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**Zentrum für internationale Entwicklungs- und Umweltforschung
der Justus-Liebig-Universität Gießen**

**Protection Mechanisms and services for young Workers in
Central Asia and the European Union**

by
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Protection Mechanisms and Services for Young Workers in Central Asia and the European Union

1. INTRODUCTION

Discrimination exists in all societies and can take on many forms. They all involve exclusion or declination, for example, of individuals or groups. Discrimination can be the result of direct and deliberate action or it can happen unconsciously. Social exclusion as well as lack of access to services and resources are common effects of discrimination. Discrimination is practiced by governments against citizens, by one community against another, or by adults against children. According to any measure of international law, children are the most vulnerable group of all since children in virtually all societies have less power than adults and are therefore vulnerable to discrimination. Many children face additional forms of discrimination. Especially, children with disabilities and children of ethnic or religious minorities are affected by discrimination. The social status as well as gender aspects can as well influence discrimination. Over all, girls are more vulnerable to discrimination compared to boys.

Kazakhstan is becoming increasingly attractive for labor migrants due to its booming economy. Citizens of other Central Asian (CA) countries looking for economic opportunities are moving to Kazakhstan. However, inflexible legislation on migration benefits mainly people with high qualifications and education. Due to a low level of education and small startup capital the majority of migrants from other CA states immigrate to Kazakhstan illegal. Migrants are among the most discriminated in society. Their work force is cheap and they do not have any employment protection or access to basic health care services. In many cases, these migrants are children. They have come to Kazakhstan together with their families or independently. Those children work on tobacco or cotton fields in rural areas as well as on the streets of the cities.

Social scientists explain the difficulties in securing the rights of migrants as follows. Migrants act and live in two jurisdictions. On the one hand, there is the state from which they departed, on the other hand, there is the state in which they work or try to find a job (ABDULAEV 2008, P. 35). Differences in legislation between states hinder access to rights and also create opportunities for violations of rights. This situation is often worsened by a lack of language skills and semi- or illegal migration, residence, and employment in the host country. Therefore, migration is accompanied by discrimination, violations of human rights, and even human trafficking. Under these circumstances migrant children are the most vulnerable

group. However, under the norms of international humanitarian law, children lacking care and supervision of an adult are considered as “neglected.” This status, irrespective of their nationality or circumstances, should immediately accord them protection in whatever state they arrive (VIDAL 2007, P. 2). All states that ratified the *UN Convention on the Rights of the Child* express their concern for the welfare of children, particularly neglected ones, and consider children as the most valuable representatives of the society.

This paper will take a look at the general situation of child protection in all five CA countries. Mechanisms and services including legislation and infrastructure and the situation of child laborers will be commented. It will be examined if the legislation and infrastructure in CA states is consistent with the *UN Convention on the Rights of the Child* and if there is a regional approach in CA and the European Union (EU) that allows assistance to young migrants. Further, the paper tries to analyze potential policy instruments to create a more child friendly situation in CA as well as in the EU.

1.1 General Framework

CA countries signed and ratified the *UN Convention on the Rights of the Child* (CRC) in 1992-1994¹. Thereby, they have defined child protection issues as one of the main priorities of their national policies. Within the last years, a growing interest in child protection issues can be observed in CA states, since the basis for transition to the social support system is focused on children.

CA governments have undertaken a number of efforts to implement special recommendations of the CRC. To ensure substantial contribution to policies and decision-making processes, interdepartmental bodies have been established in Kazakhstan and Tajikistan. They are responsible for child protection. Uzbekistan and Kazakhstan considered the establishment of independent bodies such as Ombudsperson to monitor the child rights. However, the efforts undertaken in the social reforms system are primarily concentrated on mitigating the impact of social factors on children and focus less on strengthening the family potential and social services system to prevent disintegration of families. According to official statistics of CA states in 2003, there were 62,000 children under the age of 18 years reared outside their biological families in foster care by place of their residence or adopted. Actually, this number is sufficiently higher (approximately by 10,000) in comparison to 1990. For a

¹ The dates when Central Asian countries joined the UN Convention on the Rights of the Child are: 11.09.1994, the Republic of Kazakhstan; 06.11.1994, the Kyrgyz Republic; 25.11.1993, the Tajik Republic; 19.10.1993, Turkmenistan; 29.07.1994, the Republic of Uzbekistan. (See Office of the UN High Commissioner for Human Rights 2006.)

number of CA countries, placement of children in children's homes is the only way to solve numerous family problems such as poverty, unemployment, children's diseases, or physical disability of children. Families with many children, families living in remote rural districts without access to educational institutions, and families with disabled children have to rely on the system of boarding schools which take the economic burden off the parents' shoulders. Moreover, there is a wrong perception among parents that institutionalization does not make any harm to the child (VIDREE / ZIMMERMANN 2002, P. 7). Alternative forms to child rearing are developed in all countries of CA including adoption and foster care. However, an increase in the number of children being raised in state institutional facilities can be observed. Children living in state institutions without their families grow up in an environment unfavourable for development. This is especially harmful for younger children. The growing number of children placed in institutional care clearly demonstrates that all CA countries are lacking family support systems capable to prevent families breaking.

The problem of stigmatization and discrimination of children with special needs and their placement in official institutional facilities is a common problem for all CA countries. A study conducted by UNICEF and ORA International in Tajikistan has revealed a number of causes for institutionalization of disabled children. According to the parents,

- boarding school is the only place where a child receives specialized medical care and education based on child needs;
- it is difficult for families to cope with physical and psychological problems of a child with special needs;
- for single mothers it is practically impossible to take care of a disabled child.

Intolerance of the community and public to ill people is another important reason for disabled children's institutionalization (ORA INTERNATIONAL TAJIKISTAN 2003, PP. 3-6). A sociological research conducted in Tashkent in 2005, demonstrated that 65.4% of disabled children in specialized boarding schools have both parents (UNICEF/REPUBLICAN CENTER FOR SOCIAL ADAPTATION 2006. P. 24).

It is known that in 10% of child mortality under the age of 5 years is connected to external factors such as unintended and intended injuries. In this context, attention should be drawn to the use of corporal punishment as the most frequent display of domestic violence. Great concern arises about parents' lack of skills in child upbringing and about their neglectful child care. Unfortunately, the currently existing system of child protection is not effective in early detection of cases and signs of child abuse. The existing system is not equipped with instruments for timely response to such situations. Therefore, governments have to undertake efforts to create a safe and friendly environment for children

Until today, there are no data available about the number of children imprisoned, reasons for their detention and the time they spent in closed institutions (UNICEF TRANSMONEE DATABASE 2006). Some CA countries already have taken steps to improve the situation of young people in conflict with the law. They have started to revise their national legislation. For instance in Tajikistan, a juvenile justice program has been launched in pilot areas.

Another grave concern is the issue of child labor and also the growing number of working children in CA. Under the national legislation, child labor is forbidden. Nevertheless, the economic realities of families outweigh the legal provisions about the rights of the child and make it necessary to use child labor (PUBLICATION OF REPORT ON CHILD LABOR IN THE COTTON FIELDS 2004; IDENTIFYING PRIORITIES: SCHOOL DESK OR COTTON FIELD 2005; UNICEF/ILO 2005, P. 25).

