

## GENERAL INFORMATION

### Current Institutional Framework of Migration Agencies in Kyrgyzstan

History of organization and re-organization of migration state bodies functioning in the Kyrgyz Republic starts from 1999. Since then, the migration mandated state body had faced the long history of development and multiple re-organizations.

In the recent past (Feb. 2012 – March 2013), external and labor external migration issues were tackled by the two separate ministries as the result of migration mandate's division between the two responsible ministries - Ministry of Foreign Affairs and (MFA) and former Ministry of Youth, Labor and Employment (MYLE).

In general, frequent transfer of authorities from one agency to another made it difficult to regulate labor migration from Kyrgyzstan. Such a situation created many difficulties for migrants rather than improving their protection. Neither coordination, nor cooperation mechanisms were established between the two involved agencies dealing with migration. Moreover, their migration mandates were not defined in a concise and clear way, and prognoses about their future varied from source to source.

The spontaneous and chaotic re-organizations in the history of the KR migration agencies testified to the fact that the KR authorities during all the period of the state development never had clear policies and vision of its migration structures.

Last year, the Prime Minister of the Kyrgyz Republic, Jantoro Satybaldiev, had publicly declared that the country needed a separate specialized agency to tackle migration issues.

This change of policies has led to creation of the **Ministry of Labor, Migration and Youth, (MLMY)** (March, 2013 – at present)

By the Government Provision #315 as of 07.08.2007 in the structure of the State Service on Migration and Employment (SCME) – the ancestor of the modern MLMY, there was created **Migration Fund** with the mandate to budget the implementation of the state migration policy, organization of employment of the KR citizens abroad.

The Kyrgyz Government is currently in the process of development of its 'Strategy of Regulation of External Labor Migration of the Kyrgyz Republic till 2020'. (See below)

### ***Policies /Strategies and Legislation for Dealing with External Labor Migration***

#### *National Programmes / Action Plans*

Currently, the Government of Kyrgyzstan is slowly preparing to start the elaboration of a strategic/political document on the management of external labour migration in the Kyrgyz Republic.

It is expected by the general public that the future external labour migration strategic or political document shall determine the basics of the KR state policy on labour migration in accordance with the international obligations of the Kyrgyz Republic.

However, it is unclear whether this strategic document, this time will gain the full financial support of the Government in contrast to the past strategies and concepts not supported financially, and whether all interested parties will take effective, not formalized participation in its implementation.

Regretfully, today the external labor migration appears not to be the integral part of the other related state development programmes.

Though the implemented in the past National Programmes / Plans should be valued as the useful tools enabling the state to set strategic priorities and corresponding actions, to allocate resources and set realistic tasks to ensure visible results in protecting labour migrants, however, we have to state the **lack of clear vision from the side of the Government** of what the National Programme is and how it is important for the effectiveness of governmental efforts.

All the migration programmes were implemented mainly on paper (including the case with Migration Fund), having no budget allocations for its implementation, thus being not a priority for the Government of the KR. Though the last migration programme is over in 2010, Government does not hurry to decisively elaborate and adopt the new one. KR lives without migration strategy and action plan since 2010.

#### *Legislation Regulating External Labor Migration:*

To better regulate migration process and to resolve the number of challenges which migrants have faced, the Kyrgyz Republic has developed its migration legislation. In accordance with the current interpretation of the Kyrgyz legislation, external labour migration is defined as a voluntary and legal departure of Kyrgyz nationals aimed at finding employment abroad.

The *main* legislative documents currently regulating labor migration and employment of Kyrgyz nationals abroad include international treaties ratified by the Kyrgyz Republic, inter-governmental bilateral and multilateral agreements, national laws and by-laws, provisions, regulations, decrees, etc.

It is important to mention that the KR legislation establishes the basic mechanisms (*though not sufficient*) of labor migrants protection, protection of their rights and freedoms.

#### **Migration Partnership in the Kyrgyz Republic**

Dealing with migration and employment issues, MFA and MLMY work with the other government counterparts, trade unions, employment agencies, civil society and international organisations.

#### **Brief on General External Labor Migration Situation and Available Statistic Data**

The Kyrgyz Republic (Kyrgyzstan) is a source, transit and, to a lesser extent, a destination country for external labor migration.

