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ALTERNATIVE REPORT

A HUMAN RIGHTS MONITORING REPORT SUBMITTED TO THE EUROPEAN UNION'S GSP+ TRADE PROGRAMME

CHILDREN AND THE RIGHT TO WORK IN THE KYRGYZ REPUBLIC

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1. Executive Summary

This report assesses the situation of child labour in Kyrgyzstan with respect to international standards on the rights of the child in the field of the right to work and is submitted pursuant to the European Union's Generalized System of Preferences Plus Programme (GSP+). The main areas of concern are the use of child labour, forced labour, including the worst forms of child labour in the Kyrgyz Republic.

State policy for the protection of children's rights in Kyrgyzstan is based on international commitments and on legislative and political measures adopted since independence. Kyrgyzstan has ratified all of the GSP+ conventions, and laws relating to the rights of the child in the field of the right to work include the Code of the Kyrgyz Republic "On Children", the Labour Code, the Criminal Code, the Code of Misconduct, the Law On the Prevention and Combating Trafficking in Human Beings.

Legislation prohibits the worst forms of child labour. However, the system of control over the implementation of laws is practically absent. According to the Cluster Survey data for 2018, in the republic 26.7% of children are involved in child labour. Moreover, the prevalence of child labor is higher among boys than girls (33.6% and 19%). Children living in rural areas participate in economic activities more often than children in urban areas.¹

Research shows that many children work in the informal employment sector of the economy (small street retailing, manual handling, landfills, slaughterhouses, etc) and households, with the majority of working children engaged in agriculture, are involved in begging. These are sectors of the economy where there are practically no mechanisms for monitoring the implementation of child labour laws. According to research conducted by the National Statistical Committee, 90% of children are employed in agriculture.²

During the reporting period, the practice of involving children in the worst forms of labour is maintained, which is confirmed by preliminary findings voiced during the implementation of the ILO project "Eradicating Child Labour and Human Trafficking in Central Asia - from Commitment to Action",³ as well as the cases described,⁴ there is a seasonality of child labour.⁵ At the same time, there is a tendency to increase the prohibited types of child labour.⁶ Child labour, especially in cases of involvement in agricultural types of work, is justified, calling it labour education.⁷

The child protection system is characterized by the limited potential of social workers and child protection specialists, as well as the high turnover of staff and the outflow of human resources, the lack of alternative services, the lack of funding for social services, and poor coordination between various child protection authorities and cross-sectoral of concerned parties.⁸ Institutions have been created to protect children in difficult situations. However, the measures taken mainly come down to responding to the facts of the worst forms of child labour.

There is no single mechanism for monitoring the situation of child labour, which allows a systematic analysis of the data obtained to identify children involved in the worst

¹Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

²https://24.kg/obschestvo/119447_detskiy_trud_malenkih_kyrgyzstantsev_ekspluatiruyut_sobstvennyie_roditeli/

³The study was carried out as part of a pilot project "Analysis of market patterns and value chains of cotton and beans to prevent and eradicate the exploitation of child labour in the Kyrgyz Republic", conducted by the JIA business association together with the ILO.

⁴Annex 3 to this Report.

⁵According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

⁶<https://kabar.kg/news/v-kyrgyzstane-rastet-chislo-detei-vovlechennykh-v-opasnye-vidy-raboty/>

⁷<https://bit.ly/2S1O9Ee>

⁸According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

forms of child labour at the local and republican levels. There are no tools for monitoring the identification of working children, their redirection (if necessary), further monitoring of the situation to exclude the repeated return of children to the worst forms of work. The presence of a single database, summarized by the monitoring results, as well as identified cases of child labour, will determine the future strategic policy in the field of child labour.

In addition, an authorized state body for monitoring the implementation of UN conventions ratified by the Kyrgyz Republic in the context of GSP + is not defined. Ensuring the implementation of relevant conventions is the task of the relevant ministries.

2. Legal, regulatory, and policy frameworks

Currently, the state policy for the protection of the rights and interests of children is based both on international obligations undertaken by the country and on legislative and political measures adopted since independence. National legislation is based on the main international documents: the UN Convention on the Rights of the Child, ILO Convention No. 138 on the Minimum Age for Admission to Employment, ILO Convention No. 182 on the Worst Forms of Child Labour. By ratifying these Conventions, the Kyrgyz Republic has undertaken a number of commitments to develop and implement public policies and social programs aimed at solving the problems of the worst forms of child labor.⁹

Based on the ratified documents, relevant sectoral normative legal acts were developed and adopted (Code of the Kyrgyz Republic “On children”, the Labour Code, the Law On the Prevention and Combating Trafficking in Human Beings).

Currently, an Action Plan is being developed to prevent the involvement of children in the worst forms of child labour (WFCL) for 2019-2024.

In general, national legislation contains the minimum standards provided for by the international treaties on the protection of minors in the field of labour. However, further improvement of the legislation is necessary in terms of revising the minimum working age of minors, as well as in terms of criminal liability for involving minors in the worst forms of labour.¹⁰

Legislation of the Kyrgyz Republic prohibits the worst forms of child labour. Labour legislation establishes restrictions on the age of working children and on the length of working hours. It is allowed to employ a minor from 16 years old, and in exceptional cases - from 14 years old. For minors, reduced working hours are established. At the same time, the maximum working time (depending on age) should not exceed 36 hours per week. Criminal punishment is provided for involving a minor in the worst forms of labour.

In case of violation of the requirements of the legislation on the involvement of minors in the worst forms of child labour, criminal liability is provided. Such liability is entailed in cases of trafficking in human beings, involvement in prostitution, begging, and export of minors to the zone of armed conflicts. The involvement of minors in these types of crimes is an aggravating circumstance and, accordingly, a more serious criminal punishment is envisaged. However, the issue of involving minors in other forms of child labour remains unresolved. For example, in the case of the use of child labour in agricultural work.

In order to ensure the implementation of constitutional provisions and legislation in the field of child labour, state programs and action plans are adopted. These programs and plans are aimed at identifying children in difficult life situations, including measures

⁹Eradicating the worst forms of child labor in Kyrgyzstan: a Practical Guide to the Application of the ILO Convention No. 182 (1999) for the Trade Union activists, International Programme on the Elimination of Child Labour (IPEC); Technical support group for decent labor and the ILO Bureau for East Europe and Central Asia, -Bishkek: ILO, 2012, page 6.

¹⁰Guidelines for monitoring the observance of the rights of women and children in the field of labour relations within the framework of international and national legislation, “Coalition for Democracy and Civil Society” Public Association, - Bishkek, 2019.

to combat the involvement of children in the worst forms of child labour. However, the measures taken are not sufficient and, in general, are not proactive (i.e. no measures to prevent the involvement of children in the worst forms of child labour). As a rule, the reaction follows when a case of child labour is revealed. There is no single mechanism for monitoring the situation of child labour. Basically, this situation is due to the lack of personnel (human) and financial resources. The child protection system is characterized by the limited potential of social workers and child protection specialists, as well as the high turnover of staff and the outflow of human resources, the lack of alternative services, the lack of funding for social services and poor coordination between different child protection authorities.

2.1. International standards

Kyrgyzstan has ratified all of the 27 human and labour rights treaties included in GSP+. To date, Kyrgyzstan has not ratified the optional Protocol to the ICESCR, according to the provisions of which Kyrgyz citizens could apply to in cases of violation of their (labour) rights.¹¹ In this regard, the state has undertaken to ensure, along with other rights, the labor rights of children with disabilities and to ensure protection from all forms of exploitation. The law of the Kyrgyz Republic No. 34 dated March 13, 2019 ratified the UN Convention on the rights of persons with disabilities, adopted by the UN General Assembly on December 13, 2006 and signed on September 21, 2011.

Of the conventions affecting the rights of children, as of the date of preparation of this Report, Kyrgyzstan submitted a report to the UN Committee on the Rights of the Child (November 12, 2019).

The Kyrgyz Republic has ratified two conventions of the ILO related to child labour:¹²

- 1) Convention no. 138 on the minimum age for employment-ratified by the law of the Kyrgyz Republic of March 31, 1992. Upon joining the ILO, the Kyrgyz Republic confirmed that the ILO conventions ratified by the former USSR on its territory remain in force (hereinafter – “Convention no. 138”);
- 2) Convention no. 182 on the prohibition and immediate measures for the elimination of the worst forms of child labor - ratified by the law no. 244 of the Kyrgyz Republic of December 30, 2003 (hereinafter – “Convention no. 182”).

