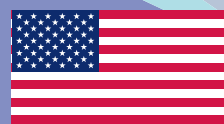


GUIDELINES

FOR THE IDENTIFICATION AND REFERRAL OF MIGRANTS AND THEIR FAMILY MEMBERS IN VULNERABLE SITUATIONS



International Organization for Migration (IOM)
The UN Migration Agency



Government of the United States

Guidelines for the identification and referral of migrants and their family members in vulnerable situations

are developed within the framework of the project “Addressing Migration Movements through Capacity Building in Central Asia” Phase IV, funded by the US Bureau of Population, Refugees and Migration, Government of the United States (PRM-PIM USA).

The opinions expressed in the study reflect the authors' views are of a research (discussion) nature and do not necessarily reflect the official approach of the bodies and organisations mentioned in the study. The orthography and punctuation of the authors of the studies with direct quotation are preserved. The study materials translated from the English language, serve as guidelines only and are not an official translation. The study results, interpretations, and conclusions do not necessarily reflect the views of the International Organisation for Migration or its member countries. In this publication the designations employed and the material presentation do not imply any opinion on the part of International Organisation for Migration (IOM) concerning the legal status of any country, territory, city or area or their governing body, or concerning the delimitation of their borders.

In its activities, the IOM adheres to the principle that humane and orderly migration should benefit migrants and society. As an intergovernmental organisation, IOM, together with partners in the international community, carries out activities aimed at solving operational problems of migration; promote understanding of issues related to migration; stimulating social and economic development through migration; and protecting the human dignity and well-being of migrants.

© 2018, all rights reserved. No part of this publication may be reproduced, stored in an information search system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written approval of the publisher.

Lead author: Galina Tyurina

Team of authors: Zamira Azhigulova (Kyrgyz Republic), Denis Jivaga (Republic of Kazakhstan), Tadirshosh Sharipov (Republic of Tajikistan)

Publisher: Sub-regional Coordination Office for Central Asia, International Organisation for Migration, Kazakhstan

2018

CONTENTS

Acknowledgements	III
Introduction	IV

Chapter 1. ANALYSIS OF THE SOCIO-ECONOMIC, LEGAL, AND INSTITUTIONAL CONTEXT

Section 1. International legal aspects of the observance of migrants' rights in vulnerable situations	2
1.1. Challenges in the international legal system of observing migrants' rights in vulnerable situations	2
1.2. Development of the concept of vulnerability in international law and practice	4
1.3. Development of guidelines and recommendations on working with migrants in vulnerable situations	6
Section 2. Analysis of the legal and institutional framework with regard to migrants' needs in vulnerable situations in the Republic of Kazakhstan	8
2.1. General analysis of socio-economic conditions and the migration situation	8
2.2. Migrants in a vulnerable situation: problems, needs, and requirements	9
2.3. Review of the legal framework for the access of migrants in a vulnerable situation to basic social guarantees and services	16
2.4. State policy on migrants	18
2.5. Institutional framework for providing social support for migrants in a vulnerable situation	18
Section 3. Analysis of the socio-economic, legal, and institutional framework with regard to migrants' needs in vulnerable situations in the Kyrgyz Republic	20
3.1. General analysis of the migration situation and the relevance of the problem	20
3.2. Migrants in a vulnerable situation: problems, needs, and requirements	21
3.3. Review of the legal basis for the access of migrants in a vulnerable situation to basic social guarantees and services in the Kyrgyz Republic	28
3.4. State policy on providing support to socially vulnerable categories of the population in a difficult life situation, including migrants in a vulnerable situation in the Kyrgyz Republic	35
3.5. Institutional framework for providing social support for migrants in a vulnerable situation in the Kyrgyz Republic	37

Section 4. Analysis of the legal and institutional framework with regard to migrant needs in vulnerable situations in the Republic of Tajikistan	41
4.1. General analysis of the situation and the urgency of the problem, the socio-economic situation in the Republic of Tajikistan	41
4.2. Migrants in a vulnerable situation: problems, needs, and requirements	42
4.3. Review of the legal basis of access for migrants in a vulnerable situation to the main social guarantees and services in the Republic of Tajikistan	49
4.4. State policy on providing support to socially vulnerable categories of the population in difficult life situations, including migrants in a vulnerable situation	53
4.5. Institutional framework for providing social support for migrants in a vulnerable situation	55

Chapter 2. GUIDELINES FOR THE IDENTIFICATION AND REFERRAL OF MIGRANTS IN VULNERABLE SITUATIONS

Section 1. General provisions of the Guidelines for the identification and referral of migrants in vulnerable situations	58
1.1. Objective of the Guidelines	58
1.2. Basic approaches and principles for ensuring the rights and lawful interests of migrants in vulnerable situations ...	58
Section 2. Standard Operating Procedures for the identification and referral of migrants in vulnerable situations in the Republic of Kazakhstan	62
2.1. Draft Standard Operating Procedures for the detection, identification and referral of migrants in vulnerable situations in the Republic of Kazakhstan	62
2.2. Draft Standard Operating Procedures for the identification of and aid for a transit migrant	72
Section 3. Standard Operating Procedures for the detection, identification and referral of migrants in vulnerable situations in the Kyrgyz Republic	73
3.1. Draft Standard Operating Procedures for the detection, identification and referral of migrants in a vulnerable situation	73
3.2. Draft Standard Operating Procedures for the referral of migrant and members of his/her family in a vulnerable situation	82

Section 4. Draft Standard Operating Procedures for the detection, identification and referral of migrants and their families in vulnerable situations in the Republic of Tajikistan 88

Section 5. Conclusions and recommendations 103

5.1. Key findings 103

5.2. List of recommendations and proposals for improving legislation, institutional development and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Republic of Kazakhstan) 104

5.3. List of recommendations and proposals for improving legislation, institutional development and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Kyrgyz Republic) 105

5.4. List of recommendations and proposals for improving the legislation, developing the institutions, and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Republic of Tajikistan) 107

List of abbreviations and acronyms 109

Glossary 110

ACKNOWLEDGEMENTS

The study "Guidelines for the identification and referral of migrants and their family members in vulnerable situations" is part of the project "Addressing Migration Movements through Capacity Building in Central Asia". With its help, the IOM Sub-regional Coordination Office for Central Asia in Kazakhstan continues to promote the values of humane management of migration flows in the region, prevent vulnerable situation of migrants, and increase the potential for their successful reintegration.

These guidelines were the result of joint work of a team of international and national experts from Kazakhstan, Kyrgyzstan, and Tajikistan. During its preparation, national experts consulted with representatives of various ministries, departments, public, non-governmental, and international organisations of the three countries. The overall direction and coordination of the study was carried out by the IOM Sub-regional Coordination Office for Central Asia in Kazakhstan, represented by National Programme Officer Yevgeniy Khon.

The authors are grateful to the organisations and experts who helped in the creation of this study by providing statistical data and participating in interviews in the Republic of

Kazakhstan: The Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan, the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan, personally to the head of the "Meirim" A. Mukhe, the chairman of the Children's Fund of the Republic of Kazakhstan, E. Vatlina, the lawyers of the Kazakhstan International Bureau for Human Rights and Rule of Law G. Kuatbekova, and A. Smirnova, employees of the Center for Temporary Isolation and Adaptation of Minors in Almaty.

The authors of the study express special gratitude for providing full quality information during the interviews to the representatives of the **Kyrgyz Republic**, namely: Director of the Public Foundation "League of Defenders of the Rights of the Child" N.U. Turdubekova, Head of the Labor Migration Department of the State Migration Service under the Government of the Kyrgyz Republic U.N. Shamshiyeva Head of the Department for the Protection of the Family and Children of the Ministry of Labor and Social Development of the Kyrgyz Republic G.A. Akhmatova. Deputy head of the department of social protection of the Bishkek city administration L.V. Gubinoy.

The authors thank the leaders and responsible officials of the authorized bodies and organisations of the **Republic of Tajikistan**: Ministry of Labor, Migration and Employment of the Republic of Tajikistan, Ministry of Health and Social Protection of the Republic of Tajikistan, Committee for Women and Family Affairs under the Government of the Republic of Tajikistan, Human Rights Ombudsman under the President of the Republic of Tajikistan, Institute of Economics and Demography of the Academy of Sciences of the Republic of Tajikistan, Republic of Tajikistan, NGO "Society Development Fund", NGO "Akhtari Bakht", NGO "Center for Human Rights", UNHCR, as well as other ministries and departments for advisory assistance provided.

The authors are deeply grateful to the staff of the IOM missions in Kazakhstan Y. Khon and S. Zhassymbekova, IOM in the Kyrgyz Republic J. Ahmetova and IOM in Tajikistan B. Rahmatjonov for the assistance in the timely and effective implementation of the project, providing editorial support and organizing meetings with representatives of several governmental agencies and non-governmental organisations.

INTRODUCTION

In the modern world, there is a continuous growth and intensification of migration flows. Migration processes are constantly becoming more complex, new opportunities and challenges associated with migration are emerging—the growth and diversification of the economy, the feminization of poverty, natural disasters, terrorism, and national security issues. Therefore, states are trying to clearly regulate these migration processes, using different strategies. But the consolidation and implementation of migration policy is a sovereign affair of each state.

Migration in the Central Asian region affects most of the population and owes primarily to labor, while the vast majority of migrants go to the Russian Federation. Simplification of the entry, residence, and employment of migrants from Central Asia by the migration services of the Russian Federation and the simultaneous introduction of entry ban to certain categories of migrants, the entry of Kyrgyzstan into the Eurasian Economic Union (EEU), the general economic decline in the Russian Federation and Central Asia have changed the direction and nature of migration flows in the region. The second most popular destination now is Kazakhstan.

Today, migration flows change rapidly and very often outside the control of states. Individual situations of migrants from Central Asia are also changing rapidly. Migrants can face cases of human trafficking, smuggling, violence, corruption, and other violations of their rights throughout the migration process. And often the categories of migrants, traditionally considered to be vulnerable in the legal system, cease to be vulnerable. The reverse is also true: some categories that had never before been classified as vulnerable

have become such by virtue of a combination of circumstances.

Sociological and field studies¹ conducted in 2015–2017 in the Central Asian region have revealed many nuances, situations, and new factors that affect migrants and their vulnerability². Thus, there is a feminization of migration, when women who have become the main breadwinners of their families leave to work abroad. A new category, which for a long time was not among the vulnerable, are young men without sufficient qualification, leaving for work. Part of the migrants who were not ready for the re-entry ban to the Russian Federation fell into a difficult socio-economic situation in their homeland. Factors such as language ignorance, lack of social relations in the destination country, tuberculosis, or, for example, the winter season chosen for migration were important factors in determining and correlating the migrant with vulnerability situations.

States need to respond to these new challenges related to the destinies and lives of people, so the development of both national and regional mechanisms for responding to different situations of migrant vulnerability throughout the migration path is an important challenge. Such mechanisms are necessary to reveal all migrants who need assistance and support, even those that are “not visible” or unobvious to the state.

The protection of migrants' human rights is a crucial task for the countries of the Central Asian region, which are origin, transit, and destination countries for migration. By joining the conventions on the migrants rights, refugees, against transnational organized crime, human trafficking, the state declares its com-

mitment to the rule of law and guarantees migrants in the most vulnerable situations to respect their rights in accordance with international norms.

However, in practice, not all migrants in vulnerable situations (upon return) find a place, help, and support in their state's social system. They are not considered vulnerable categories of the population in the national system of law and are essentially “invisible” in the legal system of a foreign state when they transit or search for employment options in the country of destination³.

In this regard, international organisations in their work have chosen an approach based on assessing the vulnerable situation into which a particular migrant has fallen. Attention to vulnerable situations does not mean creating a new category of migrants. The Director General of IOM notes: “We are not talking about creating a new category of migrants that needs protection. Of course, some categories of migrants are always more vulnerable (for example, children separated from their parents or unaccompanied children). But we focus precisely on which situations give rise to migrant vulnerability, at which stages of the migration process, which of the risk factors can be reduced or changed, and who can do it”.⁴ This approach secures the right of any migrant to receive assistance in a vulnerable situation, regardless of his classification as a vulnerable category of population, as well as from citizenship and status (regular or irregular).

In general, this is consistent with the concept of targeted social assistance at the national level, which began to operate in the post-Soviet space instead of the categorical social assistance which was accepted in the Soviet

¹ International Organisation for Migration in Central Asia. Regional field assessment “Vulnerability of migrants and the needs of integration in Central Asia: The main causes and socio-economic consequences of return migration,” 2016. [Electronic resource].—Access mode: <http://www.iom.kz/images/books/FullReportRUS2016.pdf>. International Organisation for Migration in Central Asia. Mapping of unregulated migration in Central Asia 2015. [Electronic resource].—Access mode: <http://iom.kg/wp-content/uploads/2015/01/IDFPublicationrus.pdf>. International Organisation for Migration in Central Asia. Vulnerability of migrants and the demands of integration in Central Asia: assessment of needs of migrants and communities and risk management, 2017.

² Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia. 2016; pages 33–38.

³ Alexander Betts, Soft Law and the Protection of Vulnerable Migrants, Georgetown Immigration Law Journal, Vol. 24. P. 533–552 (2010).

⁴ IOM Magazine, No 27, International dialog on migration. Strengthening international cooperation on and governance on migration: towards adoption of a global compact for safe, orderly, and regular migration in 2018. P. 42

Union⁵. The main point of targeted assistance is to make government support more personalized, accessible to those who really need it. The legislation of different countries mentions similar situations that require targeted assistance: for example, disability, inability to service oneself due to old age, severe or chronic illness, orphanhood, neglect, poverty, unemployment, lack of a certain place of residence, forced abandonment of a former residence, violation of child rights, fire, natural disaster.

It is noteworthy that in post-socialist countries, including Central Asian states, transitional targeting is achieved through the presence of a two-stage model. First phase: legislative definition of the population categories who are potentially in a difficult life situation. Second phase: collegial consideration of individual situations of these categories. The legislative presence of an open list of categories, the possibility of supplementing them, as well as the general legal framework that presupposes the existence of a mechanism to provide targeted assistance to a particular person or family, open access to the state social system and migrants in vulnerable situations.

In the Central Asian region, significant segments of the population are affected by migration, not directly, but indirectly. Such groups are not migrants and are not in the migration process. Among them are children left without parental care, who went to work; abandoned wives with a large number of young children, unable to independently provide even a minimum standard of living; families of the so-called “banned ones”, when, in the absence of any work in the region, the family receives a re-entry ban to the main country of destination—the Russian Federation for both of the main breadwinners and remains without means of subsistence.

In connection with the foregoing, it seems important to use in the public response system an expanded understanding of the migrant in a vulnerable situation, including members of the migrant's family who may suffer from a vulnerable situation caused by the departure of the primary breadwinner. This approach is especially characteristic and important for the migrant origin countries—Kyrgyzstan and Tajikistan.

For the country of destination—Kazakhstan—the creation of a mechanism to reveal vulnerable situations among habitual categories of migrants becomes fundamental. These include migrant workers with an unregulated status, “offenders”, migrants whom other do not wish to recognize as such because of their various cultural, social, gender stereotypes and norms, for example migrant women-workers or underage migrant workers. As a result of identifying such situations, it is necessary to stop the practice of expelling or deporting migrants. They should be applied to humanitarian measures, migrants should receive primary health care, adequate food, housing, access to legal procedures for restoring violated rights.

Thus, taking into account the urgency and intensity of migration processes in the Central Asian region, the inclusion of migrants in vulnerable situations and their families in the national legal field and the existence of procedures that help the state system to identify and assist them is an important step in ensuring the rights of migrants in Kazakhstan, Kyrgyzstan, and Tajikistan.

Objectives, structure, and methodology of the study

The study “Guidelines for the identification and referral of migrants and their family members in vulnerable situations” was developed within the framework of the project “Addressing Migration Movements through Capacity Building in Central Asia” in March–August 2018. This study resulted in the development of a manual on the identification and referral of migrants and their families in vulnerable situations for the three countries of the Central Asian region—Kazakhstan, Kyrgyzstan and Tajikistan.

In their work, the team of authors relied on the results of the first studies conducted at the sub-regional level in 2015–2017 by the IOM office: “Migrant Vulnerabilities and Integration Needs in Central Asia: Root Causes, Social and Economic Impact of Return Migration”, “Migrant Vulnerabilities and Integration Needs in Central Asia—Assessing migrants’ and community needs and managing risks”, “Risk Analysis on Return Migration and Challenges in Central Asia”.

The main subject of the study is the legal and institutional framework, as well as the practice of applying laws to migrants in vulnerable situation.

The following study boundaries were established:

- Kazakhstan is considered as a country of destination and transit for migrants in vulnerable situations,
- Tajikistan and Kyrgyzstan are considered as origin countries for migrants in vulnerable situations.

A **number of hypotheses** were put forward by the authors’ team, which were to be checked:

- At the national level, there are separate mechanisms for the identification and referral of refugees and asylum seekers, victims of human trafficking, migrants who have experienced sexual and gender-based violence. Undoubtedly, these migrants belong to vulnerable groups. However, an integrated approach to this category, such as “migrants in a vulnerable situation” has not yet been formed, and there are no mechanisms describing the process of identifying and referring them for help and support.
- It is assumed that in the Central Asian region, a mixed category can be allocated such as families left by a breadwinner who went abroad in search of earnings, which is typical for Tajikistan and Kyrgyzstan. For Kazakhstan the transit migrants category is a poorly identifiable visible category.
- If the notion of “vulnerable categories of migrants” is enshrined in national legislation and these categories of persons are covered by legal instruments on social policy, they will be able to receive adequate protection and support.
- The most complex in terms of recognition at the legislative level and granting them legal personality is the numerous category of irregular migrants who also belong to a group of migrants in vulnerable situations. Therefore, for such migrants, access to basic rights and freedoms must be ensured in practice and at the legislative level before they are actually expelled or deported.

⁵ I.A. Grigorieva. Social politics. Basic concepts. [Electronic resource].—Access mode: <https://cyberleninka.ru/article/v/sotsialnaya-politika-osnovnye-ponyatiya>.

- It is assumed that local authorities (for example, akimats) can become the main institutions that are called upon to reveal, identify and refer the migrants in vulnerable situations

In two sections of the study, materials are presented on the verification of these hypotheses: the first is devoted to the analysis of the legal and institutional fields at the international and national levels, the second is directly the creation of the Guidelines on identification and referral in the format of standard operating procedures.

The first section of the **first chapter** provides an overview of the international legal aspects of the observance of migrants' rights in vulnerable situation and describes the challenges facing the international legal system for the protection of migrants' rights, as well as the concept of vulnerability. A lot of different people fall into the category of migrants in vulnerable situation; therefore the definition of the vulnerability category depends largely on the national context. Consideration of categories of migrants is impossible without understanding the context at different levels: individual, family-household, community, and country. The analysis of economic and social context, migration trends, needs, and demands of migrants in vulnerable situations, as well as the analysis of the legislative and in-

stitutional fields of the participating countries: Kazakhstan, Kyrgyzstan, and Tajikistan, are provided in the second, third and fourth sections of the chapter. The study in the **second chapter** attempts to offer governments a possible working mechanism for all interested bodies and organisations to identify and refer vulnerable groups. The first section examines possible approaches and principles to ensure the rights and legitimate interests of migrants in vulnerable situations. The following sections describe the draft standard operating procedures for identifying and referring the migrants and their families in vulnerable situations. The final, fifth section provides conclusions and recommendations on the possible inclusion of vulnerable categories of migrants in national legislation.

The practical novelty of this study is the application on vulnerability indicators designed to identify both migrants and their families who might be in a vulnerable situation, as well as the draft Guidelines for identification and referral.

The research was carried out in the **methodology** of qualitative analysis and implemented as a qualitative comparative study. It includes both a desk study based on the analysis of existing national and international legislation, secondary analytical sources, and a field study, implemented in a format of semi-structured

interviews with the main state, non-profit and international organisations that are involved in identification, referral, and assistance to migrants in vulnerable situations.

At the national level, the study includes an analysis of the legislation of each country and the identification of an institutional framework to assist migrants in vulnerable situations. The method of the field study is an interview, the purpose is to explain with what potentially vulnerable categories of migrants an agency works in the country, what practices and tasks exist and how each agency sees possible ways of improving the relevant legislation. In total, 7 interviews were conducted in Kazakhstan, 11 in Kyrgyzstan, and 15 in Tajikistan. The results of interviews with representatives of state, non-profit, and international organisations supplemented the analysis of national legislation.

As a validation tool, the thematic regional workshop "Migrants in vulnerable situation in Central Asia: challenges and opportunities for the system of identification and referral" was used. It was held on June 19–20, 2018 and gathered more than 60 representatives of all interested bodies and organisations of the three countries participating in the survey, as well as international organisations (UNHCR, UNICEF). As a result of the seminar, conclusions were drawn, and recommendations received from participants were included in this study.

ANALYSIS OF THE SOCIO-ECONOMIC, LEGAL, AND INSTITUTIONAL CONTEXT

Section 1. International legal aspects of the observance of migrants' rights in vulnerable situations

1.1. Challenges in the international legal system of observing migrants' rights in vulnerable situations

The preamble of the Universal Declaration of Human Rights⁶ recognizes that the concepts of dignity and vulnerability are fundamental to international law, and it is noted that recognition of the inherent dignity of all members of the human family and of equal and inalienable rights is the foundation of freedom, justice, and universal peace. International human rights bodies also say that the main goal of international human rights treaties is the protection of persons most vulnerable to human rights violations and their infringement.⁷ The main international conventions, such as the Universal Declaration of Human Rights⁸, the Covenant on Economic, Social and Cultural Rights⁹, the Covenant on Civil and Political Rights¹⁰, the Convention on the Elimination of All Forms of Racial Discrimination¹¹, the Convention on the Elimination of All Forms of Discrimination against Women¹², the Convention on the Rights of the Child¹³, Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment¹⁴, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁵, the Convention on the Rights of Persons with Disabilities¹⁶, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime¹⁷, the Convention on the Status of Refugees¹⁸, declare the supremacy of human rights, their universality, non-alienability and naturalness, regardless of citizenship.

All universal international documents emphasize the importance of providing assistance to vulnerable persons, persons in difficult life situations, regardless of their status, the availability of documents for identification or lack of identification, the citizenship of the host country, etc., thus providing a humane approach based on respect and recognition of human dignity.

Within the framework of the UN Sustainable Development Goals and the Agenda for Sustainable Development for the period 2015–2030¹⁹, migration is presented as a resource and means for ensuring a harmonious peace²⁰, and migration is mentioned in basically each of the Development Goals (Goals Nos. 3–5, 8, 10, 11, 13, 17). The Sustainable Development Goals recognize the importance of adopting and implementing smart migration policies to promote safe, regular, and orderly migration, which respects the rights of all migrants and proposes that “migrants, including in vulnerable situations, not be forgotten.”²¹

Thus, at a high international level, a serious convention field has been created to ensure the rights of migrants, including those in vulnerable situations. By joining international conventions, states thereby confirm that foreign citizens have equal rights with citizens of the country, with the exception of certain

⁶ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

⁷ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. The 37th session, February 26—March 23, 2018. [Electronic resource].—Access mode: <http://www.unodc.org/documents/treaties/UNCAC/COSP/session5/G1313230r.pdf>.

⁸ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

⁹ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml.

¹⁰ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.

¹¹ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml.

¹² [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/cedaw.shtml.

¹³ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml.

¹⁴ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/torture.shtml.

¹⁵ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/migrant.

¹⁶ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/disability.

¹⁷ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/protocol1.

¹⁸ [Electronic resource].—Access mode: http://www.un.org/ru/documents/decl_conv/conventions/refugees.shtml.

¹⁹ Resolution A/RES/70/1 adopted by the UN General Assembly on September 25, 2015 Transforming Our World: The 2030 Agenda for sustainable development” [Electronic resource].—Access mode: <https://undocs.org/ru/A/RES/70/1>.

²⁰ Z.S. Bocharova Achieving sustainable development goals in a global migration context. Bulletin of the NNIE (2017) No. 7 (74), c.117 [Electronic resource].—Access mode: <https://cyberleninka.ru/article/n/dostizhenie-tseley-ustoychivogo-razvitiya-v-globalnom-migratsionnom-kontekste>.

²¹ Migration and sustainable development goals: the role of mechanisms for interstate consultations on migration issues and regional economic organisations. Sixth meeting. Brief report. IOM, 2016. [Electronic resource].—Access mode: http://publications.iom.int/system/files/pdf/grcp_6_rus.pdf.

political rights and freedoms. At the same time, there are significant difficulties in realizing these rights.

Insufficient access to the realization of the rights of non-citizen migrants in countries of destination, especially in vulnerable situations.

Citizenship is a certain legal and political link between a person and a state under whose jurisdiction it is located, whether a person resides in the territory of a given state or is outside of it. With the development of international humanitarian law, there is a certain ambiguity²² associated with the fact that the alleged supremacy of human rights in a certain sense erases the boundaries between citizens and non-citizens.

Therefore, the national system for the protection of human rights created by states should ensure the protection of all persons, including migrants. But often the fact that this system covers foreign migrants in a vulnerable situation is often less clearly acknowledged.²³ And although the newest international documents proclaim the principles of compliance with the rights of migrants on an equal basis with the rights of citizens of a particular country, states do not always make suitable efforts to secure the protection of rights for migrants in vulnerable situations in the national legislation.

As IOM and a number of other non-governmental organisations note²⁴, the provisions concerning the real identification of victims of foreign citizens, observance of the right of a foreigner for a 30-day period of rehabilitation and recovery, providing access to legal assistance, compensation for damage, etc are the

most difficult to apply in the sphere of combating human trafficking.

UNHCR at the international level and their national partners note the following main tasks facing countries in terms of ensuring the rights of refugees and asylum seekers: identification of and assistance to victims of gender and sexual violence in migration flows of refugees and asylum seekers, access to the national labor market, economic support, ensuring the rights of refugee children.

As mentioned in the IOM theme paper “Protecting human rights and fundamental rights of migrants, as well as special needs of migrants in vulnerable situations”,²⁵ the main problem of modern time is not the lack of legal protection and international acts, but the non-application of these norms in practice, especially when it comes to migrants in situations Protection of human rights and fundamental rights of migrants, as well as special needs of migrants in vulnerable situations.

The complexity of refracting the vulnerability concept in national legislation.

In international law there is no single interpretation of the terms “vulnerability”, “vulnerable groups” or “migrants in vulnerable situations”.

But the most precise definition of vulnerability is necessary for the elimination of discrepancies, which, on the one hand, create risks and prerequisites for the non-recognition of some of the migrants as vulnerable persons, and on the other, allow the concept of “vulnerable situation” to be widely interpreted, as a result of which it will lose the character of the act, connected with violation of human rights²⁶.

As a social category, vulnerability is a relative concept. This means that the subject understands the possible damage given the occurrence of risk situations and negatively assesses their occurrence. And, depending on the situation, the status of the subject and his individual experience, the attitude to such damage will be different. For example, for a trafficked person who has been in his/her home country for a long time in a situation of domestic violence, torture, the degree of exploitation in a traffic situation and subjective understanding, the risk assessment and own vulnerability will probably be lower than that of a victim who, for example, comes from a socially prosperous family. That is why the norms of law that guarantee respect for human dignity and are called upon to protect victims of crimes have been adopted.

In a legal context, vulnerability does not pertain to an internal sense, but encompasses an external assessment of the risks of a situation in which there are or may be certain groups of individuals, population groups, individuals.²⁷ Traditionally, vulnerability in law is seen as an opportunity for discrimination in its various manifestations, and this is a risk factor for human rights violations²⁸. However, due to the fact that there can be infinitely many situations, the legal system hardly deals with this concept, preferring to rely on the concept of population categories.

Categorical approach to the identification of vulnerable groups of migrants.

Initially, the legal doctrine was dominated by an approach that described vulnerability from the point of view of certain categories of persons. Traditionally in international law, “vulnerable groups” are primarily refugees, children,

²² Extreme vulnerability of migrants: the cases of the US and Mexico. J.A. Bustamante. 2010. Georgetown Immigration law journal, vol. 24:565–566.

²³ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. 37th Session, 26 February-23 March 2018

²⁴ IOM, La Strada International, GAATW, Picum, Anti-slavery

²⁵ Global compact thematic paper. Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations. 2017, p. 4 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf

²⁶ [Electronic resource].—Access mode: https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf, p. 13–15

²⁷ S.E. Nesmeyanova. G. Kalinina. The concept of vulnerability of certain groups of people: international and national experience // Journal of Constitutional Law, No. 4, 2017, p. 8. [Electronic resource].—Access mode: <http://rp-journal.ru/?p=699>.

²⁸ S.E. Nesmeyanova. G. Kalinina. The concept of vulnerability of certain groups of people: international and national experience // Journal of Constitutional Law, No. 4, 2017, p. 8. [Electronic resource].—Access mode: <http://rp-journal.ru/?p=699>.

certain categories of women, persons with disabilities, representatives of indigenous peoples, national minorities, and elderly people.

In the context of the protection of human rights, vulnerability is directly related to forced migration and refugee status, which was determined in accordance with the 1951 Geneva Convention. Usually a “refugee” is a person who is forced to leave his country, lost her protection, can not go back and claim the protection of the other state in which he found himself. This manifests the principle of humanitarian law, which requires the state to take care not only of its citizens, but also of all those who, due to various circumstances, found themselves outside their country in a difficult, sometimes critical situation.

With regard to children, international law is more specific, certainly classifying them as

vulnerable. The preamble of the 1959 Declaration on the Rights of the Child contains a provision on the vulnerability of children due to their physical and mental immaturity.

Migrant workers are also recognized as one of the unprotected categories. According to Art. 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, participating states should ensure effective protection of migrant workers from violence and other threats.

In the context of the protection of victims of trafficking, there is also a reference to the notion of vulnerability, and the most vulnerable categories are women and children²⁹.

Art. 23 of the New York Declaration³⁰ mentions the following main categories of vulnerable migrants: “In accordance with our obli-

gations under international law we take into account and will meet, the special needs of all people in vulnerable situations who are move in large groups of refugees and migrants, including women at risk, children, particularly those who are unaccompanied or separated from their families, representatives of ethnic and religious minorities, victims of violence, elderly people, persons with disabilities, persons suffering discrimination on any grounds, indigenous peoples, victims of trafficking and smuggled migrants who are victims of exploitation and violence.”

Categories of vulnerable citizens in international law have existed for a long time; however, their definition does not fully correspond to the tasks of the present. There is a rethinking of the concept of vulnerability, which, as already indicated, correlates with situations that create vulnerability.

1.2. Development of the concept of vulnerability in international law and practice

In international human rights instruments, the term “vulnerability” is used as an “innovative way to mobilize equal protection”³¹. But, as the researchers point out³², “the inclusion of the notion of vulnerable groups in human rights law has great potential for eliminating inequality, and yet such efforts should avoid the characteristics of certain groups.” This is due to the fact that the same group can encompass people with completely different levels of vulnerability. Understanding the entire group, for example, children or the elderly people, as vulnerable, is somewhat sim-

plistic, and sometimes even discriminatory. It is associated exclusively with belonging to a certain group, and does not take into account personal resources and the situation.³³

Moreover, this approach excludes those who are really in a situation of greater vulnerability, but not in a particular category. For example, UNHCR in its study indicated that it is not always true that “women and young children are the most vulnerable people in refugee situations and therefore need special protection measures” is true. This is due, inter alia,

to the study of A.U. Davis. on vulnerability in refugee camps in Kenya. It shows that in an emergency situation the relative mortality of children under the age of five is less than in other segments of the population, especially with a group of children over five years old³⁴.

The first and obvious category, which is indisputable according to the notion of vulnerability, is refugees and asylum-seekers. Approach to the concept of vulnerability **UNHCR**³⁵ contains two dimensions of vulnerability—situational (along the way or in countries of

²⁹ See See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). [Electronic resource].—Access mode: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

³⁰ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

³¹ Flegar, Veronika, Vulnerability and the Principle of Non-Refoulement in the European Court of Human Rights: Towards an Increased Scope of Protection for Persons Fleeing from Extreme Poverty (February 24, 2016). Contemporary Readings in Law and Social Justice, 8 (2): 148–169, 2016. [Electronic resource].—Access mode: <https://ssrn.com/abstract=2737302>

³² Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law. L. Peroni, A. Timmer, International Journal of Constitutional Law, Volume 11, Issue 4, 1 October 2013, Pages 1056–1085, [Electronic resource].—Access mode: <https://doi.org/10.1093/icon/mot042>.

³³ IOM, International Dialogue on Migration 2017. Understanding migrant vulnerabilities: A solution-based approach towards a global compact that reduces vulnerabilities and empowers migrants, background paper, July 2017. [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ICP/IDM/2017_IDM/Background%20paper%20IDM%2018-19%20July.pdf.

³⁴ A question of vulnerability. L. Graz. The magazine of IRCRCM. [Electronic resource].—Access mode: http://www.redcross.int/EN/mag/magazine1997_3/2-7.html.

³⁵ UNHCR, Migrants in vulnerable situations UNHCR’s perspective(June 2017), <https://www.refworld.org/docid/596787174.html>; UNHCR, Persons in need of international protection (June 2017), [Electronic resource].—Access mode: <https://www.refworld.org/docid/596787734.htm>, p 4.

destination) and individual (children, elderly, chronic diseases, etc.). UNHCR emphasizes that migrants in situations of vulnerability may have the same needs as refugees, with whom they often move together. At the same time, according to UNHCR's understanding and mandate, migrants who fall under the refugee status are no longer migrants in vulnerable situations, but have their own special status and have special rights under the Geneva Convention.

The importance of identifying vulnerability and vulnerability factors also applies to the issue of combating human trafficking, since this definition is directly related to the qualification of the crime and the punishment of traffickers. In particular, the explanatory recommendations of the **United Nations Office on Drugs and Crime** "Use of the vulnerability position" of 2013³⁶ laid down an individual approach and stated that "the fact of vulnerability of the provision is best assessed on an individual basis in each case, taking into account the personal characteristics of the alleged victims, their situation, and circumstances."

In 2017, the **United Nations High Commissioner for Human Rights**, in his report "Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection",³⁷ presented a vision of the concept of migrants in vulnerable situations developed by the Global Migration Group.

This concept defines migrants in a vulnerable position: "Persons who are not in a position to enjoy their human rights realistically are at increased risk of their violation and infringement and, accordingly, have the right to re-

quire the carrier to fulfill more strictly the obligation to take care of them".³⁸

The concept is based on the fact that "migrants are inherently not vulnerable and do not lack resilience and the ability to make free choice." Vulnerability is the result of the impact of different, sometimes multiple vulnerabilities factors, "exerting mutual influence and aggravating each other's actions, as well as developing or changing over time as circumstances change" and in any case "the situation of each individual must be assessed individually."

