

Shadow report of NGOs on compliance of obligations under the UN Convention on the Rights of the Child by the Kyrgyz Republic, 2013

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1. INFORMATION ON PREPARATION OF THE SHADOW REPORT

This report was prepared by Natalia Utesheva (NGO "Youth Human Rights Group"), Julia Votslava (PF "Independent Human Rights Group") and Mirlan Medetov (ALE "Association of NGOs for the protection and promotion of child rights"). The report is the product of work on collecting information, conducting field research and advocacy activities of the following civil society organizations: executive body of Association of Legal Entities "Association of NGOs for the protection and promotion of child rights", NGO "Centre for Child Protection", PF «SOS Children's Villages in Kyrgyzstan", PF "Independent Human Rights Group", PF "Legal Clinic "Adilet", NGO "Youth Human Rights Group", PF "Children of Tien Shan", PF "Blagodat", PF "Association of Parents of Disabled Children", PF "Haliluya", PF "Voice of Freedom", and PF "Master radosti".

The report also presents views of children on child rights. The views of children from different regions of the Kyrgyz Republic were collected through focus groups with students of secondary schools conducted by ALE "Association of NGOs for the protection and promotion of child rights" in 2013. During the focus group 49 children were interviewed.

2. DISCRIMINATION AGAINST VULNERABLE GROUP OF CHILDREN. VIOLATION OF ARTICLE 2 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

At the legislative level, the Kyrgyz Republic provides guarantees of equality and non-discrimination. According to the Consolidated Third and Fourth Periodic Reports (hereinafter - the National Report) to the Committee on the Rights of the Child of Kyrgyzstan submitted in accordance with Art. 44 of the UN Convention on the Rights of the Child in 2010, provisions guaranteeing equality enshrined by the Constitution of the Kyrgyz Republic of 27 June 2010 (paras. 2, 4 of Art.16), Code of the Kyrgyz Republic "On Children" (para.1 of Art. 6), and other legislative acts of the Kyrgyz Republic. However, the government recognizes that, in practice, principles of equality and non-discrimination are not always respected.

2.1 Discrimination against children of internal migrants.

One of the manifested forms of discrimination against children in the Kyrgyz Republic is discrimination on the grounds of absence of residence and residence registration. In accordance with international treaties, the Constitution of the Kyrgyz Republic protects right of everyone to freedom of movement and choice of place of residence in the Kyrgyz Republic. However, the national laws governing issues of migration and population registration set a number of requirements and administrative barriers, due to which the current system of registration is permissive rather than mailing. In fact, the majority of internal migrants living in Chui oblast and in Bishkek are not able to register at the place of residence, as it requires owning property or obtaining the consent of the owner of property. Moreover, in the most densely populated areas of the country, for example in the area of Bishkek, has internal migrants living on land where the construction of house is prohibited and official residence registration is not possible. According to USAID, 37,000 people living in new-build settlements in suburban area of Bishkek, has no registration. Lack of registration deprives citizens of access to social, medical and legal services, which is particularly acute impact on children of internal migrants.

Thus, in accordance with the legislation of the Kyrgyz Republic one of the documents required for registration to the group of family physicians (GFP) and receiving of basic health services is a registration to place of residence or certificate proving place of residence. There is also a list of documents required for a child's admission to school: parents' application, birth certificate, medical certificate number 63, a medical history card, which will be filled throughout the study of child (made vaccinations and etc.) and the certificate of registration in the district of the school. In 2008, Decree of the Ministry of Education and Science of the Kyrgyz Republic "On access of children of internal migrants to the education system" of September 5, 2008 № 549/1 was adopted, according to which children of internal migrants may enter a school without documentation and permanent registration with the condition to obtain or recover required documents within a 3 months. However, the children of internal migrants still face problem of access to

education. In 2011, parents of 226 children seek help from PF "Center for Child Protection" as they were not able to arrange their children to enter a school.

Example 1¹

Family of T. J. who was born in 1999 moved to Bishkek from Naryn in 2008 and before moving J. studied at the School of Naryn for 2 years. In Bishkek, he was not accepted to the school because of the lack of birth certificate. As a result the boy was dropped out from one academic year. In 2009, his parents seek help of staff of PF "Centre for Child Protection". As a result, the boy was arranged to school at the third grade level. He was also taken under the conditions of documents recovery within 3 months. Currently, J. goes to school and works collecting paper boxes on market "Dordoy."

2.3 Discrimination based on gender and sexual orientation

In Kyrgyzstan, approximately 12.2% of women are married before they reach age of 18. These studies show that in rural areas 14.2% of marriages are registered before the legal age². According to the UNFPA report, early marriages, as a rule, are not registered legally. Moreover, practice of bride kidnapping, including girls under 18, is continuing in the Kyrgyz Republic. Legislation criminalizes bride kidnapping but national traditions do not allow most women to appeal to police. In turn, girls who have appealed to police on kidnapping, often face inaction of police and a lack of understanding. According to unofficial figures from 30% to 80% of marriages in rural areas are exercised by bride kidnapping³ and there are cases when kidnapped girls were under 18 and were kidnapped immediately after their graduation from secondary school. Early marriages lead to teenage childbirth so 1, 2% of registered births were teenage mothers in 2011. Each year, 1200 officially abortions by girls aged 12-17 are registered⁴.

Also, there are cases of discrimination against girls under 18 on realization of right to education when parents of girls intentionally do not provide them opportunity to get a compulsory secondary education.

Example 2

In May 2010, one of the Departments for families and children support in Bishkek (hereinafter - DFCS) addressed to ALE "Association of NGOs for the protection and promotion of child rights" with a letter on assistance on restoration of 14 years old girl's right to education. The social worker found out that the girl was not attending school because of the ban of her parents. During the meeting of social worker with girl's mother, who flatly refused to allow her daughter to continue her education explaining that her daughter must help her in business and education is not necessary as her daughter will marry and stay at home, taking care of children and keeping household as soon as she will reach 18. Unfortunately, such examples are not rare in the country. And state agencies authorized to ensure protection of child do not take exhaustive measures to restore right of children to education⁵.

In the Kyrgyz Republic, there are significant problems in protection of LGBT people. Teenagers who belong to this category of citizens of the Kyrgyz Republic often experience rejection, social isolation and difficulties in their families, including physical violence and expulsion from the house. Typically, in such cases, children are not able to apply for protection to state authorities on child rights because they fear worsening of their situation or simply are not aware of any possible ways of their protection.

There are several non-governmental organizations on promotion and protection of LGBT rights in the country but they work only with adults. According to representatives of LGBT organization "Labrys", they do not have any legal or psychological support LGBT teens who seek for a help, as these actions may be

¹ Based on information provided by PF "Center for Child Protection", 2012.

² Multiple Indicator Cluster Survey. - The National Statistics Committee, UNICEF, 2007 - p. 68.

³ Situation Assessment of Children in the Kyrgyz Republic, UNICEF, 2011 - p. 51.

⁴ Analysis of the problem of early marriage and early motherhood in Kyrgyzstan, Human Rights Movement "Bir Duino Kyrgyzstan", 2013

⁵ Data of ALE "Association of NGO for protection and promotion of child rights"

interpreted by state authorities as propaganda or attempt of child abuse¹. This organization uses this approach as a society sharply intolerant and has hateful attitude toward LGBT people. Negative position of society is worsen by exacerbate effect of some representatives of media as well as negative statements of various politicians and public figures. In well-known social networks, there are discussion on LGBT persons are often hostile bias and people put them in a same line with a crimes such as pedophilia and sexual abuse.

Example 3.

16-year-old child was kicked out of house by his parents after they found out about his sexual orientation. Bereft of home he came to one of the LGBT organizations and asked for asylum in its shelter. However, the asylum was refused because of fears of organization to be persecuted by law enforcement representatives. Child refused to appeal to DFCS as he does not want to reveal the causes of conflict with his parents. As a result, the child was forced to stay on the street. Unfortunately, this example is not a single case.

Discrimination against children with disabilities (page 13)

3. DIFFICULTIES AND OBSTACLES TO BIRTH REGISTRATION. VIOLATION OF ARTICLE 7 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Code of the Kyrgyz Republic "On Children" establishes legal norms on mandatory immediate registration of birth. Detailed norms of registration of birth and child's name are regulated by the Law of the KR "On Civil Status" of April 12, 2005 No. 60 and Regulation "On the procedure for registration of acts of civil status in the Kyrgyz Republic" approved by the Ministry of Justice of the Kyrgyz Republic of 13 June 2001 No. 91. In practice, there are cases of violation of the right to birth registration in Kyrgyz Republic. And according to ALE "Association of NGO for protection and promotion of child rights", 35% (more than 150 children) were not officially registered by state authorities as born from total number of children whose parents have addressed to this organization on problem of restoration of registration documents for the period from January 2010 to September 2011².

There are excessive bureaucratic and illegal demands in the process of restoration of birth certificate for child who has already reached age or restoration of lost documents. For example, employees of a registry office in Bishkek demanded from a social worker of PF "Center for Child Protection" to provide them information from all registry offices of Bishkek stating that birth certificate was not issued by them despite of provided list of documents which is necessary for the registration of birth by the law. However, legislation of the Kyrgyz Republic does not require providing information from other registrar offices. But, the registrar office refused to register child birth without this information³.

4. VIOLATION OF PRINCIPLE OF RESPECT FOR VIEWS OF CHILD IN DECISION MAKING PROCESS REGARDING CHILD'S FATE. ARTICLE 12 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Legal norms, guaranteeing respect for the child's opinion and views, are set in the Code of the Kyrgyz Republic "On the children". However, in practice, the existing social and traditional attitudes are not focused on respect for the child's views. Traditional way of life of many families is based on belief requiring unquestioned obedience of junior to senior. Often, a child's opinion on matters relating to his fate, in general, is not taken into account by the family and public institutions. Information campaigns on forms and methods of child based on respect for the views of children and principle of the best interests of child is not conducted by government. Representatives of national mass media do not pay attention to these issues.

For example, the child's opinion is usually neglected by the system of public care in the process of transferring children from one orphanage to another as well as in the process of choosing a further

¹ Interview with representative of NGO "Labrys", November 2012.

² Information of ALE "Association of NGO for protection and promotion of child rights". Statistics of reversion for 2010-September 2011.

³ Based on information provided by PF "Center for Child Protection", 2011 r

educational institute for the child after his/her graduation from the orphanage. Monitoring of NGOs¹ conducted in four undergraduate schools in Chui showed that none of the surveyed graduates of the state system of care had been informed about opportunities for professional training. All surveyed graduates stated that they had been sent to study in a particular undergraduate school by the administration of institutions of care without discussion of their preferences and desires.

Example 4

From an interview with the graduate of institution of care studying in one of vocational schools: "I wanted to go to the 18th Vocational School, where conditions are very good but I was sent here. My opinion on where I want to learn and who I want to be was not asked. In this school I am studying in decoration department but I wanted to learn to make renovation after graduation of which it is possible to make good money but we were not taken to the renovation group"².

According to the "Regulations on activities of the Commissions on children affairs, on complaints of children, parents or guardians", presence of a child whose case is considered, as well as the presence of all stakeholders during the proceedings of Commission on Children Affairs (hereinafter - CCA) is obligatory. Despite this, as a rule, CCA make decisions on cases of children without the presence of child while the age of children permits consciously refer to what is happening and to express their opinion. This is particularly evident in the process of obtaining authorization for sale of child's property, share pledge over movable (real estate) property of child, placement of child into institutions of care, lowering the age of consent for marriage, registration of child on registrar data of Inspection for Minors (IM). These are important issues that require in-depth consideration, including the views of the child. However, according to the study, 31% of the materials were considered in absence of child despite of the fact that presence of the child in CCA proceeding is mandatory³.