1.2 Legislation

As shown in *Table 1*, CA countries have ratified the CRC in addition to other international treaties concerning child protection. By joining CRC, CA countries have demonstrated their commitment to comprehensive protection and the best maintenance of the interest of the child. The convention ratification presupposes a wide range of commitments and obligations that required revision of existing national legislation and implementation mechanisms. CA governments have undertaken measures to harmonize their national legislations with norms of international law in the field of child protection. For instance, several laws have been adopted in the Republic of Kazakhstan, including “On education”, “On the rights of the child”, “On the state youth policy”, “On marriage and family”, “On public welfare payments to the families with many children”, “On prevention of offences among minors and warning of children's neglect and homelessness”, and “On children villages and houses for youth”. The Kyrgyz Republic has adopted the Code of the Kyrgyz Republic on Children, the Civil Code, the Family Code, the Labor Code, laws “On social and legal protection from domestic violence”, “On prevention and fight with sale of people”, and the Decree of the Kyrgyz Republic President “On measures for improvement of the situation with children in the Kyrgyz Republic”. The country legislation of the Republic of Tajikistan includes laws which take into account the needs of families as well as children. In addition to the CRC, the Republic Tajikistan has adopted the Family Code, laws “On protection of health of the population” and “On social protection of disabled”. Turkmenistan has passed the laws “On the rights of children”, “On warranties of the rights of children”, and “On warranties of the rights of the young people”. The national legislation of the Republic of Uzbekistan has incorporated the basic norms of the CRC in the national laws. In 2006, the government of Uzbekistan developed drafts of two laws, “On warranties of the rights of the child”, and “On juvenile

justice". In particular, the draft of the law "On juvenile justice" was highly prized by international experts.

Table 1: International treaties on child protection ratified by countries of Central Asia

	Kazakhstan	Kyrgyzstan	Tajikistan	Turkmenistan	Uzbekistan
Optional Protocol I ²	10.05.2003	13.09.2003	5.09.2003	29.05.2005	23.12.2008
Optional Protocol II ³	18.01.2002	12.03.2003	5.09.2002	29.04.2005	23.12.2008
CEDAW ⁴	25.09.1998	12.03.1997	25.11.1993	31.05.1997	18.08.1995
ILO Convention 138 ⁵	18.05.2001	31.03.1992	26.11.1993		06.03.2009
ILO Convention 182 ⁶	26.02.2003	11.05.2004	08.06.2005		24.06.2008
Additional Protocol I ⁷	05.05.1992	18.09.1992	13.01.1993	10.04.1992	08.10.1993
Additional Protocol II ⁸	05.05.1992	18.09.1992	13.01.1993	10.04.1992	08.10.1993
Protocol to Prevent, Suppress and Punish Trafficking in Persons ⁹	31.07. 2008	2.10.2003	08.11.2002	28.03.2005	12.08.2008
Convention on the Protection of the Rights of All Migrant Workers ¹⁰		1.01.2004	1.07.2003		

² Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)

³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)

⁴ Convention on the Elimination of All Forms of Discrimination against Women (1979)

⁵ ILO Convention 138 on Minimum Age for Employment (1979)

⁶ ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999)

⁷ Additional Protocol I to the Geneva Conventions (1949) on Protection of Victims of International Armed Conflicts (1977).

⁸ Additional Protocol II to the Geneva Conventions (1949) on Protection of Victims of Non-International Armed Conflicts (1977)

⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000).

¹⁰ International Convention on the Protection of All Migrant Workers and Members of their Families (1990)

However, the *UN Committee on the Rights of the Child*, considering observations of the countries' periodic reports, states that national legislation in countries of CA does not always fully comply with CRC principles. Moreover, implementation of the national legislation is limited due to insufficiency of government funding or lack of coordination efforts. In Uzbekistan, for example, there is a wide spectrum of national acts regarding interests and rights of children. At the same time, there is no definition of the term "child" (minor). In the Kyrgyz Republic, there is a discrepancy in legislative acts about the age when a child reaches the legal capacity.

The national legislation of all CA countries reflects principles of non-discrimination of children and respect of the rights of the child. However, discrimination exists in relation to the most vulnerable children including neglected children and children living in institutional care facilities, children with special needs, children from rural regions, and children of migrants and refugees. There are stereotypes concerning the public role of men and women in society. The principle of best interests of the child does not always find reflection in the national legislation (see Appendix). Another vital issue is a missing awareness of the legislation and legal regulations among officials who are directly involved in the implementation of laws. This has a big impact at the local government level (AHMADI 2003, P.8.).

In CA countries, efforts have been undertaken to develop and implement a strategy on the rights of the child in compliance with international obligations and in line with the recommendations made by the *UN Committee on the Rights of the Child*. In 2000, the government of the Kyrgyz Republic established a committee to develop the state program "New generation - 2010". This state program on the implementation of the rights of children was adopted by the Decree of the Government on August 14, 2001. The program has the aim to create conditions, guaranteeing survival, development, and participation in public life of all children of Kyrgyzstan¹¹. The government of Kazakhstan has introduced the state program "Children of Kazakhstan 2006 – 2011". It defines main directions, priorities, and targets of the state policy in the field of protection of the rights and interests of children, including directions for preventing orphanhood (MINISTRY OF EDUCATION AND SCIENCE OF THE REPUBLIC OF KAZAKHSTAN 2006, P. 12.). In addition to this, the countries have accepted and implemented other state programs in the area of child protection. These programs are financed from local as well as state budgets.

¹¹ Government Resolution, 14. August 2001.

1.3 State programs in the area of child protection and education of the Republic of Kazakhstan

The Republic of Kazakhstan has proposed:

- The state program for development of education for the period 2005 – 2010 provides classroom equipment, strengthens the technical base of comprehensive schools and special facilities for children with disabilities, and purchases textbooks and teaching-methodical kits for educational organizations.
- The state program on reform and development of public healthcare system for 2005 – 2010. It is directed to young women and children under the age of 18 years to attend medical check ups and provides free medicines for treatment in out-patient facilities of main diseases of children up to the age of 5 years.
- The program for further intensification of social reforms for 2005 - 2007 and the national law “On welfare payments to the families with children” provided payments in connection with a birth of a child (in the size of 15 monthly indices) and introduction of two additional kinds of children's allowances¹².

The programs of the Kyrgyz Republic concerning childhood protection include:

- The State program on eradication of the worst forms of labor of minors¹³;
- The draft of the State program on a uniform communication-media strategy on facilitation of the rights of the child in the Kazakhstan Republic for 2007 - 2010.

Some of these state programs are adopted and enforced in the Republic of Uzbekistan. They are directed on social protection of children, including the national program on cadre training, the state program for development of school education, the target program on priority measures to increase medical culture of the family and to strengthen health of women and children, and the program on public health reforms.

2. INFRASTRUCTURE

All countries that ratified the UN CRC, commit themselves to respect and provide all rights stipulated in the CRC for each child within the limits of their jurisdiction (UN CONVENTION ON THE RIGHTS OF THE CHILD 1989, ARTICLE 2). In order to achieve this goal, the states require

¹² Allowances to children under 18 are provided to the families that have the average per capita income less than the cost of the food basket. Home care allowances for children younger than one year are paid irrespective of the family income.

