

## **Report on the monitoring of consular services provided by diplomatic missions and consular agencies of the Kyrgyz Republic in the Russian Federation and the Republic of Kazakhstan. A situational analysis of the rights of labour migrants working in the Russian Federation and the Republic of Kazakhstan**

The report has been prepared by the Human Rights Movement: Bir Duino Kyrgyzstan (Bishkek) and the Centre of Support to International Protection (Osh), partners in the External Migrants sub-group of the Civil Partnership Platform “Central Asia on the Move”, bringing together 25 non-governmental organizations working for the protection of the rights of labor migrants from Kyrgyzstan and Tajikistan in the Russian Federation and the Republic of Kazakhstan. The project is funded by the Danish Church Aid and the Dutch Interchurch Organization for Development and Cooperation.

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### **Introduction**

In Kyrgyzstan, the transition to the market economy entailed changes in all spheres of life. There was a sharp decline in production, the number of jobs reduced, particularly in rural areas the level of poverty increased. The loss of ability to work and earn income inside the country contributed to the growth of external and internal migration.

In 2012, the inflow of remittances from migrants working in Russia was equal to almost a third of the KR GDP<sup>1</sup>. Labour migration constrains the decline of the living standard and the spread of poverty. In addition, the outflow of the able-to-work population mitigates the unemployment situation in the country. At the same time significant amounts of money come from labour migrants working abroad, which for many families is the main and sometimes the only source of livelihood. Funds received from labour migrants are used to pay for medical services, education, the purchase of goods and services, the acquisition or construction of real estate, such economy sectors as clothes manufacturing, trade, agriculture, etc. are being developed.

In this regard, there is a need to strengthen public policy aimed at addressing the problems associated with the creation of conditions for labour migrants and the improvement of conditions

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<sup>1</sup>According to the data of the World Bank, the results of 2011 showed that Kyrgyzstan was among the three leading countries of migrants' remittance percentage of the country's GDP. The list was headed by Tajikistan, whose remittances are equal to 47% of the GDP followed by Liberia (31%) and Kyrgyzstan with an index of 29% of the GDP. Then in a descending order followed by Lesotho (27%), Moldova (23%), Nepal (22%) and Samoa (21% of the GDP). Available at the website: <http://rus.kg/news/vlast/9045-ak-zhol-v-rossiyu.html>

of their stay and their rights respect in host countries. With this goal the study was initiated aimed at identifying the problems and obstacles faced by the citizens of the Kyrgyz Republic in host countries and making recommendations to address them.

### **Monitoring objectives**

Monitoring the rights of labour migrants was conducted to gather information about the labor migration situation from the representatives of state authorities of the Russian Federation, the Republic of Kazakhstan, representatives of migration services of these countries, Institutions of Ombudsman, Kyrgyz public and non-governmental organizations, and labour migrants.

Monitoring of the consular agencies of the Kyrgyz Republic is held to gather information about the level of quality and accessibility of services for the citizens of Kyrgyzstan.

### **Monitoring tasks**

To conduct interviews with representatives of state bodies in the sphere of labour migration in Russia and Kazakhstan, Ombudsman Institutions;

- To monitor the consular agencies of the Kyrgyz Republic in host countries;
- To conduct interviews with representatives of NGOs, public foundations in the Russian Federation and the Republic of Kazakhstan;
- To conduct a survey of health care workers and labour migrants having applied to the facilities;
- To collect the stories of labour migrants (case studies);
- To develop recommendations and prepare a report based on the study results.

The main method of this research is in-depth interviews of target group representatives about their vision of the labor migration situation in the Russian Federation and the Republic of Kazakhstan. A separate questionnaire was prepared for each target group to have structured interviews.

### **General conclusions and recommendations**

#### *Settlement of the residence status*

The main problem of labour migrants is the settlement of the residence status and obtaining work permits in host countries. Many labour migrants do not have official authorization to work so they work in violation of the laws of host countries. This entails infringement of the rights of migrants in the employment sphere and restricts their access to standard social, health care and pension services.

In the Russian Federation, labour migrants from Kyrgyzstan obtain permits through intermediary firms in most cases. This significantly increases the cost of legalization and does not guarantee the authenticity of documents. Looking for an opportunity to legalize themselves KR migrants often become victims of semi-criminal structures, including immigrants from the KR selling forged permits. In order to be officially legalized a migrant

must have at least 30,000 roubles (about \$ 1,000) when arriving in to Moscow. Most migrants do not have such funds and automatically fall into the category of illegal migrants with all the ensuing consequences.

