
Warsaw, 30 April 2020

Opinion-Nr.: MIG-UZB/372/2020 [JG]

URGENT OPINION ON PLANNED REFORMS OF THE SYSTEM OF RESIDENCE REGISTRATION

UZBEKISTAN

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Based on an unofficial English translation.



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This Opinion is also available in Russian.

However, the English version remains the only official version of the document.

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Given that the actual draft Law and draft Resolution were not available for review, this Opinion is a preliminary analysis based on documents outlining planned reforms of key aspects of the system of residence registration in the Republic of Uzbekistan. In this situation, it was not possible to conduct an in-depth assessment of the planned changes to the *propiska* system, how the draft Law and draft Resolution reflect/have been reflected in the existing legislation, and most importantly to which extent the actual legislative proposals comply with the OSCE freedom of movement commitments. Once actual texts of the draft Law and draft Resolution are available, OSCE/ODIHR stands ready to conduct additional reviews.

The planned changes to the current registration system look promising, as they follow the reform activities of recent years and seek to overhaul the *propiska* system and greatly facilitate registration. It is welcome that the relevant stakeholders are taking concrete steps to reduce the burden of registering on the citizen. The reforms seem also to entail some positive and welcome steps to reduce obstacles for permanent registration. At the same time, the proposed system still includes unnecessary restrictions for persons seeking to register in Tashkent city or region on a permanent or temporary basis.

More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the reform project:

- A.** To clarify if the changes are meant to affect temporary and permanent registration in all of Uzbekistan; should this not be the case, to expand the reforms to the entire country, not only Tashkent city and region; [par 34]
- B.** To clarify that the registration system should not be based on the desire to control migration but rather on the need of service delivery and, hence, any violations of the mandatory residence requirement system

should only be treated as minor administrative violations with sanctions imposed for similar administrative offences if at all; [pars 39-40]

- C. To remove unnecessary restrictions of the right to seek permanent residence in the city of Tashkent and the Tashkent region; [pars 42-43]
- D. To ensure that any restrictions to the freedom to choose one's residence are necessary, proportionate and non-discriminatory, and therefore to reconsider the rule preventing individuals from registering at places of accommodation below a certain minimum size if they do not belong to an exempted category of persons; [pars 46-49, 60]
- E. To refrain from indirectly influencing which type or size of housing individuals may buy; [pars 50-52]
- F. To ease restrictions on temporary residence in order to ensure such registration only becomes necessary after an extended period of time and is possible for longer than five years. [par 61-62]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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Annex: Information paper on planned draft legislation and policies, and related table with justifications

I. INTRODUCTION

1. On 6 April 2020, the First Deputy Speaker of the Legislative Chamber of the *Oliy Majlis* (Parliament), who is also the Director of the National Centre for Human Rights of Uzbekistan, sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of draft documents outlining planned reforms of key aspects of the system of residence registration in the Republic of Uzbekistan.
2. On 10 April 2020, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare an urgent legal opinion on the compliance of the planned reforms, as evidenced by the documentation received, with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above-mentioned request. It primarily aims to clarify and elaborate on the existing draft documents, and to conduct a preliminary analysis of the proposed changes to the registration system. At the same time, the OSCE/ODIHR stands ready to review concrete draft legislation on these and related matters, should this be deemed useful by the respective stakeholders in Uzbekistan.
4. The OSCE/ODIHR conducted this assessment as part of its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

II. SCOPE OF REVIEW

5. The scope of this Opinion covers only the draft documents submitted for review. Thus limited, the Opinion constitutes merely an urgent and preliminary analysis of the reforms, and does not constitute a full and comprehensive review of the entire legal and institutional framework regulating citizens’ places of residence in Uzbekistan.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of planned reforms. The ensuing recommendations are based on international standards, norms and practices as well as relevant OSCE human dimension commitments.
7. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion’s analysis seeks to take into account the potentially different impact of reforms on women and men.¹
8. This Opinion is based on unofficial English translations of the relevant documents submitted to the OSCE/ODIHR, which are attached to the Opinion as Annexes. Errors

¹ See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating the registration of residence and freedom of movement in Uzbekistan in the future.

III. ANALYSIS

1. International Standards and OSCE Commitments on Freedom of Movement

10. In most countries across the OSCE region and beyond, there is some sort of population registration system in place, comprising civil and residency registration creating an administrative framework that enables state authorities to guarantee the political and civil rights of citizens, and to provide them with relevant public services.² Such systems, however, needs to be established and operated in a way that does not unduly limit key human rights of individuals, including the rights to privacy, family life and the freedom of movement.³
11. In most OSCE participating States, there is a mandatory residence registration system that authorities use to plan and deliver services to their citizens. Citizens are free to choose temporary or permanent place of residence for their registration as long as they comply with certain ownership criteria, meaning that they either own the house or apartment where they live, or they have the owner's consent to reside there. In countries wishing to register citizens' places of residence, the range of criteria that citizens have to fulfil are assessed by analyzing the extent to which they uphold freedom of movement or stand as a barrier to freedom of movement.
12. The right to freedom of movement is set out in Article 12 of the International Covenant on Civil and Political Rights,⁴ and specifies, among others, that everyone "lawfully within the territory of a State" shall have the right to move freely within that territory and shall have the freedom to choose his/her residence. This right is likewise reflected in key OSCE commitments, inter alia, by committing to respect fully the right of individuals "to freedom of movement and residence within the borders of each State".⁵
13. OSCE/ODIHR's 2009 Guidelines on Population Registration provide further detail on good practices of population registration in the OSCE region, while outlining some main principles governing the establishment and maintenance of functional and