Example 5

According to the study of NGO⁴, 40.7% of surveyed juveniles placed in the correctional prison for juveniles No. 14 in Voznesenovka reported that during the trial judge did not allow juveniles to express their position on case and let to give testimony for them.

Example 6

In May 2012, facts of abuse and exploitation of child labor by the head of the institution was revealed in Belovodsky special boarding school for children in need for special upbringing. Criminal proceedings on Article 161 "failure to comply with child-rearing responsibilities" and Article 305 "abuse of power" of the Criminal Code were initiated against the director of the institution. In August 2012, Moscow district court held a hearing and the director of the institution has pleaded guilty and the court considered his guilt proven⁵. Despite of the recognition his proven guilt, criminal case against the director was terminated by court because there was reconciliation between accused, former director A.E., and a new appointed acting director Spivakova Galina, who acted in the proceedings as a guardian of affected children. However, affected children were not invited to the judicial process, testimony of child victims at the hearing was not held and there was only one child out of 65 affected children during the reconciliation of both sides in the trial.

Only in 2013 the case was reopened on the basis of appeal to prosecutor by civil society organization. In cases where human rights defenders and civil society organizations do not take active measures to protect children's rights and guarantees on legal protection of children provided by law, the state does not provide

¹ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011.

² Ibid.

³ Report on results of the monitoring of activities of the Commission on Children Affairs. Akmatova A., Votslava Y. - Bishkek, 2011.

⁴ Ibid.

⁵ Resolution of the Moscovsky District Court № 1-262 on dismissal of criminal case from August 21, 2012.

legal protection of children and respect for views of child in decision making process regarding child's further does not taken into account even in judicial proceedings.

5. PROHIBITION AND OBSTACLES TO FREEDOM OF EXPRESSION AND FREEDOM TO RECEIVE INFORMATION. VIOLATION OF ARTICLE 13 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Freedom of expression and access to information in the Kyrgyz Republic is a constitutional right of every person and do not include any specific age limitations. Article 11 of the Code of the Kyrgyz Republic "On Children" establishes guarantee to ensure this right of children. In practice, freedom to expression of opinions and views of children, which do not meet the expectations and views of adults, leads to the prohibition of expression and carries a penalty even if child expresses his/her critical opinion very softly.

Most children (51%) are afraid¹ to express criticism or complain on actions or decisions of adults (parents or teachers at school) because of chicanery, harassment, disclosure of the information, and mistrust of adults, as well as fear of being misunderstood. Children note and describe in detail events and facts when their complaints on teachers were taken by school administrations as a personal insult and did not take it seriously.

In some schools and boarding schools, there are "boxes of trust" where children can put letters of complaints and suggestions but vast majority of children believe that this kind of boxes are ineffective and evaluate them as compliance of formality. As a rule, children do not receive a feedback on their complaints and do not know whether their complaints are taken seriously and are not aware of results of their complaints review. Even anonymous complaints on actions of school teachers are very rare. As a reason of rare complaints may be a lack of information on possibility of filing a complaint, lack of faith in effectiveness of such complaint or fear of persecution.

Example 7

According to the interview of 12 years old child: "Even if I told to director about my problem, no one will help me because all teachers cover up for each other. And I would face more difficulties in school after my complaint. Of course, everyone is afraid to speak out"².

One of the essential problems of access to the information that children note³ is the denial of medical workers to provide them with information about their health condition, diagnosis and prescribed medication. Very often children do not know what diagnose they have and how they are treated.

Children, placed in state institutions of care, have repeatedly noted that in the process of medication assigning doctors do not explain how and how often they should take it. In 2009 case, where a child was diagnosed facio-scapulo-humeral (Landouzy-Déjerine) myopathy, identified in Chui boarding school and child was recommended to wear a corset and to register for a disability certificate but the child was studying in this institution for 3 years after diagnosis and during this time child's medical needs were not met by administration⁴.

According to Article 73 of Law "On protection of health of citizens of Kyrgyz Republic" of January 9, 2005 No. 6, a patient has right to get available information about his/her health in an accessible form, including: information on examination results, disease, diagnosis and prognosis, methods of treatment, associated risks of treatment, options for medical intervention, and consequences and results of interventions.

¹ The results of survey of opinions of children in focus groups between the ages of 12 and 17. ALE "Association of NGOs for the protection and promotion of child rights", 2013.

² Ibid.

³ Ibid.

⁴ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011.

However, in respect of children under the age of 16, right to receive this information is limited. According to the law, health worker is obliged to provide the information only to a legal representative of child.

6. ABSENCE OF EFFECTIVE LEGAL PROTECTION OF CHILD VICTIMS AND WITNESSES OF CRIME. VIOLATION OF ARTICLE 19 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Access of child victims of crime to justice is severely limited because of their complete dependence on actions of a legal representative (parents or guardians). The legislation of the Kyrgyz Republic identifies following people as a legal representatives: parents; foster parents; guardians; trustees of the suspect and accused or victim and civil plaintiff; as well as representatives of organizations/institutions of care where minor is placed. In stage of investigation and at the court only legal representative of the child can represent the interests of child who is a victim of a crime. The legislation does not provide a right to a child to choose his/her representative. Norms of law (Section 4, Art. 397 of the Criminal Procedure Code of the Kyrgyz Republic), establishing the procedure for dismissal of legal representative because of a conflict of interest during the investigation or trial, relate solely to the protection of children in conflict with the law, suspected or accused of committing a crime. Kyrgyz legislation does not impose the same procedural protection for children who are victims of a crime, violence or abuse.

Thus, if legal representative of the child does not want to provide to him/her a defense or legal representative offends child, child's access to legal protection and justice is virtually absent. Even close relatives of the child, wishing to protect him/her but do not have the official status of a guardian or adoptive parent does not have capacity to effectively protect the child and represent him/her in investigation or at the trial.

Mandate to represent interests of the child during investigation and in court assigned to prosecution office and to DFCS, whose employees are qualified teachers or social workers and have no training in the field of law. Cases of protection of child victims of abuse by prosecution office are rare and protection is inefficient and formal. According to prosecutor offices¹ only 22 criminal cases relating to the protection of children from abuse was initiated from 2010 to 2012 (in 2010 - 4, 2011 - 7, and 2012 - 11). At the same time, study of UNICEF, which was conducted in 2010, shows that there is high prevalence of abuse against children in Kyrgyzstan - 37.3% of children were victims of physical violence in the family². According to the official data of the Ministry of Interior Affairs, 1243 criminal cases on crimes against minors was initiated in 2011 and 84 of them were crimes against sexual integrity of minors and 683 cases out of 1243 were brought to court. During the first 10 months of 2012 1114 criminal cases were initiated and 142 of them were crimes against sexual integrity of minors and only 618 criminal cases were brought to court³.

Methods of working with children, who are victims of crime or witness, used by public authorities do not provide any specific approaches to children. Often, a child who is a victim undergoes repeated stress during the investigation. Interrogations and other forms of investigation carried out by unprepared specialists without respect and interests of the child. Often, during the investigation testimony of the child is not considered only on the basis of his/her age even if age of maturity of the child allows him/her to give clear and detailed evidence.

Even in cases where interests of the child are represented by his/her legal representative, child victims of crime face a dismissive and formal attitude of public authorities in matters concerning their further future. In practice, public authorities often make no effort to assess short and long-term consequences of a decision for the future of individual children.

Example 8

During the trial on determination of place of residence of male minor and appointment with his father, mother insisted that his father is a source of danger to the child, as he is an alcoholic and his mother was

¹ The letter of the General Prosecutor's Office No. 17-9 of May 10, 2012.

² Child Abuse and Neglect in Families in the Kyrgyz Republic. UNICEF. 2010.

³ The letter of MIA No. 11/1829 of 19.11.2012.

suspecting his father on committing sexual abuse against the child.

As the results of medical examination did not give a clear answer on child being subject to sexual abuse by his father, his mother filed a petition to the court for a judicial inquiry to the Ministry of Defense for information about the child's father (he is a former member). According to the available information to the mother, the child's father had previously been dismissed from the army because of harassment of soldiers with phrase on his dossier "do not fit for occupation on educating younger generation". As the father's dossier was classified as a secret file, characteristic to the father can only be obtained on judicial or investigative bodies' request. During the trial, the child's mother also asked prosecutor to support her petition for characteristics request. However, contrary to the interests of the minor, prosecutor asked judge do not satisfy the request, arguing that this information is not important to the process. The Court denied the mother's petition without any justification¹.

7. CHALLENGES AND ACHIEVEMENTS IN ENSURING RIGHT TO A FAMILY ENVIRONMENT. ARTICLES 9, 20, 21 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

7.1 Positive changes in the system of protection of child right to a family environment

As stated in the National Report, system of child protection was changed significantly for the reporting period of Kyrgyzstan; Commission on Children's Affairs and Department for Family and Children Support have been established, whose function is to determine further future of the child who is in a crisis situation. According to amendments in Code of the Kyrgyz Republic "On Children" adopted on 10 July 2012, procedure of placement of a child in institutions of residential care had been significantly enforced. At the moment, according to Article 36 and 37 of the Code of the Kyrgyz Republic "On Children" placement of children in institutions of residential care should be determined by the court on the basis of the findings of DFCS on situation of child and only if placement in family environment is not possible. Earlier, before 2012, simplified procedure for placing children in institutions of residential care allowed parents if they wish to leave the child in institution of residential care. Changes in legislation have led to a significant reduction of number of children placed in institutions of care. Thus, according to the Ministry of Social Development of the Kyrgyz Republic, 1383 children were sent to boarding schools in 2010, 1186 children in 2011 and 384 children in 2012². However, the procedure of placing children based on the court's decision does not apply to institutions for children with disabilities. Placement of a children in boarding schools for children with speech, vision and hearing difficulties and neuropsychiatric hospitals decided by the conclusion of psychological, medical, and educational counsel (hereinafter - PMEC).

On December 7 2012, Plan on optimization of management and financing of residential institutions for children for 2013-2016 (hereinafter - Plan) was approved by the Government of the Kyrgyz Republic. Plan aims at reducing the number of boarding schools, providing opportunities for children to be brought up in a family environment, and reducing number of child abandonment. 19 boarding schools were included into the Plan and it is supposed to improve a quality of services focused on educating children in a family environment as well as on development of other types of social services to meet the needs of children, families and local community.

7.2 Limited resources of Departments for family and child support providing assistance to children who is in difficult situation

Despite the positive steps taken by the state on deinstitutionalization of residential institutions, there are still significant problems in the field of securing the right to a family environment in Kyrgyz Republic.

¹ Data provided by PF "Independent Human Rights group", 2013 r.

² The letter of the Ministry of Social Development No. 3/2260 of 20.05.2013.

According to Code of the Kyrgyz Republic "On Children", authorized bodies on protection of children in difficult situations are followings:

- Government of the Kyrgyz Republic;
- Authorized agency on protection of children (since 2012, it is a Ministry of Social Development);
- Commission for Children Affairs under local state administrations;
- Territorial division of authorized agency on protection of children (since 2012, it is DFCS which are under the Ministry of Social Development and are part of territorial departments of social protection);
- Executive body of local government and executive committee of local self-government on social issues.