The vulnerability concept proposed by the **International Red Cross and Red Crescent Movement**³⁹ appeared long ago (in 2006), and although it is not directly related to migration, but rather reflects the approach to the main target group of the organisation as a whole—individuals in situations of crisis and vulnerability help to supplement essence of the concept of vulnerability. In this approach, vulnerability is defined as "the characteristics of a person or group in terms of their ability to anticipate, cope, resist, and recover from natural or man-made disasters." The definition of vulnerability suggests that it can not be described without regard for context. At the same time, vulnerability is always connected with the assessment of potential, which determines the strengths and weaknesses of the individual, households, communities, institutions, and even peoples. This humanitarian organisation uses the concept of vulnerability and as a cross-cutting approach in the Movement's Development Agenda for 2006–2020, and in practical terms—to assess the ability of a subject to cope with a vulnerable situation and the ability to provide assistance. Evaluation is always performed taking into account

both risk factors and factors that help to cope with the situation.

The approach proposed by the **International Organisation for Migration**, which is part of the UN family, complements and develops the approaches of the above-mentioned UN bodies and other international organisations to understanding the concept of vulnerability.

The vulnerability concept developed by IOM began to be formed in 2016 on the basis of an approach that permits analyzing and taking measures to resolve situations directly related to the vulnerability of migrants. In the context of migration, IOM identifies vulnerability as "the limited ability of an individual to avoid the harm associated with violence, abuse, exploitation, and violation of rights, as well as the individual's limited capacity to cope with such harm, to resist it or to eliminate the consequences of such harm."

The concept of harm is enshrined in international law and literally means "the consequences of any damage, damage, loss, any violation of the rights of the individual or property."⁴⁰ In other words, these are legally and socially significant negative changes caused by a certain event. The IOM approach addresses the harm associated with violence, abuse, exploitation, or violation of rights⁴¹. It is important that this approach involves consideration of the harm caused to any category of migrants regardless of their status. In addition, it takes into account the stage of the migration process (preparatory, basic and adaptive).

According to the proposed IOM model, when considering vulnerable situations, four main levels of factors and one additional factor

³⁶ Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons. Issue Paper: UNODC. 2013. [Electronic resource].—Access mode: https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf.

³⁷ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. The 37th session, February 26—March 23, 2018. [Electronic resource].—Access mode: <https://www.ohchr.org/RU/Issues/Migration/Pages/HRC37.aspx>.

³⁸ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights.

³⁹ Website of the Movement of the International Red Cross and Red Crescent [Electronic resource].—Access mode: http://www.ifrc.org/vca,http://www.ifrc.org/Global/Publications/disasters/vca/Vca_en.pdf.

⁴⁰ See: Dictionary of the Russian language / Edited by N.Y. Shvedova. M., 1983. P. 92, 753.

⁴¹ IOM. Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations. Global Compact Thematic Paper. 2017

(situational) that can occur at any level should be considered. In this case, the identified factors, as in the model developed by the Red Cross, can have both a protective character, i.e. help reduce, overcome or prevent harm, as well as a risky character that increases the likelihood of harm.

To individual factors, the authors of the concept include biological characteristics of a person (including sex, gender) and socio-psychological (experience, beliefs, status in society, access to resources, psychological maturity, etc.). These factors are fundamental, as they affect the susceptibility of the individual to the influence of secondary factors. At the same time, the same factor can have a protective effect in one situation, and in others it can be a risk factor. For example, belonging to a particular nationality can be a protective factor if the given nationality is in the majority and be a risk factor if it is in the suppressed minority.

Family and living factors are associated with the role and status of the migrant in the family, with the history of his family, its size, etc. For example, the existence of a higher level of income may, in a standard situation, be viewed as a protective factor for an individual or

the whole family⁴², but under other circumstances this factor may be associated with an increased risk of robbery.

Social factors are current local conditions that, in one way or another, can contribute to or hinder the development of vulnerability situations. For example, they may include, at the local level, the presence of educational programs or the encouragement of forced marriages. Again, the same factor can both play a positive role and increase the risk. For example, remote rural residence can be considered a risk factor for victims of trafficking, but the same factor can protect against the actions of traffickers or serve as a barrier to the spread of any diseases.⁴³

Institutional factors are a combination of geographic, political, economic, or cultural conditions that have been formed at the state level. These factors are the most stable. Examples of such factors may be features of the development of the existing political system, established traditions of discrimination of certain groups, weak government, etc.

Situational factors can occur at any level (for example, loss of a breadwinner, a fire in the countryside, etc.).

The general model of the vulnerability of each individual migrant for violence, exploitation, abuse and violation of rights to any stage of migration and the ability to avoid such harm, overcome it, counter it, or eliminate its consequences is a consequence of the interaction of risk factors and protective factors at different levels.

This concept implies a holistic approach, which involves the development of measures to assist migrants. It affects not only those measures that an individual can undertake on his own to reduce his vulnerability, but also active actions on the part of the state, community, and family aimed at preventing harm, reducing its consequences, or helping to rebuild.

The IOM approach is intended for practitioners and will be useful in developing a risk and protection assessment framework that affects vulnerability levels. This concept will help specialists identify and evaluate the importance of these factors and, consequently, reveal the degree of vulnerability of individuals or groups. In the framework of this study, this model will be applied as the most practically oriented.

1.3. Development of guidelines and recommendations on working with migrants in vulnerable situations

The New York Declaration (paragraph 52) explicitly raises the issue of “the development of guidelines consistent with international law, non-binding guidelines, and voluntary guidelines for the treatment of migrants in vulnerable situations, especially unaccompanied or separated from their parents, children who do not meet the criteria for providing them with international protection as refugees and who may need help. ... They will complement the national efforts to provide protection and assistance to migrants.”

Recently, many scientific and practical works and studies have been developed based on the concept of vulnerability or directly related

to it and the development of such guidelines and criteria for the vulnerability of migrants.

In 2013, as part of the Pueblo process⁴⁴, Mesoamerica established **Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations**, approved in San José, Costa Rica.⁴⁵ In this report, the vulnerability of migrants to trafficking and their exploitation is examined by studying the risk factors and protective factors associated with unsafe migration. In total, 4 categories of vulnerable migrants are considered: potential victims of trafficking, potential refugees, migrants in risk

situations, and unaccompanied underage status persons. In the context of this study, the following vulnerability indicators are proposed for migrants in vulnerability situations:

- duration of travel, which jeopardizes the physical and emotional integrity of the migrant;
- assault, physical or sexual violence, torture, etc;
- ignorance of the local language and local traditions;
- prohibition or deprivation of the opportunity to communicate with the outside world in the absence of any resources;

⁴² Galos, E., L. Bartolini, H. Cook and N. Grant (2017) Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes. International Organisation for Migration (IOM): Geneva.

⁴³ A question of vulnerability. L. Graz. The magazine of the IRCRCM [Electronic resource].—Access mode: http://www.redcross.int/EN/mag/magazine1997_3/2-7.html.

⁴⁴ The site of the Pueblo process. [Electronic resource].—Access mode: <https://www.iom.int/puebla-process>.

⁴⁵ Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations, approved in San Jose, Costa Rica 2013 http://portal.rcmvs.org/sites/default/files/publicaciones/lineamientos_ingles_cambios-disco.pdf.

- forced displacement or movement due to natural or climatic catastrophes;
- a single migrant woman, pregnant, or without support, especially a teenage girl;
- exhaustion, solar or thermal shock, serious injuries due to the risk movement;
- sick persons, persons with disabilities, elderly people who move unaccompanied or supported and in need of protection;
- use of smugglers for the migration network.

In addition, one of the fundamental principles of working with these categories of migrants in vulnerable situations is the principle of non-expulsion, which means first assessing the risk, health status, satisfaction of primary needs, and only then making a decision on the situation in the legal aspect.

Regional Guidelines for the Comprehensive Protection of Boys, Girls, and Adolescents in the Context of Migration⁴⁶ also consider the concept of vulnerability of underage status migrants and propose solutions for the region, emphasizing the inadmissibility of expulsion or deportation of underage persons (including violators of laws, undocumented children, etc.).

The study **“Vulnerability of migrants to human trafficking and exploitation: evidence of the migration routes of the Central and Eastern Mediterranean”**⁴⁷

examines, from a sociological point of view, the susceptibility to human trafficking and the exploitation of migrants along their routes, while identifying the main risk situations and categories. The authors consider the prerequisites for increased vulnerability to be:

- demographic characteristics;
- route characteristics;
- preconditions related to the situation in the country.

Also, the vulnerability of children throughout the migration route is considered separately. In this study, it is noted that familiar vulnerability factors, such as gender and age, do not permit direct correlation with situations of trafficking and exploitation.

In 2016–2017, a number of studies under the auspices of IOM aimed at detection and analyzing the risk factors of vulnerable migrants and their needs were also conducted in the Central Asian region.

Thus, at the first stage in 2016, the Regional Field Assessment in Central Asia **“Migrant Vulnerabilities and Integration Needs in Central Asia: Root Causes, Social and Economic Impact of Return Migration”**.

The study reveals the dynamics of labor migration in Central Asia, connected with the re-entry ban to the Russian Federation for Kyrgyz, Tajik, and Uzbek migrants. In the sur-

vey, for each country of origin, specific vulnerabilities of migrants are proposed. This study also links these factors and the potential for social and ideological radicalization.

Subsequent regional research of the IOM and the Library of the First President of the Republic of Kazakhstan **“Migrant Vulnerabilities and Integration Needs in Central Asia—Assessing migrants’ and community needs and managing risks”** was published in 2017. The value of this study increases the identification of the needs of vulnerable migrants in the region and the analysis of risk factors that reduce opportunities for their reintegration.

The third study **“Risk Analysis on Return Migration and Challenges in Central Asia”** aimed to study the impact of return migration on the communities and economy of Central Asia on the basis of the theory of risk analysis and change theory. The study assessed the vulnerability and needs of migrants in reintegration.

Thus, at the regional level, attempts are being made in different parts of the world to create mechanisms that take into account the different vulnerable situations of migrants in different contexts. Such guidelines emphasize the necessity of meeting the elementary basic needs of migrants in vulnerable situations, irrespective of status, and only then addressing issues of their legal status and access to services.

⁴⁶ Regional Guidelines for the Comprehensive Protection of Boys, Girls and Adolescents in the Context of Migration Approved in San Pedro Sula, Honduras, during the the XXI Vice-Ministerial Meeting of the Regional Conference on Migration (RCM) in November of 2016.

⁴⁷ Vulnerability of migrants to human trafficking and exploitation: evidence of migration routes of the Central and Eastern Mediterranean. IOM. [Electronic resource].—Access mode: <https://publications.iom.int/books/migrant-vulnerability-human-trafficking-and-exploitation-evidence-central-and-eastern>.

Section 2. Analysis of the legal and institutional framework with regard to migrants' needs in vulnerable situations in the Republic of Kazakhstan

2.1. General analysis of socio-economic conditions and the migration situation

Nowadays for Kazakhstan, migration is a significant factor for the country's political, economic, and sociodemographic development, which has historically forced the authorities to pay particular attention to matters of both internal and external migration. Kazakhstan is an active participant in the Global Forum on Migration and Development, the Almaty and Budapest consulting processes. The country is also a member of the International Organisation for Migration and International Labour Organisation. Kazakhstan is the first country in the CIS to adopt and implement an ethnic immigration policy, and receives compatriots.

For a long period of time, Kazakhstan has primarily been the country of origin and transit for migrants from Central Asia heading for Russia. However, since the early 2000s,⁴⁸ the country's status has changed following economic improvements. Kazakhstan remains a country of origin for migrants, but to a greater extent it is both a transit and receiving country for working migrants.

In the past 15 years, Kazakhstan has become the region's leading economy and established strong economic ties with its neighbors—Tajikistan, Uzbekistan, and Kyrgyzstan. The money working migrants send to their native countries form a substantial part of the GDP of each of the countries.⁴⁹ The main sectors working migrants are employed in: construc-

tion, commerce and agriculture (tobacco and cotton harvesting).

According to UN data, the number of foreign citizens coming to Kazakhstan for work is constantly growing (from 12,325 working migrants with a regulated status in 2003 to 22,041 in 2012).⁵⁰ According to data from the Ministry of Labour and Social Protection, the number of labour migrants holding official permits to work in Kazakhstan amounted to 29,458 in 2016.⁵¹ In 2017 this slightly decreased to 28,842. That being said, according to the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan, around 5 million people came to Kazakhstan in 2017.⁵² They included transit migrants, foreigners entitled to stay in the country without a visa, and around 2 million people subject to mandatory registration. Out of the total number of people who came to the country, 1 million 600 thousand were citizens of CIS countries (including Uzbekistan—1 million 226 thousand, Russia—147 thousand, and Kyrgyzstan—108 thousand). Many of the migrants working in Kazakhstan do not have official work permits, so despite the slight decrease in the number of officially employed labour migrants, the number of migrants working unofficially and who are possibly in a vulnerable situation remains substantial.

Supported by the Government of the USA and Sweden, the analytical department of The Economist magazine, together with the International Organisation for Migration have conducted the study: Migration Governance Indicators of Kazakhstan. The study found that Kazakhstan has made notable progress in developing its immigration policy and immigration partnerships, promoting the social and economic well-being of migrants and society, and ensuring safe, orderly, and regular migration.

A well-coordinated migration regulatory and legal framework has been created in the country on the basis of the Law On Migration and the Migration Policy Concept for 2017–2021, consistent with the Kazakhstan-2050 Strategy in which the importance of migration is noted. The country's regulatory and legal framework aimed at combating human trafficking, and working with refugees and asylum seekers is being continuously improved. For the purpose of the development and implementation of the migration policy, a state body system exists at the institutional level.

Nevertheless the country has two important challenges to meet: the realization of migrant rights and efficient management of migration in emergencies.⁵³ The main reason for the vulnerability of working migrants in Kazakhstan lies in the lack of regulation of their legal status,

⁴⁸ FIDH, "Kazakhstan/Kyrgyzstan: Operation of migrant workers, refusal to protect the rights of refugees and asylum-seekers", 2009, [<https://www.fidh.org/IMG/pdf/Kazakhstan530r-2.pdf>]; "Human Rights Watch, "Kazakhstan: deception and Exploitation of Migrant Tobacco Workers", 2010 [in English: [<https://www.hrw.org/news/2010/07/14/kazakhstan-migrant-tobacco-workers-cheated-exploited>].

⁴⁹ K. Sultanov, T. Abishev, Commission on Human Rights under the President of the Republic of Kazakhstan, Special Report "On the situation with the rights of migrants in the Republic of Kazakhstan", OIM / OSCE, Astana, 2014. [In Russian and English. English version: Human Rights Commission under the President of the Republic of Kazakhstan, Special Report on the Situation with Migrants in the Republic of Kazakhstan, IOM / OSCE, Astana, 2014, in Russian: http://www.nomad.su/i2013/RUS_Special_Report_migrants_2013.pdf].

⁵⁰ United Nations, Department of economic and social affairs, International Migration Report, United Nations, Department of economic and social affairs, International Migration Report, 2015 [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf]

⁵¹ <https://www.enbek.gov.kz/ru/taxonomy/term/521>.

⁵² The data is provided by the Committee of the State Migration Service during the discussion of the Draft Law On Introducing Amendments to Certain Regulatory Acts of the Republic of Kazakhstan Concerning Employment and Migration <https://www.kazpravda.kz/news/obshchestvo/kolichestvo-nezakonno-vehavshih-v-rk-inostrantsev-nazvali-v-mvd-rk>

⁵³ According to the study: Migration Management Profile of Kazakhstan 2017.

which is often abused by employers and intermediaries to exploit migrants. Speaking of such working migrants, they are afraid of being visible in the country where they are considered lawbreakers and so have practically no access to the justice system and social services.

In view of the above, the Kazakh authorities are to codify approaches to regulating access

to the realization of migrant rights, develop mechanisms to reveal and identify migrants among foreign citizens, and also mechanisms to provide assistance in good time to migrants in vulnerable situations, including those in transit.

Currently, it seems important to develop a mechanism for the protection of vulnerable

migrant rights and refer them to competent state institutions, international and non-governmental organisations, including in emergencies. The development of the said mechanisms will help the competent authorities and organisations to more precisely detect and identify vulnerable migrants, and provide adequate aid and support to migrants in vulnerable situations.

2.2. Migrants in a vulnerable situation: problems, needs, and requirements

In this study, we will analyze the following key vulnerable migrant groups:

- 1) Labour migrants with an unregulated status.
- 2) Female labour migrants.
- 3) Underage labor migrants.
- 4) Victims of human trafficking.
- 5) Transit migrants.
- 6) Refugees and Asylum Seekers in Kazakhstan.
- 7) Persons without citizenship.

2.2.1. Labour migrants with an unregulated status.

According to information from the Ministry of Internal Affairs of Kazakhstan, in 2017, out of 1,381,681 foreigners officially employed in the country, only 125,625 people declared employment as the purpose for coming to the country. Officially registered working migrants account for no more than 9.8% of the total number of working migrants from CIS countries. The data was based on the analysis of migration cards issued by the Customs Service, as the purpose of arrival is specified on them. Hence around 1 million working migrants live and work in the country without settling their status and are not accounted for in official statistics. According to the Ministry of Internal Affairs of Kazakhstan⁵⁴, out of 1,381,681 migrants registered by the country's authorities in 2017, 797,982 people came from Uzbekistan (around 58%), 114,385—from Kyrgyzstan (slightly over 8%), and 33,036—from Tajikistan (slightly over 2%).

Working migrants mainly perform menial work at construction sites, in the agricultural

industry of the southern districts of Kazakhstan, in urban markets, in the catering business, in retail stores, and as domestic workers in families.

The Needs and Requirements of Labour Migrants with an Unregulated Status

The procedure for the employment of a foreign migrant involves multiple stages. A labour migrant has to independently find accommodation, get registered, obtain permits from an akimat (a regional executive authority in Kazakhstan, a district state administration institution) and the Migration Police. Low-skilled workers have to find an employer holding a permit to employ foreigners, enter into a labour contract, etc.

As the system for obtaining official work permits is quite complex for migrants, many choose to work unofficially. Some migrants initially obtain the required papers, but later miss the deadlines for temporary registration with the Migration Service and stay in the country in violation of law. For their part, employers are not always willing to employ migrants officially, since it takes time and money. Some migrants are forced to turn to intermediaries, most of whom work unofficially and so are not liable for their activities.

As a result of the unregulated status of migrants, an increased vulnerability is created to the non-observance of labour rights, primarily in respect of the non-payment of promised wages. Since such migrants work without official permits and in violation of the respective procedures, they are unable to contact the

competent authorities for the protection of their rights. When a labour migrant has no place to turn to for legal aid, they become a victim of not only deception, but also labour exploitation.

"I found a job through an intermediary. Initially, they promised unskilled workers a salary of 20,000 som a month, official employment, official registration, and accommodation in a dormitory. Besides me, 10 more people were employed. They transported us across the border in a minivan. When we were filling out our migration cards, they told us to specify that it was a tourist trip. When we arrived there, they accommodated us in makeshift barracks at the construction site, and we were not allowed to leave the site. It was a construction site for a luxury housing development. They took our passports. I did not know whether they had registered me or not. I spent three months there working for food—they did not pay me my salary. Our supervisor told us that all the money will be paid in full after four months of work. Having spent a month at the construction site, I realized that they were not going to pay me anything, so I simply left the site and returned to Kyrgyzstan. There was no point contacting any authority, as I worked unofficially and so was a lawbreaker."⁵⁵

Often, employers promise migrants legal working conditions, including official registration, but, as a rule, they fail to fulfill their promises. Moreover, when workers complete the work assigned to them, some employers may call the Migration Service to detain un-

⁵⁴ The data is obtained in response to the enquiry submitted to the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan. April 23, 2018.

⁵⁵ Interview with a labour migrant from Kyrgyzstan.

registered migrants or those whose registrations have expired, in order to avoid paying them their salaries.

Access to State Aid Measures for Labour Migrants with an Unregulated Status

According to Article 6 of the Law On the Legal Position of Foreigners, in the Republic of Kazakhstan, foreigners may engage in professional activities on the basis and following the procedure established by the legislation and international treaties of the Republic of Kazakhstan. Foreigners who permanently reside in the Republic of Kazakhstan have the same rights and obligations as citizens of Kazakhstan. The Labour Code also provides for equality of the rights and opportunities for foreign and local workers. According to Article 7 of the Labour Code, labour discrimination is prohibited. Pursuant to the legislation of the Republic of Kazakhstan, the working conditions and remuneration of local workers and labour migrants is regulated by the same standards of the laws of the Republic of Kazakhstan. Labour migrants are guaranteed free medical aid solely in the case of emergencies and diseases threatening public health. At the same time, all measures of state aid apply solely to migrants who stay in the Republic of Kazakhstan on legal grounds and hold official work permits.

For migrants from Kyrgyzstan, the country's joining the Eurasian Economic Union made their situation much easier, since legislation currently provides for the possibility of entering into the same labour contracts with citizens of Kyrgyzstan as with citizens of Kazakhstan. However, in the past few years, some citizens of Kyrgyzstan have continued working and living in Kazakhstan without labour contracts. Such a situation results from the lack of employer interest in the official employment of working migrants and the payment of taxes.

2.2.2. Female Labour Migrants in Kazakhstan

Experts believe that in recent years more women from Central Asia have participated in labour migration.⁵⁶ Looking for ways to

earn a living, many women come to Kazakhstan, both with their families and on their own. Women currently account for almost a half of all labour migrants, while two or three years ago, they made up one third of the total number of migrants from Kyrgyzstan and Uzbekistan. Such an increase in the number of female migrants is, among other things, caused by the fact that their husbands are banned from entering the Russian Federation, and so women remain the only adult breadwinners in their families. This in conjunction with the lack of job opportunities, especially in rural regions, forces women to go to Kazakhstan to earn their living.

Most of the female labour migrants work in commerce (at markets), in agriculture (cotton and tobacco harvesting in the South of Kazakhstan). Young female migrants work as babysitters. The above sectors of employment are informal and often in the shadow economy, due to which the majority of female labour migrants have an unregulated status. The story of a female labour migrant from Tajikistan:

"When I came to Kazakhstan, I faced constant difficulties—from getting registered to the legalization of my status. I still work unofficially, without a labour contract, but anyway here it is better for me and my children. Of course, my rights are being constantly violated, but I do not try to get assistance, as I don't know who to turn to, and I'm also afraid that I will be prosecuted and deported. What would I do then? That's why for me, it's better to live the way I do at the moment."

Sometimes women are forced to migrate alongside their children, which further increases their vulnerability and the vulnerability of their children. Since many women work unofficially, they are not entitled to medical care, for example, in case of pregnancy, and their children do not have access to medical services. If an employer learns that a female migrant is pregnant, they may terminate her employment. Female migrants are exposed to the risk of sexual and domestic violence.

Many migrants, especially young women from Kyrgyzstan, are lured into prostitution and become the victims of sexual exploitation.

Needs and Requirements of Female Labour Migrants

The ability of female migrants to exercise their rights, especially with regard to maternity, is an important factor for observing human rights. Despite the provisions of the Labour Code, female migrants are still engaged in heavy work, with no regard to their status. Despite the legal protection measures, their places of work typically do not pass certification, the severity of the work and its impact on the health of mothers and children is not regulated, and overtime is not remunerated.

Women risk being put out of work especially when employers learn that they are pregnant. As a result, female working migrants try to conceal that they are pregnant to the last. In fact, women not only perform work that is potentially harmful for themselves and their children, but are also deprived of their legally guaranteed right to pregnancy leave, which contravenes Article 99 of the Labour Code of the Republic of Kazakhstan and Article 4 of ILO Convention No. 183.⁵⁷

Such violations most often affect female migrants, as employers intendedly avoid entering into labour contracts with them. On the one hand, they anticipate possible complications relating to maternity, and on the other—they realize that due to existing gender stereotypes and cultural practices, female migrants assert their rights and demand official employment more rarely than male migrants.

Female Migrant Access to State Aid Measures

The legislation of Kazakhstan, taking into account the provisions of international legal acts in the protection of women, contains a set of measures guaranteeing additional support during pregnancy and after childbirth. In practice such standards are abided by only when employment relations are regulated.

⁵⁶ International Organisation for Migration in Central Asia. Regional field assessment "Vulnerability of migrants and the needs of integration in Central Asia: The main causes and socio-economic consequences of return migration," 2016. [Electronic resource].—Access mode: <http://www.iom.kz/images/books/Full-ReportRUS2016.pdf>.

⁵⁷ ILO Convention [electronic resource].—Access mode: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_c183_ru.htm.

Alongside other labour migrants, the majority of female migrants from Kyrgyzstan and Tajikistan do not have the documents required to work in Kazakhstan. Employers do not benefit from entering into labour contracts with migrants, and the lack of knowledge among migrants about their own rights allows employers to easily avoid legal matters. Without the formalization of labour relations, it is impossible to guarantee the protection of women, which inevitably leads to the violation of their rights, especially with respect to maternal health.

2.2.3. Underage Labour Migrants in Kazakhstan

Underage citizens of Central-Asian countries are also involved in labour migration to Kazakhstan. Many of them are adolescents from Kyrgyzstan and Tajikistan. Some of them come to the country with their parents, and some on their own, hoping to earn money for their families.

Legal rights activists believe that in most cases underage migrants come to Kazakhstan from the southern regions of Kyrgyzstan. As a rule, they are aged 14–17. Most of them come to Kazakhstan to help their relatives, acquaintances, or compatriots in their commercial activities in Almaty, at Barakholka (the clothes market), the Universal Market, and the Green Market (dried fruit and food), or to work in construction on equal terms with adults.⁵⁸

“There were very young boys in our team, around 14–15-year-olds, who had left school for this work. They were sent across the border on the basis of Powers of Attorney from their parents. They had the same duties as the adults, and they worked under the same conditions. Normally, members of a team work 10–12 hours a day, starting from 8 AM, with a lunch break. No one enters into a work contract”.⁵⁹

According to information from employees of the Center for the Adaptation of Minors in

Kazakhstan, as a rule people assisted by the Center come to the country from Kyrgyzstan for seasonal work, for 1–3 months, via Powers of Attorney.⁶⁰ Sometimes underage migrants come to Kazakhstan with forged papers that show they are of a legal age, which means they can avoid having to obtain additional documents. Alternatively, they cross the border illegally. Sometimes children leave their country using the passport of an older relative. This may result in problems for the children as a result of crossing the border illegally.

Needs and Requirements of Labour Migrant Children

Underage migrants from Kyrgyzstan and Tajikistan usually do not finish secondary education and rarely complete 9 years of education. Such underage labour migrants do not continue their studies in Kazakhstan, as their unregulated status deprives them of access to education. Due to their lack of skills, they may only get menial work when they get their first employment. And working full time, they have no chance to continue their education and acquire a profession.

Sometimes, children who immigrate with their families become the victims of slavery. Their “employers” take the birth certificates of children along with all their other papers. Together with their family members or other people, underage migrants live in premises with unsuitable conditions. Their diet is fairly meager. Children do not attend school and do not obtain an education. Underage migrants are forced to do heavy work alone or when helping their parents. Children working together with adults are more exposed to health risks due to their age: for example, they can get injured when doing physical work, or catch illnesses that are common among migrants in Kazakhstan, such as tuberculosis. With the lack of qualified medical aid, the health of children and adolescents is especially vulnerable.⁶¹

Underage migrants working in Kazakhstan normally send all the money they earn to their relatives at home, and they cannot use the money themselves.

The age of such children, their underdeveloped worldview, and their lack of life experience and knowledge make them vulnerable and almost invisible to the state system.

Access of Underage Labour Migrants to State Aid Measures

The labour legislation of Kazakhstan, in which certain international standards relating to the labour protection of minors are taken into account, permits adolescents under the age of 18 to work to a limited extent. Article 31 of the Labour Code of Kazakhstan permits labour contracts to be entered into with minors from 14–16 years of age, provided that certain conditions are met.⁶² In addition to permitting minors to work, the labour protection legislative regulations of Kazakhstan include certain protection measures. Directive of the Ministry of Health and Social Development No. 944 of December 8, 2015 establishes a list of jobs that are prohibited for minors. Such jobs include: jobs at cotton and tobacco plantations (sub-cl. 17, cl. 85 of Directive No. 944); at locations where pesticides or herbicides are used (sub-cl. 18, cl. 85 of Directive No. 944); jobs associated with the responsibility for the life, health and safety of children (cl. 87 of Directive No. 944); jobs associated with carrying or moving heavy items of over 4.1 kilograms (section 2 of Directive No. 944).

Despite the statutory prohibitions and restrictions on the work of minors in Kazakhstan, underage migrants under 18 are known to frequently work on equal terms with adults, including in fields where child labour is prohibited.

Representatives of a number of Kazakhstan's state bodies (including the Ministry of Inter-

⁵⁸ Interview with Head of the Meirim public organisation Alexander Mukha, Aktau, April 21, 2018.

⁵⁹ Interview with a migrant from Kyrgyzstan working at a construction site in Almaty.

⁶⁰ Interview with employees of the Center for the Adaptation of Underage Status People, Almaty, April 28, 2018.

⁶¹ Interview with employees of the Center for the Adaptation of Underage Status People, Almaty, April 28, 2018.

⁶² The Labour Code of the Republic of Kazakhstan [electronic resource].—Access mode: https://online.zakon.kz/Document/?doc_id=38910832.

nal Affairs and Ministry of Labour) deny that minors are employed in Kazakhstan. A representative of the Ministry of Labour notes that

*"In several years we have not found a single case in which a minor is employed. Nowadays this is not a problem for Kazakhstan."*⁶³

Representatives of Kazakhstan's farms, i.e. prospective employers, claim that they do not use the labour of minors—"they do not help their parents, as such labour is illegal and is punishable by fines".

Nevertheless, experts frequently hear about cases involving the forced labour of minors from Kyrgyzstan and Tajikistan in Kazakhstan. That said, registering such cases is particularly difficult.⁶⁴ The situation is made worse by the provisions of the Law on Migration according to which only legal age status foreign citizens are considered labour migrants, which makes the detection of working children more difficult for the state system.

According to trade union organisations, the bodies responsible for monitoring the situation and for combating the slavery of minors do not work efficiently enough, which causes a significant number of forced labour cases to remain undetected. Moreover, there is another problem: Although some cases of forced labour of minors are covered by mass media and reported to law enforcement agencies, guilty persons, in most cases, are not brought to responsibility.⁶⁵ This results from the lack of structured work on the part of specialists with affected people, their low level of motivation, the low level of training of investigative bodies, especially in non-metropolitan regions, and the lack of cooperation between the agencies of the Ministry of Internal Affairs on similar cases. As a rule, underage migrants do not have access to the various types of aid due to their unregulated status.

2.2.4. Victims of human trafficking

Kazakhstan is the country of origin and destination for victims of human trafficking that are subjected to forced labour and exposed to sexual exploitation. The form of exploitation depends on the region. As a rule, big cities more frequently register cases of sexual slavery, and non-metropolitan regions cases of forced labour. The latter mainly affects labour migrants from Tajikistan and Kyrgyzstan. Their labour is used in agriculture, construction and mining. Female migrants from Kyrgyzstan and Uzbekistan are the most common victims of sexual exploitation.

According to the assessment of the mission of the International Organisation for Migration in Kazakhstan, in 2017, 177 people were victims of human trafficking, with 101 of them being migrants, and 1,762 victims of slavery obtained rehabilitation and integration aid from the International Organisation for Migration and its NGO partners.⁶⁶

In most cases, migrants are forced to do heavy work that may last for the entire day seven days a week.

*"We woke up at 6 AM. Work began at 7:30. We normally worked until 9–10 PM. Of course, we did not have days off, and we were not allowed to talk to each other or even exchange glances. If our supervisors saw us do this, they could shout at us. My two children always worked with me. I harvested tobacco, and they sorted the leaves by size and strung them on a wire. All that happened under the scorching sun in summer and in severe cold in winter".*⁶⁷

Needs and Requirements of Victims of Human Trafficking

In the process of investigating human trafficking, the victims need protection from the state. They also need psychological help and rehabilitation. Many victims of human trafficking need medical or social help. This assis-

tance can often be categorized as emergency, top-priority, or life-saving.

In Kazakhstan, just like in many other countries, victims of human trafficking who manage to escape rarely go to the police. As a rule, they are afraid of being prosecuted and deported for the violation of migration rules, though pursuant to Article 741 of the Administrative Offense Code of the Republic of Kazakhstan, foreign citizens identified as victims of human trafficking are not liable for the violation of migration rules.

Unfortunately, so far corruption has not been defeated, and sometimes, when a victim of human trafficking decides to turn to the law enforcement authorities, there is a significant risk that the report will not be investigated properly. An employee of a Kazakhstani NGO notes that

"Many victims claim that the police themselves have sold them into slavery. Because of this, that he was a victim of human trafficking, one in five or seven people reports to the authorities, or even less. They are afraid that the authorities will send them back to their former owners. In practice, human rights activists advise victims of human trafficking to avoid reporting their case to the police. They say that it is vital to prepare for it and obtain the support of an NGO lawyer. The police should know that there is a person who is protecting such people".

Access of Victims of Human Trafficking to State Aid Measures

Statistical data shows that the number of forced labour and sexual exploitation cases is growing from year to year. Nevertheless, Kazakhstan has not yet drafted or implemented a separate law relating to human trafficking. Kazakh government bodies have taken certain steps to combat this practice, and in particular they have increased the severity of punishment for human trafficking. The Criminal Code contains seven articles covering the no-

⁶³ Interview with a representative of the Ministry of Labour, Astana, December 18, 2017.

⁶⁴ Interview with the President of the International Legal Initiative Foundation, April 28, 2018.

⁶⁵ Interview with the President of the International Legal Initiative Foundation, April 28, 2018.

⁶⁶ Data from the International Organisation for Migration in Kazakhstan for 2017.

⁶⁷ Interview with a victim of human trafficking in Almaty.

tion of human trafficking (Articles 113, 125, 126, 128, 132, 133, and 270 of the Criminal Code of the Republic of Kazakhstan).

The state also focuses its efforts on protecting and administering aid to the victims of human trafficking. Kazakhstan has developed regulations that permit the funding of long-stay shelters for victims of human trafficking and set standards for the provision of services to victims of trafficking. All victims of human trafficking identified by the law enforcement bodies receive aid from state-funded programmes. Three NGO-based shelters for victims of human trafficking administer legal, psychological, and medical aid, and are available to all victims of human trafficking, regardless of their citizenship, sex, or age.

In 2016, the state allocated around 4.7 million tenge to directly aid the victims, including 3.5 million tenge to support one of the NGO-based shelters for victims of human trafficking located in Astana. 31,1 million tenge was additionally allocated to finance non-governmental and governmental shelters rendering services to the victims of crime, domestic violence, and human trafficking. Kazakhstan's Law on Special Social Services entitling the victims of human trafficking to aid as the victims of violence has been improved.