² See, for instance, the *OSCE/ODIHR Opinion on the Legal Framework Regulating Population Registration in the Kyrgyz Republic*, 14 June 2012, par 10; see also *Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan*, 6 October 2016, par 54.

³ See OSCE/ODIHR *Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan*, 6 October 2016, par 54.

⁴ UN International Covenant on Civil and Political Rights (hereinafter "the ICCPR"), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR on 28 September 1995.

⁵ See, e.g., the Concluding Document of the Third Follow-up Meeting, Vienna, 15 January 1989, *Questions Relating to Security in Europe: Principles*, par 20.

efficient models of population registration in democratic societies. These principles include facilitating the free movement of people (rather than managing population movements by putting limits on the free choice of place of residence), putting in place sound administrative procedures, only requiring individuals to register once (“one person, one record”), and ensuring that registration requirements and services are requested/provided in a non-discriminatory manner, among others.⁶

2. Planned Reforms To The System Of Residence Registration In Uzbekistan

14. As stated in an information paper on new regulations on registration in Uzbekistan, and following the objectives set out in the address of the President of Uzbekistan to the Parliament, and the National Actions Strategy for 2017-2021, “concerned ministries and entities” have developed a draft law and draft resolution of the Cabinet of Ministers on improving the system of permanent registration. The information paper is posted online for comments, as is a table outlining the key changes that will be imposed by the draft law and draft resolution, along with justifications for each change.

2.1. The Current Legislation

15. Currently, the legislation governing registration and residence of citizens in Uzbekistan, which includes not only laws, but also by-laws such as presidential decrees, cabinet resolutions and instructions, is quite restrictive. In that, and also in name, this system follows the “*propiska*” system used in the Soviet Union. Human rights organizations have criticized the *propiska* system as being less of a simple registration and more of a permit system, where any desire to change one’s residence is met by often unsurmountable administrative and legal barriers.⁷ As stated in a recent research paper published by the World Bank Group, a person without a local *propiska* (either permanent or temporary) in Uzbekistan is not permitted to apply for identification documents, register a marriage, obtain pensions or other social benefits, send his/her children to public schools, obtain legal employment, or register a business, among other restrictions.⁸ At the same time, a 2018 Resolution of the Cabinet of Ministers states that while citizens are obliged to register in places of permanent or temporary residence, the absence of a *propiska* at the place of temporary residence may not be a ground for refusing services to a citizen.⁹
16. In particular, special rules apply to the city and region of Tashkent, meaning that individuals may only reside there legally if they fulfil one of the requirements set out in a list annexed to the 2011 Act on the List of Categories of Citizens of the Republic of

⁶ OSCE/ODIHR Guidelines on Population Registration, 2009, pp. 18-23, available at: <https://www.osce.org/odihr/39496>.

⁷ Uzbek Forum for Human Rights: *Propiska: Uzbekistan Abolishes Soviet-Style Residency Restrictions*, published on 18 February 2020, at: <https://www.uzbekforum.org/propiska-uzbekistan-abolishes-soviet-style-residency-restrictions/>. See also Uzbek-German Forum for Human Rights with the support of the Centre for Civil and Political Rights: *Submission for the adoption of the List of Issues in relation to the fifth periodic report of Uzbekistan to the ICCPR*, May 2019, p. 13.

⁸ William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, p. 19.

⁹ Annex 1 to the Resolution of the Cabinet of Ministries No 845 of 22 October 2018, as cited in William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, Appendix G, p. 67.

Uzbekistan Subject to Permanent Residence in Tashkent City and Tashkent Province.¹⁰ These include persons who are already registered or have acquired property in the city or province of Tashkent and their close and immediate relatives, as well as persons returning to Tashkent city/province after a time of absence, citizens appointed or elected to public office or who are “highly qualified specialists” invited to work for certain types of state bodies (for the duration of their terms) and military personnel provided with housing there. Spouses of persons holding permanent residency in Tashkent city/province may also become permanent residents if the couple has lived there together for one year after being married. If the marriage is dissolved within one year after permanent residence has been acquired, the spouse loses the right to permanent residence in Tashkent city/province.