Interaction of all state agencies responsible for protection of child rights is very weak in Kyrgyzstan and there is no overall coordination of government actions in deciding the further future of children who is in difficult situations. Often, public authorities attempt to shift responsibility onto other public authority and if child has more complex situation public authorities have less incentive to take responsibility for the child protection.

Example 9

From an interview with a representative of DFCS: "Often, during the process of assessment of the existing deficiencies in the system of child protection or discussing violations of child rights, in any case, DFCS found guilty. At the same time, child protection system consist not only DFCS but also other state agencies and local governments, which are not always willing to cooperate to address specific needs of child. For example, if we turn to the municipal territorial administration or self-government (aiylokmotu) they often refuse to cooperate with us citing that child protection issues are not part of their direct duties. Sometimes when other state agencies receive information on a child in a difficult situation, this information is not forwarded to us. For example, when one family was abandoned a child and the family decided to raise this child but officially his guardianship or adoption was not formalized. The child was served in a Family Practice Center but doctors did not informed DFCS on serving a child without any official documents. As a result of the fact that the FCSD was not informed within 5 years child was not formalized with an official custody and a birth certificate".

According to the Code of the Kyrgyz Republic "On Children", indeed, main and initial role in decision making process lies on DFCS whose resources do not comply with its tasks.

According to the Code of the Kyrgyz Republic "On Children", DFCS which established under the Ministry of Social Development has following functions:

Preventive functions apply to problems of families and children which are in crisis situation and prevention of juvenile delinquency as well as issues of child labor.

Research functions related to identification and registration of children without parental care and children whose parents do not provide them a proper care and maintenance.

Human rights functions include: ensuring protection of rights and legitimate interests of children who are in crisis situation, monitoring of activities of guardians, adoptive parents, foster families, institutions of care, medical institutions in order to ensure the performance of their duties, representing interests of children in investigation, prosecution and trial, participation in court on cases of termination of parental rights, and consideration of appeals on protection of children's rights.

Social functions include placement of children left without parental care till trial or decision based on evaluation of child needs and assistance to guardians, foster or adoptive families.

Analysis of the functions of DFCS representatives shows that DFCS's staff must be unique specialists that combine the knowledge of lawyer, psychologist and social worker. At the same time, resources of DFCS do not meet real needs of population (staff of DFCS consists 3 specialists who should serve a district with a population of over 100 thousand people). Analysis of functions assigned to DFCS shows that it is extremely

wide, which requires not only relevant expertise among employees of the agency but also adequate time to address them. Approved staff of DFCS cannot effectively carry out full range of the specified tasks. In addition, DFCS, as a rule, do not have sufficient resources to perform its functions. For example, in the case of revelation of child whose life and health are under immediate and serious threat, DFCS has no opportunity to respond immediately and remove a child from a dangerous situation and place him/her in crisis center for children as transportation costs are not provided and places in crisis centers are limited and this is not completely possible in some areas. This leads to the fact that children in a crisis situation cannot get appropriate help on time.

7.3 Problems in the field of adoption: lack of dissemination of information among population, lack of transparent procedures and corruption in international adoption, and ensuring of secrecy of adoption

National and international adoptions are part of protection of child rights to a family environment. Currently, there are following legal documents governing issues of adoption in Kyrgyz Republic: Family Code of the Kyrgyz Republic, Code of the Kyrgyz Republic "On Children", and Civil Code of the Kyrgyz Republic. In accordance with Article 45 of Code of the Kyrgyz Republic "On Children", authorized agency for protection of children is obliged to examine living conditions of person who wishes to adopt a child, check for possible preclusions for adoption, assure that adoption meets the best interest of child, identify relationship of the child with his/her adoptive parent, provide assistance to the adoptive parent in collecting process of necessary documents and transfer materials with the conclusion to the court. The materials on adoption of the child should be considered by court in civil proceedings.

Information on children without parental care should be transferred to the State data bank on children left without parental care and who should be placed in foster families (hereinafter - SDBC)¹, which is administered by authorized state body under the Government of Kyrgyz Republic. Currently, this authorized state body is a Child Protection Unit under the Ministry of Social Development. The goal of establishing and using SDBC is implementation of registration of children without parental care, creation of conditions for their placement in family environment, creation of conditions for the realization of the right of citizens to adoption of children, and creation of place where people can get receive complete and accurate information on children without parental care.

The authorized body collects information on children deprived of family environment, check this information and provide it to SDBC. Personal data of children and people who want to adopt a child contained in SDBC and is confidential and may not be distributed, at the same time, general information is open, which creates system of the transparency of the authorized state body for placing children in family environment at national and international level. Establishment of SDBC in 2010 is a positive change in the field of protection of children deprived of family environment. Unfortunately, at the present many prospective adoptive parents have no information about SDBC and new approaches to adoption of children.

Adoption is permitted as an appropriate way to protect the rights of children for a family environment and the best interests of children for children deprived of parental care. The adoption of children by foreigners is allowed in cases where it is not possible to transfer these children to a family of citizens of Kyrgyz Republic residing in the territory of Kyrgyz Republic or to adoption by relatives of child's parents regardless of nationality or place of residence of relatives.

In 2012, Kyrgyzstan ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (or Hague Adoption Convention). However, at the moment there are no clear

¹ Provision on the formation and use of the state data bank on children without parental care, approved by the Governmental Decree No. 125 on March 2, 2010.

procedures for domestic and international adoptions, which lead to the development of corruption in this area.

Example 10

On May 23, 2013, the former Minister of Social Development Sabirov R was sentenced to 5 years of imprisonment with confiscation of property by the Supreme Court of Kyrgyz Republic for soliciting a bribe from one of the international organizations on international adoption during with the accreditation of the organization. Facts of criminal cases related to corruption in international adoption are not rare. At the same time national adoption problem has same problem but the state does not take any actions for prevention of corruption at this level.

The process of development of international adoption procedures and control over this process is in progress from 2009 which leads to suffering of children who may be adopted but still in residential care.

However, despite of the innovations in the field of legal and regulatory framework governing adoption compliance with established standards and procedures for national adoption are still remains sharp. Thus, according to the National Health Information Center 180 children were adopted from orphanages¹ (51% of total number of adopted children) in Kyrgyzstan for the period from 2006 to 2009 and information from the Ministry of Health 75 children² from orphanages were adopted for the period from 2005 to 2010. At the same time, only 19 children³ from children's homes for children with disabilities and serious health problems were adopted for the period from 2005 to 2010 in Kyrgyzstan. According to the Ministry of Social Development of Kyrgyz Republic, there were 2644 children without parental care and 821 children were adopted, 1069 were taken under custody, 370 were taken under guardianship and 384 children were placed in orphanages⁴.

According to the data of NGO "Children of Tien Shan": "... In 2007, 20 children were adopted in Balykchy city and all adopted children are under the age of 3; no child was adopted from institutions of care. Mostly, young children, "door-bell babies", and children of close relatives are adopted <...>. More often close relatives of a child who lost one or both parents take custody of the child, for example, in 2007 10 children were placed under the guardianship of grandmothers and aunts. No one child from orphanage was taken under custody or guardianship among these 10 children"⁵.

The absence of extensive coverage of problem of child abandonment and its consequences for every child in care without family environment and for society leads to misunderstanding of needs of children. Adoption is not perceived by society as a positive and encouraging phenomenon, probably, it is related to the cultural differences which urge prospective parents to create an appearance of a blood relationship with adopted child. That is why there is a popularity of secrecy of adoption which contributes to lack of transparency in adoption process and subsequent monitoring of living conditions and upbringing of adopted child.

8. UNREASONABLE PLACEMENT OF CHILDREN WITH DISABILITIES IN SPECIAL BOARDING SCHOOLS. VIOLATION OF ARTICLE 10 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

At the moment placement of children in specialized boarding schools for children with disabilities are not by the decision of court but by P MEC, which is an advisory body.

¹ Consolidated third and fourth national report of the Kyrgyz Republic to the United Nations Committee on the Rights of the Child. See Table 4.

² The letter of the Ministry of Health No. 02-1-7414 of 12.11.2010.

³ Ibid.

⁴ The letter of the Ministry of Social Development No. 3/2260 of 20.05.2013.

⁵ Information provided by NGO "Children of Tien Shan" for preparation of alternative report on children's rights within the framework of the Universal Periodic Review of the UN Human Rights Council.

According to the Ministry of Education and Science, there are 16 P MEC in the Kyrgyz Republic. Only members of P MEC under the Ministry of Education and Science work on a permanent basis and have meetings every day, members of P MEC of Bishkek city meet 2 times a week and members of rest P MEC involving narrow health professionals work on a voluntary basis and meet two times a year (in May and January). This working pattern of P MECs in regions does not allow for regular assessment of health state of children with disabilities and leads to distant examination and unjustified placement of children in special boarding schools.

EXAMPLE 11

During the one year, the same P MEC made two different and conflicting decisions on one child¹: 1) recommendation and direction of the child for education in ordinary school and 2) recommendation and direction of the child for education in a special school for children with mental retardation. Later, child was sent to a children's psychiatric hospital from the special school where a doctor found her healthy and gave her a psychiatrist recommendations for education in ordinary school. Child was separated from his brother and twice transferred from one boarding school to another based on above mentioned findings of P MEC. According to the representative of P MEC, it was identified that the commission did not see the child personally during their decision making process about his/her fate.

9. DISCRIMINATION AGAINST CHILDREN WITH DISABILITIES: ABSENCE OF ACCESS TO EDUCATION AND BASIC HEALTH SERVICES AND SOCIAL ISOLATION OF CHILD. VIOLATION OF ARTICLE 23 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Unfortunately, discrimination in the process of implementation of child rights is taking place at the system level. This includes existing system of guardianship of children with disabilities, which involves placement of children with significant physical, mental or development disorders in mental health hospitals or its counterpart institutions. Typically, in case of children with disabilities placed in residential care, public authorities do take any measures to preserve association of children with their families. Children are placed in residential care without a territorial division, for example, a child living in Bishkek may be placed in institution of care in Talas region, which creates a significant barrier to maintain family ties.

Example 12

In 2009, Pokrovsky rehabilitation boarding school for children was redeveloped into center for elderly and disabled people, which is a subordinate agency of the Ministry of social development. This institution is located 90 km far from Talas and 380 km far from Bishkek. At present (data from January 25, 2013), the institution has 53 children aged from 6 to 19 who has various ailments². Herewith, only 3 children are from Talas and other children were sent to the institution from different regions of the country on the basis of P MEC decision. Building of the institution is not designed for providing basic needs of children with disabilities; there is no rampant, stairs are too narrow and do not allow to construct rampant. In the institution children receive no education but there are seven children who can be educated according the program of special schools for children with mental.

Despite of the fact that diseases of children in the institution are compound and they may need urgent hospitalization at any time, nearest hospital is located in 2 hour of driving. The institution does not have any vehicle.

During the monitoring conducted on March 28, 2013, in the institution child with infiltrative tuberculosis in right lung diagnosis was revealed by the doctor who is a member of monitoring group. The child is not isolated and placed together with two children who are also suspected in having tuberculosis. In its response to the letter on situation in the institution, the Ministry of Social Development noted that children are not hospitalized due to the lack of financial resources for transportation.

¹ Decisions of P MEC of 16.09.2004 and 27.09.2005.

