

Report of the Non-Governmental Organisations
*To the UN Committee on the Rights of Migrants Workers on
implementation of the International Convention on the Protection of
the Rights of All Migrant Workers and Members of Their Families*

March - 2012

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Abbreviations used in this report

CAO	Code on Administrative Offences
CC	Criminal Code
CEDAW	The Convention on Elimination of Discrimination Against Women
CMW	The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
CPC	Criminal Procedural Code
CSCI	Center of Support of Civil Initiatives
DIA	Department of Internal Affairs
FMS	Federal Migration Service
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee on Red Cross
ILO	International Labour Organisation
IOM	International Organisation for Migration
NGO	Non-Governmental Organisation
LC	The Labour Code
LMA	Labour Migration Abroad
LMRC	Labour Migrants Resource Center
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
MS	The Migration Service
PA	Public Association
PEA	Private Employment Agency
RGRT	Regulation of the Government of the Republic of Tajikistan
UPR	Universal Periodic Review
UN	United Nations

I. Introduction

Government of the country undertakes many efforts in the field of labour migration: a reform of migration legislation is ongoing; a National Strategy on Labour Migration Abroad for the period of 2011-2015 (hereinafter Strategy on LMA) is adopted; institutions easing procedures of departure and employment are established and so on. However, growing trend of migration of citizens results in many problems that are not yet sufficiently addressed neither through policy measures nor by legislation.

Present report covers the period of 2004-2011. It is drafted by the Non-Governmental organisations (NGO) Human Rights Center and Imran involving broad number of the following NGOs:

- Association of Pamiri Lawyers;
- Public Association (PA)“League of Women Lawyers”;
- PA “Nakukor”;
- Association “Surhob”;
- PA “Ahktari Bakht”;
- Center of Support of Civil Initiatives (CSCI) “Shahrvand”;
- CSCI “Kalam”;
- PA “Vatanam”;
- PA “Khairandesh”
- Fund of Development of Society of Istravshan city;
- PA “Mukhochirat”
- International Association of Women-Labour Migrants

Reports and studies of other NGOs and organisations were used in this report. In this respect, relevant references to the source of information are made in the text.

The present alternative report is prepared with the purpose to provide members of the Committee on the Rights of Migrant Workers and other stakeholders with objective information on the implementation of the provisions of the International Convention on Protection of All Migrant Workers and Members of their Families (CMW). Opinion of drafters of the report is different from the opinion of the state. This report complements the National report. In this respect, we avoided repetition of the detailed information on legislation that is provided in the National report. We hope that information as well as practical examples provided in this report will be

useful for members of the Committee on the Rights of Migrant Workers in order to establish objective opinion on respect of the rights of migrant workers in Tajikistan and draft recommendations.

II. Background Information

A. General economic, social and political situation in the field of labour migration in the Republic of Tajikistan.

1. Tajikistan is a country with unstable economy and high unemployment rate. According to official data in the first half of 2011 unemployment rate in Tajikistan increased by 15% compared to the same period in 2010. In addition to mass unemployment and unstable economy, the main problems hindering development of Tajikistan are poor efficiency of the public administration, judiciary and law enforcement bodies, complicated and non-transparent mechanism of decision-making by public bodies, high level of corruption and unfavourable climate for entrepreneurship development and investment.¹ Due to poverty and unemployment labour migration of citizens abroad is becoming the main source of income for the considerable part of the population of Tajikistan. According to estimation of the national experts labour migration helps to reduce unemployment rate almost by 3 times and increase by 15% employment of employable population. Migration has become a major survival strategy of the population during last 15 years in Tajikistan.²

2. Policy of Tajikistan in the field of labor migration. Labor migration policy is more focused on the employment of citizens abroad. However, the draft law on external labour migration includes a number of restrictive measures for migrant workers that concern restriction of their freedom of movement and imposition of additional duties on them.³

3. Major features of the labour migration from Tajikistan. According to official data in 2011 735,031 citizens left Tajikistan for employment. Out of this number there were 653,257 men and 81,774 women.⁴ However, current system of collection of statistics on migration⁵ does not help

¹ National Development Strategy of the RT till 2015.

² Impact of global financial crisis on labour migrants from Tajikistan: opinions of migrants, rapid assessment. Author Jamshed Quddusov, Information Research Center "SocServis", May 2009

³ See paragraphs 22-23 of this report.

⁴ Data of Migration Service under the Government of Tajikistan

⁵ Collection and processing of statistical data related to labour migration is carried out based on the Resolution of the Tajik Government "On record-keeping of foreign labour migration of Tajik citizens and their return from abroad". Tajik citizens leaving the country fill in migration cards which contain information on the country of destination, purpose of migration, education and qualification of the migrant. Following the research carried out by the ILO "Collection and processing of statistical data related to labour migration from Tajikistan" (2010) via migration cards which is practiced in Tajikistan could be an accurate and reliable source of information if all border

to define real number of migrant workers travelling abroad. According to estimation of different experts this number varies from 1 million to 1.5 million of people. Labour migration from Tajikistan is seasonal and recurrent due to traditionally strong family ties. However, in the last couple of years the period of stay of citizens of Tajikistan in labour migration abroad is increasing.⁶ According to official data 572 728 labour migrants returned to Tajikistan in 2011. Out of this number there were 506 417 men and 66 311 women.⁷ According to the research of the International Labour Organisation (ILO) male labour migration is prevalent in Tajikistan. 67% of migrants are in the age group of 25 to 55 years of age. Persons aged 18 to 25 years constitute 31% of all migrants. Russia is the most popular destination for Tajik migrant workers where more than 90% of migrants from Tajikistan find employment. The remained percentage of migrant workers travels to Kazakhstan, South Korea, Ukraine and the United States. The largest number of external migrants (52%) is engaged in unskilled labor in different sectors of the economy. About 16% are construction workers.⁸

4. Biggest number of migrant workers has no primary vocational education and, in general, they have low education level, poor command of Russian language and lack of legal knowledge. These factors significantly worsen their situation in the destination country and lead to proliferation of labour exploitation and slavery. In this respect, newly established Migration Service (MS) under the Government of Tajikistan in 2011 launched a project⁹ on training and organized recruitment of migrant workers to Russia, however to the date of drafting of this report it is not possible to assess effectiveness of this initiative. The majority of migrants do not trust public bodies and prefer to travel independently to labour migration. Only small percentage of migrant workers turns to the public bodies and private employment agencies that received license to arrange employment of citizens abroad.

5. Female labour migration and gender stereotypes. Among the major problems of female migrant workers is their lack of preparation to leave to work, social and legal vulnerability due to

control check points (both land and air transportation) were equipped with modern computer technologies and qualified and well-trained personnel. Presently the required technical equipment is available only at the check points of the country airports.

⁶ Impact of global financial crisis onto labor migrants from Tajikistan: opinions of migrants – interviewing. Author Jamshed Quddusov, Information Research Center “SocServis”, May 2009

⁷ Data of the Migration Service under the Government of Tajikistan.

⁸ Labour Migrants’ remittances to Tajikistan: potential for savings and investments into economy and financial products to attract remittances \ Sub-regional Bureau for East Europe and Central Asia countries, ILO. – Moscow: ILO, 2010

⁹ In the end of 2011, MS launched the project on training of 100 potential labour migrations on short-term courses on upgrade of professional skills and studying Russian language. In February 2012 participations of this pilot project passed their first exams and in March they received certificates. It is expected that in the future this labour migrants will receive employment in Russia and will be supervised by the migration services of Tajikistan and Russia.

prevalence of illegal employment, low levels of qualifications, awareness, legal awareness, problems of children living with them, or left at home.¹⁰ The basis of the adaptation model of Tajik migrant workers including among women is the strategy of survival, but not the strategy of integration to the society of recipient country. According to the study of the UN Women¹¹ in Tajikistan there is stigmatisation of female migrant workers, especially those who opt to go abroad for work independently leaving their husbands behind. There is a strong stereotype that migration is not female, but male business.¹²

6. The impact of labour migration on households. Labour migration impacts the distribution of roles in the families. Wives of labour migrants have to bear responsibility for upbringing of children, cultivation of land, resolution of many household and economic problems and, at the same time, remain under supervision of their husbands' parents or their own relatives.¹³ Wives and children from abandoned families of migrants are the most vulnerable when it comes to the adverse effects of migration. According to the study of the International Organisation for Migration (IOM)¹⁴ about one third of migrants never return home. Abandoned women left behind live in extreme poverty and inadequate housing facilities, eating the food which they cultivated themselves and occasionally getting help from their relatives.¹⁵ To survive, these women send their young children to work. Some of them are forced to be prostitutes or enter into polygamous marriages to improve their economic status.¹⁶ There are many cases when women are kicked out of the houses of relatives of those migrant workers who departed to Russia and did not communicate with their families.¹⁷ IOM researchers noted that the appearance of the women abandoned by migrant workers testifies long-term physical and emotional pain; they looked much older than their real age. They often wept and expressed feelings of uncertainty and anxiety with regard to their own lives and their children. Such mental state may drive women to suicide if they do not see any way out of this situation,¹⁸ especially in a patriarchal society of Tajikistan

¹⁰ Study of the UN Women and Public Fund Panorama "On Respect of Rights of Female Labour Migrants from Tajikistan", Dushanbe, 2009.

¹¹ Ibid.

¹² Interview with gender expert Ms. T.Bozrikova at <http://www.migrant.ru/news.php?id=404>

¹³ Study of the UN Women and Public Fund Panorama "On Respect of Rights of Female Labour Migrants from Tajikistan", Dushanbe, 2009.

¹⁴ IOM study "Abandoned wives of Tajik labour migrants", 2009.

¹⁵ Ibid.

¹⁶ From the interview with the NGO Human Rights Center Isfara branch.

¹⁷ According to data of the CSCI "Shakhrvand" of Khatlon province of Tajikistan.

¹⁸ Mukammal Odinaeva. "Tajikistan: "High rate of suicide among the women is related to domestic violence". <http://www.irinnews.org/InDepthMain.aspx?InDepthID=20&ReportId=62834&Country=Yes>

7. There is no statistics on number of abandoned women of labour migrants. However, these women most often suffer from depression, suicide, cruel treatment and can be engaged to criminal activities and polygamy in the situation where they see no choice or do not know legal and social rights.¹⁹

8. According to UNICEF study,²⁰ children from abandoned migrant families become more aggressive and undisciplined; they suffer from depression.²¹ The country recognises that number of street children coming from families where one or two parents are labour migrants is growing.²² In December 2011 amendments were introduced to the Family Code under which minor children left without proper supervision can be sent to specialised child care institutions until their parents return.²³ Boarding institutions are not the best place for children and cannot replace family care due to conditions of living in these institutions that are assessed as inhuman.²⁴

9. The risks associated with excessive dependence of Tajikistan on labour migration. 90% of labour migration flows from Tajikistan are directed to Russian Federation. Such dependence on one country of destination inflicts risks to the country. Migrant workers may at any time become hostages of crisis in political relations between the countries. In November 2011 court of Tajikistan sentenced Viktor Sadovnichy, a Russian national, and Alexei Rudenko, an Estonian national, to imprisonment of 8,5 years for committing illegal border crossing and smuggling. The sentence imposed on national of Russia had strong repercussions in Russia. Immediately after pronouncement of sentence on 11 November 2011 Russia made an official statement that several hundreds of migrant workers from Tajikistan will be deported because they violated conditions of residence. Official authorities of this country stated that Russia will wait for the official response from Tajikistan and depending on this response it will undertake “symmetric or asymmetric” measures.²⁵ Since 11 November 2011 several hundreds of Tajik labour migrants were detained and placed in special detention centres in Moscow, Moskovskaya province.

¹⁹ IOM study “Abandoned wives of Tajik labour migrants”, 2009.

²⁰ UNICEF study: “Labour migration impact on migrant’s children remained in Tajikistan”, November 2011

²¹ Ibid.

²² http://www.bbc.co.uk/russian/international/2011/11/111119_tajikistan_migrant_children.shtml

²³ Article 122 of Tajik Family Code stipulated that in case of absence of parents for a long period of time protection of rights and interests of children is entrusted to the guardianship and custody bodies. Guardianship and custody bodies are the local executive bodies of government. The issues related to execution of guardianship and custody of children remained without care of their children are carried out by such bodies and are governed by the procedures set forth by the Family Code and Civil Code of the Republic of Tajikistan. (Law of the RT adopted on 26.12.11., No.791).

