in the informal sector, particularly in remote areas in the agricultural sector and in businesses, such as shops and hotels, as well as in street trading, domestic service and home-based work, where the number of employed children is high. The proper functioning of enforcement systems is highly dependent on political will, competent administration and adequate resources.

There are many gaps in dealing with child labour. First, there is no statistics on working children. As the starting point for serious action against child labour exploitation, every country should complete a systematic diagnosis of the child labour situation. This will serve as an empirical foundation for advocacy and the planning of effective programs and policies. The various ways to approach the problem of child labour can be grouped into preventive and rehabilitative approaches, and, in order to succeed, child labour programs should contain elements of each.

The problem of child labour requires a multi-pronged approach using different instruments to eliminate child labour, such as improved access to education, (re)creation of a system of social welfare geared towards children and vulnerable families in general, increased wages and living standards, discouragement of children from entering employment and employment of children in compliance with the legal provisions set forth in the national Tajik law. After all, 30 *somoni* is too high of a price to pay for the children's ruined health, incomplete education and lost childhood.

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# TURKMENISTAN

*(Name withheld at the request of the author)*

## 1. Overview of International Treaties

Turkmenistan is party to the following relevant international legal instruments:

### 1.1 The Universal Declaration of Human Rights (10 December 1948)<sup>1</sup>

Article 23.

- 1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

### 1.1 International Covenant on Civil and Political Rights (16 December 1966)<sup>2</sup>

Article 8.

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
  - (a) No one shall be required to perform forced or compulsory labour;
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
  - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
    - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
    - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
    - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
    - (iv) Any work or service, which forms part of normal civil obligations.

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<sup>1</sup> Turkmenistan recognized UDHR, in accordance with the Conception of the Foreign Policy of Turkmenistan, which stipulates that Turkmenistan is a neutral state, on 27 December 1995.

<sup>2</sup> Ratified by the *Mejlis* (Parliament) of Turkmenistan) on 20 December 1996.

### 1.3 International Covenant on Economic, Social and Cultural Rights (16 December 1966)<sup>3</sup>

#### Article 6.

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### Article 7.

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration, which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

#### Article 10.

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social welfare benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### Article 12.

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;

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<sup>3</sup> Ratified by the *Mejlis* of Turkmenistan on 20 December 1996.

- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **1.4 World Declaration on the Survival, Protection and Development of Children (28 December 1993)<sup>4</sup>**

18. The well-being of children requires political action at the highest level. We are determined to take that action.

20. We have agreed that we will act together, in international co-operation, as well as in our respective countries. We now commit ourselves to the following 10-point programme to protect the rights of children and to improve their lives:

- (1) We will work to promote earliest possible ratification and implementation of the Convention on the Rights of the Child. Programmes to encourage information about children's rights should be launched world-wide, taking into account the distinct cultural and social values in different countries.
- (2) We will work for a solid effort of national and international action to enhance children's health, to promote pre-natal care and to lower infant and child mortality in all countries and among all peoples. We will promote the provision of clean water in all communities for all their children, as well as universal access to sanitation.
- (3) We will work for optimal growth and development in childhood, through measures to eradicate hunger, malnutrition and famine, and thus to relieve millions of children of tragic sufferings in a world that has the means to feed all its citizens.
- (4) We will work to strengthen the role and status of women. We will promote responsible planning of family size, child spacing, breastfeeding and safe motherhood.
- (5) We will work for respect for the role of the family in providing for children and will support the efforts of parents, other care-givers and communities to nurture and care for children, from the earliest stages of childhood through adolescence. We also recognize the special needs of children who are separated from their families.
- (6) We will work for programmes that reduce illiteracy and provide educational opportunities for all children, irrespective of their background and gender; that prepare children for productive employment and lifelong learning opportunities, i.e. through vocational training; and that enable children to grow to adulthood within a supportive and nurturing cultural and social context.
- (7) We will work to ameliorate the plight of millions of children who live under especially difficult circumstances - as victims of apartheid and foreign occupation; orphans and street children and children of migrant workers; the displaced children and victims of natural and man-made disasters; the disabled and the abused, the socially disadvantaged and the exploited. Refugee children must be helped to find new roots in life. We will work for special protection of the working child and for the abolition of illegal child labour. We will do our best to ensure that children are not drawn into becoming victims of the scourge of illicit drugs.
- (8) We will work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future. We will promote the values of peace, understanding and dialogue in the education of children. The essential needs of children and families must be protected even in times of war and in violence-ridden areas. We ask that periods of tranquillity and special relief corridors be observed for the benefit of children, where war and violence are still taking place.
- (9) We will work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future.
- (10) We will work for a global attack on poverty, which would have immediate benefits for children's welfare. The vulnerability and special needs of the children of the developing countries, and in

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<sup>4</sup> Ratified by the *Mejlis* of Turkmenistan on 28 December 1993.

particular the least developed ones, deserve priority. But growth and development need promotion in all States, through national action and international co-operation. That calls for transfers of appropriate additional resources to developing countries as well as improved terms of trade, further trade liberalization and measures for debt relief. It also implies structural adjustments that promote world economic growth, particularly in developing countries, while ensuring the well-being of the most vulnerable sectors of the populations, in particular the children.

### **1.5 International Labour Organization Convention Nr 138 Concerning Minimum Age for Admission to Employment (26 June 1973)<sup>5</sup>**

#### Article 1.

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

#### Article 3.

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

#### Article 5.

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers

#### Article 7.

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--  
(a) not likely to be harmful to their health or development; and  
(b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

#### Article 9.

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.  
2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.  
3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

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<sup>5</sup> Ratified by the *Mejlis* of Turkmenistan on 20 December 1996.



## **1.6 Convention on the Rights of the Child (20 November 1989)<sup>6</sup>**

### Article 1.

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### Article 32.

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### Article 36.

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

## **1.7 Other treaties**

Furthermore, Turkmenistan has joined the following relevant treaties:

1. UN Convention on Slavery (1927) and the Protocol amending the Convention (1953);
2. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957);
4. ILO Convention Nr 29 on Forced Labour (1930);
5. ILO Convention Nr 100 on Equal Remuneration (1951);
6. ILO Convention Nr 105 on the Abolition of Forced Labour (1957);
7. ILO Convention Nr 111 on Discrimination (Employment and Occupation) (1958).

