

Labour migration from Tajikistan.

The Report is presented according to UPR procedure to the October (2011) session of the UN Council on Human Rights.

Summary: The report hereto appeals to the articles 23, 33, 65, 68, 71 of the International Convention on the Rights of All Migrant Workers and Members of Their Families, as well as to articles № 97 and 143 of ILO Conventions. The report notes that despite the efforts of the Government labor migrants from Tajikistan remain one of the most vulnerable categories of persons in countries of destination in terms of human rights, migrant workers do not receive adequate support from government agencies at various stages of labor migration, and often become victims of labor exploitation. The report highlights the existing problems in the management of labor migration from Tajikistan and interagency cooperation.

Key words: regulation of labor migration processes, interagency cooperation, migrant workers access to information, human trafficking, labour exploitation.

1. Regulation of labor migration from Tajikistan.

A) Migration structures reorganization. *The protracted restructuring of migration structures and the transfer of authority from one agency to another makes it difficult to regulate labor migration from Tajikistan.* Up to 2007 the Ministry of Labour and Social Welfare (Labor) of the Republic of Tajikistan (RT) was dealing with the regulatory issues of labor migration from Tajikistan. To this end the State Migration Service - a structural subdivision thereof was established. In 2007, the authority to regulate labor migration have been transferred to the Ministry of Interior (MOI) of RT where already a new subdivision i.e. Migration Service within the Ministry of Internal Affairs of Tajikistan has been created. *Back in 2007 in Tajikistan the transition of authority from the Ministry of Labor to the Ministry of Internal Affairs of Tajikistan had not been implemented at a sufficient level of coordination and cooperation of ministries whereby the process of devolution was sharp and did not provide any mechanisms for the transitional administration.* In the future it negatively impacted on the regulation of labor migration from Tajikistan, for example, in 2007 the system data collection on migration and its assessing deteriorated as well as many components of the state program for foreign labor migration from Tajikistan for 2006-2010 (Program 2006 - 2010) were not implemented. “For the purpose of establishing the integrated system of labor migration management, effective use of manpower abroad and protecting the rights and freedoms of migrant workers”¹ in January 2011 there was a secondary transition of authority on labor migration. Based on the decree of the President the Migration Service under the Government of Tajikistan (GRT MS) was established which based on previously existing structures on migration of the Ministry of Internal Affairs and Ministry of Labor. *This time as well the transition of authority did not provide any measures for the transitional administration.*

B) State programs for regulation of labour migration from Tajikistan. In 2006 Tajikistan adopted a five-year program for foreign labor migration of Tajik citizens abroad for the years of 2006- 2010. The Program for 2006-2010 had been under development when the Ministry of Labor has dealt with the external labor migration therefore the Ministry of Labour was designated as the main executor of the Program of 2006-2010. After hand over of the authorities to handle foreign labor migration to the MIA of RT no appropriate changes and additions have been made to this document. As a result, de jure, for 5 years the Ministry of Labor remained as the responsible authority for implementing the state policy on labor migration, although it no longer had full powers as such. After completion of the Program, in mid-2010 works have been commenced on development of a draft National Strategy on migration of Tajik citizens abroad for the years of 2011-2015 (hereinafter the Strategy). As at the moment of producing this report the new draft Strategy did not contain sufficient preconditions for the return and employment of migrant workers within the country. The policy of the country of migrant workers origin aimed at promoting labor migration contradicts the basic standards set forth in the Convention on the Rights of All Migrant Workers and Members of Their Families and Republic of Tajikistan is a member of this Convention. The Draft Strategy is also not sufficiently correlated with existing and / or developed sectoral programs and policies that affect the processes of labor migration from Tajikistan, in particular the Comprehensive Program to

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Combat Human Trafficking in the Republic of Tajikistan for the years 2011-2013 and the National Program against HIV / AIDS HIV / AIDS for the years 2011 - 2015. The strategy does not provide for measures to reduce the negative consequences of migration, although in recent years the negative impact of labor migration in Tajikistan for the remaining families of migrant workers has become perceptible.²

C) Labour migration legislation. For regulation of labor migration processes Tajikistan has the necessary policy papers and legislative documents. However, these documents are hardly being realized because of the lack of targeted funding from the Government of the country. It is notably the lack of sufficient funding has been one of the major problems in implementing the Program of 2006-2010 making the document a declaration of intent.