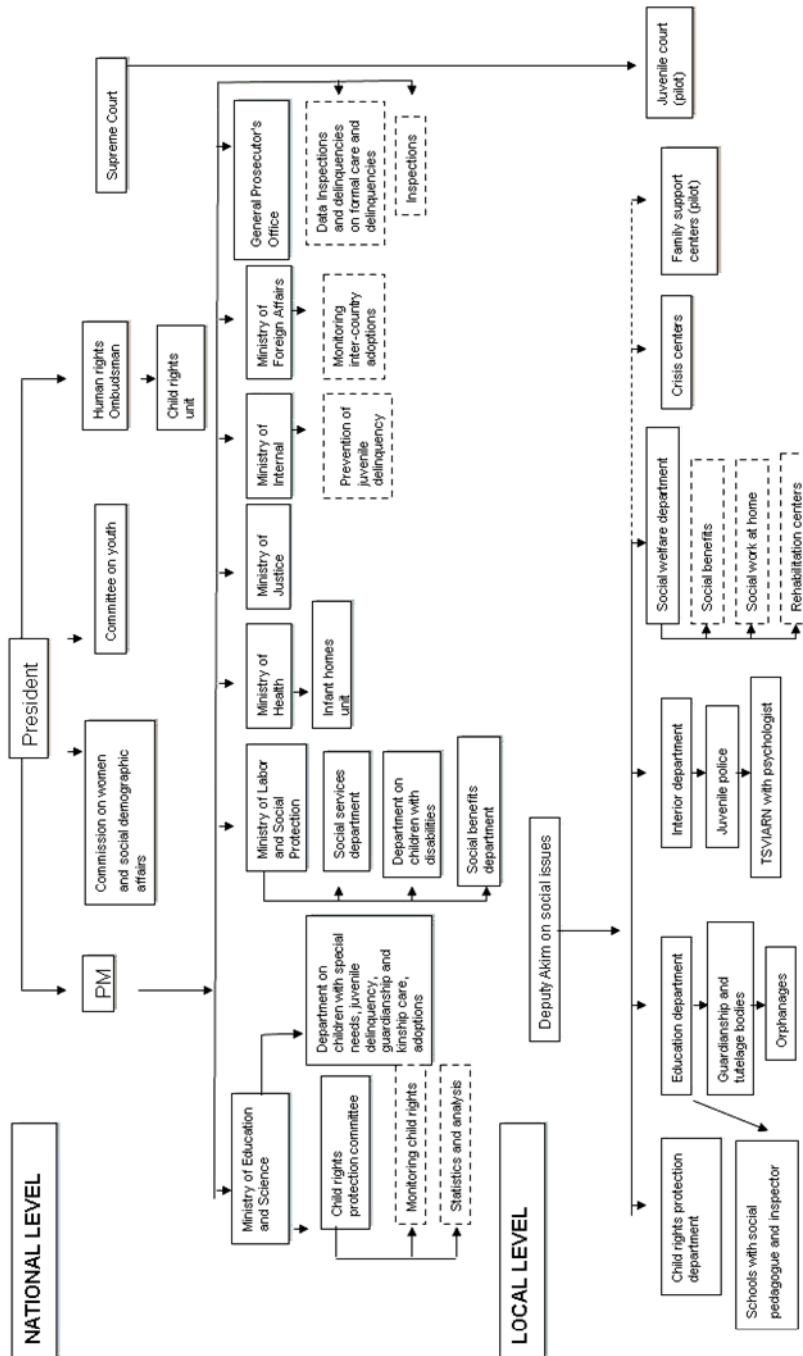
¹³ State Program on Eradication of the Worst Forms of Labor, 22. August 2008.

effective mechanisms to coordinate all efforts. The CRC calls for coordinated actions of the ministries, departments, and agencies involved in social sphere, and also of the legislative and judicial authorities, international institutes on human rights, and the civil society. Effective protection of human rights particularly depends on the cooperation level of all involved agencies. It is quite natural that any ministry taken alone (for example, the Ministry of Health) should not be responsible for the implementation of the CRC. Therefore, it is necessary to take an integrated approach for the implementation of the rights of the child, both interdepartmental and interdisciplinary. In addition, for an effective implementation of the CRC it is necessary to ensure coordination of efforts at national, regional, and local levels (UNICEF INNOCENTI RESEARCH CENTER 2006, P. 28).

CA countries have inherited the Soviet system of social protection of children that includes a number of linear ministries (Ministry of Education, Public Health, Labor and Social Protection, and Ministry of Internal). Furthermore, departments at regional level, and a number of public, non-state organizations are involved. *Table 2* shows the schematic structure of social protection in the Republic of Kazakhstan. This structure is typical for all CA countries. According to this scheme, the Ministry of Education and Ministry of Health are responsible for child care, upbringing of children left without parental care, and children with special development needs. The Ministry of Justice or the Ministry of Internal is engaged in prevention of offences. The Ministry of Labor and Social Protection is responsible for implementation of national legislation, dealing with issues of child labor, and determination of administrative sanctions when legislation is violated (U.S. DEPARTMENT OF STATE 2007). This ministry is also responsible for welfare payments. In the Republic of Tajikistan, the Ministry of Labor and Social Protection is also responsible for children with special needs as well as the Center for imprisonment before trial of children who have committed offences.

Quite often, the role of a coordinating agency is given to the Cabinet of Ministers (e.g. in the Republic of Uzbekistan and Turkmenistan) or some ministry takes a leading role (e.g. the Ministry of Social Work and Social Protection of the Kyrgyz Republic) in CA countries. In Uzbekistan, a coordination council was created under the Cabinet of Ministers that functioned on voluntary principles. It is aimed to develop strategies in the area of child protection, as well as to coordinate efforts in implementation of those actions. This committee includes representatives of different ministries, departments, public and international organizations. However, there is no single agency in Uzbekistan responsible for coordination of efforts in the field of the protection of child rights.

Table 2: The children’s social protection system in Kazakhstan: the map of main ministries and departments



2.1 Country specific infrastructures

Only in three countries of Central Asia special structures concerning the protection of children have been created. In January 2006, the Committee on child protection was created under the Ministry of Education and Science by the Governmental Decree of the **Republic of Kazakhstan**. The Committee is responsible for the coordination of activities of various ministries and departments as well as international and non-governmental organizations in the field of child protection. The Decree states that the primary goal of the Committee is to implement the state policy on protection of the rights and interests of children. The functions of this agency include:

- implementation of state programs on protection of the rights of the child;
- interdepartmental and interstate cooperation on issues of the rights of the child;
- cooperation with the state bodies, NGOs and mass-media in the child protection;
- development of information and analytical materials on situation in the country;
- rendering research-methodological and legal advice to state bodies and organizations within the limits of its competency.

The committee's responsibilities also include monitoring of the bodies of guardianship and foster care. The committee is headed by a chairperson, appointed to this position by the Minister of Education and Science of the Republic of Kazakhstan. The committee includes the department on child rights protection, department on adoption of children, analytical department and departments for legal, cadre, and financial provisions¹⁴. At the local level, the committee is represented by departments on protection of child rights. The major tasks of those departments include coordination of inter-department cooperation at the local level and control over implementation of measures directly connected to the realization of children's rights.¹⁵

The National Committee on the rights of the child under the Government of the **Republic of Tajikistan** was established in September 2001. Main field of activity is the coordination of policies of various ministries in the area of child protection (AHMADI 2003, P.10). The primary task of the committee is decision-making and policies concerning well-being of children and protection of their rights. The decisions made by the committee are obligatory for the

¹⁴ Polizhenie o gusudorstvennom uchrezhdenii departament po zashchite prav detei (The situation of state establishment, department of child law protection) 13. January 2006.

