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# Uzbekistan's Implementation of the CRC

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Responses to the List of Issues CRC/C/UZB/Q/3-4  
and Concluding Observations CRC/C/UZB/CO/2

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Uzbek Bureau for Human Rights and Rule of Law

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Tashkent, April 2013

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## Question 1

1. Please provide information on direct application and judicial rulings, if any, on the incorporation of Convention into the State party's national law. In doing so, please also provide information on measures, if any, taken to ensure that the judges apply the principles and provisions of the Convention in judicial proceedings affecting children.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“ The State party complete as soon as possible the current legislative efforts with a view to bringing the law into compliance with the provisions of the Convention (e.g. by adopting the law on the Guarantees of the Rights of the Child), thereby ensuring that the principles and the provisions of the Convention are fully integrated in the laws of the State party”<sup>1</sup>.*

In preparation of current report Bureau anonymously questioned 47 lawyers working in Tashkent on their work experience for the past 10 years. Lawyers stated that there was not a single case of referring to the Convention and basically, any other international Conventions in their practise.

The absence of court decisions examples directly referring to the Convention provisions is generally explained by the lack of effective implemented mechanisms or direct application of Convention on the Rights of the Child at the national level. Furthermore, the place of the international law in domestic legal hierarchy is not clear in Uzbekistan. The Law “On Normative Legal Acts” states the legal hierarchy in the Art.5, with no place for international law:

- a) Constitution of the Republic of Uzbekistan;
- b) Laws of the Republic of Uzbekistan;
- c) Resolutions of Chambers of Oliy Majlis of the Republic of Uzbekistan;
- d) Decrees of the President of the Republic of Uzbekistan;
- e) Resolutions of the Cabinet of Ministers of the Republic of Uzbekistan;
- f) Acts of ministries, state committees and agencies;
- g) Decisions of local governments.

Thus the Constitution of Uzbekistan, adopted in 1992, is the country's highest law. All other laws and by-laws must comply with the Constitution. Although, the Parliament passes the laws, the Constitution gives the President the right to issue decrees and executive orders, which are mandatory within the Republic's territory. The government of Uzbekistan also issues mandatory directives and orders.

Constitution of Uzbekistan does not contain specific provisions on the role of International Law. Only, the Preamble of the Uzbek Constitution fairly mentions the international law saying that:” ... recognizing priority of the generally accepted norms of the international law...” Although the preamble is a part of the Constitution, but according to Uzbek law on Normative Legal Acts (Art.24) the preamble of the Constitution is no more than a declaration. It describes that preamble of any normative legal act shall not be included the normative instructions, thus means that even preamble of the Constitution may not contain the obligatory provision.

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<sup>1</sup> CRC/C/UZB/CO/2

Therefore, the Constitution does not unequivocally state that ratified international agreements have precedence over national law in case of contradiction between the two. In practice, the absence of such a principle has led to preference being given to national law over international law.

Moreover, a national “Law on International Treaties,” of 22 December 1995, which also, unfortunately, lacks distinct rules describing the place of international law in the Uzbek hierarchy of legal authority.

In practice judges in adopting decisions refer only to the specific provisions of Codes, Laws and sometimes to the resolutions of Supreme Courts. Questioned lawyers reported that references to the Uzbek Convention and other international treaties by lawyers are also not welcomed by judges and there are cases when judge called lawyer to stop demagogy.

As a result, if international laws are not incorporated into national law, investigators, prosecutors and judges are not required to consider international laws in their decisions. Consequently, the ratified international agreements have no power.

## Question 2

2. Please provide more information on the mandate and the resources allocated to the human rights ombudsman, including on whether it is mandated to receive complaints from children as recommended in the Committee’s previous concluding observations of 2006 (see CRC/C/UZB/CO/2, para. 12). Also, please update the Committee on the envisaged establishment of a children’s ombudsman as mentioned in paragraph 12 of the State party’s periodic report (CRC/C/UZB/3-4). Further, please provide information on the number of complaints from children received by either mechanism and on their results.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“that the role of the Office of the Ombudsperson be strengthened in accordance with the Paris Principles (General Assembly resolution 48/134, annex), taking into account the Committee’s general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2), and that the State party provide the Office of the Ombudsperson with adequate human and financial resources. The Committee also recommends that the State party further strengthen the expertise of the Office to deal with complaints submitted by or on behalf of children; ensure that the procedure for dealing with these complaints are child-sensitive, easily accessible; and further pursue the establishment of Children’s Ombudsperson as foreseen in the draft law on the Guarantees of the Rights of the Child.”*

Promises on strengthening Human Rights Commissioner’s role and creation of Child Ombudsman remain to be declarative. Practical measures to implement such practice into Uzbekistan are not taken. Based on the acknowledgement of inactivity and pro-governmental policy of the Human Rights Commissioner in carrying out her responsibilities, it can be said that the activity of the Ombudsman in Uzbekistan represents a practically ineffective protection of the society and citizens’ interests. In fact, the Ombudsman’s activity is declarative and of no importance to the human rights protection in Uzbekistan. Inefficiency of Ombudsman work is clearly seen from the yearly number of complaints submitted on child rights. The maximum was in 2008 – 23 complaints from the population of nearly 28 million

people, and this is according to the State report presented to the Committee on the Rights of the Child.

### Question 3

3. Please provide detailed updated information on comprehensive measures taken by the State party to combat corruption.

Particularly, Uzbekistan is the one of the countries that has widespread corruption almost in all systems of the government. Ties between business and government regulators are seldom regimented by the legal system. Close public-private connections based on family, and regional patronage networks play important role at the decision making process in all life spheres.

Official corruption within the Uzbek civil service is widely regarded as extensive. Usually routine acts such as entering university, certification of diploma, obtaining any kinds of license (business, lawyers, doctors, est.), being admitted to the hospital, and applying for a passport or other official document are all subject to requests for bribes, which is one of the main types of judicial corruption.

Moreover, corruption is worsening in Uzbekistan, taking wider scale and involving more officials. This tendency is also reflected in surveys of Transparency International and its Corruption Perception Index. If in 2005 Uzbekistan scored 2.2 (on the scale from 10 – very clean to 0 – highly corrupt), in 2011 it scored as bad as 1.6; in 2012 Uzbekistan still was in the list of 10 worst corrupted countries of the world researched in Corruption Perception Index (CPI)<sup>2</sup>. It is clear that adopted measures by the government in fighting with corruption are ineffective and insufficient.

One of the mechanisms of combating corruption is closely related to access to information, which is regarded to be restricted in Uzbekistan. Uzbek legislation provides a space for “state secret” and “other secrets secured by law” with no further clear and precise definitions of them. Officials often refer to the internally closed information as being secret and refuse providing it. Information related to the State Budget is also under the secrecy.

There is no law on civil service and existing legislation does not require officials to publicly declare their income and assets.

Corruption is widespread in all levels of judiciary. Judiciary lacks independence, the mechanisms of selection and appointment of judges, poor financing and lack of transparency makes it first, highly dependent from the executive, and secondly increasingly corrupted.

There are cases when Courts under the pressure from executive adopt decisions not only conflicting existing laws but also against best interests of child. For example, during 2008-2009 the first and second instance Courts took a decision on guardianship rights of divorced Akbarova N. and Ananin A. according to which 5 years old Yaroslav remains with father and 2 years old Anastasiya with mother, not allowing mother to visit her son. Such decision was

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<sup>2</sup>[www.transparency.org](http://www.transparency.org)

adopted as a result of pressure from the Cabinet of Ministers where plaintiff–Ananin Alexandr worked and was violation of the Family Code of Uzbekistan<sup>3</sup>.

## Question 5

5. Please provide detailed updated information on the status of the draft legislation for raising the marriageable age for girls to 18 years.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“The Committee welcomes the information that the minimum age of marriage will be set at age 18 for both girls and boys as recommended in previous concluding observations. The Committee recommends that the State party expedite the legislative reform to that effect.”*

To the moment of writing this report the draft law on increasing the marriageable age has not been adopted. Furthermore, it is not on the upcoming agenda of Parliament.

Legislation and reforms related to the improvement of the situation with women rights, combating domestic violence, breaking patriarchal stereotypes are treated with hostility by the Government, which is instead prefers to keep “traditions and cultural values” where women are far from having equal rights with men.

According to the National Centre on Human Rights of Uzbekistan - the draft law “On State Guarantees of Equal Rights and Opportunities for Men and Women” developed by this organisation passed national and international expertise in March 2006<sup>4</sup> was presented to the Parliament. Similar situation is with the law on domestic violence. Uzbekistan’s delegation constantly feeds UN Committees member with promises on adopting appropriate laws on every session; however, no practical steps are being taken.

By keeping this discriminatory provision State creates space for early marriages, which in turn leads to the number of problems and risks that girls have to face after marriage. This all in aggregation with the widespread problem of domestic violence and the traditional role of women in the society worsens the situation. In 2013, in Horezm region, 17 years old girl died after giving birth to a child by Cesarean operation. She was forced to marry her cousin at the age of 16<sup>5</sup>.

