

# IN WHOSE INTERESTS? HOW THE LAW TREATS UNACCOMPANIED CHILDREN IN THE COUNTRIES OF THE COMMONWEALTH OF INDEPENDENT STATES



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# ABSTRACT

This report analyses gaps in the protection of unaccompanied children in the Commonwealth of Independent States and what can be done to fill these. It focuses on the Chisinau Agreement - the main instrument relating to the situation of unaccompanied children in the region, but also reviews domestic legislation. The report analyses the Agreement's compliance with international human rights standards; highlights the range of rights violations experienced by children in this situation; and finally, presents a set of recommendations and advocacy ideas for all those who have a role to play in the lives of unaccompanied children. The findings show that shortcomings in the definition of unaccompanied children and the fact that the law treats them as criminals instead of children in need of protection are at the root of the problem.

The report is aimed at different actors and institutions working at national level in CIS countries affected by the Agreement, as well as at regional and international levels. It is intended as an advocacy guide to secure reforms to domestic laws and the regional Chisinau Agreement to align them with international human rights standards.

CRIN welcomes:

- *Comments on this report*
- *Additional information on the situation of unaccompanied children in the region*
- *Enquiries about starting a new campaign*

Please contact [info@crin.org](mailto:info@crin.org) or, for communications in Russian, [russian@crin.org](mailto:russian@crin.org).

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# EXECUTIVE SUMMARY

**After the breakup of the Soviet Union, the former Soviet Republics united in a single organisation called the Commonwealth of Independent States (CIS), with the aim of retaining diplomatic, cultural, political and economic ties. The CIS is an important forum for determining policy on regional issues, one of which is the “interstate transfer” of unaccompanied children, mainly in the form of economic migration.**

In 2002 an agreement was drafted that regulates procedures, logistics and financial matters relating to the transfer of unaccompanied children in the CIS, as well as designated institutions where these children are held while their status is determined. This was the “Agreement on Cooperation of States - Members of CIS on the return of minors to their state of residence” (henceforth the Chisinau Agreement or Agreement).

Twelve years have passed since the Chisinau Agreement came into being, and yet there is still very little information about the situation of unaccompanied children in the CIS, and even less on what is being done to rectify this. A further concern is the rise in the number of unaccompanied children. In response, CRIN has conducted research into the situation of unaccompanied children in the CIS, with a view to provoking action.

CRIN’s research - a combination of desk research and interviews with NGOs on the ground - revealed a number of shortcomings in the Agreement which leave unaccompanied children in the CIS without proper legal protection. These include:

## 1. The definition of unaccompanied children

The Agreement does not differentiate between unaccompanied children (children separated from both parents and other relatives) and separated children (children separated from both parents or primary caregiver, but not necessarily other relatives) - a difference set out by the UN

Committee on the Rights of the Child.<sup>1</sup> Failure to recognise this difference can heighten the vulnerability of some children. For instance, separated children may be removed from their relatives and become unaccompanied because it is assumed they have no family.

In addition, the wording in Russian (the language in which the Chisinau Agreement was drafted) does not use the term “unaccompanied” but rather “minors left without guardianship”. This is a broader category that can also include other groups of children deprived of their family environment.

## 2. Criminalisation of children

The Agreement fails to distinguish between unaccompanied children and children suspected of committing an offence. It even overtly discriminates against children without a guardian by asserting that they are more likely to break the law than other children.

“Specialised institutions” are places of temporary residence for juvenile offenders or other children without care. Research reveals that three categories of children are held in these institutions: unaccompanied children, children in conflict with the law and children living on the street. These institutions not only fail to adhere to the principle that detention should be a measure of last resort, and instead criminalise children; they also fail to meet basic child protection standards.

International standards do not authorise the arrest and punishment of migrants in an irregular situation. The deprivation of liberty of migrants contributes to an incorrect association between crime and migration. This may increase xenophobia and attempt to legitimise restrictions of their human rights.

1 UN Committee on the Rights of the Child, General Comment No.6 on the treatment of unaccompanied and separated children defines unaccompanied children as: “children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so” (para. 7). Separated children are: “children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members” (para. 8).

### 3. Prolonged and arbitrary detention

Unaccompanied children are often held in transit centres which resemble prisons for long periods of time. The Chisinau Agreement provides that children should be transferred to the closest “specialised institution” in their home country within 30 days from the time when it has been established that no parents or legal guardians may be found. Laws in some countries extend this period for even longer.

International standards establish as a starting point, that deprivation of liberty of a child could only be taken as a measure of last resort and for the shortest period and only in exceptional cases. Therefore it is necessary to provide alternatives to deprivation of liberty of unaccompanied migrant children in the context of proceedings concerning their entry and stay in the country of destination or their eventual return to the country of origin.

### 4. The child protection gap and safeguards

The Agreement does not refer to international human rights treaties on children, including the fact that the child’s best interests should be a primary consideration. One of the effects of this is that the Agreement does not allow children to stay in the country to which they have travelled, instead requiring them to return to their home country, even if this is not in their best interests. For instance they may already have spent a significant period of time in the country to which they have travelled and built up support networks. Potential repatriation and the need to establish new social networks in their country of origin may exacerbate the situation of already vulnerable children.

The Agreement fails to commit to saying that all possible efforts should be made with the view to family reunification, respect of family life and the obligation that the governments need to refrain from taking decisions involving the separation of family members. If unaccompanied children are placed in temporary accommodation centres, all efforts should be made to foster a suitable family environment. Alternative measures to institutionalisation which aim to keep children in a family must be prioritised.

The Agreement does not require any follow-up procedure or safeguards once a child has been returned to their home country. A suitable follow-up procedure includes telephone calls, visits by independent experts and official reports to monitor the child’s well-being.

### 5. Lack of due process

The fundamental rights and freedoms of unaccompanied children are often restricted. Due process rights are therefore

particularly important, especially where these children are deprived of their liberty. These include the right to be informed of the reasons and grounds for detention, the right to be heard, the right to the presumption of innocence, the right to free legal assistance and the right to be assisted by an interpreter if necessary.

International standards also require a child-sensitive approach to justice, e.g. children should be provided with psychologists who are trained to work with children and appropriate standards of questioning should also be adopted<sup>2</sup>.

### 6. Lack of access to legal assistance

The Agreement does not provide for legal assistance to be made available to unaccompanied children who are facing asylum procedures under state care. Many transit centres do not provide legal aid, leaving it up to NGOs to provide lawyers. In cases where access to a lawyer is provided by authorities, they generally lack training or expertise in dealing with children and may employ practices that are not child-friendly.

### 7. Lack of recognition of children’s right to be heard

The Agreement does not provide for the right to be heard for unaccompanied children who have been taken to transit centres or are facing deportation. A lack of systematic provision of legal assistance means that decisions affecting unaccompanied children are not informed by their views and wishes, and the children affected are not made aware of their legal entitlements. Participation in such decisions also depends on reliable communication, which means language barriers also affect children’s right to be heard. For instance, in many cases, interpreters are not provided at any given stage of detention or transfer if authorities and transit centre staff and lawyers are not always familiar with an unaccompanied child’s mother tongue.

<sup>2</sup> Read more in CRIN’s report “Child-Friendly Justice and Children’s Rights” (2012). Available at: <https://www.crin.org/en/library/publications/child-friendly-justice-and-childrens-rights>



# METHODOLOGY

This report is based on a combination of qualitative and quantitative research. CRIN interviewed local NGOs in CIS countries by telephone, e-mail correspondence and in person. The questions for all interviewees were the same and all were asked to provide case studies from their work. No government officials were interviewed.

The scope of this report is limited to unaccompanied children in CIS Member States who are citizens of one of these States. It focuses on seven countries: Russia, Ukraine, Belarus, Azerbaijan, Kazakhstan, Kyrgyzstan and Tajikistan. It does not examine the situation of non-nationals, although unaccompanied children from countries outside the CIS region, such as Afghanistan, Somalia and Vietnam, are also present in CIS countries. This is a subject for future research.

Some of the NGOs interviewed from Russian and Kazakhstan pointed out that unaccompanied children travelling internally made up a significant percentage of unaccompanied children overall, however, this report focuses only on those travelling interstate.

Not all NGOs interviewed support CRIN's position on the Chisinau Agreement. In addition, some NGOs wished to remain anonymous because of safety concerns, and for that reason CRIN is not disclosing the sources of some of the report's information.

The report does not intend to provide a comprehensive analysis of the application of the Chisinau Agreement in all the countries examined. Instead, it focuses on the legal gaps and shortcomings of the Agreement. The main aim is to compare the Agreement with international law, rather than comparing laws between CIS countries. Incorporation of the Agreement into domestic legislation is assumed, as most of the States examined are monist in nature.<sup>3</sup>

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PART I

INTRODUCTION

## 1. About the Chisinau Agreement

The “Agreement on Cooperation of States - Members of Commonwealth of Independent States (CIS) on the return of minors to their state of residence” (henceforth the Chisinau Agreement or the Agreement) entered into force in 2002.<sup>4</sup> The CIS members who signed the Agreement are countries of the former Soviet Union: Azerbaijan, Armenia, Belarus, Georgia (no longer a member of the CIS), Russia, Moldova, Ukraine, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Turkmenistan is an Associate Member of the CIS and is not a signatory to the Agreement. Ukraine has not ratified the CIS Charter and is also considered an Associate Member, but representatives of Ukraine have signed the Chisinau Agreement and its centres are listed among transit centres set out in the Annex to the Chisinau Agreement. However, the current status of Ukraine’s CIS membership and association is unclear as the government of Ukraine has repeatedly stated its intention to leave the CIS since 19 March 2014, but no official action has been taken to-date.

The Chisinau Agreement regulates the “special institutions” where unaccompanied children from CIS Member States are held while their status is determined. Article 2 of the Agreement requires States to cooperate in matters relating to the return of children who are either missing or suspected of committing a criminal offence in another State.

The Agreement requires that unaccompanied children found in the territory of a given Member State be placed in a special institution, with appropriate conditions and treatment.<sup>5</sup> The purpose of these institutions is to identify children, ascertain the reason for their presence in the country, establish the nature of their living conditions and arrange for them to return to their home country.<sup>6</sup>

Article 6 of the Agreement stipulates that children in these institutions should be returned and accompanied to their place of residence by their legal representatives.<sup>7</sup> If there is no one to accompany these children, they should be placed in the closest permanent (not transit) centre, within 30 days.<sup>8</sup>

The Annex to the Chisinau Agreement sets out a list of 35 of these specialised centres.

## 2. Background on the CIS region

The political context in which the Chisinau Agreement was drafted is important for understanding how it relates to international norms. The Commonwealth of Independent States was established during the break-up of the Soviet Union in 1991. It is a regional organisation consisting of some of the former Soviet Republics.

The CIS has been criticised for being a purely symbolic organisation because its activities are largely diplomatic, with no concrete outcomes which influence day-to-day politics and life in its Member States. In addition, the organisation’s influence is waning because some of its members have joined the Eastern Partnership initiative of the European Union and have taken a Western-oriented course of foreign policy.<sup>9</sup> The organisation is seen by analysts and experts in international relations as an attempt by Russia to retain leadership in the region, and indeed Russia initiates the majority of CIS projects. The organisation’s official language is Russian.

The Chisinau Agreement has attracted little attention of the media in CIS Member States, possibly due to the fact that the most widely discussed CIS activities are of an economic nature. However, on certain subjects where no or few laws exist, for instance on the situation of unaccompanied children, the CIS represents an important and unique platform of cooperation between Member States.

## 3. Unaccompanied children’s routes of and motivations for travel

The rationale behind the Chisinau Agreement, according to its preamble, is to prevent crime committed by and against children with a view to protecting them. During a conference with the Organization for Security and Cooperation in Europe (OSCE), CIS representatives promoted the Agreement as a tool to prevent human trafficking in post-Soviet States.<sup>10</sup>

However, according to the media and unofficial sources, the Agreement in fact aims to control migration routes from Central Asia, the Caucasus, Moldova, Belarus and Ukraine to Russia and, to a lesser extent, Kazakhstan. Russia and Kazakhstan are the two main destination countries for

4 Available online at: <http://www.cis.minsk.by/page.php?id=1462>

5 Chisinau Agreement, Art. 2; Art. 3.

6 Ibid. Art. 4.

7 Ibid. Art. 6.

8 Ibid. Art. 6, para. 2.

9 The Member States which joined the Eastern Partnership are Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

10 The opening Statement by Mr Murat Tashibaev, the Deputy Director of the Department for cooperation on security and counteracting new threats of the CIS Executive Committee. Available online at: <http://www.osce.org/cthb/100640>

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child migrants.<sup>11</sup> According to some estimates, 90 percent of migrants to Russia come from the CIS.<sup>12</sup> The other CIS countries are for the most part transit States to Russia and/ or Kazakhstan. Given the state of the economy in the majority of CIS countries it can be assumed that economic and aspirational factors are the main reasons for migration. NGOs from Tajikistan, Kazakhstan and Russia interviewed by CRIN for the report confirmed this theory. In Tajikistan, for example, it is not uncommon for children to seek work in Russia or Kazakhstan after they complete ninth grade.<sup>13</sup> Children often travel alone to join relatives already residing in a receiving country.

#### **A case from Tajikistan:<sup>14</sup>**

A 12-year-old boy lived with his parents in Smolensk in Russia until 2012. Both the boy's parents were citizens of Tajikistan and had migrated to Russia for work. In 2012, the boy's mother died of breast cancer, and his father is serving a 17-year prison sentence in Russia. After his mother's death, the child lived in a shelter in Smolensk from which he was then sent to a transit centre in Tajikistan via a transit centre in Moscow. When travelling back to Tajikistan, the child was accompanied by an employee of the Moscow transit centre. All transportation costs were covered by Russia. The child spent just nine days in the transit centre as his relatives (an aunt from his father's side) were found quickly. Currently, a social worker from a local NGO visits the child to assess his situation.