## **2. National Legislation on the Labour Rights of Minors**

### **2.1 Constitution of Turkmenistan (18 May 1992)**

#### Article 3.

In Turkmenistan the person is the greatest value of the society and country. The country has to provide every citizen with conditions to develop freely and to protect the life, honour, dignity and freedom, personal immunity, natural and inalienable rights of all citizens. The citizen is responsible for fulfilling his obligations to the country, as stipulated by the Constitution and laws.

#### Article 6.

As a member of the world community, Turkmenistan acknowledges the priority of the universally recognized standards of the international law, adheres to the principles of the constant positive neutrality, non-intervention into the internal affairs of other countries, refrains from use of force and

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<sup>6</sup> Ratified by the *Mejlis* of Turkmenistan on 23 September 1994.

participation in military blocs and coalitions, provides assistance for the development of peaceful, friendly and seeks mutually beneficial relations with the countries of the region and countries all over the world.

Article 31.

All the citizens shall have the right to work, to free choice of profession, occupation and place of work, to healthy and safe conditions of labour. Forced labour is forbidden except in cases provided for by the law. Wage earners have the right to remuneration, proportional to the quantity and quality of work. This remuneration cannot be lower the cost of living established by the country.

Article 32.

The working people have the right to recreation. For the wage earners this right shall be determined by establishment of the workweek of the limited duration, annual paid leave, days of the weekly recreation.

The state shall create conditions favorable for domiciliary recreation and the rational use of the leisure time.

## **2.2 Law “On Guarantees of Children’s Rights” (05 July 2002)**

Article 1. The child

A child is a person who has not attained the age of 18, unless otherwise established by the Law of Turkmenistan.

Article 2. The legislation of Turkmenistan on the rights of the child.

The legislation of Turkmenistan on the rights of the child shall be based on the Constitution of Turkmenistan, the present Law, other standard acts of Turkmenistan, international agreements of Turkmenistan and the corresponding standards of the international law.

Article 17. The right to protection of honour and dignity

The child has the right to the protection of his honour and dignity.

Article 19. The right to work

The child has the right to work depending his age, health, education and training.

The child acquires the right to work at the age of 16.

The labour contract with the child shall be concluded when he reaches the age of 16. The child can be allowed to work from the age of 15 with the consent of one of the parents (or guardian).

The conditions and the order of use of the child’s work and privileges of the child’s work shall be established by the legislation of Turkmenistan.

The state institutions shall establish quotas of working places for children.

Article 27. Protection of the child’s rights from exploitation at work.

The state protects the child from all types of exploitation through legal, economic, social, medical and educational measures.

The use of the child’s work shall not be allowed at enterprises where conditions detrimental to his health or physical, mental or moral development are present. The recruitment of minors for labour connected with the production of tobacco goods or alcohol drinks shall be forbidden.

The employment of pupils during the school year for labour not connected with the education in the agricultural sphere shall be forbidden.

Article 39. The responsibility for violation of the rights and legitimate interests of the child.

The responsibility for violation of the rights and legitimate interests of the child shall be regulated by the legislation of Turkmenistan.

### **2.3 Law “On the State Youth Policy in Turkmenistan” (01 October 1993)**

Article 1. The state youth policy in Turkmenistan

The state youth policy in Turkmenistan shall be the component part of the general policy of the state and directed to the provision of the social, economic, political rights and freedoms of the youth in Turkmenistan.

Article 3. The subjects of the state youth policy in Turkmenistan

The subjects of the state youth policy in Turkmenistan shall be:

- young people under the age of 30;
- young families where both spouses are under the age of 30;
- public youth organizations.

Article 5 [para 3]. The state governing in the sphere of the youth policy realization

A state agency dealing with youth affairs shall be formed for the purpose of the complex governing of the state youth policy at the Cabinet of Ministers of Turkmenistan.

Article 9. Realization of the youth’s right to work

The state shall promote different types of youth training and industrial apprenticeship, as well as an improvement of youth’s skills at enterprises using the methods of economic regulations and preferential taxation.

Unemployed young people, who have graduated from schools, transferred to the reserve from the active military service and young people who have not been employed earlier have the right to support in employment according to the legislation of Turkmenistan. The state enterprises and organizations, based on decisions of the local executive authorities, shall establish quotas for work and industrial training places for youth and other persons under 18.

Article 12. The youth entrepreneurship

The youth shall have access to legal, economic support in their entrepreneurship by means provided for youth enterprises: preferential taxation, crediting, investments, necessary means of production and premises, plots and information about the acting legislation and methods of its application.

Enterprises where not less than 75% of employees are the young citizens under 30, and those created by youth organizations, funds, students of schools and colleges and the young scientists – not less than 75% at the age under 30 for implementing scientific and innovation projects, shall be identified as “youth enterprises.”

Enterprises where not less than 75% of employees are youth shall be exempted from the income tax, other youth enterprises shall be exempted at the rate of 50% from the income tax as established by the Law during two years from the moment of the registration.

Article 19. Guarantees of the rights of young citizens and youth enterprises, ratified by the present Law.

The control over the realization of the present Law shall be carried out by the state agency on the youth affairs.

The state bodies, enterprises, offices, organizations and officials within their competency and obligations shall provide realization of the state youth policy in Turkmenistan. Officials who fail to implement their obligations regarding realization of the rights and legal interests of the youth adequately can be held responsible, in line with the legislation of Turkmenistan.

## 2.4 Labour Code of Turkmenistan (28 June 1972)

### Article 2. Main labour rights of workers

The right to work shall be guaranteed by the Constitution of Turkmenistan, including the free choice of profession, occupation and place of work.

Forced labour shall be forbidden, except for the cases provided by the law.

### Article 46. Reduced working hours

Reduced working hours shall be established:

- for employees between the ages of 16 and 18 - 36 hours a week, for persons between the ages of 15 and 16 (students at the age from 15 to 16 working during vacations (Article 179) – 24 hours a week.

The duration of the working time for students working during the school year in free time shall not exceed the maximal duration of the working time, provided in the first abstract of the given paragraph for persons of the appropriate age;

### Article 57. Restriction of the overtime work

Working hours that exceed the pre-established duration of the working week shall be considered overtime. (Articles 47, 48 and 52).

The employer may apply to the overtime works in exceptional cases provided for by the legislation.

The overtime work can be implemented only with the permission of the enterprise trade union or a committee, representing the employees.

