Tajikistan: Exporting the workforce – at what price?

Tajik migrant workers need increased protection

Preliminary conclusions of an FIDH investigative mission, May 2011

INTRODUCTION

VIOLATION OF THE RIGHTS OF TAJIK MIGRANT WORKERS IN RUSSIA

TAJIKISTAN’S OBLIGATIONS UNDER THE ICRMW

BILATERAL AGREEMENT WITH RUSSIA

LAW ON MIGRATION

A NEW MIGRATION COUNCIL

INTERMEDIARIES AND EMPLOYMENT AGENCIES

PROTECTION OF TAJIK MIGRANT WORKERS IN RUSSIA

RECOMMENDATIONS

Introduction

From 2-9 May 2011, FIDH mandated a mission to Tajikistan to investigate the situation of Tajik migrant workers. More than 800,000 Tajik citizens work in Russia, where they face widespread exploitation and violations of their economic and social rights. In 2002, Tajikistan ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). FIDH welcomes this ratification and seized the opportunity of the upcoming examination by the UN Committee on Migrant Workers (2012) to evaluate the measures taken by the Tajik government to defend the rights of their citizens working abroad.

The mission delegation, composed of ADC Memorial Program director (St Petersburg), FIDH Deputy
Secretary General (Paris) and FIDH Eastern Europe and Central Asia Desk Director (Paris) met with representatives of the authorities, inter-governmental organisations, NGOs, as well as migrant workers. The mission enabled the establishment of working contacts between Russian and Tajikistan NGOs defending the rights of migrant workers. The mission was organised with the help and support of the Tajik Bureau for Human Rights. In June 2011, an FIDH mission delegate also met with officials from the Tajik Embassy in Moscow.

Violation of the rights of Tajik migrant workers in Russia

In previous reports, FIDH and its partners in Russia, Civic assistance and ADC Memorial have repeatedly called attention to the violations of the rights of migrant workers by employers and the police and to the general context of discrimination and impunity.

Though Russia is a visa free zone for Tajik citizens, who can enter the country with their national passport, administrative requirements to legalise their situation are complex and expensive. Under the Russian quota system, only a limited number of migrants have access to work permits. Since July 2010, migrants providing personal or domestic services can also purchase a “patent” in order to work legally but the cost and administrative burden of these requirements remains very high. Obstacles (including obtaining registration, health certificates, work permits etc.) are such that migrants turn to “intermediary agencies”, which regularly cheat and exploit them, providing false documents, faking registration or failing to deliver services for which payment has been made.

Migrants in Russia are frequently victims of xenophobic assaults. Not only do they lack protection from the police and the justice system generally, but the police also target them for bribes. Migrants who are in irregular situations are particularly vulnerable to these abuses. These migrants also have limited access to health care and social allowances, which depend on the registration of permanent or at least temporary residence. Poor housing conditions (in the workplace or in overcrowded rooms) cause the propagation of infectious diseases, including tuberculosis.

Migrants, particularly those in irregular situations, face exploitation by employers (confiscation of passports, unlimited working hours, lack of payment of wages, fines) and do not have access to health insurance or care, despite the fact that they often carry out dangerous work. Attempts to defend migrants’ rights in courts are impeded by the lack of work contracts and the increasing practice of “outsourcing” by many employers who employ migrant workers through intermediary agencies.

Migrants in an irregular situation are often held in detention centres. The centres, located throughout the Russian Federation, are used to detain persons convicted of administrative offences, including violations of immigration law, usually for a period of several months or - in the case of foreign nationals subject to deportation whose identity can not be established - for much longer. Most detainees are citizens of the CIS. Detainees include migrants who are in an undocumented situation (due to having lost their personal documents or possession of fake work and temporary residence permits prepared by intermediary firms). Irregular migrants in possession of a passport are deported. Those who have no documents verifying their identity are held in the centres, in prison-like conditions, for up to a year.

Tajikistan’s obligations under the ICRMW

The main responsibility for preventing and prosecuting those who violate migrants’ human rights lies with the Russian government, through legal reform and investigation and prosecution by the justice system. But this does not exempt the Tajik government from its responsibility to ensure “to all migrant

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workers and members of their families subject to (its) jurisdiction" the rights provided for in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, article 7). This Convention applies "during the entire migration process of migrant workers and members of their families" and imposes specific obligations on states of origin (ex. right of migrants to benefit from consular protection (art 16-7, 23) and to participate in public affairs in the state of origin).