In 2007 the Ministry of Internal Affairs and Ministry of Health of Tajikistan issued a joint order on the procedure of medical examination of Tajik citizens traveling to work outside the country.² Following the Joint Order of the Ministry of Internal Affairs and the Ministry of Health so called Clinical Expert Commission (CEC) have been established in the country on the national and regional levels. CEC was designed to provide citizens of Tajikistan traveling to work outside the country a unified medical certificate about the state of their health. Initially the activities of the CEC has caused some optimism among migrant workers and national employment agencies dealing with employment of citizens of the Republic of Tajikistan abroad. After all a medical examination at home would greatly simplify the process of employment of migrants, and is most beneficial to migrant workers in financial terms.³ *However no funding had been allocated from the state budget for the operation of CEC.* As a result, CEC were not equipped with appropriate medical equipment, there was no uniform pricing of medical services for CEC certification (i.e. the cost of medical examination and health care services differ in different areas and regions of the country) and the medical certificate issued by the CEC use to be printed on plain paper, which led to distrust among foreign companies as such certificates could be easily tampered with. CEC functioning also hampered by the lack of clear arrangements with the Russian Federation on implementation of the agreement “About Employment and Protection of the rights of citizens of the Republic of Tajikistan in the Russian Federation and citizens of the Russian Federation in the Republic of Tajikistan” signed in 2004.⁴

In 2009 a joint Order of the Ministry of Internal Affairs and the Ministry of Education of the Republic of Tajikistan was issued “About training of Tajik migrant workers in vocational schools”. This order was aimed at improving professional skills, legal awareness and language skills of migrant workers. In accordance with paragraph 1 of this order 1-3 month short-term courses for migrant workers should be organized in all vocational- technical colleges (VTC) to provide migrant workers with skills and occupations required in the labor market of destination countries. For the actual implementation of this order additional funding was necessary first of all to update the facilities and technical base of all existing VTC of the RT. The existing infrastructure and facilities of vocational colleges is inadequate / or obsolete which does not allow migrant workers to obtain skills that meet the standards of the countries of destination. Therefore short-term courses for migrant workers established on the basis of vocational schools are still not popular among the target groups, as evidenced by the statistics - in 2008 only 5,808 migrants graduated from such courses and in 2009 - 8,379 migrant workers.⁵

2. Labour Migrants access to information

The results of monitoring to identify awareness of migrant workers from Tajikistan indicate that most citizens *are not sufficiently aware of their rights*. This is mainly due to “lack of sufficient and accessible source of information on migration, lack of trust in law enforcement and other government agencies, as well as the quality of services provided by the organizations involved in raising awareness on the issues of labor migration”⁶. Although Tajikistan has undertaken international obligations to provide labour migrants with necessary information at all stages of labour migration⁷ and national legislation defines the powers of the competent state authorities to organize information and advice to migrant workers⁸ but in the country there is no an adequate and free public service rendering assistance to migrant workers, which could provide workers with accurate information.

In Tajikistan information work among migrant workers is being carried out mainly by non-governmental organizations on the account of donor funds. But the work of NGOs is limited in the extent of information and is not always consistent since it depends on grants from international organizations. As at the moment of

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producing this report there were 6 Centers Assisting Labor migrants (CAL) functioning in Tajikistan established on the basis of NGOs supported by international organizations. The representatives of such non-governmental organizations noted that the competent state authorities fully imposed the duty to inform the migrants onto NGOs at that they are not interested in the quality of services provided to migrant workers or the level of informants’ professional qualification.

2. Statistics on labor migration.

Record keeping on migration processes / data is a topical issue in the field of labor migration from Tajikistan. The existing problems in the collection and sharing of migration data at the state level contribute to such factors as:

- lack of skilled personnel and low efficiency of data processing;
- lack of a common hardware platform;
- lack of a common computerized system for storing, collecting and sharing data.

Until 2006 the Ministry of Labor of the Republic of Tajikistan used to collect and collate data on labor migration manually and kept them on paper. Later, with the support of several international organizations an automated data processing system of migration cards had been developed enabling producing of statistical reports.¹⁰ After the transfer of authority on labor migration to the MS of MIA of RT collection of migration data was temporarily suspended by the responsible migration authority¹¹ mainly due to lack of proper interagency cooperation. In 2008 the Resolution of the Government of Tajikistan was adopted “About record keeping of external migration of Tajik citizens and their returning from foreign countries” and collecting of statistical data has been renewed. Migration Service of Tajik Ministry of Internal Affairs was responsible for the record-keeping on external migration.

Collection and recording of statistical information on labor migration by migration cards that is practiced in Tajikistan could be one of the most reliable source of information provided, if all checkpoints of state borders (both ground and air transport) would be equipped with appropriate modern technology, and highly qualified trained staff.¹³ At the moment the required technical equipment is available only in the airport checkpoints. *Accordingly, the flow of migrants leaving from the country by land transportation means is not actually recorded by such migration cards.* In addition, immigration cards are filled only upon leaving the country, thus a migrant worker may leave the country for several times during a year and fill in a migration card each time that subsequently leads to inaccurate statistical data collected in this way.

