



World Organisation Against Torture
Organisation Mondiale Contre la Torture
P.O. Box 21 - 8, rue du Vieux-Billard
CH 1211 Geneva 8, Switzerland
Tel. +41-22-809.49.39 Fax +41-22-809.49.29



Адам Укугун Коргоо Кыргыз Комитети
The Kyrgyz Committee for Human Rights
Кыргызский Комитет по Правам Человека

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Rights of the Child in Kyrgyzstan

Report on the implementation of the Convention on the Rights of the Child by Kyrgyzstan

A report prepared for the Committee on the Rights of Child
37th Session – Geneva, September 2004

Researched and written by: Ramazan Dyrlydaev and Séverine Jacomy
Co-ordinated and edited by: Séverine Jacomy and Sylvain Vité
Director of the publication: Eric Sottas

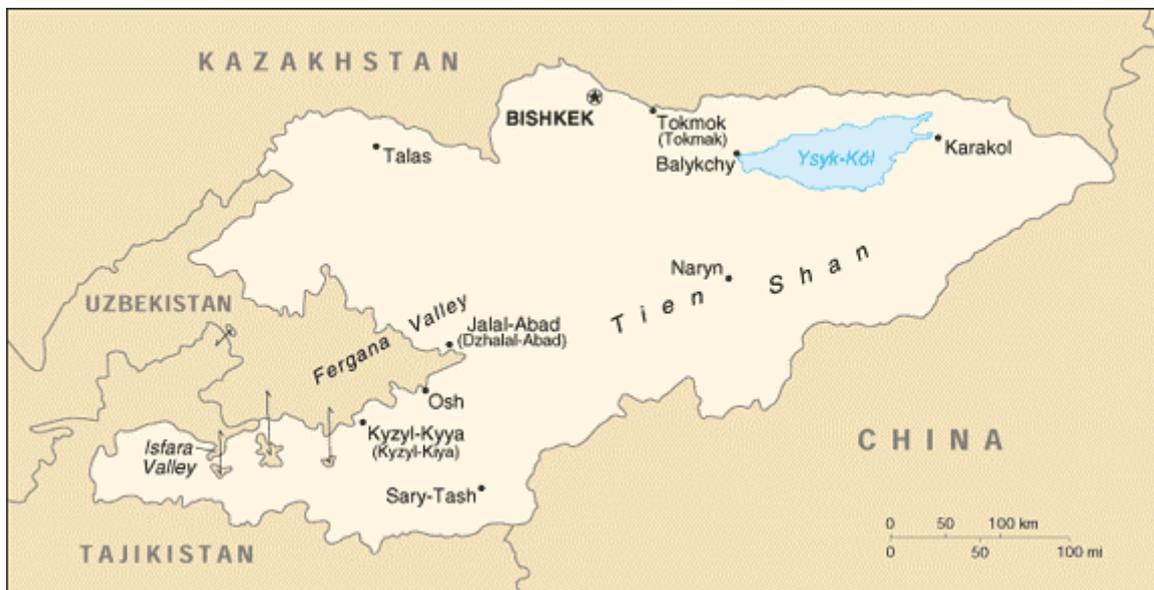
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Introduction

Kyrgyzstan is a small mountainous country of 4.7 million inhabitants, with nearly 2 millions under 18 years. More than half of the population is Kyrgyz, while most of the rest is Russian or Uzbek. 75% of the population is Muslim and about 20% Russian Orthodox. The majority of the population remains rural, even though many families migrate to urban centres such as the capital Bishkek in the hope of better socio-economic opportunities. The country has gone through transition to market economy and has been hit by poverty. Despite the tangible international support that has been, and is being, provided to Kyrgyzstan in dealing with its social and economic problems, the country still ranks among the poorest, according to international financial institutions. On the other hand, the same institutions describe Kyrgyzstan government as extremely corrupt. Corruption is indeed a key obstacle to the improvement of the social and economic situation. Between 1990 and 2000, political and economic changes have made more than 600 000 people emigrate¹ - mostly to Russia, Kazakhstan and Western countries, where they survive on cheap labour, if not sheer exploitation on black markets.



Map courtesy of the Perry-Castañeda Library Map Collection

Following the break-up of the Soviet Union, Kyrgyzstan became a sovereign state in 1991. Although the 1993 Constitution describes the system as a “sovereign, unitary, democratic Republic”², President Askar Akayev controls the government and the Parliament remains weak despite efforts to curb some abusive presidential initiatives. Repression of political opposition is strong. Civil society is growing but violations of freedom of expression and press, as well as harassment of human rights defenders, are common³. Police brutality, torture, arbitrary arrests and abuses in prisons are regularly documented⁴.

¹ See *Poverty and welfare in Kyrgyzstan over the 1990s – country paper*, coordinator K. Koichumanova, background paper for the Social Monitor 2002, UNICEF Innocenti research centre, 2002.

² Constitution of the Kyrgyz Republic, Art.1 Para.1

³ The Kyrgyzstan Committee for Human Rights is being constantly persecuted by the authorities. Its registration was twice cancelled (first in 1998; then, having been registered in the names of outsiders, was deregistered again in 2003, and now operates without registration), and many of its staff members faced arrests.

⁴ See regular OMCT appeals on Kyrgyzstan www.omct.org

In the views of many in the population, the former totalitarian regime took better care of children than the current government. Children's future was well secured. All of them were enrolled in secondary schools or secondary vocational schools. Day-care services were available for infants and all children could participate in recreational activities free of charge. But while the Soviet legacy induced a tradition of high and nearly universal educational and social standards, it also established strong trends of institutionalisation and central State control over children, especially over those in difficult situations. Transition to market economy has radically affected the quality and resources of State provisions and interventions in favour of all children, without eradicating their harshness on the most deprived. Children's lifestyles and family situations now reflect the challenges of transition, allowing for more diverse opportunities but also for more risks, such as those induced by poverty, life on the street, child labour, substance abuse, and crime. The gap between rich and poor children is widening, while high levels of corruption, including within child welfare institutions, are weakening the State's efforts to protect and promote children's rights in the country.

In that context, KCHR and OMCT welcome the second periodic report submitted by Kyrgyzstan to the Committee⁵ in accordance with article 44 (1) b of the Convention on the Rights of the Child (CRC). This report covers the period 1999-2001 and follows the initial report which was presented in December 1999 and was considered by the Committee in June 2000.

The present report covers the period 1998-2003 and focuses on provisions of the CRC which fall under the mandate of KCHR and OMCT, namely the right to be protected from discrimination, from torture and other cruel, inhuman, or degrading treatment or punishment, from other forms of violence, and the rights of children in conflict with the law.

⁵ State Party report to the UN Committee on the Rights of the Child, Kyrgyzstan, [CRC/C/104/Add.4](#) October 2001, original version in Russian.

1. International standards

Kyrgyzstan is a party to the six main international instruments related to human rights, in particular the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Kyrgyzstan acceded to the Convention of the Rights of the Child on 7th October 1994.

The Constitution of Kyrgyzstan states in its article 12, para.3, that “international treaties and other norms of the international law, which have been ratified by the Kyrgyz Republic, shall be a constituent and directly applicable part of the Legislation of the Kyrgyz Republic.”⁶ and in its article 16, para.1, that “basic human rights and freedoms shall be recognized and guaranteed in accordance with universally accepted norms and principles of international law and international treaties on the issues of human rights, which have been ratified by the Kyrgyz Republic”. The Constitution further states, in Article 18, para.1, that “no one may be exposed to torment, torture, or inhuman and humiliating punishments”.