Convention no. 138 establishes minimum standards for the working age of minors; members of the organization “undertake to implement a national policy aimed at ensuring the effective abolition of child labour and the gradual increase of the minimum age for employment to the level corresponding to the fullest physical and mental development of adolescents.”¹³ The Convention also recognizes:

- The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than fifteen years.¹⁴
- National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--
 - (a) not likely to be harmful to their health or development; and
 - (b) not such as to prejudice their attendance at school, their participation in vocational

¹¹<https://www.ohchr.org/RU/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

¹²Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the rights of the child for the period from 2014 to 2019.

¹³Convention on the minimum age for employment, art.1

¹⁴Convention on the minimum age for employment, art.2 (3)

orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.¹⁵

- National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.¹⁶

Convention no. 182 sets out the following minimum standards for the elimination of the worst forms of child labour. The Convention recognizes:

- Each State Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
- Each State Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

A significant contribution to the codification of international legal norms in the field of human rights is made by specialized agencies of the United Nations, such as primarily the International Labor Organization. The ILO has promulgated, more than 180 conventions in the field of employment, occupational health, and labour rights. The Kyrgyz Republic joined ILO on March 31, 1992 and assumed obligations for all of the ILO conventions that had been ratified by the USSR. Since joining, during the ILO existence, 189 conventions and 200 recommendations have been adopted. Kyrgyzstan has ratified 53 conventions, including conventions inherited from the USSR.¹⁷

Kyrgyzstan is a state party to eight out of nine UN core human rights treaties, except the Convention for the Protection of All Persons from Enforced Disappearance, and six out of nine optional protocols thereto. Ratifying international human rights treaties, governments commit themselves to implementing measures and enacting legislation at the national level consistent with their treaty obligations and commitments.

2.2. Constitutional principles and national legislation

The Constitution of the Kyrgyz Republic contains a provision that international treaties that have entered into force in the manner prescribed by law and to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law, are an integral part of the legal system of the Kyrgyz Republic. In particular, the Constitution establishes a ban on slavery, human trafficking, and the exploitation of child labour.¹⁸

¹⁵Convention on the minimum age for employment, art.7 (1)

¹⁶Convention on the minimum age for employment, Article 7 (2)

¹⁷https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103529

¹⁸Constitution of the Kyrgyz Republic, Art.20

According to the Constitution, human rights and freedoms are among the highest values of the Kyrgyz Republic. Article 16 (2; 5) of the Constitution says:

The Kyrgyz Republic respects and provides all persons within its territory and under its jurisdiction with human rights and freedoms. No one may be subject to discrimination based on gender, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, or other circumstances. Special measures established by law and aimed at ensuring equal opportunities for various social groups in accordance with international obligations are not discrimination.

The principle of ensuring the best interests of the child is in force in the Kyrgyz Republic.

National legislation provides for the general protection of working children, the minimum age by sphere of activity and the length of the working day. At the same time, there is a need to take consistent measures to improve legislation in order to eliminate the involvement of children in the worst forms of labour.

2.2.1. Prohibition of forced labour and exploitation of child labour

The Labor Code of the Kyrgyz Republic enshrines the principle of freedom of labour, and prohibits forced labour (Article 2). Also, discrimination in the field of labour relations, including child labour in the worst forms, is prohibited (Article 2). Article 10 of the Labour Code of the Kyrgyz Republic establishes the definition of “prohibition of forced labour”.

The basic principles of legal regulation of labour and directly related relations are:

- prohibition of forced labour and discrimination in labour relations;
- prohibition of child labour in the worst forms;¹⁹

Article 10. Prohibition of forced labour

Forced labour, that is, coercion to perform work under the threat of any coercive force, is prohibited. The use of child labour in the worst forms is prohibited.

The concept of “forced labour” is also given in the law of the Kyrgyz Republic “On the Prevention and Combating Trafficking in Human Beings” (article 1).

Article 1. Concepts used in this Law

forced labour - performance of any work or rendering of services under threat of punishment to the performance the person did not voluntarily consent;

The Code of the Kyrgyz Republic “On Children” defines the worst forms of child labour as forms of child labour, which include (Article 5):

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflicts;
- the use, recruitment or offering of a child for prostitution, the production of pornographic products or pornographic performances;
- the use, recruitment or offering of a child to engage in illegal activities, in particular for the production and sale of drugs, as defined in the relevant international instruments;

¹⁹Labor Code of the Kyrgyz Republic, Art. 2

- work which, by its nature or the conditions in which it is performed, may be harmful to the health, safety or morals of children.

Consequently, the concept of “worst forms of labour”, provided for in article 3 of the Convention no. 182, and criminalization of child labour for the purposes of eradication of child labour have found their legal basis in national legislation.

In the case of involving a minor in the worst forms of labour, criminal liability is provided. It should be noted that the degree of responsibility for the crime committed against a minor depends on the age of the latter. Thus, in the case of a minor under the age of 14 (juvenile), a more severe criminal liability is established. This approach is conditioned by the provisions of the Civil Code of the Kyrgyz Republic, based on considerations of the capacity of a minor. That is, the concept of these codes is based on the fact that younger minors (up to 14 years) are less aware of the significance of their actions (under the Civil code) and require more focused protection (under the Criminal code). However, this approach is not entirely justified and, given that a minor at any age requires adequate protection, it is necessary to eliminate such a gradation in age by establishing uniform measures of protection.

Thus, the following types of criminal liability are established for involving a minor in the worst forms of work.

Human trafficking²⁰, that is, their recruitment, transportation, concealment, reception or transfer, carried out with or without their consent, by threat, use of force or other forms of coercion, blackmail, kidnapping, fraud, deception, for the purpose of exploitation or obtaining other benefits or without it, committed against a *minor*²¹, shall be punishable by imprisonment of category III (from five years to seven years and six months). The same act committed against a *juvenile*²² shall be punishable by deprivation of liberty of category IV (from seven years and six months to ten years).

Recruitment refers to the activities of individuals or legal entities related to the search, selection, admission and hiring of people for financial remuneration for the performance of any work, provision of services in the interests of the employer or other persons.

Exploitation refers to the coercion of persons into prostitution or other forms of sexual exploitation, forced labor or services, slavery, participation in armed conflict, including through the use of debt, financial or other dependence, as well as their servile status.

Involvement in prostitution or coercion to prostitution²³ – is punishable by a fine of VI category (from 260 000 to 300 000 soms / from USD 3 715 to USD 4 300 (from 3 376 euro to 3 896 euro²⁴)) or imprisonment of category II (from two years six months to five years); **the same act, if committed against a known minor**, - shall be punished by imprisonment of category III (from five years to seven years six months) with a fine of category III (from 140 000 to 180 000 soms / from USD 2 000 to USD 2 570 (from 1 818 euro to 2 337 euro)).

²⁰Criminal Code of the Kyrgyz Republic, art.171.

²¹According to the Civil Code of the Kyrgyz Republic, for the purpose of determining legal capacity, a person is recognized as a minor from the age of 14 to 18 years.

²²According to the Civil Code of the Kyrgyz Republic, for purposes of determining legal capacity, a person under the age of 14 years is recognized as a *juvenile*.

²³Criminal Code of the Kyrgyz Republic, art.166.

²⁴Euro to som exchange rate (average, 1 euro = 77 som) for December 2019, https://www.nbkr.kg/index1.jsp?item=1562&lang=RUS&valuta_id=20&beg_day=01&beg_month=12&beg_year=2019&end_day=23&end_month=12&end_year=2019

Promotion of prostitution and debauchery - organization or maintenance of brothels for prostitution with the use of *persons who knowingly have not reached 16 years* - shall be punished by a fine of VI category (from 120 000 soms to 140 000 soms / from USD 1 700 to USD 2 000 (from 1 558 euro to 1 818 euro)) or imprisonment of II category (from two years six months to five years).²⁵

Involvement of a known minor in porn business - is punishable by a fine VI category (from 260 000 soms to 300 000 soms / from USD 3 700 to USD 4 300 (from 3 376 euro to 3 896 euro)) or imprisonment of category II (from two years and six months to five years); involvement of a *juvenile* - is punished by imprisonment of category IV (from seven years and six months to ten years) with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.²⁶

In the above-indicated article, an aggravating circumstance is the involvement in porn business of a juvenile. There is no such provision for a minor. In this case, as it follows, in relation to the guilty person for involving a minor over 14 years old in pornography, a different type of punishment will be applied - on general grounds (more lenient, since aggravating circumstances do not apply). In our opinion, such an approach of the legislator is not justified in any way and requires corresponding changes in the interests of the child.

