

## Policy Brief

### **Analysis of Violations of Migrant Workers' Rights in the Russian Federation and the Kyrgyz Republic**

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#### **Labor Rights Violations in the Russian Federation**

The processes of globalization, various changes in political, economic, social and cultural life of the CIS countries have affected the migration flows that occurred immediately after the collapse of the Soviet Union. Suffering from needs and unemployment, people from the former Soviet republics were left to the mercy of fate. Lately, Russia has held a special attraction for migrant workers. Above all, this is due to positive trends in stable development of Russian economy and relatively high living standards. These factors, together with favorable conditions for business, attract thousands of migrant workers from other countries to the Russian Federation every year.

Moreover, the migration flows are increasing every year. Hundreds of thousands of people from Central Asian republics, receiving no support from the state during this difficult period, keep leaving their homeland in search of livelihood. The true number of visitors to Russia is hard to count, since there is a visa-free regime between the countries.

Admittedly, Russia itself has been unable to get by without foreign labor. Russian citizens are reluctant to become mini-bus drivers, plant workers and market vendors. In addition, a considerable number of companies in repair and construction industries prefer to employ illegal guest workers. If all of them were dismissed, the construction market would be paralyzed. The migrants themselves do not hide the fact that, in most cases, they are working illegally. The main reasons for that are the long periods involved in processing a large number of documents and a fairly high fee for a work permit. Many businessmen use illegal labor since they can pay lower wages to illegal migrants, who are not socially protected.

According to various estimates, more than 450 thousand citizens of the Kyrgyz republic are working abroad; more than half work in Russia, 50-80 thousand work in Kazakhstan, while the rest work in other countries. Few guest workers from the former Soviet republics in Russia can protect their rights and legitimate interests, such as free movement within the territory of the host country, registration in immigration records, obtaining work permit, legal employment registration (that is, signing a labor contract), the right to get a medical examination, and these workers appeal to the relevant authorities to protect their rights that have been violated by governmental bodies and private individuals.

This violation is largely due to the fact that most migrants are residents of rural and remote regions of Kyrgyzstan, who have poor language and legal knowledge, making them dependent not only on employers but also on the official bodies that control the legality of their stay and work. To date, according to various expert estimates, more than 10 million illegal immigrants are in Russia and the annual damage that Russia suffers because of illegal migration is about 200 billion rubles. At the same time, according to the Ministry of Finance of the Kyrgyz Republic, in 2007 migrant workers sent about 1 billion US dollars to the Republic. However, this money goes to the families of migrant workers who buy food and essential goods for living.

Despite such huge losses from illegal migration, combating it is a very difficult and expensive process. For example, the cost of the administrative deportation of an illegal migrant

is, on average, about one thousand dollars. This amount does not include the cost of wages for law enforcement officials and judges.

According to paragraph 5 of Article 34 of the Federal Law “On the legal status of foreign citizens in the Russian Federation” of 25 July 2002, foreign nationals, subject to administrative expulsion from the Russian Federation by the decision of court, must be kept in special premises of the internal affairs or security bodies, or in special institutions created in accordance with the procedure prescribed by law of a subject of the Russian Federation, awaiting administrative deportation from the Russian Federation. However, this provision is not always implemented in practice. For instance, as the migrants themselves say, most have been deported not through court decisions, but through the “decisions” of persons who exercise control over their stay in the country; this includes border and other controls, placing an appropriate stamp in a migrant worker’s passport and without detention in special premises. Deportation entails the entry restriction into the country within five years; of course, such decisions of deportation should be taken by a court. At the same time, court decisions of administrative expulsion are hard to appeal, since there have not been such practices in the past.

An analysis of legislation shows that, in the post-Soviet space, there are still restrictions for those who wish to work abroad. Major amendments have been made to Russian migration legislation, visible in the Law of the Russian Federation “On the legal status of foreign citizens in the Russian Federation” of 25 July 2002 # 115-FZ, and in the Law of the Russian Federation “On the migration registration of foreign nationals and stateless persons in the Russian Federation” of 18 July 2006 # 109-FZ.