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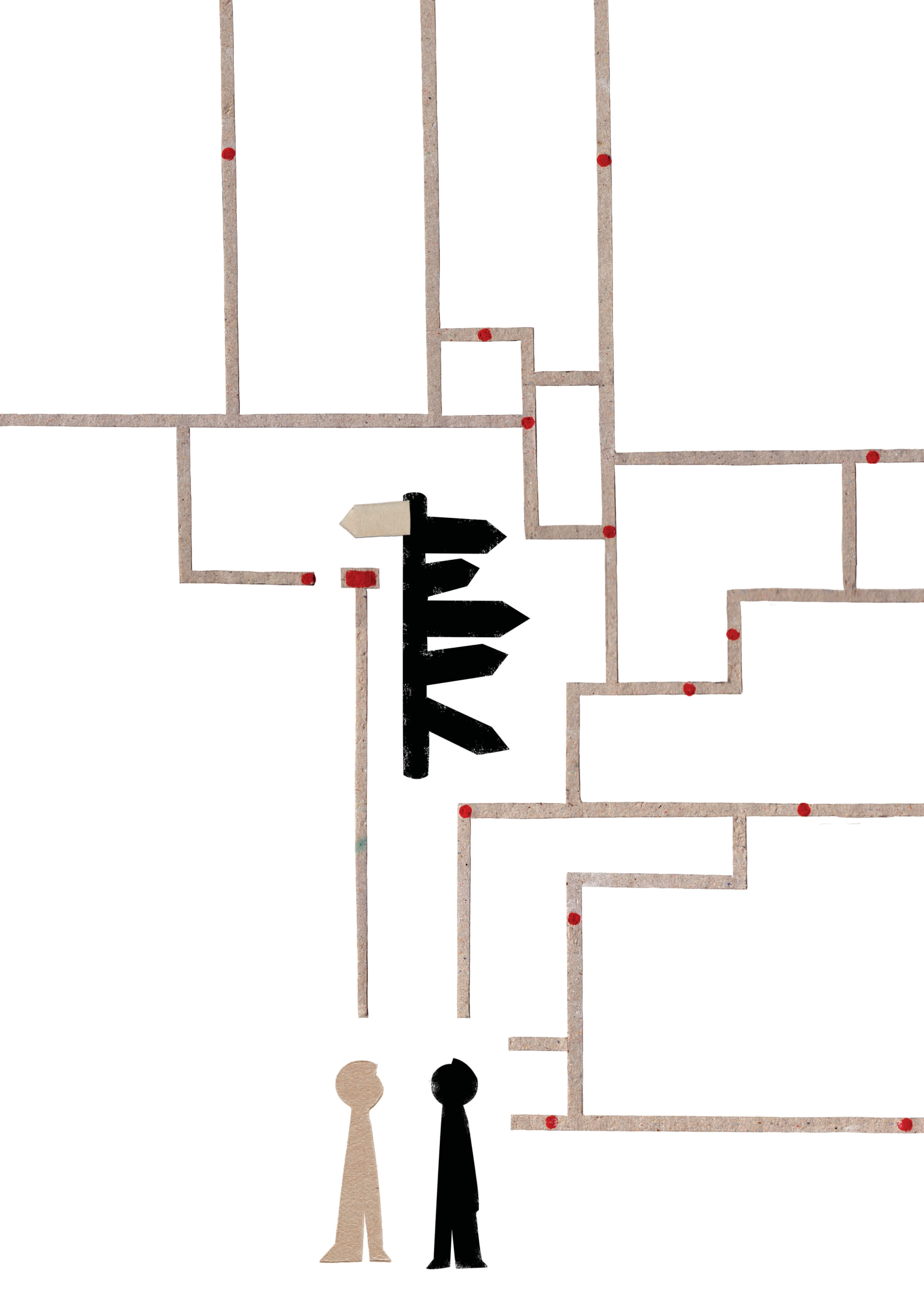
11 Vakurov, K., 'State Duma Has Ratified an Agreement on Return of Foreign Minors to their Homeland.' KM.ru, 26.05.2006 Available online at: <http://www.km.ru/glavnoe/2006/05/26/arkhiv/gd-ratifitsirovala-soglasenie-o-vozvrate-na-rodinu-maloletnikh-inostrants>; Florinskaya, Y., 'Children of Migrants in Russia: Access to Education and Medical Service.' Centre for Migration Studies, 2010. Available online at: <http://demoscope.ru/weekly/2012/0515/analit02.php>

12 Florinskaya, Y., 'Children of Migrants in Russia: Access to Education and Medical Service.' Centre for Migration Studies, 2010. Available online at: <http://demoscope.ru/weekly/2012/0515/analit02.php>

13 Education in Tajikistan is free and compulsory for children aged seven to 15 years old; it includes primary education (grades 1-4) and basic education (grades 5-9). After that children can either continue their education at the secondary level (grades 10-11), or receive vocational training in a specialised school.

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14 Provided by CRIN's NGO contacts in Tajikistan who wish to remain anonymous.



## PART II

# UNACCOMPANIED CHILDREN AND INTERNATIONAL LAW

**This section of the report highlights international standards which can be used to advocate for the rights of unaccompanied children.**

In spite of the scant attention paid to the situation of unaccompanied children in the CIS, a number of relevant international instruments exist to protect their rights. This report gives prominence to the UN Convention on the Rights of the Child, but also references other key instruments. The list below is not exhaustive.

## 1. UN treaties and treaty bodies

International treaties are one source of international law. These are binding upon States which have ratified them. Depending on the nature of a country's legal system, they may take precedence over national law. If there is a conflict between a regional treaty (which also counts as international) - such as the Chisinau Agreement - and national law, whichever instrument was signed first takes precedence.<sup>15</sup>

**1.1 The 1989 UN Convention on the Rights of the Child (CRC)<sup>16</sup> and its mechanisms. Relevant CRC articles include article 3; article 22; articles 37 and 40; article 28; article 29; article 27; article 31 and article 20;**

The CRC has been ratified by almost every country in the world, including all CIS countries. In fact, the Chisinau Agreement mentions the CRC in its preamble. In most of these States, the CRC takes precedence over national law.

All articles in the CRC apply in the context of unaccompanied children. Of particular relevance are the following articles: Best interests of the child (article 3), Refugee children (article 22), Detention and punishment (articles 37 and 40), Right to education (articles 28 and 29), Right to an adequate standard of living (article 27), Right to play (article 31), Rights of children deprived of their family environment (article 20), and Right to family reunification (article 10).

The Committee on the Rights of the Child's General Comment No.6 ('GC 6' or 'General Comment No.6')<sup>17</sup> which focuses specifically on unaccompanied and separated children outside their country of origin and also provides useful interpretation

and explanation. General Comments are not binding, but have authoritative value and are often referred to by the Committee on the Rights of the Child in its review of States' children's rights records.<sup>18</sup>

General Comment No.6 emphasises three principles of the CRC: non-discrimination, the best interests of the child and the right of the child to express his or her views freely.<sup>19</sup> The General Comment was drafted to address gaps in the protection of unaccompanied and separated children who are particularly vulnerable to sexual exploitation and abuse, military recruitment, child labour (including for foster families) and detention.<sup>20</sup> In addition, these children often suffer discrimination, especially in accessing food, shelter, housing, health services and education.<sup>21</sup>

General Comment No.14 on the right of the child to have his or her best interests taken as a primary consideration (article 3, para. 1)<sup>22</sup> is also relevant when applied to unaccompanied children. This is justified by the special situation of the child in this respect i.e. his or her dependency, maturity, legal status and, often, voicelessness.

Treaty bodies like the Committee on the Rights of the Child oversee compliance with human treaties and review States' records regularly. They issue recommendations called concluding observations based on these reviews. These are authoritative, but have the status of recommendations rather than binding law. Some UN treaty bodies also have a mechanism which allows individuals to submit complaints challenging violations of their rights. Not all CIS members have accepted these complaints mechanisms, but most have at least ratified the main human rights treaties. The term "unaccompanied children" is explicitly mentioned in most of the recommendations made by the Committee for these countries, except Moldova, Turkmenistan and Kyrgyzstan.<sup>23</sup> The Chisinau Agreement is not mentioned in any.

Civil society organisations may also submit information to States' review by the UN Committee on the Rights of

<sup>15</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331. Available online at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

<sup>16</sup> (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3. Available online at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>17</sup> Committee on the Rights of the Child, General Comment No.6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (Thirty-ninth session, 2005), U.N. Doc. CRC/GC/2005/6 (2005). Available online at: <http://www.refworld.org/docid/42dd174b4.html>

<sup>18</sup> See e.g. Belarus, CRC/C/BLR/CO/3-4, 8 Apr 2011, para. 68. Available online at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BLR.CO.3-4.doc>

<sup>19</sup> Committee on the Rights of the Child, General Comment No.6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (Thirty-ninth session, 2005), U.N. Doc. CRC/GC/2005/6 (2005), para 1. Available online at: <http://www.refworld.org/docid/42dd174b4.html>

<sup>20</sup> Ibid. para. 3.

<sup>21</sup> Ibid.

<sup>22</sup> Committee on the Rights of the Child, General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) (Sixty-second session, 2013) U.N. Doc. CRC/C/GC/14. Available online at: [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

<sup>23</sup> Moldova (CRC/C/MDA/CO/3, 20 February 2009; CRC/C/15/Add.192, 31 October 2002), Turkmenistan (CRC/C/TKM/CO/1, 02 Jun 2006) and Kyrgyzstan (CRC/C/15/Add.244, 3 November 2004; CRC/C/15/Add.127; 9 August 2000), which to date, do not contain any mention of unaccompanied children in their concluding observations.



the Child, according to CRC article 45(a). This helps the Committee to build a more objective picture of what is happening in a given State, rather than simply taking the State's word for it. These reports are called "alternative reports" and are mostly prepared by local NGOs that are familiar with the situation on the ground. At the time of writing, no mention of unaccompanied children has been made in alternative reports on Belarus, Kazakhstan, Turkmenistan, Uzbekistan and Azerbaijan.

Included below are CRC articles relevant to the situation of unaccompanied children, relevant extracts from General Comment No.6, concluding observations of the Committee, and alternative reports submitted to the Committee by NGOs working in the region.

### *Best interests (article 3)*

The principle of the best interests of the child does not support the detention of children, which should be used only as a last resort. The CRC has made a separate statement on the detention of children for breaching migration regulations, stating explicitly that States should refrain from such practices:

"[c]hildren should not be criminalised or subject to punitive measures because of their or their parents' migration status. The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status."<sup>24</sup>

General Comment No.6 provides that in line with "the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained."<sup>25</sup> In particular, the fact that they are unaccompanied or separated and in breach of migration rules should not be the sole reason for their detention.<sup>26</sup>

The rules of detention should be set out in domestic law and be "a measure of the last resort and for the shortest appropriate period of time."<sup>27</sup> All measures relating to the detention should "allow for the immediate release

of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation."<sup>28</sup> In its General Comment, the Committee states explicitly that "the underlying approach to such a programme [exceptional cases of detention] should be care, not detention."<sup>29</sup>

The child's best interests should be the main guiding principle for decisions relating to repatriation, detention, return and reintegration. This should be spelt out in bilateral agreements containing appropriate safeguards.<sup>30</sup> This is especially important for the Chisinau Agreement, which, despite being the only significant legal instrument in the region to deal with unaccompanied children, does not contain any safeguards. This not only undermines important principles of child protection and therefore contradicts the Agreement's own aim,<sup>31</sup> but confers powers on States to treat children at their own discretion and deny them protection.

General Comment No.14 of the Committee on the Rights of the Children provides for guidelines on how to assess the best interests of the child, which should always be a primary consideration. Each individual case should be considered in its own right, with attention to the specific circumstances of each child or group of children.<sup>32</sup>

### **A case from Russia:<sup>33</sup>**

On 22 March 2014, three pupils from Tajikistan: Musayev Achmat (born in 1999), Musayev Abdullah (born in 2001) and Musayev Salahidin (born in 2005), were arrested in the street and detained by police for more than two days in St Petersburg. The children were accompanied by their eldest brother, a university student. A documentation check revealed that the brother's registration had expired on 3 March, 2014. The parents argue that this was a technical error as registration was completed in January and was granted for three months. The children, the youngest of whom is nine years old, were taken to the police department and from there, relocated to a temporary isolation centre for juvenile offenders, situated at 54 Sedov street by a police inspector.

The children's father has a temporary residence permit in

24 Committee on the Rights of the Child, Report on the 2012 Day of General Discussion on the rights of all children in the context of international migration. Available online at: <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

25 Committee on the Rights of the Child (CRC), General Comment No. 6, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin," (Thirty-ninth session, 2005), UN Doc. CRC/GC/2005/6 (2005), para. 61. Available online at: <http://www.refworld.org/docid/42dd174b4.htm>

26 Ibid. para. 61

27 Ibid. para. 61

28 Ibid. para. 61

29 Ibid. para. 63

30 CRC review of Belarus, CRC/C/BLR/CO/3-4, 08 Apr 2011, para. 67-68. Available online at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BLR/CO/3-4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BLR/CO/3-4&Lang=En)

31 Chisinau Agreement, preamble. Available online at: <http://www.cis.minsk.by/page.php?id=1462>

32 Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), (Sixty-second session 2013), 29 May 2013.

33 Information provided by Olga Abramenko, Anti Discrimination Centre 'Memorial', St. Petersburg, Russia.



Russia; the mother has the same status as her children as a result of the same mistake in the registration dates on her documents. She was arrested. Of particular alarm is the fact that the temporary centre has accepted and placed these children (aged nine, 11 and 13) who have not committed any offence (except for an error in registration documents made by adults) in prison-like conditions.

According to article 2.3 of Russia's Administrative Code, administrative liability and sanctions are imposed on people who have reached the age of 16 at the time of committing such an offence, and art. 22 of the Federal Law On Principles of Prevention of Juvenile Delinquency does not allow children below the age of 16 to be placed in temporary isolation centres for juvenile offenders, except in cases of serious offences, which is not the case here. Children under 16 are not subject to administrative liability and cannot be deprived of their liberty for more than three hours. In addition, the Russian Constitution clearly states that adults and children are two different subjects of law. Therefore, it cannot be assumed that the children of migrants are illegally present on Russian territory.

Finally, a lawyer working for ADC 'Memorial' took on the children's case and the children were returned to their parents by court order. Had this not been the case, the children would have been separated from their family and then deported to Tajikistan.

In an alternative report on Russia, the organisation ADC 'Memorial' noted deficiencies in national legislation which does not consider the best interests of the child, and sometimes directly hinders them e.g. Federal Law No 321 FZ, issued on 30 December 2013, does not allow entry of migrants until 2016 who have previously failed to leave Russia on time as stipulated in registration documents. These regulations are applied in a blanket way to everyone without proper consideration of cases concerning children. ADC 'Memorial', in its alternative report, has pointed out that children are obliged to leave Russia every 90 days to extend their registration if their parents are working in Russia, which significantly hinders their access to education (if they are studying) and is not in their best interests.

**Case submitted to the Committee on the Rights of the Child by Anti-discrimination Centre (ADC) 'Memorial', the St Petersburg-based LGBT organisation Coming Out, and the Russian LGBT Network:**

Samik Samikov has lived in St Petersburg since 2011 with his mother, a migrant worker. In June 2013, Samik travelled from Russia's Chelyabinsk region Oblast to Kazakhstan. Upon his return, he was prevented from entering Russia because, according to the explanation he was given, his name appeared

on a database of persons who are banned from entering Russia until 2016. Only with assistance from human rights advocates and ombudspersons for the Chelyabinsk Oblast and Volgograd Oblast could it be established that the ban was enacted in March 2013 by the Federal Migration Service directorate for Volgograd Oblast (the location of his previous border crossing) on the basis of lists received from the Federal Migration Service.

