

Protecting Tajik migrants' rights: positive aspects of new migration policy require implementation

Preliminary findings of a mission in Tajikistan

Two years after the release of a report calling for increased protection of the rights of Tajik migrant workers, FIDH and ADC Memorial returned to Tajikistan to investigate institutional and legal changes and new challenges faced by Tajik migrant workers and their families. Particular attention was paid to gendered aspects of migration, the situation of women migrants and of the spouses of migrant workers.

The mission took place from 3 - 8 June 2013 and was organized in collaboration with the Tajik Bureau for Human Rights and the Rule of Law and the Tajik Human Rights Centre. The mission met with government representatives, international organisations, donors and NGOs, as well as with migrants and migrant families, and visited Dushanbe, Khujand and Qurgontepe.

Since 2011, there have been a number of positive developments in Tajik migration policy. Migration issues remain at the top of the government agenda, on the international scene and internally. The Migration Service, created in 2011, has started its work and established offices in several towns in Tajikistan and in Russia. NGOs are involved in discussions on the draft laws on Labour Migration and on Private Employment Agencies. FIDH and ADC Memorial welcome measures taken to improve pre-departure information (leaflets, videos) and training of migrants (vocational training, certificates, language courses), and the collaboration developing between the ombudspersons of Russia and Tajikistan. Tajikistan ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) in 2001, and an action plan is under discussion on implementation of the recommendations made by the UN Committee on Migrant Workers, in April 2012 (see here).

Controlled and organised migration to Russia (*orgnabor*) is presented as a means to protect migrants' rights. Yet, FIDH and ADC Memorial observed that measures taken thus far have not led to significant changes in the situation of migrant workers and fall short of what is needed to ensure effective protection.

Although draft laws on migration, promoted by donor agencies and international organisations, have been under discussion since 2010 in working groups, they still have not been presented to the Parliament. It is expected that they will be adopted in the course of 2013. Neither draft is available on official web sites and no public discussion or parliamentary hearings are planned. The draft versions that were shared with the mission contain elements of concern, including the tendency to place responsibility for social protection and care of elders on labour migrants themselves, rather than the state (articles 14 and 18 of the draft law on Labour Migration).

The impact of positive institutional and policy reforms has been impaired by insufficient budget allocation: as a result, the new migration strategy for 2011-

2015 has not been implemented. Though the Migration Service has established representations in regional centres, getting to these centres is often too expensive for people living in the country and the level of staffing of the Migration Service does not correspond to its extensive functions (which include controlling immigration, training, information and placement of labour migrants abroad). Its attributions overlap with those of other ministries (Labour, Education, Interior) which may lead to problems of coordination. The number of Migration Service representatives in the Russian Federation has been increased, but Tajikistan still relies on a network of Honorary Consuls and even sometimes diaspora leaders, whose work elicits criticism from Tajik migrants in Russia. Representatives of the Migration Service are mainly based in Moscow, reducing the capacity of the service to react effectively in cases of violations. Insufficient budget and staff, combined with frequent rotations and internal tensions diminish the capacity of the Migration Service to effectively defend the rights of migrants, with the result that this responsibility mainly falls on Tajik NGOS.

Even though Tajik migrant workers to Russia seem to evaluate positively the introduction of *patenty* (paying 1000 roubles each month for a permit allowing them to work for private employers), they remain vulnerable to illegal practices by employers and intermediaries: confiscation of passports, retention of salaries, police raids, arbitrary controls and xenophobic attacks. The FIDH/ ADC Memorial investigation revealed cases indicating that such violations are not adequately dealt with by the Migration Service or the Ministry of Foreign Affairs. In one case, the director of a private employment agency was brought to court accused of extorting money from migrants who wanted to go to Saudi Arabia, but the circumstances of the case were not properly investigated. Although a Program against Human Trafficking has been adopted for the period 2011-2015, the Migration Service is not included among the bodies responsible for its implementation.

The dominant impression is that institutional reforms and the drafting of laws has not so far had an impact on the situation of migrants, and that the gap between the capital Dushanbe and the rest of the country is wide. Migrants met by the mission said that they had no choice other than go to Russia to feed themselves and their family, even if they would prefer to work in Tajikistan. They do not expect any support from the State.

According to official statistics, women migrants represent 14% of labour migrants (124 007 out of 877 335 in 2012) and migration of families or couples is thought to be on the rise. FIDH and ADC Memorial also investigated the situation of women whose husbands leave to work abroad. Although the receipt of migrant remittances undoubtedly leads to an improvement in living standards, this system is fraught with serious social problems, health issues and leads to an increased burden on women. Increasing numbers of cases of men migrants staying in Russia, leaving wives and child behind without any support, have been documented.