² Results of monitoring of NGO "Youth Human Rights Group".

Placement of children with disabilities in isolated institution which does not meet needs of this category of children and does not provide a child right to access to basic health services and association of children with their family can be classified as a segregation and refusal of the government to establish relevant conditions for maximum survival and development of this group of children. This approach of the government in provision of services for children with disabilities, unfortunately, is not exceptional case

Often in psycho-neurological boarding schools there are children with safe intelligence but suffering from disorders of musculoskeletal system, hydrocephalus or who has other diseases that lead to disabilities. Condition of stay in psycho-neurological boarding schools involves only physical care and is not focused on providing intellectual development and social integration of children, as in the above mentioned institution only classes for imparting life skills are provided and elementary and general education for children with normal intelligence is generally not provided. Thus, State Agency for Social Welfare under the Government of Kyrgyz Republic (now - the Ministry of Social Development of Kyrgyz Republic) reported that¹ "... educational work in psycho-neurological boarding schools for children with mental illnesses is not provided as children in the institutions suffer from severe mental retardation".

Despite of the arguments of the government on providing enrollment in higher education institutions in Kyrgyzstan on a grant basis under a separate category and without a competition for contract form of education, situation of disabled people access to education remains almost impossible. Infrastructure of educational institutions does not allow them to move freely as buildings has no rampant and rails, despite the fact that according to the Law of Kyrgyz Republic "On the rights and guarantees of persons with disabilities" of April 3, 2008 No. 38, in every public institution should have rampants. Public transport is also not suited for transportation of persons with disabilities. Private taxi drivers do not want to transport this category of people and municipal buses do not have special equipment for their transportation.

Discrimination against children with disabilities starts at an early age. Often, administration of pre-schools refuses to enroll children with disabilities as teachers of these institutions do not have proper training and structure of buildings and overcrowding of these institutions do not allow paying attention to children with disabilities. There is an acute shortage of municipal government free day-care centers for children with disabilities. Further, problems with access to city schools, high schools and cultural institutions (cinemas, theaters, libraries, and museums) start as these institutions are unsuitable for children with disabilities.

Example 13

According to PF "Association of Parents of Disabled Children" (hereinafter - APDC), on December 27, 2011 Mambetova, representative of the Ministry of Education and Science, offered two tickets to New Year's celebration event sponsored by the Office of the President of Kyrgyz Republic and warned that invited children should not use wheelchairs. Toktosunova A. who is organizer of the event and executive secretary of the Commission for Education, Science and Culture under the President of Kyrgyz Republic, explained that Kyrgyz National Opera and Ballet Theatre named after Malydybaev, where the event took place, is not equipped with rampant. She also added: "What we should do? Conduct New Year event or transport children in wheelchairs? This is the first New Year celebration event of new president, Almazbek Atambayev, and it should be in high level"².

Currently, media does not broadcast news and other TV programs with sign language, through which, deaf children and children who has hearing problems can watch TV programs and obtain necessary information. The country has almost no access to modern textbooks for visually impaired children. Children still use program and textbooks published in 70's and 80's. At the moment, universities of Kyrgyzstan do not have department on visual impairment specialist or educator³.

¹ The letter of the State Social Security Agency No. 5/5343 of 3.12.2009.

² Available at: <http://kelechekplus.kloop.kg/2011/12/28/na-prezidentskuyu-elku-zapretili-poyavlyat-sya-detyam-na-invalidny-h-kolyaskah/>

³ Data of NGO "Blagodat", Osh.

10. OBSTACLES TO ACCESS TO BASIC HEALTH SERVICES FOR CHILDREN DEPRIVED OF PARENTAL CARE. VIOLATION OF ARTICLE 24 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

According to the norms of national legislation, children living in institutions of residential care should be provided with qualified and preventive medical care¹. Kyrgyzstan has a program of state guarantees (PSG) which is adopted annually at the level of the government of Kyrgyz Republic. PSG identifies specific categories of people who are entitled to certain free services of primary health care, emergency hospitalization, including intensive care interventions, medicines and medical equipment. Children under age of 5 and orphan children living in state institutions of care, foster homes (foster care) and boarding schools for orphans and children left without parental care². In accordance with a government guarantee of health care, all guaranteed free services or services on a preferential basis in healthcare institutions are provided on basis of registration of residence.

At the same time, state guarantee does not include certain types of care that are essential for children without parental care, for example, one of these gaps is lack of guarantees of dental care. As a result, children living in boarding schools do not receive dental care and many of them need of dental prosthetics to age of 14-15.

The results of medical examinations of children in institutions of residential care, which was conducted in 2006-2009, revealed the following most common diseases: iron deficiency anemia, recurrent ear infections, atopic dermatitis, tuberculosis infection, pathology of the musculoskeletal system (postural disturbance, flat feet), enuresis and other neurotic reactions, HPV (warts), cardiomyopathy and hypotrophy. At the same time, in institutions medical examinations are not conducted regularly or are formal. For example, in one of the boarding schools, a medical examination was conducted by a pediatrician who signs for all specialists (ophthalmologist, neurologist and etc.). Poor medical assistance or, sometimes, its absence significantly impairs quality of life of children who due to their specific characteristics are at risk. In case of getting diagnosis, prescribed treatment is not provided especially in those cases where child has a chronic illness. Situation worsens due to the living conditions: bad heated rooms, absence of hot water, and bath days with change of underwear once in every 10 days, which leads to diseases of the urinary tract. In congenital pathologies such as hydrocephalus, clubfoot, cryptorchidism, cleft palate and strabismus, surgery is usually either not available or unjustifiably delayed³.

Expensive medical care in Kyrgyzstan for vulnerable groups is provided by Fund for high-tech medical care (hereinafter - FHMC) under the Ministry of Health⁴. Financial resource of FHMC collected annually on the basis of requests to the Ministry of Health from state budget and sponsors. Priority types of medical care are determined by a commission on the basis of incoming applications. Obviously, medical care provided in the framework of FHMC can be object of great interest to institutions of care where children with disabilities are placed. As a rule, neither medical staff nor administration of institutions is aware of opportunity to submit applications to the Ministry of Health and accordingly medical assistance within the FHMC remains inaccessible to children in institutions of care.

Example 14

Some boarding schools currently have children with diagnosed "hydrocephalus". The disease can be detected at the stage of fetal development via ultrasound or after birth via careful observation of child. During the progression of the disease children lose their sight, hearing and spend the rest of life in bed,

¹ Law "On medical insurance of citizens of the Kyrgyz Republic" of February 17, 2009 No. 52, Art. 5.

² The program of state guarantees ensuring health care of citizens of the Kyrgyz Republic in 2011.

³ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011. Statement, on the results of inspection of children's homes, boarding schools of all types carried out by members of the interdepartment commission, number 4/410 of 28.05. 2008.

⁴ Government Decision № 287 of 7 May 2002 "On Establishment of Fund of the Ministry of Health for high-tech medical care "

suffering from unbearable headaches, which cannot be alleviated by any available medication. Early intervention (cerebrospinal fluid (CSF) shunting surgery) allows child to live and grow fully but it is expensive type of surgery. In 2009, according to FHMC, CSF shunting surgeries were not conducted for children in residential care¹, but according to the Ministry of Health, for the period from 2008 to 2010 there were 22 children in need of CSF shunting surgery were in baby houses and this number does not include neuropsychiatric institutions.

Opportunities of physicians of institutions of residential care are limited, in most cases they do not have access to participate in retraining and skills development and as a result this leads to a lack of knowledge about modern methods of treatment and possibilities of modern medicine among these medical specialists². This leads to unjustified prescription of drugs, improper selection or dosages of drugs and absence of prescription of necessary medications. Access to medicines within the category of life-saving medications³ is not ensured in some institutions of residential care, some of the institutions of care do not have first aid kits and anaphylactic shock first aid kits.

Poor equipment and supply of medical unit of orphanages negatively affect quality of medical care. Most of the medical units of institutions of residential care have equipment which was produced in 60-70th and most of them are out of order. At the same time, access to medical care for children living in boarding schools provided by family doctors is not always possible in rural areas due to isolation of institutions or neglect of this category of children. Hospitalization of children is also difficult due to the lack of accompanying staff and high transport costs. According to the Ministry of Education and Science, "travel expenses provided for those institutions which has its own vehicle"⁴ and most of the institutions of care do not have vehicle.

11. ABSENCE OF EFFECTIVE CONTROL OVER THE CAUSES OF MORTALITY IN STATE INSTITUTIONS FOR CHILDREN WITH SPECIAL NEEDS. VIOLATION OF ARTICLE 6 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

Monitoring conducted by Youth Human Rights Group in 2006-2007 and 2009-2010⁵ revealed numerous facts of neglect of health care of children in institutions, which are a result of limitations of existing system of residential care and sometimes negligence of administrations of the institutions. Situation of institutions of care did not improve significantly for the period from 2006 to 2012 and therefore question on causes of death of children in institutions was raised. On one side, high and expected mortality rate in some residential care for children with disabilities was noted on the other side absence of independent mechanisms of control mortality and incidence of detectable evidence of neglect of children's health care allow us to assume that in some cases death of children can be caused by lack of adequate care.

In accordance with Decree of the Ministry of Health and State Social Security Agency of Kyrgyz Republic (current Ministry of Social Development of Kyrgyz Republic) "On postmortem necropsy and x-ray screenings of children living in institutions of residential care" of May 20, 2010 No. 120, necropsy of children living in institutions of residential care, who died in a result of non-violent death, should be conducted by decision of a head of administration of the institution. At the same time, in case if neglect of health care or violence by the administration resulted in death of a child, head of the institution may be interested in hiding the cause of death. In such case, identify true cause of child death would be impossible.

¹ The letter of the Ministry of Health No. 02-1-7414 of 12.11.2010.

² Monitoring of institutions of care conducted by NGO "Youth Human Rights group" in 2009-2010.

³ Basic (vital) drugs that satisfy health needs of population, which should be available at all times in adequate amounts and in appropriate dosage. See Law of the Kyrgyz Republic "On medicines" from April 30, 2003 number 91.

⁴ The letter of the Ministry of Health No. 04-8/3888 of 08.12.2009.

⁵ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011 – p. 88-89.

In 2007, 17 children died in Belovodsky psycho-neurological boarding school for children with disabilities, in 2008 – 6 children, in 2009 - 10 children, in January 2010 - 3 children¹. During the 3 months (from November 2012 to January 2013), 3 children died in Pokrovsky rehabilitation boarding house for children with disabilities. Followings are indicated as cause of death of most children: acute cardio-respiratory failure and congestive bilateral pneumonia. Post-mortem examination is generally not performed, because, according to the doctor of Belovodsky psycho-neurological boarding school², regional forensic office requires a payment for necropsy³ which is a violation of the above mentioned Decree. In practice, only one post-mortem examination on cause of death of a child living in institution of residential care for children with disabilities was conducted and its results were filed in child's history of illness and this case was revealed during the monitoring.

International standards of human rights, in cases of death of person living in state institutions of care, suggest conducting a mandatory investigation of causes of death by a judicial or other governmental body⁴. Necropsy on the basis of the request of administration of the institution is not an effective way to investigate cause of death, especially if child's death was caused by neglect or abuse of administration of the institution where child was living.