In southern part of Uzbekistan, there are number of cases of self-immolation of women and girls, however not all of them are reported. This is generally caused by the conflict with family of husband and their attempts to put very strict control over women and girls. There were some efforts by the nongovernmental organisations creating shelters and rehabilitation centres for victims of domestic violence funded by the US Embassy. However, these efforts were wasted as government started campaign against the civil society organisations, which in turn led to the closure of organisations working in this field since 2005.

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<sup>3</sup>Articles 76-78 of Family Code of the Republic of Uzbekistan and article 13 of Law “On Guarantees of Child Rights”

<sup>4</sup><http://www.uzembassy.ru/5508.htm>

<sup>5</sup> Case of Horezm local human rights group Najot

## Update on Early Marriages

Parliament of Uzbekistan adopted new law devoted to prevention of early marriages negative consequences in the end of April 2013. Amendments and additions were introduced to Family Code, Criminal Code and Administrative Code. From 1<sup>st</sup> of May there will be criminal and administrative liability for breaking the legislation on marital age. In particular Criminal Code now provides article 125(1) “Breaking legislation on marriageable age” with a punishment of penalty from 20 to 30 times of minimal monthly wage or correctional works up to 1 year or arrest up to 3 months, for coming into factual conjugal relations with a person falling short of established marital age. In the same manner punishment is provided to parents who force marriage of person falling short from marital age and for performing religious marriage ceremony.

This positive development should be noticed and Bureau for Human Rights and Rule of Law looks forward for appropriate implementations of the new Law.

## Question 6

6. With reference to the State party’s report (CRC/C/UZB/3-4, para. 391) to the Committee, please provide specific details on the criteria and determination process for the State party establishing the extent to which a “child’s freedom to have and express opinions may be limited according to the procedure established by law”.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“That the State party, in accordance with article 12 of the Convention:*

*(a) Promote and facilitate respect for the views of children and their participation in all matters affecting them;*

*(b) Ensure that children be provided the opportunity to be heard in any judicial and administrative proceedings;*

*(c) Provide educational information to, inter alia, parents, professionals working with and for the children (see paragraph 18 (b)), the Mahallas Committees and society at large on children’s right to have their views taken into account and to participate;*

*(d) Undertake a regular review of the extent to which children’s views are taken into consideration and of the impact this has on policies, programmes and on children themselves”.*

## Freedom of Speech

Overall, the right of freedom of speech is very limited in Uzbekistan. According to Reporters without Borders’s Freedom of Press Index Uzbekistan is one of the worst offenders of this right occupying 164th place out of 179 countries reviewed.

The local mass media organizations are totally under government control; it is impossible for independent journalists to work legally in Uzbekistan as it is highly unsafe, therefore, those who officially work in Uzbekistan are forced to be loyal to the government. All Internet media that questions or criticizes the present political regime and its leadership has blocked by the government. The Cabinet of Ministers’ Decree #33 from February 2006 prohibits journalists to work for any foreign media organization without accreditation from Ministry of

Foreign Affairs, which is nearly impossible to obtain. Many independent journalists have had no choice but to flee to other countries in order to avoid of threats to their lives. Furthermore, the numbers of persecuted and imprisoned journalists are increasing.

In such environment, freedom of expression of children is also highly limited. Although officially censorship is prohibited in Uzbekistan, government promoted self-censorship by making editors-in-chief responsible for the content of publications and using vague reasons for binging journalists into responsibility for publications. For instance, Article 16 of the Law “On Guarantees of Child Rights” provides that every child has a right to receive information not bringing harm to his health, moral and spiritual development, search, receive and spread any information, with exception limitations provided by legislation. However, Uzbek legislation does not provide clear guidelines on what can harm “moral and spiritual development”. Furthermore, existing stereotypes promoted at the State level brings absurd prohibitions.

In this manner any attempt to educate children on sex is recognized as harming the morality, spirituality and contradicting local cultural values.

### Access to information

Although access to information is declared by the Constitution of Uzbekistan State with by-laws significantly restricts this right. Uzbek Government remains one of the most closed governments in the world, keeping covertly information about its activities both to its own people and outside. People of Uzbekistan are not able to find any basic information on incomes from cotton, gold, gas and etc. The only information accessible to citizens of Uzbekistan could be of personal type, however, even this information could be limited.

Evidently, access to information by children is worse complicated. There are no mechanisms ensuring the right of the child to request information from appropriate authorities.

As a heritage from the Soviet Union the system of primary and secondary education does not see children as equal and active participants of the learning process. It is not a general practice for school administration to inform pupils of the rights, of information related to them. Schools children did not know school charters and in some cases even did not know that such exists. Children are not provided with clear information on the assessment criteria, the role of teachers, administration and pupils.

An instrument seriously and unreasonably affecting freedom of speech and access to information of children is officially adopted in 2009 Programme: “On measures to increase national spirituality and preventing practices alien to the way of life and mentality of Uzbek people”. In this document government strictly opposes any ideas conflicting with the policy of preserving national culture. In general, it is aimed to promote prudency, prevent immorality and dissoluteness without defining of this terminology allowing authorities to interpret them freely.

This document significantly restricts children’s access to information as in this document State recommends limiting access of underage persons to information related to sexual education, prohibition of publication of materials not peculiar to our national culture, including Internet and SMS services. No clear classification on what is peculiar to our national culture is given though.

Anecdotally, when whole world is combating early pregnancies and sexually transmitting diseases, Uzbek Government prohibits the sale of contraceptives to persons below 16 and does not allow using the term “condom” in the publications for adults. Instead it is recommended to use term “individual protection mean” and all State founded or controlled NGO were forced to republish their leaflets containing word “condom”.

## Question 7

7. Please provide information on the reasons for placement in residential or alternative care being the predominant means of dealing with children deprived of a family environment. In doing so, please also provide specific information on:

- (a) The assessment, decision-making and placement procedure, standards and protocols for the placement of children in alternative care;
- (b) Inspection, review and contact with parents;
- (c) Complaint mechanisms available to children for cases of abuse, violence and/or maltreatment in the context of residential and/or alternative care.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

- (a) To adopt a comprehensive strategy and take effective measures to reduce and prevent the abandonment of children and the deprivation of their family environment, e.g. community programmes at local level, inter alia, those aiming at poverty reduction, services accessible to parents, training programmes for parents, parental guidance and counselling, and family mediation services;*
- (b) To develop policies and procedures to ensure that children do receive, when necessary, adequate alternative care that fully respects the provisions of the Convention;*
- (c) To ensure that the implementation of the law on the Guarantees of the Rights of the Child respects the principles of the Convention in particular with regard to family environment, adoption, parental authority, legal guardianship, foster placement, placement in institutions;*
- (d) To take measures to increase and strengthen foster care, in particular family-type foster homes and other family-based alternative care, and to place children in institutions only as a last resort;*
- (e) To ensure that the decisions 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;*
- (f) To take all necessary measures to ensure that children are placed in institutions only as a last resort, and that they enjoy all rights of the Convention and in particular receive appropriate protection, education and health care, and that the living conditions in institutions are of the highest standard and regularly monitored;*
- (g) To strengthen complaints mechanisms for children in institutions to ensure that they deal with complaints of ill-treatment effectively and in a child-sensitive manner*

The Government of Uzbekistan lacks comprehensive strategy for preventing the abandonment of children. There is no specialized social services would identify the vulnerable (violent-prone) families, provide them with social and crisis support in order to strengthen the family ties and prevent negligent treatment of the child.

Furthermore, officials avoid using word “poverty” in their vocabulary and prohibit it to the local media, instead, the terminology “families with low income” is used. To the certain extent, such approach leads to veiling the problem and worsens it as no measures are taken to combat poverty in Uzbekistan. People looking for jobs and attempting to earn for life are forced to leave to other countries. In many cases both parents are had no chance to find a job in the country, and left to neighbouring countries like Kazakhstan and Russia, and children left to guardianship of aged grandparents. In case of the death of latter, children end up on the street or orphanages.

Increasing number of single mothers abandoning their children is a result of significant cuts in social allowances allocated to such category of citizens. Under the cover of decentralizing power to citizens self management units – Mahallas, State still left itself strong control over this body through the mechanisms of appointment/election of Mahalla heads. Mahalla is responsible for social allowances distribution to single mothers and needy families. Allocation of allowances is at the discretion of Mahallas with the certain criteria developed by the Government. Mahalla examines family’s living conditions and calculates average income per family member. It can refuse social allowances allocation if family possess s TV-set, fridge or carpet.

In the past 5 years categories of citizens receiving social allowances decreased significantly. However, this drop was not correlated with any growth of citizens’ welfare.

The Mahallas can refuse to grant children with these allowances for political reason. Human Rights Watch reported denial of social services to single mothers whose husbands’ fled country during Andijan events in 2005<sup>6</sup>.