This was in accordance with federal law No 321 FZ, issued on 30 December 2013, which stipulates a three-year travel ban on entering Russia for any previous failure to leave the country within a legally set term. Samikzhon Samikov could not return to Russia, where his mother lived and where he was supposed to continue his education, so he travelled to Kyrgyzstan, which was not safe for him as an ethnic Uzbek born in the city of Osh. A Russian travel ban for Samikov was a direct result of shortcomings in Russian legislation, which does not permit residency registration for children who are foreign nationals while their parents are staying in Russia.

The travel ban in Samikov's case was overturned as a result of joint efforts by NGOs in the region, and orders were issued to the regional bodies of the Federal Migration Service. Although the fulfilment of the order proved to be extremely complicated, the ban was finally overturned and Samikzhon Samikov was able to re-enter Russia to continue his studies, although he was late for the start of the school year.<sup>34</sup>

*Refugee children (article 22)*

Article 22 of the CRC explicitly mentions unaccompanied children and requires States to provide them with appropriate protection and humanitarian assistance, in accordance with the CRC and other international humanitarian and human rights standards. This article deals primarily with children seeking refugee status (but not necessarily obtaining it). Paragraph 2 of the article says that, to cooperate with international organisations and agencies, States must take measures to (1) "protect and assist such a child" and (2) "to trace parents or other members of the family of any refugee child" in order to (3) "obtain information necessary for reunification with his or her family." It further states that where a child's parents or other relatives cannot be found, (4) "a child should be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason."

In short, according to article 22, States have an obligation to protect the rights of unaccompanied children or any

<sup>34</sup> Implementation of the UN Convention on the Rights of the Child and Problem of Children from Vulnerable Groups by Russia: Anti-discrimination Centre 'Memorial', regional St Petersburg-based LGBT organisation 'Coming Out', and the Russian LGBT Network.

other child seeking refugee status in the following ways: by protecting and assisting them, tracing their parents and/ or other relatives, reuniting them with their family, and, if this is not possible, by providing them with protection in the same way as any other child deprived of their family.

General Comment No.6, which relates specifically to unaccompanied children, also raises the situation of refugee children and draws upon article 31(1) of the 1951 Convention relating to the Status of Refugees and the general principles of law, which prohibit penalties for the illegal entry to a country where asylum is being sought. These assert that “illegal entry into or stay in a country by an unaccompanied or separated child” is justified “where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child.”<sup>35</sup> States should make sure that “children are not criminalised solely for reasons of illegal entry or presence in the country.” Policies on unaccompanied children, particularly those who are victims of trafficking and exploitation, should take this into account.<sup>36</sup>

Moreover, the Committee on the Rights of the Child has, in its concluding observations, noted at least four countries in which unaccompanied children cannot access the national refugee status determination procedure because they do not have a guardian. The Committee urged these States to remove this barrier and establish “specific and clear procedures” for accessing this procedure.<sup>37</sup> State officials, from the Ministry of Interior in particular, should be trained in child protection for this purpose.<sup>38</sup> The procedure itself should be child-friendly and comply with international refugee and human rights law.<sup>39</sup>

In most cases, the Committee in its concluding observations talks about unaccompanied children as refugees. However, in the CIS, most unaccompanied children do not meet the definition of a refugee, as they are not considered to be at immediate risk, but are instead driven by economic and aspirational factors or have been left unaccompanied as a result of the loss of their guardian in transit or in another State. This should not impede their rights.

In some cases, children and their families are deliberately refused the right to register for asylum seeking procedures,

in particular, citizens coming from the former Soviet Union.<sup>40</sup> Legal guardians should be appointed to unaccompanied children and the State should provide “clear administrative responsibilities to specific state authorities” to ensure children have adequate legal protection and to support them by registering for asylum seeking procedures on their behalf.<sup>41</sup>

The Committee calls for a child-sensitive approach to interpreting the definition of a refugee,<sup>42</sup> especially given the legislative gaps in protective measures for unaccompanied children who are not necessarily considered refugees,<sup>43</sup> e.g. children of Chechen origin, who, despite not being considered refugees, cannot return to Chechnya due to the unsafe situation there.<sup>44</sup> The Committee also urges respect for children’s access to basic needs, whether they hold refugee status or not.<sup>45</sup>

#### *Detention and punishment (articles 37 and 40)*

The Committee has expressed concern where unaccompanied children are detained and deported, especially where detention lasts for several months.<sup>46</sup> Often this is because they cannot register with the national procedure to determine refugee status (whether on their own behalf or through a guardian).<sup>47</sup> The Committee has said that unaccompanied children should not be detained, but instead placed in an alternative temporary residence following the speedy verification of their status.<sup>48</sup> The Committee has also expressed concern about the fact that children are often detained at entry points and held on the premises of border guards.<sup>49</sup> This may impede the enjoyment of other rights, such as access to adequate nutrition and medical treatment and to education.<sup>50</sup> The Committee has also urged states to refrain from detaining unaccompanied children in line with their best interests. Children’s best interests should always be a primary consideration when examining asylum applications

35 Committee on the Rights of the Child (CRC), General Comment No. 6, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” (Thirty-ninth session, 2005), UN Doc. CRC/GC/2005/6 (2005), para. 62. Available online at: <http://www.refworld.org/docid/42dd174b4.htm>

36 Ibid.

37 CRC review of Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72. Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf)

38 CRC review of Tajikistan, CRC/C/TJK/CO/2, 11-29 January 2010, para. 64. Available online at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-TJK-CO-2.pdf>

39 CRC review of Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 67 (a). Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AZE-CO-3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AZE-CO-3-4_en.pdf)

40 CRC review of Russia, CRC/C/15/Add.110, 10 November 1999. Available online at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2F15%2FAdd.110&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2F15%2FAdd.110&Lang=en)

41 CRC review of Russia, CRC/C/RUS/CO/3, 23 November 2005, para.67; Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72-73. Available online at: [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/CRC\\_C\\_RUS\\_CO\\_4-5\\_16305\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/CRC_C_RUS_CO_4-5_16305_E.pdf)

42 CRC review of Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 66 (a). Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AZE-CO-3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AZE-CO-3-4_en.pdf)

43 Ibid. para. 66 (c).

44 Ibid. para. 66 (b).

45 Kazakhstan, CRC/C/15/Add.213, 10 July 2003, para. 63 (b). Available online at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.213>

46 Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72; Ukraine, CRC/C/15/Add.191, 9 October 2002, para. 62; Belarus, CRC/C/BLR/CO/3-4, 08 Apr 2011, para. 68 (a).

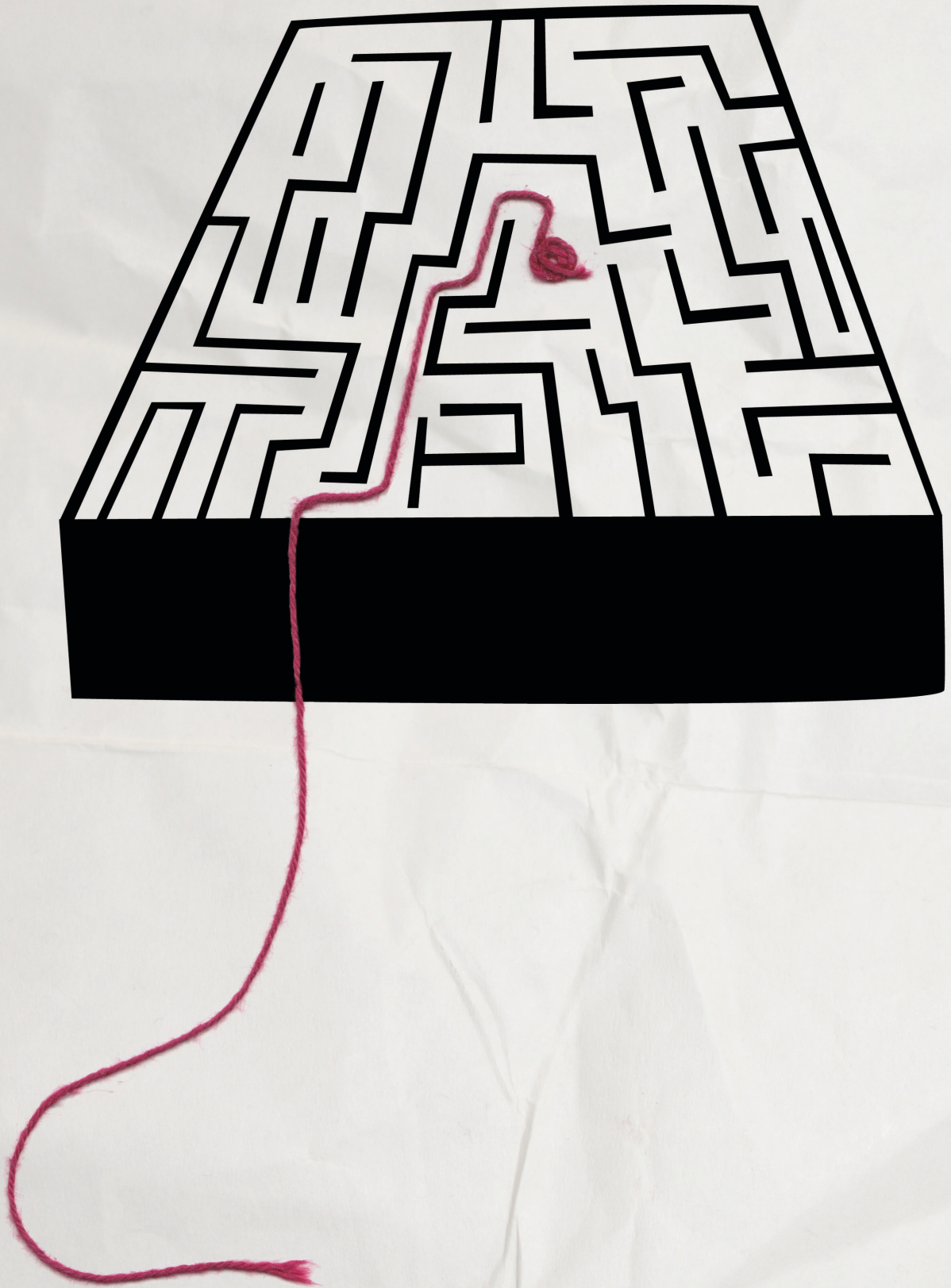
47 Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72. Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf)

48 Ibid.

49 CRC review of Ukraine, CRC/C/15/Add.191, 9 October 2002, para. 62. Available online at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.191>

50 Ibid.





of undocumented, unaccompanied and separated children.<sup>51</sup>

#### A case from Russia:<sup>52</sup>

Maruf Abdudyalov, a citizen of Tajikistan, born in 1994, was arrested on 9 November 2012 and brought to police station No. 45 of the Nevskii region of St Petersburg. The police did not file a detention report and a copy of Maruf's passport, which he was carrying, was destroyed by police officers. An employee of an NGO - ADC 'Memorial' - received information from a police officer on duty that Maruf will be sent to a centre of temporary rehabilitation and isolation of minors in conflict with the law. An employee contacted the central office of the Ministry of Interior Affairs, after which Maruf was released from the police station without charge.

Article 37 of the CRC also deals with the prohibition of torture or cruel, inhuman or degrading treatment or punishment and deprivation of liberty. States should prevent abuse and cruel, inhuman and degrading treatment by strengthening child-sensitive complaints mechanisms for children in institutions.<sup>53</sup> They should also implement follow-up measures to make sure children's rights are respected once they return to their home country, should it be established that deportation is in their best interests.<sup>54</sup> The Committee has noted a lack of such measures among many States. In addition, there is a lack of available official statistics on the number of refugee children aged 15 to 18.<sup>55</sup>

The Committee on the Rights of the Child often refers to article 37 when talking about unaccompanied children, especially paragraph b), which states that: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

This principle is reiterated in General Comment No.6, in which the Committee said that in exceptional circumstances where a child is detained, "the conditions of detention must be governed by the best interests of the child" and in accordance with art. 37 of the CRC and other international obligations.<sup>56</sup> All children deprived of their liberty shall be assigned a legal representative in order to "effectively secure

the rights provided by article 37 (d) of the Convention."<sup>57</sup>

A group of NGOs in Kyrgyzstan submitted a report<sup>58</sup> on unaccompanied children in the country. The report states that any child who has been left unaccompanied can be placed in a Centre for Adaptation and Rehabilitation of Juveniles (CARJ) for up to 20 days. This is a pre-trial detention centre run by the Ministry of Internal Affairs. The most common reason for a child to be placed in a CARJ is for identification purposes. Most children in a CARJ are neglected and, according to the report, only a small proportion (3 percent) are in conflict with the law.<sup>59</sup> The centre is a closed institution. There have been attempts, even by the Ministry of Internal Affairs, to relocate CARJ to the Ministry of Social Development, but these attempts have been rebuffed by the government of Kyrgyzstan.

Another type of detention centre where children aged 11 to 14 in Kyrgyzstan can be relocated is the Belovodsky special boarding school. According to the alternative report, this institution is prison-like: children's freedom of movement is severely restricted, there are no child-specific activities, children are tightly controlled, staff are not trained to work with children, and the building has a high wall surrounded by barbed wire.

In particular, the alternative report highlights that children are prosecuted for breaching migration regulations - an administrative violation. Such cases are considered in regular courts, which often fail to take their age into account, rather than by a Commission on Juvenile Affairs and Protection of Juvenile Rights.<sup>60</sup>

In order to guarantee unaccompanied children's right to effective due process rights in line with the CRC and to ensure their best interests are a primary consideration in all decisions affecting them, authorities should guarantee their right to be heard and participate in all stages of the proceedings; the right to be assisted by a translator or interpreter; effective access to consular assistance; the right to be assisted by a legal representative; the right to a guardian; the right that the decision adopted has assessed the child's best interest.

Article 37 of the CRC also covers the child's right to legal assistance, especially in cases where a child has been deprived of his or her liberty. The article states that children in these

51 CRC review of Belarus, CRC/C/BLR/CO/3-4, 8 Apr 2011, para. 67-68. Available online at: [www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BLR.CO.3-4.doc](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BLR.CO.3-4.doc); CRC Review of Tajikistan, CRC/C/TJK/CO/2, 11-29, January 2010, para. 65 (a). Available online at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-TJK-CO-2.pdf>

52 Information provided by Olga Abramenko, Anti Discrimination Centre 'Memorial'.

53 CRC review of Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, para. 39 (g). Available online at: <http://www.refworld.org/docid/45377ee40.html>

54 Ibid. para. 38.

55 CRC review of Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72-73. Available online at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.UKR.CO.3-4_en.pdf)

56 para. 63

57 para. 63

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

59 Ibid. para. 16.2.

60 Implementation of the UN Convention on the Rights of the Child and Problem of Children from Vulnerable Groups by Russia: Anti-discrimination Centre 'Memorial', regional St. Petersburg LGBT organization 'Coming Out' and Russian LGBT Network.



circumstances,

“shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

However, research for this report shows that States do not systematically provide legal assistance to unaccompanied children who have been placed in transit centres. It is often up to NGOs to arrange an appointment of a lawyer. In cases where access to a lawyer is provided by state authorities, they generally lack training or expertise in dealing with a child and may employ practices that are not child-friendly.