It should be noted that in Kazakhstan as opposed to the Russian Federation, virtually there are no firms offering the services of registration, residence permits, work permits, etc.

### *Labour rights*

The most common violation of the labor migrants rights is a job without a contract and as a consequence non-payment of salaries, non-payment for overtime hours, setting salary rate lower than local workers, unjustified dismissal, illegal deprivation of documents, failure to comply with labour conditions and safety. In the Republic of Kazakhstan the employment of children of labour migrants takes place, especially in agriculture. Also, there is confinement of labour migrants, including the forced confinement of children of labour migrants as employers' hostages. Kyrgyz citizens in host countries may also face labor and sexual exploitation and slavery.

The absence of an official work permit and employment contract prevents migrants from seeking protection of their violated rights. Human rights organizations providing assistance to migrants encounter difficulties in proving employment relationship in practice, so in most cases they try to solve the problem at the pre-trial stage or out of court.

Moreover the rights of migrants are violated in terms of safety, and the sites where migrants work, unfortunately, are out of sight of labor inspections, which gives employers an additional opportunity to ignore the labor laws of host countries.

### *Access to health care services*

Access of labour migrants with unsettled status and their family members to health services is limited to emergency assistance provided to all foreigners without exception. Elective treatment, observation of pregnant women and women having given birth, perinatal care of migrants' children in public health facilities are possible only in case of availability of health insurances and the availability of a certain residence status. At the same time, many migrants for various reasons do not want to buy insurance, although the Russian Federation has appropriate conditions for that. Migrants have an access to private medical centers, but in most cases the prices are not affordable.

Most migrants do not have enough knowledge about healthy lifestyles, reproductive health, sexually transmitted infections. As a result, migrants often regulate birth mainly through abortion. Many unmarried women are afraid of condemnation from relatives, so in case of pregnancy outside of marriage they try to have an abortion, there are also cases of child abandonment and sale of children. Frequent abortions, malnutrition and cold climate are conducive to the development of complications and disorders of reproductive health of female

migrants. In host countries cases of HIV, STI, and TB are detected among the citizens of Kyrgyzstan annually.

Migrant women are at increased risk of gender-based violence, while at the same time they are deprived of the opportunity to receive timely professional legal assistance and they are not informed about Russian and Kazakh crisis centers where they could receive various types of assistance.

#### *Access to education*

In the Russian Federation the children of labour migrants who have all permits, in most cases, have access to schools. The factors reducing the access of children to schools of the Russian Federation are unavailability of vaccination certificates and ignorance of the Russian language.

In the Republic of Kazakhstan the national legislation does not establish direct bans against the access to pre-school institutions and secondary schools for the children of temporarily staying labour migrants. As the monitoring shows labour migrants often involve their children in work, as a result the attendance and performance of children decreases.

The access of migrants' children to pre-school institutions in host countries is much lower, but this is largely due to the shortage of room in kindergartens, including for the citizens of host countries.

#### *Pensions*

The issue of pensions is a major problem, the vast majority of citizens of the Kyrgyz Republic staying and working in Russia and Kazakhstan have no access to the pension insurance system in host countries, but at the same time they have access to it in the KR. This problem becomes more acute due to the age of migrants, some of whom approach retirement age and plan to return to the KR.

#### *Living conditions*

In large cities of Russia, such as Moscow, 5-6 migrants live in the same room. Such high density of living is often accompanied by increased tension that is often transferred into domestic conflicts sometimes with a fatal outcome.

In the Republic of Kazakhstan living conditions are more favorable; there are fewer domestic conflicts among migrants.

#### *Crime, legal proceedings and access to legal aid*

In the Russian Federation

According to the official data of the Interior Ministry of the Russian Federation the number of crimes committed by migrants in the Russian Federation in 2011, 2012 years remained stable at around 2% of the total crime, but they have a high proportion of grave crimes. 70% of Kyrgyz prisoners are serving their sentences for grave and very grave crimes.

The crimes committed by migrants in particular with regard to the sexual inviolability of women and children, as well as crimes against law enforcement officers receive considerable attention and provoke a lot of discussion in the media. Often, after the high-profile crimes law enforcement agencies carry out big-scale campaigns to identify illegal immigrants. As a rule, such actions involve a number of violations of the rights of migrants, including those residing in the Russian Federation in accordance with the law.

According to the Interior Ministry of the Russian Federation there is an increase in crimes committed against migrants from 11.4 thousand crimes in 2011 to 12.4 thousand in 2012. However, this information is rarely discussed in the media, and is only available at the level of experts.