As follows, the lawmaker provided for aggravating criminal liability in case of involving a minor in the above types of crimes only if the guilty person knew about the age of the minor. In our opinion, this approach minimizes the possible protection of the minor, since knowledge or ignorance of age should not be the subject of proof. In addition, such things (knowing the age or not knowing the age of a minor) can be difficult to prove. We believe that the prescribed punishment should be applied regardless of whether the guilty person knew the age of the minor or not. If it is established that the guilty person did not know the age of the minor, it follows that for such a person criminal liability is provided on a common basis, i.e., without aggravating circumstances. For example, if a person is involved in or forced into prostitution, the following punishment is provided: a fine of category VI (from 180,000 to 220,000 soms (from 2 336 euro to 2 857 euro)) or imprisonment of category II (from two years and six months to five years).

Moreover, the issue of involving minors in agricultural or other types of work (slaughterhouses, street trade), which are often perceived as labour education of the child, or the use of child labour as a “family contract” (when the whole family works and the children are involved by their parents, so as not to pay to employees), remains unresolved. Also, parents themselves give children to this kind of work, thus, the child becomes an additional breadwinner, and in some cases, the only breadwinner in the family.²⁷ Given that this issue affects the parents themselves, the measures taken, in our opinion, should primarily be preventive and educational in nature, since involving parents in criminal or administrative punishment (fines) will not solve the above-indicated problem.

2.2.2 Minimum age for admission to work and the permissible number of working hours

The Labour Code of the Kyrgyz Republic establishes that an employment contract may be concluded with a person (employee) who has reached 16 years of age. At the same time, it is allowed to reduce the minimum age threshold in the following circumstances.²⁸

²⁵Criminal Code of the Kyrgyz Republic, art.167

²⁶Criminal Code of the Kyrgyz Republic, art.168

²⁷<https://ru.sputnik.kg/society/20170612/1033808720/istorii-kyrgyzstancsev-lishennyh-detstva.html>

²⁸Labour code of the Kyrgyz Republic, art.18

- from 15 years in exceptional cases, in agreement with the representative body of employees of the organization or the authorized state body in the field of labour;
- from 14 years with written consent of one of parents (guardian, appropriate adult) or the guardianship to perform light work in a child's spare time, which does not cause harm to health and does not disrupt the educational process.

The consent of the parents (guardian, appropriate adult) is given in writing (application), while the parents (guardian, appropriate adult) along with the minor sign an employment contract.

At the same time, the Labour code of the Kyrgyz Republic does not define an "exceptional case", which allows to reduce the minimum age threshold to 14 or 15 years.

The Labour Code of the Kyrgyz Republic establishes the following shortened working hours (Article 91):

- from 14 to 16 years - no more than 24 hours per week;²⁹
- from 16 to 18 years - no more than 36 hours per week.³⁰
- from 14 to 16 years - no more than 5 hours per day (working shift);³¹
- from 16 to 18 years - no more than 7 hours per day (working shift).³²

For students of general educational organizations (schools), educational organizations of primary and secondary vocational education, combining study with work during the school year:

- from 14 to 16 years - 2.5 hours a day;³³
- from 16 to 18 years - 3.5 hours a day.³⁴

Convention no. 138 also provides that States whose economies and educational systems are underdeveloped may initially set the minimum age threshold at 14 years, but they shall undertake to implement national policies aimed at ensuring the effective elimination of child labour and the gradual raising of the minimum age for employment to the level corresponding to the fullest physical and mental development of adolescents.

As follows, the labour legislation of the Kyrgyz Republic, developed in 2004, is still focused on the period of its drafting and has not undergone changes in terms of increasing the maximum age of minors. In addition, in fact, minors who do not attend educational institutions remain unprotected. Gradation between students and non-students is carried out minimizing the working day for students and a slight reduction in working hours for non-student minors. Thus, the labour legislation, in fact, supports the possibility of attracting minors to work, instead of creating conditions for their education.

2.2.3. Working conditions

The Labour Code of the Kyrgyz Republic establishes a number of additional guarantees for minors, which include the following:

- An employer is obliged to hire people under the age of 18 who are especially in need of social protection (graduates of orphanages, orphans and children left without parental care, and others) sent by the relevant state bodies to be employed, against the established quota.

Refusal to employ the persons specified in the first part of this article against the established quota is prohibited and may be appealed by them to the relevant state bodies or court (Article 295).

²⁹Labour code of the Kyrgyz Republic, art. 91

³⁰Labour code of the Kyrgyz Republic, art. 91

³¹Labour code of the Kyrgyz Republic, art. 95

³²Labour code of the Kyrgyz Republic, art. 95

³³Labour code of the Kyrgyz Republic, art. 95

³⁴Labour code of the Kyrgyz Republic, art. 95

- Termination of an employment contract with employees under the age of 18 at the initiative of an employer (except for the case of liquidation of the organization) is allowed only with the consent of the relevant authorized state body in the field of supervision and monitoring of compliance with labor laws and the Commission on juvenile affairs and the protection of their rights, in addition to observing the general procedure for dismissal (Article 301).

In order to ensure guaranteed access to quality basic general education and equal access to other levels of education, the Concept of education development in the Kyrgyz Republic until 2020,³⁵ as well as the Strategy of education development for 2012-2020, to which action plans are developed on a periodic basis,³⁶ have been developed. The Strategy provides for the identification of out-of-school and out-of-school risk children, the quality of education, the use of resources/financial management and school management, and proposes rights-and-interest oriented reforms to address equality and quality issues in the education system. It was expected that clear standards, procedures and mechanisms for the implementation of the Strategy would be crucial in achieving the intended results and realizing the rights of children to quality and inclusive education.³⁷ However, these documents do not provide for measures aimed at providing employment under quotas for those who are particularly in need of social protection.

The function of state control over the use of child labour is assigned to the State Inspectorate for Environmental and Technical Safety under the Government of the Kyrgyz Republic.³⁸

According to the Law of the Kyrgyz Republic No. 72 “On the procedure for inspecting entrepreneurship entities” dated May 25, 2007, state labour inspectors are not entitled to carry out inspections unexpectedly for an employer who intentionally violates the rights of working children, because an entrepreneur must be warned about the inspection in writing at least 10 days in advance.

Basically, identification of working children is carried out during raids³⁹ (usually by law enforcement agencies with the participation of the above-mentioned state inspectorate).

2.2.4. Prohibitions and restrictions on the types of work and professions minors may be engaged in

Article 218 of the Labour Code of the Kyrgyz Republic prohibits the use of labour of persons under the age of 18 years.

Article 218. Restriction of the performance of arduous work and work with harmful or dangerous working conditions

In arduous work and work with harmful or dangerous working conditions, the use of labour of women and persons under the age of 18 years, as well as persons to whom these works are contraindicated for health reasons, is prohibited.

Lists of arduous works and works with harmful or hazardous working conditions, in performance of which the use of labour of women and persons under the age of 18 is prohibited, are approved by the Government of the Kyrgyz Republic.

³⁵Approved by the Resolution of the Government of the Kyrgyz Republic no. 201 dated March 23, 2012 (Annex 2).

³⁶Approved by the Resolution of the Government of the Kyrgyz Republic no. 201 dated March 23, 2012 (Annex 2).

³⁷Case study of the situation of children in the Kyrgyz Republic, UNICEF, 2015.

