

RAPID RESPONSE GROUP (RRG) FOR PREVENTION OF TORTURE IN UZBEKISTAN

THE GOVERNMENT OF UZBEKISTAN SHOULD CHANGE ITS POLICY ON THE UZBEK LABOR MIGRANTS ABROAD

Studying the situation of the Uzbek labor migrants abroad through the prism of protection of their fundamental rights, prevention of violence and human trafficking against them is one of the main directions of activity for the RRG. For a long time now we have conducted monitoring of the rights of the Uzbek labor migrants abroad, including such nearby foreign countries as the Russian Federation and Kazakhstan.

Our experience shows that the Uzbek government practices “politics of non-interference” concerning the Uzbek labor migrants abroad, just passively watching how its own citizens abroad are oppressed in their rights and exposed to various forms of infringement. Easier speaking, the state does not care about the fates of the millions of the Uzbek labor migrants abroad. The government of Uzbekistan also consciously postpones resolving such significant issue within the mechanisms of such regional inter-governmental organizations as EURASEC and the CIS, and on bilateral level together with the states-stakeholders.¹

The RRG thinks that the Uzbek government should play a key role in protection and promotion of interests of the Uzbek labor migrants and start resolving of the given issue within the boundaries of the regional inter-governmental structures and on bilateral level. The RRG also thinks that the part of the responsibility for infringement of the basic rights of the Uzbek labor migrants lays on shoulders of the states which accept labor migrants.

The present research of the RRG considers the main points of concern with attitude of the Uzbek government towards the Uzbek labor migrants abroad and provides recommendations for resolving the issue. It should be noted that the present research basically considers the situation of the Uzbek labor migrants in the territories of the Russian Federation and the Republic of Kazakhstan. According to our estimations almost 90 % of the Uzbek labor migrants end up temporarily living and working in those two countries and there they face the bulk of the infringements against their rights.

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The distinct features of the policy of the Uzbek government concerning the Uzbek labor migrants: Active involvement of the Uzbek population in migratory processes draws to itself the increasing part of the active population of the country: according to various data, today from 3 mln. up to 4,5 million Uzbeks act in the role of labor migrants only in territories of the Russian Federation and the Republic of Kazakhstan. The middle age for people who are leaving in search of work makes up 25 years for male, and 30 years among female, more than 40 % from all migrants are women and minors.

¹ The EURASEC (Eurasian Economic Community) and CIS (Commonwealth of Independent States) are regional inter-governmental structures uniting former Soviet countries.

Labor migration brings profit both for the labor migrants, and the native state as a whole, bringing to the market turnover of the country tens millions of convertible currency.

Participation in free movement of work, goods and services, becomes a push for deeply researching labor markets of other countries, the analysis of conformity of supply and demand, studying demand for labor in the certain branches of the national economies.

In this regards the function of employment of the citizens of Uzbekistan abroad and attraction of foreign citizens to work in Uzbekistan is assigned to the National Agency for External Labor Migration under the Ministry of Labor and Social Protection of the Population of the Republic of Uzbekistan.

It would be reasonable to expect from the Agency to take more active participation in the solution of the issues concerning the fates of the Uzbek citizens who are already staying or intending to leave for the nearby foreign countries. However our experience shows that the role of the Agency at the best is limited to the passive recording of the applications to work abroad, or rendering services on employment for a feasible payment in South Korea, the country where during the latest years the Uzbek labor migrants were getting through official channels. The Agency has developed close cooperation with the authorized bodies of the Republic of South Korea on employment of citizens of Uzbekistan in this country.

In November 2007 at the 7th session of the Council on Social Policy under the Committee for Integration of the EURASEC a draft Agreement on temporary labor activity of the citizens of the State-Parties of the EURASEC and Guarantees of social protection of labor migrants was approved. The draft Agreement secures such issues as medical insurance of the migrants and social protection for their family members. The draft has also specified what state body and official are authorized to seize passport from a labor migrant who found himself in an illegal status on the territory of the State-Party. The draft Agreement has been approved by all State-Parties of the EURASEC except for Uzbekistan. The Uzbek party hasn't approved the draft Agreement and limited itself just to a statement of a special opinion on the Agreement?!

In particular, the representatives of the Uzbek Ministry of Labor and Social Protection of the Population have noted that multilateral agreements in the field of migration are inefficient also such questions, in their opinion, should be solved in bilateral order. As the Uzbek delegation has declared "...creation of a separate Council on Migration is inexpedient as the issue of migration pertains to the competence of the Council on Social Policy".