²⁴ Interview with Head of the NGO “Centre on Child’s Rights”, Ms. G.Rakhmanova, March 2012.

²⁵ <http://expert.ru/2011/11/14/nikakoj-kampanii-net/>

Examples of deportation:²⁶

Interview with labour migrants from Khatlon Province who were deported from Russia immediately after sentencing of pilots:

«On 16.11.2011 at 23.00 officers of the patrol service came to our place of residence. There were many of us, migrants-citizens of Uzbekistan, Kyrgyzstan and Tajikistan, but officers detained only us. They brought us to the Department of Internal Affairs (DIA) and kept us there for 12 hours and, then they transferred us to the Federal Migration Service (FMS). One of the officers of the FMS told us that all the Tajiks shall be deported. This is when I found out about this case with conviction of citizen of Russia».

«I was detained due to failure to extend duration of my stay. During court hearing I was sentenced to deportation. I asked judge to impose fine because I committed this violation for the first time. I also asked about opportunity to lodge an appeal on sentence. However, the judge of Zuzinks district court of Moskovskaya province Mrs. Kotlysheva stated as follows: “Tell this to heads of your state and law enforcement bodies that detained our pilots!”

A few more interviewed migrant workers said that they were denied of entry to the territory of Russia during 16-28 November, 2011 when they tried to pass border control check points in the airports “Domodedovo” and “Vnukovo”. Prosecutor General of Tajikistan Sherkhon Salimzoda said the following: “Taking into account the exceptional circumstances of this case, the court sentences against these pilots will be substantially mitigated by a higher court.”²⁷ In the end of November the court of appeal reduced the sentence of pilots to 2.5 years and applied amnesty to release them. Upon release of the pilot Sadovnichy V. mass arrests and raids of labor migrants from Tajikistan in Russia were stopped.

10. Dependence of the country on remittances is growing due to growth of labour migration flows. According to the World Bank estimation in 2009 Tajikistan was in the top of the list of developing countries most dependent on remittances.²⁸ Forecast of experts is that dependency of economy on remittances hinders the transition of the country to higher and sustainable growth.²⁹

Year³⁰	Remittances to Tajikistan from individuals.	Ratio of remittances to GDP
2008	\$ 2.5 billion	49% of GDP
2009	\$ 1.8 billion	34.6 % of GDP
2010	\$ 2.1 billion	40% of GDP
2011	\$ 2.9 billion	45 % of GDP

²⁶ These examples derive from the practice of the Human Rights Centre.

²⁷ <http://www.interfax.ru/news.asp?id=217245>

²⁸ Migration and Remittances Factbook 2011, World Bank 2nd edition.

²⁹ Presentation of the expert, representative of the ADB in Tajikistan Mr. K Aminov in the presentation on Tajikistan Economic Development, April 2011

³⁰ According to the National Bank of Tajikistan and World Bank data Migration and Remittances Factbook 2011

Recommendations:

1. Apply human rights based approach and take into account provisions of the CWM in development of migration policy and legislation.
2. Take into account gender mainstreaming approach and impact of labour migration on men and women and related problems in development of migration policy.
3. Ensure that right understanding on downsides and benefits of all forms of migration of women is shaped in the communities. For this purpose, conduct activities aimed at raising levels of awareness among population on this matter.
4. Develop special courses on pre-departure orientation of labour migrants taking into account needs of women-migrant workers.
5. Facilitate provision of free or low-cost information to women on specific female issues that arise at all stages of migration.
6. Develop and integrate system of provision of complex of social, economic, psychological and legal services to facilitate the reintegration of returned labour migrants taking into account needs of women-migrant workers.
7. Conduct regularly research on assessment of impact of migration on families of labour migrants left behind in Tajikistan. Take into account findings of these studies while developing policies in the field of labour migration.
8. Facilitate establishment of conditions for provision of employment to women with low competitiveness and dependent on remittances. Measures that will be undertaken in this regard shall motivate in-country employers to recruit women who are not protected socially and provide these women with tax benefits for running of private entrepreneurship.
9. Develop strategies aimed at strengthening and development of institute of family in the country. These strategies shall consider separately the needs and requirements of families of labour migrants left in Tajikistan.
10. Placing abandoned children of labour migrants to boarding schools should not be perceived as good practice. The Government shall develop practice of protection of interest of children of labour migrants that comply with their needs and provide possibilities to these children to maintain connection with their families.
11. Improve entrepreneurship and investment climate. Establish for this purpose favourable conditions for development of small and medium business, reduce risks for private investors through respect of their property rights, reduction of corruption and maintenance of security and stability in the country.

12. Include issue of impact of remittances to programmes of development of villages, districts, and other administrative units and define opportunities of state support for development of households of migrants including through provision of tax and administrative preferences.

B. Constitutional, legislative, legal framework governing implementation of the Convention.

11. This review mainly touches upon programmes that were adopted in 2011 after a decision on the establishment of the Migration Service under the Government was made; this was the beginning of the next stage of reforms of regulation and management of migration processes.

12. Republic of Tajikistan (RT) is not only the country of emigration, but also immigration. In this respect, policy on regulation of migration and fulfilment of its obligations under CMW shall be aimed at both citizens of RT leaving abroad for work and foreign nationals entering RT for work. However, so far efforts of the Government are focused on regulation of labour migration of Tajik nationals abroad and ensuring the rights of labour migrants-Tajik nationals while there are 4 523 nationals of China, Turkey, Afghanistan, Kyrgyzstan and other countries are working in RT according to the Government.³¹

13. Labour migration of foreign nationals to RT is governed by several programmes. One of them is a Comprehensive programme to combat human trafficking in the Republic of Tajikistan for the years of 2011-2015 that is aimed at prosecution of cases of illegal migration in the RT and involvement of foreign nationals- migrant workers in human trafficking in the territory of RT. Though this programme establishes the link between migration and human trafficking, the Migration Service under the Government of the Republic of Tajikistan is not included to the number of authorities responsible for its implementation.

14. Besides, State Strategy for development of labour market in the RT until 2020 stresses the need to reform immigration laws in order to ensure a balance between the interests of the RT, respect of the rights of foreign nationals, prohibition of discrimination and effective regulation of employment of foreign nationals. The proposed measures are mainly aimed at protecting domestic labour market and realistic assessment of the need to attract foreign labour force, increase of possibility for foreign nationals to study state language.³² To implement and monitor

³¹ Initial report of the RT on implementation of the International Convention on Protection of All Migrant Workers and Members of Their Families, 2010, para 10.

³² National Strategy for Development of Labour Market in the RT until 2020, priority 3, para 4

the strategy Governing Council headed by the Minister of Labour and Social Protection was established. Migration Service is a member of the Governing Council.³³ Although the strategy stipulates prohibition of discrimination, it does not establish any activities aimed at ensuring rights of foreign nationals-labour migrants, studying their situation in the labour market, the degree of social and legal protection as well as antidiscrimination measures.

15. Adoption of the Strategy on LMA is a turning point in terms of the Government recognizing the influence of the labour migration on the economy of Tajikistan and the need for a application of the fundamentally new approach in regulation of labour migration in the RT.³⁴

16. Important recommendations such as establishment of closer linkage between Strategy on LMA and existing programmes to combat tuberculosis and HIV/AIDS, programme on combating human trafficking and the State strategy for the development of labor market of RT until 2020 were not taken into account in the process of drafting of Strategy on LMA.³⁵ Recommendation on inclusion of additional separate priority area aimed at ensuring the rights of families of labour migrants was not taken into consideration.³⁶

17. Strategy on LMA is mostly focused on establishment of legal and institutional frameworks for management of migration and provision of services to migrants and members of their families, but to lesser extent on the provision of specific services to migrant workers. The developed plan of implementation of the Strategy and expected results do not include indicators on number of labour migrants benefited from this strategy and impact of the activities to be implemented in the framework of this Strategy on respect of rights of labour migrants.

18. Substantial weakness of the Strategy on LMA is its gender-neutrality. It does not take into account tendency of growing number of women-labour migrants, and specific problems which families of labour migrants face. Thus, it does not establish any specific activities in this regard.³⁷

³³Governing council on implementation of the Programme comprises of representatives of Executive office of the President of Tajikistan, deputy Ministers of finance, economy and trade, agriculture, deputy head of the Tax committee, Statistics Agency, representatives of Federation of Trade Unions and Association of Employers, National Association of Small and Medium Business and other bodies and organisations. All mentioned ministries, agencies and organisations seating in the Council are responsible for implementation of particular activities of the strategy.

³⁴ National Strategy for Labour Migration of Tajik Nationals Abroad for the period 2011-2015, paras 1-2

³⁵ Public hearings were conducted in September and October 2010 in Dushanbe and Khudjand.

³⁶ Ibid.

³⁷ Bozrikova T. "Findings of the Gender Expertise of the Draft National Strategy on Labour Migration of the National of the RT Abroad for the Period of 2011-2015", 2011, p. 15.

19. Strategy on LMA does not stipulate any sources of financing. Ministry of finance of RT did not disburse any financial resources to the MS to implement activities planned by the Strategy in 2012.³⁸

20. Official statistics does not provide information on prevalence of tuberculosis among migrant workers. However due to the fact that tuberculosis is an obstacle to obtaining a permit to work in the Russian Federation, it is necessary to introduce measures aimed at combating spread of tuberculosis and treatment of migrant workers. Though National Programme on Protection of the Population from Tuberculosis (TB) in the RT for the period 2010-2015 recognizes that migrant workers are vulnerable to TB infection,³⁹ it does not establish any special activities aimed at working with migrant workers. Migration Service is not included into the implementation of this programme. It is not mentioned amongst coordinating bodies of this programme.

21. Unlike the programme on tuberculosis, the Programme on combating HIV/AIDS in the RT for the period 2011-2015 stipulates preventive measures with labour migrants and establishment of regional cooperation to dialogue between countries on the problems of labour migrants and HIV, diagnosing and treatment of sexually transmitted diseases.⁴⁰ Unfortunately, this programme does not establish a mechanism of cooperation with the MS to implement activities on HIV/AIDS.

22. Currently, development of the draft law “On Labour Migration of Nationals the RT Abroad” and the draft Law “On Private Employment Agencies (PEA)” is ongoing in Tajikistan. If these draft laws will be adopted in the form they are written to the date of drafting of this report it will result in new difficulties in effective regulation of legal relationships in the field of migration.⁴¹

23. The draft law “On Labour Migration of Nationals of the RT Abroad”

- includes definitions “illegal labour migration of nationals of the RT” and “illegal labour migrants” which the UN and the ILO do not recommend to use;

³⁸ Unofficial discussions with officials of the MS of the RT

³⁹ National program on protection of population from tuberculosis in RT for the ear of 2010-2015, items 4.2.3.

⁴⁰ Program on combating epidemics of HIV/AIDS in RT for the period of 2011-2015, chapter 10.

⁴¹ <http://www.news.tj/ru/news/obobonazarova-sozdanie-fonda-pomoshchi-tadzhikskim-migrantam-rabotayushchim-v-rossii-neobkhodim>

- creates substantial risk of restricting the human right to freedom of movement. In particular the exit of a national may be restricted if the national knows the information containing state secret or any other secret protected by the law;
- obliges migrant workers to continuously improve their professional skills, however, it is not taken into account that migrant workers do not always have financial means for upgrading their qualification;
- obliges migrant workers to support financially their families and parents. This requirement repeats the provisions established by the family legislation;
- provides for establishment of the Aid Fund for Tajik labour migrations working abroad. However, it does not stipulate clear procedures of management of this Fund, payment of fees, decision making and criteria applied to receive money from this Fund.

24. The draft law “On Private Employment Agencies (PEA)” has significant shortcomings in use of terminology, absence of clear subjects falling under the competence of the law and lack of enforcement mechanism of this law. Moreover, the draft law does not provide for effective guarantees and mechanism of protection of labour migrants that enter into relationships with the employers through intermediary PEA. To the date of drafting of this report the Drafting group conducted discussions with representatives of civil society to change this draft law.