17. Permanent or temporary registration in Uzbekistan is regulated by the Presidential Decree on Additional Measures for Passport System Development in the Republic of Uzbekistan.¹¹ The absence of *propiska* is considered a violation of the “rules of the passport system” under Article 223 of the Administrative Code of Uzbekistan and incurs a fine of up to five minimum wages.¹²
18. Visitors to Tashkent need to register temporarily within ten days of arrival,¹³ and may obtain a temporary residence permit for a period of 5 days to 6 months.¹⁴ As of 2018, exceptions have been introduced for seasonal workers,¹⁵ which may receive temporary registration without a rent agreement, and undergo a somewhat simplified registration procedure.
19. Non-residents of Tashkent are apparently only allowed to buy property there in new buildings, not those on the secondary housing market (which are substantially cheaper),¹⁶ and may thereby obtain a permanent residence permit. The purchase should be conducted via bank transfers. The state registration fee for notarizing the purchase is 5 %.¹⁷
20. According to the 2019 Presidential Decree on Measures to Fundamentally Improve the Processes of Urbanization, people are now apparently able to apply for work outside of

¹⁰ See the Republican Law No. NO. ZRU-296 on the List of Categories of Persons – Citizens of the Republic of Uzbekistan, Subject to Permanent Residence in Tashkent City and Tashkent Region, of 15 September 2011, last amended in 2019, and its Annex on the list of categories of citizens of the Republic of Uzbekistan subject to permanent residence in Tashkent city and Tashkent province.

¹¹ Presidential Decree on Additional Measures for Passport System Development in the Republic of Uzbekistan No. UP-426229 of 5 January 2011.

¹² Кодекс Республики Узбекистан Об Административной Ответственности (available in Russian at: <https://lex.uz/docs/97661#4587712>). See also, Gazeta.uz, *Tashkent citizens do not have to register in oblasts – MIA*, published on 12 June 2019, at: <https://www.gazeta.uz/ru/2019/06/12/registration/> (in Russian).

¹³ See the table outlining all proposed changes at <http://2020.strategy.uz>, available in Uzbek and Russian. See also Resolution of the Cabinet of Ministers No. PKM-4130 of 16 February 2012, cited in William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, Appendix A, p. 48.

¹⁴ William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, Appendix A, p. 48.

¹⁵ See Addition to the Cabinet of Ministers’ Resolution (16 February 2012) of 13 February 2018, as cited in William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, Appendix G, p. 65.

¹⁶ Uzbek Forum for Human Rights: *Propiska: Uzbekistan Abolishes Soviet-Style Residency Restrictions*, published on 18 February 2020, at: <https://www.uzbekforum.org/propiska-uzbekistan-abolishes-soviet-style-residency-restrictions/>. See also William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, pp. 19-20.

¹⁷ See Resolution of the Cabinet of Ministers No. 527 of 19 July 2017, as amended in 2018, cited in William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, Appendix G, p. 63.

the region where they are registered and may apply for temporary residence permits in urban areas (including Tashkent) upon receipt of a formal employment contract.¹⁸

2.2. Description of the Planned Changes

21. Based on the information paper, as well as a table outlining the proposed changes in more detail, a draft Law will replace the term “residence permit” with the more neutral term “registration”, thereby removing a term that has negative connotations for large parts of the population.¹⁹ Moreover, certain aspects of registration of individuals’ places of residence will be facilitated, namely the permanent registration of parents/children/grandparents, including adopted children, of Tashkent residents returning after a time of absence, and of citizens appointed or elected to certain state bodies. Also, citizens who marry will no longer be required to live together for a year before applying for permanent residence where they live, nor will a spouse lose his/her right of residence in case of divorce.
22. Moreover, a new Cabinet resolution (hereinafter “the draft Resolution”) aims to facilitate registration in general, meaning that proof of registration will be sent to appropriate authorities by the interior bodies, and will no longer need to be provided by citizens (e.g. when requesting certain benefits, military enrolment, registration of lease contracts with tax department, etc). According to the planned amendments, permanent and temporary registration will be done within a day. Moreover, registration processes will be digitalized, which means that proof of permanent registration will no longer be affixed to (internal) passports, apartment cards or house books, and simplified. Citizens no longer need to de-register from previous places of residence before being able to register permanently at a new place, including in terms of “military registration”.
23. In cases of temporary registration, the new Cabinet resolution states that the term of temporary registration at a place of stay shall be fixed based on the request of the respective homeowner (but may not exceed 5 years). Persons with temporary registration shall receive all forms of public service, same as persons with permanent residence.
24. In Tashkent city or region, citizens are still required to register temporarily or permanently, but the period within which they need to do that has been extended from ten to fifteen days. Persons not residing at their places of permanent residence, but still in the same region, will not be considered to be in violation of the passport regime.
25. When registering in Tashkent city or region, the “social norm on living space” for one person set out in the Housing Code of Uzbekistan (which is currently a minimum of 16 m², and for wheelchair users a minimum of 23 m²), will need to be taken into account. Exceptions determined by a resolution of the Cabinet of Ministers will include joint living space of close family members (including guardians/trustees, adoptive families, and underage siblings without parents), persons released from detention or the army, or those who return to their place of residence from temporary work or other temporary absence.

¹⁸ William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, p. 20. See also Uzbek Forum for Human Rights: *Propiska: Uzbekistan Abolishes Soviet-Style Residency Restrictions*, published on 18 February 2020, at: <https://www.uzbekforum.org/propiska-uzbekistan-abolishes-soviet-style-residency-restrictions/>.