¹⁵ Polizhenie o gusudorstvennom uchrezhdenii departament po zashchite prav detei (The situation of state establishment, department of child law protection) 13. January 2006.

ministries and local governments. The commission has the right to make amendments to the existing legislation and to initiate new bills. The committee includes 18 representatives of ministries and directors of ministerial departments, working on the issues of the rights of the child. Furthermore, 6 expert groups report to the committee about issues of child protection, deinstitutionalization, juvenile justice, and children with special needs. In the country, there are 67 subcommittees of the National Committee, representing this agency at the local level. The local level subcommittees are integrated in the structure of the local government. The deputies, responsible for social issues at the local government level, work in the local subcommittees. The National Committee and its subcommittees are responsible for monitoring and inspections of implementation of the National plan of actions for children 2003-2010 and for submitting annual reports to the national government.

In April 2007, the government of the **Kyrgyz Republic** created the department of child protection under the state agency of physical culture and sport, youth affairs and child protection. The main tasks of the Department include:

- Implementation of public policy for the protection of freedoms and interests of children and national programs to protect the rights and interests of children;
- Support and participation in the development of draft laws and normative legal acts of the President of the Kyrgyz Republic and the Government of the Kyrgyz Republic;
- Organizational, informational, methodological, and practical support to other organizations involved in child protection (e.g. the Commission for Children and the Division for the support of family and children);
- Monitoring of the progress made in the area of child protection and compliance of the national legislation with the Convention on the Rights of the child and its public awareness.

On June 10, 2008, the Government introduced the new Decree № 285 "On the creation of family support and children divisions and Commission on Children affairs" at the local level. There are currently 57 family support and children divisions in 44 administrative districts and 13 town halls of bigger cities¹⁶. Those divisions participate in the development of child protection policies at the local level and coordinate the service system for families and children.

¹⁶ Razvitie sistemi zashchiti prav detei (Development of the system of the child law protection) 12-14. May 2009

2.2 Limiting factors of the UN Convention on the rights of the child

Since the coordinating structures in the countries that ratified the UN Convention on the rights of the child were set up in the beginning of 1990s, it is early to judge about their effectiveness and their future. Among the limiting factors that hinder development of the coordinating structures the UN Committee on the rights of the child names the following:

- Absence of the integrated approach in this area,
- Lack of necessary resources,
- Weakness of political priorities in coordinating of interdisciplinary and intersectoral cooperation,
- Inability of coordinating mechanisms to involve the governmental departments responsible for planning and allocation of resources,
- Inability to ensure transfer of national resources to support local initiatives,
- Inability to ensure active participation of regional / local authorities,
- Inability to involve the civil society (UNICEF INNOCENTI RESEARCH CENTER 2006, P. 31).

2.3 Monitoring of the UN Convention on the rights of the child

In general measures the UN Committee on the rights of the child states that “it is necessary to conduct a strict monitoring of fulfillment of the Convention provisions the mechanisms of which should be built-in in the state bodies at all levels” (UN COMMITTEE ON THE RIGHTS OF THE CHILD 2003, PARA 27). Further, the UN Committee on the rights of the child emphasizes the obligations to fulfill the UN Convention on the rights of the child and underlines the importance of independent monitoring over execution of obligations under the Convention (UN CONVENTION ON THE RIGHTS OF THE CHILD 1989, ARTICLE 44 (1-2)). In the given context, monitoring means coordinated and comprehensive efforts to assess the achieved progress and to further continue the improvements of relevant policy, legislation and services (University of Minnesota 2006).

It is possible to distinguish a minimum of two categories to monitor child rights:

- Monitoring of the child rights infringement,
- Monitoring of the progress in implementation of the UN Convention on the rights of the child.

Table 3: Clusters of Conventions on the rights of the child

Guidelines to the instructions of the Committee

In the guidelines to the initial and periodic reports the UN Committee on the rights of the child has combined provisions of the Convention in clusters thus reflecting an integrated nature of the UN CRC: they are inseparable, interdependent and equally important.

I General measures for implementation

Article 4: exercise of the rights; article 42: informing about principles and provisions of the Convention; article 44 (6): wide access to the Reports.

II Definition of the child

Article 1.

III Main principles

Article 2: non-discrimination; article 3 (1): priority of the best interests of the child; Article 6: the right to life, survival and development (see also VI); article 12: respect of views of the child.

IV Civic rights and freedoms

Article 7: the right for name and nationality, the right to know own parents and the right be cared for; article 8: the right to preserve identity; article 13: freedom of expression; article 14: freedom of thought, conscience and religion; article 15: freedom of association and peaceful assembly; article 16: protection of the right on personal privacy; article 17: access to information and the role of mass-media; article 37 (a): the right not to be subject to tortures or other cruel, inhuman or degrading treatment or punishment.

V Family upbringing and alternative care

Article 5: family upbringing and evolving capacities of the child; article 18 (1) and (2): responsibility of parents and the state support; article 9: separation from parents; article 10: reunification of the family; article 11: illicit transfer and non-return of children; article 27 (4): recovery of maintenance for the child from the parents; article 20: children deprived of their family environment; article 21: adoption; article 25: periodic review of custody and treatment; article 19: protection against all forms of violence; article 39: recovery and reintegration of a child victim of violence (see also VIII).

VI Health and well-being

Article 6: the right to life, survival and development (see also III); article 18 (3): support of working parents; article 23: the rights of children with disabilities; article 24: the right to health and health care services; article 26: the right to social security; article 27 (1) - (3): the right to a standard of living.

VII Education, leisure and cultural events

Article 28: the right to education; article 29: objectives of education; article 31: right to rest and leisure, the right to engage in play and recreational activities, to participate in cultural life.

VIII Special measures of protection

A. Children in emergency situations

Article 22: refugee children; article 38: children and armed conflicts; article 39: recovery and reintegration (see also V);

Monitoring of violations includes registration as well as responsive measures to certain incidents of the violation of the rights of the child. In compliance with the “Paris principles” (the principles on the status of independent national institutes on human rights accepted by the UN General Assembly in 1993) the independent institute (the Ombudsperson on the child rights) is established to monitor, promote, and protect the rights of the child. Usually, this institution is created to represent the interests of children in every civil or criminal case, independently of their family. The given institution has the right to represent and publish opinions, recommendations, proposals, and reports on any issue concerning promotion and protection of the rights of child. It can thus act on its own initiative or on request of other organization. The Institute of the Ombudsman has the right to consider any issues within its competency independently of who has raised them (the national government or the institute itself).

B Children in the system of juvenile justice

Article 40: administration of the juvenile justice; article 37 (a): prohibition of tortures and deprivations of liberty; article 37 (b) - (d): limitation of freedom; article 39: recovery and reintegration of a child victim of violence (see also V).

C Exploitation of children

Article 32: child labor; article 33: the use of narcotic drugs and psychotropic substances; article 34: sexual exploitation; article 35: abduction of, sale of or traffic in children; article 36: other forms of exploitation.

D Children belonging to minorities and indigenous population

Article 30.

The General Comment №2 (2002) of the UN Committee on the rights of the child states that “Establishment of the office (Ombudsman on the child rights) according to the obligations taken by the states-participants at ratification, guarantees implementation of the Convention and promotes general implementation of the rights of the child.” The European countries (Austria, Belgium, Denmark, Finland, Germany, Iceland, Luxembourg, Norway and Sweden) were among the first to establish this institute. Therefore, Central Asian countries had the opportunity to learn from existing examples. However, Children’s Ombudsman have not been established in Central Asia. Kazakhstan, Uzbekistan, and Kyrgyzstan have Ombudsman’s Offices on human rights which as well consider issues of children’s rights. These offices receive petitions and letters concerning children’s rights from parents and non-governmental organizations (NGO’s). Nevertheless, the UN Committee regrets that this institute does not have means to respond to individual petitions.