In 2015, the development of standard criteria for determining the right to receive a wide range of social services was completed. However, so far the new standards that will be used by shelters for victims of human trafficking have not been implemented. Amendments to the Criminal Procedure Code took effect in January 2015—they entitled victims to compensation from the state fund. The establishment of the fund is planned for 2018 and requires the adoption of respective by-laws.

In general, NGOs note the existence of an efficient mechanism of victim reassignment and cooperation with police authorities to combat human trafficking in non-metropolitan regions. Law enforcement departments that deal with migration issues and countering human trafficking use a documented system to reveal victims of human trafficking among vulnerable persons, such as irregular migrants

or persons engaged in prostitution. The state encourages the affected persons to participate in criminal proceedings by offering them witness protection programmes during proceedings, access to shelter services for the period of investigation and basic services such as catering, and the provision of clothes, medical, financial, and legal aid. If the victims are foreign citizens, then they are provided with legal aid, including protection from deportation. They are also granted special temporary residence permits for the period of the criminal investigation. However, the dependence of the victim's status on the criminal case makes foreigners who are the victims of human trafficking vulnerable, since if a criminal case is not initiated, or is dismissed for any reason, then the state does not recognize such persons as victims and does not provide them with the protected status.

In May 2015, the National Human Rights Commission published a special report containing an analysis of the existing legislation, prevention mechanisms, and the roles of interested parties in combating human trafficking. The report highlighted the main objectives of the state, which are still relevant: the need to strengthen the fight against corruption, the optimization of mechanisms to reveal and measures to protect victims, the raising of the level of motivation among policemen to expose such crimes.

2.2.5. Transit migrants.

For Kazakhstan, transit migration is also of great importance. Erlan Turgumbaev, the country's Deputy Minister of Internal Affairs notes that the geopolitical location of Kazakhstan in the middle of the Eurasian Continent causes large flows of migrants to pass through the country's territory. "Each year, more than two and a half million people come to our country to work, study, or on private and official business. 90% of them are citizens of CIS countries, mostly labour migrants. Approximately three million more people transit through Kazakhstan".⁶⁸

Most of the transit migrants are citizens of Kyrgyzstan and Uzbekistan headed to the Russian Federation through Kazakhstan. Among them, the least protected category

is transit migrants who are banned from entering the Russian Federation (the so-called "banned people"). Such migrants heading abroad to earn their living either stay in Kazakhstan or are forced to return to their country, which can sometimes be difficult.

Needs and Requirements of Transit Migrants

In Kazakhstan, transit migrants are often vulnerable or encounter emergencies. Due to their tight budgets, they are forced to use the services of unlicensed transportation operators, which does not guarantee their security when travelling to their destination. During transit, migrants can face physical and environmental threats, hunger, disease and injury.

Transit migrants often become the victims of fraudsters who promise to transport them to their destination at lower prices, but who do not fulfill their promises. Moreover, fraudsters at the borders offer transit migrants transportation that bypasses the official check points and provide them with forged migration cards. If the illegal border crossing is discovered by border guards, the fraudster intermediaries, as a rule, manage to escape, abandoning the migrants. The migrants themselves risk facing criminal liability for crossing the border illegally.

In Kazakhstan, there is no legal standards regulating transit migrant aid in emergency cases. Moreover, transit migrants use the territory of Kazakhstan for transit purposes only, in the process of which they are in a more vulnerable situation than labour migrants coming to Kazakhstan for work. Often, especially in winter, buses with transit migrants break down on the road due to the cold. Employees of the Emergency Committee under the Ministry of Internal Affairs of Kazakhstan administer aid to such migrants, but even those migrants who are forced to stay in Kazakhstan due to emergency circumstances subsequently have legal problems regarding their stay in the country.

Most transit migrants try to leave Kazakhstan as soon as possible and are not interested in staying in the country for a long period of time. However, recently there has been an

⁶⁸ Erlan Turgumbaev, Up to 3 million foreigners transit through Kazakhstan. [Electronic resource].—Access mode: <http://www.zakon.kz/4915620-erlan-turgumbaev-do-3-h-millionov.html>.

increase in the number of cases in which the Russian Federation has banned transit migrants from entering its territory and migrants have only learnt about it upon crossing the border. In such situations, migrants straight away become more vulnerable, since the time they can legally stay in Kazakhstan has almost run out, and they still need to return to their own countries. In such cases, many migrants banned from entering Russia try to get a job in border towns in Kazakhstan. People who decide to go back to their countries violate the migration legislation, since on their way back, the time they can legally stay in the country runs out. When they cross the border in order to return to their country, they get detained by Kazakh border guards for violating the terms of temporary stay in the country.

Access of Transit Migrants to State Aid Measures

According to the effective legislation, transit migrants are allowed to stay in Kazakhstan without registration for a maximum of five days. In other words, a transit migrant must cross the vast territory of Kazakhstan within the given period. Kazakhstan has no state programmes aimed at administering aid to transit migrants in emergencies. In such situations, transit migrants can only expect help from the rescue services and guaranteed free medical aid.

2.2.6. Refugees and Asylum Seekers in Kazakhstan.

According to the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan, in 2017, the number of people holding refugee status in the Republic of Kazakhstan amounted to 596 (135 families and individual migrants including children). Most of the refugees are registered in Almaty—370 people (91 families), South Kazakhstan Region—176 people (34 families), Almaty Region—48 people (9 families), and Jambyl Region—2 people. Among the persons holding refugee status, there are 280 women and 316 men. 568 of them are citizens of Afghanistan, 10—Uzbekistan, 10—Syria, 3—the People's Republic of China, and 5—other countries.

Ethnically, the refugees include 314 Tajiks, 86 Pushtuns, 139 Khazars, 21 Uzbeks, 11 Arabs, 8 Turks, and 17 people belonging to other ethnic groups. Among them, 56 people have

higher education, 18—vocational, and 264—secondary education. 67 people have no education. Among the refugees, 131 people are school-aged children, and 60 children are aged 5 and under.

In 2017, 154 applied for refugee status to the Migration Services. 2 of them were assigned refugee status. 41 application forms are under consideration. By the decision of the Commission for the Assignment, Extension, or Withdrawal of Refugee Status, 87 people were denied refugee status on the grounds provided for by the Law on Refugees of the Republic of Kazakhstan dated December 4, 2009.

Needs and Requirements of Refugees

The main needs and requirements of refugees in Kazakhstan relate to integration into the local society, though it is sustainable inclusion in society that presents the most serious challenge. In Kazakhstan, the position of refugees is the same as that of foreign citizens who stay in the country temporarily. Moreover, refugee status is assigned for one year. This legislative standard makes the integration of refugees much more complicated.

Refugees who wish to obtain a residence permit and citizenship should confirm they have sufficient financial resources, which is often an obstacle to obtaining/extending it due to the lack of employment opportunities. Also, refugees are only entitled to free guaranteed medical aid in emergency cases.

The so-called “mandate refugees” should be noted; persons to whom the state has refused to grant refugee status, but the Office of the United Nations High Commissioner for Refugees has granted them their refugee mandate. The problem of this category is that for the state they are in any case foreigners who are illegally staying in the territory of the country. They do not have a registration stamp, and some people have passports that have expired. The mandate refugee status allows them to stay on the territory of Kazakhstan only due to the goodwill of the authorities. Mandate refugees in Kazakhstan have absolutely no rights. They cannot work officially, children are deprived of the right to education, they are accepted into schools only by agreement with the directors (moreover, they cannot get an official certificate of education after graduation), they can receive

medical aid only in private clinics. In fact, mandate refugees in Kazakhstan are migrants with an unregulated status who are in a very vulnerable position, their situations last for years and there is no solution to this problem at present.

Access of refugees to state aid measures

As was already mentioned, all officially recognized refugees in Kazakhstan are equated to foreign citizens who are temporarily in Kazakhstan, therefore they are guaranteed only emergency medical aid. With the implementation of the compulsory medical insurance system, refugees will also not be able to access free medical aid in full, on an equal basis with citizens of the country. Although refugees are allowed to work, they cannot expect to receive a pension when they reach the appropriate age, since the legislation does not provide for the category of refugees as participants in the pension system.

Also, when registering a residence permit / citizenship, refugees are forced to confirm that they have sufficient financial resources, which almost always seems problematic due to the difficulties with formal employment.

2.2.7. Stateless persons in Kazakhstan

After the collapse of the Soviet Union, many people moved easily between the former Soviet republics for many years. Some, for various reasons, did not submit their documents on time and did not take a decision on their citizenship.

Experts divide stateless persons into two categories:

1. Stateless persons de jure.
2. Stateless persons de facto.

The needs and problems of stateless persons

Stateless persons de jure mostly encounter problems when they want to apply for Kazakh citizenship. Due to conflicts of law and bureaucratic delays, they are recommended to extend their stateless person certificates.

Stateless persons de facto have many more problems; the state simply does not recognize this category of persons. They have virtually no rights until their status is determined.

The access of stateless persons to state aid measures

According to the legislation of the Republic of Kazakhstan, stateless persons de jure in Kazakhstan have almost the same rights as citizens, with some exceptions (the right to work in the civil service, the right to be elected and to serve in the army). In other respects, as practice shows, formal stateless

persons have no problems. Having lived in Kazakhstan for five years, they have the right to apply for citizenship of the Republic of Kazakhstan.

It is much more difficult for stateless persons de facto, who may not have any documents. No one knows the exact number of such persons. About two thousand people

without documents have contacted lawyers of the Kazakhstan International Bureau for Human Rights and Rule of Law under the United Nations High Commissioner for Refugees project. Practically 80% of those who apply subsequently turn out to be citizens of Kazakhstan, the rest are citizens of Russia, Kyrgyzstan, Tajikistan, Uzbekistan, Belarus, Ukraine and Moldova.

Summary table of vulnerability factors of migrants and their families at the institutional level: Republic of Kazakhstan

Category of migrant in a vulnerable situation	Signs of migrant vulnerability on the basis of vulnerable situations.	Restrictions on access to basic rights
Labour migrants with an unregulated status	<ul style="list-style-type: none">• Being in the country without registration• Lack of formal employment opportunities• Lack of labour contract• Risk of getting into debt bondage• Risk of becoming a victim of human trafficking• Risk of becoming a victim of fraud	<ul style="list-style-type: none">• Right to social security• Right to a pension• Right to full medical treatment• Right to free legal aid
Female—labour migrants	<ul style="list-style-type: none">• Work without a labour contract, informal work• Heavy work, which usually involves men• Risk of becoming victims of human trafficking and victims of sexual exploitation• Risk of becoming a victim of fraud	<ul style="list-style-type: none">• Right to social security.• Right to a pension• Right to full medical treatment• Right to free legal aid
Underage labor migrants	<ul style="list-style-type: none">• Heavy work that children are not permitted to perform• Sometimes the inability to receive secondary education• Risk of becoming a victim of human trafficking	<ul style="list-style-type: none">• Do not always have access to education• Right to work in terms of work for underage migrants• Right to full medical treatment• Right to free legal aid
Victims of human trafficking	<ul style="list-style-type: none">• Health problems, disability, post-traumatic stress disorder (PTSD)• Lack of documents• Lack of funds• Threat to life and health on the part of traffickers• Fear of being deported• Lack of access to the services of lawyers to represent their interests in litigation• Social, cultural or religious factors stigmatizing victims of human trafficking upon return	<ul style="list-style-type: none">• The right to identify and access assistance regardless of participation in criminal proceedings• Right to social security
Transit migrants	<ul style="list-style-type: none">• Violation of the terms of transit with no registration required in the country due to the duration of the trip (an unexpected ban on entry into the Russian Federation, an emergency)• Emergency during transit• Risk of becoming a victim of fraud	<ul style="list-style-type: none">• There is no guarantee of medical or social aid in full• Right to free legal aid
Asylum seekers and refugees	<ul style="list-style-type: none">• Refusal to grant refugee status	<ul style="list-style-type: none">• Right to social security• Right to a pension• Right to full medical treatment
Stateless persons	<ul style="list-style-type: none">• Lack of documents and status of a stateless person	<ul style="list-style-type: none">• Right to work• Right to social security• Right to a pension• Right to full medical treatment

2.3. Review of the legal framework for the access of migrants in a vulnerable situation to basic social guarantees and services

Kazakhstan has made notable progress in developing its migration policy and migration partnerships, promoting the social and economic well-being of migrants and society, and ensuring safe, orderly, and regular migration.⁶⁹

The Republic of Kazakhstan has ratified the main international documents related to recognizing and protecting refugees and asylum seekers, detection and providing assistance to victims of human trafficking.

Kazakhstan is a member of the Eurasian Economic Union, the country has concluded numerous bilateral labor mobility agreements, including the Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Social Protection of Labour Migrants Working in Agriculture in Border Districts, the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Tajikistan on the Employment and Social Protection of Labour Migrants. By the law of 2009 December 2009, Kazakhstan ratified the CIS Convention on the legal status of migrant workers and family member.

An achievement in the field of education and attraction of skilled labor is the signing by Kazakhstan of international conventions on the recognition of foreign diplomas, including the Lisbon Convention and the inclusion of the country in the Bologna process. In view of its membership in the Eurasian Economic Union, qualifications received in other member states of the Union, in particular in Kyrgyzstan, are now recognized in Kazakhstan.

In order to protect children from economic exploitation, the Republic of Kazakhstan has joined the main international Conventions, such as ILO Convention No. 138 of 1973, "On the Minimum Age for Admission to Employment" (ratified by Law No. 116 of the Republic of Kazakhstan of December 14, 2000) and the ILO Convention of 1999 No. 182 "On the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor" (ratified by Law No. 367 of the

Republic of Kazakhstan of December 26, 2002). Kazakhstan ratified the Convention on the Rights of the Child and its optional protocol on human trafficking, child prostitution and child pornography, and adopted amendments to the Criminal Code toughening penalties for the exploitation of young children.

In order to ensure that other national mechanisms for protecting the rights of migrants are brought into line with international standards, it should be recommended that Kazakhstan joins the International Convention on the Protection of the Rights of All Migrant Workers and Family Members, the ILO Migrant Workers Convention (with amendments) of 1949 and the ILO Convention on Migrant Workers (with supplementary provisions) of 1975.

The legal basis for regulating the situation of migrants in Kazakhstan consists of the following legal acts. **The Constitution of the Republic of Kazakhstan** stipulates that foreign citizens and stateless persons enjoy rights and freedoms in the Republic, and also bear obligations established for citizens, unless otherwise provided by the Constitution, laws and international treaties (clause 4, Article 12). The Constitution of the Republic of Kazakhstan guarantees everyone, including labor migrants, the right to freedom of labor, free choice of occupation and profession, and to working conditions meeting health and safety requirements, to remuneration for work without any discrimination. Forced labour is permitted only upon a court sentence or in a state of emergency or martial law (clause 2, Article 24).

The Law of the Republic of Kazakhstan on Population Movement of July 22, 2011 is the basis for regulating labor migration, to which chapter 6 of the Law is devoted. Labor migrants are considered in the following categories: foreign immigrant workers, business immigrants, seasonal foreign workers and foreign domestic workers. The law prescribes mandatory conditions for the entry of foreign workers, namely: they must be of legal age, have certain qualifications, confirm the presence or absence of a criminal record, present a medical certificate, and have health

insurance. There are no provisions in this Law that protect migrant workers from slavery or cruel treatment, there are no references to possible vulnerable situations.

Law No. 2337 of the Republic of Kazakhstan On the Legal Status of Foreigners of June 19, 1995 (Articles 6–20) regulates in more detail the basic rights, freedoms and duties of foreign citizens. According to Article 6 of the Law, foreign citizens can work in Kazakhstan on the basis and in accordance with the procedure established by the legislation and international treaties of the Republic of Kazakhstan. According to Article 18 of the Law, foreigners in the Republic of Kazakhstan have the right to appeal to the court and other state bodies for the protection of their property and personal non-property rights. In other words, migrants, refugees and stateless persons in Kazakhstan formally have the right to access the justice system.

According to clause 3 of Article 33 of the **Labour Code of the Republic of Kazakhstan** a person can be hired only after the conclusion of a labour contract. In the event that an employer does not properly formalize a labour contract, the employer is liable under administrative law. For example, if a person is hired without entering into a labour contract, Kazakh legislation provides for a fine of 30 to 150 monthly calculation indices, depending on the form of registration of the employer's business.

Labour safety conditions are guaranteed only if the employee is legally employed. To ensure safe labour conditions for the employee and to compensate for harm caused to the life of the employee during the performance of work duties in Kazakhstan, an employer civil liability system was created. The provisions of the law should apply to all workers, both local and migrant workers. Of course, this means only migrants who work legally in the country. Accession to the Eurasian Economic Union has improved the situation for migrants from Kyrgyzstan, as now Kyrgyz citizens can sign a labour contract just like Kazakh citizens. However, there are still migrants who live and work in Kazakhstan without a contract for several years.

⁶⁹ According to the study: Migration Management Profile of Kazakhstan 2017.

According to clause 9 of the **Rules of Entry and Stay in the Republic of Kazakhstan, as well as Exit from the Republic of Kazakhstan**, approved by the Republic of Kazakhstan Government Resolution No. 148 of January 21, 2012, foreigners are required to register at the place of residence within five days after crossing the border. Also, after the end of official employment, a working migrant is obliged to leave Kazakhstan. The responsibility set forth in Article 518 of the Administrative Code of the Republic of Kazakhstan for compliance with these rules are borne by both foreign employees and employers. This provision, imposing increased obligations on the employer in terms of the registration and organisation of the departure of foreign workers, does not encourage employers to participate in the preparation of documents for working migrants.

Kazakhstan has a **Law On State Guaranteed Legal Aid**, but in connection with the reference rule to the Law On Legal Practice of 1997 December 1997, only refugees are entitled to free legal aid. In practice, the lawyers of the Kazakhstan International Bureau for Human Rights and Rule of Law, which deal with the protection of refugees in the courts, do not have information on cases in which refugees have received free legal aid. Labour migrants and stateless persons are not provided with free legal aid.

In Kazakhstan, **human trafficking** for the purpose of labour and sexual exploitation is punishable under Articles 113, 125, 126, 128, 132, 133, 270 of the Criminal Code. There is no separate law on combating human trafficking. Victims of human trafficking are protected, the state also funds a number of shelters and rehabilitation programs provided by NGOs which are partners of the International Organisation for Migration.

In the field of protection of children's rights in Kazakhstan, work is ongoing to ensure social and legal guarantees for the quality of life of children. The country adopted the **Law On Child's Rights in the Republic of Kazakhstan** of August 8, 2002. According to Article 8 of the Law of the Republic of Kazakhstan **On Education** of September 10, 2012, foreigners and stateless persons legally residing in Kazakhstan have equal rights with citizens of Kazakhstan to receive pre-school, primary, basic secondary and general secondary education.

In the development of the norms of the Law On Education, an Order of the **Minister of Education On the Rules of the Reception of Education by Foreigners and Persons without Citizenship in the Republic of Kazakhstan was adopted in September 2010**. The directive determined that children of foreigners and stateless persons permanently residing in the Republic of Kazakhstan, as well as persons temporarily residing in the Republic of Kazakhstan (refugees, asylum seekers, consular officers, working migrants) are admitted to educational institutions to obtain preschool education, primary, basic secondary and general secondary education and enjoy the same rights as citizens of Kazakhstan. This directive does not provide access to education of migrant children with an unregulated status, which puts them in a vulnerable position.

The Code of the Republic of Kazakhstan **On People's Health and the Healthcare System** in Article 88 provides for the right of foreign citizens to receive a guaranteed free medical aid only in cases of acute illnesses that pose a danger for others. Also, the directive of the Minister of Health of the Republic of Kazakhstan approved **The Rules of Administering Medical Aid to Immigrants**. These legal acts differentiate the provision of medical aid: ambulance service and emergency aid and routine medical aid. Services not included in the list of ambulance service and emergency aid are provided only on a paid basis, under voluntary insurance or at the expense of the employer; which corresponds to the minimum standards enshrined in international law.

In accordance with the Law of the Republic of Kazakhstan **On Pension Protection** foreigners and stateless persons permanently residing in the Republic of Kazakhstan have the right to a pension. In accordance with the legislation of the Republic of Kazakhstan, foreign citizens (labor migrants) cannot use the services of the state pension system, even in cases when migrants or their employers wish to voluntarily make such pension payments.

In accordance with the Law of the Republic of Kazakhstan On Compulsory Social Insurance of February 7, 2005, **compulsory social insurance** is provided to employees, except for working pensioners, self-employed persons, including foreigners and stateless

persons permanently residing in the country and carrying out income-generating activities. So working migrants and family members who are engaged in temporary professional work in Kazakhstan are not provided compulsory social insurance. These rules contradict international standards, which are aimed at ensuring equal access and rights to social security for both citizens of the country and working migrants.

The Law of the Republic of Kazakhstan **on State Targeted Social Help of July 17, 2001** provides targeted social help only to persons whose income does not exceed the poverty line. The law provides for assistance to refugees and foreigners permanently residing in the Republic of Kazakhstan. A migrant who is in a vulnerable situation and temporarily located in the Republic of Kazakhstan cannot count on such assistance.

According to Law No. 114-IV **on Special Social Services** of December 29, 2008, refugees and migrants are not provided with psychological assistance. Legal aid is provided only by NGOs, International Organisation for Migration partners, and the United Nations High Commissioner for Refugees.

The Law of the Republic of Kazakhstan **On Refugees** of December 4, 2009 defines the criteria and procedures for granting refugee status, guarantees the protection of the rights of asylum seekers and refugees, and also establishes their basic rights and obligations in Kazakhstan. In accordance with international law and the recommendations of the Office of the United Nations High Commissioner for Refugees, special provisions have been introduced for refugee children.

National legislation, and in particular the **Housing Code of the Republic of Kazakhstan**, as amended on April 1, 1993, provides for the right to purchase housing for citizens of Kazakhstan only. Housing for migrants is not covered at the level of bilateral agreements between Kazakhstan, Kyrgyzstan and Tajikistan.

Code of Administrative Offences of the Republic of Kazakhstan No. 235-V of July 5, 2014 (with amendments and additions as of 06.04.2015) contains a number of measures against employers who illegally employ labour migrants. Employers who

violate the rules for hiring foreign citizens are fined.⁷⁰ So according to clause 1 Article 519 of the Administrative Code of the Republic of Kazakhstan, if an employer recruits a foreigner without a work permit, with the conclusion of a labour contract or without a labour contract, the employer will be brought to administrative responsibility and receive a

fine of 30 to 1,000 MCI. In addition, according to sub-clause 3) clause 38 of the Rules, if it is established that foreign workers have been employed without a permit, the employer will not be issued such a permit for twelve months from the date the illegal use of foreign labor is established. Also, such a violation is the involvement by a private individual

employer of labor immigrants in the performance of household work (services) without a permit issued by the internal affairs bodies—the migration service. For this violation, in accordance with clause 5 Article 519 of the Code of Administrative Offenses of the Republic of Kazakhstan, the private individual employer is fined 30 MCI.

2.4. State policy on migrants

Migration policy is part of the political policy of the state and its development strategy. **The Migration Policy Concept of the Republic of Kazakhstan for 2017–2021**, approved by Resolution No. 602 of the Government of Kazakhstan of September 29, 2017 is consistent with the Strategy Kazakhstan-2050, which sets out a roadmap for sustainable economic growth, and recognizes the importance of migration.

The Migration Policy Concept for 2017–2021 defines migration as a way of solving the country's social and economic problems. The main objectives are the creation of an optimal system for the resettlement of the population throughout the country and to ensure the country's security from threats associated with migration. The government intends to

make changes in the mechanisms for issuing permits for foreign specialists, to automate this procedure, to limit the invitation of age workers by industry, to assess the effectiveness of the availability of health insurance for foreigners, to organize international cooperation with countries of origin of unskilled migrants, and to simplify the procedure for recognizing the qualifications of foreign workers. Also, the authorities will focus on developing an effective mechanism for deporting illegal migrants and creating a network of specialized temporary accommodation centers for foreigners who do not have a certain legal status. At the moment, the practice of placing foreigners in such specialized centers can be said to be disproportionate to the offenses they commit and it violates the rights of foreign citizens.⁷¹

In Kazakhstan, there are many programs to **help socially vulnerable populations**. However, this assistance is mainly intended only for citizens of the Republic of Kazakhstan and with rare exceptions—foreign citizens who permanently reside on the territory of the Republic of Kazakhstan. Only those who have a residence permit are considered to be foreign citizens permanently residing in the Republic of Kazakhstan. Foreign citizens permanently residing in Kazakhstan have the right to social and medical aid in full, except for pensions. There are no government programs in the country directed at providing social assistance to migrants in a vulnerable situation. Issues related to providing aid to migrants who find themselves in crisis situations and in the post-crisis period are also not raised in the strategies or development plans of the country.

2.5. Institutional framework for providing social support for migrants in a vulnerable situation

At the institutional level in Kazakhstan, there are two main agencies responsible for the formation and implementation of migration policy: Committee of the Migration Service of the Ministry of Internal Affairs and the Labor, Social Protection and Migration Committee of the Ministry of Labor and Social Protection.

For many years before the latest reforms in the field of migration in 2010, state bodies for managing migration processes were mainly focused on oralmans (ethnic Kazakhs who wanted to return to their homeland). In August and September 2010, the decrees of the President of the Republic of Kazakhstan were adopted, which radically reformed the system of managing migration processes and trans-

ferred it to the Ministry of Internal Affairs of the Republic of Kazakhstan. At present, the **Migration Service Committee** operates under the Ministry of Internal Affairs according to the Decree of the President of the Republic of Kazakhstan On the Further Improvement of the Public Administration System of the Republic of Kazakhstan of December 30, 2016. Its functions include control over illegal migration, recording and registration of foreigners and stateless persons, processing of documents for permanent residence in the Republic of Kazakhstan, documentation and records of nationals of the Republic of Kazakhstan, and refugees. Activities on the violation of the rights of migrant workers by employers are also controlled by the Migra-

tion Service of the Ministry of Internal Affairs of the Republic of Kazakhstan.

Decree No. 466 of the President of the Republic of Kazakhstan On the Further Improvement of the Public Administration System of the Republic of Kazakhstan of January 16, 2013 transferred the functions of the interdepartmental coordination of population migration, monitoring, analysis and forecasting of migration processes to the **Committee for Labor, Social Protection and Migration** of the Ministry of Labor and Social Protection. So the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan and the Labor, Social Protection and Migration Committee under

⁷⁰ The calculated indicator (MCI) for 2018 is 2405 tenge per month.

⁷¹ <https://vlast.kz/politika/24464-koncepcia-migracionnoj-politiki-glavnoe.html>.

the Ministry of Labor and Social Protection currently monitor both internal and external migration.

The activities of the **Public Labor Protection** Inspectorate in accordance with Article 191 of the Labor Code of the Republic of Kazakhstan of November 23, 2015 is in practice reduced to the protection of the labor rights of Kazakh nationals. Foreign workers are poorly informed about the opportunity to contact the Public Labor Protection Inspectorate, despite the fact that inspections can also potentially protect their rights.

Strict border control is carried out in Kazakhstan, in order to ensure national security, the main task is to deter unregulated migration and prevent the facts of human trafficking. The officers of the **Border Service of the National Security Committee** directly carry out primary control and verification of all migrants entering the country.

The National Center for Human Rights was established based on the Decree of the President of the Republic of Kazakhstan On the Establishment of the Ombudsman Office of September 19, 2002. The only consulting room of the **Ombudsman for Human Rights** operates in Astana. The lack of the Center's regional offices practically deprives migrants from remote areas where the most serious rights violations occur of the opportunity to receive assistance.

On the basis of the Order of President of the Republic of Kazakhstan On the Establishment of the Children's Rights Ombudsman Institution in the Republic of Kazakhstan on February 10, 2016, the **children's rights ombudsman** is working in the country, also with the office only in Astana. This also complicates the work of the ombudsman and does not allow for rapid monitoring and timely response to violations of children's rights throughout the country. The Ombudsman for Children works on a pro-bono basis, largely because of this, it monitors violations of children's rights and establishes contact between the state and NGOs.

The Ombudsman for Human Rights and the Ombudsman for Children are not entitled to change decisions adopted by the authorities, but they have the right to focus on the claims that are put forward in complaints, and to

persuade state bodies to change their decisions. The Ombudsman only provides information about mistakes and omissions, but does not tackle various kinds of violations. Consequently, only the executive authorities or the Parliament can restore the applicant's position, if related to the imperfection of legislative acts. If the appeal to the executive authorities is not effective, the Ombudsman shall submit relevant information to the report sent to the President and Parliament of the Republic of Kazakhstan.

Kazakhstan pays special attention to preventing the worst forms of child labor. Hotlines and children's public reception rooms operate in all regional **Departments for the Protection of Children's Rights** in order to protect the rights of children.

The **Human Rights Commission** under the President of the Republic of Kazakhstan also operates in the country. The Commission is a consultative and advisory body facilitating the implementation by the Head of State of the constitutional powers as the guarantor of human and civil rights and freedoms recognized and guaranteed by the Constitution of the Republic of Kazakhstan.

The Kazakh **Interdepartmental Commission on Combating Illegal Trafficking** is alternately headed by the Ministry of Labor and Social Protection and the Ministry of Internal Affairs. Also IGOs, the IOM, the OSCE and some NGOs are members of the Commission.

Based on the Decree of the President of the Republic of Kazakhstan of May 15, 2008, the **National Women, Family and Demography Policy Commission** operates in Kazakhstan. The Commission's mandate includes cooperation with authorities and civil society institutions on the protection of family interests, the implementation of the UN Millennium Declaration, the development of proposals and recommendations to authorities on the main areas of gender, family and demographic policy in the Republic of Kazakhstan. The issues of accessing and realizing the rights of women migrants were also to be included in the agenda of this Commission, but in practice this does not happen.

So the Migration Service Committee of the Ministry of Internal Affairs of the Republic of

Kazakhstan, the Labor, Social Protection and Migration Committee under the Ministry of Labor and Social Protection, as well as the Border Service have direct, permanent contact with migrants. These departments can help the migrant in the case of loss of documents, in an emergency, and in case of right violation. According to the law, the Public Labor Inspectorate can also be a useful tool to help migrants restore labor rights. The Ombudsman for Human Rights and the Ombudsman for Children can pay more attention to the problems of labor migrants and their children and to cover these issues in their reports. At the moment, the Commission on Human Rights under the President is the only body that paid attention to the problems of migrants in the reports mentioned in this study.

International and Public Organisations

From the first day of independence, Kazakhstan began to build close ties with international organisations. Many United Nations international organisations are active in Kazakhstan: The United Nations Development Program (UNDP), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations Children's Fund (UNICEF), the World Health Organisation (WHO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration), the OSCE, and others. The activities of international organisations are mainly aimed at helping the Republic of Kazakhstan in obtaining loans, grants and advisory services.

Since gaining independence, the non-governmental sector of NGOs has actively developed in Kazakhstan, and today more than 20 non-governmental organisations work in the country. NGOs in Kazakhstan are engaged in various activities, such as: the protection of social and cultural rights, the protection of civil and political rights. Not all migrants in difficult situations want to apply to the police, so if their rights are violated, migrants can avail themselves of the assistance of NGOs and international organisations. The IOM mission in Kazakhstan has a fairly large network of partner NGOs, and NGO lawyers are ready to provide migrants with counseling and assistance in applying to the police. Also Kazakh IOM NGO partners work to protect the rights of irregular migrants, provide social and medical aid to migrants, and help victims of trafficking.

Section 3. Analysis of the socio-economic, legal, and institutional framework with regard to migrants' needs in vulnerable situations in the Kyrgyz Republic

3.1. General analysis of the migration situation and the relevance of the problem

Migration in the Kyrgyz Republic is an objective process that allows its citizens to exercise their constitutional rights to freedom of movement and choice of the place of residence, as constitutionally guaranteed. At the same time, high rates of unregulated internal and external migration are a direct consequence of economic and social problems in the country at the current stage of its development.

According to the National Statistical Committee of the Kyrgyz Republic, the resident population of the country was 6,257,000 people. The economically active population is represented by 2,547,000 people, more than a quarter of whom is abroad. According to the State Migration Service under the Government of the Kyrgyz Republic (hereinafter referred to as the State Migration Service), the stable migration outflow is set at the level of approximately 50,000 people annually. This fact fully illustrates the situation on the labor market of the country nowadays. Thus, the level of employment in the Kyrgyz Republic in 2016 amounted to a total of 57.1%⁷².

The data on the labor market of the Kyrgyz Republic demonstrates both low wages and a limited number of jobs. The labor surplus on the market is conditioned by an insufficient level of economy development that does not provide a sufficient number of jobs, adequate to the growing labor resources. In the recent years the officially registered unemployment level in Kyrgyz Republic is about 7–8%. However, it is important to take into account that these numbers include only a small part of the population searching for work. The largest part of the citizens in need of employment is engaged in independent search mainly in the

informal (“shadow”) segment of the economy, not relying on the respective state services. This makes it impossible to reliably approximate the number of citizens in this category. A significant portion of the country's unemployed working-age population is joining the ranks of migrants leaving the homeland for earnings.

The situation in the migration sphere in Kyrgyzstan is sufficiently characterized by the statements provided in the Unified report on migration in 2017. They directly indicate that “migration in Kyrgyzstan today affects the lives of more than 3 million people and remains a significant economic and social factor for the foreseeable future. In every fourth household, there is at least one labor migrant. According to the expert estimates, labor activities outside of the republic are mainly carried out by young people aged 18–30, which accounts for approximately 48% of the total number of external migrants from Kyrgyzstan. A significant portion of our countrymen (more than 95%) involved in professional activity abroad works in the territory of the member states of Eurasian Economic Union”.⁷³ The State Migration Service provides the following numbers characterizing the corpus of Kyrgyz Republic citizens in labor migration as of 2017. The total number is estimated to exceed 700 thousand people, of which: in the Russian Federation—more than 640 thousand people, in Kazakhstan—about 35 thousand, in South Korea—about 5 thousand, in Turkey—30 thousand, in distant foreign countries—more than 20 thousand.⁷⁴

The economy of Kyrgyz Republic is one of the most dependent economies on external wire transfers in the world. Thus, in 2015 ex-

ternal wire transfers amounted to USD 1.68 bln, in 2016—to USD 1.99 bln and in 2017—to USD 2.48 bln. The majority of these transfers is made from Russia.⁷⁵

Money transfers are mainly used for the purchase of food products (35%) and improving living conditions (21%), rather than for the education of children (8%, possibly including state supply), business investments (3%) or savings (9%).⁷⁶

At the same time, the significant inflow of monetary funds from labor migrants, the volume of which is almost equal to the annual budget of the country, has not become a stabilizing factor which would enable the state to form a stable economy and a well-balanced labor market. Unemployment and low level of wages remain to be the main reason for modern migration.