Large numbers of single mothers and recognition of their need for aid ruins the attempt of State officials to create nice picture of only happy families living in Uzbekistan. This kind of ignorance policy violates rights of both – women and children.

Unemployment most hardly strikes single mothers as employer will be reluctant to hire woman with children. Single mothers face problems in placing their children in kindergartens, as firstly they are paid, and secondly they work only until 5 pm, while in the majority of organisations’ working hours are until 6 pm. Children of mothers who are surrounded by such circle of problems and no aid from the State end up abandoned in the orphanage or in the worst case, are forced to live on streets.

### **Institutional Care System**

The system of institutional care needs serious reformation. It is necessary to change approach to orphanage organisation and working methods. It is extremely important to condemn and criminalize cruel and inhuman forms of treatment and punishments used in orphanages; to train personnel and make their job prestigious and well-paid; adopt other measures to create comfortable environment for children.

In most orphanages children have no opportunities to develop their communicational and interpersonal skills. They are not adapted to life in society outside of the institution. Children

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<sup>6</sup>“Saving its Secrets” May 12, 2008 Human Rights Watch

leaving orphanage have not been able to develop the practical, routine skill to survive in society. Graduates of orphanages have low training levels and lack the skills necessary for successful job-hunting. It is much harder for them to get their lives going and continue their studies. In most of the cases children attempting to enter university have no money to pay for their studies and the Government does not provide any special tuition quota for orphanage children to enter universities.

Also, there is no mechanism adopted by the state to follow-up of children who have left institutional care. In the last 20 years there was not a single monitoring published. It is clear that State officials prefer to silence this problem as in case of disclosing or open discussions it will show deterrent scale of unsettlement of children after leaving orphanage.

According to Uzbek legislation, children, placed in orphanages, graduate at the age of 15-17 after completing 9 years of secondary education<sup>7</sup>. Law provides the right for housing, either one secured upon placement in the orphanage or new private place to live if no housing could be secured before placement<sup>8</sup>. However, under the different reasons graduates of orphanage are forced to wait for housing for several months if not years. In many cases housing allocated for a child is not suitable for living and requires fundamental repair works.

This waiting period children become most vulnerable to involvement in criminal activities. According to information from the officer of one of the Tashkent orphanages to the January 1<sup>st</sup>, 2012, two hundred graduates were permanently registered on the address of this state institution, however, where these children are now is unknown.

According to information from lawyers, in February 2013 two graduates of orphanage 30 of Tashkent killed 40 years old man in order to possess his bicycle, which they later sold. When arrested they did not regret the crime, instead they were glad that they will have a shelter and food for the next several years in detention places.

Girls have high risk to become involved in prostitution to earn for shelter and food.

In 2010 Cabinet of Minister adopted Resolution 164 “On Order of Provision of Housing for Orphans and Children Deprived from the Family Care”. According to this Resolution children left without parental care should be provided with the housing. If such was not secured before placement to orphanage and there is no heritage belonging to a child, Government allocates targeted transfer from the Budget to buy housing for the concerned child. In the two and half years the authors of this report have know not a single case of such allocation. Though according to the anonymous source in the local government, on the 01 January 2013 there were more than 100 children on the waiting queue for housing<sup>9</sup>.

***Thus, it is necessary to create Youth Houses where children from 16 graduating orphanages could temporarily live until resolving their housing problems. At the same time Youth Houses should become a comprehensive programme for children’s adaptation to adult live, learning skills for financial budgeting, organisation of households and many other skills.***

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<sup>7</sup>Resolution of Cabinet of Ministers 230 as of 17.10.2008

<sup>8</sup>Resolution of Cabinet of Ministers 164 as of 02.08.2010

<sup>9</sup>Interview with local government officer on February 2013

## Adoption and alternative care

There is no programme for parents wishing to adopt or take guardianship over children. It is important to implement compulsory programme, including psychological and pedagogical basics for childcare for people wishing to adopt.

Allowances provided for patronage/foster families are not sufficient for living and do not promote the system of alternative care.

## Question 9

9. Please provide updated, detailed information on the specific measures undertaken by the State party to address the issues of access, affordability and quality related to education, as acknowledged by the State party in paragraph 820 of its report to the Committee.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“That the State party, taking into account the Committee’s general comment No. 1 on the aims of education (2001), undertake all necessary measures to ensure that articles 28 and 29 of the Convention are fully implemented. In particular, the State party should:*

- (a) Ensure that primary education is free and accessible to all children, taking also into account the Dakar Framework for Action (2000);*
- (b) Take measures to eliminate all hidden costs of school attendance;*
- (c) Take the necessary measures to improve the quality of education and to provide quality training for teachers;*
- (d) Ensure that refugee children have access to free primary education and facilitate access to secondary education”*

The problem with hidden costs of education remains ignored since the last revision of Uzbekistan by the Committee. Even though the school education is free, parents still have to pay a number of costs, in particular, the cost of “renting books”, school uniform, renovation of school, “present” to teachers. School regularly collects money to so-called “school and class funds”, force parents to pay for the services of school guards. There is no state control over these funds.

Parents driven in poverty cannot afford paying high costs of their children going to school and even are forced to prevent them from attending it. On the belief that in future, sons will be breadwinning; the choice of giving education is always with the boy children.

Not attending compulsory education assumes heavy penalties on parents, this policy is not proving to be effective. It is rather more effective to introduce incentives for sending girls to the school rather than penalizing.

Total collected in 2012-2013 school year in one of the Tashkent schools was from 200 000 sums to 350 000 sums compared to the minimum monthly salary of 79590 sums<sup>10</sup>

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<sup>10</sup>Presidential Decree from 09.11.2012

## Corporal Punishment and Violence against Children in Educational Institutions

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“That the State party take into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006), and:*

*(a) Prohibit corporal punishment by law in institutions and the family and ensure that legislation is properly enforced in schools and institutions, and complied with in the family;*

*(b) Carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes about corporal punishment, and promote positive, non-violent forms of discipline in schools, in institutions and at home.”*

Child labour is widely used in schools for cleaning the territory, repair works. On the everyday basis schoolchildren are forced clean up the territory of the schools instead of participating in classes.

According to a parent A.H. her son studying in *school 59* of Tashkent is forced to clean the territory on the weekly basis, sweeping, removing leaves and other jobs instead of classes. All complaints to the school director and Ministry of Education remained ignored<sup>11</sup>.

State institutions such as orphanages, invalids homes, and etc, use child labour both as a punishment for inappropriate behaviour and force children to work at private issues of institution’s administration. Legislation does not provide clear regulations on the issue to which extent children can be involved in working in the institutions, thus no adequate control is conducted.

In many schools, boarding schools and orphanages different forms of violence is a general practice.

In school 110 of Tashkent city, teacher of 1-3<sup>rd</sup> classes Vera Belova was accused by a parent of pupil studying in Belova’s class in cruel treatment against children. Belova used to shout at children if they do not understand a lesson; keep children who are late even for a few minutes outside of the classroom standing until the end of the lesson; humiliated and punished a boy as he forgot to bring hygienic bag. Parent submitted complaint to school administration, however at the moment, no adequate measures were taken against Belova.

The above discussed Programme “The Measures to Increase National Spirituality and Preventing Practices Alien to the Way of Life and Mentality of Uzbek People”<sup>12</sup> requests to take actions against haircuts contradicting our national culture. Free interpretation of this programme and ambiguity led to the following situation:

As reported by anonymous parent, in the school 59 of Tashkent city, the director Fahriddin Shamsiev during regular gathering forced pupils, who wear modern haircuts having back hair to the middle of the neck, to trim off what he perceived to be longer than pupil should wear. The director beat boys, who refused.

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<sup>11</sup> Interview with a parent who requested to remain anonymous on January 2013

<sup>12</sup> Adopted in 2009, discussed in this report Access to Information section

In every orphanage of Uzbekistan children face daily violence and abuse even for very small fault. The practice of punishment is heavily used instead of encouragement for the right behavior.

There are cases when children are abused by the school administration on political grounds. HRW reported that some children of Andijan refugees have faced humiliation and the threat of disciplinary measures by the school administration, and in some cases have been prevented from continuing their education. Some report that teachers call the students whose fathers fled the country "children of enemies of the state."<sup>13</sup>

## Question 10

10. Please provide detailed information on the measures, if any, taken by the State party to implement International Labour Organization Convention No. 138 (1973) concerning Minimum Age for Admission to Employment and Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. In doing so, please provide specific information on effective time-bound measures, if any, to eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, including in family-run cotton farms.

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*(e) Guarantee that the cotton harvest season does not compromise children's right to education.*

Uzbekistan's use of child labour since the Soviet times remained uncurbed until 2011, when international complaints against child labour, lead by international human rights organisations and companies such as Adidas, H&M, and Marks and Spencer, lead to the cessation of child labour in cotton harvesting for 2012.