The main destination countries for labor migrants from Kyrgyzstan are Kazakhstan (different estimations range from 25 000 to 55 000 labor migrants) and Russia (due to different estimations the number of labor migrants ranges from 340 000 officially to 800 000 de facto, 100 000 persons of them obtained work permission, 60 000 persons of them work on the base of patent) where our citizens work in construction, agricultural, and other sectors.

In addition to Russia and Kazakhstan, according to reports (e.g. US State Dept.'s GTIP), Kyrgyz migrants are also known to work in China, Czech Republic, Turkey, United Arab Emirates, Italy, South Korea (3500-4000 labor migrants work there currently as per "Zamandash" source; for the period 2008-2012, according to MLMY source, 1387 labor migrants were officially sent to S. Korea), Greece, Cyprus, Thailand, Israel, Germany, Australia, New Zealand, Egypt, Angola, Syria

and to many other countries specifically in the agricultural, forestry, construction, and textile industries.

For the majority of enlisted countries statistic data of the number of the KR labor migrants there does not exist. Many labor migrants go only to the season works to abroad and then are back to the country.

Some labor migrants from Uzbekistan, Tajikistan, and Turkmenistan transit Kyrgyzstan as they migrate to Russia, the UAE, and Turkey.

To a lesser extent, Kyrgyzstan is also a destination country for migrants from Uzbekistan (work in agricultural sector, tobacco cultivation).

The major causes for migration are socio-economic problems and political instability after the events, which took place in April, May and June 2010 in the country. Despite the majority of migrants appear to be originating from the cities, such as Osh and Jalal-Abad, the rural population from the villages has also been severely affected by unemployment and massively migrates in search of employment. Labor migrants from Kyrgyzstan remain one of the most vulnerable categories of persons in countries of destination in terms of human rights and social security.

This leads to the exploitation of labour migrants (including numerous cases of trafficking in human beings and other crimes committed against labour migrants), their discrimination, discriminating working and housing conditions, lack of access to health care, pensions and education in countries of destination. Migrants find themselves in situation where the migration agreements in legal force are fully oriented on the market of the destination countries and, upon labour migrants' getting back home, they are not entitled to get pensions or social security payments. It is very rarely when labour migrants make contributions to the Social Fund of Kyrgyzstan, people work but are left without pensions.

Recently, the Government has adopted its Provision No. 222 on pension securing for labour migrants, namely all the pensions of Kyrgyz labour migrants who have worked in the Russian Federation, are transferred now at the mercy of the private, previously unknown pension fund of the Russian Federation. This rather emergently and unreasonably adopted decision puts the pensions at a risk and reportedly contains the elements of corruption.

The non-governmental sector of Kyrgyzstan continues to fight for the abolition of this provision. The rights of our labour migrants are violated for the reason of their non-regulated status. Many labour migrants do not get the legal status, i.e. they are not entitled to eligible registration by their place of residence, not entitled to get the work permit or patents, and all this entails violation of labour migrants' rights by employer, migrants' vulnerability to law enforcements. The violations include the absence of employment agreements or contracts, which results in full or in partial non-payment of wages, non-compliance with the working conditions, safety and working environment as it is stipulated by the corresponding national laws. The absence of agreements or contracts, in particular, deprives migrants of the right to protect their rights in law enforcement bodies and courts.

Meanwhile, with the scope of labor migrants' remittances constituting approximately 27% of the Kyrgyz Republic's GDP, it would be highly advisable for the country to seek for the policies that facilitate remittances, create incentives for migrants to channel their savings into investment in Kyrgyzstan and create investment mechanisms, benefits and opportunities. But this is not the case.

This said, with massive labor migration, Kyrgyzstan lacks a comprehensive governmental migration policy, i.e. a functioning coordinating body and coordinated inter-agency cooperation

both at central and at regional levels which could be the institutional basis for the provision of adequate and timely protection for labor migrants.

Insufficient political commitment to undertake such migration policy as a priority and chaotic re-organization and “playing games” with migration agencies means that the country is not prepared to protect its labor migrants from labor exploitation and various abuses.