It would be much more expedient if the already available inter-state agreements, closeness of the inter-state borders, huge number of labor migrants, absence of language and cultural barriers have been effectively used to provide better protection for the Uzbek labor migrants on the territories of the Russian Federation and Kazakhstan.

For comparison: thousands of the citizens of Uzbekistan who work in the Republic of South Korea enjoy the protection of the labor legislation, legal norms on labor safety and social protection, the minimal wages normative, the obligatory insurance of the worker from various accidents. And millions of the Uzbek labor migrants on the territory of Russia and Kazakhstan remain under full dependence of "the good will" of local employers, law enforcement bodies or migration services. The labor safety, protection of the rights of labor migrants, the social protection, stated out at bilateral meetings of Uzbekistan with Russia and Kazakhstan and similar appeals at forums and assemblies of the CIS and EURASEC remain just as a dream and empty declarations.

Problems the Uzbek labor migrants face with the law enforcement bodies of the accepting state and corruption: It is necessary to note that problems with registration of the migrant by the employer, registration of the labor migrant's legal status, legalization of his income with corresponding payments of due taxes represent only one side of the medal. The solution of those problems cannot guarantee a quiet life of the labor migrant on the territory of Russia or Kazakhstan.

According to the interviews with the Uzbek labor migrants in Moscow (Russia) today the greatest danger for the labor migrant lies in "meetings" of the labor migrants with the Russian law enforcement bodies: in average seven out of ten labor migrants any way stopped in the street and detained by the law enforcement bodies. The detained labor migrants are extorted to give money to the law enforcement officials – from 500 up to 1000 Russian roubles each time. If the detained labor migrant has all the necessary registration documents and IDs with him doesn't matter. In average each labor migrant is detained 5-6 times a month. Very often such illegal arrests are accompanied by the detention of the detainee in the police pre-investigation temporary custodies.

According to the interview with the Uzbek labor migrants in Moscow they are often detained by patrol-sentry duty officers of the Ministry of Internal Affairs. For some patrol-sentry duty officers it has turned into a habit to wait for the labor migrants at their workplaces on the day of salary. In the eyes of the labor migrant such range of corruption simply makes the procedure of the registration and legalization of the status meaningless.

Minor labor migrants: Our observations show that improvement of the labor legislation in the Russian Federation and Kazakhstan unfortunately in greater degree concerns the adult categories of the migrants. Whereas the increasing part of the labor migrants who interact with the employer are minors.

According to our studies only from Kashkadarya, Bukhara and Khorezm regions one minor labor migrant per three family leaves abroad. The average age for the minor labor migrants from Uzbekistan is 14 years. Only from 35 % up to 40 % of the Uzbek minor labor migrants who found themselves in the Russian Federation and Kazakhstan, have an opportunity to attend school even not in native language. The other minor labor migrants start working on equal basis with the adults, very often as porters of cargoes in the market, assistants of masters on civil work, food deliverers or cleaners.

As a rule, only small part of the Uzbek minor labor migrants works on the basis of the labor contract, the remaining part of the minor labor migrants are deprived of their fundamental rights and not protected by any legal norms or guarantees. Conditions of hiring the minor labor migrants as opposed to adult labor migrants are more favorable for the parents of the minor migrants and employers. It means less requests regarding wage increase, improving working conditions and residing, social protection from the side of the minor labor migrant. According to our respondents (the Uzbek labor migrants) a whole business structure of the industry of illegal trafficking of the labor migrants and gaining high profits on provision of cheap labor forces from Uzbekistan exists.

We think that the laws in Russia and Kazakhstan should react to the above mentioned situation. Only one third of the Uzbek minor labor migrants working in Russia attend schools thus the remaining minor labor migrants falling out of the reach of the "Regulation # 1 on the order and conditions of voluntary work of school children at schools of general and secondary education during free time from study" of the Russian Federation. The most part of the Uzbek minor labor migrants work on the basis of the oral contracts with their employer, without presenting birth

certificate (the main ID for a minor in Uzbekistan) or a written confirmation from a medical institution in Russia which allows the minor to work. Moreover, the medical institution provides such written confirmation only under the inquiry from the employer, the minor labor migrant from Uzbekistan has not the right to ask for such confirmation.

According to the above mentioned Regulation of the Russian Federation, the educational facility in coordination with the local bodies in charge of labor and social protection issues independently determines professions, types of work and workplaces in which the employer plans to use the labor of the minors.

However according to our interviews with the families of the Uzbek labor migrants, from 70 % до 75 % of the Uzbek minor labor migrants of school age on the territory of Russia work together with their fathers on various types of jobs without the agreement of the representatives of the local educational facilities because both sides are not interested in that (both the Russian schools, and parents of such minor labor migrants).