The law enforcement procedures for all participating departments and agencies have been optimized at the legislative level. One may see a transition from prohibitory measures to socio-economic and humanitarian ones. For example, a notification procedure for immigration records was introduced. One may simply send a notification by mail to “legitimize” his/her stay in the territory of Russia. We should not forget that, earlier, all the hardships to obtain numerous permits, including work permits for foreign specialists, were assigned to employers. But were employers interested in this? Of course not. As a result, many businessmen employed migrant workers illegally, hiding them from inspection agencies, which allowed them to set their own working conditions. In other words, they fully exploited migrant workers. Currently, a migrant is free to obtain a work permit himself and choose where he would like to work. Such conditions would help a migrant worker avoid getting into bondage and choose the most suitable employer. In doing so, a migrant will have to wait for the work permit no longer than 10 days from the date of presenting all the necessary documents. However, according to the reports of migrant workers, there have been cases of delays in issuing the permits from three days to three weeks. In addition, the provisions of subparagraph 11, paragraph 8 of Article 18 of the Law of the Russian Federation “On the legal status of foreign citizens in the Russian Federation”, which requires migrant workers to provide medical certificates within 30 days after receipt of a work permit issued for a period exceeding 90 days, are not always observed. For instance, almost everywhere the agencies of the Federal Migration Service of the Russian Federation are required to provide the certificates together with the application for work permit.

Repeated examinations of the enterprises that employ guest workers, conducted by prosecutors and state labor inspections of the Russian Federation, have shown that the territorial migration agencies themselves violate the laws-- not always complying with the procedure and terms of issuing work permits to foreigners.. As for employers, they keep on hiring illegal workers, despite enormous fines.

The various violations of the migrant workers rights, and the problems they face, start at the moment of crossing state borders and occur quite frequently. In particular, the frontier posts, internal affairs and customs agencies of Kazakhstan often require those who travel by train to Russia through the Republic of Kazakhstan to show a work invitation, a certificate of the absence of a criminal record or tax debts. The lack of an international passport, in conjunction with failing to show these documents, may become a reason to detain this passenger.

Numerous violations of the migrant workers rights have occurred during work. There are no labor contracts, guest workers do not go through medical examination and are not protected socially. There are periodic violations of wages, which can be either delayed or not paid at all.

Such serious violations of migrant workers' rights include forcing them to work overtime, seven days a week, without extra payment, in terrible working conditions, with high intensity, to perform a kind of work to which a migrant did not consent, restrictions on freedom (control of movement, isolation, etc.), physical and psychological abuse, debt bondage, taking away the documents, sex exploitation (of women migrants) and others.

Nevertheless, legal residence and work in the territory of Russia is not as unclouded as it might seem at first glance. It is no secret that guest workers in Russia remain the cheapest and most powerless labor force.

Most violations are related to protection of labor, processing of employment contracts, and setting the time for work and rest.

Payment procedures have been violated very often, including non-payment of wages and violation of the timing of payments. In addition, there have been cases of paying wages that are lower than the subsistence minimum established by law. Accordingly, these facts may indirectly show that wages are usually hidden.

People cannot ask for help from the law enforcement agencies because of basic legal illiteracy and/or poor language skills. What about illegal migrant workers then?

In any case, the legal status of residence and work for migrants is a key condition or starting point for protecting their rights and freedoms. Without doubt, the most effective means of combating illegal migration, and hence the violation of the migrant workers rights, is legalization of migrants, which is now being carried out in Russia. In many ways, legal information campaigns play a great role in this.

### ***Southern Part of the Kyrgyz Republic as a Hotbed of Violations of the Rights of Migrant Workers from Neighboring Countries***

The situation of the rights of migrant workers who want to work in the Kyrgyz Republic, particularly in the Osh region, is not much better than that in Russia. Every day, from 600 to 1,300 people cross the border through the frontier post "Dostuk" of the Karasu district.<sup>1</sup> They are mostly citizens of Uzbekistan who come to work, crossing the border posts or using illegal routes. Migrants from neighboring countries are mainly employed in trade, catering services and also in the construction of individual buildings. These people usually do not have work permits, while the employers, in turn, do not have permits to use foreign labor.