¹⁹ See the table outlining all proposed changes at <http://2020.strategy.uz>, available in Uzbek and Russian.

26. A homeowner may cancel a tenant's permanent registration "on the basis of a social norm" – in cases of individuals where the social norm does not apply (see previous paragraph), this is only possible with their consent, or by court.
27. The rules on the social norm also need to be taken into account when notarizing certain property transactions involving citizens registered in other regions of Uzbekistan, e.g. the sale, gifting, rent, transfer (on condition of lifetime security), mortgaging, or refusal/disclaimer of property or parts of a property.
28. At the same time, citizens not registered in Tashkent state or region no longer need to pay a special state duty rate (5% of the contract value) for registering a housing sales contract. The new Cabinet resolution will also state that citizens not registered in Tashkent or Tashkent region will no longer be limited to buying housing only in new buildings.

3. Preliminary Analysis of the Proposed Changes

29. As indicated earlier in the Opinion, this will be a preliminary review, given that the actual draft Law and draft Resolution were not available for review. In this situation, it was not possible to conduct an in-depth assessment of the planned changes to the *propiska* system, how the draft Law and draft Resolution reflect/have been reflected in the existing legislation, and most importantly to which extent the actual legislative proposals comply with the OSCE freedom of movement commitments.
30. This review will thus merely provide a preliminary analysis of the ideas expressed in the information note and table submitted for review. Once actual texts of the draft Law and draft Resolution are available, it would be useful to submit these for a more profound review of the actual wording of the new provision. As stated at the beginning of this Opinion, OSCE/ODIHR stands ready to conduct such additional reviews as needed.
31. The *propiska* system exercised in the Soviet Union was originally conceived and implemented primarily as an instrument of control and of managing internal migration. Although obliging individuals to register at their place of residence on the surface carries many similarities with the *propiska* system, the purpose of such an administrative framework is fundamentally different. Democratic States use the registration at individuals' places of residence as an instrument to deliver State services. Based on the information from the registration system, a State knows where its residents live and where the service intended for a specific individual should be provided (where his/her children go to school, where basic healthcare is provided, etc) and what social benefits are provided based on the size of a household. Tax collection and public utility services are frequently also designed and charged based on a person's place of residence registration.
32. This is not comparable to the *propiska* system in which the State controls migration movements by requiring persons to request permits for any change of residence and only permitting such changes in certain limited circumstances, restricting freedom of movement by imposing unjustified and unreasonable barriers and only permitting changes of residence in certain limited circumstances. The UN Human Rights Committee has criticized provisions requiring individuals to apply for permission to

change their residence or to seek the approval of the local authorities of the place of destination.²⁰

33. For this reason, the planned changes to the current registration system look promising, as they follow the reform activities of recent years and seek to overhaul the *propiska* system and greatly facilitate registration. In tackling this issue, the relevant stakeholders in Uzbekistan are responding to, among others, concerns raised by the UN Human Rights Committee, most recently in early April of 2020,²¹ regarding the restrictions that the current system imposes on individuals' freedom of movement and their choice of residence, in particular in Tashkent.
34. At the outset, it is, however, unclear whether the proposed changes will affect the system whereby citizens register their temporary or permanent places of residence in Tashkent city or province only, or whether these aim to overhaul the system in the entire country. The wording of the information paper and table seem to suggest the latter, but it is noted that in his letter to the OSCE/ODIHR requesting a review of the existing documents (see par 1 *supra*), the First Deputy Speaker of the Legislative Chamber of the *Oliy Majlis* speaks of the draft law of the Republic of Uzbekistan "On improving the system of permanent registration in *Tashkent and the Tashkent region*" and the draft Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On simplifying the procedure for permanent residence and registration at the place of residence in the *city of Tashkent and the Tashkent region*". **The ensuing analysis will assume that the changes are meant to affect temporary and permanent registration in all of Uzbekistan. In case separate regulatory acts continue to apply, it is also necessary to harmonize the legislation regulating the registration system in the city of Tashkent and the Tashkent region as well as other parts of the country.**

RECOMMENDATION A.

To clarify if the changes are meant to affect temporary and permanent registration in all of Uzbekistan; should this not be the case, to expand the reforms to the entire country, not only Tashkent city and region;

35. Furthermore, the proposed draft Law and draft Resolution and the changes that they are meant to bring about suggest that the legislator intends to utilize the registration system more as a framework for service delivery than as a system of control. While this is a positive step, some vestiges of the old control-based system appear to linger, as will be shown below, especially with respect to the right to register in Tashkent city and region, and in relation to the concept of temporary registration.
36. At the same time, it is welcome and very apparent from the information note and table that the relevant stakeholders are taking concrete steps to reduce the burden of registering on the citizen and to install a "single window", i.e. one-stop shop registration system with more automated and digitalized processes. This is fully in line with the OSCE/ODIHR's Guidelines on Population, which state that an individual should only need to register once, while his/her data may be put to multiple uses within

²⁰ UN Human Rights Committee, *General Comment No. 27 on Article 12 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9 (1999), par 17.