Article 40 of the CRC also provides for access to legal assistance for children whose detention is related to a breach of a State’s law, which is relevant to cases where unaccompanied children have been detained for violating migration regulations. Among other provisions, article 40 stipulates that States shall provide a child with “legal and other appropriate assistance”. This principle is reiterated in the Committee’s General Comment No.6: “In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.”<sup>61</sup>

**Case submitted to the Committee on the Rights of the Child by the Anti-discrimination Centre (ADC) ‘Memorial’, the St Petersburg-based organisation Coming Out, and the Russian LGBT Network:<sup>62</sup>**

“ADC ‘Memorial’ has been contacted by a 16-year-old Uzbek national, Nurzhan M., who was administratively prosecuted and sentenced to a fine and administrative expulsion for lacking medical insurance and working without a permit. The Gatchinsky District Court gave adult migrants the same sentence for the same offence. Appeals in Nurzhan M.’s case have been filed with the Leningrad Oblast Court. These point out that according to current legislation, administrative cases concerning children should be heard by Commissions on Juvenile Rights and Protection of Juvenile Rights. This also applies to the children of migrants. In addition, the court of first instance has made no attempt to locate the legal representatives of Nurzhan M. The appeal stated that underage foreign nationals cannot legally obtain a work

permit in Russia and that there are therefore no grounds for prosecution.

The Leningrad Oblast Court rejected all defence arguments and upheld the rulings concerning Nurzhan M., who was obliged to relocate to Uzbekistan. According to Nurzhan M., his mother stayed on in Russia. It is apparent that the court’s priority was not to protect the child’s interests but to “fight against illegal migration”. The court employed a discriminatory approach towards the migrant child, did not take his age into account and did not attempt to look for his legal representatives.”<sup>63</sup>

It should be noted that unaccompanied migrant children cannot be placed in prisons or other places intended to accommodate people who have been convicted or accused of having committed offenses of a criminal nature. In this regard, the United Nations Committee for the Protection of the Rights of All Migrant Workers and their Families has recommended that in order to adjust the legislation to reflect the Convention and other international instruments, the illegal entry to the state should be eliminated as ‘an offense punishable with imprisonment.’<sup>64</sup>

The Committee on the Rights of the Child has further noted that,

“conditions of detention must be governed by the best interests of the child [...]. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child’s best interests not to do so. [...]”<sup>65</sup>

*Right to education (articles 28 and 29), right to an adequate standard of living (article 27), right to play (article 31)*

The Convention on the Rights of the Child and General Comment No.6 (GC 6) also draw upon economic, social and cultural rights, which are especially pertinent for unaccompanied children. Unaccompanied children should be provided with “all basic necessities as well as appropriate medical treatment and psychological counselling where necessary.”<sup>66</sup> The right to education is also explicitly provided for in GC 6. Unaccompanied children in detention should be able to study, ideally outside detention, so they can continue their studies upon their release.<sup>67</sup> Children should also have opportunities for recreation, in accordance with article 31 of the Convention.

61 Committee on the Rights of the Child (CRC), General Comment No. 6, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” (Thirty-ninth session, 2005), UN Doc. CRC/GC/2005/6 (2005), para. 21. Available online at: <http://www.refworld.org/docid/42dd174b4.htm>

62 December, 2013. Available online at: [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/INT\\_CRC\\_NGO\\_RUS\\_15923\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/INT_CRC_NGO_RUS_15923_E.pdf)

63 Ibid.

64 United Nations Committee for the Protection of the Rights of All Migrant Workers and their Families, Final Observations, Mexico, CMW/C/MEX/CO/01, December 8, 2006.

65 Committee on the Rights of the Child (CRC), General Comment No. 6, para. 63

66 Ibid.

67 Ibid.

Access to education has also been raised by the Committee in relation to unaccompanied children. Its concerns are predominantly about the lack of access for children outside the capital and the high number of children who do not attend school - a fact which may prevent them from integrating into society.<sup>68</sup> Children who have not been granted refugee status should also have access to education facilities.

Concluding observations of the Committee also cover the right to education, access to medical and psychological treatment,<sup>69</sup> access to food and nutritional care<sup>70</sup> and shelter or appropriate housing.<sup>71</sup> There is a strong emphasis on the need to integrate these children.<sup>72</sup>

#### **A case from Ukraine:<sup>73</sup>**

This case involves a nine-month-old child and his three-year-old sister. The youngest child was abandoned by their mother immediately after birth. The mother maintained some level of contact with the youngest child for a while after speaking with a social worker. The mother subsequently abandoned both children in a hospital in Ukraine and vanished. It was then decided to send both children to Russia - their mother's country of origin - because their grandmother lived there. The nine-month-old child was not taken to the transit centre in Ukraine, but was mainly kept in medical institutions, while the older child was held in the transit centre in Ukraine waiting to travel to Russia. Both children were sent to Russia even though it was not known whether their grandmother was willing to adopt the children.

The transit centre in Ukraine is not appropriately adapted for children, especially young children. The centre's rules stipulate that children may not go to their bedroom during the day to rest. Everyone must go to bed at 10pm and get up at 7am. The children can eat only at breakfast, brunch, lunch and dinner. If they are thirsty, they must ask to go to the toilet and drink tap water (this is not advisable in Ukraine).

#### **A case from Ukraine:<sup>74</sup>**

The child's mother travelled to another country to work. A 14-year-old child was left alone to wait for his mother to return to Ukraine. After some time, social services transferred the child to an orphanage and then to a transit centre (all in Ukraine) as it was found that he had relatives in Moldova. The child was involved in a fight in a transit centre. The child did not understand why he was going to be taken to Moldova, where he was going to be taken or to which relatives. He believed that he was being moved to Moldova as punishment for his involvement in the fight at the transit centre. The situation proved traumatic for the child, as he cried while being interviewed.

#### *Rights of children deprived of their family environment (article 20), right to family reunification (article 10)*

Article 20 of the Convention deals with children who are deprived of their family environment and are therefore entitled to "special protection and assistance provided by the State." The article requires States to establish special laws on alternative care for such children which take into account their ethnic, religious, cultural and linguistic background.

Children should not be placed in locations remote from cultural facilities and community resources and should have access to legal aid.<sup>75</sup> The Committee emphasises that children should not be isolated and should "have an opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian."<sup>76</sup>

The Committee in its concluding observations emphasises the importance of the family environment and alternative care and has criticised the institutionalisation of children in most CIS States.<sup>77</sup> It has stressed that for unaccompanied children, tracing a child's family and reuniting them should be a priority.<sup>78</sup> It urges States to "ensure that the decision to place children in institutions be for a certain period of time and examined periodically to evaluate the possibility that the child might be reintegrated into his/her family or identifying an adoptive family."<sup>79</sup>

Decisions that States adopt regularly regarding migration

68 CRC Review of Ukraine para. 66, 67; Ukraine, CRC/C/15/Add.191, 9 October 2002, para. 62.

69 CRC Review of Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72-73, CRC Review of Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 66 (c).

70 CRC Review of Ukraine, CRC/C/15/Add.191, 9 October 2002, para. 62; CRC Review of Ukraine, CRC/C/UKR/CO/3-4, 21 April 2011, para. 72-73, CRC Review of Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 66 (c).

71 CRC Review of Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 67 (c).

72 Ibid.

73 Information provided by Oksana Moskalenko, Women's Consortium of Ukraine, Ukraine.

74 Information provided by Oksana Moskalenko, Women's Consortium of Ukraine, Ukraine.

75 Committee on the Rights of the Child (CRC), General Comment No. 6, para. 63.

76 Committee on the Rights of the Child (CRC), General Comment No. 6, para. 63.

77 CRC Review of Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, para. 38. Available online at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=\\_CRC%2FC%2FUZB%2FCO%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=_CRC%2FC%2FUZB%2FCO%2F2&Lang=en)

78 CRC Review of Belarus, CRC/C/BLR/CO/3-4, 08 Apr 2011, para. 67; Georgia, CRC/C/15/Add.124, 28 June 2000, para. 54.

79 CRC Review of Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, para. 39 (e). Available online at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=\\_CRC%2FC%2FUZB%2FCO%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=_CRC%2FC%2FUZB%2FCO%2F2&Lang=en)

policies, such as entrance, staying or exit of unaccompanied migrant children can have a decisive impact on the family unit or separation of a child from his or her family. In the preface to the Convention on the Rights of Child, States have affirmed their conviction that the family is ‘the fundamental group of society and the natural environment for the growth and welfare of all its members, and in particular children;’ therefore, it should receive the protection and assistance of the State.<sup>80</sup> The Convention on the Rights of the Child in its article 10 refers to the right to family reunification noting that:

“In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. [...]”

#### A case from Ukraine:<sup>81</sup>

A woman obtained Russian citizenship to ensure that her daughter would inherit her estate in Russia. When her daughter was 16, her mother died, leaving her alone. The girl lived in her aunt’s house in Ukraine. She was completely independent (for the past two years she took care of her mother and the household).

Two days after her mother’s death, the special guardianship services came with the police to take the girl to an orphanage. This triggered a suicide attempt. After a week in hospital, she was eventually transferred to an orphanage. A neighbour and friend of the child’s mother and the brother of the girl expressed a wish to become her guardian. Social services officials persuaded the neighbour not to apply for guardianship. They advised the girl that she should go to Russia to obtain a passport. The girl was transferred to a transit centre in Kiev and from there to Russia. This decision was taken in spite of the fact that Russian authorities had made an official statement saying that the girl did not have property in that country and suggested resolving the issue in Ukraine.

The girl’s time in the transit centre was difficult; she could not understand why she was being treated like a criminal, i.e. why she was being controlled and searched. A month later, she left for Russia where the transit centres system is even stricter and there are more children. She reported that there were

four children to each room and the guard on duty sleeps in the same room. Within two weeks, she ran away and lived alone for two months. She was later apprehended smoking what has recently come to be considered an illicit narcotic substance. A court hearing was arranged, but has been repeatedly delayed. There have also been problems with the migration authorities who took six months to issue her with a passport.

During her time in the Social and Rehabilitation Centre for Minors in Moscow, she was not allowed any contact with NGOs or even her own relatives. She was only allowed to communicate through the social network Vkontakte under the supervision of the authorities.

When the girl turned 18 she left the centre. A month later, a court hearing ruled against the girl putting her on probation. She was not offered any housing and temporarily lived with her relatives. Now she is trying to resolve her housing problems by herself.

#### 1.2 The Convention relating to the Status of Refugees (1951):<sup>82</sup> Art. 31;

The Convention relating to the Status of Refugees (1951 Refugee Convention), which has been ratified by 145 States, provides the internationally agreed definition of a refugee and sets out States’ obligations towards them. All signatories to the Chisinau Agreement are parties to the 1951 Refugee Convention. The majority of the CIS countries ratified the 1951 Refugee Convention prior to adopting the Chisinau Agreement.<sup>83</sup>

Article 31 of the 1951 Convention is particularly relevant to unaccompanied children as highlighted by the Committee on the Rights of the Child and in General Comment No 6.<sup>84</sup> As discussed above, the number of unaccompanied children in CIS countries applying for refugee status is unknown. Many do not qualify as refugees, as their migration tends to be motivated by economic factors rather than an imminent threat to life. Nevertheless, the provisions of this article still apply.

This provides that where there is a danger to a person’s life and freedom, the destination State shall not impose penalties purely because of their illegal entry or presence. In addition, no refugee should be prosecuted for violating rules of entry or stay if they “present [themselves] without delay to the authorities and show good cause for their illegal entry or

80 The principle of family reunification has been recognized in the International Convention on the Protection of the Rights of All Workers Migrant Workers and Members of their Families, (article 44.2) which provides that states ‘shall take measures that they deem appropriate [...] to facilitate the reunification of migrant workers with their [...] minor dependent unmarried children.’

81 Information provided by Oksana Moskalenko, Women’s Consortium of Ukraine, Ukraine.

82 (adopted 28 July 1951, entered into force 22 April 1954) UN GA Res 429 (V).

83 For more information on the dates of adoption and ratification as well as reservations and declarations, please see: <http://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&src=UNTS&no=V-2&chapter=5&Temp=mts2&lang=en>

84 para 15, 26, 31, 53, 59, 62, 74, 76, 77.





presence.”<sup>85</sup> This article could be invoked to prevent the detention of unaccompanied children because they or their parents have breached migration regulations.

### 1.3 The International Covenant on Civil and Political Rights (ICCPR)<sup>86</sup>

The Covenant is considered one of the main human rights treaties along with the Universal Declaration of Human Rights<sup>87</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In some cases in which unaccompanied children are detained, it could be argued that the Chisinau Agreement violates article 9.1 of the ICCPR which deals with the right to liberty and security of person and prohibits arbitrary arrest and detention. For unaccompanied children who are already experiencing anxiety from travelling alone and being separated from their parents, detention and the uncertainty about how long they will remain in detention may amount to cruel and inhuman treatment, thus violating the ICCPR. Article 7 which prohibits torture, cruel inhuman or degrading treatment or punishment is a non-derogable right.<sup>88</sup>

The Covenant is also relevant as it acknowledges the special status of children on the question of detention<sup>89</sup> and may further refer, although indirectly, to a body of international law now developing, which prohibits solitary confinement of children.<sup>90</sup> As this report shows, unaccompanied children are sometimes held in incommunicado detention as a form of punishment.

#### A case from Russia:<sup>91</sup>

On 3 November 2012, Didor Nazarmamadov, a 17-year-old citizen of Tajikistan, was arrested by police in the Krasnoselskii region of Russia on the grounds that he had overstayed the time permitted by the migration authorities. Didor was detained without a court order in a centre of temporary rehabilitation and isolation of minors in conflict with law in the St Petersburg and Leningradskii region, which is under the control of the Ministry of Internal Affairs. He has spent eight days in the centre, three of them in solitary

confinement (as a quarantine measure).