Some of the provisions of the ICRMW are particularly relevant to Tajik migrant workers in Russia, namely: the prohibition of forced or compulsory labour (art 11-2), the prohibition of arbitrary deprivation of property (art 15), the prohibition of arbitrary verification and destruction of identity documents (art 16-3 and 21). The ICRMW prohibits discrimination in respect of remuneration, conditions of work and other terms of employment (art 25) and prohibits the detention of migrant workers together with convicted criminals (art 17-2). Finally, article 16-2 underlines that “migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions”.

Under the Convention, States of departure have the responsibility for “the preparation for migration, departure” (art 1-2), and in particular to ensure that migrants departing to seek work abroad receive information about their rights under the ICRMW (art 33). Information seminars and resource centres have been set up in several towns in Tajikistan by NGOs, some of them with IOM support and/or OSCE funding, but there is a need for permanent, state-funded structures. Though this kind of activity can be organized through NGOs and though civil society has a monitoring role, the State cannot exempt itself from its responsibility and rely on NGOs to fulfil its obligations.

State responsibility under the ICRMW also extends to the protection of the family of migrant workers: the plight of Tajik women left behind by their husbands without any support for themselves or their children is now a subject of concern for several NGOs and International Organisations.

In a broader sense, Tajik government has the responsibility to ensure economic development so as to allow people to migrate by choice and not under duress. The strategy of promoting the exportation of the workforce is in no way compatible with a policy based on respect for the human rights of migrants, as has been repeatedly stated by the United Nations Committee on Migrant Workers.

**Bilateral agreement with Russia**

In 2004, an agreement on labour migration was signed between Tajikistan and Russia (“About working activities and protection of rights of Tajikistan citizens in Russian Federation and Russian citizens in Tajikistan”). This agreement provides for the protection of migrant workers rights through written employment contracts (article 9), the prohibition on discrimination in remuneration (article 9.4), mutual recognition of diplomas (article 11), obligation for the employer to pay for health care (art 8) and provide financial compensation in case of injury or death at work (art. 15). Both States agree to take measures against individuals or businesses engaged in illegal recruitment and against deceptive job announcements (article 7).

However, under the agreement, work permits are delivered for only one year (art 4) with very few possibilities to extend them and migrant workers are prevented from exerting an activity other than that for which the permit was originally granted (art 12), thereby tying migrants to their employers. Moreover, the agreement does not make any reference to international conventions ratified by both States (such as the International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights (ICESCR and ICCPR)) and protection is limited to migrants working temporarily on a legal basis in the State of employment.

Several other agreements have been concluded at Ministerial level and the two countries are also party to regional agreements concerning migration. Consultations are held regularly between the two States, but there is failure to agree on certain issues where interests conflict (e.g. recognition of diplomas, social insurance and readmission agreements).
Law on migration

Migration issues are high on the agenda of the Tajik government: in May 2011, at the time of the FIDH mission, several laws and programs were under discussion: draft law on external migration, draft law on private recruitment agencies, as well as a draft new strategy and a draft new migration program for the period 2011-2015.

FIDH was unable to obtain copies of the final text of the new laws but has seen a copy of the draft law on external migration (dated 24 April 2011). The draft has several positive aspects: migration based on freedom of circulation, choice of place of residence and work (art 5), coordination of migration processes on the condition that migrants’ rights can be protected in the country of destination (art 12), prosecution for providing false information on job opportunities (art 25), regulation of the work of recruitment agencies (art 10 and others). Two sections are specifically dedicated to the rights of migrants in Tajikistan and in Russia, providing that migrant workers must have access to the consulate representation or to the migration council to defend their rights (art 22).

But this new law also raises concerns, with the use of the notion "illegal migration" and "illegal migrant worker", contrary to international practice and UN recommendations requiring the use of the terms ‘undocumented’ or ‘irregular’. The main areas of concern relate to limitations and prohibitions on exiting the country (prohibition for those who detain state secrets, art 14) and to the obligations imposed on migrants: obligation to gain higher professional qualifications, to represent Tajikistan in the State of employment and to provide material support to their families and parents through remittances (art 22). Moreover, according to article 19 of the draft law, migrants are obliged to "receive information on the rules and procedures on exit and employment abroad", by various means before departure².