The overtime work shall not be allowed for:

- pregnant women and women with children younger than three years of age;
- employees under 18 years of age;
- employees, who combine work and study;
- other categories of employees according to the legislation.

## Chapter XII. The youth's work

### Chapter 179. Age of when the person is allowed to enter into a labour contract

Persons under the age of sixteen shall not be allowed to enter a labour contract.

Persons who reach 14 years of age shall be allowed to enter a labour contract with the written consent of one of the parents (guardians).

### Article 180. Labour rights of employees under 18 years of age.

In the labour legal relationship the employees under 18 shall have rights equal to those of adults in the sphere of the labour protection, working hours, paid leave. In other respects, they shall enjoy privileges established by the present Code and other labour legislative acts.

### Article 181. Types of labour for which the employment of persons under 18 years of age is prohibited

The use of labour of persons under 18 years of age for hard or underground labour or in dangerous working conditions prohibited. Carrying and moving weights exceeding the established quotas by such persons is also prohibited.

The list of hard works and harmful working conditions for which the use of labour of persons below 18 years of age, as well as quotas of weights for carrying and moving, shall be determined by the Cabinet of Ministers of Turkmenistan.

### Article 182. Medical examination of persons under 18 years of age

All persons under 18 years of age shall be employed only after a medical examination. Upon reaching the age of 18 years they shall be subject to compulsory annual medical examinations.

Article 183. Prohibition to involve employees aged under 18 years for night shifts and overtime work  
It is prohibited to employ persons under 18 years of age for night shifts and overtime work, as well as during weekends and holidays.

Article 185. Output quotas for young workers

For workers under 18 years of age the output quotas shall be set based on output quotas for adult workers proportionally to reduction of the duration of labour hours for persons who have not reached 18 years of age (Paragraph 1 of Part 1 of Article 46).

Article 186. Wages of employees under 18 years of age with reduced working hours

Salary of employees under 18 years of age with the reduced working days shall be similar to that of employees of appropriate categories who work full time.

The work of employees below eighteen years of age who are authorized to carry out part time work shall be paid based on part-time rates set for adult workers with an extra charge for the difference between the duration of their work day and the normal work day of an adult employee.

The salary of the general education school students, students of vocational schools who are working during their time off shall be paid proportionally to the time they have worked or proportionally to their output. The enterprise may establish an extra charge to the students' salary out of their own funds.

Article 189. Termination of labour contracts with employees under 18 years of age

The termination of employees under 18 years of age at the initiative of the management shall be allowed only with the approval of the Committee on the Affairs of Minors. Termination of the labour contract with a minor on the grounds indicated in Paragraphs 1, 2 and 6 of the Article 33 of this Code shall not be allowed without subsequent employment.

Article 190. Termination of labour contracts with employees under 18 years of age at the request of their parents or guardians

A labour contract with employees under 18 years of age may be terminated at the request of their parents, foster parents or guardians as well as guardianship and other agencies, authorized with supervision and control in this field.

Article 193. Creation of the necessary conditions for combination of work and studying

The employees undergoing occupational training at the enterprise or studying under an appropriate direction (application) of their employers or the agreements concluded with them (for training, collective or labour contract) at the educational establishments during their on the job training the employer shall create necessary conditions for combination of work and education.

Article 194. Employment in accordance with profession and qualification

Upon completion of professional training at enterprise the employee shall receive a certain qualification (grade, class, category or another) under his profession and he will receive employment in accordance with the agreement for education.

Article 196. Benefits for employees working in general education schools or professional educational establishments

For employees studying and working in general education schools or professional educational establishments a reduced work week shall be established or daily labour hours shall be reduced while preserving the daily wages in the established order and they shall also receive other benefits.

Article 197. Reduction of labour hours for the persons receiving education in general education schools

For the employees who successfully attend educational institutions, including long-distance and evening courses, and concurrently work are entitled to reduced working hours [...].

Article 199. Annual vacations for the persons enrolled in general education schools

The administration of enterprises shall allocate the vacation periods to persons enrolled in general education schools so that it would coincide with the examination period should an appropriate request be submitted.

## **2.5 Decree of the President of Turkmenistan “On extension of labour rights to citizens who reach the age of 16” (01 April 2002; Nr PP-3606)**

For the purposes of extension of legal rights to citizens who reach the age of 16, I decree:

1. To allow citizens who reach the age of 16 to enter into labour legal relationships with enterprises, organizations and institutions with various types of ownership.
2. For the ministries and central institutions of Turkmenistan *biakimlikes*, *velayats*, towns and *etraps*<sup>7</sup> to develop a special employment programme for persons who reach 16 years of age to allow them to fulfil their right to work.

## **2.6 Law “On Protection of Labour” (1 October 1993)**

Article 1. Definition of protection of labour

Protection of labour is the system of legal, socio-economic, organizational, technical, sanitary, hygienic, preventive and treatment measures and means which provide security, protection of health and capacity to employed persons.

Article 8. Compulsory state social insurance of employees

All employees are subject to compulsory state social insurance by administration (employer).

Employees who work in conditions of heightened risk are subject to compulsory personal insurance against industrial accidents and occupational diseases by the administration (employer) and the amount of premiums shall be defined by the legislation.

Article 9. Guarantees of the rights of employee for labour protection during work

Administration (employer) must introduce modern means of labour protection, provide working conditions meeting the requirements of safety and hygiene and preventing traumas and lethal occurrences.

Article 10. The right of employee for information on the working conditions and labour protection

Administration (employer) must notify the employee on the working conditions and labour protection in working places on the results of inspections and changes in the production process as well as on request of the employee.

## **3. Conclusion**

The overview of the Turkmen legislation in the area of protection of labour rights of minors has shown that the state is party to the main international legal documents regulating this issue.

Article 32 of the Convention on the Rights of the Child (CRC) states that all parties to this convention shall set the minimal age or ages for employment. The 1973 ILO Convention “Concerning the Minimum Age of Admission to Employment” sets it at 18 years of age. In order to implement the provisions of the Convention on the Rights of the Child, the *Mejlis* of Turkmenistan has adopted a Law “On Guarantees of the Children’s Rights,” which sets the minimum age of

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<sup>7</sup> *Hakimlik* – the body of local executive government; *velayat* – district; *etrap* – region.

employment at 16, although employment at a younger age is permissible, with the written consent of parents or guardians.