Using child labour at cotton harvesting is not only economic exploitation but also violates access to education. Thanks to international campaigns against child labour in Uzbekistan, in 2012 harvest Government took a decision not to take children from schools for cotton picking. At the same time, the college students aged from 16 to 18 still worked at cotton fields, and the Government forced all schoolteachers to go on fields to pick up cotton, while children were kept in classes for 5-6 hours without lessons.

In many of schools parent were (not-officially) offered to pay certain amount of money to hire another worker for cotton picking, and keep schoolteacher in their classes. In Tashkent the sum to be collected from each child was from 250 000 to 350 000 sums (approximately 120-170 US Dollars by the rate of Central Bank of Uzbekistan in March 2013.) For parents having more than 1 child, such amounts were unbearable.

## Question 11

11. Please provide updated information on any measures undertaken by the State party to establish a

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<sup>13</sup>“Saving its Secrets” May 12, 2008 Human Rights Watch

## Torture and ill-treatment

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“(a) To amend the relevant provisions of its Criminal Code in order to ensure a consistent interpretation of the definition of torture by the judiciary and the law enforcement authorities, as recommended by the Committee against Torture and the Human Rights Committee in 2002 and 2005, respectively (CAT/C/CR/28/7 and CCPR/CO/83/UZB);*

*(b) To undertake systematic training programmes at the national and local level, addressed to all professionals working with and for children (see paragraph 18 (b)), and the Mahalla Committees, on prevention of and protection against torture and other forms of ill-treatment;*

*(c) To investigate the allegations of torture and ill-treatment of persons under 18, and take all measures to bring the alleged perpetrators to justice;*

*(d) To implement the National Plan of Action for the implementation of the Convention against Torture and pay particular attention to measures related to children.”*

The definition of torture provided in article 235 of the Uzbek Criminal Code still does not comply with the article 1 of the UN Convention against Torture (CAT).

Uzbek definition of torture reads as following: “... unlawful psychic or physical influence on the suspect, the accused, the witness, the victim or other participant in the criminal process or the convict serving a sentence, or their close relatives, by means of threats, causing blows, beating, torturing, causing suffering or other unlawful actions committed by an inquiry officer, investigator, procurator or other employee of the law enforcement organs or penal institutions, with the aim of obtaining any kind of information, confession of committing crimes, arbitrary punishments for committed actions or forcing to commit any kind of actions”(emphasis added). This definition literally legalized torture in Uzbekistan by using word “unlawful”. It could be interpreted that the law enforcement representing law in Uzbekistan are allowed to use torture and this will be lawful psychic or physical influence. The term “unlawful” was adopted by mistake and caused a great deal of confusion in the interpretation of that word by national as well as foreign human rights organisations and lawyers. Furthermore, this definition does not provide the use by the third person to influence, as it is stipulated by the Convention.

As a result of international pressure, in 2004, the Supreme Court’s Plenary Resolution was adopted,<sup>14</sup> stating that the courts of the Republic of Uzbekistan have to use for their guidance the definition of “torture” provided in Article 1 of the Convention against Torture.

Despite the fact that government claims that a Supreme Court Plenum Resolution was adopted, it is important to know that notably, all judges, investigators and law enforcement personnel use only the Criminal Code in their everyday work, and continue to ignore or are unaware of the Supreme Court Plenary resolution of 2004. For this reason, it is vital that this resolution be implemented through Uzbekistan’s Criminal Code.

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<sup>14</sup> The explanations of the Supreme Court have a mandatory power over lower instance courts pursuant to the Law “On Courts” No. 162-II of December 14, 2000.

Torture remains to be routine practice during investigation, and majority of existing cases of torture are not reported. State created a tightly closed environment around the investigation process. It primarily suppressed the work of independent non-government organizations and eliminated participation of such in any stage of investigation. Previously, NGO representative could participate in the court hearings as public defenders; this was abolished in 12 September 2009 by introduction amendments to article 53 of Civil Procedural Code, according to which professional participation in court hearings can be represented only professional by lawyers.

Also, it put under strong control the work of legal defenders, by creating new mechanisms of licensing of lawyers; forcing them to join state-organized and controlled association – the Chamber of Lawyers; and requirement to pass regular examination at state agency with the possibility to stop the license of independent lawyers.

The President of Uzbekistan, or other high-level state officials did not publicly condemn torture, thus law enforcement officials do not see torture as a gross violation of human rights and continue to use it in everyday work. Most of the court verdicts are still based on confessions of accused persons with no other evidential base. During the court hearings refusal of confessions and statements that accused signed papers under the torture are regarded as an attempt to avoid punishment and no investigation of torture is being done.

On 11 September 2012 in Tashkent Central Park, Chilanzar rayon militia officers detained 16 years old *Grigoriy Grigoryev*. Militia officers accused boy in stealing mobile phone under the article 169 of the Criminal Code. Grigoriy was beaten to his head and body and lost consciousness. Later in the evening militia officer called Larissa Grigoryeva, Grigoriy's mother and let him go home, keeping his birth certificate. Returning home, Grigoriy lost consciousness and Larissa called emergency. Boy was taken to hospital where he was diagnosed with "craniocerebral trauma" and "injuries of body soft tissues". Later Larissa was detained for 72 hours and was also tortured to stop her activities on opening the case against militia officers torturing her son. When freed she was diagnosed with "concussion of the brain" and "Injuries of soft tissues of hands and legs". To the moment of writing of report militia officers torturing by were not punished.

Video monitoring is not implemented in the interrogation rooms of law enforcement despite the numerous recommendations of UN treaty bodies and Special Procedures. Existing complaints procedures are not effective and currently are not possible in the majority of cases. Children in detention cannot complaint in writing. Complaints should be registered in chancellery of prison and then sent out to the appropriate agency, which happens almost never, especially if the complaint is about torture or ill-treatment. There is no independent mechanism to investigate cases of violence against children in state institutions. In practice, even very few complaints sent out are returned for revision to the institution against which officials it was initially written.

Punishment in juvenile prisons is considered to be inhuman and degrading. In Uzbekistan, children are placed in solitary cell called "kartcer". This cell has an imitation of chair from cement and bed locked to the wall. In the night the guard is supposed to come and unlock the bed, there are cases when guard does not unlock the bed. The temperature in this cell during

the winter times is colder than outside.<sup>15</sup> Administration of juvenile prisons constantly beat children and use obscene language to children.<sup>16</sup>

The forced labour is the most frequently used form of punishment in the all kind of governmental institutions: schools, universities, and orphanages. This practice is widely used in juvenile prison, which shows clear contradiction to the UN Rules on the Protection of Juveniles Deprived of their Liberty<sup>17</sup>.

## Juvenile Justice

In its previous Concluding Observations Committee on the Rights of the Child recommended:

- “(a) Establish juvenile courts staffed with appropriately trained professional personnel;*
- (b) Take all measures to ensure that detention, including pretrial detention, is used only as a measure of last resort, and not in the case of status offences;*
- (c) Ensure that persons under the age of 18 in custody are separated from adults;*
- (d) Take urgent measures to improve the conditions of detention of persons under the age of 18, and bring them into full conformity with international standards;*
- (e) Strengthen recovery and reintegration programmes and train professionals in the area of social recovery and social reintegration of children;*
- (f) Introduce training programmes on relevant international standards for all professionals involved with the administration of justice;*
- (g) Seek technical assistance from the United Nations Panel Interagency Panel on Juvenile Justice among others.”*

Since the last revision of Uzbekistan’s implementation of the Convention provision, there was no practical change in the introduction of Juvenile Justice to the legislation. From that time, State has not been moved forward from discussions, seminars and roundtable on the issue of Juvenile Justice. Cases of juvenile offenders are still considered by general jurisdiction courts.

State reports that there were 34 juvenile lawyers for the whole Uzbekistan<sup>18</sup>, while several hundreds of juvenile offenders are in need of specialized defence yearly. There are no institutions specialised in the preparation of juvenile lawyers or in the promotion of their qualification. According to the law, a juvenile offender who cannot afford a lawyer should be provided with one from the state but, unfortunately, this legal protection system is not proficient. As a rule, state lawyers are not willing to defend juvenile offenders free of charge for lack of material motivation. Lawyers’ salaries paid by the state are insufficient to the extent that they cannot even justify their transportation expenses. As a result, the work is

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<sup>15</sup>Interview with ex-prisoner R.R. 2011

<sup>16</sup>Ibid

<sup>17</sup> Paragraph 67 of the UN Rules on the Protection of Juveniles Deprived of their Liberty states “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited”.

<sup>18</sup>CRC/C/UZB/3-4

administered by young and inexperienced lawyers, who are more concerned with opportunities to expand their knowledge than with the interests of their juvenile clients.

Moreover, there is a disgraceful practice of using so-called “pocket lawyers” by investigators. Lawyers who are in collusion with investigation seems to protect the interest of clients, whereas force their defendants to confess by signing necessary protocols in favour of the investigators.