Extensive household survey (conducted earlier by the Ministry of Labour of the Republic of Tajikistan and now by MS within MIA of RT) is not an efficient way of collecting statistical data as it does not provide accurate information. In practice statistical forms are filled in by the staff of local executive authorities (jamoats) which may lead to underreporting. Moreover, such practices do not meet international standards of statistical accounting of population movement, since the survey methodology is unclear.

Migration data exchange between competent authorities is not systematic. Duties and responsibilities redistribution in the field of labor migration did not also promote capacity building in data collection and record-keeping on migration statistics.

3. Activities of private employment agencies on employment.

Private Employment Agencies (PEA) of Tajikistan often intentionally or unintentionally contribute for the migrants being subjected to labor exploitation. In practice, there are many cases when PEA knowingly provided migrant workers with false, incomplete or misleading information about the employer, the nature of work and wages.¹⁶ Although in Tajikistan there is the legal framework for regulation of PEA activities however, it is imperfect and can not efficiently regulate PEA activities and protect the interests of migrant workers. Existing legislation does not define the limits of PEA¹⁷ responsibilities (for example, in cases where migrant workers on the fault of PEA fall into labour exploitation) and do not define the rights and obligations of migrants in relation to the PEA.¹⁸ The legislation also does not provide special procedures for filing complaints in cases related to employment of citizens abroad. Complaints of migrant workers are

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considered in a general procedure¹⁹, but it is not a sufficiently effective way. Due to the lack of professional skills on human trafficking, law enforcement officials do not always recognize elements of human trafficking in the complaints of such victims caused by activities of PEA, so they usually redirect such requests to the courts for trial in a civil law court. There is also a problem when the law enforcement officials can not gather convincing evidentiary basis for such categories of cases.

Cases illustrating legal investigation of the cases of complaints of migrant workers in respect of PEA and intermediaries engaged in illegal activities on employment.

The criminal case against the director of LLC “Dastoni zarrin” In 2004 a group of migrant workers appealed to the Office of Internal Affairs (OIA) of Sughd region claiming to take measures against citizen Boimurodov A., by whose fault they fell into labor exploitation. OIA of Sughd region instituted criminal proceedings but in due to coming into effect the amnesty the **criminal case was dismissed**. Migrant workers appealed to the court in Khujand in a civil process manner with a claim for recovery of material and moral damages from the Boimurodov A, but until the procedure for taking the claim for consideration by the court was finalized some of the plaintiffs went back to work to Russia therefore due to lack of plaintiffs' **the claim was left without consideration**. In September 2007 OIA of Sughd region reinstated a criminal case against Boimurodov S. the citizen of Tajikistan, charging him as per Art. 247, Part 4., subsection "b" (Fraud), Art. 259, part 2, section "b" (illegal business) and Art. 132, Part 3, subsection "b" (Recruiting people for exploitation) of the Criminal Code. In 2008 investigations of this criminal case was completed. With regard to the case 102 migrant workers were found to be the victims. In July 2008 the court of Zafarabad district of Soghd region **made a determination to directing of the criminal case for additional investigation to the prosecutor office of Sughd region**. Only in May 2009 B. Gafurov district court of Sughd region awarded a sentence to Boimurodov S. the verdict was - 20 years of prison. The convict has filed an appeal.

The criminal case against the head of PEA “Vostok-Pharm”.

In February 2008 Tabarov S. saw on local television commercials of the PEA “Vostok Farm,” and turned to them for employment. A little later, Tabarov S. and 33 other people were sent by this PEA to work in Rostov - na - Donu of Russian Federation. Upon arrival to Russia it was revealed that the representatives of “Vostok Pharm” misled migrant workers about the nature of the work and pay for labor. A part of the migrant workers had decided to refuse to work. However, representatives of the “Vostok Pharm” and the employer took away migrant workers’ passports and stated that each of them has to work out and recover the cost of air travel, meals, accommodation, migration registration fees and issued work permits. Only after the repayment of these debts migrant workers could leave the employer and to do self-employment. Migrants had to live in abandoned refrigerator containers and cargo containers, they gave them little food and water and forced to work 10-12 hours a day without pay for 85 days. When migrant workers have once again refused to work under these conditions, the employer and the representative of “Vostok Pharm” threatened them with deportation. Labor migrants returned to Tajikistan in late spring 2008 with the help of the International Organization for Migration. After returning to Tajikistan Tabarov S A appealed to the law enforcement authorities. The Prosecutor's Office instituted criminal proceedings against the head of PEA “Vostok Pharm” under Art. 130.1 of Criminal Code envisaging responsibility for human trafficking. However, in March 2009 Tabarov S. received a letter from the district prosecutor's office of Firdausi district of Dushanbe, stating that the criminal case was dismissed for “lack of evidence”.