12. PROBLEMS WITH FOOD AND SHELTER FOR CHILDREN IN DIFFICULT SITUATION. VIOLATION OF ARTICLE 27 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

12.1 Malnutrition in institutions of residential care

One of the pressing problems, which institutions of residential care face, is a lack of funding for nutrition. The diet of children and adolescents should be based on active growth and special needs of the child. The government allocates fund for nutrition of children living in institution of residential care which consists sum from 30 KGS (U.S. \$ 0.62) up to 65 KGS (U.S. \$ 1.3) per one person/day. In 2007, a Decree of the President of Kyrgyz Republic was adopted and it requires that amount allocated to nutrition of children must be at least 65 KGS (U.S. \$ 1.3) per person/day⁵. However, if institution is not financed from the republican state budget but local state budget, it does not always get full fund for nutrition.

Example 15⁶

In one of the boarding schools in Batken oblast, 30 KGS (\$ 0.62) per person/day is allocated to nutrition of children. This institution is funded by local state budget and according to director of the institution, when he addressed to the local city council with a request to increase amount of allocation for nutrition of children, he received resolute refusal from the council. Director of the institution was not aware of the above-mentioned Decree that establishes new rules of financing as he does not have access to recent legislations.

Children collect mushrooms and fry them and they also steal corn from the field of farmers because of the insufficient nutrition in the institution (Chui boarding school, 2009).

In vocational schools 50 KGS per person/day is allocated to nutrition of graduates of boarding schools who study in rehabilitation groups. If consider physiological needs of teenager body and that biological and social orphans are study on a budgetary basis and have no external financial support, this amount is

¹ The data from statement registrar "Medical certificate of death". Obtained in Belovodsky psycho-neurological boarding school for children in 2010.

² Interview in 2009. Monitoring of institutions of care conducted by NGO 'Youth human Rights Group' in 2009-2010.

³ This practice exists in neuropsychiatric hospitals for adult persons. See Report of the Ombudsman of KR of 2009. Available at: www.ombudsman.kg

⁴ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by Resolution of UN General Assembly 43/173, principle 34.

⁵ Decree of the President of KR "On additional measures of social support of citizens of the Kyrgyz republic» No.528 of 3.12.2007.

⁶ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011.

insufficient to ensure adequate nutrition and children often suffer from hunger. Also, in some boarding schools and vocational schools a deprivation of food as a form of penalty is practiced.

Amount of allocated funding for nutrition of children must be reconsidered and inflation and needs of specific groups of children should be taken into account in the process of revising. At the beginning of 2013, minimum consumer budget on food for children is equal to 92 KGS (U.S. \$ 2) per person/day¹.

12.2 Absence of social services for graduates of institutions of residential care

Currently there is no social support for graduates of institutions of residential care in Kyrgyzstan. No public authority own statistical or analytical data relating to social adaptation and arrangements of children after their graduation from institution of residential care. The best solution in obtaining place for living is to enter to vocational schools where they are provided with room in dormitory. However, according to the Ministry of Education and Science, in 2012, 239 graduates of boarding schools, which is 1.3% of the total number of alumni of institutions of residential care of (total number of alumni of 2011 is 18,545 people), were studying in undergraduate educational institutions². In autumn 2011, in professional vocational schools No. 113, 12, and 16, which are located in Osh city, no one alumni of institutions of residential care was educating in rehabilitation groups for graduates of boarding schools³.

According to the norms of the Code of Kyrgyz Republic "On Children" (Article 69), DFCS is responsible to protect the rights of graduates of educational institutions, medical institutions, social security institutions and other similar institutions regardless of their ownership form. However, in practice, assistance to graduates are not provided by the representatives of DFCS. According to the research of NGO conducted in 2012, 69.8% of children in institutions of residential care do not receive full consultations on further possibilities of education and adaptation in society⁴.

In accordance with Article 44 of the Code "On Children", orphans and children, left without parental care living in institutions of residential care, with relatives or with legal guardians, retain the right to a living space where they lived before. If they cannot be placed in their earlier living space, they should be provided with an accommodation which is equivalent to the earlier according to the legislation of the Kyrgyz Republic. However, at the present, there is no clear legislation that would reflect the order of provision of accommodation, including definition of criteria of priority for receiving accommodation, mechanisms of provision, time frame and etc. Also, often house which is partially owned by child living in institution of residential care is sold without child's permission and presence. Currently, there are facts of violation of child rights to ownership of property by his/her biological relatives⁵.

13. OBSTACLES TO ACCESS TO EDUCATION IN PUBLIC SCHOOLS. VIOLATION OF ARTICLES 28 AND 29 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

The Ministry of Education and Science has provided information about number of non-learning children and it contains 1 869 children of August 2011⁶. According to UNICEF, in Kyrgyz Republic, in 2008 there were 39 000 non-learning children. According to the national statistics, amount of non-learning children between ages of 10 and 17 years was 2117 children in the country, and it contains 1251 boys and 866 girls⁷.

¹ Data from the National Statistical Committee for the 1st quarter of 2013. Available at: <http://stat.kg/images/stories/docs/Express/Uroven/PM%202013/Pmin%201%20kv.%202013.pdf>

² The letter of the Ministry of Education and science No. 03-6/6 of 01.09.2012.

³ Information obtained in monitoring of NGO "Youth Human Rights Group" in cooperation with Ombudsman of KR in above mentioned vocational schools. 2011.

⁴ Research of PF "SOS Children's Villages in Kyrgyzstan": information on survey of 3 boarding schools and 4 vocational schools, 2010.

⁵ Information provided by PF "SOS Children's Villages in Kyrgyzstan", 2013.

⁶ Uneducated children. Study of prevalence and dynamics of violence. Materials of the round table, organized by the Ministry of Education and Science on November 23, 2011

⁷ Statistical Book "Children of Kyrgyzstan" Bishkek, 2012 - p. 215

The main reasons of children's absence from school are¹: state of health of child, child labor in household, inability to pay school fees; concern on child safety, which is caused by school racket, need to earn money for family and survival, lack of school supplies, and attendance of religious institutions as a substitute for schooling.

The national legislation of Kyrgyz Republic stipulates that primary, secondary and high school education are free². At the same time, in addition to the funds required for purchase of clothing and stationery for children, administration of schools arranges extra charge for rental of textbooks, classroom repair, security service of buildings, purchase of detergents, and celebration of different events. According to the conclusion of Interdepartmental Commission which studied legality of administrative charges to parents of children in schools of Chui oblast, Bishkek and Osh cities in 2009, children's access to education is limited in that students whose parents are unable to pay established cash payment to "public associations" and "funds" operating in schools, are often not allowed to attend school³. Administration of schools conducts a kind of entrance exams for 6-7 years old children. Typically, these exams become a kind of auctions under the slogan, "Who pays more for enrollment of child into school". Even in August 2012, despite an official ban on entrance exams, some schools in Osh have continued this practice⁴.

Children, whose families do not have funds for a child's learning in school, are forced to stay at home or go to work in markets, car washes, and etc. At the same time, it is almost impossible to reintegrate children, who miss school and have significant knowledge gaps, into school process as schools do not have classes for leveling-off and special programs for education of children with gaps in education.

Also it should be noted that school has stopped to be safe and reliable place for education for many children. The reason of unsafe situation in school is a school racket, which spread widely. School children are victims of an everyday extortion by school racketeers across the country. One of the researches of "Soros Foundation - Kyrgyzstan" provides data of survey on causes of absence from school of children. According to the survey findings high school students often do not attend school because of high concern for their safety and primary and secondary school students have less concern on safety than high school students. Thus, we can conclude that the problem of violence against students is increasingly important for high school students and is the reason that teens are afraid to go to school⁵.

126 and 127 paragraphs of the National Report provide information about provision of schools with teaching staff. In the National Report, it is indicated that the total number of teachers in educational institutions compounds more than 72 thousand teachers. However, we should note that provided data is for 2006-2007 whereas the total number of teachers in 2010-2011 compounded 67.8 thousand teachers. As you can see, currently number of teachers has decreased by more than 4 thousand teachers. Thus, shortage of teachers in schools is essential; moreover, current efforts to attract young professionals are ineffective. Only 15% of students, who graduated from pedagogical universities, work as school teachers⁶.

In 2009, UNICEF and the Ministry of Education and Science conducted a study and a crisis in the field of school education was revealed because school administrators have to turn to retired teachers and they teach several classes. The school authorities also ask teachers to teach subjects on which they have little knowledge and encourage distance students to work full time. In 2009 officially declared shortage of

¹ Information is provided by PF "Centre for Child Protection", 2011.

² The Constitution of the Kyrgyz Republic, Articles 20 and 45; Law "On Education" of April 30, 2003 No. 92, Article 16.

³ The report of the Ombudsman of KR "On the state of the rights and freedoms of individual and citizen of the Kyrgyz Republic", 2010, paragraph 2.5: "Respect for the rights of children".

⁴ Based on data provided by PF «Blagodat», Osh, 2012.

⁵ Report on assessment of needs in the field of education in southern regions of Kyrgyz Republic. "Soros Foundation-Kyrgyzstan". Bishkek, 2011.

⁶ Survival strategies of schools in the Kyrgyz Republic: Analysis of schools shortage at local level. Based on studies conducted in Batken and Jalal-Abad oblasts of the Kyrgyz Republic. UNICEF, the Ministry of Education and Science, 2008 - p. 35.

teachers was about 23%¹ of demanded teachers. Teacher training is carried out only at the level of regional centers except Chui oblast and is planned on the basis of obsolete programs; travel expenses and per diem are not covered which result in reduction of training opportunities of rural teachers.

14. INEFFECTIVENESS OF POLICY AND PROGRAMS ON ELIMINATION OF THE WORST FORMS OF CHILD LABOR, INCLUDING FORCED CHILD LABOR AND CHILD LABOR USAGE IN STATE INSTITUTIONS OF CARE. VIOLATION OF ARTICLE 32 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

The national report noted that in Kyrgyzstan problem of child labor is directly linked to economic difficulties of parents.

In 2007, National Statistical Committee of Kyrgyz Republic and International Programme on the Elimination of Child Labour IPEC conducted a research on child labor which covered 7080 children aged 5-17.

According to the research, level of child labor among this age group was quite high and compounded 40.3% of children. In general, according to ILO study, number of employed children in Kyrgyzstan compounds 592 thousand children². According to the study, an average age of when children begin to work is 10. More than 68% of working children work seven days a week. Working hours depends on occupation of child, however, children start work at 9 am and finish at 7 pm and average working hours consist 10 hours.

The level of awareness of regulations governing rights of children in workplace is very low among children and adults. Despite the fact that vast majority of high school students, who study at 7-8th grade, work and about 45% of children have never even heard of existence of any legislative acts concerning issues of child labor. Only 6 (19%) of 31 of teachers and members of local government are familiar with ILO Convention on the Worst Forms of Child Labour and 10 are familiar with ILO Convention on the Minimum Age for Admission to Employment and Work.

According to data for 2011 provided by NGO "Centre for Child Protection", 230 children who participated in the projects of this organization were working. Main types of activities in which children are involved are: collection of paper boxes and polyethylene, shoe cleaning, work with weighing machines, small trading, begging, working as domestic servers and etc.

The majority of working children are engaged in multiple activities. From an economic point of view, the vast majority of working children (96%) are engaged either in agriculture or in home production, 95% of which work in unpaid family business. The results of the study indicate that working children work together with other members of the family for the sustenance of family income³.