³⁸In accordance with the Resolution of the Government of the Kyrgyz Republic No. 12 “On government bodies under the Government of the Kyrgyz Republic and other organizations under the Government of the Kyrgyz Republic” dated 12.01.12. and the Resolution of the Jogorku Kenesh of the Kyrgyz Republic No. 1452-V “On the structure of the Government of the Kyrgyz Republic” dated 23.12.11, as well as in connection with the reform of the executive authorities, the State Inspectorate for Environmental and Technical Safety was created under the Government of the Kyrgyz Republic. The State Inspectorate was entrusted with the inspection and oversight functions of the previous State Labour Inspectorate under the Ministry of Labour, Employment and Migration of the Kyrgyz Republic.

³⁹Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

In compliance with this article, the Government of the Kyrgyz Republic has approved a *list of industries, professions and works with arduous and harmful working conditions* (underground works, open-pit mining, metallurgy, etc.). The following restriction is established: graduates of primary and secondary vocational schools who have completed vocational training with a training period of at least three years in the professions included in the above List, and who have not reached the age of 18, may be allowed to work in these professions for a period of not more than 4 hours a day under the guidance of experienced workers-mentors and subject to strict compliance with the existing rules and regulations on labour protection in these industries and works.⁴⁰

At the same time, in 2019, the Ministry of Labour developed a draft Resolution of the Government of the Kyrgyz Republic “On amendments and additions to the Resolution of the Government of the Kyrgyz Republic “On the list of industries, professions and work with arduous and harmful working conditions, which prohibit the use of labour of persons under eighteen years of age” dated July 2, 2001 No. 314”, in order to improve the list of works on which the use of child labour is limited or prohibited in accordance with the current legislation of the Kyrgyz Republic.⁴¹

It is forbidden to use the labour of persons under the age of 18 in arduous works and work with harmful or dangerous working conditions, in underground work, as well as in work the performance of which could harm their health and moral education (gambling, work in night clubs, manufacturing and trade in alcohol, tobacco, narcotic and toxic drugs). It is forbidden for workers under the age of 18 years to carry or move heavy loads that exceed the established limit standards (Article 294 of the Labor Code of the Kyrgyz Republic). A similar ban is established by the Code of the Kyrgyz Republic “On Children” (Article 15).

It is prohibited to involve workers under the age of 18 years in overtime work. Overtime work is performed by an employee on the initiative of an employer in excess of the established length of working time, daily shift, as well as work in excess of the normal number of working hours for the accounting period (Article 100 of the Labour Code of the Kyrgyz Republic).

It is also forbidden to send employees under the age of 18 to business trips, to engage them in works at night, on weekends and non-working public holidays, cultural events. The exception is the creative workers of mass media, cinematography organizations, theaters, concert organizations, circuses, and other persons, if there is a written consent of one of the parents (guardian) and the permission of the authorized state body in the field of education involved in the creation and (or) performance (exhibiting) works without prejudice to their health, training and moral development, as well as professional athletes in accordance with the lists of professions established by the Government of the Kyrgyz Republic (Article 297).

2.2.5. Regulation on identifying children and families in difficult life situations

According to the Regulation “On the procedure for identifying children and families in difficult life situations”,⁴² when children involved in the worst forms of child labour are identified, such children should be provided with social support. At the district level, there are territorial departments - the Department of Social Protection of the Population

⁴⁰Decree of the Government of the Kyrgyz Republic no. 314 “On the list of industries, professions and work with difficult and harmful working conditions, which prohibit the use of labour of persons under eighteen years of age” dated July 2, 2001.

⁴¹Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

⁴²Approved by the Resolution of the Government of the Kyrgyz Republic No. 391 dated June 22, 2015.

(hereinafter referred to as the “District Administrations”). The indicated District Administrations are territorial divisions of the Ministry of Labour and Social Development. Territorial subdivisions of the authorized body for the protection of children, together with the executive bodies of local self-government, monitor families with children for the purposes of carrying out preventive work to prevent difficult life situations and early detection of difficult life situations.

This Regulation provides for the following response measures:

- ✓ In case of identification of a child involved in the worst forms of child labour that are harmful to the health of the child, an emergency removal of children from the workplace is carried out.
- ✓ If in the case of identification of a child who does not attend a general education organization, the District Administration together with the educational body takes measures to involve the child in education.
- ✓ On the basis of the decision of the Children’s Affairs Commission, the authorized body in the field of employment, migration and youth policy assists in the employment of children who have reached the age of 14 years, to perform work that does not interfere with education, does not harm the health and social development of a child.

The following sectoral regulations also ensure a child’s right to work and protection from forced labour:

- ✓ The Code of the Kyrgyz Republic No. 100 “On Children” dated July 10, 2012 contains sections on the system for protecting children in difficult life situations and measures to protect children in difficult life situations.⁴³

Article 34. Identification of children in difficult life situations

1. When identifying children in a difficult life situation, a person shall inform the relevant territorial division of the authorized body for the protection of children about this within 2 days.
2. The procedure for organizing the identification of children in difficult situations, as well as the procedure for interaction of state authorities, local authorities with the authorized body for the protection of children is determined in the manner prescribed by law.

Article 35. Assessment of the situation and planning the individual work with the family

1. When identifying a family at risk, the territorial division of the authorized body for the protection of children, together with the executive body of local self-government, within 10 calendar days conducts a study and assessment of the situation in the identified family, develops a plan of individual work with the family, in coordination with this family, taking into account the needs of each child.
2. When developing a plan of individual work with a family in difficult life situation, the territorial division of the authorized body for the protection of children, with the help of appropriate specialists, assesses the family’s life situation and searches for external and internal resources for the necessary transformations and possibilities of their effective use for a positive change.

⁴³Sections 4 and 5 of the Code of the Kyrgyz Republic “On Children”.

3. A plan of individual work with the family includes a list of measures to provide social, legal, psychological, pedagogical, medical assistance to a family in difficult life situation, aimed at maintaining and promoting the favorable development of the child, as well as strengthening educational skills and capabilities of parents, guardians and other persons responsible for raising a child and caring for him/her. Also, the plan includes the deadlines for its implementation, indicating the responsible persons.
4. The territorial division of the authorized body for the protection of children is obliged to monitor the dynamics of changes in the family in difficult life situation, in accordance with the terms established in the plan of individual work with the family.

Article 36. Individual plan for the protection of the child

1. The territorial division of the authorized body for the protection of children develops an individual plan for the protection of the child within 10 calendar days from the date of identification of a child in a difficult life situation.
2. An employee of the territorial division of the authorized body for the protection of children, conducting a comprehensive assessment of the situation together with an local self-government specialist in rural areas or with a representative of local authorities in the city, develops an individual plan for the protection of the child and resolves the following issues:
 - 1) whether the child needs protection services;
 - 2) whether the child needs rehabilitation programs;
 - 3) whether it is possible to leave the child in the family or if placement of him/her outside the family is required;
 - 4) whether the child needs guardianship, adoption, or placement in a foster family.
3. The development of an individual child protection plan is carried out taking into account the following principles:
 - 1) taking into account the opinion of the child in accordance with his/her age and maturity;
 - 2) placement of a child outside the family is carried out as an extreme measure of protection;
 - 3) separation of brothers and sisters is not allowed, with the exception of cases when such separation is in their best interests;
 - 4) taking into account the national, religious, cultural or linguistic origin of the child;
 - 5) explaining to the child all the information and decisions made regarding him/her in an accessible form, depending on the child's age and maturity;
 - 6) making a decision as soon as possible and without harming the well-being and interests of the child.
4. Sending a child to a residential care facility is used in exceptional cases as a last resort and if there is an evidence that all other measures to provide the child with family environment have been exhausted.
5. An individual child protection plan should contain:
 - 1) assessment and analysis of the life situation;
 - 2) measures to protect the child;
 - 3) a forecast of the impact of measures to protect the child on his/her development and the realization of the child's rights in the long term;

- 4) information on specific bodies responsible for the implementation of activities;
- 5) deadlines for the implementation, control of the plan.

6. An individual child protection plan is submitted for consideration by the Children's Affairs Commission, which reviews it within 10 calendar days.

7. In urgent cases when there is a direct threat to the life and health of the child (the use of physical, psychological, sexual violence, ill-treatment or exploitation), the territorial division of the authorized body for the protection of children, together with the law enforcement bodies, takes urgent measures to protect the child, up to placing him/her from the family. Within 24 hours, the territorial division of the authorized body for the protection of children informs the court in writing about urgent measures. In this case, the territorial division of the authorized body for the protection of children within 3 working days develops a draft individual child protection plan and sends it to the Children's Affairs Commission.