Field staff meetings of the Public Foundation "Labor Migrant Assistance Center Network" with the citizens of the Kyrgyz Republic, traveling to the Republic of Uzbekistan through the frontier and customs posts, as well as with citizens of the Republic of Uzbekistan, i.e. with "pendular" migrants, have shown that more than 70 percent of the migrant workers are unaware of the Intergovernmental Agreement "On the mutual trips of citizens" of 2 July, 2000 that requires a work permit. This problem mainly affects "pendular" migrants. But there are other categories of migrants, such as Chinese citizens, who are able to receive legal advice. Most of them are registered as individual entrepreneurs or operate as a legal entity.

The most vulnerable layers of the population remain the unemployed and "pendular" migrants from neighboring countries, coming for seasonal work; they have to face the problem of late issue or refusals to issue the required work permit.

In addition, there is an imaginary problem of "registration of international passports." According to the law of the Kyrgyz Republic "On the external migration" of 17 July 2000, citizens of a foreign state, subject to a visa-free regime, may enter, leave, transit, travel and stay in the territory of the Kyrgyz Republic without a visa, provided they have a valid document

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<sup>1</sup> Analytical report by the Public Foundation "Labor Migrant Assistance Center Network", September 2008.

(passport or an alternate document). During their stay in the Kyrgyz Republic, citizens of foreign countries are exempt from the registration of international passports, if the period of their stay in the Kyrgyz Republic does not exceed 60 days (90 days for citizens of the Russian Federation and the Republic of Kazakhstan).

Migrant workers say that border and customs officials nag them, saying that foreign nationals who arrive in Kyrgyzstan for more than five working days, ostensibly must be registered at their place of residence by the Ministry of Foreign Affairs of the Kyrgyz Republic and its territorial offices, and by the Ministry of Internal Affairs of the Kyrgyz Republic and its territorial bodies, or in hotels.

Of course, there have been almost the same violations of the migrant workers rights during the process of working activities, too.

### ***Preconditions for violations of the migrant workers rights***

Violation of migrant workers' rights is, to a great extent, a consequence of illegal residence in the country and illegal labor activities, and also of corruption of officials and their failure to comply with national and international legislation. It is hard to imagine any effective measures to eradicate corruption and bribery because, as long as there is money in the country, these phenomena will remain.

Other preconditions are the socio-economic standard of living, and, at the same time, very high unemployment rates and attractive immigration population policies of other countries. Equally important are the poor language and legal skills of migrants.

### ***Recommendations***

- Improve the immigration legislation of the Kyrgyz Republic:
  1. Reduce the set of documents required to obtain permits and the time needed to consider the applications for permission.
  2. Introduce a system of computerized control over border crossings by border and “pendular” migrants.
  3. Take into account that, during periods of seasonal work, the number of “pendular” and border migrants greatly increases, so it is necessary to establish their individual quotas.
- Reduce unemployment by creating new jobs.
- Regulate the processes of attracting foreign labor.
- Cooperate with NGOs and international organizations in protecting the migrants rights.
- Take into account that the majority of migrants illegally work in the territory of the Kyrgyz Republic and the Russian Federation, which makes it necessary to legalize their stay and work, and relieving them of any responsibility.
- Strictly supervise officials of public authorities in general, and the Federal Migration Service of the Russian Federation and the State Migration and Employment Committee of Kyrgyzstan in particular.

### ***References***

1. State Program of regulation of migration processes in the Kyrgyz Republic in 2007-2010. Adopted 25 Sept, 2007
2. Law of the Kyrgyz Republic “On the external migration” of 17 July, 2000
3. Law of the Kyrgyz Republic “On internal migration” of 30 July, 2002
4. Law of the Kyrgyz Republic “On foreign labor migration” of 13 Jan., 2006
5. Law of the Russian Federation “On the legal status of foreign citizens in the Russian Federation” of 25 July 2002 # 115-FZ.

6. Law of the Russian Federation “On the migration record of foreign nationals and stateless persons in the Russian Federation” of 18 July, 2006, # 109-FZ.
7. Employment, unemployment, labor migration: The results of one-time survey of employment in July 2006 / National Statistic Committee of the Kyrgyz Republic and the State Migration and Employment Committee of KR on migration and employment. Special edition. - Bishkek, 2007.
8. The rights of migrant workers in Kazakhstan. National law, international standards and practices. - 2008.
9. Manual for the formulation of effective policies on labor migration in countries of origin and destination / International Organization for Migration. - 2006.
10. Labor migration and productive use of human resources in the Kyrgyz Republic/ International Labor Organization. - 2008, September.