Finally, the reasons for adopting a new are unclear: the 1999 law on migration governed internal and external migration and although some of its provisions can also be criticised, the 2011 law is no improvement. This tends to lead to the conclusion that the aim is to give an impression of tackling issues by producing legislation, but a failure to address the central problem of implementation. For example, the 1999 law on migration provided that Tajikistan favours and facilitates migration of its citizens only to countries where migrants’ rights are protected. Yet, the recent negotiations with Saudi Arabia (where grave violations against and exploitation of migrant workers have been reported by numerous human rights organisations) would indicate the contrary.

A new migration council

Another measure intended to demonstrate that the government is tackling these issues is the creation of the Migration Council, in January 2011, by Presidential decree. Previously a department within the Ministry of Interior, the body in charge of migration issues is now a separate body within the Tajik government.

Nevertheless, as of May 2011, the internal status of the Migration Council had not been determined, its powers and activities were not clearly defined, and it was not yet properly staffed, with the exception of the section in Dushanbe. The reason for these delays may be linked to tensions with other institutions and ministries in respect of control of some areas such as education of migrant workers, passport delivery, registration of migrants etc.

Indeed, in the February 2011 draft of the Migration Council internal regulations, its powers extend from elaboration and analysis of public policy, to implementation in respect of foreigners coming to Tajikistan as well as Tajik citizens leaving the country. It is responsible for the delivery of passports and identity documents, as well as the organisation of recruitment in Russia, control and licensing of recruitment agencies in Tajikistan, control over education of migrants, fighting human trafficking, refugee status determination…and the protection of state secrets.

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² This provision seems to be based directly on the Filipino ‘model’ (to which the FIDH delegation heard numerous references made by officials and experts). Compulsory pre-departure information seminars and control of recruitment agencies are two of the “good practices” that international organisations tend to promote based on the system of ‘migration management’ in the Philippines. But the use of the Philippines as a model is subject to criticism, especially since it restricts the rights of migrants to exit the country, is expensive and is based on a concept of ‘exportation of the workforce’. This latter concept has been criticized by the UN Committee on Migrant workers.
The official presentation of this new council was announced for June but remains delayed. In the meantime, migrants cannot receive all the support to which they are entitled.

Intermediaries and employment agencies

FIDH was unable to obtain a copy of the draft law on recruitment agencies. But the fact that only a very small percentage of migrants to Russia go through recruitment agencies, would suggest that such legislation is not the priority in Tajikistan, especially since provisions already exist within other laws enabling prosecution of intermediaries engaged in trafficking. The 1999 law on Migration and art 335-2 of the Penal Code allow for the prosecution of "organisation of irregular migration" (though there are risks that a broad interpretation of article could lead to the prosecution of any person offering help to migrants). A law on trafficking was adopted in 2004 and articles 130 (abduction, including by deceit), 130-1 (human trafficking with the aim of exploitation), 131 (illegal deprivation of liberty) and 132 (recruitment with the aim of exploitation) of the Penal code could also be used.

FIDH was unable to meet with the Prokuratura to discuss investigations and prosecutions under these articles. But the statistics provided by Tajikistan in its report to the UN Committee on Migrant workers show that cases of prosecution for such crimes are scarce: 13 persons were subject to criminal prosecution in 2010, and among the 3 cases of prosecution under article 130, only one person has been tried and convicted. This suggests that rather than legal reform, priority should be given to addressing problems of victims’ access to the justice system and the capacity of the procuracy and the courts to deal with these crimes.

Protection of Tajik migrant workers in Russia

Under article 23 of the ICRMW, migrants are entitled to "the protection and assistance of the consular or diplomatic authorities of their State of origin". Official representatives of Tajikistan in Moscow who met with FIDH are aware of this responsibility and claim to be active in this area. A hotline has been established with representatives of the Embassy as well as NGOs. Official representatives in Moscow expressed their frustration that letters dealing with these issues addressed to the FMS and Ministry of Labour do not receive attention.