In 2008 Uzbekistan introduced Habeas Corpus. Up to the moment local and international NGO had sufficient time to see shortcomings in both legislation and practical implementation of this institution. The way habeas corpus was introduced to the Uzbek legislation has a number of shortcomings.

Firstly, the authorities have demonstrated a lack of political will to establish an independent court system. Secondly, the procedure for determining the application of pre-trial detention does not provide suspects or accused persons with a right to appeal the legality of their arrest, nor to raise the issue of torture or inhuman and degrading treatment or other unlawful acts or decisions of law enforcement officials, before a judge.

Also, stated principle for separation of judges looking at issue of pre-trial detention and hearings of the actual case. Judge deciding the case of pre-trial detention could be the same person who will further participate in the hearing of the actual case as there are no mechanisms avoiding it. In this scenario the impartiality and objectivity of judge can be affected in future trial.

Furthermore, judge can only decide on the following (article 243 Criminal Procedural Code of Uzbekistan):

- On the application of pre-trial detention;
- Rejection on pre-trial detention;
- Prolongation of the length of custody for not longer than 48 hours for presenting additional proves on merit or demerit of the application of pre-trial detention.

The issue of other measures such as written undertaking on appropriate behavior; personal guaranty; guaranty of public association or personnel; bail; warship of juvenile supervision of command over servicemen remained under consideration of investigator and prosecutor (articles 237 and 240 Criminal Procedural Code of Uzbekistan).

Another very important shortcoming is that the revision of cases on detention in custody is held in closed hearing and participation of lawyer is not obligatory. Article 243 of the Criminal Procedural Code lists the persons allowed to participate on the hearing on the revision of case on pre-trial detention, namely, prosecutor, defense lawyer, if the latter participates in the case and suspected or accused person. Conditional nature of presence of a defense lawyer violates the right to defense.

Moreover, the Article 217 section (1) provides that a suspect or accused liberty may be deprived by compulsory position into a medical institution for psychiatric examination by the prosecutor or investigator without court scrutiny.

The current legislation of Uzbekistan does not provide any legal standards for a judge to determine reasonableness of application of pre-trial detention. Judge is not obliged to weight evidences presented by the procurator or investigator and evaluate the lawfulness of the detention of the suspect. Procurators and investigators do not have any legal instructions and standards of evidences to be presented in order to apply detention in custody. Thus judges do not examine the actual lawfulness and legality of detention properly.

Partial introduction of Habeas Corpus practices had not changed the weight Procurator in the criminal process. Procuracy is a part of law enforcement system, although stated to be independent, in practice heavily affected by the executive power, as the President of Uzbekistan appoints the Procurator-General.

The weight of Procuracy is provided by the concentration of a number of powers within this state organ; namely, Procuracy is responsible for preliminary investigation, representation of the State in prosecution at judicial process and supervision of protection of the rights and freedoms of citizens, the interests of society and the constitutional order of the Republic of Uzbekistan<sup>19</sup>. Having the functions of supposedly three independent institutions makes Procuracy heavy state machinery affecting both courts and making the court hearing uncompetitive with Defence Attorneys.

## Child Civil Rights and Freedoms

### Birth Registration

In its previous Concluding Observations Committee on the Rights of the Child recommended:

*“State party to take all necessary measures to ensure that children are registered immediately after birth. The Committee also urges the State party to ensure that the national legislation regulating birth registration is in accordance with the provisions of article 7 of the Convention, and to abolish the practice of charging fees for birth certificates and ensure full implementation of this prohibition”*

It is important to notice that up this date (May 2013) this recommendation of the Child Rights Committee has not been implemented. Government continues to charge fee for birth registration, along with death registration, adoption, paternity matters and etc. Charges may hinder timely registration of birth for poor people. In case of birth of twins or triplets the charges increase appropriately. Charge for birth registration certificate is fifteen percent of the minimal monthly wage established by the Government.

Another factor seriously affecting timely birth registration is Propiska<sup>20</sup>. More detailed overview is presented in appropriate section, however here is a direct link how the system of Propiska impedes inalienable right of the child.

*Belova Elena of Tashkent city, her passport was expired when she turned 25 years old. In 2008, as she was not permanently registered at any address she was not issued new passport.*<sup>21</sup>

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<sup>19</sup>Article 2 of the Law “On Procuracy”

<sup>20</sup>Propiska is a system of residence registration inherited from the Soviet Union times and aimed at preventing urbanization.

<sup>21</sup>Regulations on Passport System as of 26.02.1999

In 2012 Elena Belova gave birth to a girl child with severe genetic disease – mycoviscidosis. As Belova has not have had the renewed passport and Propiska, thus her baby Angelina was not issued a birth certificate. Not having stated documents Belova could not find any job and had to live at ex-husband’s apartment, who was drinking and smoking heavily in the flat. For Angelina with such severe disease living in such environment was horrendous for a tiny baby, who passed away at the age of 5 months still without a birth certificate.<sup>22</sup>

In other case of *Hasanova Nargiza of Tashkent city*, in 1999 received her first passport at the age of 16 in Kokand city where she was temporarily placed in special boarding school, however her permanent registration was in Tashkent. In April 2001 Hasanova Nargiza returned to Tashkent to her grandmother’s house where she was registered initially. After Hasanova’s grandmother’s death Nargiza’s uncle who inherited the house discontinued her registration and she turned up on the street. In 2002 she met Artikov R. But they could not get marry as Hasanova did not have propiska. When she achieved they age of 25 her passport expired, she could not get new one for the same reason of absence of passport. In April 2011 she gave birth to a baby boy, and she could not receive birth certificate for her son for almost one year.<sup>23</sup>

## Protection of Privacy

Privacy is not recognized as inalienable right of the child and goes against the traditional views. No awareness-raising is conducted on this issue. Adults, including by administration of institutions and their parents, frequently violate this right of the child.

In institutional care children do not have an opportunity to protect their privacy. Children do not have their own closets where they could store their personal things; dressers are routinely searched. All correspondence is subject to unofficial censorship. The same applies to the children, placed in juvenile colony.

In the juvenile prison, official censorship exists; administration reads all incoming and outgoing letters. In case if administration does not like the content of the letter, it is simply destroyed.

## Freedom of Movement

*Committee recommends to ensure that the existing compulsory residence registration system (propiska) does not limit the rights and freedoms of children;*

Uzbek government controls the movement of its citizens through mechanisms of so-called - Exit Visa; and residence registration system called - Propiska. These provisions of law violating international legislation on freedom of movement are kept in force with the motivation of improvement of the passport system and orderliness of entry and stay on the territory of the Republic of Uzbekistan. However, in practice, it is a serious bureaucratic procrastination and sinecure for authorities.

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<sup>22</sup>Interview with Elena Belova, 2012

<sup>23</sup>Interview with Nargiza Hasanova 2011

System of “exit visa” technically looks like a sticker in passport allowing citizens of Uzbekistan to leave and enter Uzbekistan freely during two years of its validity. It is determined to stop people from fleeing the country if they committed crime, have unfulfilled court, hold state secrets and etc. However, elementary logics show that within the two years of exit visa validity person can commit crime and easily leave the territory of Uzbekistan. In the similar manner this system is not able to prevent stealing of child by one of the parent and leaving to another country.

Propiska is notionally registration of the person according to the place of individual’s birth and location of immediate family. Historically, Propiska was used by the Soviets to prevent internal migration of rural people to cities and capitals of former soviet republics. Technically, Propiska is the seal in the passport of a citizen identifying his/her permanent place of residence.

Problems arise when the person decides to move to another part of the country. The person will then encounter many difficulties in accessing public medical treatment, education, social welfare system, services of kindergartens, and importantly the person will be unable to find formal work. Basically, Uzbek citizen turns into illegal alien without having Propiska in a new settled place, and to get one takes a lot of time, effort and financial resources, as relevant authorities are highly corrupt.

Exit visas and Propiska violate not only international law such as but also the Constitution of the Republic of Uzbekistan, which is meant to be the highest source of law in Uzbekistan. Pursuant to the Constitution’s Article 28: “The citizens of the Republic of Uzbekistan shall be eligible to free movement on the territory of Uzbekistan, entry to and exit from the Republic of Uzbekistan with the exception of restrictions determined by law”. Therefore, existing laws and by-law acting in Uzbekistan on this issue contradicts and violates its Constitution rules.

Moreover, the Uzbek government systematically adopts new legislation that builds on this resident registration system, further violating rights to access education, work and medical services. The government’s latest September 2012 amendment establishes only 12 categories of Uzbek citizens have right to be permanently registered in Tashkent. Without permanent registration person cannot be legally hired, has limited access to educational and medical services. The same applies to children whose parents do not have permanent registration in Tashkent or Tashkent region.