Often working children are subjected to physical, emotional and sexual abuse. According to ILO study, more than 16%⁴ of children indicated that they are beaten by their employers and 4.2% of respondents indicated that they experienced sexual harassment at work. About 23% of children reported that they were cheated by their employers. Basically, deception consist in that employer pays less than agreed or refuse to pay. One reason for this deception is that contract on work agreed is verbal but not on paper and signed.

Most of teachers and representatives of local self-government (55%) indicate that working children are attending school less and have lower academic performance than non-working children. Percentage of

¹ Ibid.

² International Labour Organization / National Statistics Committee, Working children in Kyrgyzstan: A survey of child labor in 2007, Bishkek, 2009.

³ Ibid.

⁴ Ibid.

children who miss school due to illness is higher among working children than among those who do not work.

Example 16

In 2008, social workers of Centre for Child protection identified E. who was born in 1996. He was collecting paper boxes on "Dordoy" market. The boy has big gaps in education, he finished only 1st grade. During the conversation with him it was revealed that the boy has a family and family has three other children who left school. His mother has serious illness and they do not have father. Therefore, the role of bread winner lied on him. After 1st grade, he had to quit school and go to work because his family lacked money. As a child with gaps in education E. tried to arrange a night school for working youth but and he had to quit the school because of its remoteness. Considering that he is the only breadwinner in the family, constant transportation costs have been an intolerable burden for the family. Currently, E. does not study at school.

State Programme for the Elimination of the Worst Forms of Child Labour was implementing for the period from 2009 to 2011. However, many objectives of the Program were essentially unrealistic to be implemented as often Programme activities which were conducted in rural areas, did not find support from the local community, because child labor is perceived by parents as a norm: need for labor training and help of child to a family. Another major problem was a lack of government funding of the Programme, although, responsibility for its implementation should be borne by the state. For example, DFCS does not have funding for transportation to rural areas of the country for implementation of the Program¹.

Existing legislation on prevention and elimination of child labor is more declarative rather than obligatory. There are no real mechanisms to prosecute employers or parents for exploring child labour. According to the judicial department cases of crimes and offenses on labor law, human trafficking and slave labor of children for the period from 2007 to 2012 were not filed in courts.

At the same time, according to the Ministry of Interior Affairs, number of cases on trafficking (article 124 of the Criminal Code (this article also covers issues of exploitation)), violations of labor protection rights (article 142 of the Criminal Code), violation of labor legislation (article 143 of the Criminal Code) and slave or forced labor (article 125 paragraph 1 of the Criminal Code) are:

Year and Article of the Criminal Code of cases	The number of cases brought to court	The number of terminated cases
2008 (art. 124, 142)	3	1
2009 (art. 124, 142)	2	0
2010 (art. 124)	2	0
2011 (art. 124)	2	1
First 7 months of 2012	0	

Analysis of supervisory and control activities of the State Inspectorate for Environmental and Technical Safety of Kyrgyz Republic indicates that violations of requirements of labor legislation for minors continue to be widespread and permanent. According to data for 2007-2011 of the State Inspectorate for Environmental and Technical Safety, share of planned monitoring of child rights at working place compounds only 0.2% out from 7846 monitoring. Percentage of violations of child rights compounds 0.02% of total number of identified violations of labor legislation for the period of 2007-2011.

Meanwhile, the State Inspectorate for Environmental and Technical Safety KR notes that according to paragraphs 9 and 5 of the "Regulation on procedure for conducting inspections of business entities" approved by the Government of Kyrgyz Republic on November 6, 2007 No. 533, they have no right to inspect unexpectedly for employer who knowingly violates rights of child as business entity shall be notified

¹ Report on the results of monitoring and evaluation of the National Programme of Action of social partners to eliminate the worst forms of child labor in Kyrgyz Republic for 2008-2011.

by letter at least 10 calendar days before the date of inspection. State Inspectorate notes that facts of child labor and exploitation are almost impossible to determine at the time of the scheduled inspection¹.

So far, the worst forms of child labor are used not only by society but also state educational institutions use them. In secondary schools, practice of engaging children in cleaning surrounding of schools and adjacent areas (streets, parks and etc.) against and derogation of educational process still continues². In the regions of Kyrgyz Republic, this practice is most common in pre-holiday days or pre- arrival of government officials of high rank.

During 2009 - 2012, civil society organizations and the Ombudsman of Kyrgyz Republic had received information on use of forced and often backbreaking child labor in the following institutions: Chaldovar boarding school in Talas and Belovodsky special boarding school for children who need special upbringing. As a rule, large-scale use of child labor in institutions of residential care justified by administration of the institution as labor education of children.

Example 17

On October 17, 2011 NGO "Youth Human Rights Group" in cooperation with the Institute of Ombudsman of Kyrgyz Republic monitored observance of children's rights in Chaldovar boarding school.

During the monitoring, it was found that there are garden and farms in the boarding school, consisting cattle (about 50) and 22 hectares of agricultural land. According to the words of director of boarding school, boarding school is farming in agricultural land since 1995. Farming contains mainly work of boarding schoolchildren as the administration of the boarding school does not attract a sufficient number of hired workers. For example, on October 17, 2011, at time of monitoring students of 7-9th grades were involved in process of bean sorting. Several boys were carrying bags of beans, which were obviously higher than set standards for children: in average, in an hour one boy raised from the floor about 2-3 bags weighing about 40-50 kg.

According to financial documents of the boarding school, annual income derived from child labor in agricultural work was not less than 900 thousand soms or 25 thousand U.S. dollars (information of 2010). At the same time, living conditions and nutrition of children living in the boarding schools were not significantly different from the living conditions of other boarding schools which financed from the state budget.

Thus, we can conclude that the administration of Chaldovar boarding school exploited child labor, which can be attributed to the worst forms based on following criteria: disruption of education, significant damage to children's health; appropriation of the results of child labor (i.e. child labor is unpaid and labor contract with students is not signed).

According to the request on clarification of situation, the boarding school has been examined by the prosecutor's office and facts of exploitation were confirmed, the Ministry of Labour and Employment conducted dissemination of information to the staff and administration of the institution. Establishment of responsibility was not involved for the administration. However, according to the monitoring which was conducted one year later on October 16, 2012, practice of forced child labor continues to be used in the institution, although, in a much smaller scale.

15. INEFFECTIVE PROTECTION OF CHILDREN FROM TORTURE AND FAILURE TO COMPLY OBLIGATIONS IN RESPECT OF CHILDREN IN CONFLICT WITH LAW. VIOLATION OF ARTICLES 37 AND 40 OF THE CONVENTION ON THE RIGHTS OF THE CHILD.

15.1 Torture and ill treatment in institutions of juvenile justice and residential care, inefficiency or absence of procedure of filing compliant

¹ Ibid.

² Based on data provided by PF «Blagodot», Osh, 2012.

According to the Coalition against Torture main group affected by risk of torture and ill-treatment by law enforcement officials, as before, are males in age of 26 - 40 (38%) and male children - 5%¹. At the same time, torture is used not only in detention centers but also in institutions of education and residential care. For example, in institutions for children with different jurisdiction (under the MIA, KSSEP, Ministry of Education) 24 cases of torture against 18 children, committed during the period from 2009 to 2012, were recorded. All cases of identified torture in this study were against juvenile male. The largest number of cases of torture against children were committed by the representatives of regional police department and pre-trial detention centers (jurisdiction of the Ministry of Internal Affairs) and number of victims of torture in these institutions is 12 people and Belovodsky special school for children (jurisdiction of the Ministry of Education and Science) and number of victim also 12 people².

Followings are the main purposes of torture of children³:

1. Extract of confessions to crimes;
2. Exploitation of children in order to receive benefits;
3. Disciplinary action to ensure the child's "appropriate behavior".

Forms of torture used against minors⁴:

- Exhausting physical exercise;
- Sleep deprivation;
- Deprivation of contact with the family for long periods of time (a maximum period of 1.5 years revealed a child who was subjected to this kind of punishment experienced deep anguish and in a conversation with the psychologist was identified propensity child to suicidal behavior);
- Use of electroshock;
- Suffocation by plastic bag;
- Painful posture;
- Sensual torture: burying under snow or coercion to look at sun until darkening in eyes;
- Beating.

Also different manifestations of abuse and neglect of basic needs of children were revealed in residential care system. Thus, during the monitoring of NGO⁵ facts of ill-treatment of inmates were identified in 19 institutions of residential care out of 22 surveyed institutions. It should be noted that use of violence as an educative measure to child is a result of realities of the current system: for example, a ratio of students to one teacher is often inadequate (in one group teacher may have from 20 to 30 children), level qualification of staff of these institutions is very low and special training of personnel working with children in difficult situations is not conducted. All these are causes of violence against children in institutions.

Cases of investigation, judicial protection and bringing responsible person for torture or ill-treatment of children to justice still remain rare in the Kyrgyz Republic. Effective mechanisms and procedures for monitoring of activities of institutions responsible for child rights protection are not provided. Currently, identification and elimination of all possible cases of abuse, including neglect of a child needs is only possible on the basis of willingness of the head of institution where child is placed.

The number of complaints on torture or ill-treatment received by various government agencies of the Kyrgyz Republic from children or their legal representatives is extremely small⁶. Thus, according to the official data for the period from 2010 to August 2012, following number of complaints was registered. The General Prosecutor's Office has received two complaints (one in Osh and 1 in Bishkek), criminal

¹ Azimov U., Sayakova D., Esenamanova E. Prevention of torture in detention centers of interior affairs. Bishkek, 2011.

² Protecting children from torture and cruel treatment in the context of juvenile justice: research report of UNICEF 2012. 2013 – p.22-39.

³ Ibid.

⁴ Ibid.

⁵ Monitoring of child rights in institutions of care for children without parental care: report on results of monitoring of 2009-2010. NGO «Youth Human Rights Group». – Bishkek, 2011 – p. 77-87.

⁶ Protecting children from torture and cruel treatment in the context of juvenile justice: research report of UNICEF 2012. 2013 – p.22-39.

proceedings on use of torture against children (Article 305-1 of the Criminal Code) were not registered¹ and one criminal proceeding on exceeding authority (Article 305 of the Criminal Code) was initiated². At the same time, during this period, prosecutors have filed 22 criminal cases (in 2010 - 4, 2011 - 7, 2012 - 11) concerning protection of children from abuse³. During this period, the Ministry of Internal Affairs had registered no complaints on torture against children⁴. According to the Judicial Department of the Kyrgyz Republic, criminal cases relating to torture and ill-treatment of children were not considered in courts⁵.

At the present, none of residential institution or institution for children in conflict with the law has information about child's right to file a complaint, to information on procedures for filing a complaint and public authorities which examine these complaints. In none of the institutions of care, children were able to describe complaint procedures and a description of actions of public officials or administration of the institution in case of complaint of ill-treatment is filed⁶.

Often, when children complaint on violence against them by the staff of the institution, measures of protection of children are not taken because there is a high degree of distrust to children.

Example 18

In summer of 2011, during the meeting of the Commission on Children Affairs under the administration of October district of Bishkek on considering further future of a child who constantly ran out of house, do not attend school and has been registered in the Inspectorate on Juvenile Affairs (hereinafter - IJA), members of CCA ignored request 12 years old boy on not sending him with the members of IJA as they beaten him during the arrest. Members of CCA made no attempt to examine the child, representatives of IJA, details of arrest, did not required representative of DFCS in order to place child into other institution and point physical examination of the child⁷.

Thus, in institutions of residential care there is a system where abuse of power by adult who leading children's groups usually remains unpunished.