Recommendations:

1. Amend the policy documents concerning labour migration to include priorities and measures aimed at ensuring the rights of foreign nationals-migrant workers, studying their situation in the labour market, identifying the extent of their social and legal protection in accordance with the obligations under the Convention.
2. Introduce formal rules on procedure of public consultations and participation of civil society in policy development, consideration of their recommendations and their inclusion to the programme and policy documents.
3. Mainstream gender to programmes and legislation on labour migration and acknowledge officially the impact of labour migration on the lives of women and children, growth of number of women migrating both for the purpose of employment and as family members of migrant workers and take specific measures necessary for protection of the rights of women and children.
4. Ensure participation of the Migration Service under the Government in implementation of all national programmes that are relevant to migrant workers, particularly, in programmes to combat human trafficking, the fight against tuberculosis, HIV/AIDS.

C. Administrative framework in the field of labour migration

25. In the beginning of 2011 the Government of the RT established a separate, independently functioning public body in the field of labour migration, i.e. the Migration Service under the Government of the RT (the Regulation of the Government of Tajikistan (RGRT) No. 229 adopted on April 30, 2011). The Migration Service was transferred from departmental subordination of the Ministry of Internal Affairs (MIA) of the RT as well as from the law enforcement to the civilian public bodies. Thus, the system of management of migration flows was reformed already three times. Until 2007 the authority in this field was vested in the Ministry of Labour and Social Protection of RT. In 2007 these powers were handed over to the MIA. In 2011 the Migration Service under the Government of the Republic of Tajikistan was established. It has no institutional subordination. It is a central body of executive power in the field of migration.

26. Negative factor of this reform is the absence of continuity and framework requiring hand over between institutions in the process of reform and opening of new institutions. This results in loss of intellectual, human and institutional resources. Accordingly, the transfer of the Migration Service from the departmental subordination of the MIA resulted in major loss of majority of trained human resources whose capacity in the field of migration was built. This happened due to reluctance of personnel to leave the police service and, in this respect, lose earnings. The decision to establish the MS was taken at the beginning of the year. Meanwhile the Charter outlining powers, objectives and composition of the MS was adopted in late April 2011. Until mid-2011 MS did not have its own building and other infrastructure. Established mechanisms of coordination and cooperation between border troops, other departments and the MS when it was under the MIA were destroyed. Since the beginning of 2011 and almost during one year MS did not function and did not fulfill its direct duties due to the need to address matters related to setting-up the infrastructure, recruitment of staff and get the work up and running. Absence of effective mechanisms and institutions to manage migration process is an evidence of weak public policy in the field of migration that does not give due regard to magnitude and significance of migration, in particular, external migration and its impact on the economy, development of the country and reduction of poverty among the population. Moreover, current weakness of public policy and public bodies has direct impact on implementation of the obligations of the state in respect of human rights and protection of rights of labour migrants travelling abroad.

27. Regulations on the MS under the Government of the RT establish functions that are performed already by other public bodies. Thus, Regulations vested in the MS policy functions,

namely, the MS is responsible for participation in the development and implementation of public policy in the field of migration as well as drafting and improvement of legislation in this field. MS is also responsible for fulfillment of coordination functions (interagency, and with civil society and international organizations inside and outside of the country), control and supervision over the activities of individuals and legal entities working in the field of external labour migration and employment of Tajik nationals abroad and regulation of procedures of foreign labour migration to the RT.

28. In addition to functions of control and supervision (including inspection) over the activities of private employment agencies recruiting citizens to work inside and outside of the country, the MS is responsible for licensing of private employment agencies and issuance of work permits to foreign nationals. This situation establishes a conflict when the same body is simultaneously responsible for regulation and control.

29. The MS is also responsible for provision of the following range of services: 1) counseling, legal, social and other services to migrant workers and members of their families; 2) protect the rights, freedoms and lawful interests of the migrants from the RT outside the RT and the rights, freedoms and lawful interests of foreign nationals engaged in labour activities in the territory of the Republic of Tajikistan; 3) participation in drafting and implementation of projects of social protection (including micro-finance projects and remittances) to assist migrant workers abroad and members of their families to raise their living standard and poverty reduction; 4) organization and coordination of vocational training of migrant workers in the Republic of Tajikistan; 5) in partnership with relevant bodies develop curriculums, professional training and retraining of labour migrants, as well as organize short-term vocational courses in the Republic of Tajikistan, provide services on the organization of vocational training for migrant workers.

30. The MS is also in charge of the organised recruitment of Tajik nationals outside of the country. Besides, the MS shall perform series of analytical functions to monitor the situation with regards to migration within and outside the country, keeping records on migration flows, analysis of legislation in the field of migration, conduct researches and expertise and so on. The MS is also responsible for recording number of labour migrants travelling for work and returning back. It also performs law enforcement function, i.e. prevention and combating of illegal migration.

31. Many of the functions mentioned above, particularly, provision of educational services, microfinance and other services are already being provided by other ministries and agencies. For instance, control over enforcement of labour legislation and inspections are already being conducted by the State Service on Control in the Field of Labour; services on assisting in search of employment including outside the country are being provided by the State Employment Agency; the functions of protection of national of the RT abroad is the responsibility of the Ministry of Foreign Affairs (MFA), in this respect, this Ministry is assigned with appropriate diplomatic status unlike the MS that does not have this status. Diplomatic status of embassies and consulates enables their personnel to communicate more effectively with courts and public bodies of the country of destination. Functions of control and supervision over respect of legislation are vested in the office of the prosecutor.

32. The institutional structure of the MS established by the Government is also inconsistent with its functions, as it is not clear how MS will perform important functions like protection of the rights of migrant workers. Thus, the MS is composed of 230 full-time staff members, out of which 100 employees employed in its central apparatus. MS itself consists of the management, principal department on labour migration, department of cooperation with compatriots living abroad, organizational and analytical department, department of migration control, department of licensing, information department, department of international cooperation, department of registration of works with migrant workers, human resources department, legal department, administrative and financial department. In this respect, mentioned organizational set-up does not establish any special departments or units that are responsible for provision of services to labour migrants, performance of control and supervision over wide range of activities in the field of migration and other functions as prescribed by the Regulation.

33. The following factors hamper effective implementation of state's obligations to protect the rights of migrant workers: there are budgetary constraints that preclude spontaneous establishment of such agencies as the MS under the Government of the RT performed without studying feasibility of assignment and concentration of this variety of functions (development of policy and legislation, law enforcement function, control, supervision, provision of services, licensing, coordination and cooperation) in one agency; moreover, these functions duplicate functions of other bodies; importantly, analysis of the impact of institutional reforms on the rights of migrant workers is not performed before undertaking reforms. Exactly these factors raise doubts about awareness of the Government on critical situation with regard to respect of rights of labour migrants in the countries of destination.

Recommendations:

1. Strengthen institutional capacity of the Migration Service under the Government, including through allocation of annual funding sufficient for fulfillment of its functions, implementation of national programmes, particularly, taking into account the impact of migration on the economy and poverty reduction.
2. Conduct functional review of system of management and regulation of migration in order to eliminate duplicating functions of public bodies, streamlining manpower and financial resources. Migration service shall preserve its status of coordination and analysis. Functions on provision of services to labour migrants shall be delegated to competent public bodies.
3. Develop formal administrative procedures (mechanism) on protection of the rights of migrant workers in destination countries and strengthen cooperation between the Migration Service and the Ministry of Foreign Affairs of the RT. In particular, urgently develop and adopt measures of prompt response on violation of rights of migrant workers in partnership with law enforcement bodies and the Ministry of Foreign Affairs of the Republic of Tajikistan that are already competent to undertake this function and have established collaboration with law enforcement bodies in the countries of destination
4. During the process of development of policies in the field of migration study and apply good practices of the countries other than those focused on facilitation of migration flows, but countries working on elimination of labour migration and improvement of economic situation in the country aimed at establishment of employment opportunities within the country. Besides, use the best practices of the countries that regulate labour migration of its population to countries without visa regime as in the case of the RT.

III. Information on the articles of the Convention

Article 83 Right to effective remedy

34. In addition to the judiciary and law enforcement bodies, migrant workers can seek protection of their rights in the Migration Service under the Government of RT, the Ombudsman and Inter-Ministerial Commission on Combating Human Trafficking under the Government of the RT.

35. Mostly, migrant workers refer cases of failure of the private employment agencies to comply with their obligations, including exploitation and human trafficking to judiciary and law

enforcement bodies.⁴² Insufficient professionalism and level of training of personnel of the law enforcement bodies and judiciary hamper their capacity to detect elements of human trafficking in complaints of migrants. NGO Human Rights Centre is aware of cases when elements of crimes “human trafficking” or “fraudulent practices” were stated in complaints of labour migrants. Nevertheless, migrants were denied to open a criminal file, but they were recommended to file a civil suit. In other cases law enforcement bodies were not able to collect reliable evidences. As a result, opened criminal proceedings were discontinued. Or actions were qualified as less serious crimes. Besides, these systemic problems as corruption and failure to comply with the principles of fair trial influence the effectiveness of these remedies and reduce the level of trust of migrants to these public bodies.

Cases.⁴³

*The criminal case against the head of PEA “Vostok-Pharm”. A citizen Tabarov S. and 33 other people were sent by “Vostok-Pharm” LLC to work in Rostov-na-Donu (Rostov-on-Don) of Russian Federation. Upon arrival to Russia it was revealed that representatives of “Vostok Pharm” misled migrant workers about the nature of work and salary. Several migrant workers decided to refuse the work. However, representatives of the “Vostok Pharm” and the employer took away passports of migrant workers and told them that everyone has to work out and reimburse cost of airfare, meals, accommodation, registration in migration service and receipt of work permits. Only upon the repayment of these debts migrant workers were able to leave the employer and look for employment independently. Migrants had to live in abandoned refrigerator containers and cargo containers, they were provided with little food and water, they were forced to do unpaid work 10-12 hours per day during 85 days. When migrant workers have once again refused to work under these conditions, the employer and the representative of “Vostok Pharm” threatened them with deportation. Labour migrants returned to Tajikistan in late spring 2008 with the help of the International Organisation for Migration. The office of Prosecutor General opened criminal proceedings against the head of PEA “Vostok Pharm” under article 130.1 of the Criminal Code (CC) of the RT that establishes responsibility for human trafficking. However, in March 2009 Tabarov S. received a letter from the district prosecutor's office of Firdausi district of Dushanbe, stating that the criminal case was dismissed due to “absence of elements of crime in these actions”. At the same time, Human Rights Watch detected in this case the fact of human trafficking and appealed to Office of Prosecutor General of the RT with official request to conduct inspection of the employment agency “Vostok-Pharm” LLC in order to ensure that their employment practices are in full compliance with the law. Human Rights Watch also requested to bring offenders to responsibility in case of detection of facts of violations.*⁴⁴

⁴² По результатам анализа обращений гражда в правовые приемные НПО «Центр по правам человека»

⁴³ Данные кейсы приведены из интервью с мигрантами, адвокатами трудовых мигрантов а также интервью юристов ОО Центр по правам человека и НПО Имран.

⁴⁴ Official appeal of HRW is published at <http://www.hrw.org/ru/news/2009/06/04-4>

PEA “TajikAviatur”. During the period from 23 November to 14 December 2010 PEA “TajikAviatur” arranged organized recruitment and transportation of 180 Tajik labour migrants to Irkutsk city by air. According to migrants, upon their arrival to Russia they became victims of labour exploitation by construction company “VostSibstroj”. Migrants informed that they didn’t receive salary; they didn’t have adequate living conditions, adequate food and medical treatment. In their open letter in local Newspaper “Nigokh”⁴⁵ migrants noted that this PEA did not perform its duties towards migrants. To the date of drafting of this report it is known that former Migration Service under the MIA of the RT lodged official complaint to the Federal Migration Service of Russia asking for help in resolving this situation. According to information provided by migrants the criminal file against guilty individuals was not opened in Tajikistan.⁴⁶

36. According to the Law of RT “On Ombudsman for Human Rights”⁴⁷ the Ombudsman is responsible for review of complaints on violation of human rights of Tajik citizens, foreign citizens and stateless persons. The Ombudsman concluded Agreements on cooperation with the Human Rights Ombudsman of Russia, Mr. Lukin (concluded on 26.10.2011) and with the Ombudsman of Sverdlovsk region, Ms. T. Merzlyakova (concluded on 06.12.2011). While Ombudsman has the mechanisms to protect the rights of migrant workers within the country and directly in Russia (using Agreements with the Ombudsmen) the percentage of migrant workers complaining to this body is very low. Majority of migrants are not well informed about activities of Ombudsman and authority of this body. According to available data in 2011 Ombudsman reviewed only 4 complaints of the labour migrants. There are facts when Ombudsman merely referred complaints to Migration Service and didn’t undertake adequate measures necessary for protection of rights of labour migrants.⁴⁸ There was no response of Ombudsman on massive arrest and violation of rights of labour migrants in Russia in November 2011 that were attributed to conviction of national of Russia, pilot Sadovnichy V.⁴⁹

37. In accordance with Comprehensive Programme on Combating Human Trafficking in the RT for 2011-2013 labour migrants are included to risk group. NGOs forwarded to the Inter-Ministerial Commission on Combating Human Trafficking⁵⁰ (hereinafter, Commission) several

⁴⁵ No. 49 (220) dated 23.02.11

⁴⁶ Interview with group of labour migrants from Gonchi district taken by personnel of the PA Fund of Development of the Society, October 2011.