Propiska creates a closed disk for other problems. Regulations on Passport System in the Republic of Uzbekistan require having certificate of Propiska in the list of documents for passport issuance. At the same time without passport a person cannot be permanently registered at any address. Without passport mother will not be issued birth certificate for her babies. Though article 205 of the Family Code of the Republic of Uzbekistan provides that child born on the territory of Uzbekistan must be registered in the civilian registry offices within one month of the date of birth. Problem of absence of Propiska and thus inability to receive passport imposes serious obstacle to appropriate birth registration, which is the violation of the Convention on the Rights of the Child and domestic legislation of Uzbekistan.

Propiska system seriously harms the lives of the poor families - the most vulnerable population - those who on different reasons lost housing and those who do not have such. This is especially true for children leaving orphanages at the age of 16. According to Uzbek

legislation children leaving orphanages should be provided with housing either one that was secured from the previous living residence or right to heritage or specially allocated by the government if no accommodation. In the large number of cases, with the connivance of local government officers housing secured for children is being sold before they leave orphanage then they are placed in the queue for housing. Waiting time for the latter can be from 1 year to 5 years according to the experience of Bureau Lawyers. During this time child has no place to be permanently registered in.

Legislation around Propiska and its implementation causes absurd cases. Legislation requires having the consent of housing owner to be permanently registered at certain address. This provision worse affects abandoned children and those whose relatives passed away. They simply are not able to receive such consent, as either relatives owning housing refuse their children as they did years ago when child was placed in orphanage or it is impossible to get such document as person should be signing it is not existing anymore.

According to the Local Governor's Resolution, Gorunova Victoria's grandmother's housing was secured for her graduation from orphanage 21 of Tashkent. She graduated in 2009 and received passport being permanently registered at the address of orphanage. When her Propiska expired in June 2011, Office of Internal Affairs refused to provide permanent registration as there was no written consent from the flat owner (Victoria's grandmother) who died in 2008.<sup>24</sup>

In another case, for the same reason the graduate of orphanage 30 in Tashkent city, Kochnova Natalya received refusal for Propiska as there was no written consent of houseowner, who passed away to that moment. The heritage of this housing was not formalised and it is still not done due to the reasons totally out of Kochnova Natalya control.<sup>25</sup>

Morozova Daria, graduate of orphanage 22 of Tashkent city – housing was not secured. Before being placed to the orphanage she lived with her mother and grandmother in the flat belonging to the latter. During the years spent in orphanage her grandmother died and mother is missing. Administration of the orphanage 22 appealed to declare mother of Moroza missing, but law enforcement refused it. Thus it is impossible to formalize the heritage of the late grandmother and Propiska for Daria at her flat.<sup>26</sup>

All these cases clearly show how legislation related to Propiska violated rights of children. A huge problem arises if child placed in orphanage was not born in Uzbekistan. Despite that fact that child spends in orphanage on the full state provision from 1 to 15 years, upon graduation they face serious bureaucratic obstacles receiving passport and Propiska.

In 2011, Motilek Sergey who spent 15 years in Tashkent orphanage on the territory of the Republic of Uzbekistan received passport of the stateless person.<sup>27</sup>

## **Restrictions of Freedom of Associations and its impact on the rights of a child**

The situation with the freedom of association is drastic in Uzbekistan. Although, the government of Uzbekistan has targeted independent civil society organizations with

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<sup>24</sup>Interview with Victoria Goryunova 2011

<sup>25</sup>Interview with Natalya Kochnova 2011

<sup>26</sup>Interview with Daria Morozova 2012

<sup>27</sup>Interview with Sergey Motilek 2013

oppressive policies since the beginning of Karimov's era, the wave of "colour" revolutions in former Soviet republics, and the Andijan massacre of 2005 have led the State to become increasingly aggressive, openly employing severe methods to repress civil society, including by enacting oppressive legislation and directly threatening and otherwise persecuting NGO personnel in order to silence independent voices.

Government, viewing independent civil society organisations and human rights defenders as a threat to its regime, is attempting all measures to silence free voices for many years. Be it refusal or withdrawal of registration, legislative measures to make strongly control the work and criminalisation of working without registration – all measures are in force.

Nowadays, only few independent organizations are left to work in Uzbekistan and even they have to work without having official registration of the government, therefore are not able to access banking and other services offered to registered organizations. It is not possible for organisations without registration to obtain statistical data from the Government, access governmental institutions for independent monitoring and offer recommendations for improvement. Thus, the existing situation with civil society in Uzbekistan cannot work for the best interests of the child.

"Mehr Tayanchi" – organisation, working with children leaving in difficult conditions, was closed in 2007. They had comprehensive programme combined medical, psychological and legal services. Shelter in this organisation was designed to accept 20 persons at a time. However, when the Government introduced draconian measures against NGO, cutting most of the possible means of financial aid, "Mehr Tayanchi" was forced to apply to the State financing to enlarge the Shelter. Local Government fearing the outflow of information and disclosure of the real numbers of children leaving on the street will go to public. Pressuring the leadership of the NGO, "Mehr Tayanchi" was closed.

Legal Aid Society of Uzbekistan (LAS) one of the leading human rights organisation bringing out the most urgent information about children rights was closed in 2005 after criticising tragic Andijan events. The Legal Aid Society of Uzbekistan was the only organisation providing free legal aid to needy children. Ministry of Justice brought unfounded and illogical accusations: original registration of the LAS was put under the question as organisation did not have an agreement for renting office when supplied documents for the registration. On the basis of such empty accusations organisation was withdrawn its registration.

### **Detractive Legislation adopted against independent NGO's**

Upon the first "Colour Revolution" in the former Soviet Republic of Georgia, the Uzbek Government adopted a number of draconian laws that made the work of independent NGOs and other key agents of a democratic society (e.g. certain media) impossible. NGOs wanting to operate as legally registered entities have had to submit to State control over their work. Whilst many of these laws pre-date Uzbekistan's last review, they continue to be a devastating obstacle to civil society and democratic freedom. They are briefly outlined below together with newer legislative developments to ensure a complete picture of the situation faced by those seeking to inform the current review.

The Presidential Decree of December 2003 requiring the re-registration of all foreign NGOs continues to smother civil society representation. This law allows the government to control the activities of international NGOs through the Ministry of Justice and other State organs,

exercising pressure on critical international NGOs, including through the denial of accreditation.

Another persisting obstacle to the operation of civil society remains the 2004<sup>28</sup> cabinet resolution forcing NGO's to transfer their bank accounts to two State banks. Within these banks a Special Commission, staffed by bank personnel and National Security Services (former KGB) officers is charged with deciding whether to allow NGOs to receive money. Numerous NGO grants have been blocked for some time and even sent back to donors because the newly created Commission did not approve them. Officially, the Commission looks at whether a grant's objectives are consistent with Uzbek Government policy, though in reality it simply denies independent NGOs the ability to access foreign funding.

The Presidential Decree of 27 May 2004 requiring re-registration of all Women NGOs,(without stipulating the criteria for determining a "Women NGO") also continues to oppress free civil society. The Decree seeks to register all women organisations under the one government organisation: the Committee of Women forcing them to be subordinate to and work under the dictates of this organisation.

Moreover, Uzbekistan's Criminal Code and its Code on Administrative Responsibility (as amended in December 2005), continue, under Article 239, to oblige all NGOs to obtain permission from the Ministry of Justice before conducting any activity, including providing documents confirming the use of property and financial resources. Failures are penalized with enormous fines (from 100 to 600 minimal monthly wages, which is from 3 928 to 23 750 US Dollars)<sup>29</sup> imposed on the managers and directors of NGO.

Penalties for the following offences under Uzbekistan's Criminal Code have been increased to 3-4 times: Art. 139 – Libel; Art. 140 – Insult; Art. 159 – An encroachment on constitutional order of Uzbekistan; Art. 217 – Infringement of rules of the organization and holding meetings, rallies, street marches or demonstrations; Art. 244 -1 – Manufacture or distribution of materials containing threats on public security. These articles attract penalties "from 200 up to 600" of minimal monthly wages.

The penalties for similar breaches under Uzbekistan's Code on Administrative Responsibility also been toughened. The rates of penalty relating to articles 40 – Libel and 184 –Producing or distribution of the materials containing threat of public security of Administrative Code have been increased up to 10 times. For example, where previously a penalty under the Article 23(in exceptional cases) could be imposed from 10 to 15 times the minimum monthly wages, it is now possible to apply a penalty from 100 up to 150 times minimum monthly wages. However law fails to specify the type of materials that can pose a threat to public security. Thus materials published by NGO containing information on human rights abuses can easily be interpreted as causing public disturbance of population and thus being a threat to public security under the legislation.

Parliament's December 2006adoption of the Law on the Guarantees for Activities of Non-State, Non-Profit Organisations also continues to impede democratic reform. This law

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<sup>28</sup>The Resolution of the Cabinet of Ministers No. 56 of February 4, 2004

<sup>29</sup> According to Presidential Decree of 09 November.2012 the minimal monthly wage in Uzbekistan is 79 590 Uzbekistan Sum. US Dollars rate are given at the exchange rate used by the Central Bank of Uzbekistan on 5 March 2013

contains a number of vague and ambiguous definitions and restrictions that facilitate way to arbitrary administrative decisions targeting civil society organisations.