The main factors of labor migration from Kyrgyzstan are:

- 1) economic: transformation of the labor market structure, unemployment, shadow economy, large-scale poverty;
- 2) social: decrease of the level of education and qualification, spreading of migration culture;
- 3) demographic: high population growth rates and an increase in the number of able-bodied citizens contributes to the reduction of labor resources;
- 4) demographic: knowledge of Russian language, close cultural and social connections, visa-free regime and existing infrastructure conditions facilitate the labor migration to Russia and Kazakhstan.⁷⁷

⁷² National Statistical Committee of the Kyrgyz Republic. Employment level of the population by sex and territory

⁷³ Unified report on migration in the Kyrgyz Republic, Republic of Armenia, Republic of Tajikistan, and the Russian Federation. [Electronic resource]. Access mode: <http://migrussia.ru/images/Edinyj-doklad-final.pdf>.

⁷⁴ Data of the State Migration Service. [Electronic resource]. Access mode: <http://ssm.gov.kg/отчеты/>.

⁷⁵ Review by the State Bank of the Kyrgyz Republic

⁷⁶ World Bank. Review of the Kyrgyz Republic economy. No. 6 Autumn / winter 2017

⁷⁷ The National Institute for Strategic Studies of the Kyrgyz Republic (NISS KR). Population migration.

As a matter of fact, over the whole time period of existence of sovereign Kyrgyzstan there has been active internal migration represented by the relocation of a large number of people from economically underdeveloped regions to the more developed ones. Internal migration in Kyrgyzstan accounts for approximately 60% of all territorial travel of citizens. Internal migration of the population primarily takes place from rural areas to the cities with developed economies and infrastructure but with limited potential (land, housing, communications etc.). The decrease of the population and its qualitative composition in strategically important border territories and rural regions restricts the perspectives of the development of the agricultural sector and other industries of the economy.⁷⁸

Labor migration to the Kyrgyz Republic takes place on significantly smaller scales. Thus, in 2017 foreign specialists received 14,768 work permits, which amounted to a little less than 90% of the labor quota for 2017 approved by the Government of the Kyrgyz Republic (the quota is 16,490 work permits).

In 2017, 352 foreign citizens obtained a permanent residence permit. 35.9% of the quota was used while the quota had been approved for 980 persons.

The number of refugees in the territory of the Kyrgyz Republic amounted to 172 per-

sons as of the end of 2017. The number of asylum seekers registered with the State migration service is 98 people.

During 2017 the status of *kairylman* (*kairylman*—an ethnic kyrgyz, who is a foreign citizen or a stateless person, voluntarily relocating to the Kyrgyz Republic and obtaining the status of *kairylman*) was granted to 1506 ethnic kyrgyz, who returned to the historical homeland.⁷⁹

Analysis of the current economic and socio-political situation in Kyrgyzstan and its potential trends in the near future does not provide grounds to forecast a decrease in the migration activity of its population. Moreover, the Kyrgyz Republic's membership in the Eurasian Economic Union and associated preferences for its citizens make the labor markets of the Eurasian Economic Union member states more attractive for them, taking into account that traditionally a significant majority of Kyrgyz individuals find employment there. Therefore, the problems complicating the stay of the Kyrgyz Republic citizens abroad are becoming more acute. Migrants' family members, and especially their children, continue to experience insufficient attention from the state. A portion of them faces restriction in access to comprehensive education and qualified medical aid and is deprived of decent living conditions. During recruitment, working migrants, especially those without a regulated status (the most vulnerable of whom are

women and youth) are more subject to the risk of being a victim of fraud and labor exploitation than others.⁸⁰

The increase in the number of labor migrants staying abroad for longer continuous time periods exacerbates the social problems of the family members of the working migrants—first of all of their elderly parents and children left to be cared for in the homeland.

The discussions by the national expert community and international organisations, carrying out the activities in Kyrgyzstan of the migration issues is mainly focused on the topics of the regulation of migration, minimization of its negative consequences, and elaboration of measures aimed at supporting labor migrants abroad.

“The existence of migration is considered to be something self-evident. The most common argument used against any criticism is that our citizens have their constitutional right for the freedom of movement. However, it is worth remembering that besides this important right, the people of Kyrgyzstan have the rights to work, to proper medical treatment, education and social protection and so far these rights have been constantly abused, and very little is being done to implement them”⁸¹ The aforementioned point of view fully characterizes the topicality and problems of the external migration in the Kyrgyz Republic.

3.2. Migrants in a vulnerable situation: problems, needs, and requirements

Nowadays, labor migration, both regulated and unregulated, remains an important factor for the development of Kyrgyzstan economy and employment of citizens. At the same time, the inflows of significant monetary funds from labor migrants into the republic are the means of subsistence for many families. Wire transfers are mainly used to cover the current expenses of the family, cost of

education of children, cost of medical aid, and other expenses for supporting the family.

A certain portion of labor migrants returns to Kyrgyzstan after completing its professional activity in another country. Usually, a labor migrant who returned home, especially if he or she has been working abroad for a long time, significantly falls out of the social and economic

flow of his or her homeland and starts experiencing negative consequences of long absence. People leave for short periods of time, working on a seasonal basis or for longer periods about 3–5 years, sometimes with no possibility to come back to the homeland when staying abroad. When returning to Kyrgyzstan, many of them may face various problems of a social, economic, and psychological nature⁸² and

⁷⁸ M.O. Shaiybekova Current state of the migration policy in the Kyrgyz Republic.

⁷⁹ Data of the State Migration Service Access mode: <http://ssm.gov.kg/отчеты/>.

⁸⁰ Unified report on migration in the Kyrgyz Republic, Republic of Armenia, Republic of Tajikistan and the Russian Federation. Access mode: <http://migrussia.ru/images/Edinyj-doklad-final.pdf>.

⁸¹ Emil Nasritdinov “Migration in Kyrgyzstan: arguing pros and cons.” Access mode: <https://www.academia.edu/4371887/Migration>.

⁸² The analytical report “Conditions and status of social rehabilitation of labor migrants—citizens of the Kyrgyz Republic after their return to their homeland.” Representative office of the international organisation RAST in Kyrgyzstan, Center for social studies at the American University of Central Asia, 2007.

thus find themselves in a vulnerable situation. It is necessary to highlight the fact that the state bodies do not collect any corresponding statistics which in turn fails to capture the scale of this situation and its acuteness.

According to experts, the problem of efficient integration of returning migrants, including those who were banned from repeated entry into Russia, in the countries of origin is determined by three main factors. First, due to the insignificant scale of return of migrants before the economic downturn started and sanctions were introduced, the issue of re-integration was long absent from the policy agenda of the migrants' countries of origin. Second, the deterioration of the economic situation further constrained the opportunities for creating new jobs in the Central Asian region. Finally, the steady redirection of labor migration flows is determined by the existence of diasporas that can offer legal, economic, and social support to the migrants who have returned.⁸³

Overall, in Kyrgyzstan as at the end of 2017 there were more than 91 thousand families that were socially unprotected, vulnerable and in a complicated situation, with 292 thousand children. During 2017, approximately 2,000 children and adolescents under 18 deprived of parental care were revealed.⁸⁴ At the same time many of the children deprived of parental care have both parents in labor migration. Usually, parents leaving for labor migration do not make the corresponding documents and simply leave the children with relatives.

This study covers the following groups of the most vulnerable categories of migrants and their family members:

- 1) migrants with re-entry ban
- 2) families with children abandoned by primary breadwinner migrants

- 3) migrant children left without parental care
- 4) migrants who have become victims of human trafficking
- 5) refugees and asylum seekers.

Factors affecting the vulnerability of migrants and their family members may be individual, family, situative, and structural⁸⁵. It is worth mentioning that the degree of vulnerability of the categories of migrants and their family members under consideration may also differ depending on the aforementioned factors.

3.2.1. Migrants with re-entry ban

According to the State Migration Service, in 2015 180 thousand Kyrgyzstan citizens were banned from entry into the Russian Federation; as of January 1, 2017–110 thousand, of whom 50 thousand were banned by court decision, which makes their return to Russia rather problematic. In 2017, more than 10 thousand citizens of Kyrgyzstan were banned from repeated entry to Russia for 3 years. The main violation that incriminated them was untimely registration of migration. In total in 2017, approximately 72 thousand Kyrgyzstan citizens were on this “black list”.⁸⁶ The most vulnerable categories of these labor migrants are youth and women.

Restriction of economic opportunities in their country and absence of profession for young migrant men who have recently started families constitutes an acute problem of providing for their families. At the same time they are banned from entering Russia, where they planned to find a source of subsistence. Moreover, young men neither have a house of their own, nor any other property. They are waiting for the end of the ban term and are not searching for jobs in their homeland due to low wages.

Divorced or widowed women with or without dependants also represent one of the

most vulnerable categories of migrants with re-entry ban. Divorced women with dependants experience the greatest economic difficulties and feel the despair of their situation. Usually, their family members are unable to provide financial support to them, while they cannot find a job in Kyrgyzstan due to the absence of professional skills or employment opportunities with fair wage. Women, who are breadwinners in the family because their husbands are incapable of providing for the family, also represent the most vulnerable migrants with re-entry ban. For them migration was a solution and life strategy to provide for their families when their husbands failed to do so.⁸⁷

A study by the International Organisation for Migration offers a definition of migrants in a vulnerable situation with re-entry ban. First, these are migrants who faced severe economic difficulties after they were forced to stay in the country of their origin. As a result they became vulnerable to various social manipulations (in the form of radical religious and political ideology) and human trafficking. Second, these are migrants who faced discrimination or found themselves with irregular migration status in the new destination country.⁸⁸

Needs and requirements of migrants with re-entry ban

In the context of the economic situation, working migrants from Kyrgyzstan who were banned from repeated entry into Russia for the period from three to five years were affected to the greatest extent. As the level of wages in Russia is significantly higher than in Kyrgyzstan and as returning migrants are facing reintegration difficulties in the local labor market, such a ban definitely threatens the welfare of migrants and their families.⁸⁹

⁸³ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia. 2016.

⁸⁴ National Statistics Committee of the Kyrgyz Republic. Article “Children’s Day: Figures and Facts”

⁸⁵ International Organisation for Migration. Vulnerability of migrants and the demands of integration in Central Asia: Brief review. 2017

⁸⁶ Access mode: <https://24.kg/obschestvo/78282/>; <https://24.kg/obschestvo/83705/>.

⁸⁷ International Organisation for Migration. Vulnerability of migrants and the demands of integration in Central Asia: Brief review. 2017

⁸⁸ International Organisation for Migration. Vulnerability of migrants and the demands of integration in Central Asia: Brief review. 2017

⁸⁹ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia. 2016.

One of the main problems of banned migrants is the employment problem as they are searching for a job with a wage sufficient to maintain their families at a level comparable to the one with their foreign wages. At the same time many of them do not want to work according to their profession, although abroad they worked in different industries including those demanding heavy physical labor. Absence of permanent employment affects not only the material situation of such a migrant but also his or her psychological and emotional state, which inevitably influences family relationships. The studies made on this category of individuals demonstrate the need for legal assistance among migrants. 44% of respondents from this category of migrants require such. First of all, it concerns re-issuance of the documents to receive the certificate for return to the homeland, as well as identity documents; on the services of lawyers to represent their interests in court processes or with government bodies; on the provision of information about their rights and how these rights can be realized.⁹⁰

At the same time, this group of migrants needs legal services to solve problems and issues connected with the re-entry ban in the destination country as even after being banned from entry; a migrant attempts to leave again by any means.

During the interview, a representative of the State Migration Service mentioned that labour migrants—citizens of Kyrgyzstan with re-entry ban may file an application to the representative of the State Migration Service and receive help in restoring their right to enter the Russian Federation in the following cases: if close relatives (parents, spouses, or children) are the citizens of the Russian Federation; if a citizen of Kyrgyzstan is studying at an institute of higher education in the Russian Federation; if the citizen had a regular status; if the citizen is a highly qualified expert; if the citizen of Kyrgyzstan needs acute medical aid.

Almost all banned migrants have serious health problems such as bad living conditions, irregular legal status, and arduous working

conditions negatively affect the state of their health.

The results of sociological survey of migrants who returned to their country of origin, carried out by the International Organisation for Migration in 2016 within the framework of the regional Field assessment in the Central Asia revealed the mechanisms of reintegration and difficulties faced by respondents. It was revealed that banned migrants usually tried to reintegrate through unofficial channels. Migrants with a low level of education, including women abandoned by their husbands, working in Russia managed to do so to the least extent, and they remained the most vulnerable population category.

Working migrants turn to their circle immediately after returning home to borrow money (47%) or find a temporary job (about 70%). The search for job is primarily made via acquaintances; with their help, migrants manage to find temporary or odd jobs; however, none of the respondents had a permanent employment, and the economic difficulties continued. Only 22% of the migrants managed to find employment after returning home.

68% of the respondents addressed the state bodies and civil society organisations with the only purpose to find out the term of their ban for repeated entry to Russia. Migrants did not expect to find work at home with fair pay or obtain help from the state bodies.

It is worth highlighting that abandoned and divorced young women were in a situation of extreme vulnerability, and only some of them were getting support from close relatives.⁹¹

Access of migrants with re-entry ban to means of state support

According to the legislation on the employment of the population of the Kyrgyz Republic, the priority right for professional education and retraining as well as for temporary job via participation in paid public works is granted to the officially unemployed, individuals with limited health capabilities; women having children of underage;

citizens who have been discharged from military service; graduates of general education organisations, as well as citizens searching for employment for the first time (without prior work experience), not having a profession (specialization).

Migrants banned from repeated entry into the destination country also have access to the state employment services on a common basis, whose number includes: assistance in the search for suitable job and employment; provision of free services of professional orientation, professional education and retraining; provision of scholarships for the period of professional education; participation in the programs of paid civil works; payment of unemployment benefit.

From this study's point of view, it is worth highlighting that the state employment services do not specify such a category of unemployed citizens as "migrants in a vulnerable situation;" there is no statistics on the number of employed migrants with re-entry ban. This is conditioned by the fact that state employment services work on the basis of applications, not engaging in proactive work in respect of employment of this category of migrants.

Access to services in the spheres of social protection, education, medical aid and other services for this category of migrants is provided on general terms. The legislation does not provide for free access to these services without registration at the place of residence. The services can be provided for payment based on the registration at the place of stay or a certificate from the place of actual stay.

The State Migration Service is able to assist the citizens of the Kyrgyz Republic willing to re-enter the Russian Federation solely in the aforementioned cases. In all other cases, for example, if the migrant was deported by decision / resolution of the court of the Russian Federation, the State Migration Service can not assist in excluding from the "black list". These citizens are invited to appeal the exclusion decision in Russian courts in accordance with the procedure for appealing court rulings.

⁹⁰ Study by International Organisation for Migration "Revelation of rehabilitation and reintegration needs of men—victims of human trafficking." 2015

⁹¹ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia. 2016.

3.2.2. Families with children abandoned by primary breadwinner migrants

According to the researchers, “the number of abandoned wives and children is increasing, and this problem would not be so difficult if labor migrants helped their families rather than abandon them to their fate. No one can say precisely how many abandoned wives and children there are today, but for analysts and experts it is obvious—their number is increasing every year. The situation when a migrant forgets about the family and stops sending money or sends insufficient amount is currently not uncommon. Family members of migrants burdened with family troubles and problems including caring for children and grandchildren do not always receive social protection under the law, so everyone survives as well as they can. Everyone tries to help such a category of people with living husbands and fathers.”⁹²

It should be noted that regardless of the reason for migration, women and children are the most vulnerable category of migrants. When men depart as labor migrants, women are entrusted with double responsibilities, which makes them particularly vulnerable. When women have to migrate, they often become victims of crimes related to human trafficking.⁹³

In the absence of legal protection and funds, women staying at home risk discrimination in the family of the husband's parents and can also find themselves in a very difficult situation in the event of divorce, which is a common occurrence in such families.

“While there is no long-term positive impact on the country's economy, migration has an extremely negative impact on the social life of the state, destroying the integrity of rural communities and weakening family ties. But most importantly, migration jeopardizes the main institution of any society—the family. In certain cases, the migrant creates another family in a foreign land. Another danger

pertains to migrants returning with different venereal diseases or even HIV and infecting their wives.”⁹⁴

As the experts note, “very often migrants acquire second families in the host state. Our research shows that the number of divorces in families of migrants has increased by 12% on average. Along with their problems and relatives, children are the ones who suffer. We have discovered many examples of child abuse in these families. In these families, there is a large number of early and forced marriages.”⁹⁵

Needs and requirements of families with children abandoned by primary breadwinner migrants

Such social needs as receiving material assistance; appointment and receipt of social benefits, assignment and receipt of social allowance, pensions; medical aid; placement of children in pre-school institutions and schools; assistance in employment; provision of temporary housing; assistance in obtaining microloans are actual for the families with children abandoned by primary breadwinner migrants.

In the given vulnerable situation, migrant families often require legal assistance, for example, obtaining a passport, birth certificates for children, advising on the rights of citizens to social services in the state social security system, assisting in collecting the necessary documents for benefits receipt, pensions, foster care / guardianship, advocacy services, acting for the child in law enforcement and judicial bodies.

Access of families with children abandoned by primary breadwinner migrants to the measures of state aid

Humanitarian aid is most in demand among families with children abandoned by primary breadwinner migrants and whose financial

condition is quite heavy. In the Kyrgyz Republic, families in such a vulnerable situation are not covered by existing programs in the field of health and social protection as a separate category or a specific target group.

In this case, the state programs in the field of employment are mainly focused on registered citizens employed in the official labor market.

In addition, internal migrants officially registered at the place of residence have a right to a basic volume of social services including public medical aid.

In the Kyrgyz Republic, legislation in the field of social protection guarantees social-domestic, social-legal, social-medical, and psychological-pedagogical services for families in difficult social situations, as well as a temporary shelter, financial assistance, advisory assistance, and other assistance.

During an interview, a representative of the Ministry of Labor and Social Development of the Kyrgyz Republic noted that families with children abandoned by primary breadwinner migrants are classified as families in difficult life situations. The respective services for social support of families with children abandoned by migrants are provided in the framework of Regulation on the Procedure for the Identification of Children and Families in Difficult Life Situations No. 391 dated June 22, 2015 approved by the Government Resolution of the Kyrgyz Republic.

It was also noted that the allocation of a separate target vulnerable group “families with children abandoned by primary breadwinner migrants” is not required, as the provision above covers this group in terms of social help.”⁹⁶

Access to medical services is carried out under the program of state guarantees for providing citizens with medical services that specifies the guaranteed amount, types and

⁹² Problems of labor migration Access mode: <http://www.ethnoinfo.ru/problemy-trudovoj-migracii-broshennye-semi>.

⁹³ The analytical report “Conditions and status of social rehabilitation of labor migrants—citizens of the Kyrgyz Republic after their return to their homeland.” Representative office of the international organisation RAST, Center for social studies at American University of Central Asia, 2007.

⁹⁴ Migration in Kyrgyzstan—Pros and Cons. Emil Nasritdinov.

⁹⁵ Derbisheva G., NGO “Insan Leylek” Access mode: <https://24.kg/obschestvo/91251/>.

⁹⁶ The interview obtained during the field part of the study on April 18, 2018.

conditions of providing the citizens with medical services, ensuring implementation of their rights to medical services in healthcare organisations, regardless of the forms of ownership participating in the Program of state guarantees.⁹⁷

It should be noted that the Program of state guarantees does not include a specific category of vulnerable citizens related to migrants. In this case, the Program above provides for separate categories of citizens, which can be classified as the most vulnerable groups of migrants—these are children left without parental care; children from low-income families under 16 years of age who study in educational institutions, registered in the social development bodies; people receiving social subsidies.

A representative of the Ministry of Health of the Kyrgyz Republic said in the interview that the Program of state guarantees for providing the citizens with medical services ensures free access to medical services at the outpatient level and in hospitals as per the social status. The medical aid not covered by the program is rendered on a paid basis.

The condition for providing free and concessional medical services under the Program of state guarantees is the presence of a document confirming the right to benefits (passport, birth certificate for children under 16 years of age, child birth verification letter before receiving the birth certificate, pension certificate, and compulsory medical insurance policy). Free specialized medical aid under outpatient treatment is provided to citizens who are included in the Program of state guarantees belonging to the family doctors group.

3.2.3. Migrant children left without parental care

Migrant children left without parental care is one of the most vulnerable groups of children

in the Kyrgyz Republic as confirmed by study data performed by the United Nations Children's Fund (UNICEF).

“Children of labor migrants who are left in the care of relatives or placed in institutions are becoming more vulnerable to abuse and violence. Long-term absence of parents can lead to a number of psychological and social problems. Children of internal migrants are ‘invisible’ in society, since the majority of them have no birth certificates, a fact which results in numerous deprivations. They have no access to basic services (school, medical services, social subsidies and social protection services), and they often live in the worst and most dangerous conditions. As the increasing poverty level causes internal and external labor migration, the number of children left unattended increased. In 2014 at least one of the biological parents of more than 11% of children from the age of 0 to 17 years lived abroad.”⁹⁸

The extent of the problem was confirmed by a household round covering more than 316,000 houses was carried out by the Ministry of Labor and Social Development of the Kyrgyz Republic in 2016. As a result, it was found that parents of more than 61,000 children are in labor migration, and the vast majority of them are outside the country. Experts note that over the past 20 years in Kyrgyzstan, almost a whole generation of children has grown up without one or both parents, which will inevitably have a negative effect on the country's future.⁹⁹

Needs and requirements of migrant children left without parental care

The study carried out by the Center for the Protection of Children of Kyrgyzstan has revealed the main obstacles impeding the access of migrant children to health care services. The most common problems they encounter when seeking medical services: no documents

(passport, birth certificate); no registration at the place of residence and registration in a medical institution; frequent change of residence; low incomes and legal ignorance. All these factors are obstacles for migrant children to accessing health care services.

Herewith, researchers point to the problems associated with the upbringing and education of children who live with their grandparents during migration of their parents: they rarely attend educational institutions and may not receive professional education.¹⁰⁰ The rendering of social services is still insufficiently developed and does not meet the needs of children left behind by migrants in the care of relatives, due to the presence of social shortcomings including a heavy load on social workers and the absence of specialists with appropriate specialized training.¹⁰¹

According to the data of a UNICEF representative, in the country there are about 260,000 “children of labor migrants. Many children temporarily have no father and mother. In this case, a child has psychological problems, the risk of suffering from violence—physical, emotional, and sexual increases. In addition, a child remains without a legal representative and can not solve issues related to public services and completing some documents.”¹⁰²

Representatives of the Ministry of Education and Science of the Kyrgyz Republic and the Bishkek mayor's office noted that firstly migrant children need a birth certificate as well as financial support (clothes, shoes, etc.). Also, many children lag behind educationally due to non-attendance of classes or long breaks in their studies. It was noted that schools must organize additional classes for such children, and the municipal territorial departments of the Bishkek Mayor's Office must actively identify children in difficult life situations and solve their problems with the help of the commissions for children affairs.

⁹⁷ Resolution of the Government of the Kyrgyz Republic “On the Social Guarantee Program for the Provision of Healthcare to Citizens” No. 391 dated June 22, 2015

⁹⁸ “Situation analysis of the children situation in the Kyrgyz Republic,” UNICEF

⁹⁹ Emil Nasritdinov “Migration in Kyrgyzstan: arguing pros and cons.”

¹⁰⁰ Access mode: <http://concours.nazaccent.ru/2015/text/1686/>.

¹⁰¹ The study of IOM “The right of migrants to health in Central Asia: new opportunities and challenges”, 2017

¹⁰² Access mode: <https://ru.sputnik.kg/society/20180706/1040055223/migraciya-kyrgyzstan-deti-roditeli.html>.

Access of migrant children left without parental care to state support measures

Protection of child's rights and interests in case of long-term absence of parents is vested in the Ministry of Labor and Social Development of the Kyrgyz Republic and the commission for children affairs. Herewith, the guaranteed child's rights in a difficult life situation are not being fully realized. Thus, the Code of the Kyrgyz Republic on Children establishes that parents can file a joint application on assigning a guardian or custodian to a child for a period when, for good reason, parents can not fulfill their parental responsibilities including a specific person and validity period of guardian or custodian power in the Authorized Body for Children Protection. However, this code does not work in practice, which is confirmed during investigation of cases related to the ill-treatment and violence against children, absence of documents on preliminary guardianship and custody.

There is also no specific data on execution of custody and guardianship for migrant children. The reports of the Ministry of Labor and Social Development of the Kyrgyz Republic include the information on custody and guardianship according to the standard procedure without separate indication of migrant children left without parental care.

The representative of the Ministry of Labor and Social Development of the Kyrgyz Republic noted during the interview that support and protection of migrant children left without parental care is carried out under the provisions of the Code of the Kyrgyz Republic On Children. They include such measures to protect children as detection of a child in a difficult life situation; planning activities for child protection; approval of an individual plan for child protection; implementation and monitoring of planned activities.

The representative of the Ministry of Education and Science of the Kyrgyz Republic informed that now there is no concept of "micro-sites", all children, including migrants' children can attend schools at the place of their actual residence. However, it was noted that a child may not be admitted

to school if there are no places in it. Currently, there are no data bases for migrants' children left without parental care and not attending school.

3.2.4. Migrants who became victims of human trafficking

Spontaneous migration processes are one of the risks and causes of human trafficking. It is very difficult to determine the number of citizens affected by human trafficking, as this process is carefully hidden by both criminals and victims. There are no official data on human trafficking in Kyrgyzstan; there are only expert estimates.

The IOM study "The extent of human trafficking in Central Asia" in 2010 revealed that 5,000–15,000 citizens of Kyrgyzstan have become victims of human trafficking in other countries; the main countries of destination for victims of human trafficking from Kyrgyzstan are Russia and Kazakhstan; the most common form of exploitation is labor exploitation, which accounted for 91.3% of cases; the majority of persons, who have been exploited, are men (70%).¹⁰³

According to a report on human trafficking presented by the US State Department in July 2018, Kyrgyzstan is in the 2nd group of countries with special surveillance (Tier 2 Watch List), and it is a country of origin, transit, and destination for men, women, and children being subject to forced labor, as well as for women and children to sexual exploitation.

Men—labor migrants working abroad are subject to the greatest risk of becoming a victim of human trafficking. Men, women, and children are subject to forced labor in Russia and Kazakhstan, particularly in the agriculture, construction, and textile industries as well as in household duties and child care. Women and girls are subject to sexual exploitation both abroad and within the country. Street children begging and being engaged in home work (often by relatives) are particularly vulnerable for human trafficking.

International and non-profit organisations report that some citizens of Kyrgyzstan who joined extremist militants in Syria have to stay there against their will and that recruiters can deceive new citizens, including underage status persons, by promising jobs in Turkey.¹⁰⁴

Needs of migrants who have become victims of human trafficking

In Kyrgyzstan, victims of human trafficking are mainly revealed in a reactive way, i.e. victims of human trafficking seek help themselves. Many victims do not hope for help from state bodies, since the status of a victim of human trafficking that would enable them to receive assistance and protection is provided by the court and law enforcement agencies solely in the framework of a criminal process in which victims are not always willing to participate.

Many victims of human trafficking need to re-issue lost documents necessary for obtaining rehabilitation and reintegration assistance including medical aid, employment, and social payments.

As representatives of civil society organisations have noted, the victims of human trafficking primarily need medical aid and services of "highly specialized" medical specialists, e.g. a psychotherapist as well as humanitarian and financial help.

In the IOM study "Detection of rehabilitation and reintegration needs of men, victims of human trafficking" performed in 2015; the following basic needs of men affected by human trafficking (in order of priority) were determined:

- 1) medical aid: medical examination and treatment are necessary because of health problems that are the result of labor exploitation;
- 2) social benefits / cash benefits: the importance of this assistance owes to the fact that respondents are the breadwinners of their families, but being disabled due to health problems that have occurred after exploitation, they are unable to provide for their families;

¹⁰³ "Detection of rehabilitation and reintegration needs of men, victims of human trafficking" [Electronic resource]. Access mode: <http://iom.kg/wp-content/uploads/2015/07/Needs-of-male-VOT-Rus.pdf>.

¹⁰⁴ Access mode: <https://www.state.gov/documents/organisation/282802.pdf>.

- 3) assistance in employment and training: having mainly secondary education, respondents need access to continuing education, occupational guidance courses, short-term specialized courses to acquire professional skills that will help them find employment;
- 4) organisation of individual labor activity: lack of financial resources and knowledge for organisation of individual labor activity determines their need for receiving this type of assistance;
- 5) legal help: First of all, it concerns reissuance of the documents to receive the certificate for return to the homeland, as well as identity documents; on the services of lawyers to represent their interests in the court processes; on the provision of information about their rights and how these rights can be realized.

We believe it is possible to refer the above-mentioned basic needs and their priority to women who have been victims of human trafficking, with a slight correction.

Access of migrants who have been victims of human trafficking to measures of state aid

The legislation of the Kyrgyz Republic guarantees the provision of free medical and legal aid to victims of human trafficking, social rehabilitation including psychological, medical, occupational rehabilitation, employment, and housing.

The types of aid listed above are provided mainly by civil society organisations in the framework of the state social order, as well as with the financial support of international organisations.

The country has one asylum for victims of human trafficking in Bishkek established by the public association Crisis Center “Sezim.” At present, this asylum can not fully provide necessary help to all victims of human trafficking and those seeking support. It should be noted that to ensure the activities of this asylum, Bishkek mayor’s office provided premises for free use and finances all expenses for public services.

There is also a asylum in Osh, but its activity has been suspended due to a lack of state funding.

It should be emphasized that up to date an effective mechanism has not been established to provide for social rehabilitation of victims of human trafficking or their referral with the aim of helping them. There is no integral system of protection and assistance to victims of this global criminal problem—from victim identification to providing shelter and services for further rehabilitation and reintegration.

The absence of clear criteria for identification and a referral mechanism of victims of human trafficking does not allow state bodies to select them as a separate category of citizens who find themselves in a vulnerable situation. At present, state assistance is provided to them according to the standard procedure and on a common basis.

3.2.5. Refugees and asylum seekers.

According to the State Migration Service, a number of refugees within the Kyrgyz Republic as of January 1, 2017 was 171 persons including 92 persons from Afghanistan, 79 persons from other countries (Syria, Ukraine, Iran, Morocco, DPRK, Ethiopia). A number of asylum seekers was 101 persons.

These figures express well the situation with this category of persons, the number of which does not accentuate the range of problems of the state relationships with them. The Kyrgyz Republic guarantees to all refugees an equal legal status without any distinction based on sex, race, language, ethnicity, religion, age limit, political or other opinion, education, country of origin, property or other status, and other circumstances which is fully present in national legislation.

It must be emphasized that citizens of flash-point countries have requested for granting refugee status to Kyrgyzstan only.¹⁰⁵

Refugees within Kyrgyzstan are provided with all the documents necessary for daily life as well as with special travel documents. In addition, they are entitled to receive citizenship of the Kyrgyz Republic on a preferential basis.

Needs and requirements of refugees and asylum seekers

Persons whose applications for granting the refugee status were rejected by the State Migration Service apply to the Bishkek office of UNHCR.

Although the number of this category of people on a national basis is very small, the range of problems in this area is quite complex. The only organisation in Kyrgyzstan providing legal support to refugees is the Public Foundation “Legal Clinic ‘Adilet’.” According to the lawyer of this organisation, “... they can not confidently state that the rights of refugees and asylum seekers are protected in Kyrgyzstan because according to the law their right to employment and work in the country is limited. Therefore, they have to work illegally; for this reason they are subjected to various pressure from law enforcement. Fines are imposed on them, in some cases refugees or asylum-seekers have to pay bribes to avoid penalties or drawing up protocol.”¹⁰⁶

It should be noted that this point of view is not fully supported by existing legal norms, since the legislation of the Kyrgyz Republic does not grant the right of employment to persons only applying for recognition as refugees, while refugees, who have obtained official status, are entitled to be freely employed or carry on business without any restrictions. We believe that such a statement by a specialist carrying out legal support for refugees and persons applying for recognition as refugees is indicative of certain deficiencies in the field under consideration regarding qualified support, as well as possible abuses by law enforcement officials due to a lack of knowledge about the refugees status.

Access of refugees and asylum seekers to measures of state aid

In accordance with the Law of the Kyrgyz Republic on refugees, a person applying for recognition as a refugee and members of the family have the right to: freely move around the entire territory of the Kyrgyz Republic, except for restricted areas; judicial protection; education and medical services, services of an interpreter; exemption from payment

¹⁰⁵ The Unified Report on Migration in the Kyrgyz Republic, 2014

¹⁰⁶ [Electronic resource]. Access mode: http://m.gezitter.org/society/60934_bejentsyi_v_kyrgyzystane/.

of expenses related to consideration of the application for granting refugee status at all stages, and other rights.

The legislation of the Kyrgyz Republic declares the right of refugees to reside in a place of temporary settlement and use public services. However, in practice, there are no such places within the country. In 2007 with the support of the UN High Commissioner for Refugees, the Transient Refugees Center was established and then closed in 2016 due to a

lack of state funding. Currently, refugees have to independently resolve the issue of residence by renting housing.¹⁰⁷

United Nations High Commissioner for Refugees through its executive partner—the public foundation “Legal Clinic “Adilet”, provides for financial and medical aid to asylum seekers who need it most.

With regard to the social and pension fund scheme, as well as access to medical services

and higher education, refugees are equated with foreign citizens temporarily located within the Kyrgyz Republic and receive assistance on a corresponding basis.

The specificity of legal status of refugees lies primarily in the fact that they have the basic human rights applicable to all; these are claimed by citizens, foreigners, stateless persons, refugees, and asylum seekers, regardless of a particular state, and have a universal character.¹⁰⁸

3.3. Review of the legal basis for the access of migrants in a vulnerable situation to basic social guarantees and services in the Kyrgyz Republic

The Kyrgyz Republic has signed and ratified the **basic documents of the United Nations (hereinafter referred to as the UN), the conventions of the International Labor Organisation** (hereinafter referred to as the ILO) **on human rights and migrants’ rights**, among which: Universal Declaration of Human Rights; The International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; The Slavery Convention; Convention on the Status of Refugees; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; The Convention for the Suppression of Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air; ILO Convention No. 97 on Migrant Workers; ILO Convention No. 118 on Equal Rights of Nationals and Foreigners and Stateless Persons in the Field of Social Security and others.