²¹ UN Human Rights Council, *Concluding Observations on the Fifth Periodic Review Report of Uzbekistan*, CCPR/C/UZB/CO/5, adopted on 2 April 2020, pars 36-37.

the state apparatus; a clear and transparent structure for sharing information throughout all parts of the state administration that also takes into account the rights of the individual is a prerequisite for the proper functioning of any state registration system.²²

37. The idea of reforming and accelerating the registration process from three days to one day is also laudable in principle, but it may be useful to revisit this approach to see whether, given the existing work processes and capacities within civil administration offices, this will indeed be feasible. **If not, then a more realistic timeframe should be maintained, which could, as capacities within public offices grow, and as the digitalized content-management becomes more widespread, be reduced accordingly. While a digitalized system can provide many benefits to the public, proper safeguards need to be in place to ensure that privacy and other legal standards are met.**²³
38. According to the laws and regulations currently in place, individuals that move to Tashkent city and region need to register there, either permanently or temporarily, within ten days. The planned reforms aim to increase this period to fifteen days, and justify this with reference to other countries, where citizens shall contact authorities within an average period of 14-30 days. **While it is welcome that authorities are considering to revisit the timeframe, fifteen days still seems like quite a short time. As stated in previous OSCE/ODIHR Opinions, time limits for registering one's residence should not be excessively short and should be supported by flexible regulations (e.g. extensions of deadlines, or flexibility with regard to the submission of certain documents).**²⁴ In general, people visiting friends or relatives, or simply another town, should not be obliged to register even if they stay longer than fifteen days (see additional comments on the concept of temporary registration at par 61 below). **It is therefore recommended to make registration obligatory only for individuals moving for substantially longer periods. Apart from that, the rules of registration within a State should apply to the entire State – registration in Tashkent should follow the same principles as registration elsewhere.**
39. **It also remains unclear from the provided information note and table what kind of sanctions authorities will impose on persons who are found in Tashkent city/region, or in other regions without proof of registered temporary or permanent residence.** The table indicates that persons not residing at their places of permanent residence, but still in the same region, will not be considered to be in violation of the passport regime (presumably this refers to Article 223 of the Administrative Code). **This then raises the question of what other sanction would be imposed for these persons, and also, how the draft Law will deal with persons residing at a place that is not their place of permanent residence, and that is not within the same region. These points should be clarified in the draft Law.**
40. **In particular, in a system that is not based on the desire to control of migration within a country, but rather on the delivery of services, the rationale for imposing sanctions, if at all, should be based merely on the fact that misinforming the administration will pose difficulties for the delivery of certain public services, not on the need to punish individuals for violating a law. In case States choose to introduce sanctions for such infringements, this should be seen as minor**

²² OSCE/ODIHR *Guidelines on Population Registration*, 2009, pp. 21 and 41-43.

²³ See OSCE/ODIHR *Guidelines on Population Registration*, 2009, pp. 17 and 19-20.

²⁴ See OSCE/ODIHR *Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan*, 6 October 2016, par 64.

administrative violations only and thus, any sanctions imposed should be similar to those imposed for similar administrative offences.

RECOMMENDATION B.

To clarify that the registration system should not be based on the desire to control migration but rather on the need of service delivery and, hence, any violations of the mandatory residence requirement system should only be treated as minor administrative violations with sanctions imposed for similar administrative offences if at all;

3.1. Permanent Registration

41. It is particularly welcome that citizens will not be required to de-register when moving from one place to another, and that rather, the authorities where permanent residence is declared will inform those of the place of prior residence accordingly. Moreover, it is equally positive that restrictions on the right to permanent residence are to be lifted for persons moving to Tashkent for certain types of public office or work, and that fees and obligations imposed on non-residents wishing to buy real estate in Tashkent have been lifted.
42. **At the same time, these changes only appear to affect persons with property in Tashkent, or those appointed or elected for public office or “highly professional experts”. There is no indication that other categories of citizens wishing to move to Tashkent city or region for work or other reasons will be allowed to do so, which appears to be an unnecessary restriction.²⁵ According to the UN Human Rights Committee, in its General Comment 27 on Article 12 of the ICCPR on Freedom of Movement, individuals may not be prevented from entering or staying in a defined part of the territory.²⁶ It is thus recommended to ensure such possibility in the pending reform process.**
43. **Moreover, facilitating the re-registration of citizens in Tashkent city or region after a time of absence is preferable to the current provisions, which appear to make it difficult for persons leaving Tashkent temporarily for work or other reasons to register again when returning.** At the same time, at least with regard to private property owners, it is unclear why the mere fact that somebody is leaving his/her usual residence for a limited amount of time should mean that they forfeit their permanent registration. This approach would likewise clearly run counter to every person’s right to choose his/her place of residence (Article 12 ICCPR).²⁷ **At the same time, it would appear to be less burdensome for both the individual and for the respective civil administration offices if this person would retain permanent residence in Tashkent even when living in another part of the country. If, in the**

²⁵ See also Uzbek Forum for Human Rights: *Propiska: Uzbekistan Abolishes Soviet-Style Residency Restrictions*, published on 18 February 2020, at: <https://www.uzbekforum.org/propiska-uzbekistan-abolishes-soviet-style-residency-restrictions/>. See also William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, p. 20.