The Labour Code is one of the main normative legal act of Turkmenistan. Provisions on the labour, performed by minors are contained in Article 179 (Chapter XII), which stipulates “Persons 16 years of age and below are not allowed to enter a labour contract. A person who is 14 years of age and above can enter into a labour contract with a written consent of one parent (guardian, trustees).”

The Law “On state youth policy in Turkmenistan,” despite providing for the establishment of a state agency on youth affairs under the Cabinet of Ministers, is largely ineffectual. The law contains norms, which provide for the full protection of the rights of youth, including the right of minors to engage in labour activities.

At present, the issues related to children are not being given due consideration. The right of children to education is restricted, with the replacement of the ten-year system of compulsory education with the nine-year one. It is now almost impossible to gain admission to institutions of higher education, such as universities, due to the greatly reduced number of places. In addition, in order to gain admission to such institutions, prospective students have to have acquired a minimum of two years of work experience. Institutions that offer special vocational trainings have been abolished and the situation is deteriorating every year.

Moreover, diplomas or similar documents, issued by educational institutions from other countries, regardless of pre-existing relevant agreements, are not officially recognized, although Turkmenistan is party to the Convention on Recognition of Training Courses, Diplomas of Higher Education and Academic Degrees issued by both European States (Paris; 21 December 1979) and states of Asia and the Pacific Ocean (Bangkok, 16 December 1983).<sup>8</sup>

In the rural regions of Turkmenistan, the regulations of the Law “On Guarantees of the Children’s Rights” are grossly violated, with the knowledge of the central and local authorities. Although the regulations prohibit the employment of pupils during the school year for agricultural and other works, not connected with educational process,<sup>9</sup> pupils, including those from junior grades, have to work throughout the cotton-picking season. Child labour is used for weeding during summer holidays. Many families cannot provide for their children, due to lack of employment or wage arrears. Thus, begging, prostitution and various crimes have become widespread among children, as a result of scant payment for their work, their parents’ poverty and lack of education. If the Law “On the Youth Policy in Turkmenistan” were efficient, it would be possible to solve these problems, but this is not one of Turkmen state’s priorities.

The problem of (un)employment in Turkmenistan cannot be solved in the foreseeable future for several reasons, including the limited development of the private sector, due to the monopoly of the state in almost all the spheres of economy. Furthermore, employment in the state sector is problematic due to requirements not reflected in the Labour Code. For example, prospective employees have to provide state authorities with complete information about relatives, including children, spouses, siblings, parents, grandparents of both parents, and similar information concerning the relatives of the spouse. Information on convictions or lack thereof has to be supplied to authorities as well. The professional skills and experience and education are only evaluated at the end of the process.

It is also impossible to obtain employment without *propiska* (the registration with local authorities at the place of residence) - a remnant of the socialist system. This is indubitably a violation of the

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<sup>8</sup> Turkmenistan joined it on 24 May 1996.

<sup>9</sup> Paragraph 3 of Article 27 of the Law.

universally recognized human rights and freedoms, in addition to violating the Constitution of Turkmenistan, which declares that every person has the right to move freely and to choose the place of residence within Turkmenistan.<sup>10</sup>

It is thus evident that Turkmenistan needs to take the following actions in order to remedy the situation of youth employment: 1) implementation of obligations undertaken by Turkmenistan upon becoming party to international legal treaties; 2) further harmonization of the current legislation with the international legal treaties; 3) establishment of liabilities for the violation of the rights of minors; 4) creation of a special body to deal the youth affairs and, overall, 5) the development, adoption and realization of an efficient state policy to protect the rights of minors.

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<sup>10</sup> Article 24 of the Constitution of Turkmenistan.



# UZBEKISTAN

## Independent Expert

*(Name withheld at the request of the author)*

### 1. Introduction

#### 1.1 Importance of the Study

Two thirds of the population of Uzbekistan lives in the countryside, out of which a high percentage are large families. Traditionally, children help parents with work on the family-owned land plots or around the house. The use of child labour is an indicator of the social and economic development of a state. With the transition to market economy, the state has ceased to act as the full guarantor of social protection of the population and many families could not adapt to the new situation. The current economic situation has significantly increased the incidence of child labour used to supplement family income. According to numerous researchers, the use of child labour has negative consequences, as it impacts the children's education, as well as physical and psychological condition, and, in the long-term, the social and economic development of the state.

#### 1.2. Objectives of the Study

The purpose of this study is to provide a concise analysis of the current situation of children employed, either legally or illegally, as well as of the labour legislation relevant to children. The study will mainly fulfil the following objectives:

- Investigate issues related to the Uzbek labour market
- Outline the demographic development of the country
- Reference existing reports and other materials on the use of child labour that have been published in Uzbekistan.
- Examine the legislative basis that regulates the employment of children.

#### 1.3 Methodology

In the course of this research, the author relied on official statistics, research carried out by international and non-governmental organizations, as well as publications in newspapers, magazines, Internet, and laws. Computation and comparative assessments were used as well.

### 2. Situation Analysis

#### 2.1 Demographic and Economic Indicators

At the beginning of 2002, the population of Uzbekistan reached circa 25.1 million inhabitants, which amounts to about 40% of the total population of Central Asian countries. This is largely the result of the previously high fertility rate, and subsequent population growth. For many years, the Government of Uzbekistan encouraged women to have many children in order to increase the population size of the country. Those who had seven or more children were traditionally glorified as “mothers-heroines.” They were also the recipients of a number of benefits offered by the state, such as financial bonuses, housing allowances, extensive paid maternity leave, child allowances etc. (Uz DHS, 1996). The total fertility rate (TFR), however, dropped from 5.7 children in 1970 to 2.4 children per person in 2002.