Among the special **multilateral agreements on migration in the Commonwealth of Independent States** (hereinafter referred to as the CIS), the Agreement on Cooperation in Professional Migration and Social Protection of Working Migrants of 1994 and the Convention on the Legal Status of Migrant Workers and Members of Their Families of CIS Member States 2008.

The Agreement on Cooperation in Professional Migration and Social Protection of Working Migrants of 1994 contains principles for the regulation of labor migration; mutual recognition of diplomas and other documents on education and qualifications, work experience; defined mandatory requirements for the content of the employment contract concluded with migrant workers. In practice, primarily the provisions of the Agreement on the visa-free entry regime, on the right to import and export personal property, on transferring earnings to the homeland function.

The Convention on the Legal Status of Migrant Workers and Members of Their Families of CIS Member States stipulates that the national legislation of host countries should ensure to them, on an equal basis with their own citizens, the right to safe working conditions, equal remuneration for equivalent work, the use of housing on a reimbursable basis, security, excluding pensions, compulsory social insurance and compensation for damage in cases of occupational accidents and occupational diseases, access to other paid work activities, in case of loss through no fault of the migrant worker’s circumstances.

In the regulation of social issues of labor migration, the main documents of the CIS are: The Agreement on the provision of medical aid to citizens of the CIS member states and the Protocol on the mechanism for its implementation in 1997, the provisions of which determine the basis for free provision of emergency and urgent

medical assistance to migrant workers in host countries in cases that threaten the life of the patient; Agreement on the Mutual Recognition and Equivalence of Secondary (General), Elementary Vocational, and Secondary Vocational Education Certificates, designed to provide favorable conditions for access to education for migrant workers and members of their families from the CIS countries.

However, it should be noted that the provisions of the documents above are practically not implemented.

At present, the more effective multilateral agreement, including in labor migration management, is the **Eurasian Economic Union (EEU)** Treaty of May 29, 2014, of which the Kyrgyz Republic is a member. The Treaty on the Eurasian Economic Union contains: a “Labor migration” special section; Protocol on the provision of medical assistance to workers of Member States and family members (Appendix No. 30 to the Treaty).

According to Article 97 of the Treaty, the worker and members of his family may stay without registration in the states of the Union for up to 30 days; registration is carried out for the duration of the labor or civil law contract; at employment with the worker the labor or civil-law contract is concluded and documents about formation and qualification are recognized; without leaving the territory of the state of employment for 15 days, you can conclude a new labor or civil law contract.

¹⁰⁷ [Electronic resource]. Access mode: https://kaktus.media/doc/358754_bejency_v_kyrgyzstane:otkyda_oni_i_kak_jivy.html.

¹⁰⁸ International protection of refugees. PF “Legal Clinic ‘Adilet’ ”

**Summary table of vulnerability factors of migrants and their families
at the institutional level: Kyrgyz Republic**

Category of migrant in a vulnerable situation	Signs of migrant vulnerability on the basis of vulnerable situations.	Restrictions on access to basic rights
Migrants with re-entry ban	<ul style="list-style-type: none"> • Limited financial capacity in their country • No qualification/profession • No gainful employment • Limited opportunities to meet the needs of their young families • No ownership of property or housing • The large number of dependents among migrant women who are the primary breadwinners of the family • A lack of education, experience, and income for young people 	<p>Difficulties in access to:</p> <ul style="list-style-type: none"> • loans • specialized medical services
Families with children abandoned by primary breadwinner migrants	<ul style="list-style-type: none"> • High level of poverty • No constant source of income to meet the needs of the family • No material support (the primary breadwinner does not help) • No employment due to dependents with physical disability • Discrimination from the husband's family • Another family of the primary breadwinner migrant • No children documents (passport, birth certificate) • Return of migrants with different venereal diseases or even HIV, and subsequent infection of their wives. 	<p>A limited right to:</p> <ul style="list-style-type: none"> • education (placement of children in school or preschool) • health care services (free medical services) • social subsidy (poverty benefit) • loans
Migrant children left without parental care	<ul style="list-style-type: none"> • No registration at the place of residence and at the place of work • No documents (passport, birth certificate) • Frequent change of place of residence • Non-attendance of school, as a result, migrant children may not obtain professional education • No documents on registered custody and guardianship • High risk of abuse and violence 	<p>A limited right to:</p> <ul style="list-style-type: none"> • general and vocational education • free public medical treatment • protection against family violence
Migrants who became victims of human trafficking	<ul style="list-style-type: none"> • Health problems resulting from exploitation / slavery; • Disability due to health problems resulting from exploitation / slavery • No qualification/profession • No financial resources and knowledge for organisation of individual professional activity • No documents for obtaining a certificate to return to the homeland, no identity documents • No access to the services of lawyers to represent their interests in litigation • No safe housing (shelter) 	<p>Difficulties in access to:</p> <ul style="list-style-type: none"> • justice and defense in the course of criminal investigation of a crime • medical aid (medical examination and treatment) • social benefits and subsidies • employment and education: victims of human trafficking need access to the courses of career guidance, short-term specialized courses for obtaining job skills • obtaining safe housing (shelter) • re-issuance of identification documents
Refugees and asylum seekers.	<ul style="list-style-type: none"> • No right to employment in the country until refugee status is won • No housing 	<p>Difficulties in access to:</p> <ul style="list-style-type: none"> • state financial aid • medical aid

In accordance with Article 98, the social security conditions (social insurance) of workers (family members) are the same as for citizens of the employment state; for the purposes of social security, except pension, labor (insurance) work experience of the working member states of the EEU is included in the total work (insurance) length of service.

At the same time, experts note the following problems: the complexity of the migration registration procedure at the residence in the Russian Federation, as well as the need to re-enter the registry after a period of each departure from the territory of the Russian Federation during the allowed period of stay; the obligatory requirement of the Russian Federation to indicate in the migration card the purpose of entry “work”, since in the case of the declaration of a different purpose of entry in the subsequent employment, it will be necessary first to travel outside of Russia and then again to enter by specifying “work” as the purpose of entry; restrictions on the employment of citizens of EEA countries (sports, civil aviation); the continuing spontaneity of labor migration processes within the framework of the Unified Energy System and the dominance of informal channels of employment; unresolved issues of pensions.

The Kyrgyz Republic has signed interstate **bilateral agreements on labor activity and protection, including social protection of working migrants** with the Republic of Azerbaijan, the Republic of Kazakhstan, the Russian Federation, the Republic of Tajikistan.

It should be noted that since 2007, in order to increase the efficiency of the organized labor migration process, a **Memorandum of Understanding has been signed between the authorized state body of the Kyrgyz Republic in the migration and the Ministry of Employment and Labor of the Republic of Korea to send and receive labor in the Republic of Korea through the system of issuing permits for employment.** The practice of concluding the Memorandum showed the effectiveness of organized hiring and employment: the citizens of the Kyrgyz Republic are covered by the provisions of the laws of the Republic of Korea “On Labor Stan-

dards” and “On Labor Protection and “On Minimum Wages” as well as insurance against accidents at work and medical insurance.

The Constitution of the Kyrgyz Republic is the primary document that establishes the rights and freedoms of citizens and guarantees the rights of every citizen to freely enter and exit the country. According to Article 25 of the Constitution, “The Kyrgyz Republic develops social programs aimed at creating decent living conditions and the free development of the individual; (...); providing support for socially unprotected categories of citizens; (...); development of the social services system; (...).” Article 19 of the Constitution of the Kyrgyz Republic stipulates that “foreign citizens and stateless persons shall enjoy the rights and perform duties on an equal footing with citizens of the Kyrgyz Republic, except in cases established by law or an international treaty to which the Kyrgyz Republic is a party.”

The Code of the Kyrgyz Republic “On Children” establishes basic guarantees for the rights and legitimate interests of children, aims for the state to provide a standard of living necessary for the physical, mental, moral, spiritual, and social development of children, protection, and special care for children in difficult life situations. The Code regulates relations in the sphere of ensuring the rights and interests of children in the territory of the Kyrgyz Republic, as well as children of the Kyrgyz Republic who are outside the Kyrgyz Republic, which includes ensuring the protection of children in difficult life situations.¹⁰⁹

According to the Code, the situation of children left without parental care is recognized as a difficult life situation. The Code does not explicitly classify the children of migrants left without parental care (parent) under the category of “children left without parental care.” Therefore, it is proposed to supplement the definition above with the target category “children of migrants left without parental care (of a parent)” and also with appropriate measures to ensure their rights and interests.

As noted above, the Code’s norm on assigning a guardian or custodian to a child for a period when, for good reason, the parents

can not fulfill their parental responsibilities essentially does not work (Article 76). In this light, it is recommended that the child protection authority develop measures to implement this Code, e.g. to adopt a Regulation on the registration of a child remaining in a country whose parents are temporarily employed abroad. Thus, this measure is provided for in the legislation of the Republic of Moldova.¹¹⁰

With a view to implementing the Code of the Kyrgyz Republic On Children, Government Resolution No. 391 of June 22, 2015 approved the **Regulation on the Procedure for the Detection of Children and Families in Difficult Life Situations**, which regulates the order of detection children and families in difficult situations in order to provide appropriate services to support families with children, aimed at overcoming a difficult life situation and determines the order of interaction between the relevant authorized state bodies and executive bodies of local self-government on the early detection and support of children and families in a difficult life situation.

The Regulation establishes the procedure for detection and social support: children left without parental care; children with disabilities; children involved in the worst forms of child labor; children in conflict with the law; children who have been subjected to abuse (violence).

Unfortunately, despite the urgency of the problems of families with children abandoned by migrants and the children of migrants left without parental care, there are no questions in the comprehensive assessment of family issues in a difficult life situation which make it possible to reveal their problems.

During the interview, the representative of the Ministry of Labor and Social Development of the Kyrgyz Republic noted that the children of migrants can be in any of these groups, respectively; they will be provided with assistance according to their needs. It was also noted that because of the heavy workload of social workers and the lack of specialists with appropriate specialized training, the provision of social services is still poorly developed and does not meet the needs of children and families in difficult life situations.

¹⁰⁹ Code of the Kyrgyz Republic On Children

¹¹⁰ Government Resolution of the Republic of Moldova No. 290 of April 15, 2009

The Global Compact for Safe, Orderly, and Regular Migration regulates legal relations in external migration in the Kyrgyz Republic. The main objectives of the Law are to regulate the processes of external migration in the Kyrgyz Republic; ensuring the protection of the rights and legitimate interests of migrants as well as the warning and prevention of illegal migration.

The law does not address the issue of returning migrants, especially their integration. Only Article 54 states that “citizens of the Kyrgyz Republic who have left for permanent residence beyond its borders upon return to the Kyrgyz Republic for permanent residence shall enjoy, on a common basis, all rights guaranteed by the legislation of the Kyrgyz Republic.”¹¹¹

The Law of the Kyrgyz Republic “On External Labor Migration” establishes the procedure for the departure of citizens of the Kyrgyz Republic for employment abroad and the attraction of foreign labor to the Kyrgyz Republic; defines the main principle—commitment to the norms of international law in human rights and social protection of migrant workers’ rights.

The law does not apply to foreign citizens and stateless persons who have been granted refugee status or political asylum on the territory of the Kyrgyz Republic; ethnic Kyrgyz, who have received the status of *kayrilman*, and other categories of foreign citizens residing in the territory of the Kyrgyz Republic.

According to the Law, migrant workers are subject to state social insurance, and they are entitled to state insurance benefits and pensions under conditions stipulated by the legislation of the Kyrgyz Republic and international treaties.

The law specifies that the employer is responsible for providing medical treatment for the migrant worker and members of his family. As the researchers note, with regard to guaranteeing migrants’ rights to medical treatment,

the provisions of the Law are declarative. The rules on ensuring migrants’ access to medical services are detailed in the Provisional Regulations on the procedure and conditions for the implementation of compulsory medical insurance for foreign citizens and stateless persons temporarily staying or temporarily residing in the Kyrgyz Republic, approved by order of the Ministry of Health of the Kyrgyz Republic. However, this act is not a normative legal act and has a lower status in the hierarchy of legal documents. It seems that these issues should be reinforced by a decision of the Government of the Kyrgyz Republic¹¹².

The market for rendering services related to the employment of Kyrgyz Republic citizens abroad is most sought after today. Every year, thousands of Kyrgyz citizens go to work abroad through private employment agencies.

In the national legislation regulating the market of services for the employment of Kyrgyz Republic citizens abroad, a legal gap has arisen due to the lack of a regulatory legal act on private employment agencies. The Law does not define the concept of “private employment agency”; only the following concept is given in connection with the activity of private employment agencies: “the sender is a natural or legal person engaged in activities related to the sending of Kyrgyz Republic citizens for the performance of their labor activities abroad.” The regulation on the procedure for the employment of the Kyrgyz Republic citizens abroad¹¹³ is not able to fill this legal gap, since it is aimed only at regulating the procedure for issuing permits for the right to conduct this activity.¹¹⁴

The State Migration Service is the main agency that regulates the activities of private employment agencies and issues permits for the right to engage in employment activities for Kyrgyz citizens abroad. As of May 24, 2018, 76 private employment agencies have permits.

The State Service for Migration has developed a draft law “On the Activity of Private Agencies Dealing with Employment Abroad,”

which has been repeatedly discussed at various venues. However, up to the present time, the legal status and essence of the activity of private employment agencies in providing services in the labor market have not been adopted, which means that they have not been determined. In addition to the adoption of the relevant normative legal act on private employment agencies, it will be necessary to introduce appropriate amendments to the Labor Code, to the Law of the Kyrgyz Republic On the Promotion of the Employment Of The Population, “On the licensing and permissive system of the Kyrgyz Republic”.

The Law of the Kyrgyz Republic “On Internal Migration” regulates public relations in internal migration, lays down the legal and organisational foundations of internal migration processes, and creates the necessary conditions for a new place of residence and place of stay for persons and families of forced migrants.

It should be noted that the Law guarantees the right of citizens to freedom of movement, choice of residence and place of residence within the Kyrgyz Republic as an inalienable human right guaranteed by the Constitution of the country. At the same time, this law provides for the possibility to restrict the right of Kyrgyz Republic citizens to freedom of movement, choice of residence, and place of residence within the country solely on the basis of the Law. Such a restriction can be made in the interests of state security and the protection of public order and public health.

In accordance with the Law, compulsory registration of citizens at a place of stay and place of residence is the main institution that regulates the procedure for their recording. The value of this institution (commonly referred to as a “residence permit”) can not be overestimated, because it is taken into account in litigation, the implementation of electoral law, medical treatment, and in many other social relations. The law establishes disciplinary, administrative, and civil legal responsibility of citizens and officials of the Kyrgyz Republic for

¹¹¹ Regional field assessment “Vulnerability of migrants and the needs of integration in Central Asia: Primary causes and socio-economic consequences of return migration”, 2016.

¹¹² The right of migrants to health in Central Asia. Challenges and opportunities. IOM, 2017

¹¹³ Kyrgyz Republic Government Resolution No. 639 of September 8, 2006

¹¹⁴ Civil-law regulation of private employment agencies, 2016

non-compliance with the requirements of the law on registration issues.

According to the Law, the state ensures protection of the rights and legitimate interests of forced migrants, which include environmental migrants; migrants from places of natural disasters, major accidents or disasters; migrants from areas of armed conflict and riots. Citizens recognized as forced migrants: a dwelling or a land plot is provided or the material damage caused is compensated; assistance is provided for obtaining employment or vocational training (retraining); assistance is provided for constructing individual housing; it is ensured that social payments (pensions, allowances) are received at the new place of residence; medical and medicinal assistance is provided on preferential terms; the children of the forced migrant are assisted in the arrangement in pre-school and general education institutions and other assistance.¹¹⁵

Under this Law, labor migration is not included in the concept of forced migration. Accordingly, state social support will be provided only to citizens recognized as forced migrants in accordance with this Law.

Moreover, Article 12 of the Law establishes that the Government of the Kyrgyz Republic, bodies of state administration and local authorities, the relevant social institutions provide possible assistance and create the necessary conditions for a new place of residence or stay for internal migrants who have changed their place of residence or stay for economic reasons, for reasons relating to the conduct of labor activity. However, the mechanisms for implementing the provision of this Law have not been developed.

Today, there are problems with the access of internal migrants to social services, which owe to the need to provide information from the place of temporary residence because registration (residence permit) at the place of residence remains one of the conditions for access to social services. Simplification of the registration rules is being discussed at all levels. For example, it is proposed to simplify the procedure for registering children, removing the requirement of its conformity to the place of residence (registration of migrant children should not depend on the place of

registration of parents, since many live with relatives). However, this issue is under discussion.

The Law of the Kyrgyz Republic “On the Legal Position of Foreign Citizens in the Kyrgyz Republic” in relation to foreign citizens permanently residing in the Kyrgyz Republic determines the basic rights to work, equal responsibility in labor relations; equal use of medical aid; equal access to social security and education; guarantees freedom of movement and choice of residence, inviolability of the person, housing and other personal rights on an equal basis with citizens of the Kyrgyz Republic. Restrictions apply to electoral rights and military service. According to the Law, foreign citizens staying on a temporary basis have the right to receive benefits, medical assistance, and other social assistance and may engage in work activities on the basis of and in accordance with the procedure established by the legislation of the Kyrgyz Republic. The provisions of the Law also apply to stateless persons. In order to bring the provisions of the Law in line with the Constitution, a rule was introduced on granting asylum to foreign citizens persecuted for political reasons, as well as for reasons of violations of human rights and freedoms.

Refugees are a special category of migrants, the state policy in relation to them, in addition to the Constitution of the country and generally recognized norms of international law, is regulated by the **Law of the Kyrgyz Republic “On Refugees”** and the Regulation on Working with Refugees in the Kyrgyz Republic. The law defines the concept of refugee, establishes procedures and the proceedings for obtaining refugee status, rights and duties of refugees.

According to the Law, a person applying for recognition as a refugee in the Kyrgyz Republic and members of his family have the right to reside in a place of temporary settlement and to use public services; on leaving for a place of residence in a foreign state; to provide judicial protection; for education and medical aid; to receive the services of an interpreter; on exemption from payment of expenses related to consideration of the application for granting refugee status at all stages.

It should be noted that refugees or asylum seekers receive the right to work only on the basis of the official refugee status.

The Regulation on Refugee Work provides special norms on the provision of education to children from families of persons who have been granted refugee status in the Kyrgyz Republic. Thus, children of school age from refugee families living in the micro-section of the school, regardless of the availability of personal files, are admitted to public schools, and conditions for their social adaptation are also being created. Orphans, children left without guardianship and custody, as well as children with special needs, from among refugees are assigned in due course to orphanages and corresponding boarding schools.

The Law of the Kyrgyz Republic “On the Prevention and Countering of Human Trafficking” determines the organisational and legal basis for preventing and combating human trafficking, the procedure for coordinating the activities of bodies combating human trafficking, establishes a system of measures to protect and assist victims of trafficking.

The law establishes that “in order to protect and assist persons affected by trafficking in human beings, the Government of the Kyrgyz Republic, in close cooperation with non-governmental organisations, approves and implements programs to assist and protect trafficked persons; implements measures to protect the rights and interests of victims of trafficking in persons who have returned to the Kyrgyz Republic; conducts activities to improve the mechanisms for the return of victims of trafficking; supervises the provision of assistance to persons affected by trafficking in persons.”

The law guarantees the provision of free medical and legal assistance to individuals, social protection of persons affected by human trafficking (art. 5). In order to provide protection and assistance to victims of human trafficking, the law provides for the establishment of special institutions: asylums for temporary residence of victims of human trafficking (art. 21) and centers for support and assistance to victims of human trafficking (art. 22). Article 24 of the Law establishes that the so-

¹¹⁵ Law of the Kyrgyz Republic “On Internal Migration,” Article 42

cial rehabilitation of human trafficking victims shall include legal assistance for these persons as well as housing, employment and psychological, medical, and professional rehabilitation for them.

However, in practice, the above assistance is not provided by the government. One of the reasons is the absence of by-laws to implement the provisions of the Law. So, despite the fact that the Law was adopted in 2005, it still lacks a procedure for the implementation of social rehabilitation of victims of human trafficking (Article 24) and Rules for organizing asylums, the procedure for their activities, management, financing standards, and organisation of monitoring their activities (Article 21). To date, there has been no designated body coordinating anti-trafficking activities, whose tasks also include the provision of assistance to victims of human trafficking.

The main gap in the legislation of the Kyrgyz Republic is the lack of criteria for identifying victims of human trafficking and of a national mechanism for referring them to provide assistance provided for by the Law.

As was noted by the representative of the Ministry of Health of the Kyrgyz Republic, people who have suffered from trafficking in persons and applied to health care organisations receive medical aid on a general basis. Since there is no approved identification tool for victims of human trafficking, these victims are not identified, respectively, no register for the provision of medical aid is maintained for them as it is for other victims of violence.

In January 2018, the following notions “victims identification of human trafficking” and “victims of human trafficking national referral mechanisms” were introduced into the Law. With the assistance of IOM, a set of normative legal acts has been developed to carry out identification of victims of human trafficking and to introduce a mechanism for their referral. Draft documents were widely discussed with the participation of the deputies of the Jogorku Kenesh (parliament), representatives of state bodies, civil society organisations, and international organisations. A further promotion of draft documents by

the Ministry of Internal Affairs of the Kyrgyz Republic is expected.

The Law of the Kyrgyz Republic “On the Basics of Social Service for the Population in the Kyrgyz Republic” establishes the basis for legal regulation in the social services for the population. The state guarantees to every national citizen who is in a difficult life situation the right to social services, i.e. provision of material assistance, social adaptation, and rehabilitation.

According to the Law, “a difficult life situation is a situation that objectively disturbs a citizen’s life (disability, inability to self-service due to old age or illness, orphanhood, neglect, poverty, unemployment, lack of a certain place of residence, conflicts and abuse in the family, family violence, loneliness, etc.), which he can not overcome on his own.” It should be noted that situations related to the vulnerability of the situation of human trafficking are not taken into account in this concept, and therefore it is proposed to supplement the definition of “difficult life situation” with such a vulnerable situation as “the consequences associated with human trafficking,” to ensure victims of human trafficking a guaranteed volume of social services.

The law also includes the notion of “risk groups—graduates of orphanages; persons released from places of deprivation of liberty who have lost their homes; migrants who came to work from other regions in search of work.” However, the Law does not include provisions for the social security of such migrants, although other categories of persons at risk are eligible for social services.

In the notion of “children left without parental care,” the reasons and situations are listed in which children are left without parental care. However, the situation related to the lack of protection of the rights and interests of migrant children left without parental care (parent) due to their long stay in migration, was not reflected in the Law.

In view of the problem’s urgency, it is proposed to include children of migrants left without parental care (parents) in the speci-

fied definition, as well as to provide the right to social services for the victims of human trafficking and children of migrants left without parental care (parent).

It is also proposed to supplement Article 7 “Complex of organisations and institutions of social services” with the following institution “asylum (shelter) for victims of human trafficking”; article 4 “Objects of social services”—the “migrants in a vulnerable situation” category.

Article 3 of the **Law of the Kyrgyz Republic “On Education”** establishes citizens’ right to education. In accordance with the Law, the state creates conditions for training, providing students with benefits, material assistance, food and transportation fare, medical treatment and rehabilitation, textbooks. Students can be provided with social educational loans. The education of orphans and children left without parental care is carried out on the basis of state support until they reach adulthood.

In order to realize the constitutional rights of the citizens of the Kyrgyz Republic for education, create conditions for rational planning of the contingent of pupils, identify uneducated children and take measures for their education, a register of children is maintained. The procedure for the registration of school-age children is organized and conducted by the local state administration, the executive body of local self-government and education authorities.¹¹⁶

According to a representative of the Ministry of Education and Science of the Kyrgyz Republic, children from migrant families, taking into account the migratory mobility of the family, are more at risk of leaving school. The main problems of migrant children, both internal and external, are the absence of a birth certificate, non-attendance, and lagging behind in school. Often children of migrants are not enrolled in school or were enrolled in school, but for various reasons, do not attend. Schools accept a child without documents, i.e. give parents the opportunity to restore (receive) the necessary documents, free from school fees, etc.

¹¹⁶ Instruction on the procedure for the registration of children of school and preschool age, approved by the Government of the Kyrgyz Republic on June 19, 2017 No. 388

Despite the measures taken by the Ministry to provide education for migrant children, the following problems exist: incomplete enrollment of migrant children; the loss of working children ties with the school to some extent, and the interruption of the education process; a weak inclusive and home-based education for children with disabilities.

The Law of the Kyrgyz Republic “On Healthcare in the Kyrgyz Republic” is the main normative legal act regulating the issues of protecting citizens’ health in the Kyrgyz Republic.

The law establishes the healthcare rights of certain population groups: the rights of the family (the state takes care of protecting the health of all members of the family through the implementation of sanitary and preventive measures, the provision of affordable health care, medical rehabilitation); rights of pregnant women and mothers (maternity in the Kyrgyz Republic is protected and encouraged by the state. Women during pregnancy and in connection with the birth of a child, as well as during the care of sick children are entitled to receive benefits and paid leave in the manner prescribed by the legislation of the Kyrgyz Republic); the rights of legal underage status persons (providing dispensary supervision and treatment, medical advice in determining their professional and military suitability, providing the necessary information about the state of health in an accessible form).

Kyrgyzstan has established a compulsory health insurance scheme for foreign citizens and stateless persons temporarily staying or temporarily residing in the Kyrgyz Republic. Such persons are presented with a compulsory medical insurance policy for obtaining medical services¹¹⁷.

The **Law of the Kyrgyz Republic “On State Subsidies in the Kyrgyz Republic”** applies to citizens of the Kyrgyz Republic

residing in the territory of Kyrgyzstan; ethnic Kyrgyz, who have received the status of *kayrilman*; foreign citizens residing on the territory of the Kyrgyz Republic, if they are citizens of countries with which an international treaty has been concluded and entered into force as concerns granting benefits.

According to the Law, the detection of low-income families, with a view to organizing them targeted social protection, and the primary definition of the degree of their need is transferred to the powers of state structures that can be delegated to local government bodies. According to experts, local self-government bodies are closer to the population and can better determine the level of need of families and children in difficult life situations, assist in taking measures for the primary placement of a child in a difficult life situation, and reveal poor families for organizing targeted social protection for them. Therefore, it is also proposed to classify these issues as of local importance.¹¹⁸

Social benefits and subsidies are established on the principle of categories. Migrants in a vulnerable situation are not included in the list of socially vulnerable segments of the population as a separate category or target group, but they can be included in other categories of vulnerable persons.

The laws that are meaningfully related to the issues of social protection of vulnerable segments of the population include the **Law of the Kyrgyz Republic “On State and Municipal Services,”** which establishes the basic principles of providing state and municipal services, such as accessibility, security and quality of services, equal access to services.

State bodies and municipal institutions provide only those services that are included in the Unified Register of public services provided by the executive authorities, their structural subdivisions and subordinate institutions¹¹⁹, and the Basic Register of Municipal

Services Provided by Local Governments of the Kyrgyz Republic¹²⁰, respectively.

The categories of migrants in a vulnerable situation and their family members considered in this study are provided with the following services:

- provision of preschool, elementary, primary and secondary general education to children left without parental care (free of charge);
- assistance in employment abroad for citizens of the Kyrgyz Republic who are seeking work as part of state programs, intergovernmental, and other official agreements (on a fee basis);
- payment of compensation for expenses related to repatriating bodies of citizens of the Kyrgyz Republic who died abroad, during their employment (free of charge).

The basic services in the sector of employment, social protection, health, connected with overcoming the negative consequences of migration, are not directly fixed in the legislation. In this regard, it is proposed to include in the above-mentioned registries a list of services that should be provided to migrants in a vulnerable situation, e.g. social services for human trafficking in asylums and crisis centers, approving the relevant standards for the provision of these services.

It should be noted that the possibility of purchasing social services from non-commercial organisations is established by law; however, it is difficult to assess the effectiveness and quality of these services. So, to date, the Government of the Kyrgyz Republic has not defined the procedure for accrediting semi-permanent organisations and social service institutions that provide services in the state social order.¹²¹ According to the Law, state and municipal institutions can transfer the execution of state and municipal services to private legal entities and individuals with a transfer of funds and sources of financing, i.e. provision for the use of the mechanism of state social order.

¹¹⁷ The right of migrants to health in Central Asia. Challenges and opportunities. IOM, 2017

¹¹⁸ Report “Gathering of basic data on target groups of the project and reliable information on their involvement in decision-making processes in the provision of services.” Joint EU-UN Project “Promoting good governance to achieve social justice”, 2012

¹¹⁹ Government Resolution of the Kyrgyz Republic of February 10, 2012 No 85

¹²⁰ Government Resolution of the Kyrgyz Republic of January 14, 2015 No. 6

¹²¹ Law of the Kyrgyz Republic “On the Basics of Social Service for the Population in the Kyrgyz Republic,” Article 61

The Law of the **Kyrgyz Republic “On State Social Order,”** adopted in 2017, in a new wording is aimed at solving social problems that are not covered or insufficiently covered by the activities of state bodies and (or) local governments, to create alternative mechanisms for providing social services to the population, to an effective use of public funds intended for the implementation of social programs, as well as other tasks.

It should be emphasized that according to the Law one area of implementing state social order is **assistance to migrants, internally displaced persons, and refugees.** The budget of the Kyrgyz Republic annually provides for funding for programs (projects) under the state social order. So, in 2018, KGS 36 million were allocated for the implementation of the corresponding measures; in the previous years funds allocations were made in the amount of KGS 25–27 million.

According to the Law, state bodies develop programs of the state social order. Currently, only 2 state bodies have developed these programs. Thus, the Ministry of Labor and Social Development of the Kyrgyz Republic developed The State Social Order Programme for 2018 granting grants to non-profit organisations for the provision of social services to

the following categories of the population: families and children in difficult life situations, older citizens and people with disabilities, as well as women affected by domestic violence and discrimination.¹²²

The State Agency for Youth, Physical Culture and Sports under the Government of the Kyrgyz Republic has also developed The State Social Order Program for 2018–2020. The Program notes that “in view of the lack of jobs, especially in the regions and rural areas, boys and girls are forced to migrate in search of work, the greatest problems are experienced by young people living along the border, remote areas, migrant children, and kay-rilmans.”¹²³ However, the priorities and tasks of the Program do not include measures to solve the problems of migrant children.

Unfortunately, in the above programs there are no measures to assist migrants in a difficult life situation, i.e. such a sphere of the state social order as “assistance to migrants, internally displaced persons, and refugees” has as yet failed to receive attention from state bodies.

Analysis of the above array of normative legal documents of the Kyrgyz Republic and their becoming an integral part of the internation-

ally ratified documents at the international level shows that in general a legal framework has been created in the republic to ensure the rights of migrants in a vulnerable situation to receive social services.

The current legislation of Kyrgyzstan does not link the problems associated with migration with other spheres of society's life. However, it should be noted that in the legislation of the Kyrgyz Republic as concerns migration, the main normative legal acts are aimed at the social and legal protection of the external labor migrant in the country of his stay. Unfortunately, measures to rehabilitate and reintegrate returned labor migrants in a vulnerable situation are virtually absent in the country's legislation; this also includes the socially vulnerable “migrant in a vulnerable situation” category of citizens.

The provision of state support to migrants in a vulnerable situation is carried out as per standard procedure and on general grounds, e.g. as for individuals in a difficult life situation. In this regard, it is proposed to make changes and additions to the legislative acts of the Kyrgyz Republic, especially in the sector of social protection, employment, health.

3.4. State policy on providing support to socially vulnerable categories of the population in a difficult life situation, including migrants in a vulnerable situation in the Kyrgyz Republic

The main problem of the migration policy of Kyrgyzstan at the current moment is the absence of migration management strategies, clear priorities, directions, and tasks for the long term. Thus, “strategic documents have been developed, and especially important, migration is not seen as a problem as much as a potential opportunity, but labor mobility is linked to the goals of overall economic growth.”¹²⁴ However, there are practically no concrete measures to regulate migration processes in connection with the country's socio-economic development in program documents.

The main strategic document for the development of the country is the **40 Steps to the Future Program of the Government** of the Kyrgyz Republic, which is based on a program-targeted approach to the process of implementing strategic development goals. According to the Program, its primary purpose is the citizen / person and ensuring his needs, rights, and freedoms as well as reforming the new governance structure through the prism of human needs.

The Program notes that starting in 2017, priority issues will be addressed that are of

concern to the population, including ensuring social security and a decent standard of living. “Measures of state social assistance to vulnerable segments of the population will concentrate not on combating the consequences of and mitigating negative phenomena, but on eliminating the causes of their occurrence. To this end, the Government will develop new standards of social services with a human orientation, rather than infrastructure and its content. It is necessary to move from managing and financing the social infrastructure to managing the quality, safety, and efficiency of social protection services.”¹²⁵

¹²² Access mode: <http://www.mlsp.gov.kg/?q=ru/gosprogrammy/gosudarstvennyy-socialnyy-zakaz>.

¹²³ Access mode: <http://www.sport.gov.kg/contents/viewcontent/id/416/pid/205>.

¹²⁴ IOM study “Mapping of unregulated migration in Central Asia,” 2014

¹²⁵ The 40 Steps to the Future Programme of the Government of the Kyrgyz Republic

It should be noted that the Action Plan of the Government of the Kyrgyz Republic for 2017 and 2018 lacks specific actions to solve the indicated priority problems. The Action Plan of the Government for 2016 envisaged the following measure: “Implement special measures to deal with special categories of migrants: victims of human trafficking, people who received disability while working abroad, returned with acquired social disease (HIV, STIs, tuberculosis)” and determined the expected result—“approval of provisions on referral mechanisms of special categories of migrants”.¹²⁶ However, these measures have not been implemented.

In the program for the employment of the population and the regulation of external and internal professional migration up to 2020, the following are indicated as the main directions: “the development and implementation of a number of measures, taking into account the specific needs of individual vulnerable groups; formation and development of an effective system of state regulation of labor migration by improving legislation, information and educational provision, providing services to citizens of the Kyrgyz Republic wishing to work abroad; development of forms and methods of regulation of labor migration based on the development of bilateral and multilateral interstate relations.” But the given Program practically does not contain measures on solving employment problems of separate vulnerable groups of migrants.

Similarly, the Program does not lay down specific goals, objectives, and mechanisms for working with returning migrants. At the same time, the document stresses that “migrant workers abroad acquire new knowledge and experience, master new technologies, and attach themselves to new production organisation standards that can be applied in their work upon return to their homeland.”¹²⁷

The Program of the Government of the Kyrgyz Republic for the support of families and protection of children for 2018–2028 is aimed at strengthening and developing the family institution, enhancing the social role of the family in society, and ensuring the

protection of the rights and interests of children. The Program notes that despite ongoing state policy to support families with children and ensure the protection of the rights and interests of the child, there are a number of problems, including a lack of proper attention to children of labor migrants.