In 2003, a post of human rights ombudsman was created by the Kyrgyz government and taken up by Mr. Tursunbai Bakir. At the end of the year, he reported on his first year in office, during which he received some 10,000 complaints from Kyrgyz citizens. He stated that “the overall situation is far from favourable.”⁷

Indeed, UN treaty monitoring bodies have regularly expressed concerns about grave violations of human rights committed by State agents in Kyrgyzstan and by the lack of adequate legal provisions to prevent, inquire and punish such instances. Even treaty monitoring bodies non specialised in children’s rights have highlighted the worrying situation of children. In July 2000, the UN Human Rights Committee concluded its session on Kyrgyzstan by stating that it was “concerned about the continued existence of child labour, the problem of mistreatment of children in some educational institutions, cruel punishment and the phenomenon of trafficking in children. The State party must urgently address these issues so as to ensure the special protection to which children are entitled under article 24 of the Covenant. Specifically, corporal punishment must be prohibited”.⁸

In its concluding observations on the initial report of Kyrgyzstan examined in May 2000, the Committee on the Rights of the Child noted that although the State party had adopted various legislative and administrative measures relating to children's rights, “the implementation of these measures was impeded by several factors, namely deficiencies in coordination, budgetary allocation and resources, and the involvement of civil society”⁹.

Since then, Kyrgyzstan has acceded to the Optional Protocol on children in armed conflict on 13th August 2003 and to the Optional Protocol on the sale of children, child prostitution and child pornography on 12th February 2003. While full implementation of the former is an attainable target for the government of Kyrgyzstan, the latter presents numerous challenges.

While welcoming the accession of Kyrgyzstan to the two optional protocols to the Convention, KCHR and OMCT would also urge the Government of Kyrgyzstan to adopt further measures to better implement and monitor the provisions of the Convention on the Rights of the Child and of the five other international human rights treaties at national level.

⁶ Constitution of the Kyrgyz Republic, *ibid*.

⁷ *Kyrgyzstan - Preliminary results of ombudsman's activities*, Bishkek, by correspondent Tolkun Namatbaeva, Deutsche Welle, December 15, 2003

⁸ Concluding observations of the UN Human Rights Committee, CCPR/CO/69/KGZ, 24.07.2000, para.19

⁹ UN Committee on the Rights of the Child, CRC/C/15/Add.127. (Concluding Observations/Comments) Para. 1.6., 09/08/2000

2. Definition of the child

The State party report presents different aspects of the definition of the child, while recognising that corresponding norms are sometimes not respected or make exceptions¹⁰.

There is no definition of the child as such in the Kyrgyz legislation. However, several legislative acts such as the law “on the protection of the rights of minors” specify that minors are defined as being “up to the age of 18”.

Yet, majority can be attained before 18 in two cases. Article 18 of the Marriage and Family Code prohibits marriage before the age of 18, but in exceptional cases, at the separate request of both partners, the age at which the woman may marry can be lowered, but not by more than one year. She will then be considered to have attained majority. A child can also be emancipated at 16 for the purposes of a working contract or upon decision of his legal representatives, which also results in attaining majority and full civil capabilities before 18.

The minimum age for work is 14 and persons under the age of 18 may not be employed to do heavy labour or to work under harmful or dangerous conditions. At the same time, there are no age definitions for compulsory education, although primary and secondary education are considered compulsory. As a result, and despite programmes of assistance set up by the government, many children drop out from school and engage in labour at an early age.

The minimum age of criminal responsibility is 14. Children found guilty of serious penal offences can be imprisoned from that age.

OMCT and KHRC would recommend that Kyrgyzstan amend its legislation so that, even in instances of marriage and independent work from the age of 16, all persons under 18 still fully benefit from child protection measures and from the status of minor in penal procedures. We would further recommend that the ages of compulsory education be clearly established and that State provisions for school age children from families in financial difficulties be systematic. Finally, Kyrgyzstan should explore possibilities of abolishing imprisonment of minors in conflict with the law, with only very few exceptions where child offenders present an immediate danger for society and/or when risks of collusion during investigation have been fully demonstrated.

3. Discrimination

Socio-economic discrimination

The current state of the educational system in Kyrgyzstan is poor, especially in comparison to the pre-transition period. Schools are understaffed and face a shortage of equipment, text books and teaching aids. The problem is especially acute in rural districts where the majority of Kyrgyz population reside. Only well-off families can afford good education for their children, but they account for only 10% of the country's population.¹¹ Indeed, education in public "elite" schools is only available to children of families who can pay monthly bribes.

¹⁰ State Party report, [CRC/C/104/Add.4](#), *ibid.*, p. 11 para.23.

¹¹ Source: Kyrgyz National New Agency, *Kabar*, March 26, 2003

For example, School No. 13 in Bishkek allegedly does not enrol children from low income families because each family must pay a monthly bribe of 250 soms, in addition to renovation costs and other contributions. No law or regulations allow for such payments. As a result, children from low socio-economic background are discriminated against and disadvantaged further by their low level of education.

OMCT and KHRC would recommend the government of Kyrgyzstan to make education for all a budgetary priority with the aim of bringing all schools and educational personnel in the country to the same level of funding and qualification, and that bribing be explicitly forbidden and controlled by the administration in order to guarantee equal access to education.

Discrimination against girls

In its concluding observations of 1st September 2000, the Committee on Economic, Social and Cultural Rights expressed concern "about the phenomenon of children dropping out of school to provide for their families. The situation of girls is particularly alarming, as their access to education is being curtailed by a revival of the tradition of early marriage, and a decrease in the prestige of having a formal education"¹².

In terms of protection from early marriage and its potential consequences for girls, the legislation is also discriminatory. As exposed above, Article 18 of the Marriage and Family Code allows marriage from the age of 17 for girls. In addition, according to the State party report, the Penal Code only guarantees protection from early marriage and abduction of girls under the age of 16¹³. Hence, the legislation of Kyrgyzstan is not only discriminatory but also contradictory in its efforts to protect girls.

OMCT and KHRC therefore recommend the Committee on the Rights of the Child to urge the government of Kyrgyzstan to extend the protection of girls from early marriage and abduction up to the age of 18, marriage from the age of 17 being only an exception made in case of explicit request by the future spouses themselves and to be made applicable to both boys and girls.

4. Protection from torture and other cruel, inhuman or degrading treatment or punishment

Article 37 of the Convention provides that "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". OMCT believes that the Government report's handling of the issue of torture and other forms of ill-treatment is insufficient.

a. Legal framework

In its concluding observations of 9 August 2000, "like the Committee against Torture (CAT/C/23/6), the Committee on the Rights of the Child expresse[d] concern at the absence of a definition of torture in the 1998 Criminal Code and appropriate penalties, and the apparent failure to provide prompt, impartial and full investigation into allegations of torture, as well as the failure to prosecute alleged perpetrators."¹⁴

¹² ESCR Kyrgyzstan.. E/C.12/1/Add.49, para. 23

¹³ State Party report, [CRC/C/104/Add.4](#), *ibid*, p. 13 para.27.

¹⁴ UN Committee on the Rights of the Child, [CRC/C/15/Add.127](#). (Concluding Observations/Comments) Para. 34., 09/08/2000

The State Party report argues that children are protected from torture by provisions included in the “law on the protection of the rights of minors”, which specifies that minors cannot be physically or psychologically coerced to give testimonials, confessions or evidence, in the absence of a lawyer. Moreover, interrogation of child suspects cannot last for more than two hours without a break, and no more than four hours a day in the most difficult cases¹⁵.

Such protection is extremely poor. It appears to suggest that children do not have immediate access to a lawyer and it allows for the use of excessive psychological pressure during interrogation. The status of the lawyer is not specified. In addition, the State party report does not refer to due access to a medical doctor or to any possibilities of communicating with the family. Back in 2000, the Committee on the Rights of the Child had already expressed concerns that “despite laws to the contrary, the militia often do not notify parents of arrests, and that often neither parents nor lawyers are present during questioning of juveniles”¹⁶.

Finally, the State party does not report on the existence of any child-sensitive complaint mechanisms, or specific prosecution and sanctions against perpetrators of acts of torture committed against children.

On November 2003, it was reported that President Askar Akaev amended the Criminal Code to make torture of civilians by law enforcement or other governmental officials a crime. Depending on the severity of the torture, the penalty could now be up to 10 years imprisonment.¹⁷ But without legal guarantees and due implementation of the above mentioned provisions, such a law remains insufficient to prevent and protect children from torture and inhuman or degrading in Kyrgyzstan.