When a child is removed from the family, the territorial division of the authorized body for the protection of children is obliged to inform the parents or persons replacing them in writing about the possibility to appeal the child's removal actions in court in accordance with the Civil Procedure Code of the Kyrgyz Republic.

8. The procedure for placing a child outside the family is determined by the Government of the Kyrgyz Republic.

The governmental policy in the field of the labor market includes all traditional measures: regulation of the minimum wage, unemployment benefits, obligations of an employer to pay salaries on time, to conclude employment contracts, ensure working conditions, etc. However, these measures are not really effective. For example, the official minimum wage (1,750 soms per month or USD 25 per month (about 22 euro) is much lower than the salaries offered to unskilled workers at the lowest paid enterprises in the country.⁴⁴

2.3. Policies, strategies to support children in employment

2.3.1. State child labour programs

For the period of preparation of this Report, previously approved state programs have lost their effect. The latest State program of action of social partners to eradicate the worst forms of labour of minors in the Kyrgyz Republic for 2008-2011, ceased to be valid in 2017. There are internal Orders of the Ministry of Labour and Social Development of the Kyrgyz Republic "On the implementation of social programs (projects) on "Prevention of the worst forms of child labour, social adaptation of children with disabilities" and an information letter on the activities of the Information resource center on the problems of the worst forms of child labour. Also, the Ministry adopted an interdepartmental order No. 102 "On approval of an interdepartmental plan to prevent the involvement of children in the worst forms of child labour for 2016-2018" dated 06.04.2016. Works on identifying and accompanying children in difficult life situations, including the number of working children and children involved in the worst forms of child labour are carried out by employees of district and city departments in accordance with the approved Plans.

In general, as follows, the above-indicated programs and plans are aimed at taking measures in relation to working children, that is, implementing an ex post facto response.

⁴⁴General Country Assessment for the Kyrgyz Republic, prepared by: Graziela Piga, Tomislav Novovich, Roman Mogilevsky, - Bishkek, September, 2016, p. 74.

However, it is necessary to strengthen measures aimed at suppressing situations of involving minors in the worst forms of child labour.

In order to develop an Action Plan to prevent the involvement of children in the worst forms of child labour (WFCL) for 2019-2024, in May 2018, a working group was formed as part of the implementation of the “Family Support and Child Protection for 2017-2027” program of the Government of the Kyrgyz Republic.⁴⁵

According to the ILO, the working group consists of 30 representatives, including representatives of the Ministry of Labour and Social Development, the Ministry of Education, and the Ministry of Health, representatives of district departments of social development, education, representatives of inspections of internal affairs from the northern regions, local authorities, non-profit organizations, trade unions and employers’ organizations. It is also noted that the Plan provides for the implementation of four tasks: improving the regulatory framework in the field of eradicating the worst forms of child labour; developing a system of protection in the worst forms of child labour and improving the interaction of interested bodies; ensuring access to state and municipal services for children involved in the worst forms of child labour and their families; raising awareness and involvement of civil society institutions and the population to protect the rights and interests of children and prevent the worst forms of child labour.⁴⁶

During the discussion of the above-mentioned Action Plan, the Deputy Minister of Labour and Social Development of the Kyrgyz Republic Aliza Soltonbekova said that the Plan will lay down activities that will identify children in the worst forms of child labour, develop a support and social rehabilitation mechanism, as well as create a database of such children. In addition, the Plan implies strengthening the capacity of social workers working with local authorities that will be involved in the process of identifying and assisting in the rehabilitation of children in the worst forms of child labour and their families.⁴⁷

2.3.2. Monitoring system of the worst forms of child labour

Having ratified all seven UN Human Rights Conventions, the Kyrgyz Republic has an obligation to submit periodic reports to the UN treaty bodies. Ratified Conventions are included in the list of 27 international treaties to maintain the status of GSP + EU.

However, it should be noted that at the date of preparation of this Report, an authorized state body for monitoring the implementation of UN conventions ratified by the Kyrgyz Republic in the context of GSP+ has not been determined. Ensuring the implementation of relevant conventions is the task of relevant ministries. For example, the responsible body for economic activity is the Ministry of Economy, the responsible body in the field of ensuring labor rights is the Ministry of Labour and Social Development of the Kyrgyz Republic. However, according to the Ministry, it does not monitor human rights conventions.⁴⁸

Kyrgyzstan has a partial system of social protection for children, in which several state structures at the central and local levels are responsible for child protection issues.⁴⁹ The child protection system is characterized by the limited potential of social workers and

⁴⁵<https://bit.ly/2nAN6hy>

⁴⁶https://www.ilo.org/moscow/news/WCMS_671370/lang--ru/index.htm

⁴⁷<https://bit.ly/2nAN6hy>

⁴⁸Letter of the Ministry of Economy of the Kyrgyz Republic of September 24, 2019, Ref No. 16-1/14556; letter of the Ministry of Justice of the Kyrgyz Republic of September 13, 2019, Ref. No. 02-2/13713.

⁴⁹The situation of children in the Kyrgyz Republic, UNICEF, 2011, p. 33.

child protection specialists, as well as high staff turnover and outflow of human resources, lack of alternative services, inadequate funding, and poor coordination between different child protection authorities.⁵⁰

Currently, various state, non-governmental and international organizations are involved in child protection issues in the Kyrgyz Republic. The current child protection system is presented in more detail in Annex 2 to this Report. The Ministry of Labour and Social Development of the Kyrgyz Republic (hereinafter - the Ministry of Social Development) is the authorized body for the protection of the rights of the child. At the district level, structures have been formed, including departments for the support of families and children (hereinafter referred to as the “DSFC”) and Children’ Affairs Commissions. DSFCs are considered as district executive bodies and are deprived of the right to make decisions independently.⁵¹ For decision-making (sending a child to an alternative institution, etc.), the DSFC submits cases for consideration by Children’s Affairs Commissions. The lack of representative offices at the level of village administrations, limited human resources and the lack of vehicles complicate the fulfillment of the functional responsibilities of the DSFC, especially regarding the provision of services to vulnerable children in remote areas. Case studies are often conducted at a low level.⁵² The measures taken mainly come down to responding to the facts of the worst forms of child labour.⁵³ For example, the national report on the implementation of the UN Convention on the Rights of the Child notes that in order to monitor the use of child labour, raids are carried out, as well as explanatory work to promote safe work for children. During the first half of 2019, 36 inspections and raids were organized and conducted, during which 26 teenagers working in unacceptable conditions were identified.⁵⁴ At the same time, the national report does not indicate what measures have been taken to remove minors from the worst forms of work and to exclude their return to child labour.

There is no single mechanism for monitoring the situation on child labour, which would allow systematic analysis of the data obtained to identify children involved in the worst forms of child labour at the local and national levels. As well as the fact that there is no effective mechanism providing for a set of measures to reduce the number of working children. There are no tools for monitoring the identification of working children, their redirection (if necessary), further monitoring of the situation to exclude the return of children to the worst forms of labour.⁵⁵

The presence of a single database, summarized by monitoring results, as well as identified cases of child labour, will determine the future strategic policy in the field of child labour.

3. Children in work

3.1. Overall situation

During the reporting period, the practice of involving children in the worst forms of labour has continued, as evidenced by the preliminary findings presented during the

⁵⁰According to the focus group of representatives of NGOs, state bodies (Department for family and children support) dated 04.10.2019, the venue: Bishkek, “Park Hotel”.

⁵¹The situation of children in the Kyrgyz Republic, UNICEF, 2011, p. 34.

⁵²The situation of children in the Kyrgyz Republic, UNICEF, 2011, p. 35.

⁵³According to the focus group of representatives of NGOs, state bodies (Department for family and children support) dated 04.10.2019, the venue: Bishkek, “Park Hotel”.

⁵⁴Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

⁵⁵https://www.ilo.org/moscow/news/WCMS_671370/lang--ru/index.htm

implementation of the ILO project “Eradicating Child Labour and Human Trafficking in Central Asia - from Commitment to Action”,⁵⁶ as well as by the case studies described in Annex 3 to this Report.