The conditions of detention did not comply with international standards, according to Didor’s lawyer and Didor himself. Didor says the detention room had three beds and no other furniture. The window was barred and could not be opened. Bed sheets and mattresses were old and in bad shape. The light was on until 9.00pm and it was impossible to turn it off as the switch was outside the room and controlled by a guard. There was no drinking water in the detention room. Only cold water ran from the basin, while the toilet was situated in another building to which Didor could only go accompanied by a guard. During the three days Didor spent in solitary confinement he could not shower or take a bath, as there are no washing facilities in solitary confinement. He was checked once a day by a doctor, but could not request a doctor himself.

Family visits were prohibited by the institution. Didor was permitted a 15-minute walk outdoors only once during the entire period of detention. The food was of poor quality and the portions were insufficient. For instance, at lunchtime, Didor could only have porridge, a piece of bread and a cup of tea. Meat, fish and fruit were not provided. Didor spent three days in solitary confinement with no access to information, such as books, newspapers, radio or television. There was a television in the common room which he was able to access after his time in solitary confinement.

The Chisinau Agreement does not state explicitly that children should be separated from adults or that unaccompanied children, who are detained for breaching administrative and migration rules, should be separated from children who are suspected of committing a criminal offence.

### 1.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>92</sup>

All CIS countries are parties to the ICESCR. Relevant articles under this treaty include article 11 on the right to an adequate standard of living, including adequate food, clothing and housing; 12 (health); 13 (education); 14 (free and compulsory primary education); and 15 (the right to participate in cultural life).

#### A case from Kazakhstan:<sup>93</sup>

A 16-year-old girl from Uzbekistan was apprehended by law enforcement officials while selling pastry on a street market in Almaty. The girl was taken to a transit centre in the city where staff discovered she had head lice. A monitoring NGO noted

<sup>85</sup> Article 31 of the 1951 Convention.

<sup>86</sup> (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>87</sup> UNGA Res 172 A (III) (10 December 1948).

<sup>88</sup> ICCPR, Art. 4(2).

<sup>89</sup> ICCPR, Art. 10, Art. 14(4).

<sup>90</sup> U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, U.N. Doc. A/45/49, (Dec. 14, 1990) (“The Riyadh Guidelines”); UN CRC, 44th Sess., General Comment No. 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007); U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, U.N. Doc. A/45/49, para. 67 (Dec. 14, 1990) (“The Beijing Rules”).

<sup>91</sup> Information provided by Olga Abramenko, Anti Discrimination Centre ‘Memorial’.

<sup>92</sup> (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>93</sup> Information provided by Zulfiya Baisakova, the Union of Crisis Centres of Kazakhstan, Kazakhstan.

that staff acted sensitively and with cultural awareness by not cutting the girl's hair (a common practice in the Soviet Union as an easy way to get rid of lice) because it is customary for girls in their teenage years to have long hair in Central Asia. Staff treated the girl's scalp with special medical products instead.

### **1.5 The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>94</sup>**

The Migrant Workers Convention deals with the rights of migrant workers and their family members. The Convention does not distinguish between legal (documented) and illegal (undocumented) migrants.<sup>95</sup> The Convention has child-specific articles, although it does not refer explicitly to unaccompanied children.

Relevant articles include: article 17 on support to family members where the liberty of migrant workers is restricted; article 29 on the right to a name, registration and nationality for children of migrant workers; article 30 on access to education on an equal basis with nationals of the State concerned; and article 45 which requires that children have access to a local school and the opportunity to learn their mother tongue.

#### **A case from Ukraine:<sup>96</sup>**

A 17-year-old Roma girl from Russia ran away from home after an argument with her parents. She was living in the Autonomous Republic of Crimea with her boyfriend and wanted to get married against her parents' wishes. She ended up in police custody, but it is unclear how. In the remand centre where she was held, the girl was able to meet with her boyfriend who she calls "husband". NGOs that monitor her living conditions have the sense that she sits watching television all day in the room of an officer on duty. During a visit by one NGO, she was sitting in the library reading a book in German - a language she has no knowledge of (she speaks Russian and Romani). There are no books in the institution in Romani - all are in Ukrainian or Russian.

### **1.6 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized**

#### **Crime;<sup>97</sup>**

Unaccompanied children are particularly vulnerable to being abused and trafficked. The protocol provides comprehensive measures to prevent trafficking in persons and assisting victims, especially children. Various provisions address the safety of people who have been trafficked, their repatriation and how they should be treated while a course of action is established.

### **1.7 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>98</sup>**

Unaccompanied children are particularly vulnerable to violations of their rights under the CAT because of their age, unaccompanied status, the fact that they are non-nationals and are likely to be held in places where their liberty is restricted. There is an absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law, a norm which is peremptory, constitutes customary international law and is not subject to derogation or exceptions. All of the CIS States have ratified CAT.

Among the CIS States, which have ratified Optional Protocol to CAT, which allows for individual communications to the Committee Against Torture are: Azerbaijan, Kazakhstan, Moldova, Ukraine and Russia.

## **2. Special Procedures of the UN**

UN experts, called Special Procedures, can also deal with issues around unaccompanied children. Special Procedures are established to find out about human rights situations for a given issue or particular country. Their role is to examine, monitor, advise and publicly report on these situations.

The Special Procedures especially relevant to the situation of unaccompanied children are: the Special Representative of the Secretary-General on Violence against Children and the Special Rapporteur on the sale of children, child prostitution and child pornography. Other relevant Special Procedures include: the special rapporteurs on education; on human rights of migrants; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on torture and other cruel, inhuman or degrading treatment or punishment; on trafficking in persons, especially women and children; on the situation of human rights in Belarus; and the Working Group on Arbitrary Detention.

<sup>94</sup> (adopted 18 December 1990, entered into force 1 July 2003) text in UN Doc A/RES/45/158.

<sup>95</sup> UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art. 2. Available online at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

<sup>96</sup> Information provided by Oksana Moskalenko, Women's Consortium of Ukraine, Ukraine.

<sup>97</sup> (adopted 15 November 2000, entered into force 25 December 2003) UN GA/RES/55/25.

<sup>98</sup> (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

### 3. Regional instruments

Some countries in the CIS region are members of the Council of Europe and are therefore parties to the European Convention on Human Rights (ECHR)<sup>99</sup> and have accepted the jurisdiction of the European Court of Human Rights (ECtHR). These countries are: Russia, Moldova, Azerbaijan, Armenia and Ukraine. The judgments of the ECtHR are binding on these States.

The relevant articles of the ECHR, that particularly deal with violations of the rights of unaccompanied children are: article 3, which prohibits torture or other forms of inhuman or degrading treatment or punishment; article 5, which deals with the right to liberty and security of a person, and justifies the lawful detention of children only for the purpose of “educational supervision” or to bring a child “before the competent legal authority”; article 8, which deals with the right to respect for one’s private and family life; and article 14 on the prohibition of discrimination.

To date, no decisions have been issued specifically addressing unaccompanied children in the CIS region. However, some cases offer insight into the ECtHR’s views on issues affecting unaccompanied children, for instance in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*<sup>100</sup> and *Rahimi v. Greece*,<sup>101</sup> the ECtHR found multiple violations of the ECHR. Both cases involved the transfer of unaccompanied children from one State to another as well as transfer between facilities, where the treatment of unaccompanied children was not sensitive to their situation and the fact that they were children amounted to cruel, inhuman and degrading treatment, thus a violation of article 3 of the European Convention on Human Rights.

Also within the Council of Europe is the European Social Charter (ESC), which enshrines social and economic rights. The protections on health; the right of mothers and children to economic protection; and the right of migrant workers and their families to protection and assistance have a particularly clear application to the plight of unaccompanied children.<sup>102</sup> States parties to the Charter must submit periodic reports on their implementation to the European Committee of Social Rights and the Committee has the power to receive complaints on alleged violations of Charter rights.

Azerbaijan, Russia, Moldova and Ukraine have all ratified the ESC, but none has signed up to the complaints mechanisms

that would allow NGOs to submit complaints to the European Committee on Social Rights. The Committee has not explicitly addressed the rights of unaccompanied children during its Conclusions on any CIS States, though the rights of migrants and children have featured prominently in some State reports.<sup>103</sup>

All members of the Council of Europe have also ratified the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>104</sup> As such, Russia, Moldova, Azerbaijan, Armenia and Ukraine are all bound by the CPT. The ratification of the CPT permits the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to visit detention centres, including juvenile detention centres in all Member States of the Council of Europe. The CPT Committee issues a report to a State after its visit with recommendations. If a State refuses to cooperate or to implement recommendations of the CPT Committee, the Committee may decide to make a public statement by a majority two-thirds vote.

The Committee on the Prevention of Torture outlined standards on the treatment of unaccompanied children in its 19th General Report, stating that detention is “rarely justified” and “can certainly not be motivated solely by the absence of residence status”. The Committee also called for unaccompanied and separated children deprived of their liberty to be provided with free and prompt access to legal and other appropriate assistance, including the assignment of a guardian or legal representative.<sup>105</sup> Addressing Spain, the Committee recommended that the State implement specialist training for those responsible for the care of unaccompanied children in detention.<sup>106</sup>

<sup>99</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

<sup>100</sup> App. No. 13178/03, 12.10.2006.

<sup>101</sup> App. No. 8687/08, 05.04.2011.

<sup>102</sup> European Social Charter, Articles 11, 17 and 19 respectively. Available online at: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>

<sup>103</sup> See, for example, European Committee of Social Rights, Conclusions 2011 on Ukraine, January 2012. Available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ukraine2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ukraine2011_en.pdf).

<sup>104</sup> (adopted 26 November 1987, entered into force 1 February 1989) ETS 126.

<sup>105</sup> 19th General report (CPT/Inf) (2009) 27, paras. 97 and 98.

<sup>106</sup> CPT/Inf (2011) 11, para. 157.

## PART III

# VIOLATIONS OF UNACCOMPANIED CHILDREN'S RIGHTS IN CIS COUNTRIES

**This section of the report analyses the findings of interviews carried out with NGOs working with unaccompanied children in CIS countries, including common trends and differences.**

CRIN interviewed NGOs in the following countries by telephone, email or in person: Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Azerbaijan, Ukraine and Belarus.

In **Russia**, two NGOs based in St Petersburg provided information: Anti-Discrimination Centre (ADC) 'Memorial' and 'Stellit'. St Petersburg is the second most popular destination for unaccompanied children in the country after Moscow. CRIN received no response from NGOs in other regions, but 'Stellit' has worked with transit centres across the country and was able to provide information from other regions. ADC 'Memorial' has mainly worked with the Transit Centre in St Petersburg and has not worked closely with other transit centres and institutions of a similar nature, which exist in every territorial administrative unit of Russia. Therefore, the reference in the text to 'transit centres' by ADC 'Memorial' means the transit centre in St Petersburg.

In **Kazakhstan**, CRIN met with Crisis Group, which is based in Almaty - the most populous city in Kazakhstan and the main destination for unaccompanied children. Crisis Group monitors transit centres in Almaty, as well as Astana (the capital city), Taldykorgan in central Kazakhstan, and Taraz in the south.

In **Kyrgyzstan**, the Youth Human Rights Group provided information. The Youth Human Rights Group has conducted monitoring of transit centres together with the Office of Ombudsman of Kyrgyzstan. This NGO works in all regions of the country.

Information on **Ukraine** was provided by the Women's Consortium of Ukraine (WCU). The WCU is a member of the coalition of children's rights NGOs in Ukraine, which has conducted a monitoring exercise of reception centres, including transit centres, in 2013 under the initiative of Ministry of Internal Affairs of Ukraine. The Criminal Police Department for Children, under the Ministry of Internal Affairs of Ukraine, has designated four reception centres as transit centres, which were monitored in the following cities: Simferopol (Autonomous Republic of Crimea), Kiev, Kharkov and Mykolaiv. The reception centre in Mykolaiv city was supposed to be used since August 2005 as a transit centre because the reception centre in Odessa was closed down for reparation works. However, due to a small number of children the reception centre in Mykolaiv was not used to accommodate unaccompanied children. The WCU did not have information about the current situation in the Simferopol reception centre, as at the time of writing and as of 18 March 2014 the territory of the Autonomous Republic of

Crimea is de facto controlled by Russian forces.<sup>107</sup>

CRIN also interviewed an NGO working in Dushanbe, the capital city of **Tajikistan**, who wished to remain anonymous.

In some countries, such as **Moldova**, transit centres are reported to be closing down, although CRIN is unable to verify this information.<sup>108</sup> The transit centre in **Azerbaijan** has also been closed down and there is no official institution to accommodate unaccompanied children other than the ones provided in an *ad hoc* manner thanks to the efforts of local NGOs.<sup>109</sup> In **Belarus**, around five to seven years ago six transit centres were operating under the Ministry of Internal Affairs, now only one remains in the capital city of Minsk. This can be explained by the fact that fewer unaccompanied children are arriving in Belarus, but no official information or statistics could be obtained to support this argument were available.<sup>110</sup>

## 1. Detention

Unaccompanied children are detained unnecessarily and in deplorable conditions in all countries reviewed.

### *Conditions of detention*

Unaccompanied children are detained in two types of centres in CIS countries: the first, which tends to operate under the ministries of education or social protection and health, is usually referred to as a "transit" centre or "centre of adaptation". The second falls under the authority of each country's respective Ministry of Internal Affairs and is referred to as a remand centre or centre for children in conflict with the law. The names of the centres, their nature and internal regulations vary from one country to the next. In general, the first kind of centre is better suited to children, but both have shortcomings.

In **Kazakhstan**, **Tajikistan** and **Kyrgyzstan**,<sup>111</sup> transit centres are called "centres of adaptation and rehabilitation of minors". The centres are closed and children's freedom of movement is significantly restricted.

<sup>107</sup> Information provided by Oksana Moskalenko, Women's Consortium of Ukraine, Ukraine (hereinafter, 'WCU').

<sup>108</sup> Email correspondence with Oksana Moskalenko, Women's Consortium of Ukraine, Ukraine; Mariana Ianachevici, "AVE COPIL", Moldova.

<sup>109</sup> Information provided by Kamala Ashumova, Reliable Future YO, Azerbaijan (hereinafter, 'Reliable Future') and Mehriban Zeinalova, NGO 'Clean World', Azerbaijan (hereinafter, 'Clean World').

<sup>110</sup> Information provided by Andrey Solodovnikov, Director of the Centre for Promotion of Tracing Missing and Exploited Children, INGO "Ponimanie"/"Razumenne"/"Understanding", Belarus (hereinafter, 'Understanding').

<sup>111</sup> After reform in 2013 and 2014, the Centres of Adaptation and Rehabilitation of Minors in Kyrgyzstan were renamed Centres of Prevention of Juvenile Delinquency, where children, after reform, could be detained from three to a maximum 48 hours, as opposed to an almost indeterminate period of detention as was the case previously.