The level of awareness of citizens of the Kyrgyz Republic about the legislation of the Russian Federation is extremely low; the majority of respondents do not have a clue about where and to which organization to apply regarding their rights violation or obtaining legal advice.

In the Republic of Kazakhstan

Labour migrants in the Republic of Kazakhstan have the right to apply to law enforcement and judiciary institutions the same as the citizens of the republic. However, in practice, most of the migrants do not apply to these agencies. The main reason is the fear of bearing administrative responsibility and deportation, since most of them carry out work activity in circumvention of the law.

In the surveyed cities of Astana and Almaty, there is a number of human rights organizations actively working with migrants and providing them with legal and social assistance. The most widespread reason for seeking assistance in such organizations by migrants is non-payment of wages. For all other issues, such as long working hours, safety violations, lack of medical treatment, withholding of passports or violence, labour migrants do not apply.

Human rights organizations conduct extra-judicial or pre-trial proceedings with an employer, and try to convince or to intimidate him by applying to the police or the media. According to human rights activists application to the court does not provide an opportunity to demand owed wages, since the measure of responsibility for the employer is just a fine.

#### *Relations with the local population and the problems of integration*

In the Russian Federation, local attitudes towards migrants are mainly formed on the basis of publications in the media, which often present only negative information about migrants.

An important factor in the formation of negative attitudes towards migrants is that by agreeing to lower pay and poorer working conditions they thereby worsen the situation of local workers. In addition, migrants do not participate in collective forms of protection of workers' rights and thereby contribute to the growth of arbitrariness of employers.

Kyrgyz citizens working in the Republic of Kazakhstan do not experience serious problems in communicating with the local population. In many ways it is determined by the similarity of cultures, languages and traditions of the two nations. At the same time, at the household level, there are cases of arrogant and neglectful attitude towards migrants.

### **Work of consular offices**

Embassy of the Kyrgyz Republic and consular offices are forced to change the forms and methods of work in accordance with the new requirements in the field of migration. This is confirmed by the structural innovations - expanding the institution of honorary consuls, employing additional staff specializing in providing legal assistance, opening an Internet reception, reconstruction of the building and much more. At the same time it must be recognized that purely diplomatic efforts are quite insufficient to solve the problems of migrants.

Monitoring showed that in the Russian Federation there is hidden competition and a split among the associations of compatriots of the Kyrgyz Republic. At the same time, most of them provide the same range of services to labour migrants. Coordination of their activities by diplomatic missions could promote consolidation of the compatriots associations' activities providing a single standardized package of services in separate spheres of activity.

There is practically no connection between non-governmental organizations, trade unions and associations of compatriots, although some of their activities are the same. In this regard, the Embassy could play a key role in establishing contacts and close cooperation between them.

There is a pronounced gender imbalance in the diplomatic missions and consular offices of the Kyrgyz Republic in the Russian Federation and the Republic of Kazakhstan. This is especially true regarding lawyers, as women who have suffered from various forms of violence, as a rule, do not seek advice from a male lawyer.

In addition, the Embassy of the Kyrgyz Republic in the Russian Federation and the Republic of Kazakhstan is in need of the following:

- Video recording equipment along the perimeter of the Embassy and inside the building, including the building of the consular department.
- Equipment for the electronic line;
- There is a shortage of transport to ensure the work of involved lawyers;
- Employment of an additional staff member, a migration attaché, or at least training the existing staff on labour laws.

The monitoring showed that migrants applying to consular agencies are generally satisfied with the quality and accessibility of services. Most of those who applied for the solution of a problem received professional assistance.

**Recommendations:**

Taking into account the large scale of external labor migration and its significant impact on the economic and social stability in the Kyrgyz Republic,  
*the Government of the Kyrgyz Republic and the authorized bodies in the area of migration should:*