LIST OF ISSUES TO RAISE RECOMMENDED TO THE UN COMMITTEE ON MIGRANT WORKERS IN CONNECTION WITH THE CONSIDERATION BY THE UN COMMITTEE OF THE KYRGYZ REPUBLIC'S REPORT ON THE RIGHTS OF LABOUR MIGRANTS

Pre-departure Stage:

- Policies. Are there any strategies/ policy papers defining the clear labor migration policies? Are the voices of labour migrants taken into account when forming such policies?
- What are the priorities of the KR Government when ensuring the rights of labour migrants to access basic rights, both in the KR and in the RF and in Kazakhstan?
- Does migration constitute the integral part of the sustainable development state programmes?
- Institutional framework. What institutional mechanism would be most effective in accordance with the vision and the plans of the KR Government? What are the disadvantages of the existing institutional mechanism, ways to develop its capacity?
- Legislative Regulation. Is there a possibility to optimize the protection of the rights of labour migrants in order to avoid collision with the formalized legal base unintentionally pushing migrants into irregular migration? What are the best practices that Kyrgyzstan is ready to adopt? What mechanisms are needed to ensure the effectiveness of migration laws? What are the amendments and addenda needed to be introduced to the national legislation?
- There are different requirements in many countries set for private recruitment agencies seeking a license. Some countries (e.g. Cambodia and Thailand) put the bar rather high. Does Kyrgyzstan plan to introduce licensing of the private recruiting agencies to ensure the proper protection of the labour migrants' rights and for functionality of such agencies? What protection mechanisms the KR is willing to introduce at the stage of employment of the most vulnerable categories of labour migrants? Will the law on private employment agencies be adopted? What other ways does Kyrgyzstan see for proper regulation of private recruitment agencies to meet international standards set by the UN and ILO Conventions?
- Matching employers and job seekers. What ways Kyrgyzstan sees to ensure the direct matching of the employers and job seekers?
- Bilateral and Multilateral Inter-state cooperation. What does the Government think shall be obligatory included in the treaties to be signed between countries of origin and destination? Are there any other countries to sign treaties with?
- Does the KR Government plan the introduction of the approved by the state standard contract form seems useful to you? Could it be introduced as the annex to bilateral treaties? What such contract should include?
- Services for migrants. Pre-departure orientation is essential. What types of pre-departure orientation programmes/seminars/courses for labour migrants are conducted in the KR? Are there any professional or linguistic courses? Who finance this?
- What are the ways of raising labor migrants' professional skills levels in Kyrgyzstan to help them to improve their employment opportunities and thus to promote their deployment abroad?

- Does Kyrgyzstan conduct informational campaigns, in what forms? How Kyrgyzstan assesses the assistance of the non-governmental sector in migration issues?
- What system of collection migration data base exists in the KR? Does KR conduct migration researches?

#### Destination Country Stage:

- What are the ways of empowerment/protection of labor migrants especially through the community-based organizations (diaspora)?
- What are the ways to ensure the enforcement of the employment contract at the worksite?
- Are professional certificates issued by the KR acknowledged in the destination countries? Are the destination countries involved in it?
- Services for migrants. What are the ways for KR to secure medical services, social security, and access to education for labor migrants? What are the ways of portability of the rights for social services? What are the obstacles to portability and how can be they removed?
- What is the mechanism of guardianship for children left by labor migrants with the relatives?
- Are the regular consultations with the destination countries being held?
- Will KR negotiate with the destination country to provide temporary migrants with a secure legal status, with rights and responsibilities? Role of trade unions, labor inspections?
- Do labor attaché at the embassies effectively protect labor migrants?
- Is it real to conduct work on legalizing the labour migrants who work for a long time in the destination country?
- What are the measures KR undertakes to ensure the equal right for education for migrants' children in the destination countries as well as at home?
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#### Upon Return Stage:

- Are there any favorable conditions for labour migrants including tax policy for starting small and medium-sized businesses?
- Are there any favourable conditiond for sending remittances to the KR?
- Are there any statistic on returned migrants?
- Are there any policy regarding returning migrants?
- What Government does after the visit of the Special Rapporteur on earlier marriages and children deliveries?

**Civil society always stands ready to protect the rights of labour migrants, and only thanks to its efforts, the state starts realizing the need to formulate migration policy.**