⁴⁷ The Law of the RT adopted on 20 March 2008, No.372.

⁴⁸ This practice took place in consideration of complaint filed to protect interests of labour migrants Abdukadyrov M. who in September 2011 became a victim of labour exploitation in Russia and Sharipov I. who was subject to cruel and inhuman treatment in Russia. Complaints were filed on 21.10.2011 г.

⁴⁹ More details about this issue is presented in para 9 of this report.

⁵⁰ According to article 7 of the Law of the RT “On Combating Human Trafficking” (15.07.2004) Inter-Ministerial Commission on Combating Human Trafficking is not directly responsible to undertake specific measures to protect

appeals of migrant workers caught in slavery and labour exploitation.⁵¹ Though the Commission reviewed appeals and gave relevant orders to competent bodies to respond promptly on facts mentioned in the appeal the whole process of review of these appeals lasted for more than 10 days. Meanwhile, appeals stated the circumstances causing danger to life and health of migrants.⁵²

38. NGOs note that MS does not have clear procedures for receiving and reviewing complaints: a) complaints first of all is registered in the general department regardless the matter stated; b) further the complaint is referred by the general department to competent official of the MS within next few days regardless of the fact that often migrants needs prompt assistance. Representation of the MS in Russia does not have a diplomatic status and cannot visit special detention wards where migrant workers are kept before deportation and expulsion from Russia. There are documented evidences that migrant workers are exposed to cruel and inhuman treatment in these detention wards.⁵³ Currently, there are 13 staff members including the support staff in the Representation of the MS in Russia. The MS personnel are based in Moscow, while migrant workers live not only in Moscow, but also in other regions of Russia. The RT and Russia did not yet reach agreement on opening of permanent offices of MS of the RT in other regions of Russia. Although the inspectors in charge of individual federal districts of Russia visit them regularly to monitor situation with regard to respect of rights of labour migrants. However, it is not sufficient to ensure prompt access of labour migrations to these mechanists and response on violation of human rights of migrants.

39. There are several individual cases of application of foreign nationals (mainly, from Commonwealth of Independent States (CIS) countries) working in Tajikistan to law enforcement bodies (militia) in case of violation of their rights.⁵⁴ Migrant workers from abroad (China, Afghanistan, Turkey, Iran) prefer to contact relatives, friends, employer or their embassies in case of violation of their rights for to lack of trust or fear to apply to militia, office of the

victims of human trafficking, however, it is responsible for imposing control over functioning of specialised institutions in compliance with objectives assigned to the Commission.

⁵¹ The appeal in favour of Tajik citizens Abdukodirov M was sent on 15.09.2011, Jurabayev Umurzok and another 30 migrants who were in forced labour in Russia is sent on 29.07.2011

⁵² Djurabaev Umurzok noted that Russian employer denies his rights to leave this working place, he took away his documents while labour migrant had paroxysm of kidney disease.

⁵³ Case of Ilhom Sharipov, see in more details in paragraph 74 of this report.

⁵⁴ Monitoring of respect of rights of foreign international labour migrants in Tajikistan conducted by NGO Human Rights centre in cooperation with NHOs Nakukor, Ahtari Bakhtm Association of Pamiri Lawyers. February-March 2012.

prosecutor, court. Besides, they are not aware about other remedies available such as Ombudsman, Inter-Ministerial Commission on Combating Human Trafficking.⁵⁵

Recommendations:

1. Develop programmes for training and upgrade of qualification of personnel of the offices of prosecutor, MIA and the judiciary on provisions of CMW, particularly, include topics that concern study of the provisions of CMW to the curricula of the Judicial Training Center under the Council of Justice and Training Centre under the Office of the Prosecutor General.
2. Develop a Resolution of the Plenum of the Supreme Court of RT explaining appropriate practice of hearing the cases of violation of rights of labour migrants, particularly those cases that have elements of human trafficking and labour exploitation.
3. Ombudsman shall develop a mechanism of review of complaints and prompt response on violation of rights of labour migrants, including clear procedures of response in cases of massive violation of rights of labour migrants in Tajikistan and countries of destination.
4. The Government of the RT shall develop formal procedures of protection of rights of labour migrants and bind law enforcements bodies, MIA, prosecutor, courts, MS to respond to cases of violation of rights of labour migrants using departmental mechanisms and agreements on legal assistance between the RT and countries of destination. Moreover, in this respect, improve interagency coordination between the MS and other bodies competent to combat human trafficking.
5. The MS shall define procedures of cooperation and wide involvement of civil society organisations in responding to complaints of labour migrants. These procedures shall at minimum establish simplified procedure of application to the MS with complaints received from labour migrants and provide clear and prompt terms of review of these complaints depending on their nature. When migrants report danger to their life and health periods of review of complaints shall be as short as possible.
6. In order to improve effectiveness of remedies introduce ICT in operations of competent bodies to ensure prompt receipt and review of complaints and applications of labour migrants.
7. Establish in regions of Russia where many Tajik labour migrants reside shelters and crisis centres.

⁵⁵ Monitoring of respect of rights of foreign international labour migrants in Tajikistan conducted by NGO Human Rights centre in cooperation with NGOs Nakukor, Ahtari Bakhtm Association of Pamiri Lawyers. February-March 2012.

8. Provide to nationals of the RT and foreign nationals-labour migrants the information about all available remedies in the language which they understand.

IV. Human rights of all labour migrants and members of their families

Article 8 Right to leave the State including the State of origin and return to it.

40. Article 25 of the Law “On Migration” (1999) provides that a national of the RT may be denied to leave the RT if this individual knows the information that constitute state secret or other secrets protected by legislation. This provision is in violation of standards established by Article 12 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁶ If a civil action is brought against an individual in the court this individual may be denied to leave the country prior to the end of the proceedings. However, according to civil procedural legislation parties of the trial may present their interests in the court through their representatives. This restriction is significant for potential labour migrants due to current judicial practice in Tajikistan when hearing of civil cases may last for more than 3-4 years.⁵⁷

41. In addition to mentioned restrictions, the draft law “On Labour Migrations of Tajik Nationals Abroad”⁵⁸ establish that incapable individuals are also denied of exit. This constitutes discrimination.

42. There are facts of restriction of physical access of labour migrants to migration cards⁵⁹ that need to be filled by migrants prior to departure to the country destination. In Dushanbe airport migration cards are rarely available at the special points, however, there are some unknown people who propose to labour migrants to fill out migration cards if they pay 2-3 Somoni (from 50 to 70 US cents). These facts, i.e. when migrants had to pay for service to fill out the migration cards earlier in 2008 in Khudjand airports. Respective public bodies did not respond to this violation of rights of individuals traveling outside of the country.⁶⁰

⁵⁶ General Recommendation of the Human Rights Committee No. 27 states that “just a mere mention of state secrets is not sufficient for such a restriction on freedom of movement and such restrictions must have a clear legal grounds and meet the criteria of absolute necessity and proportionality requirements”. The UN Human Rights Committee, General Recommendation No. 27, “Freedom of movement” (Article 12), 02.11.99.

⁵⁷ Study of Legislation in the Field of Labour Migration, ILO Project in Tajikistan, 2010.

⁵⁸ For more details see paras. 22-23 of this report.

Migration Card of the of citizens of the Republic of Tajikistan is filled in by every citizen of the Republic of Tajikistan, over the age of 16 at the exit of the Republic of Tajikistan and in return from abroad. The information collected on the basis of migration cards of citizens of the Republic of Tajikistan should be used solely for statistical purposes.

⁶⁰ Article “If Migrants are deceived already in Tajikistan?” published in the newspaper Asia-plus on 03.03.2012 <http://www.news.tj/ru/news/migrantov-obmanyvayut-uzhe-v-tadzhikistane>

43. Cases of corruption and extortion are common among customs and border control officers working in the airport. Interviewed migrants from Dushanbe city says: “Before customs and borders controls there is need to go through the “sanitary room” that releases documents on exported dry fruits. This document costs 9,70 Somoni (about US\$2). Even if you take with yourself less than 1-2 kg of dry fruits you are forced to buy this document though it is not mandatory. Then, the customs control starts. When the luggage was checked by the special machine, it is being searched manually. At this stage you have to pay 10 Somoni (about US\$2,5) and then continue. At this same stage sometimes services on filing out the migration cards are offered. Then you proceed to luggage department where they force you to pay 10 Somoni (US\$2,5) for wrapping your luggage. Afterwards, you continue to passport control. This is also the stage when they often ask about 5-10 Somoni (from US\$1 to \$2,5). You can also decide not to pay, but in this case your documents will be thoroughly checked for a long while. In general, labour migrant pays on average up to US\$10 to ensure that it will be possible to exit and enter the country without any problems”.

44. Foreign labour migrants also noted that during procedure of crossing the border officers of customs and border control services demand bribe. It is often that customs services abuse the situation when migrants do not understand the language. They put forward unclear demands to labour migrants and, as a result, labour migrants are forced to pay bribes to get rid of this demands. According to interviewed migrants if they decide not to pay the bribe then procedures of inspection and passing border control delays. In this respect, it is more convenient to pay bribes and get rid of unnecessary attention.⁶¹

Recommendations:

1. Bring current Law “On Migration” and draft law “On Labour Migration of Tajik Nationals Abroad” in compliance with article 12 of the ICCPR, namely, remove provisions restricting citizens to exit the country if they know state secret or other secret protected by law. Remove from the draft law “On Labour Migration of Tajik Nationals Abroad” discriminatory provisions restricting exit based on criteria of incapability.
2. Detect and suppress the practice of establishment of artificial barriers related to fill out of various documents that have to be filled out by migrants to enter and exit the RT.
3. Ensure free access of labour migrants to migration cards.

⁶¹ Monitoring of respect of rights of foreign international labour migrants in Tajikistan conducted by NGO Human Rights centre in cooperation with NHOs Nakukor, Ahtari Bakhtm Association of Pamiri Lawyers. February-March 2012.

4. Ensure access of labour migrants to comprehensible information on entry and exit of the country including the procedure of passing check points (of customs, border control, immigration control, state inspection on phytosanitary and quarantine of plants and so on) at the stage of crossing the border including on the languages they understand.
5. Strengthen measures to detect facts of corruption and extortion in check points of country entry and exit and bring culpable persons to the responsibility established by the legislation.

Article 11 Prohibition of slavery and forced labour.

45. In accordance with article 8 of the Law of the RT “On combating human trafficking” following bodies are responsible for measures aimed at combating human trafficking: Office of the Prosecutor General,⁶² the MIA,⁶³ State Committee of National Security of the RT,⁶⁴ Customs Service under the Government of the RT,⁶⁵ the Ministry of Labour,⁶⁶ the MFA and its foreign representations,⁶⁷ the Ministry of Education,⁶⁸ the Ministry of Health⁶⁹ and the Committee on Youth, Sports and Tourism under the Government of the RT.⁷⁰ This law does not establish any authorities of the MS in the field of human trafficking, however, the MS controls activities of PEA and most often labour migrants fall into exploitation due to fault of dishonest PEA.