Contrary to international standards on freedom of association Uzbek Law makes registration as the central prerequisite to NGO activity, rendering the informal active groups illegal and their members punishable by up to 5 years imprisonment under the criminal code.

Uzbekistan's Law on Mass Media (as amended in January 2007) further continues to suppress independent voice. Under this law, Internet and bulletins are recognized as Mass Media with several attended consequences including the requirement for an NGO to obtain a license in order to issue regular bulletins or brochures. Consequently, if an NGO bulletin addresses critical issues such as violence against women, sexual exploitation or democratic values and ideas, it is unlikely to be granted a license. All web sites publishing critical information and being maintained from abroad are blocked. Notably, many critical thematic issues are discussed on these sites, though Uzbek readers are deprived of access to them. All access to the web sites of international human rights organisations, such as Human Rights Watch, International Federation for Human Rights (FIDH), Amnesty International, and many others is blocked.

In order to build a single State-controlled NGO administrative body, 2008 saw the Uzbek government create a so-called NGO, named the National Association of Non-governmental Non-commercial Organisations of Uzbekistan (NANNOUZ). This organisation is intended to subsume all existing NGOs under its auspices. In 2012, the NANNOUZ carried out six Projects funded by the European Commission for 1.3 million Euros. These projects were entitled "Plan your future". Since 2010, another so-called NGO – Fond Forum of Uzbekistan – has been active in the country. Although, this organisation is officially an NGO, it is lead and reportedly funded by President Karimov's eldest daughter, G. Karimova, who is an official government employee. In 2010, this organisation also got consultative status with the UN's ECOSOC.

Any publication produced by an NGO or international organisation, including UN offices, must obtain permission from the Centre on Spirituality and Education under the Cabinet of Ministers. This regulation acquired a special force in March 2009 in light of the newly adopted "Program on enhancing national spirituality and the struggle against phenomena and activities alien to the Uzbek way of living and mentality". The implementation of that program began with the screening of numerous publications by international organisations (UN Uzbekistan offices inclusive) by the Centre on Spirituality and Education. The screening aimed to determine whether or not the publication is related to the issues and contains terminology of gender equality, domestic violence, feminism, safe sex, condoms, etc which are identified as "hostile to the national culture".

The law in Uzbekistan imposes administrative liability for functioning as a non-registered group for more than 6 months. In article 202 (1) of the Code of Administrative Liability Involving others in non-governmental, non-profit organizations, movements, sects, which are illegal in the Republic of Uzbekistan, is punishable by a fine ranging from fifty to one hundred minimum wages or by an administrative arrest of up to fifteen days." In February 2012 responding to the events of Arab spring the Uzbek Government also went on to ban Flash-mobs.

## Registration of NGOs

NGO registration is mandatory in Uzbekistan. It is carried out by the Ministry of Justice and there are three types of responses officials can provide upon consideration of the documents supplied by group's initiators: a) approval; b) denial; and c) leaving registration documents unconsidered due to shortcomings or errors. For an organisation whose Charter provides that it will work on human rights, religious freedoms and other so-called sensitive issues, the Ministry always uses the third type of response launching endless bureaucratic mechanisms.

With its documents for registration an organisation must provide protocols for its members meetings, and a list of founding group members. This requirement allows the government to put pressure on founding members to deny participation in the formation of NGOs and further use it as a shortcoming of the NGO's registration.

The Ministry of Justice has found "shortcomings" in registration papers for NGOs to prevent their official registration. Examples of such shortcomings have historically included that "...the group cannot put as its goal protection of human rights since article 43 of the Constitution secures the State's role in promotion and protection of the rights and freedoms of citizens..." ("Mazlum" human rights NGO's refusal in 2002) and that another applicant could not choose to combat torture, as one of its objectives because Uzbek law outlaws torture and there is no torture in Uzbekistan (NGO – Mother's against torture 2003). Whilst these are clearly historical examples, given the State's consistent stance on human rights NGOs, their applications, if not left languishing unanswered in the registration system, can expect similar such responses today.

## Domestic Violence

*43. The Committee recommends that the State party:*

- (a) Adopt specific legislation on domestic violence, and that it provide a definition of domestic violence and consider domestic violence as a criminal offence;*
- (b) Carry out effective public-awareness campaigns and adopt measures to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against children;*
- (c) Carry out systematic training and awareness campaigns at the national and local level addressed to all professionals working with and for children (see paragraph 18 (b)), as well as the Mahalla Committees on prevention of ill-treatment and neglect of children within the family, in schools and in institutions;*
- (d) Establish an effective system for the reporting of child abuse and neglect and provide training for professionals working for and with the children on how to receive, monitor and investigate complaints in a child-sensitive manner, and how to bring the perpetrators to justice;*
- (e) Ensure access to counselling for all victims of violence as well as assistance for their recovery and social reintegration.*

One of the main problems faced by children of Uzbekistan is domestic violence. The Uzbek government officially denies this problem. There is still no law on domestic violence in Uzbekistan. Moreover, aspirations for protection from domestic violence, non-discrimination and gender are included in the list of "western values" and perceived breach the traditional values of Uzbekistan, being therefore taboo in the official vocabulary.

Furthermore, a literal translation of “domestic violence” is not found in the official Uzbek language; instead the government uses the term “family conflict”, thus recasting the phenomenon as a family issue in which government should not intervene. Law enforcement officials often remain ignorant to complaints on the violence in families and fail to take appropriate action, preferring not to intervene into “family conflicts”.

Ignorance of the problem with domestic violence led to insufficient work of the State and non-state bodies in preventing this ugly phenomenon in Uzbek society. State bodies, supposed to be responsible for violence prevention are law enforcement, Procuracy, Guardianship and Trusteeship Bodies and Commission on Minor’s Issues under the local governments. Mahalla<sup>30</sup>, a semi-independent body, is deemed to play an important role as a non-state actor for violence prevention.

Efforts of Guardianship organs in violence prevention are not sufficient. For the population of more than 200 000 persons there is only one officer who has to deal with enormous scale of responsibilities. Apart from the violence prevention, officers of Guardianship organs are also responsible for adoption, patronage families and other issues. According to interviewed officer of Guardianship and Trusteeship Body, annually in single rayon of Tashkent city, there is up to 50 adoption cases and more than 100 cases of guardianship and patronage.<sup>31</sup> Monitoring of abuse prevention becomes simply impossible. Other state officials and Mahalla committee members are not adequately trained to identify and report cases of violence and abuse of child.

Commission on Minor’s Issues created within the structure of the local governments consists mainly of employees of this structure, while child issues require at least having professional psychologists and pedagogues as permanent staff. Commission lacks effective cooperation with Guardianship organs, Mahallas and NGOs on children problems and plays rather passive role.

Mahalla in this violence prevention chain is the weakest link, while it is supposed to be the strongest for its closeness to families. Mahalla committee members are in need of adequate training in violence prevention. It is also necessary to include and appropriately train school administration to react to the cases of violence against children.

Reluctance to recognise the problem of domestic violence leads to absence of comprehensive programme of identification of cases in families by appropriate officials. Stagnation in combating domestic violence in Uzbekistan is explained by the lack of political will to reform legislation as it will damage the patriarchal values of traditional families which in turn are viewed as national value.

## **Sexual Exploitation, Abuse and Sexual Harassment**

Child prostitution is a problem in Uzbekistan. However, there is no official data about the age or percentage of children involved. Street children and children in institutions, such as orphanages are often involved in prostitution. Often law enforcement officials are involved in criminal businesses that engage in child sexual abuse.

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<sup>30</sup>Mahallas – local autonomous institutions of self- government based on family ties and Islamic rituals.

<sup>31</sup>Interview with Guardianship and Trusteeship Officer, 2012, Tashkent

Street girls are often subject to sexual abuse when held in detention centre. Children in prisons can also be exposed to sexual abuse either from prison staff or elder peers. Although the Criminal Code contains provisions on sexual intercourse with a person dependent on the perpetrator, there is no separate law on protection from sexual harassment. Children placed in institutional care are at high risk of sexual abuse. There are no mechanisms of independent observation and complaint in such institutions. Independent NGO's are not allowed to monitor the situation in these institutions.

Article 121 of the Criminal Code of Uzbekistan "Forcing woman into coitus" states: "*Forcing a woman into coitus or satisfaction of sexual desires in unnatural form by the person to whom woman was in official, financial or other dependence*". While international law and CEDAW in its General Recommendations in particular, provides wider definition for this phenomenon: "*Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually colored remarks showing pornography and sexual demand, whether by words or actions*".

It is necessary to introduce full and appropriate definition of sexual harassment in Uzbek penal provisions and conduct campaign in schools, colleges and universities to raise awareness on this issue among children.