The Committee on the Rights of the Child should request the government to provide more details about the content, status and implementation of the 2003 amendment of the Criminal Code regarding acts of torture and penalties for such crimes.

b. Practice

Several cases of torture and child abuse committed by state agents have been reported in the local media over the past years. Criminal investigations were undertaken concerning some of these cases. For instance, the Chu region Prosecutor's Office has initiated criminal proceedings against half of the personnel of the police station of the town of Jany-Jer for having collectively beaten, forced to confession and attempted to drown Ermek Kudaibergenov, 16, Erkin (a visually handicapped person), 16, and Davran Yesenkulov, 17¹⁸. Some of the officers were expelled from law enforcement bodies, while others were sentenced to different terms of imprisonment. But sentences were conditional. Another case is that of police Junior Sergeant Nurlan Badyshbaev who raped an 8 year old girl on August 17, 1998. He was judged and imprisoned although he denied his guilt. Investigators found out that he had been drunk. Medical examination confirmed Badyshbaev's guilt.

But several other cases are either not investigated or abandoned. On February 27, 1998 four officers of the Leninsky District Interior Department of Bishkek allegedly beat a boy named Sergei Skromny and drowned him in an ash dump belonging to the Bishkek Cogeneration

¹⁵ State Party report, [CRC/C/104/Add.4](#), *ibid*, p.23 para.55.

¹⁶ UN Committee on the Rights of the Child, [CRC/C/15/Add.127.](#), *ibid*. Para 61.

¹⁷ Source: Radio Free Europe/RL

¹⁸ Source: *Delo Nomer*, 16.05.2003

Plant. A sentence of acquittal was pronounced in favour of some of the officers by the court, while some others were never identified. The international community repeatedly demanded proper investigation of the case. The parents are still seeking justice but to no avail. KCHR continues to monitor the Skromny case.

KCHR also received a written statement from a juvenile detainee Andrei Polkovnikov asserting that Panfilov District Interior Department officers were deriding and beating him. KCHR directed his statement to the General Prosecutor's Office. The official response was that the police officers had acted within limits of law and that no evidence of torture or other inhuman or degrading treatment could be found. OMCT took up the case¹⁹ and the country mission of the UNHCHR addressed the government. The government reply was that criminal proceedings had been initiated against the suspect officers on December 4, 1998. The General Prosecutor's Office was instructed to conduct the case. However, the case against the torturers was closed altogether. Moreover, on December 20, 1999 Polkovnikov was convicted by the Zhaily district court, although evidence against him was not obtained legally. Polkovnikov testified at a seminar on torture held by KCHR, IHF and the OSCE Centre in Bishkek jointly with the Kyrgyzstan Presidential Office. During the seminar the Presidential Office promised to exercise special control of this particular case as well as other cases involving torture of minors. However, the torturers remain unpunished.

Several other similar cases of police brutality and arbitrary detention aimed at forcing children to confess petty crimes were recorded by KCHR, which were never investigated nor punished.

In April 1998, officers of the Municipal Police Station No. 12 arrested three minors, A. Zhuravlev, S. Vasiliev, A. Molodykh who were taken to the Pervomaisky District Interior Department, where they were beaten and forced to confess offences. The case was submitted to the district court, which only returned it for further investigation. Finally, the boys were condemned, and none of the officers were punished.

In July 1998, Natalya Iede appealed to KCHR reporting that when she came home from work her daughter Olga (9 years old) and her son Vitaly (10 years old) had been taken away by police officers. When she came to the Aksui district Interior Department her daughter was being questioned by policemen, while her son Vitaly was not there. She protested against her children being interrogated in her absence, and asked where her son was. Some time later Vitaly was brought in a car. She asked where he had been, and Vitaly said that their neighbour Zhapar Sharipov and officers of the Interior Department had taken him to the local river. They beat him there and threw him into the water twice. He almost drowned. The neighbour was claiming that Vitaly had stolen 500 USD from his car. Vitaly denied having taken the money and explained that he was just playing near the spray faucet when the policemen captured him. On the next day Vitaly was taken to the Interior Department again, and his mother was not allowed to see him until the evening. Police officers claimed that he confessed to having stolen the money and given it to his mother. She denied these facts and argued that her child had been ill-treated and forced to confess. She was also held for several months in pre-trial detention. Today, the family is still seeking justice but to no avail.

In December 1998, 9 year old Kanybek Abdyldaev and Dilshat Mukhamedsopiev were beaten by officers of the Sverdlovsky district Interior Department of Bishkek. As they were playing in the street, a car had approached them, two officers of the district Interior Department had

¹⁹ OMCT urgent appeal KGZ 211098.CC

come out and taken the boys by the collar and forced them into the trunk. A woman who had tried to intervene informed the parents, who ran to the Department to find that the officers had beaten their sons, hitting their heads against the wall. The policemen were not punished, despite the parents' appeals to different authorities.

On September 16, 1999 police officers from the 3rd Battalion of the Guard Department Kh. Kudaibergenov, T. Kubegenov and V. Kordan arrested and beat a minor named K. Osmonov without warrant. No investigation was carried out.

On new year's eve of 2000, a 15 year old boy named Nurkabai was severely beaten by drunk police officers. They stopped him at the Dordoi market where he worked as a porter and sent him for a bottle of vodka (which he was supposed to buy with his own money). The boy had no money, and he failed to get any vodka on credit. When he returned without any liquor the policemen (five officers, all in all) started to beat him professionally, with feet and clubs. Then they sent him out again ordering this time to fetch at least some beer. He started stumbling home, half alive, but fell unconscious before he could get there. His brother found him lying in the street and took him to hospital. Nurkabai's injury was so severe that he remained in a coma for a long time. He had brain contusion and left-side paresis. His condition was aggravated by a serious traumatic brain injury he suffered years before.²⁰ No investigation was carried out.

Several cases of political repression have also affected children over the past few years. In particular, on March 17th 2002, around 100 residents of Kyzyl-Tuu village headed for Kerben, located at the centre of the Aksy district, to demonstrate in protest of the trial of opposition parliamentarian Mr. Beknazarov leader of a movement against the transfer of a part of the territory of Kyrgyzstan to China agreed by the government²¹. On the way to Kerben, the district's authorities and the special police forces (OMON) reportedly blocked their route and ordered the villagers to turn back. When the demonstrators refused to stop, the OMON reportedly indiscriminately opened fire on the assembled crowd. Several people were wounded and at least 13 died as a result of the authorities' attack. Several people, among whom children aged between 16 and 17 years, were arbitrarily detained and tortured by members of the Aksy District Police Department (ROVD). They were stripped naked, showered with ice-cold water and beaten up. This treatment lasted between 5 to 6 hours and was aimed at obliging them to testify against themselves. They were accused of having taken part in public disturbances, during which one of the buildings of the police department and the house of a policeman in Kerben had been burned down by demonstrators.

Fattakh Ziyatdinov (17) was allegedly arrested and interrogated without the presence of a legal counsel. He was accused of having organized the disturbances. He was beaten with a stick and had his hands pierced with an awl. He was then obliged to sign a paper, without knowing what would be done with this paper. Shukrat Baimatov (16) was reportedly shot at by masked persons in Kerben, and later was also arrested and taken to the ROVD facilities, where he was tortured in the ways mentioned above. Given that his condition was deteriorating due to this treatment he was then sent to the hospital. The names of the other teenagers that were arrested and tortured remained unknown, as it has reportedly proven difficult to get this information, due to their fear of being included on such a list, and therefore potentially becoming the targets of further human rights violations.²²

²⁰ Source: *Vecherny Bishkek*, January 05, 2000.