46. There is a legal basis for the prohibition of forced labour, slavery and other forms of its manifestation. Nevertheless, the legislation does not adequately take into account features of the process of human trafficking. The CC and the Law of the RT “On Combating Human Trafficking” attributes 22 crimes to the crime “human trafficking”. Amongst them are the following: violation of the state border, rape, involvement to the prostitution and so on (i.e. all criminal acts that accompany the process of human trafficking). The definition of human trafficking established by the legislation⁷¹ already includes the full range of illegal activities

⁶²Supervision over the enforcement of the law on combating human trafficking, perform activities on prevention of human trafficking.

⁶³ Prevention, detection and suppression of crimes attributed to human trafficking.

⁶⁴ Detection of connections of international terroristic organisations and organised criminal groups with human traffickers, prevention and suppression of attempts of crossing the state border by traffickers, and illegal crossing the state border by victims of human trafficking.

⁶⁵ Detection and suppression attempts of crossing the customs border by traffickers, as well as illegal transfer of victims of human trafficking of customs border.

⁶⁶ Ministry of Labour is responsible for drafting of proposals on provision of support to victims of human trafficking, opening and maintenance of specialised institutions.

⁶⁷ MFA ensures protection of rights and interests of Tajik nationals who became victims of human trafficking and were found outside the RT by means of development of effective mechanisms of cooperation between diplomatic missions in the countries of transit and destinations.

⁶⁸ Includes topics on human trafficking and related problems to the current curricula of humanitarian disciplines.

⁶⁹ Develops programmes on provision of medical and psychological support to victims of trafficking, provision of medication in the specialised institutions.

⁷⁰ Controls compliance of activities of tourist organisations and companies with those established by their charters.

⁷¹ Here we mean Criminal Code of the RT and the Law of the RT “On Combating Human Trafficking”

related to the chain of human trafficking. This wide range of other criminal acts falling under the definition of human trafficking confuses the assessment and forecasting of actual the real crime of human trafficking.⁷²

47. Current Criminal Code includes article 132 “Recruitment for human trafficking”. Elements of this crime provided in the Code is redundant and covers only one element of the multicausal crime reflected by the legislator in the disposition of the article 130.1 of the Criminal Code “Human Trafficking”. Such duplication results to the fact that the crimes related to human trafficking are interpreted according with article 132 “Recruitment...” which affects the results of prosecution. For instance, according to official data for the period from 2005 to 2009 there was only one criminal case prosecuted under article 130.1 of the CC of the RT and 133 criminal cases were prosecuted under article 132 CC of the RT.⁷³ This situation clearly shows that there are problems related to correct qualification of human trafficking crimes.⁷⁴

48. In 2010 the Government informed about ongoing investigations and criminal prosecution against 28 persons suspected in human trafficking as prescribed by the articles 130.1 of the CC and other laws (in 2009 the prosecution was against 9 persons).⁷⁵ At the same time measures to protect and support victims of human trafficking in Tajikistan are not effective enough and have very low protective and compensation status.

49. According public associations there is some strengthening of activities the Consulate General of the RT in the United Arab Emirates aimed at combating human trafficking and protection of the interests of Tajik nationals. On the contrary activities of the consular sections in Russia that is the main country of destination of migrant workers, aimed at protection and representation of interests of citizens are not perceived effective. In Tajikistan there are only two shelters for victims of trafficking. They are fully dependent on donor support. Rehabilitation and re-integration programmes provided by shelters for victims of trafficking are not effective. The Government does not have any data on impact of the rehabilitation on victims. There are neither legislative provisions nor adequate practical measures to compensate victims of human

⁷² See Sattorov F M, M J Burkhanova Recommendations for improving the legislative framework in the field of combating human trafficking in Tajikistan. Dushanbe, 2010., p.5-6

⁷³ Report of the Interdepartmental Commission on combatting human trafficking under the Government of the Republic of Tajikistan for 2005-2009.

⁷⁴ See Sattorov F M, M J Burkhanova Recommendations for improving the legislative framework in the field of combating human trafficking in Tajikistan. Dushanbe, 2010., p.5-6

⁷⁵ Report of the US Government on Human Trafficking, 2011, www.dushanbe.usaembassy.gov

trafficking and provide jobs by the state via job fairs. As a rule no opportunities are provided for ensuring decent work in Tajikistan. This shortcoming affects process of re-integration of victims.

50. In 2004 a victim of labour exploitation, a citizen of Tajikistan Kahramon Musabayev lost his legs and became disabled due to the trip arranged by the employment agency “Tojikkhorijakor”. With the support of NGO Musabayev K. applied to court. Complaint of Musabayev K. was partially satisfied by the decision of the court of Khujand city on 11.01.2007. The court ordered the compensation of material damage equal to 6,500 Somoni and moral damage equal to 1,500 Somoni (to the date of pronouncement of judgment the amount of penalty was equal to \$ 2,300).⁷⁶ However, the defendant did not pay in full this compensation while the court didn’t undertake any appropriate measures to enforce the judgement. Pension that is paid to K. Musabaev does not cover minimum consumer costs.⁷⁷ Law enforcement bodies of Tajikistan did not open investigation of this crime on the territory of Russia to prosecute key exploiters. R. Musabayev independently communicates with the Principal Department of Internal Affairs of Volgograd region of Russia.⁷⁸

51. The case of Tajik national Siyarkhon Tabarov is another example when victim of labour exploitation did not receive adequate protection from the state.⁷⁹ In the framework of re-integration programme of the IOM Tabarov S. received assistance to return to the country. As in the previously mentioned cases, law enforcement bodies of Russian were not involved to ensure thorough investigation of this case. Compensation was not paid to victim of exploitation.⁸⁰

Recommendations:

1. Exclude 22 different crimes from the crimes attributed to human trafficking and focus only on two articles of the RT, namely, 130.1 (human trafficking) and 167 (trafficking of minors).
2. Delete article 132 (recruitment for the purpose of exploitation) from the CC of the RT, because this crime is already covered by the provisions of the article 130.1 of the CC of the RT (human trafficking).

⁷⁶ Information of NGO Human Rights Center lawyers, Khujand.

⁷⁷ Tajikistan: Live goods for real money, cheap and good. Tilav Rasulzadeh for <http://www.fergananews.com/article.php?id=6891>, here Information of NGO Human Rights Center lawyers, Khujand is also used.

⁷⁸ <http://news.tj/ru/newspaper/article/sudba-migranta>

⁷⁹ Refer to para 35 of this report for more details.

⁸⁰ Interview with victim of exploitation Siyarkhon Tabarov, 2010.

3. Amend the legislation of the RT with regard to compensation of inflicted moral and physical damage to the victims of human trafficking by the state in the form of additional social benefits that cover minimum consumption costs to regain employability of victim.
4. Establish cooperation with countries of destination, including with Russia in the field of investigation of actions of employers exploiting labour migrants and bringing them to responsibility.
5. Provide labour migrants with open access to employment agencies and individuals granted the license to arrange employment abroad. For this purpose introduce practice of publication of “black” and “white” lists of PEA to ensure that migrants have a possibility to avoid contacts with dishonest agencies.

Articles 12,13,26 Freedom of opinion and expression of opinion, freedom of thought, conscience and religion, right to join trade unions.

52. In August 2011 the Law of the Republic of Tajikistan “On Parental Responsibility for Upbringing and Education of Children”⁸¹ was adopted. It applies to Tajik nationals, foreign nationals and stateless persons residing in RT (article 2). The purpose of this law is to strengthen parental responsibility for upbringing and education of children in the spirit of humanism, patriotism, respect for national, universal and cultural values, as well as protection of the rights and interests of children. Article 8 of this Law establishes parental responsibility to prevent participation of their children in the activities of religious organizations with the exception of children officially enrolled in religious institutions. This provision is contrary to the paragraph 4 of the article 12 of this Convention.

53. Besides, the state took an obligation to protect children from child labour, including from its worst forms. However, article 8 of the Law stipulates that parents are responsible for prevention of engagement of child in hazardous and hard works that inflict damage on health of a child as well as other works that prevent normal physical and psychological development of a child. Article 12 of the Law enumerates responsibilities of teachers, public institutions and other organizations regulating matters of upbringing and education of children. This list of responsibilities does not impose the duty to prevent the involvement of children in child labour on these bodies despite the fact that, in accordance with international treaties Tajikistan took a commitment to prevent involvement of children in child labour. These provisions of the Law in the first place impose responsibility to protect children from child labour on parents, but not on the authorized public officials as state agents.

⁸¹ No. 762 adopted on August 2, 2011

54. The Civil Code of the RT provides that citizen reaches legal capacity in the age of 18 years (article 22). However, article 8 of the law establishes the following parental responsibility: parents are obliged to prevent presence of children under twenty years of age during night hours in entertainment centers and prohibit children under twenty years of age to consume alcoholic beverages (including beer), drugs and psychotropic substances, tobacco products (including “*nas*” - green powdered tobacco) and potent substances. While reasons upon which the state decided to impose these responsibilities on parents pursue good intentions, the established age does not comply with provisions of article 22 of the Civil Code and the Convention on the Rights of the Child. This kind of obligation and responsibility should be borne by the agents of the state and implemented through policy measures, including with involvement of parents.

55. The right of foreign nationals and stateless persons to join Tajik trade unions is established by the para 4 of the article 5 of the Law of the RT “On Trade Unions” (No. 757, 2011). This provisions stipulates that “...foreign nationals and stateless persons residing in the territory of the Republic of Tajikistan may join the trade unions of the Republic of Tajikistan with exceptions of certain cases established by the law and international treaties ratified by Tajikistan.” However, this law does not establish mentioned restrictions. Neither they are stipulated by the Law of the RT “On Legal Status of the Foreign Nationals in the Republic of Tajikistan”⁸² nor by the Law of the RT “On Migration”.⁸³ It may constitute a violation of the paragraph 2 of the article 26 of this Convention.

Recommendations:

1. Amend the Law of the RT “On Parental Responsibility for Upbringing and Education of Children” to impose obligations under this law, first of all, on the public bodies, but not only on parents.
2. Amend the Law of the RT “On Parental Responsibility for Upbringing and Education of Children” to ensure its compliance with Civil Code of the RT and the Conventions on the Rights of a Child that stipulates that child is a human being below 18 years of age. In this respect, the responsibility on respect of rights of persons above 18 years of age shall be imposed on agents of state, but not on parents.
3. Establish the exhaustive lists of restrictions for foreign nationals and stateless persons with regard to their right to join trade unions of the RT in the Law “On Trade Unions” to

⁸² No. 230 adopted on February 1, 1996.

⁸³ No. 881 adopted on December 11, 1999.

ensure compliance with international standards of freedom of associations and trade unions.

Articles 14, 15 Prohibition on arbitrary and unlawful interference with privacy, infringement of inviolability of home, correspondence and other forms of communication, prohibition of arbitrary deprivation of property

56. In March 2011 Family Code of the RT was amended. According to amendments marriage between foreign national or stateless person and Tajik national shall be permitted if the foreign national lived in the RT for not less than one year and mandatory prenuptial agreement that has to be concluded prior to registration of marriage (para 3 article 12 of the Family Code, para 2 article 41 of the Family Code). Besides, according to the amendments the following mandatory provisions shall be included to the prenuptial agreement between Tajik national and foreign national or stateless person:

- property relationship of the parties, their rights and responsibilities with respect to property;
- responsibility of the parties to sustain children;
- provision of spouse and children with their private home (according to housing legislation a foreign national does not have a right to acquire property right on private home);
- provision of maintenance of incapable spouse in needs of care (para 4 article 42 of the Family Code).

The law prohibits amendments to these provisions of prenuptial agreements (para 4 article 43 of the Family Code). These provisions “... indicate the discriminatory nature of legal regime established for conditions of marriage and common property of spouses – Tajik national and foreign national.”⁸⁴

57. Thus, the migrant worker, a citizen of China, said that he married a citizen of the RT in 2008. They have two children. Though he repeatedly applied for residence permit, he was denied for unknown reasons. During the marriage, he bought an apartment. The property right on this apartment was registered on his wife, because under the national law foreign national do not have a right to acquire property of real estate.⁸⁵ In 2011, he divorced his wife. The court rules

⁸⁴ Coalition “From Equality *De-Jure* to Equality *De-Facto*”, 2010, Preliminary Draft of the Second Shadow Report of Public Associations of Tajikistan on Implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)”, para 59-60.