Child labor is considered primarily as a consequence of the economic crisis in the country and the low economic situation of families. This situation continues to persist.⁵⁷ Accordingly, the study of this problem and the development of various measures to prevent and reduce the number of working children lay in one direction. The well-being of families, stable economic development of the country, higher employment rates will significantly reduce the number of working children, however, the real situation shows that there are no such conditions for solving this problem.⁵⁸

The study of the situation and the facts of involving children in the worst forms of child labour confirms the limited potential and the presence of weak mechanisms for the actual implementation of laws to ensure legal protection against child labour.⁵⁹ The greatest difficulty is caused by the enforcement of labour law in the informal sector of the economy (agriculture, small-scale street trading, carrying heavy loads) and households. About 70% of the total number of employed, works in the informal sector. Informal employment means low labour protection standards, lack of long-term employment contracts and the absence of protection of workers' rights. Often, informal employment also means part-time employment, which does not make it possible to earn an income sufficient for life.⁶⁰

It is also noted that a significant number of minors are forced to work in landfill sites in order to help adults feed their families.⁶¹ In an informal economy, children are paid less than adults, and they know less about their rights. Some children are forced to engage in hazardous labour activities such as coal or metal mining in closed uranium production landfills, while others work as “wheelbarrows-pushers” in bazaars, janitors, street vendors or car washers. Most children in rural areas are engaged in works in the fields, especially in spring and autumn, but in these cases it is often difficult to establish - is it help to parents or forced absenteeism at school in favor of arduous irregular work.⁶²

At the same time, there are practically no systematic measures to prevent/minimize the risks of involving minors in the worst forms of child labour, to identify working children and redirect them, if necessary, to other types of permitted works or social institutions (for example, to provide psychological, medical care). In general, the measures taken are aimed at punishing persons who have involved minors in the worst forms of child labour.⁶³

There is a significant burden on state bodies responsible for identifying children in difficult life situations. This load is expressed in a lack of personnel, a low level of employees' capacity, high staff turnover due to limited resources (low wages, minimal allocation of funds for the proper performance of work, such as allocating one vehicle

⁵⁶The study was carried out within the framework of the pilot project “Analysis of market patterns and supply chains of cotton and beans to prevent and eliminate the exploitation of child labour in the Kyrgyz Republic”, conducted by the JIA business association in cooperation with the ILO.

⁵⁷<http://www.stat.kg/media/publicationarchive/45776369-a0eb-401e-bc2c-01ee276b7274.pdf>;

<https://bit.ly/2Nvvn55>

⁵⁸“Child Labour in Kyrgyzstan.” International Organization, International Program on the Elimination of Child Labour. Bishkek, 2001.

⁵⁹According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

⁶⁰General Country Assessment for the Kyrgyz Republic, prepared by: Graziela Piga, Tomislav Novovich, Roman Mogilevsky, -Bishkek, 2016, p. 73

⁶¹According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

⁶²The situation of children in the Kyrgyz Republic, UNICEF, 2011, p. 38.

⁶³According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

unit for all 4 districts, i.e., for one city, the lack of compensation for transportation and other expenses, including for mobile communications, directly related to the fulfillment of employees' tasks on protection of children's rights).⁶⁴

There is no single mechanism for monitoring the situation of child labour, which would allow systematic analysis of the data obtained on identification of children involved in the worst forms of child labour at the local and national levels. The availability of a single database summarizing the results of monitoring, as well as identified cases of child labour, will allow to determine the further strategic policy in the field of child labour. The main task should be to redirect children involved in arduous/harmful works to other areas not classified as the worst forms of child labour, as well as the exclusion of re-involvement of minors in prohibited types of work.

International experience shows that a systematic approach is needed to effectively eradicate and prevent the worst forms of child labour. To solve the target tasks of protecting human rights, appropriate divisions have been created in various state bodies. The system of child protection at the national level is represented by the following state bodies: the Ministry of Labour and Social Development of the Kyrgyz Republic, the State Inspectorate for Environmental and Technical Safety (along with other tasks, monitors compliance with labour laws), the Human Rights Coordinating Council, the Coordinating Council for Social Welfare and Children's Rights, Federation of Trade Unions, Ombudsman. At the district level, there are Departments of Social Protection of the Population (hereinafter referred to as "District Departments"), as well as Children's Affairs Commissions (hereinafter referred to as "CAC"). The indicated District Departments are territorial divisions of the Ministry of Labour of Social Development. CAC is a collegial body of the system for the protection of children in difficult life situation, operating on a periodic basis. CAC is created: (a) under local state administrations; (b) under Mayor's offices.

This approach is designed to provide a collegial decision on a case-by-case basis. Moreover, these structures experience a need for systematic training of personnel.⁶⁵ At the same time, the employees of the District Departments and CAC do not possess the authority necessary for the full monitoring of child labour. Basically, it is a question of the need for scheduled inspections of labor safety and labor protection requirements by employers in the formal employment sectors. So, the authorized state body in the field of labour protection – the State Inspectorate for Environmental and Technical Safety - has the right to inspect enterprises. District Departments alone, without the specified state body, will not be able to inspect the enterprise to identify child labour. With regard to the inspections carried out by the above-mentioned bodies, it should be noted that they mainly cover educational organizations, since the competence of these state bodies in respect of conducting scheduled inspections does not extend to other organizations. It should be noted that the authorized bodies are considering the abolition of CAC due to their failure to perform tasks assigned to them.⁶⁶

Along with the above-mentioned bodies, an equally important role in identifying children involved in the worst forms of labour is assigned to the prosecutor's office and internal affairs bodies. They receive reports related to the worst forms of child labour, as well as facts based on the results of raids conducted by Juvenile Liaison Officers and law enforcement operations.⁶⁷

⁶⁴According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

⁶⁵Combined third and fourth report of the Kyrgyz Republic, submitted in accordance with article 44 of the Convention on the Rights of the Child, to be presented in 2010, p. 14.

⁶⁶According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

⁶⁷The Law of the Kyrgyz Republic No. 1360-XII "On Internal Affairs Bodies of the Kyrgyz Republic" dated January 11,

Thus, the child protection system includes various institutions. All of the above bodies are of great importance for monitoring child labour in terms of identifying, redirecting children involved in the worst forms of labour, and prevention the return of identified children to the worst forms of labour.

However, measures to identify, suppress and further monitor the fate of children involved in the worst forms of child labour are generally not systemic in nature and are ex post facto response measures (response follows the receipt of a fact that a child is involved in the worst forms of child labour). In a number of cases, violations of labor legislation in terms of child labour are identified during raids.⁶⁸

It is necessary to develop a system of protection for identification, redirection and further monitoring of the situation of children removed from the worst forms of child labour; it is also necessary to improve the interaction of authorized bodies.

3.2. Worst forms of child labour

According to the data of the Ministry of Labour and Social Development of the Kyrgyz Republic, **over 9 months (January-September) of 2019, 138 working children were identified, of which 16 were children involved in the worst forms of child labour.** As noted by the Ministry, individual child protection plans have been developed for each child, in the framework of which they receive social services at rehabilitation centers.⁶⁹ However, the Ministry does not indicate in which particular types of child labour the minors were involved. Also, in its letter, the Ministry does not specify which measures were included and implemented during the implementation of the individual plans.

Along with this, according to the information of a social worker of the organization specializing in the protection of the rights of “street children”, there is a seasonality of child labour (working in markets, agricultural works).⁷⁰

The facts on children involved in the worst forms of child labour are provided in Annex 3 (cases of children involved in the worst forms of child labour) to this Report.⁷¹

Below are the data on working children for 2018 provided by the National Statistical Committee without indicating the data on identified cases of the worst forms of child labour. As follows, the data on working children for 2018, provided by the Ministry of Labour and Social Development of the Kyrgyz Republic and the National statistical committee of the Kyrgyz Republic differ significantly. This fact demonstrates how the absence of a single database on child labour distorts the real picture. This discrepancy suggests that the current system of identification of child labour and prevention of further involvement of children in the worst forms of child labour, is ineffective. The lack of a real picture of the situation in the field of child labour, in our opinion, cannot contribute to a change in the situation and the emergence of positive trends, since they cannot fully determine the policies of the Ministry of Labour and Social Development, including a set of measures aimed at minimizing and preventing the re-involvement of minors in child labour.