The main Program objectives: improvement of the regulatory and legal framework governing family issues and the protection of the rights and interests of children; prevention of violation of the rights and legitimate interests of children, as well as their discrimination; the creation of conditions for the family to perform its basic functions; the development of social services for families and children; the development of foster family services for children left without parental care.

However, the Plan of Priority Measures for the Implementation of the Program did not reflect concrete measures / actions to address problems related to the vulnerability of families with children abandoned by migrants and the children of migrants left without parental care.

Development of Youth Policy in 2017–2020 program of the Government of the Kyrgyz Republic notes that the common signs characterizing the youth of Kyrgyzstan are “high mobility, vulnerability, and exposure to various risks. The processes by which state bodies collect information on youth, the essence of its initiatives, needs, and practices of meeting needs are carried out separately. This does not allow us to get a full picture of the real state of affairs in the youth sphere and make appropriate decisions.”

The Program emphasizes that the outflow of young people to external labor migration remains high. At the same time, the group of socially vulnerable youth includes only persons with disabilities, victims of violence, refugees. Unfortunately, young migrant people in a vulnerable situation are not included in this group.

One of the objectives of the Program is to ensure equal access of youth to state and municipal services. The solution to this problem

is proposed by strengthening the capacity of youth homes, centers, educational institutions to provide services, information counseling and other support for the socialization and integration of young people in a difficult life situation. Issues related to the vulnerability of young people in migration processes are not reflected in the Program or in the Action Plan for its implementation.

In 2017, the **Government of the Kyrgyz Republic adopted the Program of the Government of the Kyrgyz Republic for countering human trafficking for 2017–2020**, and one of its tasks is to protect and assist victims of human trafficking. According to the Program, the adoption of measures to achieve this goal will create a system of support and assistance to victims of human trafficking, as well as conduct social rehabilitation and provide protection to victims of human trafficking.

The Action Plan for the implementation of the Program envisages the adoption of a draft law on introducing amendments to the Law “On the Basics of Social Services for the Population in the Kyrgyz Republic” regarding the classification of victims of human trafficking as entitled to free social services, as well as determining the status of shelters / rehabilitation centers, and the adoption of a package of normative legal acts on the introduction of a national mechanism for the redirection of victims of human trafficking, which, as noted above, was developed with the assistance of IOM.

It should be noted that the above-mentioned program documents do not reflect the issues of ensuring the right of migrants in a vulnerable situation to receive social and other services. Such a situation can be called a significant gap. Therefore, it seems necessary to include these issues in the draft of the Concept of the State Migration Policy of the Kyrgyz Republic, developed by the State Migration Service.

The results of IOM research note the lack of measures to develop a migration strategy related to the rehabilitation and reintegration of migrants, who found themselves in the most

¹²⁶ Government of the Government of the Kyrgyz Republic of January 29, 2016 No. 41

¹²⁷ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia, 2016.

vulnerable situation. The insufficient recognition of this issue in other spheres of state policy remains a separate (e.g. in the general strategy of social protection of the population, only general measures are implemented).¹²⁸

Measures to adapt the Sustainable Development Goals to 2030 into sectors / fields related to the situation of migrants in a vulnerable situation

The Sustainable Development Goals (further—SDG) adopted in 2015 at the UN summit are closely related to migration issues, in particular Goals 3, 4, 5, 8, 10, 11, 13, 17.¹²⁹

In order to adapt to the national conditions, implement and monitor the achievement of the SDG by the Government of the Kyrgyz Republic, a Coordinating Committee on adaptation, implementation, and monitoring of the SDG was established until 2030; a Matrix of inventory and adaptation of SDG tasks and indicators has been developed.¹³⁰

It should be noted that at present, national indicators have been partially developed for achieving the objective of SDG 5.2 “Eliminate all forms of violence against all women and girls in public and private spheres, including human trafficking and sexual and other forms of exploitation.” These are indicators for the implementation of the objectives of SDG 5.2:

5.2.1.b. “The volume of state financing of crisis centers and asylums for victims of domestic violence” and 5.2.1.c. “Number of victims of human trafficking of sexual and other exploitation by sex and age”.

SDG task 8.7 “Take urgent and effective measures to eradicate forced labor, end modern slavery and human trafficking and ensure the prohibition and elimination of the worst forms of child labor, including the recruitment and use of child soldiers, and by 2025 to end child labor in all its forms” provides for the following national indicators: 8.7.1.2. “The proportion and number of persons in forced labor, broken down by children (under 17 years) and adults (18 years and over), population, sex and migration status”; 8.7.1.a “Number of victims of human trafficking and other exploitation disaggregated by sex and age”.

Realization of SDG task 8.8 It is proposed to assess “the protection of labor rights and promote the provision of safe and secure working conditions for all workers, including migrant workers, especially migrant women and those without stable employment” with the aid of national indicators: 8.8.2.a. “The number of people applying for advice to the authorized body for migration, disaggregated by sex;” 8.8.2.b. “The number of people employed abroad through the authorized body for migration, disaggregated by sex from the total number of applicants.”

Achievement of the SDG task 10.7 “To promote orderly, safe, legal, and responsible migration and mobility of people, including through a planned and well-designed migration policy” is proposed to be evaluated using national indicators “Number of people applying for advice to the authorized migration agency, broken down by sex” and “Number of people employed abroad through the authorized body for migration, disaggregated by sex from the total number of applicants.”

To SDG task 16.2 “To put an end to outrages, exploitation, trade, and all forms of violence and torture against children” a national indicator is defined: 16.2.2.1. “The number of victims of human trafficking per 10,000 people by sex, age, and form of exploitation.”

It should be noted that to monitor the progress of the SDG implementation, national indicators are proposed for which the National Statistical Committee of the Kyrgyz Republic is already collecting data. In this regard, we believe that it is advisable to develop additional national readings (indicators) along with the above-mentioned objectives of the SDG, together with civil society organisations and international organisations, with subsequent reflection in the strategic documents on migration, namely, in the draft Concept of the Migration Policy of the Kyrgyz Republic.

3.5. Institutional framework for providing social support for migrants in a vulnerable situation in the Kyrgyz Republic

As experts note, the formation and development of the institutional mechanism in the migration policy of the Kyrgyz Republic during the period of independence is characterized by instability and inconsistency. Until now, Kyrgyzstan’s migration policy has focused more on issues of external labor migration as an important tool for providing the labor-abundant population with employment abroad. In other words, the migration policy was guided by the “pushing out” of the population for the purpose of employment.

Declaring the benefits for the country from external migration in the form of participation of citizens of the Kyrgyz Republic in the global labor market and familiarization with new technologies and production organisation standards, the national documents do not cover the issues of returning such hypothetically “improved” human capital to the country. Among the priorities and policy measures, there are practically no issues of reintegration of returning migrants and creation of conditions for in-

vestment activity and efficient use of cash transfers.¹³¹

In the Kyrgyz Republic, interdepartmental coordinating bodies have been created, whose competence includes the issues of supporting migrants in a vulnerable situation. Also, we note that a number of state bodies are involved in the process of providing assistance to people in difficult life situations, which ostensibly includes migrants.

¹²⁸ Regional field assessment in Central Asia Vulnerability of migrants and the demands of integration in Central Asia, 2016

¹²⁹ Access mode: <https://ru.ictsd.org/bridges-news/мосты/news/международная-миграция-во-благо-устойчивого-развития>.

¹³⁰ National Statistical Committee of the Kyrgyz Republic. Statistics. SDG

¹³¹ V.S. Malakhov, E.B. Demintseva, A.B. Elebaeva, A.D. Musabaeva “Introduction of the Kyrgyz Republic into the Eurasian Economic Union: influence on migration processes”

Coordination of the interaction of state bodies, public and international organisations in regulating migration processes is entrusted to the **Coordinating Council on Migration**.¹³² One of the Council tasks is the development of an effective mechanism for interaction of state bodies on migration issues, the coordination of their activities in developing proposals for improving migration legislation. Despite the urgency of issues related to the situation of migrants in a vulnerable situation, they have not been considered at the meetings of the Coordination Council since 2016.

During an interview, the representative of the State Migration Service spoke about making changes to the composition of the Coordination Council, in particular, the appointment of the Prime Minister of the country as the chairman of the Council—which was largely influenced by the significance of migration processes.

The Coordination Council for Social Protection of the Population and Children's Rights is a consultative and advisory body formed to coordinate interaction between state bodies of executive power, local government, non-profit, international, and other organisations in implementing measures in the social protection of the population and protection of children's rights.¹³³

It should be noted that among the functions of this Council are the development of proposals for the improvement of normative legal acts in the social protection of the population and ensuring the rights of children. But at meetings of the Council, issues related to the situation of families with children abandoned by migrants and children of migrants left without parental care (the parent) were also not considered.

At the local level, the **Committee on Children's Affairs** under local state administrations and city halls is considering the issues of ensuring the rights, protection, and interests of children. One of the Commission's tasks is to review and approve a draft individual work

plan with the family and/or an individual plan to protect the child.

In order to provide additional social support to families with children, the executive committees of local self-government operate **Social commissions**.

The State Migration Service under the Government of the Kyrgyz Republic is an executive body implementing state policy in the sphere of external migration, ensuring the protection of immigrants' rights, refugees, cooperation with fellow nationals abroad, protecting the rights and interests of external labor migrants—citizens of the Kyrgyz Republic, as well as in the sphere of countering human trafficking.

The State Migration Service provides the following free services to the above-mentioned categories of migrants in a vulnerable situation: issuance of a registration certificate of an application for refugee status and a refugee certificate; issue of the license of kayrilman; compensation of expenses related to the repatriation of bodies of citizens of the Kyrgyz Republic who died abroad during the period of their employment.

Currently, the reintegration of returning migrants is not within the competence of the State Migration Service, but during the interview, the representative reported on the intentions of the leadership to intensify work in this field.

Studies on the situation of migrants emphasize that "Kyrgyz government agencies working on migrants mainly focus on lifting bans from Kyrgyz citizens (reducing the blacklist) and achieving better working conditions for migrants working abroad. The activities of state bodies are more focused on solving the problems of external migrants than returning to their homeland. The State Migration Service which implements a state policy relating to migration does not have a structural unit that would work with returning migrants. The Regulation on the State Migration Service

does not mention the tasks of the service for the reintegration of returning migrants."¹³⁴

The Ministry of Labor and Social Development of the Kyrgyz Republic is an executive body that implements the state policy in the areas of labor, social protection of the population, including support for socially unprotected categories of the population in difficult life situations as well as in the family and gender development.

It should be noted that the Ministry's functions include providing social and rehabilitation services to victims of human trafficking as well as developing proposals for assistance to victims of human trafficking.¹³⁵ However, the procedure for the social rehabilitation of victims of human trafficking has not to date been established. The provision of social assistance to victims of trafficking is carried out in a general manner and on general grounds.

The categories of the most vulnerable migrants considered in this study are provided the following services free of charge and in the general order: appointment and payment of unemployment benefits; provision of temporary jobs in the programs for the organisation of paid public works; appointment and payment of monthly social benefits; appointment and payment of a monthly allowance to low-income families with children; appointment and payment of monetary compensation instead of benefits; payment of maternity benefits; payment of ritual allowances (for burial); social services in social stationary institutions.

One of the main tasks of the **Ministry of Health of the Kyrgyz Republic** is the development and implementation of the state policy on improving the quality and ensuring the population's access to health services.

The Strategy of the Kyrgyz Republic for the Protection and Strengthening of the Population's Health up to 2020 (Health 2020) indicates that the state is interested in reducing health inequalities, including the elimination

¹³² Ordinance of the Prime Minister of the Kyrgyz Republic of May 6, 2016 No. 254

¹³³ Government Resolution of the Kyrgyz Republic of December 4, 2015 No. 830

¹³⁴ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional Field Assessment in Central Asia, 2016

¹³⁵ Government Resolution of the Kyrgyz Republic of May 3, 2013 No. 236

of differences in access to social and living conditions necessary for protecting public health. The main principle of the Strategy is to ensure universal access of the population to health services.

However, per capita health financing, which is based on statistics on the population of a given locality, does account for migration processes. As a result, this leads to the fact that the distribution of financial resources does not always reflect the actual burden of medical care for migrants. The issues of improving the mechanisms of medical treatment for migrants remain relevant, requiring the revision of funding for family doctors groups.

A number of categories of citizens have the right to receive free medical aid at the outpatient level and in hospitals for social status in the amount stipulated in the State Guarantees Program for providing citizens with healthcare. Medical assistance in excess of the amount stipulated in this program is provided on a fee basis. As noted above, this Program does not specifically address migrants in a vulnerable situation.

In an interview with a representative of the Ministry of Health of the Kyrgyz Republic, a migrant in a vulnerable situation can be in the above-mentioned socially vulnerable population receiving medical aid under the State Guarantees for Providing Citizens with Healthcare Assistance.

The Ministry of Education and Science of the Kyrgyz Republic is guided in its activities by the regulatory legal in the education, the Concept of the Development of Education in the Kyrgyz Republic up to 2020 and the Strategy for the development of education in the Kyrgyz Republic for 2012–2020.

One of the objectives of the education system is universal access to quality basic general and secondary general education. According to the above-mentioned Unified Register of Public Services, educational organisations provide, free of charge, pre-school, elementary, primary and secondary general education as well as the upbringing and maintenance of children left without parental care, to which the children of migrants can be included.

The functions of the ministry include monitoring the adoption of measures aimed at providing affordable education. However, up to the present time, there are problems of enrolling internal and external labor migrants who do not attend school and organizing additional classes for migrant children with long breaks in education.

According to a representative of the Ministry of Education and Science of the Kyrgyz Republic, there is no single database of children in difficult life situations, and the detection of migrant children not attending school is not fully implemented. It was also pointed out that this work should first of all be dealt with by local self-government bodies. The Kyrgyz Academy of Education has developed an accelerated training program for children with interruptions in training. However, there is no statistical data on the coverage of migrant children receiving education under this program.

The Institute of the Ombudsman (Akyikatchy) of the Kyrgyz Republic is a national human rights institution of the Kyrgyz Republic.

The Institute of the Ombudsman (Akyikatchy) can influence the work of the Government in the annual reports “On observance of human and civil rights and freedoms in the Kyrgyz Republic” as well as special reports. In these reports, it is noted that one of the most pressing problems in respect of human rights is the direct and indirect discrimination against migrants, both domestically and abroad; there are problems with the registration of internal migrants, which entails a restriction of access to social, medical, educational, and other services.

The recommendations of the Ombudsman (Akyikatchy) are sent to the relevant state bodies, local authorities and other structures for taking measures. Unfortunately, these recommendations are reflected year after year in annual reports, which indicates that they are not sufficiently implemented.

Migrants appeal to the Ombudsman (Akyikatchy) on issues related to employment, documentation, observance of the migrant children rights, a “black list”, illegal detention,

human trafficking, etc. According to the representative of the Office of the Ombudsman, to solve the problems of migrants, the state should work on improving the legislative base.

It should be noted that despite a number of measures taken by the state to provide services to vulnerable layers of the population on the principle of a “single window,” there is a lack of interdepartmental cooperation and interdepartmental disunity of specialists from territorial state bodies as well as the absence of unified organisational and methodical system approaches in implementing interaction in solving problems children and families in a difficult life situation.¹³⁶

International organisations and civil society organisations

In May 2017, the Government of the Kyrgyz Republic and the UN Country Team signed the **United Nations Development Assistance Framework for the Kyrgyz Republic (UNDAF) for 2018–2022**.

The Framework notes that “some vulnerable groups, such as children or families of migrants, victims of trafficking are not always covered by services, despite the provisions of the Kyrgyz legislation on housing, medical and psychological support, and social reintegration. At present, the services are mostly of a reactive nature and are provided by residential institutions. The small number of existing social services at the local level is unsustainable due to gaps in the regulation of their planning, provision, and financing. Many children remain in the care of relatives or without parental care because of the parents migration. This is a cause for concern in terms of limited social protection measures and an increased risk of victimization and delinquency. Efforts in the cooperation are necessary to expand access to safe shelter, medical and psychological assistance, social reintegration, and the fight against human trafficking must be strengthened.”¹³⁷

International organisations, especially the **International Organisation for Migration (IOM)**, play an important role in the implementation of the state migration policy within the UNDAF framework, which systematically supports measures of the state migration

¹³⁶ Detection and socially supporting families and children in difficult life situations. Modules of training courses for specialists in the social sphere. ILO, 2017

¹³⁷ United Nations Development Assistance Framework for the Kyrgyz Republic (UNDAF) for 2018–2022

policy. Program for Assisted Voluntary Return and Reintegration is one of the key activities of IOM to assist migrants returning to their countries of origin. The program consists of 3 stages: assistance in the organisation of dispatch and the necessary preparations for the trip, direct assistance when traveling home, assistance after arrival for the purpose of reintegration. Within the project framework “Dignity and Law”, with the support of the United States Agency for International Development (USAID), the Fund for Assistance to Affected Migrants operates, which assists migrants in a vulnerable situation in solving a number of problems.

IOM has developed a Handbook for non-profit organisations—partners to assist vulnerable migrants, identify victims of human trafficking and vulnerable migrants, which also provides a list and procedure for collecting the necessary documents to help vulnerable migrants.¹³⁸ In 2016–2017, IOM provided direct assistance to migrants with a ban on re-entry in their countries of origin (in Kyrgyzstan and Tajikistan), providing grants and legal advice; training in professional skills, which allowed them to successfully reintegrate into their communities and reduce economic vulnerability.¹³⁹

One of the IOM program topics in Kyrgyzstan is counteracting human trafficking. Within these programs, the legislative base has been improved; projects on the return, rehabilitation, and reintegration of victims of human trafficking as well as training programs for judges, prosecutors, law enforcement officers are being implemented; and the Hotline 189 is operating.

UNICEF activities in Kyrgyzstan are aimed at protecting the rights and interests of children, developing their abilities. A cooperation program between the Government of the Kyrgyz Republic and UNICEF for 2018–2022 envisages the realization of children's rights with a focus on the most vulnerable as well as contains measures to improve the situation of children as concerns ensuring their health, education, social protection, etc.

The Office of the United Nations High Commissioner for Refugees (UNHCR) in Kyrgyzstan conducts humanitarian activities to protect refugees, internally displaced persons and stateless persons; supports the Government of the Kyrgyz Republic in creating an effective system for granting asylum, preventing and reducing the number of stateless persons; actively participates in the process of consolidating peace in the Ferghana Valley, helping to build trust between communities and local authorities.¹⁴⁰

The ILO Office for Eastern Europe and Central Asia implemented projects in Kyrgyzstan to eradicate child labor as well as raise public awareness of the consequences and ways to address this problem. The implementation of the ILO project “Application of the training strategy” will strengthen national training systems, policies, and strategies as well as increase employment opportunities for both women and men.

One of the activities of the **OSCE** is to assist in the development and implementation of effective policies to combat human trafficking by supporting measures to improve legislation; promotion of the concept of interaction between law enforcement agencies and the local community; to facilitate the exchange of experience and professional knowledge among specialists from different countries.

With the support of the **United Nations Office on Drugs and Crime (UNODC)**, the Government's Program of the Government of the Kyrgyz Republic for countering human trafficking for 2017–2020 has been developed. Currently, UNODC and the European Union are implementing the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants 2015–2019 aimed at assisting in the development and implementation of national responses to human trafficking and the smuggling of migrants, as well as protection measures for affected persons.

Civil society organisations in the Kyrgyz Republic work in various areas, provide assis-

tance, and provide services to vulnerable segments of the population. For the considered categories of migrants in a vulnerable situation, non-profit organisations provide consulting and educational services; inform target groups on countering human trafficking (seminars, trainings, information campaigns); carry out rehabilitation and reintegration of victims of trafficking; provide social, legal, psychological material and other assistance to migrants in a vulnerable situation.

In 2016, IOM assessed the potential of civil society organisations, IOM partners, regarding their capabilities and needs. Based on the results of the evaluation, recommendations have been developed that mention the need to systematize the processes of monitoring and evaluating the services provided, developing service standards, and conducting their analysis with the provision of socially significant services.¹⁴¹

It should be noted that solving socially significant problems of migrants in a vulnerable situation via the implementation of state social order by non-profit organisations potentially contributes to the expansion of the list of social services, improving their quality, and also provides targeted social assistance.

However, at the present time there is a decrease in the activity of non-profit organisations for initiating and implementing socially significant projects relating to migration. Thus, in the highly relevant area “Assistance to Migrants, Forced Migrants, and Refugees,” which is stipulated by the Law of the Kyrgyz Republic “On State Social Order,” projects from civil society organisations are not offered.

Undoubtedly, civil society organisations make a significant contribution to the solution of migration issues. At the same time, we note the need for non-profit organisations to conduct “advocacy campaigns” to address the problems of migrants in a vulnerable situation; more active expression of opinions and positions of civil society on problems, priorities, and measures to address issues related to the vulnerable situation of migrants and their families.

¹³⁸ IOM management for non-profit organisations—partners to assist vulnerable migrants

¹³⁹ Materials of the regional training for NGOs on providing direct assistance in the integration and reintegration of victims of human trafficking and vulnerable migrants, September 6–8, 2017 Almaty, Kazakhstan

¹⁴⁰ The UN system in the Kyrgyz Republic. Access mode: <http://kg.one.un.org/content/unct/kyrgyzstan/ru/home/we/unhcr.html>.

¹⁴¹ IOM Report “Assessment of the Capacity of Civil Society Organisations, IOM Partners in Kyrgyzstan,” 2016

Section 4. Analysis of the legal and institutional framework with regard to migrant needs in vulnerable situations in the Republic of Tajikistan

4.1. General analysis of the situation and the urgency of the problem, the socio-economic situation in the Republic of Tajikistan

According to Article 24 of the Constitution of the Republic of Tajikistan, a national citizen may freely move and chose the place of residence, leave the republic, and return to it.¹⁴² This constitutional right is also stated in several other regulatory legal acts of the Republic of Tajikistan, including in the Law On Migration of December 11, 1999 No. 881.¹⁴³ This right is exercised by citizens of the Republic of Tajikistan, including by way of migration.

In 2017, migration covered 419,751 male and 55,468 female citizens of Tajikistan. According to various estimates, external labor migration involves 30–40% of economically active and the most able-bodied citizens. Labor activities outside of the republic are mainly carried out by people aged 30–50, the share of which is approximately 60% of the total number of external migrants from Tajikistan. In terms of gender composition, the number of male migrants exceeds that of female migrants by approximately 7.5 times. However, in recent years, the share of women in the total number of labor migrants has been increasing. Thus, in early 2000s, it was approximately 5%, and in 2016 it was 15.8%. The data confirms the increased share of women in labor migration.

According to research, in 2016, 99.1% of Tajik migrants went for earning to the Russian Federation; 0.5% went to other CIS countries (mainly Kazakhstan), and 0.4% went to distant foreign countries (South Korea, UAE, US, etc.).¹⁴⁴ Due to the financial crisis in Russia, which is the main country of destination for

labor migrants, starting from 2014, the number of labor migrants from Tajikistan continuously decreases. Thus, in 2016, as compared to 2013, their number decreased by 282,400 people (35.3%); in Q1 2018, the number of labor migrants, who went to work in other countries, as compared to the same term in 2017, decreased by 3.6%.¹⁴⁵ At the same time, according to forecasts of the Population Division of the Department of Economic and Social Affairs of UN for Tajikistan, "if the level of external migration remains at the level of 2017, then, the population will decrease by 26,180 people due to migration. I.e. the total number of people leaving the country (emigrants) will exceed that of people entering the country for long-term stay (immigrants)."¹⁴⁶

According to the review of the World Bank, in 2016, Tajikistan was the leader in terms of the ratio of the amount of funds transfer to GDP of the country.¹⁴⁷ However, it was only until 2012 that money transfers from migrants constituted almost the only source of financing for their families. After the global financial crisis that also affected Russia, the level and amount of transfers dramatically decreased, and the impact of the same on GDP of the republic also dramatically decreased. While in 2012, money transfers constituted 48% of the GDP; in 2016 it was only 27.1%.¹⁴⁸ In early 2018, the situation slightly improved. According to the report of the Central Bank of the RF, in Q1 of the current year, the volume of money transfers from Russia to Tajikistan increased by 15.1% as compared to the same

term of the previous year. Citizens of Tajikistan sent home USD 487 million from Russia. In these terms, Tajikistan is the second among CIS countries after Uzbekistan, citizens of which in the said term sent home USD 726 million from Russia.¹⁴⁹

In 2017, 360,266 labor migrants returned to the Republic of Tajikistan, which is 76,708 people (17.5%) less than in 2016. In course of the interview held by the Center for Demography and Economic Sociology of the Institute for Social and Political Researches of the Russian Academy of Sciences, 48% of labor migrants from Tajikistan declared that they would like to permanently move to the RF. The chance to obtain citizenship of this country dramatically decreases the level of vulnerability of migrants, as it becomes possible for them to become civil servants or get other prestigious occupational work.

The migration situation in the country was affected by following social and economic factors. First of all, after switch to market relations, there was a depression in all areas of the economy in the Republic of Tajikistan, including employment (the low level of salaries, lack of jobs, disruption of economic relations, etc.). Second, the social tension on the labor market resulted in the outflow of able-bodied citizens from the country. This type of migration is known as forced migration and serves as a method for reducing tension in the area of employment. Third, in the 2000s, the level of poverty in Tajikistan was high. The reason for this was inadequate social

¹⁴² [Electronic resource].—Access mode: <http://www.president.tj/ru/taxonomy/term/5/112>.

¹⁴³ Akhbori Madjlisi Oli, the Republic of Tajikistan, 1999 No. 12, p. 320.

¹⁴⁴ Unified report on migration in Kyrgyz Republic, Republic of Armenia, Republic of Tajikistan, and the Russian Federation: <http://migrussia.ru/images/Edinyj-doklad-final.pdf>.

¹⁴⁵ Data of the Ministry of Labor, Migration, and Employment of the Population of the Republic of Tajikistan.

¹⁴⁶ [Electronic resource].—<http://countrymeters.info/ru/tajikistan>.

¹⁴⁷ Migration and Remittances Factbook 2016, World Bank 2nd edition.

¹⁴⁸ Data of the Institute for Economy and Demography of the Academy of Sciences of the Republic of Tajikistan. [Electronic resource].—Access mode: <https://www.vedomosti.ru/management/news/2015/06/17/596689-denezhnie-perevodi-tadzhikskih-migrantov-iz-rossii-upali-pochti-vdvoe>.

¹⁴⁹ [Electronic resource].—<https://ru.sputnik-tj.com/country/20180619/1025885575/denezhnij-perevod-russia-tajikistan-uvelichilis.html>.

and economic support by the government, and low income stratas were surviving mainly due to migration. Fourth, the high pace of growth of the population, and increased number of able-bodied citizens resulted in a deficit of jobs within the country. Fifth, a certain cult of migration was established. There were cases, when students in grades 8–9 wrote in their essays on preferred jobs that after graduation from school they will become migrants as their fathers and elder brothers.

The amount of labor immigration to the Republic of Tajikistan is insignificant as com-

pared to labor migration. Thus, in 2017, the Migration Service issued a work permit in the Republic of Tajikistan to 6,645 foreign citizens based on the established quotas.¹⁵⁰ Besides, it should be mentioned that according to the United Nations High Commissioner for Refugees, there are approximately 2,700 refugees and 400 asylum seekers in Tajikistan. The majority of them moved to Tajikistan from the adjacent Afghanistan.¹⁵¹

Thus, labor migration in the Republic of Tajikistan covers a vast portion of the population

and significantly affects the social and economic situation. Integration of the most unprotected stratas of the population covered by migration in the country, provision of support to them, and provision of access to the main social guaranties and services require profound scientific and practical research, consolidation of efforts and facilities aimed at regulation of migration processes, improvement of the national legislation as regards migrants in vulnerable situation, the state policy as regards migrants, and institutional grounds for social support to migrants in vulnerable situation.

4.2. Migrants in a vulnerable situation: problems, needs, and requirements

Labor migration remains an important factor for the economic development of the Republic of Tajikistan as well as the employment and well-being of the citizens. Funds sent by migrants are mainly used to buy food items and essentials (54%), education for children (20%), construction, repairs and purchasing of housing, vehicles, etc. (23%). Migrants note that there is almost nothing left for arrangement and development of own business (0.4%).¹⁵²

It is worth mentioning that after returning from abroad, the major problem faced by labor migrant citizens of Tajikistan is economic reintegration. During labor migration, their salary was sufficient for themselves and their families. Thus, many are disappointed, when returning home, as they have to do the same work for less money, and some of them prefer not to work at all after returning. Migrants themselves rarely perceive their psychological and social reintegration as a problem. In general, labor migrants face only slight difficulties in readjusting to their own society, as many of them were absent for a short while and periodically returned home from time to time. Regardless of ending up in labor migration, Tajik culture and society remain integral parts of their identity.¹⁵³

Following factors hinder efficient reintegration of labor migrants, including that of “prohibited” migrants and other categories of vulnerable migrants:

- Deterioration of economic condition. Migrants feel uncomfortable in unemployment. They reduce their expenses dramatically, and unfortunately this reduction primarily concerns essential items, as a result of which their families approach the poverty threshold;
- social isolation. Due to the deteriorated economic condition, migrants remove themselves from participation in celebration of marriages of their family members and friends, don't go to parties much, and avoid any type of events associated with expenses;
- deterioration of self-esteem. Comparing themselves to other more successful fellow nationals, migrants start to blame themselves in all failures and economic difficulties. If such accusations come from their wives, children or other relatives, migrants' self esteem can become extremely low.
- distancing from authorities. Being afraid of visits of law enforcement and other authorities to the place of residence or work, and sometimes facing corruption

in these authorities in the country of destination during unregulated migration, migrants no longer trust the authorities at home also. Thus, they distance themselves from the law enforcement authorities of Tajikistan, which also negatively affects their reintegration.

Studies and social polls conducted in recent years conducted by both us and other experts made it possible to reveal the following categories of migrants in vulnerable situations, and their family members:¹⁵⁴

- 1) migrants with re-entry ban
- 2) families with children abandoned by migrants
- 3) migrants with HIV/tuberculosis;
- 4) migrants who have become victims of human trafficking
- 5) refugees and asylum seekers.

4.2.1. Migrants with re-entry ban

Regardless of clear progress (expiry of the term of prohibition, early cancellation based on the results of work of an expert task force and joint commission of the Republic of Tajikistan and the Russian Federation), a vast group of migrants from Tajikistan is still prohibited

¹⁵⁰ [Electronic resource].—<https://ru.sputnik-tj.com/country/20180619/1025885575/denezhnij-perevod-russia-tajikistan-uelichilis.html>.

¹⁵¹ [Electronic resource].—Access mode: <http://ru.sputnik-tj.com/country/20170330/1021968941/oon-bezhentsy-afganistan-tadzhikistan.html>.

¹⁵² Analysis of social and economic problems of labor migrants that have returned to the Republic of Tajikistan. Dushanbe, 2018. Internet resource—<https://www.osiaf.tj/ru/2018/04/17/analiz/>

¹⁵³ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia, 2016. P. 264.

to enter the Russian Federation. In 2017, certain agreements were reached between the Russian Federation and the Republic of Tajikistan on lifting bans for citizens of the Republic of Tajikistan who have committed minor administrative violations, but no criminal offences. As a result, granting of amnesty was declared for 122,000 of “prohibited labor migrants” from Tajikistan. As of March 2018, the number of labour migrants from Tajikistan temporarily prohibited from entering the RF was 181,000.¹⁵⁵

According to studies, results of which were subsequently confirmed by us in course of oral interviews, the most vulnerable group of labor migrants in Tajikistan is the youth with re-entry ban.¹⁵⁶

The vulnerability of young male migrants largely stems from the fact that most of them have a low educational level (i.e. incomplete secondary education or secondary education), and they also lack any professional qualification. Even if they learn any profession at home, it will not always solve the problem because of the lack of necessary experience. Unemployment among the youth and lack of prospects for employment at home with decent salary, obligation to support their families, lack of housing or property, as well as prohibition from re-entering the country of destination increase the level of vulnerability of young male migrants.

Needs and requirements of migrants with re-entry ban

The research suggests that the prohibition to enter the country of destination negatively affects both migrants and their households. Migrants with re-entry ban with no stable income upon return at home become not

only more vulnerable in economic terms, but also lose their social status. All these objective factors affect their self-esteem and become a reason for self-isolation from society and unwillingness to seek help.

Prohibition for migrants to enter the country of destination, termination of funds transfer from migrants to their homes dramatically deteriorate financial condition of migrants and their families. Their income in the country of destination is hardly enough for the daily needs of their families, and it is not possible to save money or invest for the future. As a result, in 2–3 months, migrants with re-entry ban having lost their jobs, and, thus, income, become completely poor, and due to this family quarrels become more frequent.¹⁵⁷

During the course of the interview, the following story was especially impressive and told by one of the migrant with re-entry ban:

“When I was deported from Russia, it turned out that without a job and without money even my family doesn’t need me. When I was away from home, working 24 hours a day and sent almost everything I earned back home, they used to need me. But after the prohibition from entering Russia and when I was unable to find a decent job at home, I became an extra mouth to feed in the family. I am counting the hours until the prohibition is cancelled, and I go back to Russia, but this time not only to earn, but also to be far away from the family, which I have recently started hating...”

Migrants with re-entry ban indicated increasing poverty, debts, and the sense that nobody is able to help them, as everyone is facing the same situation. They were uncomfortable borrowing money from their close relatives.

As it was mentioned by migrants with re-entry ban, they were unable to find decent jobs at home; thus, there were even several instances of suicide among them.

Others willing to re-gain their status of migrant in the country of destination committed crimes: they got fake passports and went to the country of destination again. However, once they were caught with fake passports at the Dushanbe airport or in the country of destination, they lost not only the chance to get a job, but also their freedom.

Studies have revealed several difficulties faced by labor migrants. Oftentimes, job searches were conducted via state authorities and non-governmental organisations. Thus, according to the Ministry of Labor, Migration, and Employment of the Population of the Republic of Tajikistan, in 2014–2016 and Q1 2017, 1,613 out of 12,961 applicants were employed.¹⁵⁸ However, as a rule, the majority of migrants with re-entry bans tried to reintegrate via unofficial channels and searched for jobs via their neighbors, acquaintances, and relatives. In course of the poll, respondents mentioned that if they addressed their acquaintances, it was possible to get a higher salary and better working conditions. At the same time, no practical results of this strategy were brought to light by the studies, as none of the unemployed respondents was able to find a job in this way. The main type of employment offered via acquaintances was casual earning associated with renovation of flats or gathering of fruit and herbs during the harvest season.