⁸⁵ For more details refer to para 89 of this report.

that the residence of children will be the place of residence of their father. Upon marriage dissolution his wife did not want to divide or change the apartment. He didn't apply to court to claim his rights on the apartment since the law does not permit him to own real estate. He is forced to rent an apartment and at the same time, children are doomed to move frequently. According to him, it also becomes more difficult to renew the visa because previously, he was able to do this upon invitation of his former wife. But now, he has fewer grounds to request extension of the visa. To extend the visa he applies to the administration of the market that plays a role of a host. He cannot take the children to his homeland, because his former though barely takes any part in their upbringing, prevents him to take them away. Neither has she agreed to take them outside Tajikistan. Migrant worker is concerned that his children will be left without proper care in Tajikistan has he not receive the renewal for this visa.⁸⁶

Recommendations:

1. Remove provisions of the Family Code that establish restrictions of marriage between Tajik nationals and foreign nationals and stateless persons, because they are discriminatory.
2. Provide guarantees from unlawful and arbitrary interference to private and family life of foreign nationals and stateless persons in consideration of matters related to divorce and upbringing of children.

Articles 16, 17, 24 The right to liberty and security safeguards against arbitrary arrest and detention, recognition of legal personality

58. Provisions of the Criminal Procedure Code (CPC) are fully applicable to foreign nationals and stateless persons who have committed crimes in the territory of the RT (article 5 of the CPC). Despite the fact that the penitentiary system in the RT was transferred under the jurisdiction of the Ministry of Justice of RT, the detention facility of the State National Security Committee (SNSC) and centers of temporary detention has not yet transferred to the jurisdiction of the Ministry of Justice.⁸⁷ This situation has direct relevance to migrant workers, because foreign nationals who violated the regime of stay in the territory of the RT may also be detained by the SNSC.

⁸⁶ Interview with labour migrant, Sughd region, 2011

⁸⁷ Coalition of Public Associations of the RT on Drafting of the Report under Universal Periodic Review (UPR), 2010, Report 1 (Civil and Political Rights), para 38.

59. International Committee of Red Cross (ICRC) and NGOs do not have access to places of pre-trial detention and prisons to conduct independent monitoring.⁸⁸

60. In 2011 amendments were introduced to the Law of the RT “On Militia”.⁸⁹ According to these amendments militia is responsible to undertake immigration control and governs matters related to stay of refugees and asylum seekers in the framework of authorities assigned to it. (article 3). The legislation did not specify the scope of responsibilities of militia on immigration control and procedures of this control. This gap in the legislation violates provisions of the Convention that require establishment of procedures for undertaking any verification of identity of labour migrants and members of their families (para 3 article 16).

61. According to findings of the monitoring of respect of rights of foreign migrant workers in the RT⁹⁰ inspections by the MS in Khatlon province take place every month. Militia checks migrant workers more often. Every inspection lasts from several minutes up to one hour. Rights are not explained to labour migrants if they are detained. As a rule, migrant workers had to pay bribes on average from 50 to 100 Somoni (from 10 to 20 USD) to militia so that they will be released though their documents were in order.⁹¹ Labour migrant says: “..every time I go market to do food shopping I am stopped by militia. I am brought to department of militia where I am asked various questions. As a result, in order to get rid of these questions every time I have to pay from 50 to 60 Somoni. This is very burdensome.”⁹²

62. Besides, migrant workers noted that the most serious challenge they face is the crossing the state border. They note that customs officers and border guards require, as a rule, a bribe of 10 Somoni (about 2 USD). Moreover, customs officers are using the fact that migrants do not know the language, thus they pose obscure demands. As a result to get rid of them, migrants have to pay a bribe.⁹³ The procedure of customs clearance is also discriminatory. Migrant workers are asked to wait and are inspected only after customs clearance of all passengers was completed. Exactly in this moment they demand a bribe. In case of refusal to give a bribe, the procedures of

⁸⁸ Coalition of Public Associations of the RT on Drafting of the Report under Universal Periodic Review (UPR), 2010, Report 1 (Civil and Political Rights), para 39.

⁸⁹ No. 41 adopted on 17 May 2004.

⁹⁰ Monitoring of respect of rights of foreign international labour migrants in Tajikistan conducted by NGO Human Rights centre in cooperation with NHOs Nakukor, Ahtari Bakhtm Association of Pamiri Lawyers. February-March 2012.

⁹¹ 1 доллар США равен 4.75 таджикских сомони, www.nbt.tj

⁹² Интервью с трудовым мигрантом гражданином Китая Хатлонская область, 25 февраля 2012 года.

⁹³ Interviews with migrant workers, Khatlon Region, February 25, 2012

customs and border inspection are delayed deliberately.⁹⁴ Moreover, there are facts when border control officers deliberately do not put the stamp certifying the fact and date of crossing the state borders in the passports of foreign nationals, particularly of those States that have visa-free regime with RT (Russia, Kyrgyzstan). These foreign nationals face problems with regard to proving legal cross of the Tajik border. In order to resolve these problems they also have to pay bribes to border control guards to exit the RT.⁹⁵

63. Article 100 of the CPC of the RT stipulates that in case of detention of foreign nationals the body responsible for criminal proceedings and detention shall report within 12 hours since the moment of actual detention to MFA of the RT to notify the embassy or consulate of this state. This provision does not oblige public bodies to notify consulates and embassies immediately upon the request of migrant workers. This is in contradiction with the requirements of the Convention.

64. Two kinds of punishments are imposed, namely, fine or fine and administrative expulsion from the territory of the RT, in cases of violations of compliance with rules of entry and stay of foreign nationals and stateless persons on the territory of the RT.⁹⁶ According to MS since the beginning 2011 128 foreign nationals were deported from the RT.⁹⁷ Taking into account that authorities to deport foreign nationals were assigned to the MS only in May 2011, mentioned statistics is not complete. Execution of expulsion for violation of other articles of the Code on Administrative Offences (CAO) falls under jurisdiction of other competent bodies. In this respect mentioned statistics do not incorporate numbers from these bodies..

65. In addition to CAO the Law “On Legal Status of Foreign Nationals in the RT” governs the administrative expulsion. Thus, according to article 31 of this law administrative expulsion can be imposed on foreign nationals and stateless persons in the following cases: 1) if their activities contradict to interests of national security or protection of public order; 2) if this is necessary for protection of health and morals of the population, protection of rights and lawful interests of Tajik nationals; 3) in case of gross violation of legislation governing legal status of foreign nationals in the RT, customs, currency or any other legislations of the RT.

⁹⁴ Interviews with migrant workers, Khatlon, Sughd regions, Badakhshan, Dushanbe, in the period from 20-25 February 2012.

⁹⁵ Interview with migrant workers, Dushanbe, during 20-29 February 2012.

⁹⁶ This information is drafted based on analysis of the situation on administrative expulsion conducted by the Labour Migration Resource Centre in Sugd province.

⁹⁷ <http://news.tj/ru/news/v-proshlom-godu-za-predely-tadzhikistana-deportirovano-128-inostrannykh-trudovykh-migrantov>

66. Para 28 of the Rules on Issuance of Work Permits to Foreign Nationals and Stateless Persons Undertaking Labour Activities in the RT specifies that “.. in the case of violation of the requirements ... of these Rules,” foreign national or stateless person that entered the RT for the purpose of work shall within 5 days to exit the territory of the RT. In case of failure to exit foreign national shall be deported from the country by competent bodies. Para 3 of the article 138 of the CAO of the RT “Work of the foreign nationals and stateless persons on the territory of the RT without work permit” stipulates degree of responsibility of the foreign national working without work permit. However, punishments established for violation of this article do not impose administrative expulsion, but only administrative fine. Part 3 of the article CAO of the RT provides that administrative expulsion from the territory of the RT foreign nationals and stateless persons shall be imposed by judge. If foreign national or stateless persons committed administrative offences upon entry to the RT then administrative expulsion is imposed by the competent public body or public official. However, imposition of administrative expulsion by the competent public body or public official is practically not possible. According to article 696 of the CAO of the RT imposition of the administrative expulsion in case of any administrative offences punished by administrative expulsion falls under exclusive jurisdiction of the court.

67. In the meantime, part 2 of the article 31 of the Law “On Legal Status of Foreign Nationals in the RT” stipulates that decision on expulsion can also be taken by the SNSC upon consent of the Prosecutor General of the RT. Article 33 of the Constitutional Law of the RT “On bodies of prosecutor in the RT” stipulates that expulsion of foreign national and stateless persons shall be executed in compliance with the legislation of the RT and upon consent of the Prosecutor General of the RT. These provisions are in contradiction with the provisions of the CAO. The latter establishes exhaustive lists of offences that are punished by the administrative expulsion imposed only by court. Besides, the requirement to impose administrative expulsion of foreign nationals and stateless persons upon consent of the Prosecutor General of the RT contradicts principles of independent and competent courts in these cases. However, in practice this provision of the Constitutional law is not enforced. Administrative expulsion is imposed bypassing the stage of getting the consent of the bodies of the prosecutor.

68. Proceeding report is compiled on the administrative offence committed by the individual. This report is submitted to court for consideration immediately after its drafting. Judge reviews this case in the day of receipt of this report (article 801 CAO) and rules to impose expulsion. According to article 813 of the CAO of the RT complaint on ruling of court on administrative

offices can be filed within 10 days after the date of delivery or receipt of the copy of ruling. However, part 3 of the same article prescribes that complaints on the ruling imposing administrative expulsion of the foreign national or stateless person from the territory of the RT may be filed within one day upon pronouncement of ruling. Civil code of the RT in its article 216 stipulates that calculation of the defined period (term) starts on the next day after the calendar date or on the date of happened event that defines a start. Thus, individual subject to administrative expulsion has only one day to file complaints on the ruling of court.

69. There are several judges that establish in their ruling one day term for filing the complaint in their ruling on expulsion, but several judges establish ten days term for this purpose. Complaint is filed to the judge that ruled this case or directly to the higher court. If the complaint was filed to the court that ruled this case then all the files on this case shall be transferred to the higher court on the date of submission of complaint. If this complaint is filed directly to the higher court then the higher court shall request all the files on this case from the court that ruled this case on the date of submission of complaint. According to general rules mentioned actions shall take place within 3 days after the date of submission of complaints. Complaint on the ruling imposing administrative offence is not subject to legal charge. According to part 3 of the article 816 of the COA of the RT complaints on ruling imposing administrative expulsion shall be reviewed within one day upon the date of its submission. In addition to CAO, part 2 of the article 31 of the Law “On Legal Status of Foreign Nationals in the RT” stipulates that “... decision on expulsion shall be made by the State National Security Committee upon consent of the Prosecutor General” and “...if the person subject to deportation will not apply to court to question lawfulness of this decision within one week upon date of making this decision, then this decision shall be enforced.” This provision is in contradiction with the CAO of the RT.

70. According to article 19 of the Law “On Migration” entry of foreign national and stateless person to the territory of the RT shall be permitted only if he or she were not deported from the RT. It is not clear upon which criteria border control guards take a decision to permit or prohibit to foreign national or stateless person to entry the country if he or she was deported previously. The legislation of the RT does not define any term or period during which the entry of the previously deported person is not permitted. According to border control guards this period is defined by the ruling of the judge on imposition of administrative expulsion. The common period of prohibition of entry to the RT upon administrative expulsion is five years. However, the national legislation does not establish provisions governing the duration of this period of

restriction to enter the RT if the administrative expulsion is applied. Neither has it established the jurisdiction of the court to make this decision.

71. Review of several court rulings of various courts of the Sugd province imposing administrative expulsion revealed that judges do not establish any periods during which the entry of the deported person is not permitted. Moreover, no stamps are put in the identity documents of the foreign national or stateless persons to specify the date of deportation and duration of restriction to enter the RT. According to border control guards all border control check points are notified respectively about deportation, and data of deported persons. Data is introduced to electronic list of persons that were deported and whose entry to the RT is restricted. It can be concluded that entry of the deported person is restricted for undefined period, particularly, forever due to mentioned gap in the legislation and established practice. As to database several officials of the MS noted that this database does not exist in all border control check points, because no stamp is put to the identity documents of the deported persons. In this respect, these persons may return to the RT without any problems by crossing the border in any other border control check points.