- Take timely actions to effectively manage migration processes. One of the measures should be to establish a separate and stably operating administrative body in the Kyrgyz Republic dealing with issues of labour migration and oriented at the processes of external migration from Kyrgyzstan.
- Pay attention to pre-departure preparedness of labour migrants consisting of such components as:
  - Providing consultations to labour migrants on the issues of employment and carrying out labour activities, pension, medical insurance and health care and providing the main information about a host country.
  - Medical examination of labour migrants prior to the departure from the country to assess their risks and opportunities;
  - Creating conditions for job training.
- Take effective measures to create favourable conditions for migrants to use labour markets of other countries besides Russia and Kazakhstan, thus having certain control of external labour migration and protection of labour migrants' rights in accordance with international obligations of the Kyrgyz Republic.
- Promote the development of a competitive market to provide service abroad which is currently in Kyrgyzstan, particularly in the south, in rudimentary condition. At the same time to increase the efficiency of measures to stop the activities of firms providing intermediary services illegally.
- Initiate adoption of the KR law about private employment agencies corresponding to the international legal tools in the area of labour migration.
- Take measures to create the best environment for labour migrants' stay in host countries, particularly to strengthen the work on the extension of period of KR citizens' stay without registration in host countries.
- Consider the issue of providing affordable health care to the KR citizens in host countries. For that purpose to provide for the opening of specialized medical rooms under diplomatic missions of the Kyrgyz Republic or to sign appropriate agreements with state and private health care facilities in host countries.
- Initiate public discussion of the Government Decree #222 about effective guarantees of pension rights of the labour migrants, citizens of the KR.
- Take measures on step-by-step introduction of mandatory medical insurance into practice with the purpose of possible obtaining a standard package of medical services in host countries.
- Develop mechanisms of creating conditions for the KR citizens to acquire financially affordable health care policies in host countries.
- Prepare a labour migration situation report and submit it timely to the UN Committee on labour migrants so that it can be considered timely in 2014.

- Increase the participation of NGOs in consultative bodies of the KR.
- Take measures to improve technical equipment of diplomatic missions in the Russian Federation and the Republic of Kazakhstan.

*Recommendations in the health care sphere:*

- Set up a system of recording and statistical reporting of the incidence among labour migrants in host countries applying to health care facilities of host countries regarding the issue of obtaining the statistics of incidence of the KR citizens in order to include the data into the national reporting system and to take appropriate measures.
- Conduct awareness raising activities among the population about the need to have fluorography examination of the total population.
- Provide assistance to health care facilities in host countries with the supply of information posters, booklets and leaflets on reproductive health, STIs, HIV, safe motherhood in the Kyrgyz and Russian languages.
- Apply to international and donor organizations with the suggestion to consider the possibility of providing health care centers/public associations in host countries rendering services to labour migrants of the KR with free contraception means.

*In the area of education and science*

- Recommend studying the opportunity to prepare experts on migration.

*The Ministry of Foreign Affairs of the Kyrgyz Republic in collaboration with the KR embassies in the Russian Federation and Kazakhstan to:*

- Develop a long-term comprehensive plan on the work with labour migrants.
- Continue the practice of expanding diplomatic missions using the institutions of honorary consuls.
- Pay attention to the opportunity to use the resources of Kyrgyz Diaspora especially in the Russian Federation. The KR embassy should become a body consolidating associations of compatriots and coordinating their activities.

*Diplomatic services of the Kyrgyz Republic in countries hosting the KR citizens should:*

- Strengthen the work on interaction with local authorities on the issues of protection of rights and legal interests of the Kyrgyz Republic citizens, monitoring and timely response to the cases of indicated violations.
- Focus attention on the effective provision of rights under the legislation of host countries and international agreements, conduct monitoring of criminal cases and court verdicts for the citizens of the Kyrgyz Republic to check the effective representation of their rights and legal interests in the authorized state bodies including penitentiary institutions and judiciary bodies.
- Introduce into the practice of consular services the monitoring of court verdicts on the labour migrants' cases posted on the sites of regional and higher courts.
- Study the reasons of gender imbalance of the staff in order to develop a system of measures to introduce principles of gender equality into the staff policy and increase

representation of women in diplomatic missions and consular agencies including lawyers.

- Improve the media cooperation in host countries in order to reduce the stigmatization of labour migrants and to promote tolerant attitude of the local population to labour migrants.

Recommend ratifying international conventions about the protection of labour migrants' and their family members' rights by host countries and to incorporate the international norms into the national legislation:

*The government of the Russian Federation:*

- Activate joining of the Russian Federation to international agreements about the rights of labour migrants: UN International Convention about the protection of all migrants' and their family members' rights as of 1990; Convention of ILO #97 (revised) about labour migrants as of 1949; Convention of ILO #143 about labour migrants (additional provisions), 1975; European Convention about the legal rights of labour migrants, 1977.

*The government of the republic of Kazakhstan:*

- Ratify ILO Convention #97 about migrant workers (revised in 1949) and Convention #143 about the abuse in the area of migration and providing migrant workers with equal opportunities and treatment.