²¹ OMCT urgent appeals KGZ 290102, followed by 14 follow up (KGZ 290102.1 to KGZ 290102.14)

²² OMCT urgent appeal KGZ 170402.CC

In April, demonstrations continued to take place all over the Kyrgyz Republic in protest against the transfer of territory of Kyrgyzstan to China, the impunity enjoyed by the perpetrators of the Aksy tragedy and demanding the resignation of President Askar Akaev. Sartov Januzakovich Ulukman, 16 years old, who was taking part in the demonstration in Bishkek, was arrested and transported initially to UVD of Bishkek, before being transferred to ROVD. During his arrest, he was reportedly hit in the chest, kicked in the back and pushed into a bus. While he was being transported, he was beaten up by the ROVD police forces leaving him bruised and injured. There, he was interrogated without the presence of his family by the policemen, who used death threats to obtain information concerning the organisers of the demonstrations. After more than five hours of arbitrary detention and ill-treatment, he was released. However, the General Prosecutor refused to accept his plea and no measures have been taken as yet to bring the perpetrators of these human rights violations to justice and on 16 May 2002 two law enforcement officers visited his home and threatened his mother and younger sister in relation with this affair.

OMCT and KCHR are very concerned about the impunity enjoyed by perpetrators of the above listed acts of torture committed against children in Kyrgyzstan in recent years, and about the absence of efficient prevention and protection mechanisms, as well as political will, to fully respect the rights of children alleged or suspected of being in conflict with the law. We request the Committee on the Rights of the Child to urge the government of Kyrgyzstan:

- to urgently undertake an in-depth reform of its police and militia in order to fully train, monitor and, if necessary, sanction its staff so that it will operate in full accordance with international human rights treaties and, in particular, with the UN Convention Against Torture and the CRC. For that purpose, specialised youth police units in all police stations, as well as in municipal police departments, should be duly established to respond both to child protection and juvenile delinquency cases with the purpose and duty of promoting the rights of children;
- to change its legislation and practice in order to ensure that children held in police stations have immediate access to an independent lawyer and a civilian doctor and can communicate with their family;
- to ensure that police records include medical information and that medical examinations and interventions include appropriate psychological and age specific diagnosis and support;
- to amend its legislation and reform its administration in order to fully prevent, monitor, sanction and compensate for any act of torture or inhuman and degrading treatment committed against a child.

5. Protection from other forms of violence

Article 19 of the CRC requires children's protection "(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

a. Legal framework

In its concluding observations further to the initial report presented by Kyrgyzstan, the Committee on the Rights of the Child recommended that "all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions, be prohibited. (...); that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children (...) that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools (...); that programmes for the rehabilitation and reintegration of abused children be strengthened. Moreover, adequate procedures and mechanisms needed to be established to receive complaints; monitor, investigate and prosecute instances of ill-treatment; and ensure that the abused child is not victimized in legal proceedings."²³

Since then, the government has engaged in some initiatives in the field of child protection. Notably, in collaboration with UNICEF, the government has been looking at ways to "strengthen family care and assistance to prevent the abandonment of children; to phase out the exploitative system of "child inspectors" and build the capacity of community social workers to assist poor families and prevent family breakdown; and, to strengthen systems of adoption and foster care"²⁴. These measures may contribute to prevent neglect and abuse in the domestic environment. However, they are not addressing the prevailing culture of violence and the socio-economic conditions which intensify its consequences. Moreover, in cases of child abuse or neglect in the family, a common response is the deprivation of parental rights, which leads to massive institutionalization or foster care of children. In the long term, this trend may be more detrimental for the child than the initial abuse, or it may deter children from reporting abuse. In addition, the State party report does not address ways of preventing abuse and neglect in State institutions, which does not give a full picture of State efforts in this area.

The only reported progress relates to complaint mechanisms. A presidential decree on "Measures on further improvement of the work of local authorities in declarations and complaints of citizens" of 17 January 2001 allows for a non restrictive access to complaint mechanisms for minors. However, the government does not report on the impact of that decree and highlights children's lack of awareness of complaint mechanisms altogether. Also, allowing direct access to complaint mechanisms is not enough. If children are to be able to complaint on acts of violence or abuse they endure, they should be both educated about their rights and welcomed by trained and child-friendly staff, in charge of explaining them procedures, consequences, protection provisions, etc.

²³ UN Committee on the Rights of the Child, CRC/C/15/Add.127. (Concluding Observations/Comments) Para. 40., 09/08/2000

²⁴ See UNICEF website – *Kyrgyzstan at a glance* <http://www.unicef.org/infobycountry/kyrgyzstan.html>

OMCT and KCHR thus support and reiterate the Committee's recommendations to reinforce legislative measures against all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions.

b. Violence, abuse and neglect

A growing trend in the past years has been the neglect, abandonment and, in some cases, killing of new born babies. Reportedly, one can find newspaper ads placed by destitute parents trying to give away their children to other families²⁵ and the press has reported several cases of killings and trafficking of babies.

In a well publicised case, the investigation department of the Kyrgyzstan Interior Ministry disclosed the illegal transportation of newborn girl Katya K. to Israel for subsequent resale. A number of Kyrgyzstan citizens responsible for baby trafficking were arrested. As a result of investigation criminal proceedings were initiated against both parents and two Bishkek residents who acted as intermediaries.²⁶

Dead babies are reportedly found on dumping-grounds, in garbage cans, irrigation canals, house basements, and in Bishkek city parks. On October 30th, 2003 the body of a 2 months old baby was discovered near a hospital in the city of Tokmok. On October 31 a dead baby girl was found in the city of Karakol, at the crossroads of Tynystanov and Kutmanaliev streets.

Reports of extreme acts of violence committed by and against children are also common in newspapers. These range from murder of a three-year-old by a ten year old to children victims of beating or sexual abuse by drunk relatives, etc.

Children are allegedly facing violence in schools as well. According to the press²⁷, a teacher in one Osh school hit a 6th form pupil with a heavy pointer and broke his elbow joint. The child was in pain shock but he did not allow him to leave the classroom until the break. The boy walked home with great difficulty. This was no accident: other children confirm that some teachers have the habit of hitting them with a pointer or a book

Self-harm is also an issue of concern. Juvenile suicides has become a major problem in Kyrgyzstan. Most suicide cases are related to the difficult social and economic situation. According to the Interior Ministry, 573 people committed suicide in 2002, including 93 children and juveniles. In the first 6 months of 2003, 401 suicide cases were recorded. In the Chu region alone, 13 teenagers died of suicide during the same period²⁸.

OMCT and KCHR recommend that the government urgently develops anonymous hot-lines and psychosocial rehabilitation services, as well as child-sensitive reporting and complaint mechanisms and awareness raising campaigns addressing both adults and children. Prevention measures and sanctions should allow for mediation and rehabilitation of both victims and offenders in the long term, especially in cases of domestic violence.

²⁵ In August 1998, *Vecherny Bishkek* reported the case of a pregnant woman who came to the newspaper's office to explain her case and place an ad – in order to find a family willing to adopt her future child and support her financially for the remaining time of her pregnancy.

²⁶ *Vecherny Bishkek*, March 5th, 1999.

²⁷ *Vecherny Bishkek*, November 20th, 2003

²⁸ RIA Novosti, Yulia Orlova, 26.09.2003

c. Sexual abuse, trafficking and sexual exploitation

The CRC provides in article 34 that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials”

Still, in Kyrgyzstan, there are regular reports of sexual abuses of children by relatives, State agents or unknown persons. According to the official statistics the numbers of cases related to sexual abuse have been increasing three times every six months over the past five years, with girls being most vulnerable. Such figures may be due to an increased attention to this problem and to some improvements in the new Code of Criminal Procedures that has included detailed definitions and liabilities for crimes against minors, including sexual offences.

The State party report argues that the legislation covers a large scope of issues related to sexual exploitation of children (pimping, pornography, trafficking, etc.)²⁹. Yet, some improvements are needed to bring the national legislation in line with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to which Kyrgyzstan acceded on 12th February 2003. In particular, as prostitution is illegal in Kyrgyzstan, girls above 16, which is the age of sexual consent, may be penalised with a warning or a fine for being involved in prostitution, instead of being considered as victims. But the key and most urgent issue is certainly implementation of existing law, including through the fight against corruption, as well as the establishment of procedures and services that promote children’s rights and dignity.