Labor relations with minor workers can be terminated in the cases stipulated in the Labor code of the Russian Federation (articles 77-84). Besides the working school children have the right to independently terminate the labor contract having warned about this the administration of the employer organization in a written form three days prior to the cancellation (section 9 of the Regulation # 1). The working schoolchildren also stops working if there is a written statement of one of the parents or a person replacing the parents on the basis of a medical conclusion on a state of health of a minor worker interfering continuation of work by him. Upon the termination of the labor contract the employer is obliged to provide the school children with written information on his work specialty, professional qualification, his position and terms of work for that company. Lack of supervision and control over the parents of the minor labor migrants and disinterest of the employer in legalization of labor activity of the minor labor migrant brings to the situation when the minor labor migrant having worked simply leaves the working place without any record of his professional experience.

Work-record cards are issued only for the adult Uzbek labor migrants who have concluded written labor contracts under generally established terms. Absence of the labor contract (as a rule, this is a case for the majority of migrants) does not give an opportunity of registration of work-record cards and payment of social benefits according to the Russian Federation national legislation.

We would like to note that under the new migration rules in Russia which have come into force since January 15th 2007 the penalty for employing one illegal migrant makes one million roubles. This clause of the migration rules makes it attractive hire a minor labor migrant since the migration rules do not stipulate the minimum or maximum age for the labor migrants on the territory of the Russian Federation which means it is easier to avoid the above mentioned penalty for employing an illegal labor migrant (without registering him with the local authorities in a established form) employing a minor labor migrant.

Thus, the analysis of existing norms of the Russian Federation regulating the labor relations between the minor labor migrants and the employers shows that it is necessary to improve the existing labor legislation in Russia with clauses enhancing protection for the rights of the minor labor migrants.

The Uzbek labor migrants, human trafficking and physical violence: The basic analysis of responses received from the Uzbek citizens of the western regions of Uzbekistan who have faced different forms of infringements in search of job abroad, information on human trafficking and

victims of trafficking in Russia provided by various public organizations and official structures shows the following:

- 11 complaints out of 13 are related to cases of swindling of the victims of human trafficking who have been then forced to work as labor migrants abroad
- Cases of extortion of the intermediary organizations and firms with the connivance of, and sometimes and at obvious concealment of separate officials of corresponding state structures of Russia and Uzbekistan
- Cases of violent death on the basis of racial discrimination and nationalism - 7 monitored cases out of 10 ended up with a fatal outcome, in 3 cases – the result was just small fights among different groups of the labor migrants from different countries
- In monitored 5 cases out of 9 when the victim (a labor migrant) has addressed the Russian law enforcement structures for assistance a proper support and assistance was rendered
- Among the total number of studied appeals and complaints only 3 complaints were submitted by ethnic Uzbek labor migrants, other complaints were submitted by ethnic Russians – citizens of Uzbekistan. This might speak about obvious unwillingness to publicly fight for their rights or disbelief in restoration of the violated rights among the ethnic Uzbek labor migrants in Russia
- The middle age of the Uzbek labor migrants who have submitted complaints and appeals about the violation of their rights is 38-40 years
- It should be noted that the aggression of the Russian nationalist groupings is not based on the issue of nationality, but rather on where from the person is coming (in some sense a mixture of xenophobia and Nazism). Many ethnic Russian labor migrants coming from Uzbekistan have also felt victims of the violence of the nationalistic groupings in the Russian Federation.

Previously the RRG has many times presented individual cases of physical violence against the Uzbek labor migrants on the territories of Russia and Kazakhstan.

Our researches show that the basic stream of trafficking of the Uzbek labor migrants is organized by so-called "foremen" - some kind of intermediaries, agents for hiring between the labor migrant and the employer either in the Russian Federation, or in Kazakhstan. Foremen collect groups of the Uzbek labor migrants from different parts of Uzbekistan, organize their trip to the employer and often accompany them to the final destination. Usually the natives of Uzbekistan who have developed good connections with the Russian or Kazakhstan employers act as foremen.

Upon arrival to the final destination foremen often collect passports of the Uzbek labor migrants, ostensibly for registration of migration documents and hand them over to the employer together with the labor migrants. If the labor migrants are lucky with the employer they will soon receive their passports back after the formalities with the migration registration are done. If the labor migrants are not lucky with the employer their passport will be left at the employer's or foremen's hands as a guarantee that the labor migrants will stay and keep working on conditions of the employer.