Migrants met by the mission spoke bitterly about the dominant Russian media coverage of migrations, which they felt to be aggressive and discriminatory, and expressed their indignation at some declarations by Russian officials and politicians. Although there have been several public reactions by the Tajik

Embassy in Moscow to such declarations, protests by Tajik officials are not systematic.

One of the main sources of concern is the increasing number of deportations and the impossibility for migrants to get precise information on their status when they have been deported or expelled from Russia: they are not informed for how long they are forbidden from re-entering Russia. A list of Tajik citizens *non grata* in Russia (with the duration of the prohibition) is given by the Russian FSB (which commands the border guards) to their Tajik counterparts, but is not easily accessible by migrants themselves. The Migration Service regrets that it does not have automatic access to this list.

Finally the question of migration remains problematic at an international level. Several components of the agreements signed between Russia and Tajikistan in 2004 have still not come into force (concerning social protection and pensions), and the agreement signed in February 2013, that would allow Tajik citizens to remain for 15 days in Russia without registration has not yet been ratified by the Russian Duma. There are concerns that ratification may in practice be conditional on the ratification by the Tajik Parliament of a parallel agreement concerning the presence of a Russian military base. A protocol that would extend work permits for Tajik migrants up to three years has still not been signed.

Labour migrants are thus not only used as scapegoats in moments of crisis between Russia and Tajikistan, as in November 2011 (see joint press statement, *Tajikistan: Migrant workers must not be held hostage to the Russian-Tajik political crisis*), but also as bargaining chips between Tajikistan and Russia.

Based on these preliminary findings, FIDH and ADC Memorial make the following recommendations:

To the government of Tajikistan

- Ensure that the process of drafting legislation is open and transparent, that the results of consultation with civil society are taken into consideration and that draft laws can be readily accessed on institutional web sites;
- Ensure that the provisions of the laws on Labour Migration and on Private Employment Agencies are in complete conformity with the provisions of international human rights conventions ratified by Tajikistan and in particular with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Ensure that people of Tajikistan are able to exert control on those in charge of the elaboration and implementation of migration policy at different levels, in particular through pluralist and transparent elections;
- Ensure the effective investigation, prosecution and punishment of employers, intermediaries and human traffickers responsible for violations of the rights of migrants; strengthen measures aimed at fighting forced labour and human trafficking and include migrant workers in the remit of the Interagency Commission against Trafficking;
- Extend the programs of pre-departure training and information for migrants. Increase the numbers of representatives of the Migration Service in Tajikistan and in Russia and clearly define their powers;

- Ensure that training of migrants does not replace measures required to improve the general operation of the educational system; ensure that schools provide high quality training, including the learning of a foreign language and/or Russian which is officially the language of 'international communication' in the country;
- Support the activities of Tajik human rights organizations, including those working with migrants and their families and taking part in the legislative processes;
- Enforce effective and constant cooperation between governmental services, responsible for protection of the rights of migrant workers (Ombudsman, Migration Service, Ministry of Labor, Ministry of Foreign Affairs, Ministry of Education etc.) at both the institutional and regional levels to strengthen implementation of the strategy for implementing the ICMW recommendations.

To the governments of Tajikistan and Russia

- Enhance cooperation to make available to those concerned, the list of Tajik citizens who have been forbidden to enter Russia, following expulsion or deportation. Ensure that this information is given on a confidential basis and that the protection of personal data is guaranteed;
- Ensure that no collective expulsions take place;
- Refrain from any negotiation or agreement linking the issue of labour migration to other political, defence or security issues;
- Reinforce cooperation so as to make effective the recent agreement allowing Tajik citizens to remain in Russia for 15 days without registration and so as to reach an agreement on three-year work permits for Tajik citizens in Russia;
- Pursue negotiations in order to reach agreement to enable migrant workers to have access to effective social protection, including decent pensions;
- Implement existing legal agreements in order to ensure that Tajik migrants working or resident in Russia pay support to their wives and families remaining in Tajikistan, in accordance with court orders in Tajikistan;
- Implement existing agreements in order to ensure that Tajik migrant workers benefit from fair working conditions and remuneration on an equal basis with Russian nationals;
- Take urgent measures to combat xenophobia and right-wing populism and its influence on international Russian-Tajik relations, Russian migration policy and on the implementation of the rights of Tajik migrant workers in Russia.