Monitoring of implementation of the UN Convention on the rights of the child includes systematic evaluation of existing protection mechanisms and realization of the rights of all children. Monitoring of the rights of the child is necessary for two reasons:

- For identification of inadequately protected rights and identification of vulnerable groups, e.g. children at risk of neglect, exploitation or discrimination as well as children who might be isolated without public interference. The UNICEF Report “THE STATE OF THE WORLD’S CHILDREN (2006)” states that isolation is a multidimensional concept that includes deprivation of economic, social, gender, cultural, and political rights. Isolation can occur as a result of actions of the family, community, government, civil society, mass media, private sector or other children. (C.F. UNICEF 2005, P. 7);
- For estimation of importance and effectiveness of existing measures directed at protection of the rights of the child.

The Committee offers a set of indicators (measurable parameters that characterize a system) summarized in eight thematic clusters and according to the obligations of the countries (Table 3). Although, the list of indicators is not complete the authors of the report “*The General Measures for implementation of the UN Convention on the rights of the child. The Process in Europe and Central Asia*” state that a large number of indicators is not always an advantage. It is more preferable to develop indicators corresponding to the clusters of the UN CRC. Parameters included in the Millennium Development Goals can be used as a good example (UNICEF INNOCENTI RESEARCH CENTER 2006, P. 34). The UN Committee on the rights of the child as well as observations based on reports submitted by CA governments mention that there are no data about persons under 18 years old (in reference to the rights included in the Convention) and that the data are not gathered regularly and not used to evaluate success and development of policies helping in the implementation of the Convention. Moreover, the information submitted by different ministries significantly varies. Therefore, data about vulnerable groups of children needs to be systematized.

3 LABOR MIGRATION AND CHILD LABOR IN KAZAKHSTAN

3.1 Labor Migration in Kazakhstan

The major reason of migration in CA is different levels of economic growth in Kazakhstan and other CA countries. In recent years, Kazakhstan’s labor market was becoming more and more attractive to citizens of Uzbekistan, Tajikistan, and Kyrgyzstan. This development is likely to be traced back to differences in the level of wages in Kazakhstan and the other countries. For example, in Uzbekistan the majority of population receives salaries from 2000

– 7000 Uzbekistan soms (2.5 - 9 \$US) per month. This compromises only 1/3 of the amount necessary for providing minimum requirements of the individual. Taking into account the fact that Uzbek families are traditionally large, it turns out that per capita income is less than 3 \$US per month. According to various estimates, poverty affects up to 40 - 60% of the population of Uzbekistan. For this reason, hundreds of thousands of Uzbek citizens are working (often illegally) outside their country, mainly in Kazakhstan (especially in the neighboring Southern Kazakhstan region). Today, the main areas of employment of illegal migrant workers are in the construction of private buildings and in agriculture (cultivation, picking cotton, vegetables, etc.). Annually, from April to November, citizens of Uzbekistan rent plots of land on the border between Uzbekistan and Kazakhstan in the Saryagash region. Approximately 7,000 to 10,000 people work on those lands (on an area of 12-15 thousand hectares), and about 4,000 of them are citizens of Uzbekistan. Citizens of Kyrgyzstan usually work on tobacco plantations in the border areas of Almaty region (LARUELLE 2008). In the coming years, inflow of labor migrants in Kazakhstan is expected to continue because of the economic growth of the country. According to the Committee for Migration, the Ministry of Labor and Social Protection, in the time span from 1999 to 2006 the largest arrival of immigrants came from Uzbekistan. They correspond to 57.6% of the total number of all immigrants from CIS countries (with 26.5% Russia is on the second place). Official and unofficial sources provide different estimates on the number of Uzbek migrants in Kazakhstan. According to the International Organization for Migration study, the number of labor migrants from Uzbekistan in Southern Kazakhstan (which attracts up to 90% of all Uzbek migrant workers), is 200,000 people. Government officials and community organizations estimate that this number is at least five times bigger. Kazakhstan is the ninth-largest migrant-receiving country in the world. The number of migrant workers coming to Kazakhstan varies between 300 and 500 thousand people. Important points of labor migration are the cities Almaty, Astana, and Western and Southern Kazakhstan regions (MARAT 2009).

According to an OSCE/UNESCO study (2008) on scales and characteristics of labor migration in Kazakhstan, (the study included 1,500 migrants in 10 regions of Kazakhstan), 49.3% of interviewed migrants mentioned they work legally, 38% were illegal migrants, while 12.7% could not provide an answer to the question.¹⁷ There are no official statistics on illegal labor migrants in Kazakhstan. Therefore, addressing the topic of younger migrants, the researchers raised an unexplored issue. It should be noted that children who come into the

¹⁷ Materials of the Seminar Organized by the Ministry of Labor and Social protection together with OSCE “Upravlenie trudovoi migracii v Kazakhstane “ (The administration of the labour migration in Kazakhstan) Almaty, May 29-30, 2008.

country independently as migrant workers, or as part of a family, face very specific problems. One of the important factors is that they should be protected under the international humanitarian and national laws despite their illegal status.

3.2 Child labor in Kazakhstan

Child labor is a fundamental human rights violation that needs to be combated at national and international levels. The consequences of child labor are grave, to the physical and mental development of children. The International Labor Organization's (ILO) report on child labor states that in 2004 there were 218 million children trapped in child labor worldwide. Some 126 million children were engaged in 'hazardous work', many of them work in slavery conditions (ILO 2005, P. 2). Unlike the so-called historical forms of slavery, which were legal and were recorded and mapped with precision, modern slavery is illegal in virtually all countries and therefore, its precise dimensions are impossible to establish (CRAIG 2008, PP. 147–149).

It is still difficult to evaluate the spread of child labor in Kazakhstan. This might be connected to lack of data collection system (on child labor), lack of connections between existing data bases or problems of finding and proving facts of child labor. That in its turns might be connected to unawareness about the issue of child labor, lack of knowledge how to solve it, and especially lack of knowledge among working children about their own rights. However, the research undertaken by ILO in 1997 and 2006 has demonstrated that problems of child labor does exist in both urban and rural areas of Kazakhstan and that the issue is more urgent in rural areas (ILO-IPEC: CAR CAPACITY BUILDING PROJECT 2007, P. 3; ILO-IPEC: CHILD LABOR 2006, P. VI). Most children affected by child labor reach the South Kazakhstan Region together with their families. They migrate from Uzbekistan and the Kyrgyz Republic during the harvest time. Many of them work on cotton and tobacco fields (ILO-IPEC: CHILD LABOR 2006, P. VII). The wages of migrants depend on the harvest. considering all expenses on food and accommodation, the average revenue of a family is around 2000 - 3000 \$US per season.

The access to social services, health care and education is an important aspect of migration. In Kazakhstan, according to the OSCE/UNESCO study (2008) migrants did not face any problems in cases of emergency when medical help was required, regardless of their legal status¹⁸. However, in other cases where medical treatment was needed migrants had to pay

¹⁸ During the interviews, migrants mentioned the Governmental Decree from October 16, 2006 #997 which states that "Foreign citizens and stateless persons are entitled to free medical assistance and help in case of disease when they represent a threat to others. In other cases, medical care is

for the medical treatment¹⁹. It should be noted that migrants can ask for medical help only in private hospitals because state hospitals would require information about residence. Therefore, according to reports of international organization, children involved in cotton and tobacco harvest do not have access to quality medical care. Mostly, they suffer from fatigue and malnutrition (ILO-IPEC: CHILD LABOR 2006, P. IX). Furthermore, most migrant families do not have the opportunity to provide an adequate education for their children. The main reason for migrant children not attending schools or other educational facilities in Kazakhstan is the language barrier. This refers more to Tajik and Uzbek language speakers and less to Kyrgyz language speakers (ALIMBEKOVA, ET AL., 2009, 82 P).