**Kazakhstan** represents the more positive end of the spectrum: an amendment to legislation<sup>112</sup> means that since 2011, the centres of adaptation have no longer operated under the Ministry of Internal Affairs, but under the Ministry of Education. This has transformed the nature of these centres from punitive to educational institutions, for example, staff no longer wear a uniform, children are no longer searched, window bars have been removed, no employees remain from the Ministry of Internal Affairs and even the distinctive Soviet-era smell of detention centres (rot and urine) has disappeared.<sup>113</sup>

Attempts in **Kyrgyzstan** and **Tajikistan** since 2008 to bring transit centres under the control of the Ministry of Education or Ministry of Health and Social Protection have been thwarted.

Transit centres in **Kazakhstan** and **Russia** are also closed, but do not have a penitentiary feel.<sup>114</sup> In Russia, if resources permit, transit centres offer more homely conditions. In **Tajikistan**, transit centre staff including psychologists wear the same uniform as law enforcement officials. This creates a barrier between staff and children, inculcating fear in the latter. In addition, children are searched and windows are barred.<sup>115</sup>

In **Ukraine**, reception centres operate under the Ministry of Internal Affairs and are of penitentiary character.<sup>116</sup> Children in these reception centres are regularly searched despite the fact that all children's belongings are removed upon entry into the centre.<sup>117</sup> In bedrooms and toilets there are spyholes in the doors which allow employees to monitor what children are doing.<sup>118</sup> In other rooms children are under constant observation.<sup>119</sup>

In **Azerbaijan**, there are no transit or temporary centres for unaccompanied children. These children are placed in shelters or orphanages with the help of NGOs or sent to the Centre of Illegal Migrants which operates under state migration and border control services.<sup>120</sup> The conditions in which they are held are unknown to the NGO interviewed. In **Belarus**, transit centre conditions resemble those of

prisons: Children are under constant supervision and surveillance and are governed by a strict schedule. In **Kyrgyzstan**, prior to reforms carried out in 2013/14, when the Ministry of Internal Affairs together with representatives of civil society elaborated new regulations, which decreased the time children could be held in detention and which were meant to improve the conditions of transit centres in general, prison-like conditions also dominated in the centres.<sup>121</sup> Even since the reforms, the centres have remained under the control of the Ministry of Internal Affairs. CRIN has no information about conditions following reform.

In **Russia**, as well as the more educational transit centres, there are also "centres of temporary rehabilitation and isolation of minors in conflict with the law". While the transit centres in Russia operate under the Committee of Social Protection of the Population,<sup>122</sup> the centres of temporary detention operate under the Ministry of Internal Affairs and emulate penitentiary institutions.<sup>123</sup>

Statistics from the Novosibirsk region of Russia show a worrying increase in the number of children from the CIS who are sent to centres of temporary rehabilitation and isolation of minors in conflict with the law. In 2008, 28 children were detained; this figure rose to 62 in 2010.<sup>124</sup> Every tenth child is a citizen of the CIS.<sup>125</sup>

This is particularly relevant for children found to be in breach of administrative law, as every third child detained in the centre is not a Russian citizen and has been detained for breaching migration regulations. Among these children, 54 percent arrived in the country alone or accompanied by relatives other than their parents.<sup>126</sup>

Most of the centres accept both citizens of the CIS and other foreign nationals.<sup>127</sup> Transit centres in Russia which are more rehabilitative in nature do not accept children from the CIS if they are 16 or older - these children are usually placed (especially if transit centres are overpopulated) in centres of temporary rehabilitation and isolation for children in conflict with the law.<sup>128</sup> This regulation discriminates on the basis of

112 Law on Introducing Amendments and Additions to the Law on Education of the Republic of Kazakhstan of 24.10.11; No. 487-IV.

113 Information provided by Zulfiya Boisakova, the Union of Crisis Centres of Kazakhstan, Kazakhstan (hereinafter, 'Crisis Centres').

114 Information provided by Olga Kolpakova, Regional Public Organisation of Social Projects in Sphere of Population's Well-being "Stellit" (hereinafter, 'Stellit'), Crisis centres.

115 NGO from Tajikistan, anonymous.

116 WCU.

117 WCU.

118 WCU.

119 WCU.

120 'Clean World'; 'Reliable Future'.

121 Information provided by Natalia Utesheva, Public Organisation Youth Human Rights Group, Kyrgyzstan (hereinafter, 'Youth Human Rights Group').

122 Information provided by Olga Abramenko, Anti Discrimination Centre 'Memorial' (hereinafter, 'ADC "Memorial"').

123 ADC 'Memorial', Order 569 of the Ministry of Internal Affairs of Russia, 26 May 2000, 'On the establishment of regulations for departments of internal affairs working on issues affecting minors', §59.2.

124 The website of the Ombudsperson for children's rights in the Novosibirsk region, Russia <http://novosibirsk.rfdeti.ru/display.php?id=12330>

125 Ibid.

126 Ibid.

127 Kazakhstan, Belarus, Russia, Kyrgyzstan, Tajikistan.

128 ADC 'Memorial', 'Regulations for the admission of children to 'Transit' centre', Order No. 38-D of 09.12.2010.

age and nationality.

In most institutions, children are searched upon arrival - ostensibly for safety and sanitary reasons - and are sometimes required to change their clothes.<sup>129</sup> In **Tajikistan**, girls' virginity is checked on arrival (a practice not established by law). Where this is found to be lacking, a criminal investigation is initiated. This traumatic process is exacerbated by the fact that it is carried out by a male medical expert. NGOs have tried to insist a female perform the procedure, but the administrative and criminal code of Tajikistan differentiates between "expert" as someone who can testify in court and has a special licence to do so and a specialist's opinion, which does not hold the same value. The only recognised experts available in the country's transit centres are male. In addition, where a girl's hymen is not intact, she is kept in a special centre rather than transferred to an orphanage so as not to "spoil other girls".<sup>130</sup> This practice is inhumane and degrading and should be eradicated.

Even where transit centres are more rehabilitative in character, they are still closed institutions where children are detained and their freedom of movement and communication with the outside world are significantly restricted. Detention does not serve the best interests of the child - a fact highlighted by international human rights bodies, including the UN Committee on the Rights of the Child.<sup>131</sup>

### *Period of detention*

The period of detention is also a concern. According to the Constitution of **Kyrgyzstan**,<sup>132</sup> a person can be detained without a court order for a maximum of 48 hours, while in transit centres this can increase to 30 days, with the possibility of prolonging this a further 15 days.<sup>133</sup> In **Kazakhstan** the maximum length of detention without a court order is 72 hours, while the time period when children are allowed to be kept in transit centres is 30 days, again with the possibility of extension, increasing the likelihood of abuse.

In **Belarus**, unaccompanied or separated children can be kept in transit centres for up to 30 days. If their identity cannot be established or they do not have a residence permit or are not residing permanently in Belarus, they can be held for up to 60 days.<sup>134</sup> This period can be prolonged for a further

15 days by a court decision.<sup>135</sup>

In Belarus and **Kazakhstan**, a requirement is set out in law that where children are placed in transit centres or arrested, a prosecutor and commission on minors should be informed within 24 hours from the moment of detention.<sup>136</sup> This requirement is an important safeguard to guarantee prompt intervention not only by law enforcement officials such as the prosecutor but also social services (children's commission). However, whether this provision is adhered to in practice is unknown.

In Kazakhstan, children can be placed in transit centres only with permission from the Guardianship Agency which works only on weekdays (excluding public holidays). If the child is found unaccompanied on other days, placement is difficult and NGOs must step in. An NGO in Kazakhstan pointed out that some months have a lot of public holidays, leaving just 19 working days in these months.

Children in transit centres in **Russia** are typically held for three to six months, but in some cases this period can be extended for up to a year. The period depends on whether children can be identified and their guardians found, or if children fall ill and cannot travel as a result. The minimum time children are held in detention centres is three hours - the time needed to establish the legal representatives with the purpose of reuniting them.<sup>137</sup> The longest known period was two years in the case of two girls in Azerbaijan who were abducted by their father and taken to Russia.<sup>138</sup> It took two years to find their mother and reunite her with her children.<sup>139</sup>

Prolonged detention can in part be explained by the fact that children often travel without documents and it is therefore difficult to identify them. The process of identifying children and providing them with the necessary documentation takes time. In most cases, the identification procedure depends on embassies and consular representatives of CIS countries. The ombudsman for children's rights in the Novosibirsk region of Russia has highlighted that cooperation with embassies can be time-consuming and cumbersome. He noted that there is a need for regulations to establish a time-frame within which embassies must provide information.<sup>140</sup>

129 NGO from Tajikistan, anonymous.

130 NGO from Tajikistan, anonymous.

131 See Section above.

132 Youth Human Rights Group, Art. 24, the Constitution of the Republic of Kyrgyzstan.

133 Youth Human Rights Group, Art. 4.1, Regulation of the Centre of Adaptation and Rehabilitation of Minors of the Ministry of Internal Affairs of the Republic of Kyrgyzstan.

134 'Understanding'.

135 Ibid.

136 'Understanding'; Crisis Centres.

137 This information only relates to the Transit Centre in St. Petersburg, the situation in other transit centres in Russia is not known to the NGO surveyed. ADC 'Memorial'.

138 This information only relates to the Transit Centre in St. Petersburg, the situation in other transit centres in Russia is not known to the NGO surveyed. ADC 'Memorial'.

139 This information only relates to the Transit Centre in St. Petersburg, the situation in other transit centres in Russia is not known to the NGO surveyed. ADC 'Memorial'.

140 The website of the Ombudsperson for children's rights in the Novosibirsk region, Russia <http://novosibirsk.rfdeti.ru/display.php?id=12330>

In **Ukraine** children are kept in reception centres for 30 days maximum and this period of time can be prolonged by a court order for another 30 days.<sup>141</sup>

A local NGO in **Kyrgyzstan** has successfully lobbied through litigation for a change in regulations on the centres of adaptation and rehabilitation of minors. As a result of these changes, these centres have been renamed as “Centres of Prevention of Juvenile Delinquency” and the time period in which children can be held there without their case being heard by a court is three to 48 hours. The centres remain under the responsibility of the Ministry of Internal Affairs. NGOs are currently monitoring these transit centres, but CRIN is not aware of the results of this work.

## 2. A lack of distinction in the treatment of unaccompanied children and children in conflict with the law\*

Neither domestic law nor the Chisinau Agreement adequately address the lack of distinction between children who are detained because they have committed an offence and children who are detained because they are unaccompanied. In **Kazakhstan**, for example, unaccompanied children may be kept in a remand centre together with children awaiting court hearings and who are in conflict with the law. The NGO interviewed did not know whether children are detained for breaching administrative law or migration rules as well, or if it is only those on criminal charges.

Although children in conflict with the law in remand centres in Kazakhstan are kept in different rooms to adults, they are housed in the same centre in conditions that are not suitable for children. NGO criticism has triggered attempts to split the centres in two, leaving one half for adults under the supervision of the Ministry of Internal Affairs and the other half for children under the Ministry of Education. Despite funding to make the changes and some renovation works, this plan was abandoned. The NGO interviewed did not know why, although it is thought that the funding provided was not enough and frequent turnover of government personnel may play a part.

In reception centres in **Ukraine** the following categories of children are held in detention: a) children aged 11 to 18 who have carried out “socially dangerous acts”<sup>142</sup> at the time when they were 11 to 14 years old;<sup>143</sup> b) children who left alternative care facilities of their own free will; c) children who need to be

reallocated;<sup>144</sup> d) children who are foreign nationals and are required to be transferred to the country of their permanent residence in accordance with agreements between Ukrainian departments of internal affairs and other countries.<sup>145</sup> From this provision it can be concluded that children in conflict with the law and unaccompanied children are held together, which is problematic from the perspective of international law.

In some places, children are detained with adults. In **Kyrgyzstan** this happens largely because some unaccompanied children do not possess any identity documents which means their age may be assessed incorrectly<sup>146</sup> or the children themselves may not know their own age.<sup>147</sup> In the Centre of Illegal Migrants in **Azerbaijan**, adults and families with children, as well as unaccompanied children are held together, according to the NGO interviewed,<sup>148</sup> but CRIN has been unable to verify this information.

*\*For the purpose of this report, we are calling for a clear distinction between children who are detained because they have committed an offence and children who are detained because they are unaccompanied. However, CRIN believes that no child should be detained for offences they have committed, and detention should only be a measure of a last resort, when it has been assessed that a child is posing a serious risk to public safety.*

## 3. Freedom of movement and communication with the outside world

All NGOs interviewed reported that children cannot leave transit centres of their own accord and none allow children to leave the premises without adult supervision (except in a few cases, for example, in **Russia** some children are allowed to attend local schools, but this is an exception rather than a rule). All institutions discussed have a high fence and a guard at the entrance and exit to the building.

Some transit centres impose restrictions on children’s movement even within the centres themselves and all activities are tightly controlled. In **Ukraine** and **Kyrgyzstan** (Bishkek city), for example, children cannot go to their bedroom during the day to rest. In Kyrgyzstan, restrictions on freedom of movement had not changed even since the 2013

141 WCU.

142 Actions which are likely to lead to criminal liability.

143 A note from WCU: as claimed by employees of the reception centre, preventive or administrative detention was abolished after the ECtHR decision on *Ichin and others v Ukraine*, 21 December, 2010, app. no. 28189/04 and 28192/04.

144 Reallocated from one alternative care institution to another.

145 WCU; Order as of 13 July 1996, No. 384 ‘On the establishment of provisions for reception centres for children set up by departments internal affairs.’

146 For more information: a comment by the Council of Europe’s Commissioner for Human Rights in 2011: [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=166](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=166)

147 Youth Human Rights Group, NGO Statistics, from January to May 2012. In total, 27 cases have been reported in which children in transit centres were over 18.

148 ‘Clean World’.



reform.<sup>149</sup> Other centres do allow children to choose how they want to spend their time, for example, a transit centre in Osh, Kyrgyzstan, permits children to choose whether to watch a film, draw or play with toys. A similar situation was reported at a transit centre in Almaty, **Kazakhstan**.

Telephone calls are permitted in the transit centre in St Petersburg twice a week under supervision. The high number of children makes it difficult to organise calls more frequently.<sup>150</sup> In **Belarus** and **Kazakhstan**, calls to relatives are allowed. In **Tajikistan**, telephone calls are also allowed but again under supervision and for a set number of minutes. In **Ukraine** telephone calls are only allowed under the supervision of reception centre employees.<sup>151</sup> All written correspondence with relatives (letters, notes) is read by reception centre employees, which is in breach of children's right to a private life.<sup>152</sup>

Most of these children have limited or no access to the internet - ostensibly for safety reasons. In Kazakhstan, there is a designated computer room. However, NGOs that monitor the centre say they have never seen a child using the internet and suspect that they are not allowed to. There is no internet access in the transit centres in Tajikistan and Ukraine.