## **Recommendations:**

### ***Institutional reforms***

Appropriately incorporate ratified international documents in domestic legislation;

Strengthen the role of Ombudsman and create Child Ombudsman with the authority to receive complaints directly from children. Make the recommendations of Ombudsman mandatory for implementation. Introduce more publicity for Ombudsman activity;

Create effective complaint procedures for violations of the civil and political rights of children;

With appropriate international and local organizations develop comprehensive programme combating corruption in Uzbekistan. Ensure transparency of State activities; Eliminate term "other secrets" from legislation and make laws on secrecy as precise as possible;

Develop law on "Civil Service" and Code of Ethics for State officials

### ***Civil Rights and Freedoms***

Eliminate gender-based discrimination about marriageable age;

Adopt programme and Law on protection from Domestic Violence;

Introduce the terminology on sexual harassment and amend penal provisions with wider definition of sexual harassment in accordance with the General Recommendations of CEDAW on this issue.

Introduce the complex strategy of preventing early marriages, including incentives at pursuing higher education for girls, raising awareness of women rights issues and negative consequences of early marriages and inequality.

Introduce amendments to the corpus delicti in the case of polygamy include cohabitation with two or more women in separate houses to the article 126 of the Criminal Code of the Republic of Uzbekistan.

Ensure civil rights and liberties promotion among children placed in the institutions;

Create room for the privacy for children placed in the institutions;

### ***Freedom of Speech***

National legislation on mass media should be brought in compliance with international requirements and standards. For the establishment of transparency and openness, it is necessary to avoid the practice of issuing sub-legislative normative acts contradicting the laws and the Constitution of Uzbekistan, including those of secret and oral nature. It is necessary to entirely revise the requirements for secrecy, libel, insults and access to information.

Develop a new legislation to protect and regulate the mass media and journalists, ensuring a transparent and public participatory decision making process as well as mass media and journalists' protection measures;

Develop methods of legal defence of mass media and journalists against the pressure of state organs and agents, monopolies and oligarchies by way of adopting a Law on TV and Radio Broadcasting;

Provide for the diversity of the mass media market including abolition of the restriction of publication and broadcasting by NGOs, political parties, foreign broadcasters and private organisations;

Make the system of accreditation of foreign mass media public and transparent;

Abolish administrative and bureaucratic obstacles for the establishment and functioning of professional associations of journalists, independent broadcasters, reporters and others;

Stop pressuring independent journalists, mass media editors and create real conditions for the realisation of freedom of speech.

From the institutional point of view, it is necessary to conduct decentralisation and privatisation of state mass media and of the market of printing and information services;

Establish mechanisms to encourage children to express themselves, especially in institutions, medical establishments, schools and courts

### ***Freedom of Association***

Revise and simplify the order of the NGO registration including foreign representations and introduce respective amendments into legislative acts weakening control on the part of the state controlling organs and the Ministry of Justice; Change the character of NGO registration from permissive to informative.

Abolish the practice of tight control of the activities of NGOs by the Ministry of Justice, in particular, necessity of obtaining permission from the Ministry on conducting the educational activities, conferences, round-tables and etc.

Eliminate the practice of checking the appropriateness of grants allocated to the NGO on the issue of necessity to Uzbekistan by the commission within the banks. Stop freezing grants allocated to NGO and returning them to the international donors.

Eliminate censorship of NGO publications, and stop persecution of individuals involved in developing and publishing materials of nongovernmental organisations, including textbooks, leaflets, and public services announcements on children issues.

Stop persecution of leaders of NGO, human rights defenders, journalists and activists.

### ***Freedom from Torture and Juvenile Justice***

Amend article 235 of Criminal Code of Uzbekistan and bring it in full compliance with article 1 of CAT

Establish a Juvenile Justice system in the Republic of Uzbekistan by means of the establishment of separate courts for juveniles and amending the legislation in order to bring it in compliance with international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System;

Develop special procedures for juveniles in the Criminal Procedural Code;

Introduce into practice the principles of restorative justice as an alternative to traditional punishment in the form of imprisonment;

Establish rehabilitation centers for children, delinquents, torture and domestic violence victims, functioning within the framework of restorative justice;

Advance introduced system of Habeas Corpus by: (1) requiring judge to review case of detention on merit and review the reasonableness of detention in custody; (2) giving judge authority to decide on the type non-jail types of measures; (3) requiring judges to accept complaints on torture during the revision of the cases on detention in custody; The judicial hearing on the restriction measure should be public and with due hearing of the parties, as any other judicial process.

Provide real independence of judges and the judicial system by: (1) transferring the power of appointing judges from the President to the Parliament of Uzbekistan; (2) introducing a life appointment principle for judges; (3) providing a decent salary to judges and material-technical procurement of courts and judges individually; (4) prohibiting administrative rotation or transfer of judges from one position to another, both to the higher or lower instance or from one court to another, without their consent;

Separate the 3 main functions of the Procuracy to be carried out by three separate and independent bodies, and to limit the Procuracy's role exclusively to a function of prosecution, surveillance over investigation by law-enforcement bodies and representation of State interests in criminal, administrative and civil cases.

Introduce into the current criminal procedure legislation the right of witnesses to legal assistance by a defence lawyer (the right to be interrogated with the participation of a lawyer) and the right not to incriminate oneself;

Reform legislation to conform the UN Rules on the Juveniles Deprived from the Liberty, Beijing and Riyadh Rules;

### ***Freedom of Movement***

Eliminate the system of “Exit Visas” as violating of civil freedoms;

Reform current system of Propiska

### ***Situation with Vulnerable Families and Abandoned Children***

Ensure that different social benefits (e.g. for children with disabilities) are paid to children up to at least 18 years of age;

Ensure transparency and accountability of Mahalla activities. Publish annual reports of Mahalla activities in terms of distribution of social care benefits.

Provide effective mechanisms for complaining and appealing against the decisions of Mahalla committee on social care benefits.

Eliminate the practice of checking the family welfare in the cases of allocating maternity allowances.

On the regular basis calculate the basket of consumer goods and bring social care allowance in compliance with the amount of consumer basket.

Adopt legislation on rehabilitation and social integration of disabled children. Legally impose the requirement of adopting public buildings to the requirements of disabled persons;

Adopt programmes for protection of the most vulnerable groups, such as orphans and street children;

Adopt comprehensive training programme for Mahalla officials on the international law related to child rights;

Ensure positive discrimination for orphans, street children and disabled for access to higher and professional education;

Provide tax incentives for employers hiring orphans and disabled persons.

Develop counseling services for families vulnerable to violence, providing social and crisis support;

Create joint unit of Guardianship, Fostering and Adoption Service with Commission on the Minors’ Affairs. It is important that this unit is formed of professional educational specialist, lawyer and psychologist;

Promote alternative care, such as family type homes and other types of alternative care. Introduce necessary amendments to the legislation and introduce incentives for families providing care for abandoned children;

Develop more practical approach to the education in orphanages. Improve the living conditions in institutions, in particular, by offering more opportunities for developing social skills, creating living conditions similar to a family environment, changing the daily schedule;

Develop legislative mechanism to preserve property rights of the child;

Support in practice the creation of new family type homes that could substitute large state-run institutions;

Provide children leaving institutional care with post-institutional support, which includes provision of education in accordance with their preference, legal counselling, exemption from taxes until the age of 25 and housing;

Provide transparency of control by the appropriate bodies over the guardianship and adoption service's work to prevent further violation of children's rights to their housing property. To allow independent monitoring by NGO;

Guarantee effective complaint procedures in all institutions, including orphanages, psychiatric hospitals, special school, and juvenile prisons;

Establish university department on social work and introduce social work practice;

Create a separate governmental organisation working on Orphanages and Adoption issues and develop national standards on the issues of adoption;

Introduce a system for social workers monitoring of adopted and fostered children;

Adopt a Regulation on Foster Families and support their establishment in practice, provide sufficient financial resources to Foster families to enable them to provide adequate standard of living for the child.

### ***Child Labour***

Regulate legally labor relations on agricultural works, including followings:

- Duration of working hours which has seasonal term

- Regulation of night work in agricultural farm

- Ensure social guarantees (pension guarantees, guarantees on temporary disablement compensation and etc.)

- Develop mechanisms to control the observance of protection measures and norms related to the children labor

Punishing officials who continue to use or turn a blind eye to child labour;

Establishing monitoring bodies including international, industry and government representatives, to ensure laws and declared policy against child labour are actually implemented. To develop programs on drug abuse preventing in cooperation with independent NGOs;

Stop using child labour in schools and colleges;

Outlaw violence against children in schools and alternative system institutions;

Monitor and prohibit unofficial costs practiced in schools and colleges, such as "renting books", payment for the school guards, cleaning, repair and renovation of the school

### ***Sexual Exploitation***

Uzbekistan should address the fight against child sexual exploitation (trafficking and prostitution) at national and regional levels in cooperation with neighboring countries, NGOs and relevant UN agencies;

The Government of Uzbekistan should open its files, in particular statistical and legislative information, on minors within the judicial system to the work of non-governmental organisations, i.e. independent bodies, to assess the situation;