PEA "TajikAviatur. In the February issue of the newspaper “Nigoh” (№ 49 (220) dd. 23.02.2011) an article was published about another labour group of migrants (about 200 persons) who have become the victims of forced labor by the construction company “VostSibstroy” of Irkutsk Region of Russian Federation. PEA “Tajikaviatur” dealt with employment of migrant workers. This employment agency has provided migrant workers inaccurate and incomplete information about the conditions of employment and the work. And after the arrival of migrant workers to the country of destination it had not fulfilled its obligations before them. At the time of producing this report we were aware that the former Migration Service of Ministry of Internal Affairs of RT filed a formal appeal to the Federal Migration Service of

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Russian Federation concerning this case and requesting for their assistance in resolving the this situation. Information about instituting a criminal investigation on this fact is not available.

Recommendations:

1. Take actions to improve interagency coordination on labor migration issues.
2. In the programs for the development of the country, as well as in the sectoral program on labor migration to provide measures for entrepreneurial development, in particular to create an enabling environment, including tax, for small and medium-sized businesses.
3. Establish mechanisms for implementation of migration legislation norms and pursuing this aim to provide competent authorities with the necessary financial and other resources.
4. Create a competent, public support service to migrant workers on the pre-departure orientation of migrant workers.
5. Adopt a separate law regulating the activities of employment agencies that would meet international standards set by the UN and ILO Conventions.
6. Thoroughly investigate and prosecute crimes related to labor exploitation. And in relation to this to cooperate with Russia in investigating fraud employers and bring them to justice, including the promotion of participation in this process migrants already returned home
7. Improve human resource capacity of the judiciary, law enforcement bodies, labor inspections, Migration Service under the Government of RT on combating labor exploitation and processing of complaints and allegations related to human trafficking for labor exploitation.
8. Improve the system of collecting and recording statistical data on labor migration.

¹ Decree of the President of RT “On the Migration Service under the Government of the Republic of Tajikistan” dd. 21.01.2011

² See: Joint Order of the Ministry of Health dd. 14.09.2007 № 461 and MIA dd. 18.10.2007 № 598.

³ From interviews with staff of Information and Resource Center for migrant workers in the city of Khujand, September 2010

⁴ Creating CEC is provided by art. 10 of the “Agreement on Employment and Protection of the rights of citizens of the Republic of Tajikistan in the Russian Federation and citizens of the Russian Federation in the Republic of Tajikistan” signed in 2004

⁵ Interview with the Deputy Head of the Agency for employment, social protection and migration of the Ministry of Labour of RT, A. Babaev, 2010.

⁶ “Migrant workers’ awareness on their rights and their access to information” Results of monitoring of the Centre for Human Rights conducted in 2007, 2008, 2009

⁷ Art. 33 International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 2 of ILO Convention № 97

⁸ The concept labour migration of Tajik citizens abroad adopted in 2001

⁹ Interview with the information and resource center for migrant workers, Khujand, December 2010

¹⁰ See: Data exchange “What to begin with?” IOM. Vienna, 2007 - p. 127

¹¹ Roundtable discussion on the collection and exchange of statistical data on labor migration conducted by IOM Mission in Tajikistan in 2008

¹² According to the Resolution of the Government of the RT "About external migration of Tajik citizens and returning from abroad, citizens of Tajikistan traveling outside the country must complete a migration card, which contains information about their destination country, purpose of such travel, their education and qualifications of migrants.

¹³ Interview with P. Hakimov, a national expert of the ILO project in Tajikistan, October 2010

¹⁴ Interview with P. Khakimov, a national expert of the ILO project in Tajikistan, October 2010

¹⁵ See the research “Exchange of migration data in the RT: analysis of legislation and situation review” Human Rights Centre, 2008

¹⁶ See the results of an investigation carried out by Human Rights Watch “Exploitation of migrant workers in the Russian construction sector”, 2009

¹⁷ PEA activities in Tajikistan is mainly regulated by the Law “About Migration” (1999), the Law “About licensing of certain types of activities” (2004) and “Regulations on the peculiarities of the licensing of certain types of activities”(2007).

¹⁸ See the results of a study by IOM and ILO, “Labour migration and the establishment of private employment agencies in Tajikistan”, 2009

¹⁹ Considering the case in the general procedure means that if the actions of the guilty party there is an offense under the Criminal Code of Tajikistan, the application is submitted to law enforcement agencies, i.e. the police or prosecutors. If the offense is not, the case is resolved in civil proceedings by filing a claim in court.