15.2 Illegal detention and deprivation of liberty of children and impunity of officials

Data on number of children placed in the Center of adaptation and rehabilitation of juveniles (CARJ) which is noted in the National Report (p.147, picture. 10) can not be interpreted as a positive trend in the field of adaptation and rehabilitation of juveniles. Order of the Ministry of Internal Affairs No. 65 of 18 February 2002, approving Regulations of Center of adaptation and rehabilitation of juveniles, was adopted in violation of current legislation of the Kyrgyz Republic (Code of Criminal Procedure, Code of Administrative Responsibility Code, and Code "On Children") and violation of constitutional rights of children. The Constitution (Article 24) provides that: "Everyone has the right to liberty and security. No one shall be arrested, detained, or be deprived of liberty except court order and based on grounds and procedures prescribed by law. No one shall be subjected to detention for more than 48 hours without a court order. "

In fact, CARJ under the Ministry of Internal Affairs is can be considered as a pre-trial detention center as placement of children is confidential and there are severely limits on freedom of movement of children. According to the current Regulation, any child under age of 18 in the street without an adult can be placed without a court order in CARJ for up to 30 days.

¹ Letter of the General Prosecutor's Office of KR No.17-9 of 10 .05.2012.

² Result of the investigation in Belovodsky special school in May 2012.

³ The letter of the General Prosecutor's Office No.17-9 of 10.05.2012.

⁴ The letter of the Ministry of Interior Affairs No.1/2504 of 02.05.2012.

⁵ The letter of the Supreme Court of KR No. 01-11/861 of 27.09.2012.

⁶ Data of research in different institutions of juvenile justice in 2009-2013, NGOs, UNICEF and Ombudsman of KR.

⁷ Monitoring of Commission on Children Affairs by NGO "Independent Human Rights Group", 2011.

According to the data of registration log book, most often, unaccompanied children delivered to CARJ in order to establish their personal identity. As a rule, during the arrest of children, law enforcement officials do not inform them about causes for arrest and they do not register police report on arrest. During the interviews with children in CARJ, parents or legal representatives of the child are not called and lawyer is not given, even if the reason for sending a child to CARJ is suspect on committing an offense or crime. Analysis of causes of placement in CARJ shows that children arrested for committing offense or crime is only 3% of the total number of children in CARJ¹. Thus, in most of the CARM are homeless and neglected children who should be in the focus of attention of the social security authorities, and not the Interior Ministry. Thus, mostly homeless and neglected children are placed in CARJ and these children should be in institutions of social security authorities and not the in interior affairs' institutions.

The Ministry of Interior Affairs recognizes illegality of the Regulation on CARJ and inappropriate existence of CARJ under the Ministry of the Interior Affairs. In March 2013, the Ministry of Interior Affairs submitted a request to the Government on relocation of the institution under the Ministry of Social Development. However, the request met with resistance from the Government and the mayor of Bishkek, as a result violations of physical integrity of children continue.

In the Kyrgyz Republic children in conflict with the law from 11 to 14 years old can be directed to Belovodsky special boarding school, which has all criteria of prison and is only institution of this category in the country.

Belovodsky special boarding school is an institution subordinated to the Ministry of Education and Science of the Kyrgyz Republic. According to official government reports, relating to matters of reform of the juvenile justice system, placement of children in this institution evaluated by authorized state bodies as a punishment alternative to imprisonment. At the same time, such position is unfounded as, in practice, the institution meets all characteristics of prison: children are not able to leave the institution and return to family when they want, their lives and their movement is strictly regulated and controlled by administration of the institution, institution's building fenced with high wall with barbed wire and rehabilitation or special training programs for children is not provided in the school. Education is based on program of regular school; teachers and educators did not have any training on working with children in conflict with the law or in difficult situations.

According to the Provision² governing activities of the special boarding school, this school is a public institution for placing and upbringing of children who committed offences. Monitoring of Belovodsky special school by NGO "Youth Human Rights Group" in May 2011, showed that there are a large number of juveniles have not committed offense. Procedures for placing children in the special school established by law are not respected. Typically, children can be sent to the special boarding school for homelessness, vagrancy and absenteeism at school³.

According to Article 33 of the Law "On Education" placing of children aged between 11 and 14 years in the special boarding school is only possible on the basis of a court decision and only if child committed a socially dangerous act. In violation of the law, children were sent to the special boarding school from 2003 to 2013 on the basis of permit of the Ministry of Education and Science and decision of district administration's orders without any court decision.

The prosecutor's office of the Moscovsky region, on 18 February 2013, recognizing gross violation of law and rights of 44 children living in the special school by officials of the Commission on Children Affairs and the Ministry of Education, refused to file a criminal case because of the "lack of a criminal act". In April 2013, Moscovsky district court considered the case on the refusal to file a criminal case on the fact of

¹ According to the research of UNICEF "Torture in context of juvenile justice" in 2012, 15 children out of 507 children placed in CARJ in 2012 were the subject of suspicion of committing crime.

² Regulation "On special boarding school for children and teens with special needs in upbringing" on July 19, 1996, No.330

³ Analysis of decision of CCA on placement of children in Belovodsky special boarding school, 2012.

illegal deprivation of liberty of juveniles by placing them in Belovodsky special school. The District Court also recognized a gross violation of Article 33 of the Law "On Education", which establishes a judicial procedure for placing children to the institution, but did not see actions of the Ministry of Education and the district administration as an offense and dismissed the appeal and upheld decision of the prosecutor. Thus, the prosecutor and the court admitting violation of legal procedures for placing children in Belovodsky special school on the basis of the court and at the same time they refused to provide appropriate remedies and protect right to personal integrity. Children, in respect of whom violation of the law was recognized, continue to live in the special boarding school.

15.3 The detention during investigation and deprivation of liberty are common for children in conflict with the law

According to Article 114 of Code on Criminal Procedure, detention as a preventive measure can be applied to a child only in exceptional cases such as repeated commission of criminal offenses that qualify as serious crimes or accusation of a serious crime. Children who first committed offenses are not subject to pre-trial detention. In 2004, the UN Committee on the Rights of the Child concluding observation to the government of Kyrgyzstan noted that in practice, pre-trial detention of juveniles should be used in exceptional cases. In case of 67% of juvenile defendants detention is elected as a preventive measure¹.

The Kyrgyz Republic has a high level of stigma against children in conflict with the law and discrimination by representatives of the Prosecutor's Office and law enforcement. Thus, according to research of NGO, 60% of investigators and 24% of employees of the Inspectorate for Juvenile Affairs believe that juvenile suspects should be charged detention as a primary preventive measure without considering alternative measures. Also, 68% of surveyed investigators and 71% of prosecutors, and 68% of employees of DFCS believe that the detention of child as a punishment for a crime is an effective measure. 100% of the surveyed teachers of Belovodsky special boarding school believe that there is a category of difficult children and it is useless to do preventive work with them, as in any case they will take path of offense / crime, and same opinion was expressed by 78% of prosecutors, 90% of judges and 83% of representatives of DFCS².

Practice of violations of procedural norms on children at the stage of investigation is widespread. According to the Division on summarizing judicial practice and analyzes of judicial statistics of the Supreme Court, investigating authorities are not always implement measures to quickly investigate criminal cases involving children. There are cases when investigation of criminal cases was delayed up to 6 months from date of initiation of criminal proceedings, although, according to the norms of the Criminal Procedure Code of the Kyrgyz Republic (Code of Criminal Procedure), investigation in cases of children offenses should be completed no later than within 1 month (Article 166, Code of Criminal Procedure). There are no acts of survey of living conditions and education of children in 40% of cases brought to court. Most hearings of criminal case of juvenile held without a lawyer or parents and teachers, psychologists and social workers are not involved in criminal proceedings.

According to the data of the Supreme Court, in 2010, 433 juveniles were convicted and 162 were sentenced to imprisonment, 222 – to suspended imprisonment, 30 - restraint, 18 - appointment of fine³, but this data differs from the data of National Statistical Committee of the Kyrgyz Republic, which indicates that 358 juveniles were convicted in 2010⁴. According to National Statistics, 235 children were sentenced to imprisonment in 2011, which compounds 53% of the total number of convicted juveniles. 14.9% - were

¹ Analysis of judicial practice on juvenile cases of 2009-2010, PF "Center for Rights", 2012.

² The results of studies on measurement of level of stigmatization of children in conflict with the law, conducted within the project "Strengthening of NGOs working in the field of child protection in the Kyrgyz Republic" funded by EU. PF "Independent Human Rights Group", Votslava Y., January 2012.

³ Data of Judicial Department of the Supreme Court of the Kyrgyz Republic for 2010.

⁴ Data from the National Statistical Committee of the Kyrgyz Republic. Available online at: <http://www.stat.kg/stat.files/din.files/prest/5060006.pdf>.

sentenced to from 6 to 8 years of imprisonment, 5.1% - from 9 to 10 years, 2.1% - from 11 to 15 years, 0.4% - from 16 to 30 years of imprisonment¹, at the same time, the maximum sentence for juveniles cannot be more than 10 years according to criminal law.

According to the criminal legislation of the Kyrgyz Republic, there are 3 alternative types of criminal punishment to the deprivation of liberty. But these criminal penalties are applied extremely rare by courts of the Kyrgyz Republic. Courts continue to practice of imposing a punishment for juveniles as a triple fine (troynoy ayip), despite the fact that this form of punishment for juveniles was expelled in June 2007. The government does not provide data on practice of alternative forms of punishments for minors such as remedial work and a public apology with compensation for damages. This allows us to conclude that courts have no precedents for use of these alternative forms of punishment.

Articles 5 and 402-1 of the Code of Criminal Procedure set definition of mediation, conditions and consequences of use of conciliation procedures (mediation). However, procedures of mediation and restorative justice actors are not indicated in the legislation, which makes the use of mediation in practice more difficult. An additional factor preventing the spread of restorative justice in practice is the lack of public understanding of the importance of such procedures for minors².

15.4 Placement of child suspect with adult

According to the existing regulatory legal acts³, at the pretrial stage juveniles is allowed to be placed with adults in temporary detention centers (TDC) in Kyrgyzstan. Law "On the procedure and conditions of detention of persons detained for suspected and accused of committing a crime" from October 31, 2002 No. 150 prescribes separation of juvenile and adult prisoners, but at the same time, the Law stipulates (Article 31) that "in exceptional cases with the written consent of supervising prosecutor, juveniles are allowed to be placed with an adult who is positively characterized and arraigned on a criminal charge which is not related to serious or high crime."

According to a study of NGO in cooperation with the Ombudsman of KR "Prevention of torture in temporary detention centers of Internal Affairs of the Kyrgyz Republic", 9 of 193 detainees in temporary detention centers were minors. In two TDC, TDC under Regional Department of Internal Affairs of Assyk-Ata and TDC under Regional Department of Internal Affairs of Tokmok, minors were placed together with adults in one ward. In an interview with deputy to chief of one of the Regional Departments of Internal Affairs, it was noticed that former law enforcement officers detained in a single ward or in ward with minors⁴.

15.5 Obstacles to family-child communication in detention centers

In the Kyrgyz Republic, legislative norms note that visits of relatives and other persons to accused or convicted person are subject to the prior written permission of the authorized person in charge of criminal case, visits limited up to 2 times a month for 3 hours each. The same standards are written in the Law "On the procedure and conditions of detention of persons detained on suspicion and charge of committing crimes" (Articles 16 and 17). The permission is valid only for one date. In a written authorization, certified by official stamp, name of the visiting person and name of accused or convicted person should be indicated. Visit of more than 2 adult persons is not allowed.