1994. Law of the Kyrgyz Republic No. 224 “On the Prosecutor’s Office of the Kyrgyz Republic” dated July 17, 2009.

⁶⁸<https://knews.kg/2016/06/29/trud-ne-po-detski/>

⁶⁹Letter of the Ministry of Labour and Social Development of the Kyrgyz Republic dated 23.10.2019, Ref. No. 15/1-7/8664.

⁷⁰According to the information provided within the framework of consultations, “Child Protection Center” Public Association.

⁷¹Guidelines for monitoring the observance of the rights of women and children in the field of labour relations within the framework of international and national legislation, “Coalition for Democracy and Civil Society” Public Association, - Bishkek, 2019, p.58-64.

The National statistical committee of the Kyrgyz Republic annually conducts an integrated sample survey of household budgets and labor force. In 2018, the number of children aged 15-17 years amounted to 27.3 thousand people.⁷²

Table 13. Employed population aged 15-17 for 2018

Employed, thousand people	27,3
By sex:	
men	19,3
women	8,0
By place of residence:	
city	3,7
village	23,6

Below are the data from the Ministry of Labour and Social Development of the Kyrgyz Republic for the period from 2016 to 2018:⁷³

Year	Working children	Involved in the worst forms of child labour
2016	742	9
2017	759	26
2018	593	22

According to the Cluster Survey data for 2018, the prevalence of child labour is higher among boys than girls (33.6% and 19%). Children living in rural areas participate in economic activities more often than children in urban areas. Children from families belonging to the poorest quintile of wealth are almost 5 times more likely to be involved in child labour than children from the richest quintile (32.1% and 6.1%). The proportion of children aged 15-17 years involved in work in harmful conditions is higher than in other age groups. The proportion of children working in harmful conditions is higher in the quintile of the poorest (12%), as well as in rural areas (15.2%). Boys are more often involved in harmful work (16.1%). By region, the highest rate of child labour is observed in the Naryn region (40.5%), and the lowest rates are in Bishkek (7.3%) and Osh (6.1%) cities.⁷⁴

According to the ILO, in Kyrgyzstan, 39% of children work.⁷⁵ They are mainly employed in the agricultural sector, trade, and the processing industries.⁷⁶

In the Kyrgyz Republic, there are some factors that create the prerequisites for human

⁷²Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

⁷³Letter of the Ministry of Labour and Social Development of the Kyrgyz Republic dated 23.10.2019, Ref. No. 15/1-7/8664.

⁷⁴Fifth periodic report of the Kyrgyz Republic on the implementation of the Convention on the Rights of the Child for the period from 2014 to 2019.

Annex 4 to this Report contains information from the National statistical committee of the Kyrgyz Republic on working children (participation of children in economic activity).

⁷⁵https://www.ilo.org/moscow/news/WCMS_671370/lang--ru/index.htm

⁷⁶<https://bit.ly/2nAN6hy>

trafficking, such as difficult socio-economic situation, unemployment associated with it, entailing an increase in the number of migrants both within the country and abroad. Among the victims of human trafficking, a significant part is the working-age population, often with a low level of education and legal literacy.⁷⁷

According to the National statistical committee of the Kyrgyz Republic and UNICEF, in Kyrgyzstan more than 277 thousand children were left unattended by their parents due to labour migration.⁷⁸ Although migrant families have a higher income due to remittances from abroad, the absence of parents forces children to do arduous work, which deprives them of free time and even causes them to miss school. Children of internal migrants make up approximately 80 percent of street children. They often live in homes in poor condition on the outskirts of Bishkek with limited water, gas, electricity, sanitary facilities and communications, and have limited access to medical services, education, and social benefits. Children of migrants, who are already poor and very vulnerable, are at great risk of violence, exploitation and socially dangerous behavior.⁷⁹

Certainly, poverty is the main reason forcing children to work. Income derived from child labour can be the most important factor in the survival of the child or his/her family. According to the survey of children working in the cotton, rice and tobacco sectors of the Kyrgyz Republic, the main reasons why children began to work include: “coercion of parents, desire to improve the financial situation of the family, buy necessary items and goods”.⁸⁰

In addition, widespread opinions as well as local traditions and customs also play an important role. For instance:

- the opinion that labor favorably affects the formation of character and the development of children's skills;
- traditions that force poor families to borrow large sums of money to organize festivities and religious rites and rely on the labor of their children to repay such debts (serf labour);
- belief that girls are less in need of education than boys;
- children from large families are more likely to be at work than children from small families, since the income of parents is not enough to support a large family.
- accessibility and quality of school education.⁸¹

Child labour can be so deeply rooted in local traditions and customs that neither parents nor children themselves are aware that child labour is contrary to the interests of children and is illegal.

An extremely important factor is the families themselves. A huge number of children are employed in family enterprises (farms, private sector enterprises, family fields, land plots, etc.). According to the results of the first national survey on child labour, the vast majority of working children work as unpaid family workers (95%). They are mainly involved in home production (76.4%), which includes agricultural work (19.7%). However, even when working in family-owned enterprises, the health and safety of children can be at serious risk.⁸²

⁷⁷National Report on the Universal Periodic Review, January 19-30, 2015, p. 16.

⁷⁸<https://rus.azattyk.org/a/29976946.html>

⁷⁹<https://uni.cf/2ndWcAL>

⁸⁰Eradicating the Worst Forms of Child Labour in Kyrgyzstan: A Practical Guide to the Application of ILO Convention No. 182 (1999) for Trade Union Activists, International Program on the Elimination of Child Labour (IPEC); Technical Support Team on the Issues of Decent Work, and ILO Office for Eastern Europe and Central Asia, Bishkek: ILO, 2012, p. 11.

⁸¹Eradicating the Worst Forms of Child Labour in Kyrgyzstan: A Practical Guide to the Application of ILO Convention No. 182 (1999) for Trade Union Activists, International Program on the Elimination of Child Labour (IPEC); Technical Support Team on the Issues of Decent Work, and ILO Office for Eastern Europe and Central Asia, Bishkek: ILO, 2012, p. 11.

⁸²Eradicating the Worst Forms of Child Labour in Kyrgyzstan: A Practical Guide to the Application of ILO Convention No. 182 (1999) for Trade Union Activists, International Program on the Elimination of Child Labour (IPEC); Technical Support Team on the Issues of Decent Work, and ILO Office for Eastern Europe and Central Asia, Bishkek: ILO, 2012, p. 12.

3.3. Child labour and the private sector

From an interview with the chairman of the JIA Labor and Employment Committee, Joodar Omoshov:⁸³

“... In society, the concepts of labour education are often confused with child labour. These are really different things. I myself grew up in a village and remember how we were sent to hayfields for work. But it is one thing when you bring up your children and teach them to work, and another thing - when children are forced to work on a regular basis ...”

“... In the Kyrgyz Republic, child labour is usually used in the areas of trade and agriculture. Based on this, we decided to see how things are going, choosing three main areas: cotton, walnut and beans.

As partners in this project, we have opened our platforms in the regions so that we could assess the situation on-site.

Not all people are open to dialogue, and yet we saw that a very large number of children were involved in the collection of walnuts, which, among other things, needed to be peeled and packaged.

People make a lot of arguments justifying child labour, in particular, the absence of men, the fact that children are more responsible for work, as well as labor migration of the adult population..”

“... We have been cooperating with ILO for three years, and two years ago we opened the Labour and Employment Committee. We must somehow raise the level of social responsibility of our entrepreneurs, in particular of more than a thousand JIA entrepreneurs.

To date, more than 400 thousand business entities are registered in Kyrgyzstan, and, in total, all associations of employers do not represent 10% of this number. This is a huge mass of entrepreneurs who are not familiar with the topic of the danger of child labour. We had to start somewhere and started with this project ... “.

“...It is very difficult to work with people, especially with rural residents. They have certain work patterns that are very difficult to break.

Their argument is that they have worked this way for centuries. Labour force is not enough; it is better to let the children work than they would sit idle...”.

Why employers outside the family hire children:⁸⁴

- children are a cheap labour;
- children can physically perform some types of work better than adults;
- children are easier to manage than adults, even though they have less skills;
- children are less aware of their rights, less trouble, complain less, and more adaptable;
- it is easier to sacrifice children in case of any difficulties;
- employers receive moral satisfaction from the fact that they helped to children in need.