In 1991, annual rate of population growth started decreasing, reaching 1.3% in 2001. Despite this marked decline, the absolute number increased by five million inhabitants in this period. Thus, the base population became large and its growth, even at a lower rate, results in a higher number of newborn children (over 500 thousand). On the other hand, Uzbekistan's crude death rate (CDR) is relatively low, which is a result of the age breakdown of the population. The rate of population growth has remained high, at least by modern standards, especially in rural areas, which constitute more than 60% of the total population. Each year, about 70% of the total births – around 350 thousand children – are recorded in rural areas.<sup>1</sup>

Rapid population growth produces a young population, which implies a higher burden on the society, as only a small proportion of its working population is enrolled in the labour force and produces goods and services in order to support the non-working categories of the population. The available data reveals that about 38.7 per cent of the total population of the country is below 16 years of age, despite declining from 43.1% in 1991. According to the official records for 2002, in Uzbekistan there are 9734,5 thousand children between the ages of 0-16, including 1272,3 of six and seven years olds and 5173,7 thousand of 8 - 15 year olds. The highest number of children and teenagers reside in rural areas (67.6 per cent), particularly between the ages of eight and 15 (72.4 per cent).<sup>2</sup>

As outlined in Table (1), many children live in regions with high rates of both population density and unemployment, such as Fergana, Kashkadarya and Samarkand. Furthermore, it is necessary to mention that, in some regions, such as Kashkadarya, Surkhandarya, Djizak and Samarkand, there are higher than average numbers of children. The lowest number of children lives in Tashkent, where they account only for 27.5 per cent from the total number of inhabitants.

It is evident, that in Uzbekistan most children live in the countryside, which is due to the national tradition of having large families and to children's duty to support parents in the old age. In rural areas, children under 16 years old make up 41.8 per cent of the total number of the population, against 33.1 per cent in urban areas.

**Table (1) Distribution of Population under 16 years of age, 2002**

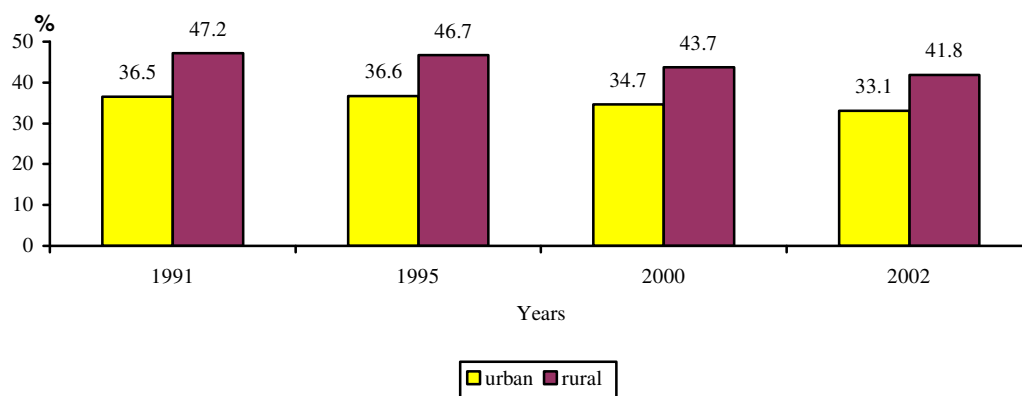
Regions	Total population	Population under 16	
		number	%
Republic of Uzbekistan	25115,9	9734,5	38.8
Republic of Karalpakstan	1540,1	601,5	39.1
Andijan	2247,4	862,4	38.4
Bukhara	1456,1	542,5	37.3
Djizak	1005,7	426,2	42.4
Kashkadarya	2253,7	978,7	43.4
Navoi	795,8	296,7	37.3
Namangan	1982,8	796,1	40.2
Samarkand	2749,8	1144,2	41.6
Surkhandarya	1801	790,6	43.9
Syrdarya	657,2	264,7	40.3
Tashkent	2390,6	857,4	35.9
Fergana	2729,8	1046,5	38.3
Khoresm	1369,3	538,8	39.3
Tashkent city	2136,6	588,2	27.5

*Source: "Population of the Republic of Uzbekistan 1991-2001."*

<sup>1</sup> State Department of Statistics, "Population of the Republic of Uzbekistan 1991-2001," Tashkent , 2002, p. 79.

<sup>2</sup> Ibid, pp.35-43.

**Figure (1) Percentage of population under 16 years old by place of residence**



*Source: "Population of the Republic of Uzbekistan 1991-2001."*

Demographic, social and economic factors create objective preconditions for the use of child labour in the countryside. In rural areas, 31 per cent of families have 6-7 members, and 11 per cent of families have nine and more members. Currently, 136 children are born per one hundred women of reproductive age, with 152 children in rural areas.<sup>3</sup>

During the transition to market economy, it has been observed that the number of children has decreased in both urban and rural areas, as the political and economic changes had demographic implications. According to Heleniak (WB, 1998), the decreasing birth rate may be attributed to the following factors:

- uncertainty about the economic conditions and adopted social policies related to family welfare and child bearing
- changes in relative costs of having and raising children
- increased poverty
- reduced subsidies and privileges of the pro-natalist policies, such as the income and welfare payments from the Soviet era
- increasing availability of modern contraceptive methods.

Moreover, approximately 27 % of the population lives below the poverty line and thus cannot satisfy its basic needs. In rural areas, approximately 35 % have a higher chance of becoming poor, and 58 % - the poorest (UN, 2003).

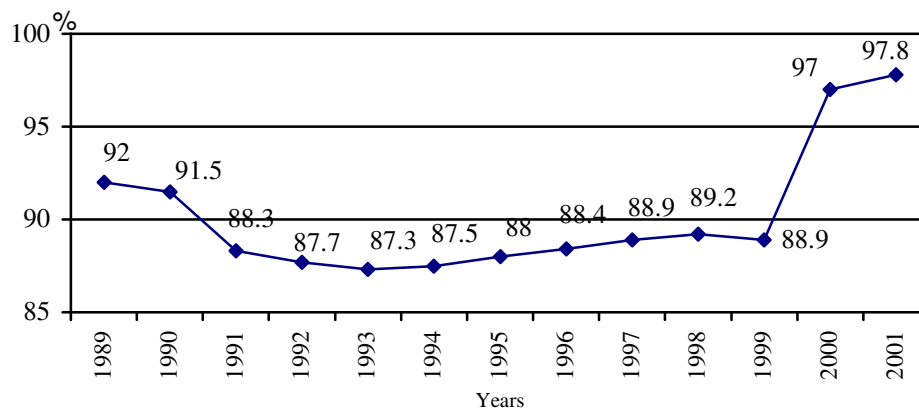
## **2.2 Education Indicators**

According to the Constitution of the Republic of Uzbekistan, the state guarantees to all citizens the right to free education. The general secondary education is compulsory and includes I-IX grades. In addition, the Law "On Education" guarantees equal rights to education irrespective of sex, language, age, race, nationality, religion, social origin, occupation and duration of residence in Uzbekistan (Article 41).