72. Foreign nationals are often denied in residence permit. The duration of review of applications for residence permits delayed for more than one month.⁹⁸ According to data of the Labour Migration Resource Centres (LMRC) of the Sugd province big group (more than 100 persons) of foreign nationals and stateless persons were denied in residence permit without specifications of any reasons.

Recommendations:

1. Transfer detention facility of the SNSC and centres of temporary detention under the jurisdiction of the Ministry of Justice;
2. Ensure transparency of the penitentiary system including through ensuring access of the ICRC and civil society to prisons to monitor the rights of prisoners, particularly, foreign nationals.
3. Introduce amendments to national legislation to establish that migrant workers and members of their families shall be exempted from all the expenses related to their detention for the purpose of detection of any violations of migration rules.
4. Develop transparent and clear procedures of verification of identity, frequency and list of bodies competent to verify identity of migrant workers. Conduct training among

⁹⁸ Interview with migrant workers of Sugd Province, in April 20-25, 2012.

- officials of these competent bodies on enforcement of these procedures, conduct awareness raising campaigns among migrant workers about these procedures to eliminate corruption.
5. Introduce mechanisms of control over the work of the officers of customs and border control services to eliminate violation of rights of migrant workers at the stages of customs clearance, border control and so on.
 6. Amend article 100 of the CPC to establish provisions that bind bodies detaining foreign nationals to notify immediately diplomatic and consular missions upon request of the detained foreign national and inform detained foreign national about this right.
 7. Ensure enforcement of established rules on receipt of residence permit by foreign nationals.
 8. Bring provisions of the Law of the RT “On Legal Status of Foreign Nationals in the RT”, Rules on procedures of immigration control, Rules of stay of foreign nationals in the RT in compliance with the provisions of the CAO of the RT, particularly, to establish in these legal acts that imposition of administrative expulsion is under exclusive jurisdiction of court.
 9. Delete part 3 of the article 813 from the CAO of the RT that limits the period of appeal on ruling on administrative expulsion of foreign national and stateless person from the territory of the RT by one day upon its pronouncement to bring it in compliance with general provisions establishing the term of appeal of rulings of other administrative offences.
 10. Amend CAO to establish provision requiring that ruling on expulsion of person shall be enforced only upon expiration of the period established for lodging appeal on ruling of court on imposition of administrative expulsion.
 11. Establish in the legislation consequences of administrative expulsion including the period during which foreign national has no right to enter the RT, competence of bodies to control the compliance with established period at all border control check points and put the stamp showing imposition of administrative expulsion. Introduce centralised tracking system of imposed administrative expulsions that will include information on identity documents of deported persons, period of expulsion and provide access of border control guards of all border control checkpoints in the territory of Tajikistan to this system.

Article 23 The right to recourse to consular or diplomatic protection.

73. According to findings of the researches⁹⁹ migrant workers do not trust consular agencies of the RT. Currently, there is one Tajik Embassy based in Moscow and 2 General Consulates based in Yekaterinburg and Ufa in Russia. Tajikistan is also using the institute of honourable councils¹⁰⁰ who work in big cities of Russia where many Tajik labour migrants reside. These are the following cities: Saint-Petersburg, Novosibirsk, Kaliningrad and Petrozavodsk.

74. Migrant workers negatively perceive the work of Tajik consulates and embassies in Russia. Weak and insufficient work of consulate agencies may be explained by limited number of personnel as well as lack of capacities to provide information promptly (for instance from the MIA of the RT) upon request of consulate agencies and embassy.¹⁰¹ Absence of consulate agencies of the RT in the territory of Russian in the places, where many Tajik nationals reside creates number of serious problems among migrant workers. Russian human rights organisation Ant-Discrimination Centre “Memorial” notes that absence of Tajik consulates in Saint-Petersburg forces migrant workers to travel to Moscow to resolve any administrative matter. This is a vicious circle. If the migrant lost his or her passport or the passport was expired the migrant has to travel to Moscow in order to return to the RT. Migrant can travel to Moscow by train or air and for this purpose he or she needs passport.¹⁰² It is a common situation for many migrant workers if they are based in those territories of Russia where Tajik embassy or consulate is present.

75. Several migrants also informed about corruption among officials of embassies and consulates of Tajikistan in Russia. According to them it is also possible to receive all the documents without bribery, however, it will take too long. Diplomats do not sympathise to problems of migrants as migrants said.¹⁰³ Migrants also noted that they rarely address honourable councils because their services are too expensive.¹⁰⁴

⁹⁹ For instance, report by FIDH “Tajikistan: Export of Labour Force – at What Cost?”, 2011; Report by HRW “Exploitation of Labour Migrants in Russian Construction Sector”, 2008; “Monitoring of Awareness of Labour Migrants About Their Rights and Their Access to Information”, Human Rights Centre, conducted in 2007, 2008, 2010 and 2011.

¹⁰⁰ **Non-professional (honourable) council** — is a person who is not on the diplomatic service of the represented state, but who performs some consular functions. As a rule, this person is a representative of the business circles of the state of destination. These honourable councils have no right to issue identity documents (passports, visas and so on), but they can file requests and applications to authorities of the countries of destination (normally they are citizens of this state). They do not receive any fee for doing consular functions of represented state, but they may take some parts of the consular fees.

¹⁰¹ Interview with officials of MFA conducted by personnel of the Human Rights Centre, February 2012.

¹⁰² According to study of FIDH “Tajikistan: Export of Labour Force – at What Cost?”, 2011

¹⁰³ Monitoring of Awareness of Labour Migrations about Their Rights and Their Access to Information, 2011, Human Rights Center.

¹⁰⁴ Interview with Migrant Workers from Isfara city, July 2011.

Case of Labour Migrants Miraliev I. and Sharipov I.

On 11.10.2011 local Newspaper Asia-Plus published stories of two Tajik labour migrants,¹⁰⁵ who were kept for 6 months in special detention center in Shakhti city of Russia. According to information published in this article labour migrants Sharipov I. and Miraliev I. in spring 2011 were placed to detention center because of the expiration of passport of one labour migrant and absence of passport of another labour migrant. Migrants were forced to stand on concrete floor for 16 hours. They were given cabbage 3 times a days and one loaf of bread as food to share between six people. Sharipov I. was given anaesthetic drugs with expired dates. Sometimes migrants were forced to work in houses of head of the special detention center and local commanders. Miraliev I. informed that during 6 months of detention no representative of Tajik Embassy came to see them. "When migrant was brought next time to work in the house of head, his wife allowed him to call home. Ismon informed his relatives about his troubles. Relatives of Ismon had to collect money for Russian officers of militia who demanded bribe of 6,000 Russian roubles. They also paid 3,000 Russian roubles to transfer the documents to embassy. During detention in Russian detention center Ismon lost his weight 20 out 66 kg. His hairs started to fall out. Now he has to go through the treatment of kidneys affected by cold and ill heart. Besides, he has to collect USD 1000 to repay debts." After the article was published on 21.10.2011 Human Rights Center applied on behalf of Sharipov Ilkhom who still stayed in special detention center to Migration Service of the RT, Embassy of Tajikistan in Russia, MIA of the RT, MFA of the RT, Office of Prosecutor General and Ombudsman. Migration Service sent this application to its representation in Russia. Ombudsman sent this application to the MS of the RT. Embassy of Tajikistan in Moscow replied that facts published in this article were not true. Embassy rejected the facts of demand of bribery from Miraliev I. noting that issuance of the certificate on return of people kept in detention centers is free. The Embassy noted that official authorities of Russian didn't notify them about court decision to deport Miraliev I. According to Tajik Embassy in Russian the certificate on return was sent to Miraliev on 19.08.2011 and Miraliev came back home in September. As to Sharipov I. Embassy informed that certificate on return was also sent to him. However, for unknown reasons this certificate didn't reach administration of special detention centers. In one month Human Rights Center applied to Embassy once again and only on 23 November 2011 Ilkhom was deported to Tajikistan.

Recommendations:

1. When appointing the Ambassador and personnel of embassy conduct more thorough recruitment of personnel that have high qualification, good diplomatic skills, good command of Russian language and other requirements established by legislation .¹⁰⁶
2. Increase number of consulate agencies in Russia due to high number of Tajik migrant workers residing in the territory of this state.

¹⁰⁵ <http://news.tj/ru/news/sudba-tadzhikskogo-migranta>

¹⁰⁶ Article 1 of the Regulations on Ambassadors, RGRT adopted on 23.01.1995г., No.165.

3. Develop and introduce detailed mechanism of application of labour migrants working abroad for protection of their rights and procedures of response (including appropriate period) by consular services and embassies on these applications.
4. Introduce provision of electronic services to labour migrants to practices of embassies and consulates, particularly, those services that concern issuance and reissuance of documents required for residence in country of destination or return to country of origin.
5. Establish an embassy hotline specifically for migration and labour-related questions, and ensuring that the staff of that hotline have training to provide information and referrals to relevant legal, social, and other services to those who call.
6. Conduct rights trainings in Russian regions where a large population of the home country's nationals are living and working, whether through trips to that region, through cooperation with local NGOs or Diaspora groups, or in other ways.
7. Disseminate information on rights under international and Russian law; the obligations of employment agencies and other intermediaries; and mechanisms in Russia and the home country for filing complaints against employers, intermediaries, and police.

Articles 25, 27, 28, 53 The principle of equal treatment in respect of remuneration and other conditions of work and employment conditions, social security, and the right to receive urgent medical care, the right to freely choose their remunerated activity for members of the migrant worker family.

76. Labour Code (LC) of the RT establishes equal labour rights of foreign nationals unless particular laws establish restrictions in relations to this particular category of workers. Current LC of the RT does not stipulate any provisions that govern directly relationships with worker-labour migrant. In this respect, all the provisions of the labour legislation are equally applied to both Tajik nationals and foreign nationals regardless their legal status.

77. Article 5 of the Law of the RT “On Legal Status of Foreign Nationals in the Republic of Tajikistan” stipulates the legal status of foreign nationals that reside either temporarily or permanently in the RT. Those foreign nationals who received permanent residence permit issued by the bodies of internal affairs have the status of permanent residents. Foreign nationals residing in the RT on other lawful grounds have a status of temporary residents. Permanent residents have equal rights with Tajik nationals.

78. In accordance with article 1 of the Law of the RT “On Migration” (No.881 adopted on 11 December 1999) labour migrant is a person who is to be engaged, is engaged or has been

engaged in a remunerated activity in a state of which he or she is not a national and is not a permanent resident. National legislation does not include foreign nationals permanently residing in the country to the category of labour migrants that is in contradiction with the provisions of the Convention (article 2). All foreign nationals regardless of their status (as labour migrants or permanent residents) have to receive work permit¹⁰⁷ for period of up to one year.¹⁰⁸ However, the Law of the RT “On Legal Status of Foreign Nationals in the Republic of Tajikistan” establishes that immigrants (permanent residents) have the same legal status as Tajik nationals while in relation to labour rights the requirement to receive work permit for period of up to one year is a discrimination of their labour rights.

79. Thus, this temporary work permit attaches a condition of conclusion of fixed-term employment contract for this category of workers. It is not possible to conclude employment contract for an indefinite period. Duration of the employment contract with foreign nationals regardless his or her status is limited to the period of work permit. In this respect, labour migrants face additional condition of termination of employment contract, namely upon expiration of work permit that is in contradiction with principles of the Convention. It is also not clear who the law regulates the validity of the work permit in case of change of jobs of labour migrants, because work permit specifies the place of work of the foreign national.

80. Besides, it is not clear how the law regulates validity of the work permit in case of termination of the employment contract, specifically, due to liquidation of the organisations and staff reduction. Respectively, in the mentioned cases the work permit shall be valid till the end date of the period for which it was issued, because dismissal of workers happened due to reasons beyond his or her control. In this respect, this gap in the law may result in discrimination if labour migrant is denied of the rights to continue his/her work on the mentioned grounds in the RT.

Recommendations:

1. Remove discriminatory provisions on duration of work permit and definition of labour migrants to ensure its compliance with the provisions of the Convention.
2. Address gaps in the legislation with regard to the grounds of termination of employment contract due to liquidation of the organisations, staff reduction and establish the

¹⁰⁷ Article 7 of the Law of the RT “On Legal Status of Foreign Nationals in the Republic of Tajikistan”, No.230 adopted on 1 February 1996.