Access to state aid measures

Problems of reintegration of labor migrants that are citizens of the Republic of Tajikistan

¹⁵⁴ From Tajikistan to Russia: Vulnerability and violation of rights of labor migrants and their families. October, 2014, No. 614 a. [Electronic resource].—Access mode: <https://www.fidh.org/IMG/pdf/russie641rus2014.pdf>; Unified report on migration in Kyrgyz Republic, Republic of Armenia, Republic of Tajikistan and the Russian Federation: <http://migrussia.ru/images/Edinyj-doklad-final.pdf>; Jamshed Kuddusov. Needs of returning migrants and their family members for services, and estimated potential of state authorities in Tajikistan to solve migrants’ problems. Dushanbe, 2016; Vulnerability of migrants and the demands of integration in Central Asia. The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia. 2016; MOM in Central Asia. Vulnerability of migrants and the demands of integration in Central Asia: assessment of needs of migrants and communities and risk management, 2017; Analysis of social and economic problems of returning labour migrants of the Republic of Tajikistan. Dushanbe, 2018. [Electronic resource].—<https://www.osiaftj.ru/2018/04/17/analiz/>.

¹⁵⁵ [Electronic resource].—Access mode: <http://avesta.tj/2018/02/06/181-tys-grazhdanam-tadzhikistana-zakryt-vezd-v-rossiyu/>.

¹⁵⁶ Study by International Organisation for Migration. Vulnerability of migrants and the demands of integration in Central Asia: Summary. 2017. P. 30–31.

¹⁵⁷ Vulnerability of migrants and the demands of integration in Central Asia: The main causes and socio-economic consequences of return migration. Regional field assessment in Central Asia, 2016. P. 136–137.

¹⁵⁸ Moensho Makhmadbekov. Situation with labor migration in the Republic of Tajikistan. Dushanbe, 2017.

who are prohibited from entering the Russian Federation for a certain time remain in the focus of the national government. In view of the current situation and in order to provide jobs for this category of citizens, by order of the Minister of Labor, Migration, and Employment of Population of the Republic of Tajikistan of April 7, 2015, a special Program was approved aimed at the employment of citizens of the Republic of Tajikistan that are labor migrants prohibited from entering the Russian Federation and other countries.

To implement the anti-crisis Program of the government of the country, an order of the Minister of Labor, Migration, and Employment of Population of the Republic of Tajikistan was signed, according to which relevant structures of Migration Service and Agency for Labor and Employment must register all applied labor migrants returning home, provide them with necessary information on employment opportunities, train in new professions, certify their professional skills, promote individual entrepreneurship.

In order to ensure reintegration of returning migrants in the republic, in 2016, over 150,000 new job opportunities were created, and 125,000 were created in 2017.¹⁵⁹ By way of implementation of the state Program for promotion of employment of the population, the ministry employed total 49,207 citizens, which is 131.1% of the annual plan of the program and is 9,867 people or 26.7% more than in the same term in 2016.

At the state level, the issues of issuing permission for re-entry of 5 categories of citizens of the Republic of Tajikistan, which were banned from entering the territory of the Russian Federation:

1. Migrants who have a residence permit, a patent, a work permit, they have committed minor offenses.
2. Those having close relatives (parents, spouse or children) that are citizens of the Russian Federation.
3. Citizens of the Republic of Tajikistan that study at universities of the Russian Federation or in educational institutions of other transit countries.

4. Citizens of the Republic of Tajikistan that need urgent medical treatment (copies of certificates, medical opinions, and referrals are required);
5. Citizens of Tajikistan that have property (real estate) within the RF. It is worth mentioning that by now, the parties have positively settled the issue as regards the permit for 140 students and 77 citizens of other categories to re-enter the Russian Federation.¹⁶⁰

4.2.2. Families with children abandoned by migrants

The problem of abandoned families of labor migrants is one of the most acute in Tajikistan.

Throughout an interview in the Ministry of Public Health and Social Protection of the country, it was mentioned that abandoned families of labor migrants are a severe modern problem. This social phenomenon is one of the negative consequences of labor migration. In several recent years, especially in connection with the global crisis, its negative consequences, and dramatic reductions in the incomes of labor migrants, the amounts of money transfers have also decreased significantly. Cases are becoming more frequent when heads of families do not support their relatives and leave them to the mercy of fate without any finances. As a result, wives and children face difficult life conditions. In fact, abandoned families of labor migrants constitute an especially vulnerable category of the population, as women in such families often have no profession or work skills and are unable to find a job due to social and cultural norms; children are primarily underage status persons, and sometimes these families also take care of their elder parents.

In some cases, young Tajik men would get married, and in few days or weeks leave their young spouses and go earn money. By way of such a marriage, they actually get a housewife for their parents and sometimes for an entire large family. As a result, relations of young wives that are alone in a new family with the husband's families become strained. In such situations, family members often call husbands

and complain about their wives (young kelins), and husbands would divorce them (talok) by phone. In a while, husbands return home to get married again, and, as a rule, would marry a girl chosen by the parents or sisters. However, soon they leave the young wives and go away. The new wife aware of the destiny of the previous one has to bear all the humiliation. Another danger relates to migrants returning with different venereal diseases or even HIV and infecting their wives.

Oftentimes, migrants find other women in the country of destination and enter a civil marriage forgetting about their official families. It should be mentioned that a certain portion of migrants never returns home. Women abandoned by labor migrants live in poverty and rarely get support from relatives. To survive, these women send their children to work. There were cases that relatives of labor migrants would initiate quarrels without any reason and kick out women, once their husbands go for labor migration and cease to maintain ties with the family. Looking at these women, it was clear that for a long time they experienced physical and emotional pain; they looked much older than their real age; they often cried and suffered from their life conditions and living conditions of their children.

Studies among women abandoned by their labor migrant husbands showed that the majority of women in focus groups are officially still married. Stories and destinies of the respondents are different, but none of them has constant connection or financial support from their husbands for a year or more, all the way up to 10–12 years. Most of the husbands who have abandoned their families initially maintained contact with their families by phone and supported them financially during their first days abroad. But with time this practice tended to cease.¹⁶¹

While problems of Tajik labor migrants are actively discussed, the destiny of their children that stay at home remains almost unattended. The first attempt to study this issue in more detail was the study of UNICEF. The report shows that due to migrant money transfer,

¹⁵⁹ [Electronic resource].—Access mode: <https://ru.sputnik-tj.com/main/20180206/1024659710/tajikistan-mintrud-rabochie-mesta.html>.

¹⁶⁰ <http://www.mehnat.tj/mehnat/?p=979&lang=ru>.

¹⁶¹ [Electronic resource].—Access mode: <http://www.ethnoinfo.ru/problemy-trudovoj-migracii-broshennye-semi>.

their children can receive education and have access to better medical services. However, this is the case for families that receive financial support regularly. In families, where there is no connection with fathers working abroad, the situation remains difficult.

The needs of families with children abandoned by migrants

Analysis showed that families with children abandoned by migrants have certain needs of financial, social, and other nature, including following: receiving of financial support, social allowances and pensions, medical aid, enrollment of children in pre-school and general education institutions, support in employment, provision of housing, support in getting land plots for housing construction, provision of microloans, etc.

Other needs of migrant families in a vulnerable situation include the need for professional legal support, including for obtaining ID documents, support in formalizing allowances and pensions by way of collection of necessary documents, provision of lawyer services, representation of family members, including children, at state authorities and institutions.

The problem of non-payment of alimony by men having abandoned their families is equally acute. Sometimes men divorce (talok) their wives by phone, without visiting the home country. Marriage is terminated through courts; however, issues of alimony, including the amount of such, remain unsettled. Oftentimes, in the absence of men, the amount of alimony is set randomly; sometimes relevant criminal cases are initiated, and men remain on the wanted list for years. However, the financial problems of abandoned wives and children cannot be solved by initiating a criminal case and putting persons obliged to pay alimony on the wanted list.

Another significant problem is child homelessness. Adjustments were introduced in the family code regulating the legal status of labor migrants' children. According to these supplements, underage status children left without due care can be sent to special child institutions until the return of their parents. Thus, the existence of the problem of child homelessness was recognized for the first time. Almost 80% of children without care have at least one parent alive, and in many cases they have both parents, while, as a rule, these are labor migrants. Some of these children are even unable to write. These are children of labour migrants, who oftentimes become beggars or abandoned children to support their families.¹⁶²

Access to state aid measures

Under the initiative of the International Organisation for Migration representative office in Tajikistan and as part of the project called Reduction of Negative Economic and Social Consequences of Labor Migration by Way of Improvement of the System for the Protection of Migrants' Children Remaining in Tajikistan, the Ministry of Public Health and Social Protection of the Population of the country studied this issue. It was determined that the majority of abandoned families of labor migrants are vulnerable and require social support by the state. In this connection, a Regulation of the Government of the Republic of Tajikistan was passed, under which the said category of citizens is included in the list of vulnerable strata of the population that require social aid.

At present, the amount of financial support is insignificant; thus, under instructions of the government of the Republic of Tajikistan the Ministry of Public Health and Social Protection of the Population prepares a state program for targeted aid to low-income families that provides for an increased amount of financial aid and more benefits.¹⁶³

At present, the provision of relevant services aimed at the social support of families with children abandoned by migrants is effected within the framework of the Procedure for Provision and Amounts of Free Social Services approved by the Regulation of the government of the Republic of Tajikistan No. 724 of December 13, 2012.¹⁶⁴ According to the said regulatory document, persons that are victims of labor or sexual exploitation, refugees, and forced migrants, as well as victims of human trafficking and families of labor migrants abandoned by husbands or left without their support are included in the List of Social Groups of Citizens of the Republic of Tajikistan That are in a Difficult Life Situation and Have the Right to Social Services. These categories of citizens are freely provided with following: social and domestic, social and medical, social and psychological, social and pedagogical, and social and legal services.

However, until now, citizens have needed to be registered at the place of residence to get access to social payments in Tajikistan. Procedure of Administering Healthcare Services to the Citizens of the Republic of Tajikistan by State Healthcare Institutions

"... the main condition for providing free health care to the population of the Republic of Tajikistan is the availability of the direction of the family doctor, the district therapist, the pediatrician, the obstetrician-gynecologist, the territorial health care institution, the conclusion of the medical control commission."

However all the said documents can only be issued at the place of registration. Without a residence permit, it is not possible to get a doctor's referral, and, thus, the access of abandoned families to public health care services is restricted, as they often live away from the place of residence registration. Such requirements also apply in the field of education.¹⁶⁵

¹⁶² Anora Sarkorova. To Russia for Work: How Families Abandoned by Tajiks Live. https://www.bbc.com/russian/international/2015/07/150724_tajikistan_migrants_children.

¹⁶³ International Organisation for Migration in Central Asia. Vulnerability of migrants and the demands of integration in Central Asia: assessment of needs of migrants and communities and risk management, 2017.

¹⁶⁴ Interview with the leading specialist of the legal department of the Ministry of Health and Social Protection of the Republic of Tajikistan F.A. Gulmamadov Dated May 26, 2018.

¹⁶⁵ An alternative NGO report on the fulfillment by the Republic of Tajikistan of the International Covenant on Economic, Social, and Cultural Rights. The 54th session of the Committee for economic, social, and cultural rights, 2015.

4.2.3. Migrants with HIV/tuberculosis

Another significant risk factor for labor migrants from Tajikistan is infection with communicable disease in host countries, including HIV, tuberculosis, etc.

Labor migration significantly deteriorates health of migrants. Compact settlement, low social and economic status, lack of proper nutrition, stress from being away from a familiar environment—all these factors increase the risk of infection with tuberculosis among Tajik migrants.¹⁶⁶ Approximately 20%, or one out of all five newly revealed persons infected with tuberculosis in Tajikistan is a labor migrant. In 2016, out of the total number of newly revealed persons infected with tuberculosis, 927 cases or 17% were that of labor migrants.¹⁶⁷ In 2016, a positive status for HIV was confirmed for 155 people tested under the code of labor migrants, which is 14.8% of the total number of all new cases detection HIV. For comparison: In 2012, HIV positive status was confirmed just for 65 labor migrants (7.7%).¹⁶⁸

Needs of migrants with HIV/tuberculosis

Tuberculosis and HIV pose a threat for health of the nation in general, and in particular constitute an obstacle for performance of migrants' labor activities in Russia. Thus, there is an acute need for more measures aimed at prevention of tuberculosis and HIV, and treatment of the same among labor migrants. However, in early 2015, financing under UN development¹⁶⁹ program was stopped for projects associated with arrangement of informational and preventive measures among labor migrants. Besides, relevant NGO activities were stopped, and state programs aimed at HIV and tuberculosis prevention are lacking targeted financing.

Access to state aid for migrants with HIV/tuberculosis

If any of these diseased is revealed among labor migrants in the Russian Federation, they are deprived of the right for legal employment. As a result, they have to return home or live and work in Russia illegally. As such, it is necessary to reinforce preventive measures in the republic aimed at the early detection of various diseases among labor migrants. At present, this is a complex task, as due to the low number of family doctors and lack of nursing staff, medical institutions are unable to serve the vast amount of labor migrants. It is necessary to develop human resources of institutions of primary medical and sanitary help, equip them with diagnostic equipment, both in towns and rural settlements. At present, the state has no resources for this; thus, it is possible to try to solve the problem by raising external support.

According to the National Program for Fighting Human Immunodeficiency Virus epidemics in the Republic of Tajikistan for 2017–2020, the government of the country supports the implementation of measures to combat HIV epidemics at the national level, mainly by way of the provision of necessary staff, paying for their labor, providing premises, recovery of operating expenses as well as partial purchasing of diagnostic test systems and medicines for treatment of opportunistic infections. Detection and treatment of persons infected with tuberculosis are implemented in accordance with the National Strategic Plan for the Tuberculosis Protection of the Population of the Republic of Tajikistan for 2015–2020.

4.2.4. Migrants who became victims of human trafficking

As a rule, the main precondition for human trafficking is unregulated migration. In the Re-

public of Tajikistan, records are being kept of crimes pertaining to human trafficking, as well as the number of victims of human trafficking. Thus, international organisations reported that in the first 11 months of 2017, law enforcement authorities of the Republic of Tajikistan initiated 22 criminal cases under Article 130.1 of the national Criminal Code. 13 additional cases were detected based on Article 132, and 10 cases were detected under Article 167.¹⁷⁰ However, the data is relative, as human trafficking is highly latent, and in view of objective and subjective factors, it is impossible to detect the actual number of crimes in this area and their victims.

According to the review of the U.S. Department of State on human trafficking in 2018, during the last 5 years, Tajikistan is a source and to a lesser extent the country of destination for men, women, and children subject to forced labor, as well as the country of origin and destination for women and children subject to sexual exploitation. Tajik men and women are subject to forced labour in agriculture and construction in Russia, UAE, Kazakhstan, and to a lesser extent in other countries of Central Asia, Turkey, and Afghanistan. The number of cases, when men are subject to labor exploitation in agriculture, construction as well as on markets in Tajikistan is increasing. Besides, notifications are received on human trafficking for sexual exploitation. Women and children from Tajikistan are subject to sexual exploitation mainly in Turkey, UAE, and Russia, as well as in Saudi Arabia, Kazakhstan, Afghanistan, and Tajikistan itself.¹⁷¹

Needs of migrants who have become victims of human trafficking

In the Republic of Tajikistan, criminal prosecution of those performing human trafficking is mainly effected on the basis of applications of victims to law enforcement authorities or

¹⁶⁶ Issues of Migrants' Access to Measures Aimed at Early Detection, Diagnostics, Prevention, and Treatment of Tuberculosis, and Tuberculosis with HIV analytical survey. [Electronic resource].—Access mode: <http://www.mednet.ru/images/stories/files/CMT/migranty.pdf>.

¹⁶⁷ [Electronic resource].—Access mode: <http://www.afew.org/ru/novosti/tajikistan-imported-diseases-ru/>.

¹⁶⁸ Interview of deputy director of the Republican Center to combat HIV/AIDS in Tajikistan, Mr. D. Saiburkhanov [Electronic resource].—Access mode: <http://www.afew.org/ru/novosti/tajikistan-imported-diseases-ru/>.

¹⁶⁹ Financing was mainly provided under the UN development program as part of financing of grants of the Global Foundation to combat HIV, tuberculosis, and malaria.

¹⁷⁰ Annual report of the US Department of State on trafficking in persons in 2018. [Electronic resource].—<https://www.golos-ameriki.ru/a/state-department-2018-trafficking-in-persons-report/4458768.html>.

¹⁷¹ Ibid.

consulate. Besides, those performing human trafficking and their victims are detected by officers of the competent authorities in the course of fulfilling their duties.

One of the main tasks of authorities and persons responsible for combating human trafficking is the provision of comprehensive support to the victims. The evidence from practice shows that victims of human trafficking require following types of support: legal support and support in the recovery and formalization of documents, including applications and notifications in connection with the crimes in the area of human trafficking; psychological and social support in order to make the victims sure to provide evidence against criminals; accompaniment and continuous contact throughout the preliminary investigation and case trial. It is also necessary to ensure the safety of victims who are in shelters of public organisations, since these organisations themselves do not have all the necessary resources and powers to take security measures; take measures to protect the privacy of victims and, above all, protect victims from unwanted and dangerous contacts with the media; to provide victims with information about the criminal process and the role of victims in the process, including information on their rights and obligations; inform the victims of the events during the investigation of the case, including the detention of suspects and the investigative actions carried out, as well as the sequence and significance of events in the courtroom, and their consequences for the victims and for the outcome of the case as a whole; to provide victims with an opportunity to express their opinion and protect their legitimate interests; to provide assistance in filing a civil suit both within the criminal case and independently; to inform and provide support directly in the courtroom; Prepare the presence of victims in the courtroom in advance.

Access to state aid measures

According to legislation of the Republic of Tajikistan, victims of human trafficking may address special state or non-governmental institutions to obtain a free minimum package of social services, including the provision of shelter, food, urgent medical, psychological, legal,

and financial support, as well as sanitary and hygienic services in the amount provided for in the legislation of the Republic of Tajikistan.¹⁷²

However, in practice, not all victims of human trafficking (VoT) receive the social support provided for in the law. First of all, this is due to the fact that VoT with a low legal consciousness and insufficient legal knowledge fail to request the necessary package of social services. Secondly, due to bureaucratic barriers, that require the collection of multiple documents and attending various instances, many VHTs are reluctant about making efforts to receive the social support provided for in the law.

Victims of human trafficking in Tajikistan can receive necessary support from civil society organisations, including Umeda NGO network within the framework of the project called Strengthening of Response Measures of the Government of the Republic of Tajikistan in the Area of Combating of Human Trafficking that is being implemented by the International Organisation for Migration with financial support of the Bureau of the U.S. Department of State for international issues of combating drugs and law enforcement activities.

There are 2 asylums for victims of human trafficking in the country—one in Dushanbe and one in the town of Buston, the Sogdii-skaya Region. At present, these asylums can fully provide necessary help to all victims of human trafficking and seeking support.

It should be noted that currently the Republic has adopted the procedure for implementing a set of measures in the referral mechanisms of victims of human trafficking. The main objectives of this document are effective enforcement of the rights of victims of human trafficking and their referral to provide them with a range of assistance and services, as well as improvement of national policies and procedures related to victims of human trafficking including regulations on residence in the country and repatriation, compensation and witness protection, development of national action plans and establishing of benchmarks for assessing the achievement of objectives.

4.2.5. Refugees and asylum seekers

According to the data of the United Nations High Commissioner for Refugees, now in Tajikistan there are about 1,700 refugees and 400 asylum seekers. The majority of them moved to Tajikistan from the adjacent Afghanistan.

Needs and requirements of refugees and asylum seekers

One of the main needs of refugees is employment. In the cities of Vakhdat, Bokhtar, Khujand and the region of Rudaki and the districts of Bobojon Gafurovsky and Jabbor Rasulovsky, a survey of 2,381 people among 437 refugee households was conducted with the support of an NGO and partners of the United Nations High Commissioner for Refugees. As a result, it was found that 143 women and 391 men were employed, and 316 women and 156 men remained unemployed. 38% of the unemployed refugees said that they can not find a job, 22% are engaged in caring for other family members, 17% do not work for health reasons, 7%—due to low payment for labor, 5%—lack of necessary skills, 1%—no work permits, the remaining 8%—other reasons for unemployment.¹⁷³

Access to state aid measures

According to Government resolution of the Republic of Tajikistan No. 599 dated December 2, 2008, the Ministry of Internal Affairs, the structure of which includes an established department for citizenship and refugee management, is the authorized agency for refugee management. The law “On Refugees” as of 2002 establishes the economical and social guarantee for protection of rights and legitimate interests of refugees and asylum seekers. In accordance with the provisions of this law, refugees use all the rights and freedoms provided for the citizens of Tajikistan, except for that as specified in the law, “limitations caused by the necessity to observe the interest of national security”. In particular, a person applying for refugee status in the Republic of Tajikistan and members of the family have the right to move freely throughout the territory of the Republic of Tajikistan, except for closed regions, cities, and districts. In Tajikistan, a list of settlements of the Republic has been adopted, where asylum seekers and refugees are

¹⁷² Annual report of the US Department of State on trafficking in persons in 2018. [Electronic resource]—<https://www.golos-ameriki.ru/a/state-department-2018-trafficking-in-persons-report/4458768.html>.

¹⁷³ <http://today.tj/tadzhikistan/1953-pomosch-afganskim-bezhencam-uvkb-oon-predstavil-v-dushanbe-novuyu-strategiyu.html>.

not permitted temporary residence. This list includes: Gorno-Badakhshan Autonomous Region (GBAO), Dushanbe, Tursunzoda, Rogun, Vahdat, Faizabad, Varzob districts, etc. (only 1 region, 24 cities and districts), which restricts their rights.

Similarly, the refugee has the right to judicial protection; education and medical air; services of an interpreter; exemption from payment of expenses related to consideration of the application for granting refugee status at all stages, and other rights.

It should be noted that according to a study of the United Nations High Commissioner for Refugees, about 87%¹⁷⁴ of the of school-aged refugee children attend public and private institutions, and 13% of the school-aged children do not attend school or leave school for various reasons.¹⁷⁵

Summary table of vulnerability factors of migrants and their families at the institutional level: Republic of Tajikistan

Category of migrant in a vulnerable situation	Signs of migrant vulnerability on the basis of vulnerable situations.	Restrictions on access to basic rights
Migrants with re-entry ban	<ul style="list-style-type: none"> Limited financial opportunities Lack of education, qualification, or profession Depressed psychological state Relatively young age of the “prohibited labor migrant” Negative migration experience Impossibility of employment in the country after returning and the “burden” of the primary breadwinner The presence of serious diseases obtained during migration, which restrict entry into destination countries The risk of criminal liability in case of a second exit for labor migration with forged documents Potential victim for recruitment by banned groups. 	<p>Restricted access to:</p> <ul style="list-style-type: none"> obtaining loans for development of income-generating activity (due to a lack of finance or the necessary information and knowledge, absence of special loans) required medical services state support program (intended for a relatively small number of returned migrants) psychological support programs (either non-existent or very insignificant) information on available rights and services
Family members (spouses and children) left by migrants (primary breadwinners) in the country of origin)	<ul style="list-style-type: none"> High level of poverty and the absence of employment possibility in rural areas No education, qualification and non-competitiveness in the domestic labor market (most often among the urban population) No employment opportunities due to the high volume of household duties: care for children and other family members (including old people, persons with physical disabilities, etc.) Depressed psychological state due to discrimination in the family of relatives of the migrant spouse High economic dependence on the family of the migrant spouse, including the absence of the right to housing A high risk of falling victim to domestic violence during the absence of a migrant spouse No officially registered marriage of a woman and the status of children (no passport, marriage certificate, or birth certificate of children) High risk of transmission of HIV and other STIs from a migrant spouse Low level of legal and health-related knowledge Abandoned children lag behind in school. Children have to work and are excluded from the learning process (child labor) Children without guardianship Children without registration Children have to migrate and can potentially work illegally in Russia (foreign citizens can work in Russia from 18 years of age) 	<p>Restricted access to:</p> <ul style="list-style-type: none"> obtaining loans for development of income-generating activity (due to a lack of finance or the necessary information and knowledge) required medical services information on available rights and services <p>Lack of:</p> <ul style="list-style-type: none"> special programs for support of such families programs/projects for psychological and social support of families

¹⁷⁴ The survey involved 2,381 persons from 437 refugee households. 435 households are represented by Afghan refugees and two households are from Pakistan.

¹⁷⁵ <http://today.tj/tadzhikistan/1953-pomosch-afganskim-bezhencam-uvkb-oon-predstavil-v-dushanbe-novuyu-strategiyu.html>.

Category of migrant in a vulnerable situation	Signs of migrant vulnerability on the basis of vulnerable situations.	Restrictions on access to basic rights
	<ul style="list-style-type: none"> Children can be stigmatized by other children (in cases where the family is abandoned by a migrant), resulting in a depressed psychological state There is a risk unlawful actions being committed against children. 	
Working migrants with HIV and tuberculosis	<ul style="list-style-type: none"> Points for category 1 High level of stigmatization in the society and in the state body system 	<ul style="list-style-type: none"> Points for category 1 <p>There are no legislative restrictions on access to labor for HIV-positive individuals, but in practice, HIV-positive migrants can not find a job if their status is known</p>
Migrants are victims of human trafficking.	<ul style="list-style-type: none"> Health problems or physical disability resulting from labor exploitation / slavery Stigmatization in the society (in case of sexual exploitation) No documents to return to the country High risk of threat to life and health security No access to basic needs (housing, food and health care) Limited financial opportunities Lack of education, qualification, or profession Depressed psychological state due to past violence or strenuous working conditions. Risk of re-victimization 	<p>Restricted access to:</p> <ul style="list-style-type: none"> legal, social, and medical aid in practice <p>Insufficient training of personnel for management of this group</p> <p>Insufficient financing of the state rehabilitation programs</p>
Refugees and asylum seekers	<ul style="list-style-type: none"> Status of refugee or asylum seekers No housing, employment 	<ul style="list-style-type: none"> Restriction of the right to labor and education, the right to travel Lack of sufficient financing via existing support programs

4.3. Review of the legal basis of access for migrants in a vulnerable situation to the main social guarantees and services in the Republic of Tajikistan

The Republic of Tajikistan ratified and signed the **ILO conventions, the main documents of the UN and also the CIS related to the protection of human rights and migration**: The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (1966)¹⁷⁶, the International Covenant on Civil and Political Rights (1966)¹⁷⁷, the United Nations Inter-

national Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)¹⁷⁸, The Convention on the Status of Refugees (1961)¹⁷⁹, the Convention on the Rights of the Child (1989)¹⁸⁰, the Convention on the Elimination of All Forms of Discrimination against Women (1979)¹⁸¹, the Convention for the Suppression of Transnational Organized Crime (2000) and its Ad-

ditional Protocol on Prevention Suppress and Punish Trafficking in Persons, Especially Women and Children (and the Protocol against the Smuggling of Migrants by Land, Sea and Air,¹⁸² ILO Convention No. 97 on Migrant Workers (1949),¹⁸³ ILO Convention No. 143 on Migrations in Abusive Conditions and on providing migrant workers with equal opportunities and treatment (1975)¹⁸⁴, ILO Convention No. 182

¹⁷⁶ Ratified on November 13, 1998, under No. 701//Akhbori Majlisi Oli of the Republic of Tajikistan, 1998, No. 23–24, Art. 323.

¹⁷⁷ Ratified on November 13, 1998, under No. 701//Akhbori Majlisi Oli of the Republic of Tajikistan, 1998, No. 23–24, Art. 323.

¹⁷⁸ Date of accession—November 28, 2001. Akhbori Majlisi Oli of the Republic of Tajikistan, 2001, No. 11, Art. 697.

¹⁷⁹ Ratified on October 12, 1992. Came into force for the Republic of Tajikistan on October 07, 1993.

¹⁸⁰ Ratified on June 26, 1993, under No. 30//Akhbori Majlisi Oli of the Republic of Tajikistan, 1993, No. 14, Art. 317.

¹⁸¹ Ratified on June 26 1993, under No. 31//Akhbori Majlisi Oli of the Republic of Tajikistan, 1993, No. 14, Art. 318.

¹⁸² Ratified on May 29, 2002, under No. 645//Akhbori Majlisi Oli of the Republic of Tajikistan, 2002, No. 5, Art. 505.

¹⁸³ Ratified on October 2, 2006, under No. 357//Akhbori Majlisi Oli of the Republic of Tajikistan, 2006, No. 10, Art. 416.

¹⁸⁴ Date of accession—October 2, 2006, under No. 358//Akhbori Majlisi Oli of the Republic of Tajikistan, 2006, No. 10, Art. 417.

on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor¹⁸⁵, as well as other international legal instruments such as the Agreement on Cooperation in the Field of Labor Migration and labour protection of migrant workers in the CIS countries by 15 April 1994; Agreement on Assistance to Refugees and Forced Migrants of 21 November 1994; Agreement of the CIS states on cooperation in combating illegal migration of March 6, 1998; Agreement on cooperation in combating trafficking in human beings, human organs and tissues dated September 4, 2006; Agreement on the formation of the Council of Heads of Migration Authorities of the CIS Member States of October 5, 2007 and the Convention on the Legal Status of Migrant Workers and Members of Their Families of the CIS Member States of November 14, 2008.

Tajikistan also signed **several bilateral agreements on the regulation** of labour migration: Agreement between the Governments of the Republic of Tajikistan and the Russian Federation On the Professional Activity and Protection of the Rights of Citizens of the Republic of Tajikistan in the Russian Federation and Citizens of the Russian Federation in the Republic of Tajikistan of October 16, 2004; Agreement between the Governments of the Republic of Tajikistan and the Kyrgyz Republic On the Professional Activity and Social Protection of Working Migrants of May 6, 1998¹⁸⁶, Agreement between the Governments of the Republic of Tajikistan and the Republic of Kazakhstan On the Professional Activity and Protection of the Rights of Working Migrants and Citizens of the Republic of Tajikistan Temporarily Working in the Republic of Kazakhstan and On the Professional Activity and Protection of Rights of Working Migrants and Citizens of the Republic of Kazakhstan Temporarily Working in the Republic of Tajikistan of May 4, 2006¹⁸⁷. The guarantees set out in these Agreements cover migrants who are legally working in the destination countries, and do not apply to migrants whose status is irregular.

An important bilateral Agreement in the

area of labour migration is the **Agreement on the Migration Rules for the Citizens of Tajikistan in the Russian Federation** signed on February 8, 2013, that regulates the obligatory migration registration of Tajikistan citizens within 15 days from the date of entry instead of the previously provisioned 7 days. Based on the **Agreement on the Migration Rules for the Citizens of the Republic of Tajikistan in the Republic of Kazakhstan and for the Citizens of the Republic of Kazakhstan in the Republic of Tajikistan**, upon entry to both countries, citizens of the countries shall not be obliged to register (registration at the place of residence) with the competent authorities within 30 calendar days from the day of entry. Registration of citizens of both countries shall be effected for a term up to 90 days from the day of crossing of the state border. Previously, the term of registration for citizens of Tajikistan in this country was 5 days, and the total duration of stay was up to 1 month.

Tajikistan is continuing to work on signing bilateral agreements with the Russian Federation in the area of labour migration as the main destination country. In 2017–2018, the governments of the countries have been negotiating the signing of the following agreements: Agreement on cooperation in the area of migration; Agreement on readmission and executive protocol on the procedure for its implementation; Agreement on the organised selection of citizens of the Republic of Tajikistan for temporary employment within the Russian Federation. If an Agreement between the Russian Federation and the Republic of Tajikistan on cooperation in the area of pension coverage is signed, all migrants who had regulated status in the RF, i.e. those, that were paying taxes and had social insurance policies, will be able to claim pensions.¹⁸⁸

According to Art. 35, 38, 39 and 41 of the **Constitution of the Republic of Tajikistan**, everyone has the right to work, choose a profession, obtain a job, labour protection and social protection from unemployment, as well as health protection, and free medical aid from the state public health institutions.

Social support in old age, in case of disease, disability, loss of earning capacity, loss of the breadwinner, and in other cases defined in the law is guaranteed to everyone. The state guarantees free basic compulsory education in state educational institutions.

The main law setting out the procedure for the exit of citizens of the Republic of Tajikistan for employment abroad and regulating the procedure for the activities of working migrants is **Law No. 882 of the Republic of Tajikistan On Migration** of December 11, 1999. At the same time, it has some drawbacks and contradictions, which directly affect labour migrants. The key provisions of the Law are blanket provisions (e.g. Art. 5, 6, 84, 9 of the Law). The Law does not cover all aspects of external labour migration. Out of 27 articles of the Law, only 5 to a certain extent pertain to external employment, including two different elements, which are labour migration abroad, and (foreign) labour migration within the country. The provisions of the Law on the protection of the rights of working migrants are mainly aimed at protecting the rights of Tajik migrants abroad, while returning labour migrants and their support are not mentioned. The Law also has several drawbacks in terms of sending working migrants to work abroad, the procedure for the exit and entry of working migrants, and the signing of labour contracts. The Law does not contain the notion of the labour migrant, vulnerable migrant, or family with children abandoned by a migrant.

In order to eliminate the said gaps, a new draft law of the Republic of Tajikistan On Labour Migration was developed. However, according to the researchers, the new draft law also has significant drawbacks, as it does not take into account the main requirements of modern life in terms of regulating the exit and return of labour migrants in the country. Proposals put forward by researchers on amending this founding act of the country are provided in the recommendations section.

Law No. 1196 of the Republic of Tajikistan On the Protection of Child's Rights of March

¹⁸⁵ Ratified on December 13, 2000, under No. 196//Akhbori Majlisi Oli of the Republic of Tajikistan, 2000, No. 12, Art. 606.

¹⁸⁶ [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?rgn=4537.

¹⁸⁷ Akhbori Majlisi Oli of the Republic of Tajikistan, 2006, No. 10, Art. 440.

¹⁸⁸ [Electronic resource].—Access mode: <http://ru.sputnik-tj.com/migration/20170817/1023088764/tajikistan-rossiya-pensiya-migranty.html>.

18, 2015¹⁸⁹, sets out state guarantees of social and legal protection for orphans and children deprived of parental care (in terms of labour, housing, health protection, education, free legal aid). The term children abandoned by migrants is not used in the list of situations pertaining to children deprived of parental care in the Law. However, it is this category of children that is becoming of increasing concern for the state authorities, and so it should be included in the list as one of the most vulnerable.