Indeed, child prostitution is thriving in Kyrgyzstan. Teenage girls engage or are forced into prostitution for socio-economic reasons. But in addition to sexual exploitation, they face all sorts of violence. It is not infrequent for clients or pimps to beat the girls and gang-rape them. The State party report estimates that 10% of people involved in prostitution are minors³⁰. According to other sources, in Bishkek 20% of 2000 prostitutes are teenagers³¹.

A recent field investigation was carried out by IWPR, in four of the five Central Asian republics, on the phenomenon of child prostitution³². The research confirmed that child prostitution is widespread in Kyrgyzstan, although hidden at first sight from foreigners, especially in big towns. Children involved in prostitution are to be found in private homes converted into brothels or in discreet clubs. The majority are aged 11-16, with boys involved too. “IWPR heard reports of corruption in both the judiciary and the police. In addition, where law-enforcement agencies are doing their best to protect minors in the sex trade, they are often badly under-resourced. (...) Madina, who is now 16, agreed to be interviewed about her life as a prostitute in return for 350 soms. She described how her regular clients include police officers, and local officials who employ her when important visitors are in town. “I have accompanied the judge to picnics in the mountains several times,” said Madina. “My friend came with me - she was with the prosecutor - and some police officers came with us. They had their automatics with them and they even let me do some shooting.” »³³. Children from

²⁹ State Party report, [CRC/C/104/Add.4](#), *ibid*, p.50 para.85.

³⁰ *ibid*.

³¹ See CANEE, Child Abuse and Neglect in Eastern Europe, <http://www.canee.net>

³² *Lost Children of Central Asia*, IWPR (Institute for War and Peace Reporting), January 2004, UK.

³³ *Ibid*. See full text on http://www.iwpr.net/index.pl?archive/rca/rca_200401_257_2_eng.txt

poor and abusive families are obviously the most vulnerable, including girls from rural areas that are directly recruited by pimps who promises great financial reward for temporary involvement.

Several sources report a growing trend of selling or “handing over” of girls by their own parents. These girls are most vulnerable to near slavery and sexual abuse in early marriage and/or to prostitution and trafficking. Both IWPR³⁴ and IOM/OSCE³⁵ reports confirm local estimates that Kyrgyzstan has become a lead country in trafficking of minors for sexual purposes, the United Arab Emirates and Turkey being the main countries of destination.

For instance, *Vecherniy Bishkek* reported the case of two girls, Alina, 17 years old, and Dinara, 15 years old, who managed to escape from a brothel before they were transported to UAE³⁶. Alina reported that in early October 2003, around 4 p.m., she was approached by two unknown young men at a mini-market in Jalal-Abad. Under some false pretext they took her to a solitary room, and one of them knocked her unconscious with a heavy object. When she recovered she found herself lying on a sofa in a strange room, with another girl who was in tears. They were kept for several days under guard in the same flat, then taken in a car to Bishkek located 600 km away from Jalal-Abad. Throughout the trip they were tied up, with Scotch tape put over their mouths. Several times the car was stopped at police posts, but the traffickers paid ransom and drove on. In Bishkek the girls were kept in a one-room flat. Potential buyers were arriving daily to bargain and examine the "merchandise". In order to break their will the kidnappers would beat the girls; they took away all their clothes and jewellery. They demanded that the girls "work" to compensate the costs of carrying them to Bishkek. During the weeks in slavery the girls "changed hands" several times: "First we were bought by Mavlyuda, then resold to Ainura. Finally, when the guards' attention lapsed we escaped from that flat." But many others were not so lucky. According to various NGOs and public opinion polls, human traffickers in Kyrgyzstan have sold or involved in prostitution more than 4,000 women, many of them still underage.

Even when pimping and trafficking networks are uncovered, IWPR official interviewees argue that law enforcement remains the central problem. “For Kubanych Kudaiberdiev, a captain in the Kyrgyz police force, building a credible case is the problem. “It is hard to prove that a girl is a prostitute,” he said. “ To do that, we need to see the actual monetary transaction take place, or get a statement from the client. In theory, that may sound quite realistic, but I have never seen it in all my experience.” Lieutenant-Colonel Musuralieva says the challenge is not catching the criminals, but getting a prosecution through the courts successfully when the criminals may have friends in high places. Her juvenile affairs department regularly teams up with criminal investigation officers to conduct raids, codenamed “Butterfly”, to catch both prostitutes and their pimps. “We keep on uncovering these case, but we’re unable to bring them to their logical conclusion,” she said. “For instance, two cases were filed against pimps this year, but both were dropped. They got help from people higher up, and the cases were closed. It’s likely that these pimps have got backing from some of our high-ranking [police] officers. I’m not afraid to say so.” But even when cases do go to court, defendants can often afford good lawyers while the child prostitutes have no one prepared to take the witness stand for them. If they have parents or relatives, these will often refuse to testify against the pimps. »

OMCT and KCHR would urge the government to :

³⁴ Ibid.

³⁵ *Trafficking in women and children from the Kyrgyz Republic*, IOM/OSCE, November 2000.

³⁶ *Vecherniy Bishkek*, October 31, 2003

- amend its legislation to fully address all forms of sexual abuse, trafficking and sexual exploitation of children and to efficiently protect children of different age groups;
- develop protection measures and financial assistance to better protect most vulnerable groups of children against sexual abuse, trafficking and sexual exploitation;
- develop a specific plan of action to protect children against sexual exploitation and trafficking in line with the Stockholm Agenda for Action and the Yokohama Declaration, including special attention to boys and to perpetrators;
- develop specialized services, procedures, staff and qualifications in different spheres (judiciary, medical, social, etc.) of support to children victims of sexual abuse, trafficking or sexual exploitation and to support NGO activities in this field;
- increase administrative and penal sanctions for any State official involved directly or indirectly in the sale of children, sexual exploitation of children and child trafficking.

d. Children living on the streets

According to the official report of the Government programme "Zhany Muun", in 2003 more than 20,000 children of school age were not attending school. Unofficial estimates exceed 250,000. At any Kyrgyz market place one can witness out-of-school children selling merchandise or offering to carry buyers' bags for a small amount of money, or just begging or stealing. Out of those, in Bishkek alone, between 500 and 5000 children are said to be living on the streets.

There are also reportedly more and more children who have become main providers for their families by living and working in the streets in the province, especially in Osh and some other regions of the country³⁷.

Through the NGO network on Child Abuse and Neglect in Eastern Europe, the Child Abuse Centre "Moltur Koz" describes the functioning and limitations of the protection system in favour of such children. According to their information, Bishkek Militia reports an annual rounding up of approximately 1,500 vagrant children per year, a figure which represents 10% of the "at risk" child population in the opinion of one senior Department of Interior official. Less than half of the children rounded up by militia are re-united with their families and approximately one third of those returned end up back on the street within a few days. In principle, the police has the responsibility of monitoring unaccompanied minors on the streets, apprehending them, interviewing and caring for them while in reception and transit centres. But there is real concern that children's rights are regularly abused by individual officers and by the system generally (see juvenile justice). Reception centres process the children, giving them a medical inspection, a wash and food. After the first night they are interviewed, and if their home address can be established they are transported home. If children returned to the place they lived an inspector will have some responsibility for visiting and monitoring the child but in practice there is rarely any type of social work or family support provided. The system at this point clearly fails - children invariably run away again. As for orphanages and special/boarding schools, they work on minimal budgets and staff ratios, which only allowed very minimal care for children. The family unit is not recognized

³⁷ *Vechemy Bishkek*, issue 234

as being at the heart of child protection reform. The immediate answer remains institutionalisation. The reality for such children is that when they leave the institution they are often more physically, emotionally and socially deprived than those who survive on the streets.³⁸

Some shelters have been opened in Bishkek and in several regions, where children can get medical help and psychological rehabilitation. Hospitals and services delivered by doctors for the poor and vulnerable, in the main, are of low quality and, in some cases, charged for. At present, except for Bishkek, there are no educational programs giving advice on safer sex or drug use while there is increasing number of HIV/AIDS cases among children and teenagers.