Compared to rural areas, the opportunities for child labor are limited in urban areas due to formed labor markets. However, children are involved in begging, product delivery on the market, car washing, and work at gas stations²⁰. Some research on child labor indicates involvement of children in illegal activities such as prostitution and pornography. According to police data, one third of all city prostitutes in Kazakhstan are children (KELLY 2005, P. 61). Quite often, the family of the child forces them into prostitution. (TURGANBAJ ET AL 2004, P. 38) Especially, children working as house servants are mostly invisible for legislative bodies. Therefore, they are even more vulnerable for exploitation. Another significant issue is child trafficking (US DEPARTMENT OF STATE 2007; TURGANBAJ ET AL 2004, P. 8). According to the Trafficking in Persons Report 2009, Kazakhstan is a source, transit, and destination country for children from Uzbekistan, Tajikistan, and Kyrgyzstan trafficked to Russia and the UAE for the purposes of commercial sexual exploitation and forced labor. Moreover, Kazakhstan is a destination country for a significant number of Uzbek girls trafficked for the purposes of commercial sexual exploitation and forced labor, including domestic servitude and forced labor in the tobacco, cotton, and meat processing industries. Further, the reports come to the conclusion that the government of Kazakhstan does not fully comply with the minimum standards for the elimination of trafficking (US DEPARTMENT OF STATE 2009).

There are several international legislative instruments dealing with child labor. Conventions N° 138, N° 182, and Recommendation N° 190 are fundamental international instruments in the area of child labor. Convention N° 138 is one of the key standards of child labor. It stipulates that the minimum age for admission to employment should not be less than the

provided at the expense of their own funds, funds of their employers, or medical insurance and other nonprohibited sources.”

¹⁹ The minimum price of the medical examination is 500 Kazakhstan Tenge, which are approximately 4 \$US.

²⁰ ILO-IPEC: CAR Capacity Building Project 2007, pp. 5-7; U.S. Department of State, 2007; UN Committee on the Rights of the Child: Consideration of Reports. 4. August 2006.

age of completion of compulsory schooling and not less than the age of 15. On May 2007, after ratification of major ILO conventions and taking into consideration international documents on child labor, the Republic of Kazakhstan introduced new Labor Code. According to the national legislation, an individual at the age of 16 can sign a work agreement. However, a child can work at the age of 15 with the written consent of one of the parents, if the child has obtained secondary education. Children at the age of 14 and older can work, given that it does not harm their health and intervene with the education process. Children at the age of 16 to 18 can work no more than 36 hours per week and children at the age of 14 to 16 can work no more than 24 hours per week (Labor Code, article 181 Detskii Trud (Child Labour) 2007, P. 134). Children at the age of 18 are not allowed to work overtime and are not allowed to work in hazardous and dangerous conditions. Those conditions include gambling, work in night clubs, transportation, and sale of alcohol products, tobacco products and narcotic substances Labor Code, article 179 (Detskii Trud (Child Labour) 2007, PP. 133-134). State agency on labor in cooperation with state agencies on public health should develop a list of fields of work where child labor is prohibited (Detskii Trud (Child Labour) 2007, P. 136). Children younger than the age of 18 should go through obligatory medical check before being allowed to sign a work agreement.

The Constitution of the Republic of Kazakhstan prohibits forced labor with the exception of cases of court verdict or emergency situation, or martial law (Constitution of the Republic of Kazakhstan, article 24). The minimal age for conscription is 18. The national legislation does not allow involvement of underage in production, dissemination, advertisement, and sale of erotic products (Detskii Trud (Child Labour) 2007, P. 175). Involvement of children in production and dissemination of pornographic production is punished by the law up to two years of confinement (Turganbai et al 2004, P. 29). Involvement of children in prostitution, vagrancy or begging is a law violation and is punished by the law with up to three years of confinement (Detskii Trud (Child Labour) 2007, P. 170). Force or threat of force used in order to involve children in prostitution is punished by 5 to 7 years of imprisonment (Turganbai et al 2004, P. 26). The running of brothels for prostitution and pimping is outlawed and punishable by 2 to 5 years of imprisonment (Turganbai et al 2004, P. 27) The legislation punishes trafficking of children, exploitation or recruitment, transportation, or harboring on the territory of Kazakhstan (7-10 years of imprisonment) and trafficking of children to and from the territory of Kazakhstan (up to 12 years of imprisonment) (Detskii Trud (Child Labour) 2007, PP. 171-172.). In cases of death of a child as a result of trafficking, criminals can be imprisoned up to 12 - 15 years According to the legislation, victims of trafficking cannot be persecuted and they receive temporary protection from deportation (U.S. DEPARTMENT OF STATE 2007).

For 2006 – 2008, the government of Kazakhstan developed a national plan to eliminate child trafficking. Moreover, the government developed the national program “Children of Kazakhstan” and provided 84 million \$US for its implementation. In the framework of the ILO Regional project on implementation of the worst forms of child labor and realization of ILO Convention 182, the Common plan of work on elimination of the worst forms of child labor and implementation of ILO Convention 182 in the Republic of Kazakhstan in 2009 – 2011 was signed by various actors²¹. The Plan includes creation and testing of the system of child labor monitoring, which will allow partners to monitor the situation of legislation implements on protection of children from economic exploitation in the country.

In the 1990s of the 20th century, the UN Children’s Fund introduced the concept of “child friendly environment”²², which was based on the acknowledgement of children rights. The concept includes **several elements**, which allow the creation of an atmosphere, necessary for overall child development, in the family, society, and country.

- **Governmental opportunities** to realize rights of the child in the country include: ratification of international conventions without legal reservations; allocation of the budget for programs on child protection; societal acknowledgment of government commitments; implementation of child friendly programs.
- **Legislation and rule of law** include: introduction of important international standards into the national legislation; punishment of violators, work of the police and system of justice without external interference, an opportunity of introduction of amendments in the legislation; introduction of child friendly court procedures; availability of legal consultation and aid; non-criminalization of victims, availability of juvenile justice system.
- **Culture and customs** (attitudes, traditions and ceremonies) include: creation of environments where women and girls do not face discrimination, where methods of child upbringing do not include corporal punishment; development of societies where early marriages do not take place, where peaceful resolution of conflicts in the family is appreciated, children are respected, appeal to the state services is normal, practices that can harm children are not used, sexual exploitation of children is impossible, children with special needs and orphans with HIV/AIDS are not stigmatized. existence of environment

²¹ Ministry of Labor and Social protection, Ministry of Education and Science, Ministry of Internal Affairs, Ministry of Culture and Information, Ministry of Public Health, the Office of General Prosecutor, Federation of trade unions, and Confederation of employers.

²² The Committee on the rights of the child states that respect and guarantees of the rights of the child in practice should extend beyond the provision of public services and institutions, and should involve children, parents, relatives and other grown-ups, as well as services provided by nongovernmental organization. See “Zamechanie obshchego porjadka” (General comments), №5 2003 , §56.

where women and girls do not face discrimination, where methods of child upbringing do not include corporal punishment; society where early marriages do not take place, where peaceful resolution of conflicts in the family is appreciated; children are respected; appeal to the state services is normal; practices that can harm children are not used; sexual exploitation of children is impossible; children with special needs and orphans with HIV/AIDS are not stigmatized.