In most cases those categories of the Uzbek labor migrants who are ready to work in construction works or similar works or who are leaving abroad for the first time, or who are not experienced are more likely rely on the services of the foremen. Our monitoring shows that these categories of the

Uzbek labor migrants are usually coming from rural areas and have very poor Russian language skills.

Coming from careful studying of numerous individual cases on the Uzbek labor migrants the RRG can state that trafficking of the Uzbek labor migrants to Russia and Kazakhstan with participation of the foremen takes place under the tacit consent and approval of the law enforcement bodies of Uzbekistan, Russia and Kazakhstan.

The monitoring activities of the RRG has also revealed many authentic cases of trafficking of minors from Uzbekistan to the Russian Federation through *Petropavlovskaya oblast'* of Kazakhstan under a mask of a labor migration or a trip with a view of reception of medical treatment on the Russian territory.² In all studies cases the minors from Uzbekistan (more often boys, sometimes girls from 12 to 14-15 years) were accompanied by their parents or other close relatives. The same groups of the Uzbek citizens in such composition (the father - the son, either the mother - the son or the daughter) using the route used to come back approximately in a week. All such minor Uzbeks accompanied by their parents on the way back had an identical medical bandage on the right side of the body, the minors looked very weak and exhausted. Sometimes the bandage was bleeding. Only one of accompanying parents agreed to anonymously talk to the RRG and has explained that the doctors in the Russian city of Omsk cut out the right kidneys of their children for transplantation to other persons. Thus, 10.000 US dollars were paid for each kidney.

Recommendations of the RRG:

To the Government of Uzbekistan:

- Pass Law “On internal and external labor migration” and make respective changes and amendments to other national normative legal acts
- Approve “Agreement of the EURASEC on temporary labor activity of the citizens of the States-Parties of the EURASEC to guarantee social protection of the migrants”
- Solve the issues of the protection of personal safety and life, work and maintenance of social protection of the Uzbek labor migrants, joining to the operating instruments within the CIS and EURASEC, and on bilateral level with the Russian Federation and the Republic of Kazakhstan
- Publicly recognize the crisis of unemployment for separate regions of Uzbekistan, establish and enter into practice an effective system of recording unemployment rates, outflow of the labor forces outside the country, identify the general tendencies and develop an effective and coherent strategy favorable for the national economy
- Train the employees of the diplomatic, consular missions and law enforcement bodies of the Republic of Uzbekistan on special skills and methods of treatment of and assistance to the Uzbek labor migrants and victims of human trafficking who found themselves in difficult situations and persecute the organizers of human trafficking. A special attention should be

² Petropavlovskaya oblast' of the Republic of Kazakhstan is a reloading point for the majority of the Uzbek labor migrants who are going to work in Russia. It is here where the Uzbek labor migrants are divided into different buses which then start their ways to different main cities of the two big regions of Russia – the Siberian route and the Middle route (the Uralskoe). See enclosed pictures with this research.

paid to the issue of prevention of trafficking minors from Uzbekistan. A separate attention should be paid to protection of Uzbek minor labor migrants on the territories of Russia and Kazakhstan, paying special attention to their all-around development, including access to the general and secondary education.

To the governments of the Russian Federation and the Republic of Kazakhstan:

- Pay a special attention to the growth of number of minors among the labor migrants – the Uzbek citizens occupied at different labor activities on the territories of Russia and Kazakhstan
- Make amendments and changes to the national labor legislations and migration rules specifying the requirements and high responsibility for involvement of a minor migrant to labor activities, specifically stipulating guarantees for social protection while concluding the labor contract with a minor labor migrant
- Bodies of trusteeship, social protection, educational institutions of the Russian Federation and the Republic of Kazakhstan should pay a special attention to the growth of the number of minors labor migrants occupied at different labor activities on the territories of their states, adapt or change the existing national systems of protection for the minor workers
- Put the issue of protection of the labor migrants on the agenda of bilateral negotiations with the Government of Uzbekistan
- Stop cases of extortion and corruption against the labor migrants from the side of their law enforcement bodies
- Stop cases of human trafficking from Uzbekistan, including minors, and bring the organizers of human trafficking to justice.

To the CIS and EURASEC:

- Make the issue of protection of the labor migrants on the territories of the States-Parties one of the priority directions in the activity of those regional inter-governmental organizations
- Unify the existing national standards and legislations in the field of protection of labor migrants and struggle against human trafficking.

To the international donors:

- Make the issue of protection of the labor migrants on the territories of the States-Parties one of the priority directions in their activity.

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