²⁶ UN Human Rights Committee, *General Comment No. 27 on Article 12 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9 (1999), par 7.

²⁷ See also OSCE/ODIHR *Opinion on the Legal Framework Regulating Population Registration in the Kyrgyz Republic*, 14 June 2012, par 44.

end, the respective individual eventually decides to leave Tashkent entirely and move to this other location permanently, then he/she could simply permanently register there. It may be advisable to contemplate this alternative approach, as the current one appears to be in violation of the right to freedom of movement, is unnecessarily burdensome, and poses no clear advantages.

RECOMMENDATION C.

To remove unnecessary restrictions of the right to seek permanent residence in the city of Tashkent and the Tashkent region;

44. With respect to persons living in social housing, the situation will be different, as they will indeed forfeit their right to live in publicly owned accommodation by leaving their place of residence. **In such cases, however, their right to obtain housing in Tashkent city or region, and thus the right of permanent residence upon returning will depend on their continued eligibility to receive social housing, which places them in a different situation than property owners. The draft Law should specify that this category of persons will be treated differently, with appropriate references to the Housing Code.**
45. **It remains unclear from the provided information paper and table whether there are perhaps provisions in other pieces of legislation that serve to prohibit specific categories of population from re-establishing residence or force them to lose “the right” to permanent residence. This could only be assessed upon reviewing the full package of laws.**
46. One main part of the reform deals with “social housing norms of living space”, which need to be taken into account when citizens seek to register permanently in Tashkent city or province. These norms are found in Article 42 of the Housing Code and relate to housing for citizens in need of better housing conditions, and whose income is under the minimum wage (Article 38 of the Code). The social norms shall be established by the competent regional authorities but may not be less than 16 square metres of floor space per person, and no less than 23 square metres for persons in wheelchairs.
47. Firstly, it is not clear whether this provision applies only as a benchmark for the distribution of social housing (as the wording in the Housing Code would indicate), or if it is also meant to apply to the acquisition of private property as well (which would be highly problematic, as it would essentially limit individuals’ right to buy the property of their choice). It is equally questionable whether this type of provision should serve as a guideline for all persons from other regions wishing to register in Tashkent, if that is indeed the intention of the draft Law and draft Resolution. The draft Resolution will contain exemptions for close family members, persons released from detention, former military personnel and persons returning after having lived elsewhere for employment or other reasons. However, if read correctly, this would mean that all other persons not falling under this category will not be able to register permanently in Tashkent if their place of residence does not adhere to the social norms established by the competent regional authorities.
48. According to Article 12 par 3 of the ICCPR, the freedom to choose one’s residence may only be restricted if such restrictions are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and

freedoms of others, and are consistent with the other rights recognized in the Covenant. **In the absence of concrete circumstances justifying legitimacy and necessity of the approach, it is recommended to reconsider the rule allowing individuals to register only in cases where they have found accommodation of a certain minimum size. Moreover, such an approach would also be discriminatory, as it applies to certain persons, but not to others (family members, former detainees, returning residents or military personnel).**

49. If, on the other hand, the social norm is only relevant for persons living in social housing, then it is unclear why a norm that is intended as an obligation for the State (in relation to the housing that it should provide to lower income families or individuals) likewise needs to be applied as a restriction to registration. **It would appear that if persons' requests for social housing are granted, then they would automatically live in accommodation that adheres to the social norm on living space and be able to register accordingly. These questions should be clarified.**

RECOMMENDATION D.

To ensure that any restrictions to the freedom to choose one's residence are necessary, proportionate and non-discriminatory, and therefore to reconsider the rule preventing individuals from registering at places of accommodation below a certain minimum size if they do not belong to an exempted category of persons.

50. Likewise, the need to “take into account the rules on the social norm” when notarizing property transactions by non-residents involving properties in Tashkent set out in the table is not clear. According to the justification contained in the table, it appears that the purpose of this change is to prevent citizens from circumventing registration requirements by purchasing property, or by engaging in other property transactions. Given that property transactions will presumably not involve persons living in social housing, this reference to the social norm would essentially affect anybody wishing to conduct such a transaction in Tashkent city or region.
51. If this is indeed the same social norm relating to the size of housing, then it is difficult to see how this norm could affect the notarization of property transactions, which usually is merely an official confirmation that a commercial transaction between two parties has taken place. Should this mean that notaries will be under the obligation to assess whether norms of social housing have been taken into account in property transactions, then this raises the question of how this is envisaged to look in practice, in particular whether notaries would be obliged to ask persons engaging in property transactions how many people will be living there in future, and to calculate whether this would be in line with the social norm defining how many people may stay in a property of a given size.
52. **Commercial transactions are based on private law agreements between individuals and should not be unduly impacted by State policies and laws, unless they are blatantly in violation of existing legislation. Any attempts by States to indirectly influence which size and types of housing individuals may buy are not acceptable or justifiable.** Aside from that, individuals buying real estate will not necessarily know at the time of concluding a property transaction how many people will end up living

there. **Thus, this approach is neither proportionate nor lawful, nor would it appear to be a useful way to ensure adherence to the social norm on living space in Tashkent. Other approaches would presumably be more promising, e.g. raising the property tax of apartments located in central districts or depending on the number of persons living there.**

RECOMMENDATION E.