Nevertheless, it should be noted that in the post-Soviet period, in the more impoverished regions, the school attendance rates have decreased, as outlined in Table (2). Many poor households cannot afford textbooks, clothes and other items. Children have to miss school and to support their parents financially.

<sup>3</sup> Gonorskya A.V. "Maintenance of the Full Employment of the Labour Force, Using the Potential of Non-governmental Organisations," Tashkent, 2002, p.50.

**Table (2) Percentage of children enrolled in basic education**



*Source: UNICEF "Social monitoring – Analytical Material," 2003*

In order to improve the situation, the Cabinet Ministries of the Republic of Uzbekistan passed a resolution on "Strengthening the support to socially vulnerable categories of the population," which focuses on support measures for families in need, including providing students from poor families from all grades with complete sets of free winter clothes and textbooks from the library fund every school year. The implementation of this decision should enable children to continue their education without burdening the family budget.

### **3. Analysis of Employment Practices**

#### **3.1 Labour Market**

In Uzbekistan, labour demand exceeds labour supply, which has a biannual growth of 2,5-2,7 per cent.<sup>4</sup> The labour force grew particularly fast at the end of the 90s, due to high birth rates at the start of the 80s, and exceeded the growth of employment in the last decade.

Most jobs are offered by private enterprises. In 2002, the number of private company employees has increased from 4,559 to 4,874 thousands persons, i.e. 275 thousands person (or a total increase by 197 thousands employed across the economy).<sup>4</sup> About 80% of the population works in the public sector. To a certain extent, the fast growth of the private sector of economy creates the necessary preconditions for the expansion of use of child labour, especially in rural areas.

In addition to the current open labour market, there are also bigger spontaneous, informal markets, although there is almost no reliable information about them. The size of informal labour markets is considerably higher than the size of the organized market. According to estimates, about one million person annually actively seek employment. The main labour force source of unorganized labour markets are people from the countryside. According to the results of surveys, such labour markets satisfy demand for temporary and seasonal works in the private sectors of economy.

<sup>4</sup> State Statistical Agency, "Uzbekistan in Numbers 2002 – Statistical Overview," Tashkent, 2003, p. 35.

### 3.2 Unemployment

According to the Law “On Employment of the Population,” the unemployed are defined as able-bodied persons over 16 years of age, who have no employment or income, are registered at the local labour assistance office as seeking employment, are prepared to work and/or to enrol in vocational training and retraining courses, and to improve their professional skills.

According to official data, the unemployment rate in Uzbekistan is 0.4-0.5 per cent (the lowest rate among the Commonwealth Independent States), although this indicator does not reflect the real situation in the labour market. The results of an analysis of family budgets, carried out by the World Bank, using ILO methodology, placed the real rate of unemployment in Uzbekistan at 5.8 per cent (in urban areas – 5.3 per cent, in rural ones– 6.2 per cent).<sup>5</sup>

In Uzbekistan, unemployment affects mostly the youth, as more than 50 per cent of the population are young people between 16 and 25. About 13 per cent of young people in this age group are unemployed in both rural and urban areas.<sup>6</sup> They are generally graduates of high and technical schools, colleges and other educational institutions.

## 4. Use of Child Labour

### 4.1 Overview

Today, Uzbek children work side by side with adults. They carry out the most unskilled work, such as cleaning houses and offices, washing cars, hauling goods in markets, repairing, building, helping parents or relatives in retail trade, in addition to working in the agricultural sector. There are no exhaustive and reliable statistics on the number of working children. Nearly 10% of children between the ages of 14 and 17 - the age group most likely to be involved in the “black” labour market - are not included in the official statistical data.<sup>8</sup> Therefore, this review of the use of child labour in Uzbekistan is largely based on research reports published by various organizations.

One of the surveys on children's employment was carried out by UNICEF in 2000. It pointed out that only 1% of children between 5 and 15 years of age were paid for their services, versus 4.8% of children working without payment (see Table 3).

**Table (3) Percentage of children by gender and type of employment  
(children aged 5-15)**

<i>Type of employment</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
Paid employment	0.9	1.1	1
Unpaid employment	5.1	4.4	4.8
Other employment	14	7.5	10.8

*Source: www.ucw-project.org.*

Children between 10 and 15 years of age are employed for all types of work by virtue of their development, when compared to children from the 5-9 age group (see Table 4). The high level of employment demonstrates that children between ten and 15 years of age perform work suitable for and on a par with adults, as vendors, waiters etc.

<sup>5</sup> World Bank, “Labour Market and Unemployment in Uzbekistan,” 2002. Available at [http://siteresources.worldbank.org/INTUZBEKISTAN/Resources/FullReport\\_UZRuss.pdf](http://siteresources.worldbank.org/INTUZBEKISTAN/Resources/FullReport_UZRuss.pdf)

<sup>6</sup> Tashkent Centre for Social Research “Tahlil,” “Child Labour in Uzbekistan,” 2002, p.9.

One of the main reasons of participation of children on labour markets is their wish to earn money and thus assist their parents.

**Table (4) Percentage of children by gender and type of employment  
(by age group)**

<i>Type of employment</i>	<i>5-9</i>	<i>10-15</i>	<i>Total</i>
Paid employment	0.5	1.4	1
Unpaid employment	2.7	6.5	4.8
Other employment	5.9	14.8	10.8

*Source: www.ucw-project.org*

Children have become a cheap and dependable source of labour in the country's shadow economy. In one of the interviews, the mother of seven children, Alima Karimova, emphasized: "My sons do not attend school. They just do not have time. Zakir and Azat are the only breadwinners in our family. My husband died five years ago and I am disabled. There are seven children in our family. They make 3-4 thousand soms a day (US\$ 2-3,5). This is the money we live on."<sup>7</sup> In another instance, 10-year-old Jahongir had to drop out of school and start working, since his parents cannot support themselves or their children: "My father is on disability pension of 11 thousand sums (about US\$ 9-10) per month, and my mother is a housewife. She looks after my three brothers. My father's pension is not sufficient and, as the oldest child, I have to help my parents" (IWPR).

Child labour is particularly frequent in rural areas. As shown in Table (5), the number of economically active children is twice higher in rural areas than in urban ones, at 27.2 per cent and 14.6 per cent, respectively. Children assist parents with agricultural work and in the production of homemade goods. Furthermore, employment in rural areas is seasonal, thus depriving parents of regular income and motivating them to put their children to work.