The above mentioned standards are considered universal for all persons in detention centers; in other words, it applies to both adults and children. For parents, who live far from the place of process, it is often difficult to arrange a meeting with the child, especially during the preliminary investigation. Parents have to

¹ Statistical Book "Children of Kyrgyzstan", National Statistics Committee, UNICEF. 2013

² The article "The door to a new life," Vechernyi Bishkek of September 12, 2011.

³ Law "On the Procedure and conditions of detention of persons detained for suspected and accused of committing a crime" from October 31, 2002 number 150.

⁴ Azimov U., Sayakova D., Esenamanova E. Prevention of torture in detention centers of interior affairs. Bishkek, 2011.

beg investigator for permission for visit, after receiving permission from the investigator parents go to jail. These standards prevent implementation of rights of the child deprived of liberty to communication with family which was defined by the UN Convention on the Rights of the Child and procedures for obtaining permission to visits and determination amount and duration of visit should be simpler. The child should be given possibility of longer communication with his/her parents.

15.6 Absence of professional training on working with children in conflict with law

In the case of sentence or other types of non-custodial sentence, it is expected to implement appropriate work with convicted juveniles. In accordance with the legislation of the Kyrgyz Republic, activities connected with monitoring of decision performance of minor in non-custodial sentence imposed on Inspection on criminal executive (Probation Service) under the KSSEP of KR, which, unfortunately, do not have any appropriate personnel or methodological resources. Typically, these positions occupied by probation officers without special training on working with children in conflict with the law or by former members of administrative staff (e.g. accountants) or employees who have been dismissed for length of service from the law enforcement institution.

16. RECOMMENDATIONS

1. Implement the recommendation of UN Human Rights Council on strengthening policies ensuring full assurance of children's rights, with particular attention to implementation of the Guidelines for the Alternative Care of Children, in accordance with Resolution 11/7 of the UN Human Rights Council Resolution and Resolution 64/142 of the General Assembly of the United Nations.
2. To take immediate, effective and appropriate measures to ensure:
 - a. Raising awareness of society, including family on regarding persons with disabilities and foster respect for the rights and dignity of persons with disabilities;
 - b. Combating stereotypes and prejudices against people with disabilities, including those based on sex and age, in all areas of life;
 - c. Elimination of segregation of children with disabilities from public life and providing access to all social services, including access to education and health care.

Take relevant measures to ensure access of people with disabilities to equal physical environment, transportation, information and communications, including information and communications technologies and systems and other facilities and services open or provided for society, both in urban and in rural areas.

3. Ratify the UN Convention on the Rights of Persons with Disabilities.
4. Conduct awareness raising campaigns among students of high school about contraception and family planning. Create necessary conditions for effective and impartial investigation of cases of bride kidnapping.
5. Provide a clear definition of "discrimination" and special measures to ensure responsibility for acts of discrimination against vulnerable groups of children or discrimination should be considered as an aggravation. Provide legal protection to actual victim of hate crime based on discrimination and to bring offender to justice.
6. Conduct an information campaign among population, aimed at creating a tolerant attitude towards LGBT community. Toughen criminal penalties for hate crimes, including crime committed on grounds of homophobia and transphobia.
7. The Ministry of Health should conduct monitoring of institution of residential care, regardless of their jurisdiction, at least once in every six months, with assistance of independent medical experts in order to assess quality of treatment, supervision, rehabilitation work and good hygiene standards and norms. Conduct continuous retraining programs for health care personnel of institutions of residential care and cover travel expenses of the personnel.
8. Establish procedures of mandatory investigation of causes of death of any child placed in institutions of medico-social or educational care, including obligatory post-mortem autopsy, which should not depend on willingness of administration of institution where child was living.

9. Eliminate dependence of health and social services on presence of birth certificate in legislation of the Kyrgyz Republic in order to facilitate access to health care for children of internal migrants and children who do not have a birth certificate.
10. Inform all institutions, financed from the local budget, about established norms of funding for child nutrition. Revise established sum for nutrition of children with consideration for inflation and physician needs of children.
11. In reviewing the materials directly related to the interests of children by Commission for Children Affairs and courts, ensure the mandatory presence of a child whose case is being considered and child's legal representatives.
12. Establish a system for informing students of residential institutions on vocational guidance, taking into account psychological and pedagogical aspects and personal orientation of students.
13. Reduce excessive bureaucracy in obtaining birth certificate, especially, in case of children under age of one year. Obligate registrar offices act in accordance with legislation of the Kyrgyz Republic on registration of birth certificates.
14. Develop and implement in all closed institutions (including any type of boarding schools and places of pre-trial detention and correctional and special educational institutions), mechanism which is independent from administration of the institution, effective and accessible to children that allows them to file complaints and protect children from reprisals after their complaint.
15. In any residential care facilities an explanation of internal rules of institutions, disciplinary requirements and procedures, methods of seeking information and filing complaints and all other necessary matters to enable children to fully understand their rights and responsibilities during stay in the institution should be provided by management and staff in accessible form of understanding. Free and permanent access to such information should be provided to every child at any time and under any circumstances.
16. Ensure effective investigation of each complaint on use of torture and ill-treatment in institutions of any type. Bring to justice all responsible persons.
17. In the case of torture or ill-treatment in a closed institution the investigation and justice process must take into account the specifics of work with child victims of torture and child witnesses. To avoid creating additional difficulties for the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner. Age should not hinder a child's right to fully participate in the justice process. Treatment of any child should be conducted as with a capable person, who can be questioned and whose testimony should not be invalid or unreliable simply because of his age, if the age and maturity of the child allow him to give clear and detailed evidence.
18. Inform society through local public administration and DFCS about new procedures of adoption at the national level, in particular, procedure for adoption, formation and use of the State Data Bank on Children without parental care.
19. National Statistical Committee should register issues, relating to placement of children deprived of family environment, such as:
 - The number of children adopted at national and international level - with differentiation by sex and disabilities;
 - The number of citizens of the Kyrgyz Republic, wishing to adopt a child;
 - The current number of children in SDBC;
 - The number of graduates of institutions of residential care, who completed vocational high schools and higher education institutions;
 - The number of children reintegrated into their families before and during their placement in institutions of residential care - with differentiation by sex, and disabilities;
 - The number of family type children homes and foster families;
 - The number of shelters under public associations and foundations;
 - The ratio of social and biological orphans in institutions, regardless legal form of institutions and their jurisdiction.

Continue consideration of statistical data on working children in Kyrgyzstan.

20. Exclude norm of law, allowing placement of children with adults in the detention centers. Amend the Law "On the Procedure and conditions of detention of persons detained for suspected and accused of committing a crime."
21. Reconsider the Regulation on CARJ in accordance with international standards, in order to eliminate the practice of detention of minors without a court decision for a period exceeding 48 hours. Include norms requiring informing detainee, in accessible and understandable form, about reasons of arrest, to write report from the moment of arrest, immediately report to a family of child about his arrest, and provide an attorney if there is a suspicion of committing offense.
22. Revise placement of children living in Belovodsky special boarding school who were previously placed illegally in the institution without a court decision and continue to stay there. To prosecute relevant officials who caused illegal placement of children in Belovodsky special school from 2003 to 2012. Provide affected children with restoration of their rights and compensation for moral damage.
23. It is necessary at the level of the law to provide for the right of a minor when victim of torture or ill-treatment to choose a public defender who could attend in the interests of the minor all stages of criminal proceedings, when the legal representatives of the child are also the offenders, are not interested in protecting his rights, or do not have the actual ability to provide its real-time protection, and to develop procedures that establish the legal status of the public defender.
24. It is necessary to carry out qualification rising courses and to provide the relevant system of professional training of the personnel of the closed institutions, and also employees of DFCS and IJA, on specifics of work with children in the conflict to the law. It is necessary to reconsider an educational system in the closed establishments for children in the conflict to the law, taking modern scientific approaches into account, and to exclude retaliatory approaches to education. The personnel of such establishments should pass the corresponding training and have possibility to increase the qualification systematically.
25. Develop practice of use of alternatives to imprisonment penalties by courts. Allocate a sufficient amount of funding for relevant authorities and services responsible for monitoring and supervision of implementation of alternative sanctions.
26. Implement mechanisms of punishment of employers and impact on parents for use of child labor and exaction of forced labor of children. Conduct awareness campaign for parents and teachers of educational institutions on distinction of "forced labor", "child labor" and "educational labor".
27. Eliminate practice of child labor in institutions of residential. Labor education should be taught in the framework of educational program approved by the Ministry of Education.
28. Provide all the necessary human, informational and material resources for DFCS to enable effective performance of duties.
29. Immediate informing of DFCS on child who is in a difficult situation should be included in functional duties of any public authority.
30. Review procedures of inter-agency communication and collaboration to ensure protection of children in difficult situations.
31. Implement leveling classes and special programs on education of children with gaps in education.
32. Ensure the elimination of practice of payment of "voluntary fees" and other informal fees for children's education.

17. GLOSSARY

Ministry of Social Development of the Kyrgyz Republic (MSD KR) - a state executive body implementing the state policy in the field of social development including social protection, support of the most vulnerable groups, such as families and children who are in difficult situations, senior citizens and people with disabilities. The Ministry is also an authorized state body for protection of children.

Commission on children affairs (CCA) – a specialized state body for the protection of children established by local state administrations and city town halls. CCA operates on a periodic basis. The main functions of CCA are the control and approval of decisions of Department of Family and Children Support on identifying

the measures necessary for protection of children in difficult situations. The decision of the Commission is mandatory for relevant state and municipal bodies, legal entities regardless of ownership, officials and citizens.

Department of Family and Children Support (DFCS) – territorial division of Authorized Agency for Child Protection under the MSD KR and operates on permanent basis. The DFCS is responsible for identifying of families and children who are in difficult situations, research and risk analysis, providing social and legal protection of children.

The Ministry of Internal Affairs of Kyrgyz Republic (MIA KR) – is an armed state law enforcement body exercising executive and administrative functions to ensure public order and security of the individual and society and fights against crime.

Regional Department of Internal Affairs (RDIA) - a territorial division of MIA KR.

Inspection on juvenile affairs (IJA) - a specialized division of MIA KR, responsible for prevention of crimes, offences and homelessness among children.

Temporary detention center (TDC) - division of MIA KR for detention of arrested persons on suspicion of committing a crime.

Centre for Adaptation and Rehabilitation of Juveniles (CARJ) - a structural subdivision of MIA KR responsible for identifying homelessness and offences among children and temporary detention of juveniles, homeless children and children suspected of committing offenses under conditions precluding freedom of movement.

Kyrgyz State Service of Execution Punishment (KSSEP) - law enforcement and state executive body that implements the state policy on penal system.

Pre-trial detention center (PDC) - territorial body of penal system of the Kyrgyz Republic intended to contain accused person in respect of which imprisonment was applied as a measure of restraint.

Ombudsman of the Kyrgyz Republic - a government body responsible for parliamentary control over the observance of constitutional rights and freedoms of individual.

State Inspectorate for Environmental and Technical Safety - is authorized state body exercising state supervision and control on environmental and technical safety, including safety of working conditions and compliance with labor laws.

Psychological, medical, and educational counsel (PMEC) – a state organization dedicated to selection, study, placement of children with disabilities in institutions.