IWPR also documented the lack of services and coherent protection policy for street children in the southern Kyrgyz town of Jalal-Abad. "On a winter night, shortly before New Year, Slava Radnikov was knocking on doors in Jalal-Abad asking for overnight shelter. Every time he was refused and went on until he was found by Chinara Akmatova, assistant to Director of the Jalal-Abad Regional Women Initiative Centre.(...) Slava told her that his parents could no longer provide for him and tried to leave him at the children's home in the Oktyabrskoye village, but he was not admitted to the institution. They took him to the local police station and the Inspectorate for Minors, but met refusal. "Mother and Father could find no place for me, so in the end they just left me in the street. They went to Russia with my little sister," the boy said. Chinara gave the boy shelter and food and the next day went to the Committee for Minors under the Mayor's Office. (...) "I told the boy's story but I was told that it was not within the Committee's competence to care for the boy because the parents were in Russia," (...) She was referred to the infant home run by the local Mercy Centre. "When we came to the Centre, the Director complained that he receives no financial assistance to provide for the children. He was reluctant to admit Slava, and did not allow him to stay until he telephoned the Inspectorate for Minors and made sure that the boy was referred to him by the police. There were no other children in the infant home except Slava." Slava currently lives with Aidai Mamatova, a child-minder of the same orphanage. "He cannot live at the infant home, it's too cold,"(...). Most of the orphanages and childcare centres established with international donors' grants are empty (...). The reason is that many of them get used to living in the street."³⁹

OMCT and KCHR urge the government to provide adequate and universal financial support to families with children and to develop an emergency programme in favour of children living and/or working in the street. Such a programme should provide street education and clubs, psychosocial assistance to facilitate return to biological or foster families, school reintegration schemes, as well as monitoring and support of State or NGO shelters offering individualised programmes of short term stay and reintegration, based on children's views and capacities.

e. Child labour

In addition to article 19 of the CRC already mentioned, which protects children against any form of violence, article 32 paragraph 1 specifically recognizes "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". For this purpose, art. 32 par. 2

³⁸CANEE, *ibid.*, <http://www.canee.net>

³⁹ by Ulugbek Babakulov, IWPR correspondent, 21.01.02, web site <http://www.burana.ru>

requires States Parties to “take legislative, administrative, social and educational measures to ensure the implementation of the present article (...)”.

Kyrgyzstan has ratified the ILO Convention 138 establishing the minimum age for admission to employment at 16 years. However, it has not ratified ILO Convention 182 on the Worst Forms of Child Labour Convention of 1999. Studies conducted by KCHR in the Jalal-Abad, Osh, Chu regions, and the city of Bishkek⁴⁰ reveal the urgent need to address this issue.

Jalal-Abad region: in Nookan and Suzak districts a total of 51 children aged between 8 and 17 were found to be working on tobacco and cotton fields. In summer time, under extreme heat, they performed irrigation, weeding and harvesting hobs.

For example, in the Ergeshov family three children aged 11 to 18 were doing manual work in the summer, with poor nourishment, under 40 degrees centigrade. In an interview with the parents, interviewers tried to explain possible health consequences of hard labour. They also informed them that ILO keeps such cases under special control. The parents complained about low living standards, with no government assistance. They also mentioned that hard child labour is used everywhere, and government officials pay no attention to those facts. The size of social benefits is not enough to buy anything. In their desperate situation the whole family has to work to earn their living.

In the Osh region the team identified 65 children working on cotton fields. The situation is the same everywhere.

In the Chu region they found 83 children working on plantations of sugar beet, onion, water melon and other crops, and pushing heavy trolleys with farm produce on vegetable markets. For example, in the village of Alexandrovka five children (aged between 8 and 16) from the family of Yusuz were weeding onions in summer, under 35-40 degrees. The parents argued that work is good for their children's health

As became obvious from interviews with school principals and heads of district administrations, child labour is viewed as inevitable and as the cheapest solution when appropriate farm machinery is lacking.

In the village of Asylbash and other villages of the Sokuluk district many children were found to be suffering from brucellosis - a result of regular contacts with domestic animals. In the family of Khalit two children, Syrgak and Tilek, fell ill. They told team members that nearly all of the 1,000 children living in the village had had brucellosis. A similar situation is observed in almost every other village throughout the Chu region.

In Bishkek, hundreds of children are employed as porters at 10 markets all over the capital city (Dordoy, Osh, Alamede and others). They operate heavy trolleys loaded with food products; sometimes the trolley is bigger than the porter. As became obvious from interviews with market administrators and district authorities, little is done to address the problem.

⁴⁰ This part is an extract from KCHR report on Campaign Against Worst Forms of Child Labour, prepared for the Global March Against Child Labour, 2002. The campaign team included 150 active members of KCHR, plus 27 volunteers.

The government has taken a formal approach to the child labour problem, which does not address the particular vulnerability of working children to violence, either in their work place or in their families. As part of its campaign, KCHR also conducted a monitoring of families of working children, which revealed a strong causality between poverty, child labour and violence against those children.

As an example, faced with chronic poverty, a father named Ilyas murdered his three children in the new "Kasym" building in Bishkek (Saltanat street) on December 2nd, 2001. The father could not find a job, while the mother Burulsun and the three children kept a merchandise stand at the Osh market. The family of five earned an equivalent of 50 per day. On December 2 Burulsun was about to leave for the market, as usual, with her 13 year old son Semetei. But the father did not allow him to go. When Burulsun returned in the evening she found that Ilyas had murdered all of the children. As he tried to explain himself, Ilyas said he was tired of starving and having his children starve. His reasoning was that as he could not feed them, he had to kill them. Because of his failure to find a job, his wife and children had to trade at the market every day, and yet earned very little.

More commonly, in order to earn a living, many children subject themselves to great dangers. For example, in the town of Kant ten boys aged from 8 to 13 reported that they engage in beet "unloading" (i.e. stealing) from moving lorries: they hop on, quickly fill bags with beets and throw them on the road. They risk being injured in a traffic accident or beaten by the driver. Then they sell beets to their "clients". Their daily income is between 50 and 200 soms (1-4 USD). During the interview the boys reported willingly that their teachers encouraged their activities and bought vegetables from them at a low price.

Therefore, OMCT and KCHR believe that the government of Kyrgyzstan should urgently ratify and implement the ILO Convention 182 on the Worst Forms of Child Labour and ensure the adequate implementation of ILO Convention 138 on the Minimum Age for Employment. The government should ensure consequently that all working children are adequately protected from exploitation, violence, accidents and health hazards. It should launch an information campaign on legal standards in relation with child labour, raising awareness on the consequences of excessive work and lack of education for children. At the same time, free meals and school supplies should be provided in all schools throughout the country, as incentive and additional child support measures preventing child labour.

6. Children in the justice system

Like most former Soviet countries having undergone transition to the market economy and a rapid change of social values, Kyrgyzstan has been hit by widespread poverty and delinquency. In 2002 alone, 2,500 children dropped out of school in Kyrgyzstan (according to other sources, the actual number would exceed 5,000), an 80% increase from 2000. Many of them have to work to support their families. At the same time the number of homeless children is growing, and consequently, juvenile delinquency is on the rise. In 2000 more than 1,000 criminal cases were brought against minors, and in 2001 the number increased by 869. These figures were cited by deputies of the Kyrgyz parliament (Zhogorku Kenesh)⁴¹. At the same time, juvenile crime is considered to slowing down after a very difficult decade. *"In 2000, the number of juvenile offenders was virtually back to the 1991 level. (...)*The number of

⁴¹ Source: Kyrgyz National News Agency *Kabar*, 2002.

minors committing thefts (60-70% of the total number of juvenile offenders), robberies (8-12%) and drug-related crimes (4-6%) remained stably high throughout the period under review, The growing number of gang offences committed by juveniles together with adults is particularly worrying. Whereas the number of crimes committed by all-juvenile gangs kept falling steadily.”⁴².