⁸³<https://bit.ly/2mlP19r>

⁸⁴Eradicating the Worst Forms of Child Labour in Kyrgyzstan: A Practical Guide to the Application of ILO Convention No. 182 (1999) for Trade Union Activists, International Program on the Elimination of Child Labor (IPEC); Technical Support Team on the Issues of Decent Work, and ILO Office for Eastern Europe and Central Asia, Bishkek: ILO, 2012, p. 12.

4. Conclusion

Legislation prohibits the worst forms of child labour. However, the system of control over the implementation of laws is practically absent. Further improvement of the legislation is necessary in terms of revising the minimum working age of a minor, as well as in terms of criminal liability for involving a minor in the worst forms of work. The prevailing type of prosecution is the prosecution of a person for involving a minor in the worst forms of labour. Such facts are usually revealed during raids. However, the issue of involving minors in other forms of child labour remains unresolved. For example, in case of the use of child labour in agricultural works.

There is no permanent monitoring system aimed at identifying and monitoring the situation with regard to children involved in prohibited types of labour.

However, the measures taken have not found their practical application.

Instruments for planning the activities of state bodies, as a rule, are their strategic plans. Nevertheless, despite the presence of various strategic programs approved for certain periods of time, the adopted programs were not fully implemented. Despite the statutory requirements to ban the worst forms of child labour, there is a trend of an increase in the prohibited types of child labour. This situation was noted back in 2014, when there was a steady positive trend towards a decrease in the number of children involved in child labour. However, compared with 2007, the number of children involved in dangerous forms of child labour increased by more than 93 thousand and in 2014 amounted to 276,218 children.⁸⁵ In 2018, there was an increase in the number of children involved in dangerous works.⁸⁶

According to various studies, many children work in conditions of informal employment (small-scale street vending, moving heavy loads, garbage dumps, slaughterhouses) and households. The majority of working children are engaged in agriculture.

The prerequisites for engaging in the worst forms of labour are the difficult socio-economic situation and the related unemployment, which leads to an increase in the number of migrants both inside and outside the country.

Despite the legislative requirements to ban the worst forms of child labour, there is a trend towards an increase in prohibited types of child labour.

Child labour, especially in cases of involvement in agricultural work, is often justified in society. It is widely believed that work has a positive impact on the formation of the character and skills of children. Local traditions and customs also play an important role, for example, traditions that encourage poor families to borrow large sums of money to organize festivities and religious ceremonies and then to rely on their children's labour to repay such debts (serf labour). At the same time, children from large families are more likely to be involved in child labour than children from small families, since parents' income is not enough to support a large family.

Despite the existence of legislation, both the local authorities and the country's leadership lack the political will necessary to influence farmers and entrepreneurs, as well as to combat child labour.⁸⁷

During the reporting period, the practice of involving children in the worst forms of labour has continued, as evidenced by the preliminary findings of the ILO project "Eradicating child labour and human trafficking in Central Asia – from commitment to action", as well as by the cases described above.

⁸⁵<https://knews.kg/2016/06/29/trud-ne-po-detski/>

⁸⁶<https://kabar.kg/news/v-kyrgyzstane-rastet-chislo-detei-vovlechennykh-v-opasnye-vidy-raboty/>

⁸⁷The situation of children in the Kyrgyz Republic, UNICEF, 2011, p. 38-39.

4.1. Government measures to eradicate the worst forms of child labour

Currently, various state, non-governmental and international organizations are involved in child protection issues in the country. Institutions have been created to protect children in difficult situations. However, the measures taken mainly come down to ex post facto responding to the facts of the worst forms of child labour.⁸⁸

There is no effective mechanism providing a set of measures to reduce the number of working children, including monitoring the situation of child labour, which would allow a systematic analysis of the data obtained on identification of children involved in the worst forms of child labour at the local and national levels. There are no instruments for the identification of working children, their redirection (if necessary), further monitoring of the situation to prevent the return of children to the worst forms of labour.

The availability of a single database summarizing the results of monitoring, as well as the identified cases of child labour, will allow to determine the further strategic policy in the field of child labour.

The monitoring was carried out by: (1) studying research reports, analysis and performance reports on international commitments, including the review of national legislation regarding the issues identified for the purpose of this monitoring; (2) analyzing statistics of public authorities freely available; (3) surveying in written public bodies and NGOs specialized in human rights; (4) examining official data, public comments posted in the media; reports of international organizations.

5. Recommendations:

5.1. Improvement of legislation:

- 5.1.1. Adoption of strategic programs (Action Plan) for the elimination of the worst forms of child labour, namely the Action Plan to prevent the involvement of children in the worst forms of child labour (WFCL) for 2019-2024.
- 5.1.2. To provide the legal basis for monitoring child labour, to develop mechanisms for monitoring the informal sector of the economy. In this case, the goal can be achieved by combining the monitoring of child labour with planned and unscheduled inspections carried out by specially trained state labour inspectors.
- 5.1.3. Improving the criminal law in terms of ensuring the full protection of the minor by eliminating the graduation of the minor (up to 14 years old, up to 16 years old), as well as eliminating the requirements for the “known” a certain age of the minor, which affects the degree of guilt.

5.2. Development of a system of protection against the worst forms of child labour:

- 5.2.1. Strengthening the system for monitoring the worst forms of child labour aimed at: **(a)** identifying, **(b)** redirecting/removing from the worst forms of child labour, **(c)** tracking the fate of those previously involved in various types of prohibited child labour, **(d)** and checking the effectiveness of measures taken as a result of monitoring. This is necessary in order to prevent the return to the worst forms of child labour.

⁸⁸According to the focus group of representatives of NGOs, government bodies (Department for the Support of Family and Children) dated 04.10.2019, the venue: Bishkek, Park Hotel.

- 5.2.2. To determine the authorized state body responsible for monitoring the implementation of the Conventions ratified by the Kyrgyz Republic in the context of the EU GSP +.
- 5.2.3. To develop and implement in the authorized bodies for the protection of children from the worst forms of child labour a monitoring tool, including forms to be filled in, a standard list of questions. These documents facilitate the work of monitoring participants and ensure transparency of the process. Child labour monitoring can be integrated into inspection on compliance with labor protection requirements. In this case, it is necessary to prepare state officials in the field of child protection to use the developed tools for such monitoring.
- 5.2.4. Strengthening interdepartmental interaction of executive authorities, local self-government; integration of the child labour monitoring mechanism into the daily activities of authorized state bodies and local self-government bodies. Development of a mechanism for the support and social rehabilitation of children involved in the worst forms of child labour.
- 5.2.5. Trade unions and the Ombudsman should strengthen monitoring the worst forms of child labour.
- 5.2.6. Assistance to families in difficult life situation to increase economic opportunities, provide alternative employment and additional sources of income for adult family members.⁸⁹ Improving the system of social benefits to identify the most needy families with minor children in their care.
- 5.2.7. Creating an objective and up-to-date database of children involved in the worst forms of child labour. The base should guarantee and ensure the requirements of the legislation in the field of personal data protection and ensuring the right to privacy.
- 5.2.8. Permanently strengthening the capacity of social workers and others involved in monitoring the worst forms of child labour.
- 5.2.9. The consolidation of the number of employees performing the functions of protecting and ensuring the rights of children is proportional to the number of cases, which would make it possible to fully fulfill the tasks and functions provided. Resolving of the issue related to the limitation of resources in the performance of the functions of protecting and ensuring the rights of children by authorized officers.

5.3. Conduct outreach on the worst forms of child labour with:

- 5.3.1. Employers' unions; unions have the opportunity to interact with a large number of adult workers and their families. They are able to explain to them how important it is to educate children, to protect them from the dangers that children face at work and to protect them from the need to work from such an early age. Unions play a huge role in collective bargaining and in social mobilization at the national level.
- 5.3.2. Families with minors, with a focus on regions where the main source of income is farming, in which minors are involved.
- 5.3.3. Entrepreneurs (business communities).
- 5.3.4. Judges and law enforcement authorities.

⁸⁹ILO recommendation based on the results of the final meeting on discussing the results of the ILO project "Elimination of child labour and human trafficking in Central Asia", 12 April 2019.