Visits by relatives are allowed in some centres under supervision, but not in others. In **Kazakhstan**, relatives can visit every Saturday and bring food. All visits are monitored by staff. Visits in **Ukrainian** reception centres are allowed but only under supervision and all the food that is brought by relatives must be kept in the canteen (they do not allow the children to keep water or food in their rooms) and children only have access to it during breakfast, lunch or dinner.<sup>153</sup> In Ukraine there are no special rooms for meeting with relatives and relatives are not allowed to stay in the centre, which is problematic in cases where they come from other towns or regions to visit or collect a child.<sup>154</sup>

In the St Petersburg transit centre, visits are allowed on the condition that visitors present an X-ray for preventative health reasons (according to NGOs, epidemics of tuberculosis break out periodically in the city). Centres of temporary rehabilitation and isolation of minors in conflict with the law in **Russia** do not allow children any contact with the outside world.<sup>155</sup>

#### 4. Access to legal assistance

At the moment legal assistance is one of the most challenging aspects of providing assistance to unaccompanied children. All too often transit centre staff do not know how to initiate a court case. In addition, investigation procedures are not child friendly. Nevertheless, some efforts are being made to change the situation. For example, Transit centre in St. Petersburg is developing cooperation with law enforcement representatives to make investigation techniques more child friendly. This is currently being discussed at the Russian State Duma.<sup>156</sup> Many transit centres and governments do not provide legal aid, leaving NGOs to provide lawyers.<sup>157</sup> According to the law in all the CIS countries, if children are suspected of committing an offence and a criminal case has been filed against them, they are entitled to receive free legal assistance.<sup>158</sup> In such cases government appointed lawyers are often indifferent to a child's fate and do not provide appropriate legal assistance that corresponds to the ethical and professional standards that lawyers should follow.

Representatives of a **Russian** NGO highlighted that a separate juvenile justice system, which does not aim to criminalise children and in which law enforcement officials consider the age of offenders, does not exist in Russia. The very idea of such a system is received with hostility by state officials. The same is true in **Belarus**, where in 2009, a bill on juvenile justice was introduced at the inquiry of the Council of Ministers of Belarus, but this has not yet been adopted.

#### 5. Education, health and well being

NGOs acknowledge that some transit centres provide children with education and psychological assistance. However, the lack of staff training in such centres is problematic. In **Kazakhstan**, for example, despite some positive steps to transform institutions, most staff members have never worked with children before or lack training.

In Russia, some transit centres are better equipped to work with children than others depending on the region and funding available. For example a transit centre in one of the big cities has interactive boards to teach children, while a transit centre in another region is not equipped with enough furniture.<sup>159</sup>

In terms of access to education and leisure, local school teachers were supposed to visit the St Petersburg transit

149 Youth Human Rights Group.

150 ADC 'Memorial'.

151 WCU.

152 WCU.

153 WCU.

154 WCU.

155 ADC 'Memorial'.

156 'Stellit'.

157 NGO from Tajikistan, anonymous.

158 NGO from Tajikistan, anonymous.

159 'Stellit'.

centre under a previous initiative, but this never happened.<sup>160</sup> Some children are allowed to go to school, but only those who staff believe will not run away. There are few books, and these are well-worn, as many children pass through the centre.<sup>161</sup> Some books are available in the Romani language, others in Moldovan.<sup>162</sup> There is no internet access, which staff say is to prevent child traffickers from detecting the centre.<sup>163</sup>

Lots of books are available in the transit centre in Almaty, **Kazakhstan**, but they remain unopened. During a monitoring visit by NGOs, it was clear that children were sent to the library involuntarily to show the centre in a positive light because they were flicking through newspapers despondently. However, also during the visit, children played happily in a special room with a psychologist and were not aware of the presence of social workers, as though they were used to this. The centres in Kazakhstan are generally quite well-resourced and activities take place, such as visits to the circus and summer camps.

In Almaty, sports facilities including a basketball court are also available. However, staff are not sufficiently trained, which means they do not take into account the age difference between the children when organising leisure activities. For instance, a child of seven is sent to play in the same room as a 17-year-old, and all the boys will go to the basketball court, but only older children will play, as younger children cannot play at the same level.

Access to education is often limited. Children are generally taught in transit centres, rather than at regular schools. Overall, classes are very basic (consisting of mathematics and reading and writing lessons) and are taught at a lower level than at regular schools.<sup>164</sup> In most cases, lessons are given in Russian and children may not receive classes in their native language; most books are also in Russian. In **Russian** centres there have been some attempts to attract university students who speak other languages, but this is mainly done to establish basic communication with unaccompanied children.<sup>165</sup>

In **Ukraine** children can attend regular schools only if they are being kept in an institution for more than 30 days, which is often not the case with unaccompanied children.<sup>166</sup> Education is organised according to the resources available in reception centres, which often do not have an employee

who would work exclusively as a teacher, although most employees have a pedagogical degree.<sup>167</sup> The quality of education is not monitored and there are no special programmes for children who arrive from another country with a different level of education.<sup>168</sup> There are no official statistics on the nationalities of unaccompanied children. As was noticed by the Women's Consortium of Ukraine, at the time of monitoring, there were children who spoke Russian, Ukrainian, Moldovan and Romani, while most educational materials were only in Ukrainian.<sup>169</sup> There were quite a few books and films available in other languages, but there were no materials available in Romani or Moldovan.<sup>170</sup>

In terms of qualified psychological assistance, some centres have their own psychologists, but they are usually not trained to work with children,<sup>171</sup> or have received some training organised by UNICEF, but nevertheless wear law-enforcement uniforms.<sup>172</sup> In most cases special training is needed for staff on issues like identification and rehabilitation of child victims of sexual exploitation.<sup>173</sup>

## 6. Lack of follow up procedures

A lack of follow-up procedures is a common problem. When children leave a centre to go to a foster or children's home, or return to their home country, officials do not follow up. There is no communication or cooperation between these institutions. Where follow up visits *do* happen they are usually conducted by NGOs.<sup>174</sup> In **Kazakhstan**, for example, all follow-up measures are taken by local NGOs who monitor the children's situation for up to a year after they leave the transit centre. However, this is only done for Kazakhstani nationals.

Research has shown that a lack of follow-up procedures remains a challenge even in European countries with good systems of child protection. For example, in a report on migrant children in Spain, Human Rights Watch concluded: "In repatriation decisions, government officials fail to analyse or even collect information about what could happen to these children in their home countries."<sup>175</sup>

160 ADC 'Memorial'.

161 ADC 'Memorial'.

162 ADC 'Memorial'.

163 ADC 'Memorial'.

164 NGO from Tajikistan, anonymous.

165 'Stellit'.

166 WCU.

167 WCU.

168 WCU.

169 WCU.

170 WCU.

171 Crisis Centres.

172 NGO from Tajikistan, anonymous.

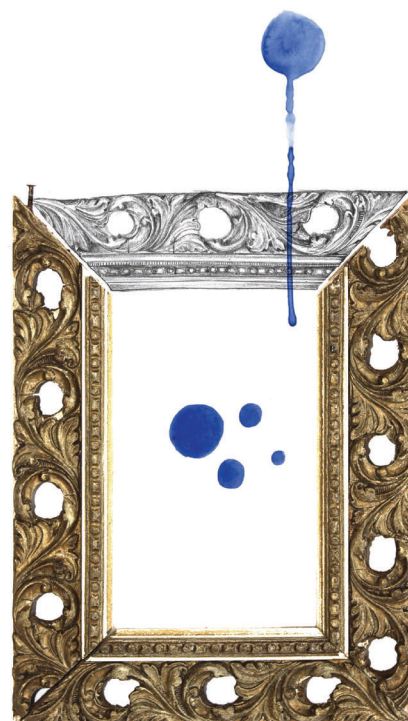
173 'Stellit'.

174 Crisis Centres.

175 Human Rights Watch, "Spain: Give Migrant Children Legal Aid" (17 October 2008). Available at: <http://www.hrw.org/news/2008/10/17/spain-give-migrant-children-legal-aid>

**A case from Kazakhstan:<sup>176</sup>**

A 17-year-old Uzbek girl was in Kazakhstan with her mother who was working in the capital Almaty. When her mother passed away, the girl was placed in a transit centre in the city. While looking for relatives it became clear that the girl had a father and younger siblings in Uzbekistan. The father had a history of violence towards the girl's mother so she was hesitant to return to her family. NGO staff tried to explain to the girl that she had a right to stay in Kazakhstan if she wanted to, but she eventually decided to return to Uzbekistan to be with her father. Her decision was based on concerns about integrating in Kazakhstan, being unable to speak the local language and not having any relatives or anywhere to live after she turns 18.



## PART IV

# RECOMMENDATIONS

The problems with the Chisinau Agreement and domestic legislation of the CIS States stand apparent. Changes must be introduced to the Agreement to ensure its compliance with international law in order to protect the best interests of unaccompanied children in the region who are in a particularly vulnerable position.

Multiple violations of the rights of unaccompanied children, such as arbitrary detention, unacceptable detention conditions, a lack of legal protection, inhuman treatment, the right to education and the right to health prevail as a result of shortcomings in regional and domestic legislation. It should also be noted that the situation of unaccompanied children is neglected in the region where more attention must be paid to the shortcomings of the Chisinau Agreement.

**In view of the multiple violations of the rights of unaccompanied children in CIS countries outlined in this report, we make the following recommendations to national, regional and international organisations.**

#### **To the governments of CIS countries**

- Amend national legislation on issues relating to the detention of unaccompanied children, length of detention and safeguards in line with international human rights standards;
- Adopt alternatives to detention, to avoid criminalising children, and seek out good practices for dealing with unaccompanied children;
- Allocate responsibility for transit centres to the Ministries of Education or Health and Social Protection, instead of the Ministry of Internal Affairs;
- Introduce provisions in national legislation explicitly stating that the best interests of the child should be a primary consideration, and their right to be heard should be taken into account in all decisions affecting unaccompanied children;
- Include the principle of family unity as part of migration policies, with the implication that States should refrain from taking decisions involving the separation of family members and take positive action to promote the reunification of children with their family;
- Establish adequate follow-up procedures where a decision to deport is made;
- Provide unaccompanied children with legal and psychological assistance from professionals trained to work with children;
- Ensure, when the age of an unaccompanied child cannot be verified due to a lack of identity documents, that age assessment be pursued only in cases of serious doubt, that such assessment be conducted by a multidisciplinary panel of independent experts and always with respect to a child's culture, dignity and physical integrity, and that a child is able to appeal against the decision of the panel or seek a

revision of the assessment;

- Create measures enabling refugee registration, assistance and advice on asylum applications, education and counselling for unaccompanied children;
- Collect statistics and monitor the flow of unaccompanied children who apply for refugee status;
- Assist in the strengthening of capacity of local UNHCR offices so they can guarantee that unaccompanied children can exercise the right to seek asylum;
- Initiate, at the CIS level, a review of the Chisinau Agreement to ensure it complies with international human rights standards, particularly the UN Convention on the Rights of the Child (CRC);
- Conduct training with law enforcement officials and migration officers on the treatment of unaccompanied children;
- Introduce provisions in national legislation stating that children cannot be detained for breaking migration rules;
- That CIS Council of Europe Member States - Armenia, Azerbaijan, Russia, Moldova, Ukraine - accept the collective complaints procedure under the European Social Charter; and that all CIS countries ratify the Third Optional Protocol to the CRC on a communications procedure.

#### **To the ombudspersons / national human rights institutions**

- Raise awareness of the situation of unaccompanied children in their country and provide examples of good practices to government officials;
- Conduct visits to detention centres where unaccompanied children are held;
- Engage in high level advocacy, for example, contact the President directly to raise concerns regarding violations of the rights of unaccompanied children;
- Bring cases on behalf of a child in local courts in order to introduce amendments.

#### **To national and regional NGOs and civil society organisations**

- Undertake legal advocacy at national level: bring a case to local courts and press for a legislative review of compliance with international treaties and constitutions; raise the issue with the relevant ombudsperson for children's/human rights; write a joint letter to governmental bodies, such as high-level ministries, prosecutors and chairpersons in courts;
- Raise the issue with UN human rights treaty bodies and Special Procedures;
- Write a joint letter or communication to the CIS Interparliamentary Assembly;
- Bring a case to the European Court of Human Rights, provided domestic remedies have been exhausted.

### **To the Interparliamentary Assembly of the CIS**

- Initiate a discussion with CIS Member States on issues around unaccompanied children with a view to providing them with better protection;
- Initiate a review of the Chisinau Agreement and the extent to which it complies with international human rights norms, including the UN Convention on the Rights of the Child.

### **To the European Network of Ombudspersons for Children (ENOC)**

- Write to the Interparliamentary Assembly of CIS countries highlighting the need to amend the Chisinau Agreement;
- Develop a common position paper drawing attention to issues that unaccompanied children are facing in CIS countries.

### **To the Council of Europe**

- Monitor the issue, including through country visits, of unaccompanied children in Member States and provide recommendations through the Council's independent expert monitoring bodies, namely the Group of Experts on Action against Trafficking in Human Beings (GRETA) and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Review domestic legislation of Member States on unaccompanied children and the Chisinau Agreement and adherence to European standards and suggest good practices;
- Raise issues around unaccompanied children with the following bodies: Committee of Ministers, Parliamentary Assembly, Commissioner for Human Rights;
- Create a brief on the situation of unaccompanied children with details of relevant jurisprudence from the European Court of Human Rights.

### **To the European Union and other donors, foundations and bilateral partners**

- Consider providing funding for the training of employees of transit centres on a range of topics, such as: working with unaccompanied children and children experiencing difficult situations, family reunification, the best interests of children, etc., as well as training for psychologists, teachers, law enforcement and migration officials on working with unaccompanied children;
- Consider funding projects relating to the integration or reintegration of unaccompanied children in society;
- Provide funding to local NGOs projects relating to unaccompanied children through its European Neighborhood Instrument and regional programme on Asia and Central Asia.

### **To the Committee on the Rights of the Child**

- During the States' review, raise the issue of whether the Chisinau Agreement and domestic legislation reflect international standards with regards to unaccompanied children. A particular emphasis should be put on prohibition of detention and conditions of detention;
- During the States' review, ask CIS States where detention centres for minors within the framework of the Chisinau Agreement have been shut down, to provide information about situation of unaccompanied children and remedies provided to them;
- In the Concluding Observations, emphasise the rights of unaccompanied children non-asylum seekers.

### **To the Special Procedures of the UN**

- Within the mandate of the Special Representative of the Secretary-General on Violence Against Children and the Special Rapporteur on the sale of children, child prostitution and child pornography conduct a study of unaccompanied children, carry out country visits to investigate the situation of unaccompanied children at the national level, make communications to state officials, raise awareness of abuses of the rights of unaccompanied children and engage in advocacy efforts;
- Within the mandate of the Special Rapporteur on the human rights of migrants, request an invitation to visit and monitor CIS countries, paying particular attention to the situation of unaccompanied children.