¹⁰⁸ Para 2 of the Rules on provision of work permits to foreign nationals and stateless persons who conduct labour activities in the RT, adopted by RGRT on 31 October 2008 No.529.

possibility for foreign nationals to apply to employment service or Migration Service that will be obliged to assist workers to find if possible similar job for the duration of the previously concluded employment contract.

3. Address the gap in the national legislation and establish that it is not required to receive new work permit due to change of owner of the enterprise, reorganisation of the enterprise or change of place of work. Foreign national may notify the MS about these changes bypassing the requirement to receive work permit.

Article 33, 37 Right to information

81. Charter of the MS adopted by the Resolution of the Government on 30 April 2011 obliges this body to provide labour migrants and members of their families with counselling services. Information services shall be provided for free. *Unfortunately, Charter of the MS does not establish directly this responsibility to inform migrant workers on policy of labour migrations in countries of destination, rules and regulations on issuance of work permits in countries of destination and so on as it is prescribed by the CMW.*

82. Specialised department on counselling and work with migrant workers is operational only in the Central office of the MS in Dushanbe. In regional offices of the MS this specialised departments were not opened. In this respect, counselling services are provided differently. Representatives of office of Ms in Gorno-Badakhshan Autonomous Oblast (GBAO) noted that “ they don’t have any official staff members responsible to provide counselling services. Sometimes head of the regional office provides counselling services to Tajik national and foreign nationals on various issues related to labour migration”. Representatives of the MS in Khatlon noted that there are 21 staff members and they all provide counselling when required. 4 staff members in the office of MS in Sugd are responsible for counselling of migrants. However, current number of personnel and resources of the MS does not enable to cover by direct counselling even 10% migrant workers planning to leave the country.

83. According to available data department of work and counselling of citizens in the Central office of the MS for the period from September to December 2011 reviewed about 89 applications of Tajik migrant workers on legal and social matters.¹⁰⁹ Representation of MS in GBAO since its opening in 2011 provided assistance including information to 18 migrant workers. The MS office in Sugd during the same period provided assistance and counselling to 270 migrants. Unfortunately, the office of MS in Khatlon didn’t provide any official figures on

¹⁰⁹ Written replies of the Government of the RT on lists of issues to be taken up by the Committee on Migrant Workers, CMW/C/TJK/Q/1/Add.1

number of migrants received assistance and counselling, but according to officials of this office about 50-60 migrant workers apply to them.¹¹⁰

84. The MS states that information to migrant workers is also supplied by the official web-page of this organisation,¹¹¹ however, some of the presented information on procedures related to labour migrations abroad is either old or not updated. Besides, information is mostly focused in Tajik nationals while information for foreign migrant workers on the language they understand (at least in English) is not available on this web-page.

85. The Ms and its representations in regions are based only in administrative centers. In this respect, possibilities of many migrants from rural areas to access services and information are considerably hampered. Travel to administrative center is expensive for many migrant workers. Access to virtual assistance via web-page may be not accessible for many citizens, particularly taking into account that access of Internet is not available in all the regions, but in autumn and spring supply of electricity is limited. During this period electricity is supplied only for two hours a day.

86. The MS do not practice trips to regions to provide information and consultations to migrants on matters related to travel and employment abroad. However, this way of provision of information is effective given the current situation. In the regions representatives of the MS are engaged by NGOs in the process of provision of information to population about procedures of departure and employment abroad. Given the work of the MS on provision of information the role of specialised NGOs providing information about all stages of planning and departure to labour migrations is growing. When this report was drafted IOM supporting functioning of 7 specialised Labour Migration Resource Centers (LMRC) in Tajikistan. 6 of these centers are run by NGOs. According to data of IOM in Dushanbe¹¹² up to 2010 LMRC reached more than 30 000 migrant workers. In 2010 LMRC informed more than 11 000 migrant workers on various issues (including migration issues in countries of destination), in 2011 information services were provided to more than 13 000 migrant workers and potential migrant workers, about 30% of clients were women.

№	Name of the 2009 Organisation	2010	2011
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¹¹⁰ Interview with staff of the MS in GBAO, Sugd, Khatlon, February 2012.

¹¹¹ Written replies of the Government of the RT on lists of issues to be taken up by the Committee on Migrant Workers, CMW/C/TJK/Q/1/Add.1

¹¹² Interview with staff of IOM, March 2012.

1	LMRC in Dushanbe	---	---	Information and legal assistance is provided to 851 labour migrants.
1	LMRC in Kulob ¹¹³	Information and legal assistance is provided to 769 labour migrants, of them 130 women	1374 people of them 468 women	2938 people of them 973 women
2	LMRC in Khujand ¹¹⁴	Information and legal assistance is provided to 943 labour migrants, of them 312 women	5292 people of them 1807 women	4396 people of them 1648 women
3	LMRC in Hisor ¹¹⁵	---	---	Information and legal assistance is provided to 3327 labour migrants
4	LMRC Center in Tajikabad ¹¹⁶	---	---	Information and legal assistance is provided to 3044 labour migrants
5	LMRC in Khorog ¹¹⁷	Information and legal assistance is provided to 1144 labour migrants, of them 353 women	Information and legal assistance is provided to 1612 labour migrants, of them 642 women	Information and legal assistance is provided to 4800 labour migrants, of them 1396 women
6	LMRC in Aini ¹¹⁸	Information and legal assistance is provided to 1579 labour migrants, of them 375 women	Information and legal assistance is provided to 4385 labour migrants, of them 997 women	Information and legal assistance is provided to 5898 labour migrants, of them 2224 women
7	Total	4435	12663	25254

87. In addition to LMRC that provide information to migrant workers this activity is also conducted with female migrant workers and abandoned wives of migrant workers by local NGOs League of Women Lawyers and International Association of Women Migrant Workers.

¹¹³ Run by the CSCI “Shahrvand”

¹¹⁴ Run by the NGO Centre for Human Rights

¹¹⁵ Run by the NGOs Vatanym

¹¹⁶ Run by the NGOs Surkhob

¹¹⁷ Run by the CSCI Kalam.

¹¹⁸ Run by the NGOs Hayrandesh

№	Name of the Organisation	2010	2011
1	League of Women Lawyers	1258	1775
2	International Association of Women migrant workers	--	307
3	TOTAL		2082

88. This tables demonstrate that in general activities on provision of information to migrant are conducted by public associations. This situation has certain risks. First of all, LMRC depend on donor resources and their work can be terminated due to end of Projects. Ample example is the work of LMRC in Kurghan-tube and Shartuz that in 2011 actually stopped their work due to end of funding. “Now migrants from our regions do not know where to get information on employment abroad”, - said head of the NGO “Shifo”.¹¹⁹ “It seems that public bodies fully vested the responsibility to inform migrant workers in NGOs. They are not interested by quality of pre-departure informational activities among migrant workers, do not monitor the level of awareness of migrants, do not study needs of migrants in information” - representatives of NGOs said.¹²⁰ The MS shall play a leading role in the field of provision of information services to migrant workers.

Recommendations:

1. Provide access of migrant worker to information through opening of representations/offices of MS under the Government of the RT in all administrative units of the RT and introduce responsibility to provide information in job descriptions of competent personnel;
2. Improve access of Tajik migrant workers and foreign migrant workers to information using ICT (for instance, Internet, free text messages and free applications in mobile phones).
3. Ensure access of foreign migrant workers to information on migration legislation and rules of stay in the RT in the language they understand.
4. Build appropriately and regularly the capacity of the personnel of the Migration Service of the RT working in the regions on provision of services on information and counselling of migrant workers

¹¹⁹ IOM Situation analysis conducted in the framework of the development of the National Referral Mechanism for Migrants, July 2011.

¹²⁰ Ibid.

5. Amend the Charter of the MS to establish the obligation of the MS to inform migrant workers about labour migration policy of country of destination, rules and procedures of issuance of permits for work in countries of destination as it is foreseen by the CMW.
6. Develop and introduce methodological guidelines for the MS and other competent bodies on undertaking information activities among migrant workers. These guidelines shall establish standards on information required for migrant workers, improve quality of the information work and comply with provisions of the CMW.

Article 43 The principle of equal treatment with nationals at hiring in the specified fields

89. CMW provides that migrant workers having documents or received permanent residence have equal rights with nationals of the state with regard to provision with dwelling (article 43.1d, 43.3). The legislation restricts these rights of labour migrants. Article 9 of the Law “On Legal Status of Foreign Nationals” establishes that foreign **nationals permanently residing in the Republic of Tajikistan (i.e. those who have a residence permit)**, “have a right to receive and use dwelling in houses of state and public housing fund, housing and construction cooperatives in accordance with the same grounds and in the framework of the same procedures as Tajik nationals.” Legal drafters, from one hand, granted an equal status of foreign nationals permanently residing in the country, but from the other hands, they establish restriction, namely, foreign nationals may only live and use the dwelling. In the next paragraph of this article legal drafter established specifically, that “foreign nationals do not have the right to purchase dwelling as well as any other building comprising the housing fund (with exception of acquiring property upon inheritance as heir at law) if otherwise provided by the law and other international treaties ratified by Tajikistan. In view of these reasons foreign nationals cannot acquire and own real estate in Tajikistan.

Recommendations:

1. Remove from the legislation provisions discriminating foreign nationals granted permanent residence permit to acquire and own real estate.

Article 71 Delivery of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

90. There are cases when Tajik Embassy in Russia assisted to repatriated bodies of deceased migrant workers and members of their families to the RT. This assistance includes provision to the Tajik nationals to transport the bodies of deceased Tajik nationals for free via Tajik air

companies. Allegedly, there is a special Resolution of the Government of the RT on free repatriation of bodies of deceased migrant workers by Tajik air companies. However, this document was not accessible for drafters of this report. Neither migration legislation nor civil legislation do not govern the issues of reimbursements and/or compensations related to death of migrant workers or members of their families.

91. The experience of repatriation of bodies of deceased labour migrants varies. 22 years old migrant from Kulob in this interview told the following: “My friend and myself found a job in Moscow through our common friend. In one year my friend lost his job. It took him long to check with employers to find the job. On 03.09.2011 he was hit by the car. We didn’t know anything about this. Investigator in charge of this case didn’t inform our Embassy. Mother of my friend approached DIA of Kulob for help when her son abruptly stopped to phone her. I was told that DIA of Kulob lodged official request to the MIA of Russia and received a reply that body of the Tajik national was not found in any morgues. I found out about this incidence only in December. Identification of body was conducted. It was indeed my friend. I asked the MS for assistance, but they refused to help me saying it was not their job. I decided not to apply to the Embassy. What was the point of doing this? It was easier for me to contact all my friends and collect money required for repatriation of my friend’s body home. I collected 25 000 Russian roubles and sent the body of my friend home. I used Tajik airlines. No one told me that it is free service.”

92. Public organisations interviewed also noted that it is problematic to repatriate bodies of deceased Tajik nationals to the RT, particularly, from those regions of countries of destinations where no representation of Tajik air companies and diplomatic mission exist.¹²¹ “We received several applications from citizens in 2008-2011 to assist with repatriation of bodies of migrant bodies deceased for various reasons in Russia. As a rule, these are poor families that do not have money to pay for repatriation of their deceased relatives. In these cases we ask Tajik Embassy in Moscow for assistance or diasporas that are positively assessed. We heard that there is an official document that prescribed to Tajik air companies to transport cargo-200¹²² for free, however we didn’t see it yet. Once we had to repatriate body of migrant from Ufa from where there are no direct flights operated by Tajik air companies. We had to transport it with Russian airlines. We approached Embassy, but it took too long to review application. We approached Diaspora. They

¹²¹ According to data of the Human Rights Center in Khudjand, 2010-2011.

¹²² Cargo 200 is a term meaning transportation of killed or deceased people in special sealed container (sealed zinc coffin) to the place of burial.

collected half of the amount. The other half was collected by relatives and acquaints of deceased migrant worker from Tajikistan. His body was brought home”.

Recommendations:

1. Establish the Law “On Migration” and, later, in other laws on migrations to be adopted provisions on recovery and/or compensation for death of migrant worker or member of his or her family in compliance with provisions of the CMW.
2. Ensure that transportation of body of migrant worker died in destination countries by national airline companies is funded from the state budget.