Only when children in need of protection come in conflict with the law, either by committing offences, often under pressure from adults, or by simply disturbing public order, do they fully attract public attention. OMCT and KCHR would thus like to remind Kyrgyz authorities that the great majority of children in conflict with the law are first and foremost in need of support, are often victims of violence themselves, and can become key players in the country’s socio-economic stability if adequately accompanied and supported.

a. Administration of juvenile justice

Back in 2000, in its alternative report to the UN Committee on the Rights of the Child⁴³, the Youth Human Rights Group argued that “there is no specialised juvenile justice system in Kyrgyzstan, no juvenile or family courts. Juvenile crime proceedings are only considered in the same regular courts, by the same judges. No lawyers/advocates specialised in juvenile justice, only Juvenile Prosecutor and members of the Commissions on Youth Affairs have special knowledge on juvenile system, though the majority of them are not lawyers.”

The Committee itself concluded that “juvenile offenders are not dealt with separately under the justice system; and that there are no special procedures or specially trained personnel. (...) The Committee is concerned that even when a case against a juvenile has been dismissed by the prosecutor, the charge remains on the register because people are often not aware of how to have it struck off. This may result in stigmatization of innocent people”⁴⁴.

The government announced that in 2002, a new law would allow for the specialisation of courts for juveniles⁴⁵. In 2003, UNICEF supported a mapping exercise of the juvenile justice system to identify provisions that hamper the protection of child rights and worked with the Police Academy to support and conduct training for police officers on child rights and juvenile justice, in order to contribute to juvenile justice reform⁴⁶.

However, there are no official or alternative reports of reform or other positive developments in practice in this area.

OMCT and KHRC would suggest that the Committee inquire further both about the state of juvenile justice reform and about the implementation of current law and procedures relating to children in conflict with the law in Kyrgyzstan.

Age of criminal responsibility

⁴² K. Koichumanova, *Poverty and Welfare trends in Kyrgyzstan over the 90s – country paper –*, National Statistical Committee, Bishkek, background paper prepared for the social Monitor 2002, UNICEF Innocenti Research Centre, p.33

⁴³ NGO Commentaries to the Initial Report of the Kyrgyz Republic on the UN Convention on the Rights of the Child, CRC Session 24, 15 May - 2 June 2000 - Youth Human Rights Group, CRIN.

⁴⁴ UN Committee on the Rights of the Child, CRC/C/15/Add.127., *ibid.* Para 61.

⁴⁵ State Party report, [CRC/C/104/Add.4](#), *ibid.*, p.3 para.8

⁴⁶ See www.unicef.org – Kyrgyzstan at a glance

The minimum age of criminal responsibility is set at 14, at which age children may be deprived of their liberty. However, it must be noted that younger children can also have their situation reviewed by the Commission on Youth Affairs and be detained in closed institutions (special schools) for protection or educational purposes.

While considering the minimum age of criminal responsibility to be set at a reasonable age, OMCT and KHRC would suggest that the Committee requests also more details about the status of younger children sent to special schools by Commissions on Youth Affairs.

Grounds of arrest

“Child inspectors” of the Ministry of Interior are responsible for law enforcement in relation with children. Hence, juvenile crime and protection issues are dealt with by the same staff, in a law enforcement spirit rather than with a child rights approach.

Hence, street or vagrant children who have not committed any offences, not to mention victims of sexual exploitation, are regularly arrested and held in police custody. The possession or consumption of drugs are also legal grounds for arrest, along with theft, acts of violence and serious crimes.

In practice, the police conduct periodic proactive "Teenager" operations targeting street children. The children are detained and delivered to the Bishkek juvenile rehabilitation centre. But in the process detainees often fall victim of violence. One such operation in 2002 resulted in the capturing of nearly 200 teenagers⁴⁷.

In February 2002, the Bishkek city Interior Department conducted another police operation under the title "Vagabond". Within a few days, 224 juveniles were removed from utility (water supply, sewage, cable, central heating) service tunnels, cellars, and attics. Of those, 153 were neither attending school nor working, 25 lived by petty theft, 7 by prostitution, and 24 by begging.⁴⁸ However there was no comprehensive report as to what kind of help they received from the authorities. Apparently, no further steps were taken to rehabilitate them or provide them with an adequate living environment. Some of the children were returned to their parents, but ran off again as most of them were coming from families in difficulty, their parents being alcoholic or drug addicted, with broken social networks. In the majority of cases the children fell back into exploitation and other hazards of life on the streets.

As for registered penal offences, many of the cases brought to justice could be challenged. One example from KCHR's activities is the case of Ulan B. who worked in a private cafe in the city of Osh. He was paid 150 soms (about 3.5 USD) per month. When he demanded an increase the café owner fired him. Ulan then stole a frying-pan and left a note saying that he had taken it as collateral to ensure the payment due to him. He was charged with theft and extortion and placed in detention. Ulan was held under inhuman conditions. It was established later that the boy had no intention of theft or extortion. Moreover, when he was detained no solicitor was provided, as required by the law.

b. Children deprived of their liberty

⁴⁷ From a report by Deputy Head of the Bishkek city Interior Department published on January 30, 2002 in *Vecherny Bishkek*.

⁴⁸ *Vecherny Bishkek*, February 12, 2002.

In its 2000 concluding observations, “in relation to pre-trial detention, the Committee expresse[d] its concern at the length of detention; the limited access to visitors; and that juveniles are often detained with adults during this period. The Committee is concerned at the limited access to adequate legal aid for poor individuals; the often disproportionate length of sentences meted out in relation to the seriousness of offences; and that girls are detained with adult females. The Committee is concerned at the poor conditions of the facilities; inadequate nutrition, clothing and psychological and medical care; and the lack of access to adequate recreational, educational and vocational facilities. The Committee is also concerned at the lack of facilities for the physical and psychological recovery and social reintegration of juvenile offenders”⁴⁹.

An interview of T. Vinnikova, Executive Secretary of the Commission for Minors under the government of the Kyrgyz Republic, in *Vecherny Bishek*⁵⁰, confirmed that grounds for concern about material resources and conditions of detention for minors in Kyrgyzstan are still very much present. Special institutions for minors reportedly receive less than 40% of budgeted funds. Children in juvenile correction facilities have poor clothing and almost no footwear. Daily per capita food expenditure is between 5 and 7 soms (0.11-0.16 USD), instead of the prescribed 18-21 soms. Children hardly ever receive meat, milk, vegetables or even sugar. They bathe only occasionally and are not provided with soap. For years they have not been examined for TB, pediculosis or dermal diseases. There is no medicine available in case of illnesses in detention. In special schools, 70% of children suffer from anaemia and other physical or mental disorders.

Teenagers in pre-trial detention are said to be kept together with adults, who teach them criminal "skills" during their detention. In addition, according to KHRC sources, investigations of appeals are regularly delayed, cases are kept for extended periods at prosecutor's offices and courts. As a result, minors spend months in pre-trial detention in very severe conditions. Court rulings are often delivered with substantial delay, after the period for appeal has expired, in violation of the right to defence.

In specialized institutions children are separated from the rest of the world; there are no radios, TV-sets, occupational activities or athletic classes. These children already have low self-esteem, and isolation increases their feeling of emotional, intellectual and physical inferiority.

The majority of specialized institutions' personnel have neither experience nor appropriate training to work with children and juveniles who require special educational environment. In a typical corrective labour institution, not all instructors have pedagogical background.

On 15th December 2003, the human rights ombudsman of Kyrgyzstan, Mr. Tursunbai Bakir, confirmed the gravity of the conditions of detention of children in the country. He reported that “*minor inmates walk barefooted even in winter, the floor is constantly damp, and walls are covered with mould. Underage girls are kept together with adult women. In the Voznesenovka juvenile institution there are currently about 200 juveniles. (...) Most of them received long sentences, incommensurate with their offences. For example, a 14 year boy was sentenced to 3 years in prison for stealing one dollar and a bottle of vodka. Another juvenile*

⁴⁹ UN Committee on the Rights of the Child, CRC/C/15/Add.127., *ibid.* Para 61.