To refrain from indirectly influencing which type or size of housing individuals may buy;

53. Finally, the reforms seek to provide homeowners with the right to cancel the permanent registration of a citizen (presumably his/her tenant) on the basis of the “social norm”. It is unclear which type of scenario this provision intends to rectify, as the reference to the social norm would indicate that this is somehow related to the size of the living space.. At the same time, the justification listed in the table seems to refer to cases where a person moves to a new location but remains registered at the old location, which poses problems for the homeowner as this means that bills, court orders or other mail from public authorities keep arriving for the former tenant. **It is, however, unclear how the latter situation would continue to pose a problem for the homeowner given that according to the planned reforms, de-registration from a former place of residence will take place automatically once an individual has registered at a new location.**
54. **If, on the other hand, the reference to the social norm relates to the social norm on living space set out in the Housing Code, then this would somehow mean that a homeowner could cancel a citizen’s permanent registration due to the latter’s failure to adhere to the respective social norm (perhaps because several people live in a location that has only been leased to one tenant). This provision and its effects are not very clear and should be reconsidered.**
55. In particular, mere reference to violations of the social norm on living space should not be enough to remove tenants from rented accommodation. Rather, the property owner’s rights would be served better by specifying that any type of gross violation of the agreement that is the basis for tenancy (whether oral or written) may lead to a tenant’s eviction. This may include situations where more people than indicated live in a house or flat, but also situations where tenants are responsible for property damages or engage in criminal activities, among others. **It is thus recommended to ensure that the violation of the “social norms” does not provide a homeowner with the right to termination of permanent registration but allowing such cases be decided by a court.**
56. Overall, the rules of residency in Tashkent city and province still appear to be vastly different from those applying in other parts of the country. It is assumed that this is in order to avoid additional internal migration flows to Tashkent, and possible over-population. Nevertheless, as indicated above, such a restrictive approach to a particular part of a country is not in line with the right to freedom of movement under Article 12 of the ICCPR, which applies to all parts of a state. The enjoyment of this right may not be made dependent on any particular purpose or reason for the person wanting to move

or to stay in a place;²⁸ nor may individuals be prevented from entering or staying in a defined part of the territory.²⁹ Moreover, it must be said that these types of restrictions have rarely to never been able to prevent people from moving to certain places in hope of employment and better living conditions. Moreover, studies have shown that additional internal migration generally boosts economic growth and thus has more positive than negative effects.³⁰

57. Bearing this in mind, **the relevant stakeholders in Uzbekistan should re-assess and ideally decide to not follow this whole approach, which would be more in line with international freedom of movement standards and OSCE commitments. Moreover, it would be more beneficial for the population and less burdensome for the competent authorities if the special regulations for Tashkent would be lifted, and if it were treated like all other parts of the country.**

3.2. Temporary Registration

58. In cases where individuals move away from their places of permanent residence temporarily, they shall register on a temporary basis in their new place of stay. Based on the planned draft Resolution, such temporary residence may be granted at the request of the homeowner where the respective individual is staying and should not exceed five years. It is positive that the draft Resolution aims to stimulate voluntary registration of citizens, and to this end also requires the Ministry of Justice and the Ministry of Internal Affairs to create conditions to extend all forms of public services that require permanent registration to temporary residents as well.
59. In this context, however, it would be helpful to elaborate the draft Resolution somewhat, so that the extent of public services offered to temporary residents becomes clearer. Habitually, different sets of services are offered by States to temporary residents on the one hand, and permanent residents on the other. For example, voting rights for local elections are usually granted only to registered permanent residents, and usually, individuals pay taxes at their place of permanent residence. **The differences in terms of public services should be made clearer in the actual text of the draft Resolution.**
60. **Moreover, and on a more general note, the status of persons renting property is unclear. Most importantly, it does not appear to be possible for tenants to establish permanent residence at the location where they rent property.** Based on the information paper and table, it appears that if a person is a temporary resident at a rented property in a certain location, and if this person (or his/her next of kin) does not acquire any property in this location, he/she will lose the right to reside there entirely. If this is indeed the intention of the lawmakers and other stakeholders, then such measure would effectively deter persons from resettling and *de facto* discourage people who cannot afford to acquire property within five years from exercising their right to freedom of movement. This could potentially disenfranchise a large number of people. **There is no indication in the table or elsewhere as to which legitimate aim such a restriction would follow, let alone why this would be necessary or proportionate**

²⁸ UN Human Rights Committee, *General Comment No. 27 on Article 12 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9 (1999), par 5.