- **Open discussion** (involvement of civil society and mass media) involves: acceptance of existing problems in the area of child protection at the national and societal levels; to give children the opportunity to discuss problems at home, at school, and with each other; victims are not stigmatized and persecuted; NGOs and mass media can work without external interference.
- **Development of life skills** of the child, knowledge and participation in life of the society include: Creating an environment where children know their rights, where they are encouraged to have their own opinion as well as to express it; where they have necessary information and negotiation skills and learn about effective problem solving; where grownups respect children, child's opinion is listened in the family, school, and society.
- **Family's and community's potential** includes the fact that parents and guardians of children know and use protective methods of upbringing their children; families have support of social services; communities support and monitor child rights.
- **Basic services and rehabilitation** include accessible education for all children, including refugees; non-discrimination in provision of public health services for vulnerable groups; functioning of the social protection system; existing shelters and 'hot' lines; prepared personnel; safe and engaging classrooms.
- **Monitoring and reporting** includes systematic data collection, transparent reporting system based on these data, accessibility of those reports for people responsible for decision making; access of independent monitors to children from traditionally marginal groups; encouragement of civil society participation in all those processes.

Monitoring is the weakest part of the child friendly environment concept. This might be explained by the fact that data collection and interpretation is very complicated, even in cases when authorities and society are ready to discuss existing problems in the area of child protection. However, evaluation and analysis of child protection data is a necessary condition for effective intervention on behalf of the national government and society.

Dialogue, partnership, and coordination of all efforts are required not only between different branches of power, between authorities and civil society, international organizations, families, and children but also between countries. It is impossible to consider the issue of migration and child labor as a problem for one or a group of countries. It is a global cross-border issue and therefore, it does require common procedures. As observed earlier, there are serious

gaps in the national legislations of all CA countries. Moreover, in many cases governments do not have the necessary mechanisms in place to implement the existing legislation. Some of the governments already achieved certain progress in the area of child protection. Their experience is precious and should be shared so the best regional practices can be used by others.

3.3 Regional approaches in Central Asia and the EU directed at child protection

In 2006, governments of the five CA countries decided to establish the *Child Protection Forum of Central Asian countries* to improve awareness about childhood protection issues and exchange information in the region. Since 1997, several regional initiatives including *Forum on maternity and child health* protection as well as *Forum on Education* have been established. The first one was directed at developing programs on maternal and child mortality, reduction of morbidity rates, and support of local efforts on protection of health and well-being of mothers and their children. The *Forum on Education* was launched in 2002. This Forum was established after the introduction of the principles "Education for All" at the Conference on Education in Dakar in 2000. The *Forum on Education* was supposed to help solving difficulties in the sphere of education and track progress in realization of commitments taken by CA countries. The work of those two regional forums has demonstrated that those institutions can be used as mechanisms for active promotion of issues of child care in CA. To analyze the developed situation in the field of childhood protection in Central Asia, to review the arising problems and find possible ways for their solution, the CA governments have initiated the establishment of the *Forum on the Child Protection* in 2006.

The *Forum on the Child Protection* aims at:

- Increasing the public awareness, increasing the level of knowledge and stimulation of actions directed on implementation of the rights of the child in context of the UN Convention on the rights of the child, the Millennium Development Goals and the concept "A World Fit for Children";
- Providing consistent and regular implementation of the obligations declared at international conferences where governments of CA countries have made important contributions. In particular, at the Stockholm and Budapest conferences on the rights of children at risk or deprived of parental care, the conference in Sarajevo "Europe and Central Asia - suitable for life of children" and the conference "Act Now" in Ljubljana on issues of violence against children;
- Creating a vision and policy concerning families and children at risk as well as children without parental care, children from single parent families, families which have lost their

breadwinners, children in residential care, children with special needs brought up in foster families, children in conflict with the law and involved in forced labor;

- Assessing progress in child care and social protection systems' reforming in the five countries of CA and identifying gaps and priorities for further actions;
- Development of an effective strategy and policy concerning child labor in the CA countries;
- Strengthening the interstate exchange of information and best practices;
- Strengthening the partnership between CA countries and strategic partners like the European Union, Asian Development Bank, the World Bank and UN, and also with international and national NGOs.

The topic of the first forum was formulated as "Social and legal support system for families and children of Central Asia". It includes issues of social policy, protection and social inclusion, building child protection systems, and overcoming fragmentation. During the preliminary meeting, held in May 2006, the participants defined topics for future forums, namely, issues of de-institutionalization, juvenile justice, and prevention of violence against children. Further, they defined issues requiring a complex approach including financing of the social sector; domestic and interstate coordination of the child protection issues as well as their legislation and enforcement; social work and development of social services, collection, analysis, and monitoring of data in CA countries. Representatives of agencies and departments from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, engaged in childhood issues and also staff of regional and CA offices of UNICEF attended the preliminary meeting.

The objectives for the *First Child Protection Forum* were determined:

- Creation of a platform for discussion of child care issues at a high political level in Central Asia, including working mechanisms of the forum, indicators of efficiency and effectiveness.
- Adoption of short-term and long-term obligations on social protection and social inclusion of children, creation of the child protection system and overcoming of fragmentation.

The first *Forum on Child Protection* was organized on December 6th – 7th 2006, in Astana, Kazakhstan. Representatives of four countries (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan) were participated in its implementation. The forum was important for the development of policies concerning protection of children, for reporting and monitoring of the country level objectives' implementation set up by the Forum. In addition to this, participation of representatives of different ministries and departments allowed a systematic joint discussion of vital issues and overcoming of fragmentary, narrow approach to protection of the rights of children. The major recommendations of the Forum were focused on the following:

- Stable economic growth and relative stability in the region provides an opportunity to invest in children;
- The primary strategy to protect children is to **invest in families** because this is the first protective environment of children.
- The current child protection systems need to be made more flexible, focus more on the preventative aspects (address family crisis early on) and provide **individualized responses** rather than “one-size-fits-all” responses for categories of children.
- Child protection’s cross-sectoral approach requires coordination of efforts among actors through strengthened **partnerships**.

In May 2009, it was decided to organize the second Forum. It was concluded that the agenda of the Forum would be build on the progress of current child care reforms. , would share lessons learned and reform practices and would also aim to discuss priorities that seem to be common across Central Asia and beyond. The aim was to achieve greater knowledge on how to accelerate work at country level and on needs to focus interventions in this field throughout the region. For the purpose of enhancing regional exchange and learning, the Forum would invite Azerbaijan and Turkey and would also look at reform examples from other countries in the CEE/CIS region.