Protection is limited by the fact that there is only consulate representation in Moscow and in Ekaterinburg. Migrants working, for example, in St Petersburg or in the Leningrad region are therefore forced to go to Moscow to have their identity documents renewed and cannot benefit from consulate protection.

Moreover, labour migrants met by the FIDH mission in Tajikistan do not consider the consulate as a potential source of support: some complained of corruption and reported that they had been forced to pay bribes.

Recommendations

Recommendations to the Tajik government

• Provide help and support to Tajik migrant workers in Russia regardless of their legal status;

• Provide increased access to consular assistance by extending consular representation;

• Enhance the capacity of labour departments of embassies and consulates to work with migrant workers, in particular introduce into embassies at least one position for employment issues;

• Establish hotline assistance in main areas of employment of Tajik migrant workers in Russia for migration and labour-related questions, and ensure that the hotline staff have training to provide relevant information and referrals to legal, social, and other services;
• Create in main areas of employment in Russia shelter and crisis centres for migrant workers seeking refuge from violence and forced labour.

• Provide protection to Tajik migrant workers in their relations with the Russian police and justice system, in particular by observing trials or police interviews, offering translation services and ensuring contact with families.

• Provide information to migrants, before departure, on their rights and recourse mechanisms available in Russia, though training centres, seminars and diffusing information in train and coach stations and airports.

• Provide information to the population on the ICRMW and the rights set out therein.

• Investigate and prosecute all agencies or individuals falsely using the symbol of the Tajik state to promote their services.

• 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 provide regular information on the numbers of prosecutions and convictions for these crimes.

• Ensure that the process of drafting legislation is open and transparent, includes consultation with civil society and that draft laws can be readily accessed on institutional web sites.

• Ensure that training of migrants does not replace measures required to improve the general operation of the education system; ensure that schools provide high quality training including learning a foreign language.

• Within the new migration council, ensure that questions of asylum and refugees are separated from questions of labour migration and ensure the independence of the commission and its members.

• Make a declaration under article 77 of the ICRMW to allow the Committee on Migrant Workers to receive and consider individual complaints

**Recommendations to the Tajik and Russian governments**

• Increase cooperation in the fight against forced labour and human trafficking.

• Make reference in all agreements signed to the UN Conventions ratified by the two States and ILO Conventions

• Continue negotiations in order to reach agreement enabling migrant workers to have access to effective social protection and decent pensions

• Implement existing legal agreements in order to ensure that persons 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

• Allow access in Russia to education in the Tajik language

• Develop collaboration between the Ombudspersons of the two countries

• Initiate negotiations in order to reduce the cost of administrative procedures for migrants in Russia, in particular for medical care and delivery of patents
Recommendations to the Russian government

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

- Ratify ILO Convention No. 97 of 1949 concerning Migration for Employment and ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions);

- Increase the flexibility of the registration and quota system, including by enabling migrants to legalize their stay on a declaratory basis and to obtain work permits for longer periods (three to five years) with the subsequent possibility of permanent regularisation in the country;

- Abolish the necessity for employers to get special authorisation to employ migrant workers;

- Ensure that migrant workers have access to effective appeals against deportation and that detention and deportation of migrant workers are conducted in full compliance with Russia's human rights obligations;

- Exercise strict control over private bodies to ensure fair social and employment conditions, including remuneration, on an equal basis with nationals, for migrant workers;

- Prosecute all private agencies and individuals falsely using the symbols or names of the federal migration service and other official Russian bodies to promote their services;

- Rigorously enforce the legal requirement for employers to provide written employment contracts to workers, including migrant workers;

- Introduce mandatory medical insurance for employers of foreign workers and sanctions for avoiding this obligation.

- Ensure equal protection and access to redress mechanisms to all migrant workers, including those without employment contracts; ensure that national courts can review labour conflicts in the absence of an employment agreement;

- React promptly and effectively to all requests or diplomatic correspondence from the Tajik consulate, embassy and other state bodies;

- Train law enforcement agencies to effectively investigate complaints made by migrant workers, both criminal and labour law complaints;

- Rigorously investigate, prosecute and sanction employers who confiscate passports, withhold wages and force employees to work illegal overtime or commit other violations of Russian and international human rights law;

- Reform legislation in order to enable migrant workers to form trade unions.

With the support of Bureau of Human Rights and Rule of Law