²⁹ UN Human Rights Committee, *General Comment No. 27 on Article 12 (Freedom of Movement)*, CCPR/C/21/Rev.1/Add.9 (1999), par 7.

³⁰ See also William Seitz: *Free Movement and Affordable Housing – Public Preferences for Reform in Uzbekistan*, World Bank Group: Policy Research and Working Paper, January 2020, pp. 20-22.

within the meaning of Article 12 of the ICCPR. It is hence recommended for the reform project to ensure that persons renting property are not prevented to exercising their right to freedom of movement.

61. At the same time, the reforms relating to temporary registration, while welcome in principle, still retain some restrictive elements. Many countries in the OSCE region and beyond have similar registration systems allowing for one permanent place of residence and other more temporary places of residence. However, if an individual is only staying somewhere for a limited amount of time, it would appear unduly burdensome for the individual, the relevant homeowner and the administrative authorities to require him/her to register, especially if this is only for a short period of several weeks.³¹ If a person residing in a certain location temporarily wishes to receive public services, then he/she will in any case need to register to obtain these services. If, on the other hand, the respective person does not wish to receive such services, then there is no reason why he/she should be obliged to register in a certain location. Any measures requiring all individuals to register temporarily, regardless of the circumstances, would not be in line with the service-based approach of registration systems existing in most democratic countries in the OSCE region and beyond (as opposed to the control-based *propiska* system that the decision-makers in Uzbekistan wish to replace). **In any event, the obligation to register on a temporary basis should only become necessary after an extended period of time and should be expanded beyond the current 15 days to one or several months. Violations of such provisions should only be treated as minor administrative offences if at all.**
62. Similar considerations apply to the restriction of temporary registration for a period of five years. The important matter here is that, in line with what is said in Article 12 of the ICCPR, the respective person is able to choose his/her place of residence, which also encompasses his/her right to choose the place of permanent residence, and the place of temporary residence. If a person moves to another place to work there for a period of six, eight or ten years, there is no reason why he/she should not keep his/her primary place of residence in his/her place of origin, and then retain a secondary, or temporary place of residence in the place where he/she is employed, if he/she so desires. **It is thus recommended to rethink the temporary residence limit of five years.**

RECOMMENDATION F.

To ease restrictions on temporary residence in order to ensure such registration only becomes necessary after an extended period of time and is possible for longer than five years

63. Moreover, it is not clear why it is the homeowner who should request to temporarily register the individual who is leasing the property, unless this is meant to simplify things and unburden the tenant. If this is a translation error, and it is in fact the tenant requesting registration, with an additional written proof of consent by the homeowner, then this is unproblematic and similar to what has become standard practice in other countries.

³¹ See OSCE/ODIHR *Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan*, 6 October 2016, par 63.

4. IMPACT ASSESSMENT AND PARTICIPATORY APPROACH TO LAWMAKING

64. The relevant decision-makers have prepared an information paper and table, which list a number of reasons justifying the contemplated reform, but do not mention the research and impact assessment on which these findings are based. Given the potential impact of the draft Law and draft Resolution on the process of temporary and permanent residence registration, and related matters, an in-depth regulatory impact assessment is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the best efficient and effective regulatory option (including the “no regulation” option).³² **In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review, including by analysing the gender impact of the proposed changes, to identify existing problems, and adapt proposed solutions accordingly.**³³
65. It is welcome that the information paper and table have been posted online for comments, as it is always preferable to receive feedback from a wide array of persons at an early stage. Such approach is also in line with OSCE commitments, which require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1).³⁴ It is hoped that more pointed discussions have also been initiated with key stakeholders in the process of registering permanent and temporary residence of individuals, namely the relevant public administration bodies, notaries, as well as organs responsible for distributing social housing as well as local communities, which would also include persons who do not have access to the Internet.
66. **Once a draft Law and draft Resolution have been prepared, consultations will, in order to be effective, need to continue in an inclusive manner and will need to provide sufficient time to prepare and submit recommendations on draft legislation; it is suggested for to provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.**³⁵
67. **According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations should take place over an extended period of time, taking into account, inter alia, the nature, complexity and size of the proposed draft act and supporting data/information.**³⁶ **To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,**³⁷ **meaning not only when draft legislation is being prepared by relevant ministries but also when it is discussed before Parliament (e.g. through the organization of public hearings).** Public consultations constitute a means of open and democratic governance; they lead to higher transparency

³² See e.g., OSCE/ODIHR, Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan, pars 61-62.

³³ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

³⁵ See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

³⁶ See e.g., OSCE/ODIHR, Opinion on the Draft Law of Ukraine “On Public Consultations”, 1 September 2016, pars 40-41, <<http://www.legislationline.org/documents/id/20027>>.

³⁷ See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <<http://www.osce.org/odihr/119633>>.

³⁸ *ibid.*

and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.³⁸ Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of laws once adopted.

68. **In light of the above, the relevant decision-makers and legal drafters in Uzbekistan are therefore encouraged to ensure that the draft Law and draft Resolution will be subject to further inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.**

[END OF TEXT]