**Table (5) Percentage of economically active children by place of residence**

<i>Place of residence</i>	<i>Total</i>
Urban	14.6
Rural	27.2
Total	23.4

*Source: www. ucw-project.org*

Furthermore, children are involved in the cultivation of rice in Karakalpakstan and they raise silkworm cocoons in Fergana valley, although work in the cotton fields is the major form of organized agricultural work in terms of both duration and labour inputs.<sup>8</sup>

During the Soviet period, the cotton industry was central to country's economy and the state frequently resorted to the labour of school children due to time constraints associated with cotton picking. When the country became independent, the state policy on agriculture was reassessed – the number of cotton fields was reduced and producers became more interested in independent entrepreneurial activities. Nevertheless, the use of child labour in cotton fields continued. As school authorities do not have any effective instruments to force children to go to cotton picking, they resort to softer methods of persuasion. Cotton picking is paid work. In 2001, the payment for 1 kg of picked cotton ranged from 22 *soms* at the beginning of the season to 15 *soms* at the end of the season. Working hours depend on

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

the age of children. Pupils pick cotton between September and the end of November, as schools are closed during the cotton-picking season.<sup>9</sup>

Recently, governmental procurement quotas were introduced for some agricultural crops that have strategic significance for the national economy. Rural students play the role of the labour reserve that ensures that the government quotas are reached. Presently, children are employed in cotton-picking in an organized manner only after the best part of the cotton has been picked and when work in cotton fields does not yield substantial earnings for agricultural producers. At the beginning of the cotton-picking season, agricultural producers do not allow other people to work in the cotton fields.

There are no official records on the number of children participating in cotton-picking, although, according to IWPR, “in 2001, in the fields of Dzhizak, 25,000 school children and students worked in the fields, or twice more than in the previous year” (IWPR, 2001).

#### **4.2. The Role of State Institutions and International Organizations**

The Uzbek government has always dealt with children’s issues, more recently through the Republican Commission on Affairs of Minors, headed by the General Prosecutor. The heads of almost all the ministries and departments are members of the commission, whose primary goals are preventive activities and explanatory work with parents on the prohibition of the use of child labour, prevention of crimes among teenagers and the creation of a labour safety net for teenagers. In addition, the commission assists in the registration for work in the formal sector of economy through labour exchanges and it is also involved in issues related to the labour safety of minors.

Moreover, the Ministry of Interior operates a Legal Centre in Tashkent that mainly deals with homeless children, abandoned by their parents, who have left the country to seek employment abroad. The centre assists in placing such children in orphanages and boarding schools. A similar centre was recently created in Samarkand, with more centres envisioned in other regions in the long term.

Non-governmental organizations carry out activities, which aim to assist children as well. In the last few years, “Save the Children”(UK) has started its activities in Central Asia by financing specific programs geared towards assisting children, through local NGOs, and researching the topic.

One of the local NGOs, the children's centre “Mehr Tayanchi,” was created with the support of “Save the Children” (UK) and the Children's Fund of Uzbekistan. “Save the Children” provided financial support to the project “Development of social services for street and working children” (2002).

The main objectives of the project were:

- 1) providing social assistance to street and working children at the centre;
- 2) providing legal assistance and developing or amending national legislation to better protect the interests of street and working children, in cooperation with state structures and children;
- 3) carrying out social work with families, mobilization of communities (*mahalla* committees) on returning children to their families and activities to prevent an increase in the number of street children;
- 4) involving street and working children in all aspects of work of the centre and encouraging other organizations to do the same.

“Mehr Tayanchi” has worked with more than 400 children between the ages of five and 18, mostly boys, out of which 80 per cent are street children, 13 per cent - from poor families and 7 per cent are working children. Most street children are from the cities of Angren, Chirchik and Ahangaran.

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<sup>9</sup> Tashkent Centre for Social Research “Tahlil,” “Child Labour in Uzbekistan,” 2002, p. 75.

The problem of use of child labour of Uzbekistan has not been researched extensively. Only in the last years, the international organizations have focused on the various aspects of use of child labour in Uzbekistan. One of the first qualitative research reports on child labour in Uzbekistan was published in 2001 by the Tashkent Centre for Social Research “Tahlil,” with the assistance and financial support of “Save the Children.” The survey was conducted in Tashkent, Namangan, Djizak, Fergana and Karakalpakstan and consisted of an analysis of the national legislation on labour and an investigation of the use child labour in different sectors of the economy. The researchers aimed to identify the economic sectors where child labour is used most frequently, the push factors, and the working conditions of minors, as well as to provide estimates of the incidence of child labour and to examine its consequences.<sup>10</sup>

Detailed interviews were conducted with 44 working children and teenagers, with representatives of the Ministries of Labour and Social Protection of the Population, various educational and medical institutions, law enforcement authorities, local communities, as well as with parents of working children (38 interviews). In addition, cooperation was initiated with the Tashkent-based NGO “Mehr Tayanchi,” dealing with homeless children, which distributed questionnaires to 120 children. The report “Child labour in Uzbekistan” was distributed to the interested international and local organizations.

The findings of the report published by “Tahlil” pointed to the following:

- failure by employers to sign labour contracts with their staff
- employment of children under 14 years of age
- failure by employers to request medical certificates testifying to the ability of employees to perform certain types of work (compulsory medical examinations for workers under 18)
- employment of persons between 14 and 15 years of age without the written consent of their parents
- non-observance of regulations regarding shorter working hours
- overloaded work schedules that do not allow children to continue their compulsory education
- employment of minors during overtime and night shifts
- failure by employers to provide paid leave
- failure by employers to provide social security.<sup>11</sup>

Child labour is rarely covered by the mass media. The article by O. Griaznova “Who are they, children of the market?” published in the newspaper “Narodnoe Slovo” is an exception. It identified irresponsible parents as culprits, while acknowledging the economic push factors, since child labour supplements large and poor families’ budgets.

Sometimes, articles on the legal aspects of child labour are published in the newspaper “Na postu.” The article “To participate in destiny,” published on 23 May 2002 by S. Hudajberdiev, highlighted the efforts of law enforcement authorities to assist in the return of children to schools and to families, to find jobs, and to carry out explanatory work with parents about the importance of their children’s education. In an attempt to adopt a more constructive approach, all children hauling consumer goods in markets are now registered by the local police office (IWPR).