### **To the United Nations Refugee Agency (UNHCR)**

- Strengthen the capacity of local offices so they can guarantee that unaccompanied children can exercise the right to seek asylum;
- Provide trainings and seminars to the local migration and law enforcement officials on child-sensitive approaches to unaccompanied children seeking asylum;
- Work with government officials, law enforcement and migration officials, employees of transit centres to ensure that unaccompanied children have access to lawyers to file for refugee status in transit centres;
- Support States in developing measures to enable refugee registration, assistance and advice on asylum applications, education and counselling to unaccompanied children;
- Support States in carrying out such advocacy efforts as collecting statistics and monitoring the flow of unaccompanied children who file for refugee status determination procedure;
- On questions of local integration, voluntary repatriation and resettlement of unaccompanied children filing for refugee status, ensure that governments provide for all the safeguards relating to human rights and children's rights specifically;



- Use its advocacy and lobbying tools to bring national policies and laws in compliance with international standards, to ensure that States use a child-sensitive definition of refugee;
- Provide assistance and ensure that assistance is given to those children who are returning home, and establish follow-up measures once they are returned to prevent the risk of abuse;
- Create training manuals for border and entry officials on the question of unaccompanied children seeking asylum;
- Conduct expert meetings aimed at addressing the situation of unaccompanied children, either regionally or globally;
- Establish capacity building measures uniting host governments, governments of countries of origin, civil society organisations and refugees themselves;
- Conduct best interest assessments for unaccompanied children in the CIS, report findings to local governments with a view to implementing these recommendations in local practices and making relevant changes to legislation;
- Ensure that unaccompanied or separated children have access to family tracing and reunification services;
- Bring to the attention of government, migration and law enforcement officials the Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (February, 1997). Update the guidelines to better reflect recent realities;
- Bring to the attention of stakeholders the UNHCR guide on “Working with Unaccompanied Children: A Community-based Approach”;
- Provide training on UNHCR Guidelines on Determining the Best Interests of the Child with local government, migration and law enforcement officials, as well as those directly dealing with unaccompanied children.

#### **To the United Nations Children’s Fund (UNICEF)**

- Engage the Regional Office for Central and Eastern Europe and Commonwealth of Independent States in advocacy work on issue around unaccompanied children in the region;
- Address governments to reconsider certain provisions of the Chisinau Agreement to better reflect international norms, namely the CRC, through the Regional Knowledge Management and Leadership Agenda;
- Bring to the attention of state officials the Inter-agency Guiding Principles on Unaccompanied and Separated Children, as well as to border and migration officers, law enforcement officials and employees of the institutions dealing with unaccompanied children;
- Provide technical assistance to the States on legal reform on issues relating to the detention of unaccompanied children, including length of detention and safeguards;
- Evaluate the situation with unaccompanied children and provide examples of good practices to State officials, and lobby the latter for proper social protection of migrant and unaccompanied children;

- Support local NGOs or be an umbrella organisation for information gathering and the creation of viable statistics on unaccompanied children in the region with a view to creating a mechanism to regularly monitor the situation of unaccompanied children.

#### **To the UN Office on Drugs and Crime**

- Work on projects aimed at strengthening the integrity of the judiciary, especially cases concerning unaccompanied children;
- Raise awareness among and promote reform within police departments and prosecutors’ offices on how to work with unaccompanied children - who should not be detained;
- Outline legal identity gaps with respect to the provision of justice for children in the Chisinau Agreement and make recommendations to States;
- Conduct training programmes for law enforcement officials on how to work with unaccompanied children or provide technical support to NGOs conducting such training.

#### **To the International Organization for Migration (IOM)**

- Raise awareness of the IOM Guidelines on the Protection of Unaccompanied Migrant Children and the IOM Report “Unaccompanied Children on the Move” among CIS government officials, migrant officers, law enforcement officials and those working closely with unaccompanied children;
- Assist local NGOs in capacity building and provision of resources for resettlement related activities, follow-up measures, assisted voluntary return and reintegration of unaccompanied children;
- Assist local NGOs in research and information campaigns relating to unaccompanied children;
- Express concern about discriminatory laws and policies relating to migrants in the CIS at international fora.

#### **To the Organisation for Economic Cooperation and Development (OECD)**

- Address the issue of unaccompanied children through its international migration policies and data measures;
- Explicitly note in its recommendations to governments a need to improve living and working conditions for the families of migrant workers;
- Pay special attention in policy recommendations to governments to the elimination of discrimination against migrants, especially their children;
- Advise governments on better allocation of economic resources for migrant integration programmes, their language and professional training, focusing on the most vulnerable groups, namely, children;

- Provide recommendations on social and family policies to governments, specifically aimed at improving the well-being of unaccompanied children, and which address (but are not limited to) the following OECD indicators: material well-being, education, quality of school life, housing and environment and risk behaviours.

### **To the Inter-Parliamentary Union (IPU) and similar networks**

- Foster communication, cooperation and exchange of experience between parliaments and parliamentarians on putting the human rights of unaccompanied children at the centre of legislative oversight;
- Use its human rights committees to urge parliaments of the CIS to take steps with respect to legislation and adoption of budgets for the protection of the human rights of unaccompanied children;
- Create an IPU Assembly Resolution on the question of unaccompanied children, e.g. on how parliamentarians can and must promote effective ways of protecting unaccompanied children, or the role parliamentarians can play in better advocating and enforcing human rights standards in relation to unaccompanied children;
- Highlight the importance of implementation of the IPU Assembly Resolution on Migrant Workers, People Trafficking, Xenophobia and Human Rights<sup>177</sup> especially with regards to the CIS.

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<sup>177</sup> Resolution adopted by consensus\* by the 118th Assembly (Cape Town, 18 April 2008). Available online at: <http://www.ipu.org/conf-e/118/118-3.htm>



# FURTHER READING

**This is a list guidelines, reports and manuals on the rights of unaccompanied children and the challenges they face:**

- UNHCR, *Working with Unaccompanied Children. A Community-based Approach*, 1996;
- UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, 1997;
- UNICEF, ICRC, UNHCR, Save the Children, International Rescue Committee, World Vision International, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, 2004;
- Fundamental Rights in the European Union, *Promoting unaccompanied Children's Access to Fundamental Rights in the European Union: The Legal Status of Unaccompanied Children within International, European and National Frameworks*, 2011;
- European Migration Network, *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study*, 2010;
- Council of Europe, *The Alternatives to Immigration Detention of Children*, 2014;
- Human Rights Watch, *Returns at Any Cost Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards*, 2008;
- International Organization for Migration, *Unaccompanied Children on the Move*, 2012;
- Lutheran Immigration and Refugee Service for the United Nations High Commissioner for Refugees, *No Small Matter: Ensuring Protection & Durable Solutions for Unaccompanied & Separated Refugee Children*, 2007;
- UNESCO, *Migrating Alone: Unaccompanied and Separated Children's Migration to Europe*, 2010;
- UNESCO, *The Right to Education: Law and Policy Review Guidelines*, 2014.



# LIST OF ANNEXES

# ANNEX I

The list of transit centres, which in the framework of the Chisinau Agreement accept children, and their current status<sup>178</sup>

Country	The Name of Transit Centre <sup>179</sup>	Current Status <sup>180</sup>
The Republic of Azerbaijan	- The reception centre of Baku	Closed down, according to the NGO surveyed
The Republic of Armenia	- The reception and orientation centre of children in Yerevan of the Ministry of Internal Affairs of the Republic of Armenia	N/A
The Republic of Belarus	- The reception centre of minors of the Office of Internal Affairs of Minsk Regional Executive Committee	One centre remains and is functional, but there used to be six. When the Chisinau Agreement was adopted there was one centre
Georgia	The reception centre in: - Tbilisi; - Batumi.	Closed down
The Republic of Kazakhstan	centres of temporary isolation, adaptation and rehabilitation of minors in: - Almaty; - Aktau; - Ust-Kamenogorsk; - Uralsk; - Petropavlovsk; - Pavlodar; - Shymkent.	Functioning
Kyrgyz Republic	- The centre of adaptation and rehabilitation of minors in Bishkek	Functioning
The Republic of Moldova	- The State Reception centre for minors in Chisinau	Closed down, according to the NGO surveyed

<sup>178</sup> The countries and the centres list are mentioned as provided in the Annex to Chisinau Agreement. Not all the States mentioned are current members of the CIS, as e.g. Georgia seized its membership on 18th of August, 2009. Turkmenistan has an 'associate member' status in the CIS and did not sign the Chisinau Agreement itself, but its transit centre is on the list. Ukraine did not ratify the CIS Charter, but the representatives of Ukraine have signed the Chisinau Agreement, its centres are present in the list, however, current status of Ukraine with regards to the CIS membership and association is not clear as there have been official statements as well as attempts of Ukraine to leave the CIS starting 19th of March, 2014, but there have not been any official actions done to the date of writing the report.

<sup>179</sup> It needs to be mentioned that these are not the only centres, where unaccompanied children are placed, as is seen from the report, the NGO representatives mentioned the centres, which are not on the official list of transit centres as provided in Annex to the Chisinau Agreement.

<sup>180</sup> As of 27th of July, 2014. The information about the current status of transit centres is based on findings provided by the NGOs questioned for the purposes of this report. To obtain official statistics on these centres in terms of their status proved impossible, as most of the countries, which closed their centres did not follow the official procedure, as provided in a footnote to the Annex to Chisinau Agreement, of submitting a written notification upon closure of a centre to the depositary of Chisinau Agreement.

The Russian Federation	<p>Centres of temporary isolation of minors in conflict with the law in:</p> <ul style="list-style-type: none"> <li>- Yekaterinburg;</li> <li>- Krasnoyarsk;</li> <li>- Moscow;</li> <li>- Nizhnetagilsk;</li> <li>- Novosibirsk;</li> <li>- Rostov;</li> <li>- Samara;</li> <li>- St. Petersburg;</li> <li>- Sochi;</li> <li>- Khabarovsk;</li> </ul> <p>Social-rehabilitative centres for minors in:</p> <ul style="list-style-type: none"> <li>- Belgorod;</li> <li>- Moscow;</li> <li>- Orenburg;</li> <li>- St. Petersburg;</li> </ul> <p>Social shelters for children in:</p> <ul style="list-style-type: none"> <li>- Makhachkala;</li> <li>- Khabarovsk;</li> <li>- Smolensk region;</li> </ul>	Functioning
The Republic of Tajikistan	- The reception centre for minors of the Ministry of Internal Affairs of Tajikistan in Dushanbe	Functioning
Turkmenistan	- The reception centre in Ashgabat	N/A
The Republic of Uzbekistan	- Yangiyulsk Reception centre for minors of the Office of Internal Affairs of Tashkent	N/A
Ukraine	<ul style="list-style-type: none"> <li>- The reception centre for minors of the Main office of the Ministry of Internal Affairs of Ukraine in Kiev;</li> <li>- The office of the Ministry of Internal Affairs of Ukraine in Kharkov region.</li> </ul>	Functioning

# ANNEX II

## Unaccompanied children in the countries of CIS - Questionnaire

*Definition of unaccompanied children.* According to General Comment No. 6 of the Committee on the Rights of the Child, “unaccompanied children” (also called unaccompanied minors) - children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

“Separated children” - children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. Separated children may, therefore, include children being accompanied by adult family members.

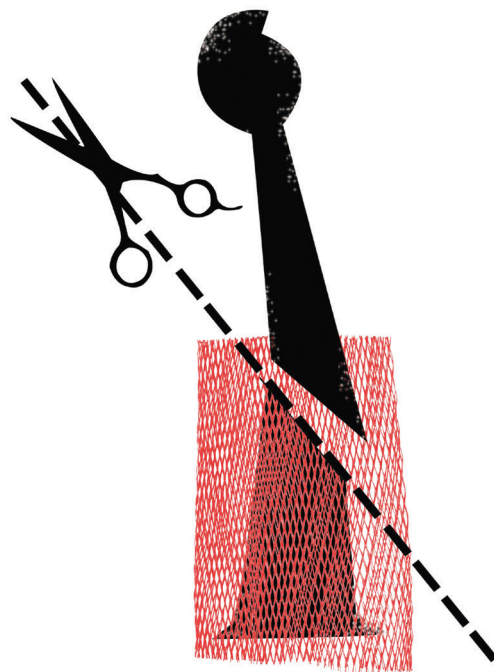
Child Rights International Network (CRIN) is preparing a report on unaccompanied children in the CIS countries and would be grateful if you could answer the following questions.

1. Please give examples of national legislation used where unaccompanied children are detained.
2. What are children’s motivations for migration (economic, family reunification, other)?
3. In what kind of institution(s) are unaccompanied children held? Are children detained with adults? Please specify the institution: reception center for minors, temporary detention center for adults, etc.
4. Are you aware of the time limits for detaining children in reception centres? On average, how long are children detained in these centres? From your experience, what was the longest and shortest period of detention of a child in such a centre? (If unaccompanied children are detained in a facility with adults, please mention this above).
5. Which groups of children are detained in the facility? For example, children suspected of having committed a crime, unaccompanied children, migrant children seeking asylum. Is there any evidence of their age, nationality?
6. Are there any statistics available on unaccompanied children detained in the reception centres? If yes, please specify the number of unaccompanied children held in the facility in recent years.
7. Are the conditions of detention more residential or punitive in nature?
8. Please describe as fully as possible the conditions in which children are held:
  - a. Access to education (are books, textbooks, videos available? In which languages? Is there access to the internet? Are staff trained to teach children?);
  - b. Access to legal aid (the child was given access to a lawyer who specialises in working with children, can assess the needs of the child and assist him or her, for example, in filling out an application for asylum in the country);
  - c. Access to psychological help (are staff trained in child psychology and to work with children?);
  - d. Environment (loose or strict schedule, whether child’s actions are controlled, constant physical surveillance, searches, etc.)
  - e. Communication with the outside world (is contact with the outside world allowed: calls to relatives and friends, meetings with them, access to the internet). Is everything being done to identify the closest relatives and friends of the child and to reunite the child with them in the shortest possible time? Can you provide examples of measures taken to achieve this (for example, requests sent to the embassy, the immigration authorities, etc);
  - f. Opinion of the child (is the child’s opinion taken into account when deciding the issue of his or her permanent residence? Are the child’s social relationships and contacts with significant others taken into account? Is the child informed about the follow-up procedures?)
9. Can you describe a story of one or more unaccompanied children (age, gender, nationality, reasons for being detained, period of detention, difficulties they are facing in detention)?
10. Please specify any other details;
11. Can CRIN contact you if we need additional information? Please provide your contact information: name, organisation, country, telephone number, e-mail.









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