The European Union can be considered as an interesting example in the area of child labor and migration in particular since the European Union holds a firm commitment to promoting children’s rights and responding to their basic needs. The Communication *Towards an EU strategy on the Rights of the Child*, adopted on 4 July 2006, outlined a process for developing a long term strategy for the EU on children’s rights. The EU Communication refers in particular to *child migrants, displaced children or refugees, children affected by armed conflicts and child soldiers* who are amongst the groups of children who have specific needs and who are significantly vulnerable. The major framework for EU’s position has been the policy that “children’s rights are part of universal human rights that the EU is committed to respect under international and European treaties, in particular the UN Convention on the Rights of the Child and its two Optional Protocols (KALVERBOER ET AL 2009, P. 42). The Communication is focused in particular on four general principles of the CRC: non-discrimination (Article 2), the best interests of the child (Article 3), the right of the child to survival and development (Article 6) and respect for the views of the child (Article 12). The European Union has also embraced the Millennium Declaration and the Millennium Development Goals (KALVERBOER ET AL 2009, P.42)

In June 2008, the EU-Parliament adopted the *Directive on common standards and procedures in Member States for returning illegally resident third-country nationals*. The purpose of the legislation was to lay down EU-wide rules and procedures on the return of

illegal immigrants. It covers periods of custody as well as re-entry bans, and also includes a number of legal safeguards. Member States will be banned from applying harsher rules in cases involving illegal immigrants, but will be allowed to keep or adopt more generous rules. But the EU legislation applies only after a decision has been taken by the national authorities to deport an illegal immigrant; each Member State retains the power to decide in the first instance whether it wishes to regularize or deport the immigrant (KALVERBOER ET AL 2009, P.46).

Article 5 of the text adopted by the Parliament about non-refoulement, best interests of the child, family life and state of health states that:

When implementing this Directive, Member States shall take due account of

- A. the best interests of the child;
- B. family life;
- C. the state of health of the third-country nation concerned and respect the principle of nondefilement.

The earlier Commission's proposal in regard to the nature and solidity of the third-country national's family-relationships, the duration of the stay in the Member State, the existence of the family and the cultural and social ties with his country of origin were amended. Also, the section in regard to State Members taking into account the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child was removed in the text. In comparison to the Commissions' proposal on Article 5, the text adopted by the EU Parliament has weakened the legal position of children and is no longer consistent with the CRC standards (KALVERBOER ET AL 2009, P. 47).

Despite the good intentions of the European Union in promoting children's rights, there is little evidence that children's rights are based on the CRC or have been taken seriously in the Directives on harmonizing the European Asylum System of the Member States which have been adopted by the European Parliament.

There is a huge discrepancy between the original intentions and the Directives which were adopted by the European Parliament. Taking this into consideration, it should be mentioned that the higher common standards for protection for children originally intended by the EC would be difficult to achieve (KALVERBOER ET AL 2009, P.62)

4 CONCLUSION

The UN Convention on the rights of the child speaks not only about needs but about the rights of children from the moment of a birth. The Convention covers a wide scale of the rights consolidated in three basic categories:

- The right to life,
- The right for survival and development,
- The right for protection and participation.

The Convention provisions assume that children should live in the environment providing for realization of their rights starting from the right for a name and citizenship and ending with the medical and sanitary care and education. They have the right to shelter from torture, exploitation, arbitrary detention, and unreasonable deprivation of family care. Children have the right to participate in decisions concerning their lives and to participate in the life of the local community.

The Convention is not the hierarchy of the rights and therefore, one right cannot possible have a higher priority in comparison with the other right. The Convention demonstrates that all rights of the child are equally important. Rights complement each other and provide for survival and development of the child. The countries-signatories to the Convention make a commitment to respect and ensure the whole complex of rights stipulated by the Convention for each child within the limits of the state jurisdiction without any discrimination (UN CONVENTION ON THE RIGHTS OF THE CHILD 1989, ARTICLE 2(1)). The state and the family are responsible for guaranteeing, respecting, and realizing the rights of the child. It is widely accepted that the state has a central and a primarily beneficial role in the protection of young people. Therefore, even if children experience extreme abuse or are neglect from their families the state authorities are supposed to provide comfort to those children.

In the field of childhood studies there has been plentiful debate about the role of the state in children's lives. Less attention is given to the ways in which the state is a source of risk for children (BOYDEN 2007, P. 240). The present research tries to show that with an effort to limit the influx of illegal migrants to their own countries many governments fail to realize their obligations towards migrant children. In many cases for reasons of national security they try to limit the rights of the child, putting at stake a notion of childhood as a life phase free from political blemish: in legal terms at least, children are the bearers of rights that cannot be compromised or alienated by circumstance.

There are 192 countries of the world ratified the UN Convention on the rights of the child, including five Central Asian states. (ALSTON/TOBIN 2005, P. 10) Having joined the UN CRC, Central Asian countries have undertaken a wide range of obligations requiring serious

revision of the current legislation, of the corresponding mechanisms for coordination of the child protection system and monitoring of the rights' implementation. However, the UN Committee on the rights of the child in the concluding observations to periodic reports provided by the countries marks that there are still a number of problems in this area:

- In countries of Central Asia the national legislation does not always fully comply with principles of the UN Convention on the rights of the child ;
- Lack of necessary financial and human resources, lack of the comprehensive approach in the child protection hinders the work of coordinating structures involved in the child rights protection (UNICEF INNOCENTI RESEARCH CENTER 2006, P. 31).
- Lack of the statistical data on children, first of all, about the most vulnerable groups of children, hinders monitoring of the Convention implementation.

Due to these existing problems the issues of children especially in need of assistance fall out of the focus of the governments. These children become «invisible» which means that the rights of these children will not be satisfied even at the level of basic needs such as sufficient nutrition, health care, school education and family care. The reasons causing such situations are lack of the data about children in the state agency of statistics, lack of the records about these children during development of the state program, duplication of functions of various departments and ministries.

In 2006, countries of Central Asian initiated the Forum on child protection to overcome these problems. Issues of social policy, protection and inclusion of children, creation of the social protection system and overcoming of fragmentation were discussed. The Forum has demonstrated that it is an effective instrument for interstate cooperation and exchange of experience. Hereafter, it can serve as an impulse to conduct the integrated Forums (Forum on education, Forum on maternity and child health, Forum on child protection).

The regional analysis of child protection systems shows that there is a fragmentation of the current child care systems. There is a multitude of actors, not necessarily well coordinated that have to respond to complex family situations and different child protection problems. Reforms of current child care systems into a continuum of services that provide individualized responses, rather than collectivist responses is one of the important regional lessons learned to strengthen the current system response.

There are many implications for governments in this work:

- They must be driving the vision for change and articulate operational plans, guiding principles for the reform as well as targets for the coming years.
- Governments also need to be active in enforcing what are the core responsibilities of the state. This includes setting standards for the operation for the system, carry out gate-

keeping functions, accreditation, provide support to planning, costing and budgeting at regional and local levels, defining the minimum package of services; and development of targeted social policies to support most vulnerable families

- To overcome fragmentation and ensure proper coordination of the work, governments are also responsible for bridging gaps between sectors, coordination and facilitating institutional and professional capacity development. This includes regulate allocation of resources (decentralization with equity), define obligations of the different sectors (including responsibilities of the professionals encompassed in job descriptions), ensure continuum of services between the different actors (includes identifying missing services and functions) and improve professional competencies (job descriptions, training, lessons learned, sharing potential good practices, etc.)
- Finally, governments need to take full responsibility for review of quality of services provided through monitoring of services (beyond financial monitoring), development of methods for result-based management, support to systems for data collection, provide opportunities for “competition” in service provision between state actors and NGOs.

Having signed the UN Convention on the rights of the child, the governments of all Central Asian countries have undertaken to respect the rights of children, including the right to the proper standard of living. The governments of Central Asia should be aware of necessity to input funds in development of children because children are the future. Since 1998, the region enjoyed economic growth while the economic recession was left behind. Taking the economic growth into the account as well as reduction of the birth rate, today all Central Asian countries have a unique chance to invest in education and public health for the future of their children. In the long-term prospect these investments will allow the younger generation to make their own investment.

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