⁵⁰ *Vecherny Bishek* November 30, 1998

was imprisoned for 5 years for stealing 15 dollars". In this regard the Ombudsman argued for speeding up penitentiary reform in the country and for introducing a system of alternative penalties⁵¹.

Obviously, this situation does not meet various requirements established in article 37 of the CRC and in the UN Rules for the Protection of Juveniles Deprived of their Liberty. Regarding the latter instrument, OMCT and KCHR wish to emphasise rule 31, which states "the right to facilities and services that meet all the requirements of health and human dignity". OMCT and KCHR also wish to recall rule 32, which requires that these facilities take into account "the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities".

OMCT and KCHR would then urge the Kyrgyz Government to adapt its child detention centres in order to meet the requirements of article 37 (c) of the CRC, which states that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

c. Diversion and alternatives to imprisonment

After arrest, children can be merely released by the police without any specific follow-up and the Kyrgyz Criminal Code provides for a series of different types of punishment other than prison sentences, such as a fine, the deprivation of the right to occupy a position or pursue a particular activity, socially useful labour, corrective labour and restriction of freedom. However, these are neither alternatives to prosecution nor alternatives to imprisonment. Release does not offer any support or follow-up to prevent recidivism. And sentences other than deprivation of liberty are given in case of minor offences, while deprivation of liberty is given in case of more serious offences. In addition these sentences are given with a punitive rather than with a restorative aim. Hence, Kyrgyzstan does not provide for alternatives to prosecution and to imprisonment for minors although this is strongly recommended by international standards and in particular by the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

OMCT and KCHR thus strongly urge the Committee on the Rights of the Child to request the government of Kyrgyzstan to make juvenile justice reform a national priority, in technical, political, legal and budgetary terms. In particular, the government of Kyrgyzstan should be urged to:

- Put a stop to police raids against street children and divert child protection mandates to specialised social workers and street educators integrated into juvenile justice reform processes;
- Ensure immediate access to a lawyer, a doctor and family members for any arrested child;
- Develop a juvenile justice system that will provide for educational measures and alternatives to imprisonment for children, adequately chosen and monitored by

⁵¹ ⁵¹ *Kyrgyzstan - Preliminary results of ombudsman's activities*, Bishkek, by correspondent Tolkun Namatbaeva, Deutsche Welle, December 15, 2003

specialised personnel, trained in children's rights and restorative justice practice and principles;

- Develop recreational and vocational activities during and after detention, in partnership with civil society, allowing for the gradual rehabilitation of children in conflict with the law;
- Restore all detention centres and provide immediate material, psychosocial and medical assistance to all children in their custody in order to guarantee conditions of detention in full compliance with international standards;
- Facilitate regular prison visits by independent observers and encourage visits by relatives and friends to children in custody;
- Explore possibilities of abolishing imprisonment of minors in conflict with the law, with only very few exceptions where child offenders present an immediate danger for society and/or when risks of collusion during investigation have been fully demonstrated.

Conclusion and recommendations

KCHR and OMCT ask the Committee on the Rights of the Child to urge the Government of Kyrgyzstan to undertake the following recommendations:

Status of the CRC in Kyrgyzstan

- to adopt further measures to better implement and monitor the provisions of the Convention on the Rights of the Child and of the five other international human rights treaties at national level.

Definition of the Child

- to amend its legislation so that, even in instances of marriage and independent work from the age of 16, all persons under 18 be still considered minors and their rights be thus fully protected. We would further recommend that the ages of compulsory education be clearly established and that State provisions for school age children from families in financial difficulties be systematic. Finally, Kyrgyzstan should explore possibilities of abolishing imprisonment of minors in conflict with the law, with only very few exceptions where child offenders present an immediate danger for society and/or when risks of collusion during investigation have been fully demonstrated.

Discrimination

- to make education for all a budgetary priority with the aim of bringing all schools and educational personnel in the country to the same level of funding and qualification, and that bribing be explicitly forbidden and controlled by the administration in order to guarantee equal access to education.
- to extend the protection of girls from early marriage and abduction up to the age of 18, marriage from the age of 17 being only an exception made in case of explicit request by the future spouses themselves and to be made applicable to both boys and girls.

Protection from torture and other cruel, inhuman or degrading treatment or punishment

- to provide more details about the content, status and implementation of the 2003 amendment of the Criminal Code regarding acts of torture and penalties for such crimes.
- to urgently undertake an in-depth reform of its police and militia in order to fully train, monitor and, if necessary, sanction its staff so that it will operate in full accordance with international human rights treaties and, in particular, with the UN Convention Against Torture and the CRC. For that purpose, specialised youth police units in all police stations, as well as in municipal police departments, should be duly established

to respond both to child protection and juvenile delinquency cases with the purpose and duty of promoting the rights of children;

- to change its legislation and practice in order to ensure that children held in police stations have immediate access to an independent lawyer and a civilian doctor and can communicate with their family;
- to ensure that police records include medical information and that medical examinations and interventions include appropriate psychological and age specific diagnosis and support;
- to amend its legislation and reform its administration in order to fully prevent, monitor, sanction and compensate for any act of torture or inhuman and degrading treatment committed against a child.

Protection from other forms of violence

- to reinforce legislative measures against all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions.
- to develop anonymous hot-lines and psychosocial rehabilitation services, as well as child-sensitive reporting and complaint mechanisms and awareness raising campaigns addressing both adults and children victims and/or authors of violence. Prevention measures and sanctions should allow for mediation and rehabilitation of both victims and offenders in the long term, especially in cases of domestic violence.
- to amend its legislation to fully address all forms of sexual abuse, trafficking and sexual exploitation of children and to efficiently protect children of different age groups; to develop protection measures and financial assistance to better protect most vulnerable groups of children against sexual abuse, trafficking and sexual exploitation; to develop a specific plan of action to protect children against sexual exploitation and trafficking in line with the Stockholm Agenda for Action and the Yokohama Declaration, including special attention to boys and to perpetrators; to develop specialized services, procedures, staff and qualifications in different spheres (judiciary, medical, social, etc.) of support to children victims of sexual abuse, trafficking or sexual exploitation and to support NGO activities in this field; and to increase administrative and penal sanctions for any State official involved directly or indirectly in the sale of children, sexual exploitation of children and child trafficking.
- to provide adequate and universal financial support to families with children and to develop an emergency programme in favour of children living and/or working in the street. Such a programme should provide street education and clubs, psychosocial assistance to facilitate return to biological or foster families, school reintegration schemes, as well as monitoring and support of State or NGO shelters offering individualised programmes of short term stay and reintegration, based on children's views and capacities.

- to urgently ratify and implement the ILO Convention 182 on the Worst Forms of Child Labour and ensure the adequate implementation of ILO Convention 138 on the Minimum Age for Employment. The government should ensure consequently that all working children are adequately protected from exploitation, violence, accidents and health hazards. It should launch an information campaign on legal standards in relation with child labour, raising awareness on the consequences of excessive work and lack of education for children. At the same time, free meals and school supplies should be provided in all schools throughout the country, as incentive and additional child support measures preventing child labour.

Children in the justice system

- to make juvenile justice reform a national priority, in technical, political, legal and budgetary terms.
- to put a stop to police raids against street children and divert child protection mandates to specialised social workers and street educators integrated into juvenile justice reform processes;
- to ensure immediate access to a lawyer, a doctor and family members for any arrested child;
- to develop a juvenile justice system that will provide for educational measures and alternatives to imprisonment for children, adequately chosen and monitored by specialised personnel, trained in children's rights and restorative justice practice and principles;
- to develop recreational and vocational activities during and after detention, in partnership with civil society, allowing for the gradual rehabilitation of children in conflict with the law;
- to restore all detention centres and provide immediate material, psychosocial and medical assistance to all children in their custody in order to guarantee conditions of detention in full compliance with international standards;
- to facilitate regular prison visits by independent observers and encourage visits by relatives and friends to children in custody;
- to explore possibilities of abolishing imprisonment of minors in conflict with the law, with only very few exceptions where child offenders present an immediate danger for society and/or when risks of collusion during investigation have been fully demonstrated.