Articles of a more general nature on the situation of children and teenagers are published more often. They highlight the activity of law enforcement directed towards the prevention of crimes committed by children, in particular because for many children this is the only means to sustain themselves after being

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<sup>10</sup> Ibid., p.7.

<sup>11</sup> Ibid.



abandoned or neglected by their parents. To use one example, on 18 April 2002, an article in the newspaper “Garage” talked about the life of the 15-years-old Ilya, a street child with an alcoholic mother unwilling to take care of her son, who had to steal in order to eat.

In order to educate the youth, in 2004, the Centre for Research on Human and Humanitarian Rights, with assistance of the George Soros Foundation, published the comprehensive “Passport of the Young Citizen.” One of its chapters is focused on labour legislation, which explains, in a detailed manner, what documents are necessary to secure employment, the privileges enjoyed by minors etc.<sup>12</sup>

## 5. Analysis of National Legislation

Article 37 of the Constitution of Republic of Uzbekistan guarantees to all citizens the right to work, in appropriate conditions, and to choose their employment freely.

The social and labour rights of citizens are contained in two basic documents – the Labour Code (1995) and the Law “On Employment of the Population” (1992, revised in 1998). According to the Law “On Employment,” all citizens have “equal opportunities in the realization of their right to work and to a free choice of employment, irrespective of sex, age, race, nationality, language, social origin, property and official position, religion, membership in public associations, or other circumstances that have no negative impact on the ability of persons to work and the results of their work“ (Article 5).

According to Article 77 of the Labour Code, children have the right to be employed at the age of 16, when they finish their primary education (nine grades), which is compulsory under the Law “On Education.” Also, all citizens, between the ages of 16 and 64 (16-60 years for women and 16-64 for men) are considered able-bodied and, thus, part of the labour force. According to international law, all persons under 18 years are minors, which is compatible with the Civil Code of Uzbekistan that stipulates that children attain majority at 18, when they are granted the right to vote and run for public office.

The Labour Code contains special regulations to protect minors from inadequate working conditions, hours and types of employment, as defined below:

a) Types of employment (Article 241)

- adverse working conditions
- work underground and/or in conditions harmful to children’s health, safety or morals
- lifting and moving heavy goods by children is prohibited (children between 14 and 16 years may lift not more than 4,1 kg, children between 16 and 18 years of age may lift and carry not more than 13 kg (boys) and 7 kg (girls).

b) Working hours (Article 242) – Children who are allowed to work:

- children between 16 and 18 years of age - not more than 36 hours per week
- children between 15 and 16 - not more than 24 hours per week
- children between 14 and 16 years of age - not more than 24 hours per week during vacations and not more than 12 hours per week during the academic year.

c) Work conditions (Article 245) – Children are not allowed to work:

- overtime
- during holidays

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<sup>12</sup> Tansibekova G. and Kosteckii V., “Passport of the Young Citizen,” George Soros Foundation, 2004, p.64.

- outside regular working hours (between 10 pm and 6 am).

The aim of these restrictions is to ensure the safety and moral integrity of children.

Despite the shorter working days, the wages of workers younger than 18 years should be equal to those of adult employees in similar positions. The labour of minors, who combine study and work at enterprises in their free time, is paid based on working hours or output (Article 243).

In this context, it is necessary to mention that the state has put in place certain privileges for such children - children from the grades V- XI are granted paid leave for the duration of their end-year exams for a period of four to six days (Article 252).

Furthermore, the Labour Code stipulates that “persons who reach 15 years of age can be employed with the written consent of one of the parents or the legal guardian” (Article 77). Children who reach the age of 14 work may work “in preparation for future employment [...], provided that the employment is not harmful to their health and development and that it does not interfere with school attendance” (Article 77). If a 14-years-old minor is employed without the consent of parents, such a contract is considered void when the minor’s parents file an appropriate request.

The employment of minors younger does not essentially differ from employment of adults, as they are granted equal rights (Article 240). The labour contract between the employer and a minor is signed by both parties in duplicate. It should contain a detailed job description of the employee, the wage, working hours, vacation and other terms. All job applicants under 18 years of age have to pass a medication examination in order to determine his or her suitability for employment.

In addition, employers are under obligation to employ minors referred by local labour agencies in order to fill the pre-established quotas (Article 239). According to the Resolution of the Cabinet of Ministers Nr 504 “On Social Protection and Equal Labour Market Conditions,” dated 1 December 1998, up to 4 per cent of the average number of workplaces in all industries should be allocated to youth, who graduate from educational institutions, within one year from the graduation date.

In order to secure employment, minors have to present the following documents:

- 1) written approval of one of the parents (who should be informed about the working conditions and agree to them);
- 2) medical certificate;
- 3) birth certificate;
- 4) approval, issued by the institution where the minor is a student.

Based on the national legislation dealing with the employment of children, it is evident that the government has attempted to create conditions that are favourable to their lawful employment and that allow children to both work and study, although the emphasis is placed on education.

## **6. Conclusion**

### **6.1. Main Findings**

As there is little research on this topic, the analysis of labour laws and employment practices affecting children was carried out on the basis of available materials and reports. Below is a summary of the findings of this report:

- The state has undertaken a number of measures to prevent the unregulated use of child labour by creating appropriate organizations and mechanisms
- The use of child labour has largely stemmed from the difficulties of the post-Soviet transition period, which have been conducive to the use of children's labour
- As a consequence of the deteriorating economic situation, the traditionally large families have not been able to cover the education expenses of all children
- The rising unemployment has reduced the levels of average income, especially in rural areas, where employment has a largely seasonal character
- Poor and socially vulnerable families have not been able to maintain an appropriate quality of life
- Some parents have not acted in the best interest of their children by denying them the opportunity to study.

## 6.2 Recommendations

- In order to assess the real magnitude of the employment of minors, an in-depth study is necessary, particularly in regions with high unemployment rates. The major factors contributing to the supply and demand of unemployment of minors need to be better researched as well
- A further survey should be carried out during the cotton picking season in order to better estimate the use of child labour in the cotton fields
- Working children should be registered by the state statistical agencies in order to monitor the implementation of national legislation regulating the employment of minors
- The establishment of non-governmental organizations dealing with employed children should be encouraged
- The quality of education should be improved in order to create a competitive labour force
- The management of enterprises that do not comply with the laws on child labour should be held accountable in a more stringent manner
- Particular emphasis should be placed on children younger than 14 years of age, who, although prohibited from seeking employment, offer their services in the unregulated labour market.

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