In accordance with the **Law of the Republic of Tajikistan On Enforcement Proceeding** of March 20, 2008¹⁹⁰ (Art. 421), law enforcement officials may restrict the exit of labour migrants “in case, if a debtor without good reason fails to fulfill the requirements of an enforcement document”, and a law enforcement official issues an order restricting the debtor from leaving the Republic of Tajikistan. In terms of international law (Art. 8 of the International Convention on the Protection of the Rights of Working Migrants and Their Family¹⁹¹ Members and Art. 12 of the International Covenant On Civil and Political Rights¹⁹²), the decision to restrict freedom of movement can only be made by the judicial authorities. Such a restriction significantly violates the constitutional right of citizens to freedom of movement, reduces opportunities for employment abroad, and increases the internal vulnerability of migrant.

The Law of the Republic of Tajikistan On the Pension Protection of the Citizens of the Republic of Tajikistan of June 25, 1993¹⁹³, guarantees the social protection of pensioners through the establishment of pensions at the level aligned with the minimum

subsistence level. According to the Law, pensions for citizens of the country who worked abroad shall be calculated based on the salary (income) from which social insurance payments were made. Social insurance payments made by migrants based on the said Law¹⁹⁴ and tax legislation¹⁹⁵ also constitute grounds for calculating the years of service of migrants. So the legislation sets out the guarantees and procedures as regards to pension protection for migrants, but it is not known what percentage of Tajik migrants uses these provisions of the law, and the procedure for the payment of pensions to migrants who made such payments. Besides, the issue of informing working migrants about these provisions of the law also remains unsettled. Surveys conducted showed that working migrants who are unaware of the provisions of the Law do not make social insurance payments, lose years of service and pensions, which results in their vulnerability.

Working migrants in Tajikistan who are not registered in the pension insurance system of the country may claim social pension due to old age, disability, or loss of the breadwinner. Besides, working migrants, similarly to other citizens of the country, may receive unemployment benefits. However, obtaining such compensation is hindered due to administrative barriers¹⁹⁶.

The Law of the Republic of Tajikistan On Social Service of January 5, 2008¹⁹⁷, provides clarifications as regards to the notion of a difficult life situation. This is a situation that objectively violates normal course of life of a citizen, or a situation, that they are unable to overcome independently, namely: disability; old age; disease; consequences of industrial in-

jury or occupational illness; loss of the breadwinner; loneliness, orphanage, abandonment; lack of place of residence; stable psychological dependence, consequences of violence or situations associated with a risk to life; other difficult life situations. As it can be seen from the above definition, it is not exhaustive, and does not cover the situation pertaining to the vulnerability of migrants. To provide vulnerable migrants with the necessary social services, the notion of a difficult life situation shall also include migrants in a vulnerable situation.

The Law of the Republic of Tajikistan On Targeted Social Help of February 24, 2017¹⁹⁸, is aimed at helping to alleviate difficult life situations and supporting disadvantaged citizens (families) with a minimum income below the need criterion. No state guarantees (social benefits or allowances) are provisioned for migrants in a vulnerable situation as a separate category, as the very fact of a person being in migration is not a reason to regard the citizen (family) as disadvantaged.

The Law of the Republic of Tajikistan On the Promotion of the Employment of the Population of August 1, 2003, stipulates that the state shall ensure additional guarantees to citizens requiring social protection, facing difficulties in employment, and unable to compete on the labour market as an equal. This Law contains the definition of the labour market, an important element under the conditions of labour migration. However, provisions of the Law do not contain the notions of persons requiring social protection, facing difficulties in employment, or unable to compete on the labour market as an equal. Migrants in vulnerable situations require social protection, face difficulties in employ-

¹⁸⁹ Akhbori Majlisi Oli of the Republic of Tajikistan, 2015, No. 3, Art. 218.

¹⁹⁰ Akhbori Majlisi Oli of the Republic of Tajikistan, 2008, No. 3, Art. 192.

¹⁹¹ It was ratified by Tajikistan in 2001, and came into force in 2002.

¹⁹² Tajikistan acceded to this international legal document on January 4, 1999.

¹⁹³ Paper of the Supreme Council of the Republic of Tajikistan, 1993, No. 15–16, Art. 350

¹⁹⁴ [Electronic resource].—Access mode: <http://tajmigration.ru/zakon-respubliki-tadzhikistan-o-migracii.html>.

¹⁹⁵ Tax Code of the Republic of Tajikistan of 2012, Art. 212.

¹⁹⁶ [Electronic resource].—Access mode: <http://rce.kg/2018/01/08/edinyj-doklad-po-migratsii-v-kyrgyzskoj-respublike-armeniya-respublike-tadzhikistan-i-rossijskoj-federatsii/>.

¹⁹⁷ Akhbori Majlisi Oli of the Republic of Tajikistan, 2008, No.1 Part 2, Art. 24.

¹⁹⁸ Akhbori Majlisi Oli of the Republic of Tajikistan, 2017, No.1–2, Art. 19.

ment, and are unable to compete on the labour market as an equal. So it is necessary to enable the use of the said notions in the Law, and to ensure that they cover vulnerable migrants (migrants with re-entry ban; migrants with HIV/tuberculosis; migrants who became victims of human trafficking and/or smuggling of migrants; refugees and asylum seekers).

The Law of the Republic of Tajikistan On Parents' Responsibility for the Education and Upbringing of Children of

August 2, 2011¹⁹⁹, assigns responsibility for children protection from child labour and exploitation mainly to their parents, and not authorised state officers as state agents. In this regard, it is necessary to bring Article 12 of this Law in accordance with the provisions of ILO Convention No. 182 On the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. This seems especially important on the background of the current practice in the country of sending underage status persons, mostly male, to work abroad.

The Law of the Republic of Tajikistan On Education of

July 22, 2013²⁰⁰, provides for full guarantees of the provision of all forms of education to children, including vulnerable categories of orphans, children deprived of parental care, disabled children, etc.

A more precise definition in the Law on education of the notion of migrants' children, including references to children deprived of parental care and children abandoned by migrants, will enable problems in this area to be solved more easily.

In her interview, the representative of Akh-tari Bakht NGO said, that migrants' children tend to skip school classes more often than other children, or get behind in their studies. There are children whose fathers and elder brothers are labour migrants, and mostly work in Russia. Children unconsciously try to copy them, and in senior school they prepare to work as a migrant, as they think this is the only way to ensure their wellbeing.

As male migration prevails in Tajikistan, the burden of housekeeping and all the issues associated with it, including control of school attendance by children, is borne by migrants' wives. However, teenagers tend not to listen to their mothers, and often ignore their requests to attend school. In such cases, it is often clear that the presence of the father is required. Unfortunately, in response to their demands, it is good to study in order to enter the university in the future and become highly qualified specialists, teachers not just heard from teens that their fathers with higher education did not find a job in their homeland and are now working in a foreign country with plasterers at the construction site; and that they will also go to Russia, and will work on construction, and there is no need for a diploma.

There are cases in which migrants' children fail to attend school due to financial difficulties. So various measures are being taken to return migrants' children back to school, e.g. financial support or administrative measures; corresponding reports are drawn up as regards to the mothers of such children. However, the latter measure is less effective.

The Healthcare Code of the Republic of Tajikistan of

May 30, 2017²⁰¹, sets out several notions that cover certain categories of citizens, including labour migrants in vulnerable situations. So a special group consists of persons highly vulnerable to tuberculosis: persons in contact with those infected with tuberculosis, labour migrants with HIV, women, who fail to observe frequency of delivery, children not vaccinated with Calmette bacillus, prisoners, people with diabetes and chronic lung illnesses. Vulnerable population groups, i.e. persons for whom the risk of HIV infection is higher due to unfavourable family, economic, social, cultural or labour factors, including labour migrants, prisoners, abandoned children, young people with symptoms of venereal illnesses, partners of persons using injectable drugs.

According to the **Law of the Republic of Tajikistan On Countering Human Trafficking and Administering Aid to the Victims of Human Trafficking of July 26, 2014**²⁰², victims of human trafficking shall receive free medical, legal, and other aid, as well as social protection.

In late 2016, in order to implement the provisions of this Law and protect the rights and legal interests of human trafficking victims and vulnerable migrants, as well as to effectively combat human trafficking, drafts of the following by-laws and regulatory legal acts were sent to the Government for consideration:

- Regulation of Interdepartmental Commission On Countering Human Trafficking
- Model Regulation of territorial commissions On Countering Human Trafficking
- Model Regulation of specialised governmental and non-governmental organisations On Administering Aid to the Victims of Human Trafficking
- Regulation of the State Fund On Administering Aid to the Victims of Human Trafficking
- The Rules of the Establishment of Specialised Centers for Administering Aid to the Victims of Human Trafficking
- The Rules of Identifying Victims of Human Trafficking
- Resolution of the Government of the Republic of Tajikistan On the Approval of the List of Offences Relating to Human Trafficking, etc.

The task force also prepared draft laws on amendments and supplements to certain codes (Criminal Procedural Code, Criminal Code), and other regulatory legal acts of the Republic of Tajikistan pertaining to human trafficking. The adoption of the said documents will improve the regulatory legal framework for combating human trafficking and protecting human trafficking victims and vulnerable working migrants.

The Law of the Republic of Tajikistan On Refugees of

May 10, 2002²⁰³, sets out the

¹⁹⁹ Akhbori Madjlisi Oli of the Republic of Tajikistan, 2011, No.7–8, Art. 616.

²⁰⁰ Akhbori Majlisi Oli of the Republic of Tajikistan, 2013, No. 7, Art. 532.

²⁰¹ Akhbori Majlisi Oli of the Republic of Tajikistan, 2017, No.5, Part 1, Art. 270

²⁰² Akhbori Madjlisi Oli of the Republic of Tajikistan, No. 7 (Part 1), 2014, No. 393.

²⁰³ Akhbori Majlisi Oli of the Republic of Tajikistan, 2002, No. 4, Part 1, Art. 305.

rights and obligations of persons recognised as refugees. The Law contains both multiple positive aspects and drawbacks. One of its major drawbacks is the restriction in the place

of residence of refugees according to the list of settlements defined by the Government of the Republic of Tajikistan. The Law also provides for the possibility to restrict the rights of

persons seeking asylum due to national security and other reasons, while there is no clear regulations on them, which may result in the restriction of the rights of asylum seekers.

4.4. State policy on providing support to socially vulnerable categories of the population in difficult life situations, including migrants in a vulnerable situation

At present, various aspects of labour migration are regulated by different program documents that are not always interconnected. Besides, issues such as the protection of the rights of female working migrants, families abandoned by migrants, issues pertaining to the rights of migrants' children suffering from the negative consequences of migration are not currently reflected in any program document, and so there is no integrated state policy on these issues.²⁰⁴

The National Strategy for the Development of the Republic of Tajikistan through 2030²⁰⁵ (NSR-2030) takes into account the international obligations of the Republic of Tajikistan under the Agenda for XXI Century and Goals of Sustainable Development approved by the 70th session of the General Assembly of the UN in September 2015. This National Strategy states that measures provisioned therein will be aimed, in particular, at the management of labour migration processes, optimisation of the benefits of organised labour migration, and improvement of social and legal support for labour migrants in the country and abroad. The National Strategy covers issues related to pensions for working migrants, the reduction in the number of labour migrants, the reduction in the dependence on monetary transfers from migrants, the creation of worthy employment for returning low skill migrants, the promotion of re-training of migrants, etc.

It should be mentioned that according to the National Development Strategy through 2030, the government of the country intends to diversify labour migration flows from the RF to other countries. However, until a system for pre-migration training is in place, it is unlikely that this goal will be achieved. In addition to improved professional and language training of migrants, the diversification of external labour markets requires strong and responsible private and state employment agencies.

The Mid-Term Development Programme of the Republic of Tajikistan for 2016–2020²⁰⁶ is focused on the nearest future, and states that in the area of external labour migration diversification, improvements are required in mechanisms to improve external labour migration and migration conditions by way of: the development and implementation of IT systems for interdepartmental cooperation as part of external labour migration management; improvement of the regulatory and legal system for labour migrant protection; efforts to ensure labour protection and social protection of labour migrants and their families, including through bilateral agreements on the organised temporary employment of citizens of the country and pension protection; establishment of a gender sensitive set of measures aimed at the pre-departure training of working migrants and their family members, etc.

Among other measures, the State Program for the Promotion of the Employment of the Population of the Republic of Tajikistan for 2018–2019²⁰⁷ highlights the need to support small and medium entrepreneurship in view of access and opportunities for young people and women as the most vulnerable categories; development and implementation of a set of measures to promote and establish favourable conditions for effective employment for vulnerable segments of the population; development and implementation of measures aimed at the adaptation of the activities of returning labour migrants with re-entry ban to the labour market conditions in the republic. According to the researchers, the implementation of the said measures helps to reduce the vulnerability of labour migrants.

The aim of the State Strategy for Labour Market Development in the Republic of Tajikistan through 2020²⁰⁸ is to improve the level of employment by involving able-bodied citizens, improving the entrepreneurial environment, and establishing a flexible, protected labour market accessible for everyone. One of the positive aspects of the strategy is that it defines the population group that is exposed to the risk of social isolation. These are persons who are unable to make an income, whose income is insufficient or is not regular, i.e. those seeking work, but who have an insufficient level of education, including students expelled from educational insti-

²⁰⁴ Unified report on migration in Kyrgyz Republic, Republic of Armenia, Republic of Tajikistan, and the Russian Federation: <http://migrussia.ru/images/Edinyj-doklad-final.pdf>.

²⁰⁵ Approved by Resolution No. 392 of the Government of the Republic of Tajikistan of October 1, 2016. [Electronic resource].—Access mode: <http://www.tajikngo.tj/ru/-mainmenu-1/item/3105-natsionalnaya-strategiya-razvitiya-respubliki-tadzhikistan-na-period-do-2030-goda.html>.

²⁰⁶ Approved by Resolution No. 678 of Majlisi Namoyandagon Oli of the Republic of Tajikistan of December 28, 2016. [Electronic resource].—Access mode: http://www.nbt.tj/files/program/programm_ru.pdf.

²⁰⁷ Approved by Resolution No. 499 of the Government of the Republic of Tajikistan of October 26, 2017. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?Rgn=130357.

²⁰⁸ Approved by Resolution No. 2 of the Government of the Republic of Tajikistan of June 2, 2011. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?rgn=116301.

tutions, whose skills are insufficient or whose profession is obsolete. Besides, this strategy highlights the need for reform in immigration legislation in order to find a balance between state interests, the observation of the rights of foreign citizens, the prohibition of discrimination, and efficient regulation of the labour activities of foreign citizens.

The Family Development Concept of the Republic of Tajikistan²⁰⁹ contains provisions expressing concern that one of the main reasons for child disability in 15–20% of cases pertains to viral communicable diseases (cytomegalovirus, clamidiosis, toxoplasmosis, common herpes virus, etc.) and illnesses that are more prevalent in the families of labour migrants. There are no other references to the families of labour migrants in the Concept, while the country requires a strategy that would better address issues related to families with children abandoned by migrants.

The National Strategy of Population Health of the Republic of Tajikistan for 2010–2020²¹⁰ contains the notions of a migrant and labour migration. So a migrant is a person performing geographical movement across settlements in order to change their permanent place of residence for work, studies, leisure, etc. for an unlimited or limited time (from 1 day to several years). Labour migration (workforce migration) means the movement of the able-bodied population across settlements, most of the time returning upon completion of their labour activities. It should be mentioned that this strategy classifies labour migrants and their family members as other vulnerable groups of the population, and provides for measures to protect their health and provide them with the necessary medical aid.

The National Programme for Fighting human immunodeficiency virus epidem-

ics in the Republic of Tajikistan for 2017–2020 of February 25 2017, No. 89²¹¹ contains official statistical data confirming the link between illness and migration. In 2015, the main way HIV was transferred among labour migrants was venereal—151 cases (91.5%). Official statistics in recent years show that the husband of almost every HIV positive pregnant women was previously an international labour migrant, and is also an HIV carrier. The above facts clearly demonstrate certain links between the international labour migration of the citizens of the country and an increased number of new cases of HIV in the country. This situation results in the need for the classification of international labour migrants from Tajikistan as vulnerable groups of the population, and the urgent implementation among them and their partners of the entire set of comprehensive measures aimed at the prevention of HIV, venereal infections, and tuberculosis.

National Strategic Plan for the Tuberculosis Protection of the Population of the Republic of Tajikistan for 2015–2020.²¹² Official statistics provide no information on the spread of tuberculosis among labour migrants. As it is known, a person with tuberculosis cannot obtain permits to work in the Russian Federation, so it is necessary to introduce measures aimed at preventing the spread of tuberculosis and at its treatment among labour migrants. Labour migrants face an increased risk of infection with tuberculosis due to crowded living and work conditions, as well as an increased vulnerability to HIV, lack of proper nutrition, and use of drugs. Delays in diagnosing and treating tuberculosis among migrants results from the difficulty in accessing help in the countries of stay, lack of knowledge, low level of utilisation of services, stigmatisation, and marginalisation. In the medical and sanitary services an unfriendly at-

titude to migrants does not encourage them to seek help or obtain treatment. The spread of tuberculosis among migrants negatively affects the economic situation of both migrants and their families, and the entire country, as many people become unable to work, and so monetary transfers are halted, and expenses borne by the public health system increase.

Although this National Plan acknowledges that labour migrants are vulnerable to tuberculosis, it does not contain any special measures aimed at work with labour migrants. So this group is not included in the implementation mechanism of the National Plan and corresponding coordination authorities.

The National Strategy of the Republic of Tajikistan on Countering Extremism and Terrorism for 2016–2020²¹³ contains a separate paragraph (§ 8) on work with labour migrants. As it is said in the document, labour migrants in countries of their stay are exposed to a high risk of radicalisation and involvement in extremist and terrorist organisations. In this regard, additional measures are required to sign agreements with countries of stay of migrants in order to improve the conditions of their stay, strengthen the organisational and human resource potential of consular institutions and representative offices of the migration service abroad, improve cooperation with public and human rights organisations, the Tajik diaspora, law enforcement authorities, and migration services of the countries of stay of migrants in terms of the protection of their rights and prevention of involvement in extremist groups, and the improvement of the pre-migration training of citizens.

The National Strategy for the Activation of Women's Role in the Republic of Tajikistan for 2011–2020.²¹⁴ This National Strategy identifies a number of threats against

²⁰⁹ Approved by Resolution No. 801 of the Government of the Republic of Tajikistan of December 30, 2015. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?Rgn=126050.

²¹⁰ Approved by Resolution No. 265 of the Government of the Republic of Tajikistan of August 2, 2010.

²¹¹ Approved by Resolution No. 89 of the Government of the Republic of Tajikistan of February 25, 2017. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?Rgn=128847.

²¹² [Electronic resource].—Access mode: http://afew.tj/images/files/pdf/nac.strategicheskij_plan_zashchity_naseleniya_ot_tuberkuleza_2015-2020.pdf.

²¹³ Approved by Decree No. 776 of the President of the Republic of Tajikistan of November 12, 2016. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?rgn=128036.

²¹⁴ Approved by Resolution No. 269 of the Government of the Republic of Tajikistan of May 29, 2010. [Electronic resource].—Access mode: <http://kumitaizanon.tj/index.php/ru/postanovleniya/55-o-natsionalnoj-strategii-aktivizatsii-rol-i-zhenshchin-v-respublike-tadzhikistan-na-2011-2020-gody>.

women: firstly, the risk of remaining in the poor population group. This threat mainly concerns women who are pensioners and disabled, single mothers, mothers with disabled children, and wives of labour migrants. Secondly, the weaker competitive positions of women aggravate women's positions and contribute to the growth of unemployment. Thirdly, the economic rights of men and women do not have mechanisms for their implementation because of the lack of necessary legal awareness among broad sections of the citizens of the republic. And another threat is the lack of studies and information campaigns to combat discrimination against women in employment. Although the National Strategy contains a number of progressive measures in this area, in the opinion of the researchers, it does not clearly enough address the important issues for the country concerning the feminization of labor migration and families with children left by migrants in a vulnerable situation.

One of the target groups contained in the State Youth Policy Strategy of the Republic of Tajikistan up to 2020²¹⁵ is young migrants, but it does not link it with increased risks and vulnerable situations in the course of the migration process.

The National Plan for Countering Human Trafficking in the Republic of Tajikistan for 2016–2018²¹⁶ represents another of several documents defining the objectives in regards to combating human trafficking. Pursuant to clause 34 of the National Plan, the Procedure for Implementing a Set of Measures was developed and adopted under

the mechanism for referring human trafficking victims was approved by Resolution No. 327 of the Government of the Republic of Tajikistan of July 27, 2016. According to clause 2 of the Procedure, the document contains measures to provide protection and assistance to victims of human trafficking, vulnerable migrants, and also measures such as unconditional assistance to victims of human trafficking during the observation period, the granting of a special protection status throughout the criminal investigation period, observance of anonymity, protection of personal information, etc. However, this is the only reference to vulnerable migrants, and subsequently, in the context of the Procedure, it refers only to victims of human trafficking without any other references to vulnerable migrants and family members abandoned by labour migrants.

The Human Rights Ombudsman Activity Strategy of the Republic of Tajikistan for 2016–2020 According to this Strategy, one of the priorities (priority No. 6) is to ensure the rights of labour migrants and their family members. To help protect the rights of labour migrants from Tajikistan, the authorised Commissioner signed Memorandums of Cooperation with Ombudsmen of other countries, in particular the Russian Federation, and established permanent cooperation with Tajik societies in these countries. In 2015, the HRO public reception centre in Yekaterinburg, Sverdlovsk region (Russia) was opened. The HRO will support the existing activities to protect the rights of labour migrants through the reception and consideration of citizens' applications and by monitoring the effective-

ness of programmes for reintegrating labour migrants in Tajikistan.

The authors of the study believe that in order to implement the above-mentioned priority No. 6 more fully, it is necessary to develop effective mechanisms and procedures for receiving migrants' applications in the destination countries and to promote the development of the effective reintegration programmes for labour migrants in the Republic of Tajikistan.

Children with physical disabilities were chosen as the main field to work on by the Children's Rights Ombudsman Action Strategy of the Republic of Tajikistan for 2018–2020²¹⁷. This choice was made due to the fact that children with physical disabilities are one of the most vulnerable groups in the education system. Other vulnerable categories of children, including working migrant children, in particular children of "banned" migrants and children of families abandoned by migrants, are not recognized in the Strategy. At the same time, taking into account the urgency of the problem, it is suggested to introduce the target group of working migrant children in the subsequent Strategy for the activities of the children's rights ombudsman.

So although the numerous program documents adopted in the country mention certain categories of migrants and their families in vulnerable situations, they do not provide an integrated approach to this category. This enables proposals to be made to the state to focus on these categories by including them in subsequent Programmes and Strategies.

4.5. Institutional framework for providing social support for migrants in a vulnerable situation

The institutional framework for migration in the Republic of Tajikistan is the activities of state and non-state institutions, as well as NGOs, aimed at managing migration in the republic, protecting the rights and legitimate interests of migrants, and providing them with the necessary assistance.

The **Inter-agency Commission for the Regulation of Migration Processes under the Government of the Republic of Tajikistan** (hereinafter—the Commission) is the coordinating body acting on an ongoing basis with the aim of developing and adopting appropriate decisions on migrants of all

categories, refugees and asylum-seekers. The main task of the Commission is to coordinate the activities of ministries, departments and local executive bodies of state power to manage migration processes in the Republic of Tajikistan.²¹⁸

²¹⁵ Approved by Resolution No. 480 of the Government of the Republic of Tajikistan of October 4, 2011. [Electronic resource].—Access mode: <http://mmk.tj/Government-programs/strategy/youth-policy>.

²¹⁶ Approved by Resolution No. 326 of the Government of the Republic of Tajikistan of July 27, 2016. [Electronic resource].—Access mode: http://www.adlia.tj/show_doc.fwx?rgn=127614.

²¹⁷ Approved by Order No. 149 of the Human Rights Ombudsman in the Republic of Tajikistan of October 23, 2017. [Electronic resource].—Access mode: https://vhk.tj/images/strategy/O4CR_Strategy_2018_-_2020_TAJ_RUS_ENG.pdf.

The Ministry of Health and Protection of the Population of Republic of Tajikistan is developing and implementing a unified state policy in the field of health protection and social protection of the population.²¹⁹ With the participation of representatives of the ministry at the CIS level, mechanisms for the mutual recognition of medical certificates of labour migrants by all CIS countries are currently being worked out, which will have a positive effect on migrant access to medical services.

The Ministry of Labor, Migration and Employment of Republic of Tajikistan controls and verifies the activities of individuals and legal entities in the field of labour migration, implements a number of informational and preventative measures aimed at counteracting illegal migration; ensures the protection of rights and legitimate interests of citizens of the Republic of Tajikistan who are outside the Republic of Tajikistan and who have become victims of illegal migration.

The Ministry of Education and Science of the Republic of Tajikistan is authorised to train working migrants. This activity is carried out under the National Development Strategy and is aimed at raising the professional level, legal literacy, teaching the Russian language and attracting labour migrants to working abroad.

The objectives of the **Commission on Child's Rights** are the social welfare of children who find themselves in a difficult life situation; the implementation of measures to ensure the protection of children from physical, sexual, psychological and other forms of violence, and from involving children in non-recurrent antisocial actions; participation in work to detect child abuse, unsupervised and street children, parents, guardians, trustees, adoptive parents who fail to fulfill the duties of looking after, raising and educating a child or adversely affecting his/her behavior, the registration of persons of such categories, etc.²²⁰

In accordance with Art. 11 of the Law of the Republic of Tajikistan On the Human Rights Ombudsman of the Republic of Tajikistan, **the Human Rights Ombudsman** can assist in the observance and restoration of violated human rights.²²¹ Working with labour migrants is a priority for the institution, which focuses its efforts on coordination and cooperation with the Tajik diaspora abroad, the development and dissemination of materials on the rights of labour migrants, and the dissemination of detailed information on the situation regarding the protection of the rights of working migrants in mass-media. The institution of the Ombudsman has legal reception offices in the regions of the country where working migrants can also apply for legal aid.

Despite extensive powers in the field of the protection of human rights, this institution for the protection of human rights, including the rights of working migrants, is still in its infancy. Obviously, it is necessary to strengthen the human resources capacity of this department in matters of labour migration and protection of the rights of working migrants in a vulnerable situation.

International organisations and civil society organisations

On November 29, 1994, the Republic of Tajikistan was admitted as a full member to the **International Organisation for Migration (IOM)**. The IOM supports the Government of Tajikistan, encouraging social and economic development through safe and well-managed migration procedures and providing direct assistance to returning migrants and communities affected by migration in Tajikistan. As part of its mandate, the IOM in Tajikistan leads efforts to combat illegal migration, provides a full range of legal, information and reintegration services, especially to migrants who are vulnerable or exploited. The IOM in Tajikistan is also working on public health issues, especially regarding infectious illnesses such as tuberculosis and HIV, with an emphasis on the health of working migrants and their families.

Throughout 1993–1994 in the Republic of Tajikistan their representative offices were opened: Office of the United Nations Development Program (UNDP), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the International Labor Organisation and the Organisation for Security and Cooperation in Europe, the UNDAF Framework operate to help the most vulnerable segments of the population, including vulnerable migrants.

Civil society organisations actively participate in the implementation of migration policy, contribute to the protection of rights and legitimate interests of migrants in vulnerable situations, as well as their family members.

The Open Society Institute by the Assistance Foundation in Tajikistan (Soros Foundation), facilitates the piloting of a comprehensive programme for the social and economic reintegration of returning migrants jointly with the Ministry of Labour, Migration and Employment of the Population of the Republic of Tajikistan and in consultation with international donors.

To ensure the successful reintegration of returning labour migrants into the domestic labour market, it is important to provide universal access to useful information and services. At the moment, **GIPI (Civic Internet Policy Initiative)** is developing a web platform, an interactive portal for services for labour migrants, which will include a website for providing information and other services required by a labour migrant, and a website for finding and placing vacancies. The portal is supported by mobile devices, computers, payment terminals and a call centre.

The public organisation The Centre for Innovative Development is an analytical organisation that conducts research on households of labour migrants who returned to Tajikistan. So it contributes to an understanding of the whole range of problems facing returning migrants and their families.

²¹⁸ Regulation on the Interdepartmental Commission for Migration Regulation under the Government of the Republic of Tajikistan. Approved by Government Resolution of the Republic of Tajikistan No. 462 of October 27, 1997.

²¹⁹ Regulation on the Ministry of Healthcare and Social Protection of the Republic of Tajikistan Approved by Government Resolution of the Republic of Tajikistan No. 148 of March 3, 2014.

²²⁰ Commission on Children's Rights Regulation. Approved by Government Resolution of the Republic of Tajikistan No.377 of August 1, 2008.

²²¹ Law No. 372 of the Republic of Tajikistan of March 20, 2008.

GUIDELINES FOR THE IDENTIFICATION AND REFERRAL OF MIGRANTS IN VULNERABLE SITUATIONS

Section 1. General provisions of the Guidelines for the identification and referral of migrants in vulnerable situations

1.1. Objective of the Guidelines

Every year, millions of men and women leave their homes and cross national borders in search of higher salary, better opportunities for themselves and their families, and greater security. At various stages of displacement, they may find themselves in a vulnerable position, in need of protection and assistance. Therefore, to solve the problems faced by migrants in vulnerable situations in the three countries, it is necessary to have coherence and coordination in the work of the state bodies work, non-profit and international organisations.

These Guidelines are designed to ensure effective cooperation and unity of approaches in the work of various services and agencies in the identification and referral of migrants in vulnerable situations while in the country of

destination, transit and upon return to their country of origin.

These Guidelines are based on universally recognized international human rights standards and related principles, including the principles of international labor law, refugee law, criminal law and humanitarian law. It also draws on the IOM leadership in assisting victims of human trafficking and takes into account the Principles for the Protection of the Human Rights of Migrants in Vulnerable Situations, and practical guidelines for such protection prepared by the Global Migration Group, and the²²² provisions of the New York Declaration for Refugees and Migrants in 2016²²³.

In all three countries, there are laws or delegated legislation aimed at countering human

trafficking, on matters concerning refugees and asylum seekers, instructions on working with those who seek refugee status, which have been developed or are under development, often under the auspices of the IOM, and methodical recommendations for the identification and referral of victims of human trafficking. Recognizing that refugees and asylum-seekers, as well as victims of human trafficking, are representatives of the most vulnerable migrants in national law, these Guidelines are intended to cover less visible but equally serious categories and vulnerable situations. In this study, the development of standard operating procedures for identification and referral of transit and other categories of migrants in vulnerable situations and families abandoned by migrants will be of particular interest and practical innovation.

1.2. Basic approaches and principles for ensuring the rights and lawful interests of migrants in vulnerable situations

1.2.1. Approaches of the Guidelines for Identification and Referral

The approaches that are applied to the consideration of the vulnerable situation of migrants during or after migration by different departments and organisations may be different. Accordingly, the response measures chosen by them will also differ, sometimes reflecting a departmental, profile approach. Effective resolution of the challenges faced by migrants requires a more integrated approach. As noted in Art. 22 of the New York Declaration, “We emphasize the importance of a comprehensive approach to resolving the relevant issues and will ensure that all persons arriving in our countries, and especially those who move in large groups, whether refugees

or migrants, are given a sensitive, humane, and prompt reception, which respects their dignity and gender, taking into account the interests of these people. We will also ensure the full observance and protection of their human rights and fundamental freedoms.”²²⁴

In these Guidelines, four conceptual approaches will be proposed, which are intended to be used by all state, non-profit and international organisations to ensure the rights and freedoms of migrants in vulnerable situations:

- an approach based on respect for human rights;
- a gender-sensitive approach;

- an inter-sectoral approach based on migrant needs;
- contextual approach in the concept of vulnerability.

Experts are convinced that only a synthesis of the approaches discussed below will allow laying the groundwork for creating an integrated system for the identification and referral of migrants in vulnerable situations.

An approach based on respect for human rights

The approach to addressing the vulnerability of migrants, based on respect for human

²²² Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. The 37th session, February 26—March 23, 2018. [Electronic resource].—Access mode: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/002/01/PDF/G1800201.pdf?OpenElement>.

²²³ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

²²⁴ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016, art. 22 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

rights, is designed to eliminate violations of the human rights of migrants, which are both a cause and a consequence of vulnerability.

There are two vectors in this approach. First, having rights, the migrants should have knowledge and skills for self-identification and the requirement to exercise their rights. This human rights approach assumes that any type of vulnerability arises from external factors, so its use does not lead to the stigmatization of migrants or the denial of their ability to freely make decisions.²²⁵

Secondly, the capacity of state bodies as guarantors of these rights should be strengthened so that they can identify and give aid to migrants.²²⁶ The human rights-based approach clearly regulates and requires states to enforce the rights of migrants on an equal footing with the citizens rights of the country, as well as the respective responsibilities of state and non-profit organisations that are to respect, protect and respect these rights.

The use of a rights-based approach presupposes that any actions, policies or programmes comply with international human rights standards, that services are available to migrants in a vulnerable situation, and that their quality is ensured through a referral system that includes both state bodies and non-profit and international structures.

This approach involves the implementation of a system for monitoring the implementation, accountability and responsibility of authorised persons for non-compliance with international and national standards and laws in the sphere of human rights, including migrants.

A gender-sensitive approach

This approach suggests that in practice, and sometimes at the legislative level, there are

situations of inequality in relation to men and women, and therefore special measures are needed to achieve gender equality. The New York Declaration (Article 31) states that when regulating migration flows, gender aspects should be taken into account, gender equality should be promoted, and full respect for and protection of the human rights of women and girls should be guaranteed. In addition, it is stated that “differences in the needs and opportunities of women, girls, boys and men should be taken into account and their degree of exposure to particular risks”.²²⁷

The situation of migration affects men and women in different ways, causing unequal reactions and consequences. Bodies and organizations should take into account the needs of special groups of migrants—women and girls, including those who are representatives of marginalized groups. Women in these groups may be at increased risk of violence before, during or after the migration situation and be in an especially vulnerable situation, as they are “easy prey” for aggressors, rapists and traffickers who know that these women are not capable of standing up for themselves.

The gender aspect should not be forgotten in terms of men, as labor migration in the region is connected with such problems as labor exploitation and forced labor of men, inability to find skilled work abroad for young men, increased risks of stigmatization after unsuccessful labour migration, etc.

Employees of government, non-profit and international organisations should be aware of and consider the gender component when assessing a particular situation of vulnerability, as well as demonstrate an approach to work that takes into account the consequences of gender stereotypes for migrants—men and women.

An inter-sectoral approach based on migrant needs

The approach in which migrants in a vulnerable situation are the focus of attention assumes that the staff responsible for identification and referral give priority to the rights and needs of these individuals, and ensure a qualitative detection of both the migrants themselves and their needs.

Pursuant to this approach, all bodies and organizations are to provide the necessary degree of coordination for effective identification, which is a guarantee of quality and comprehensive provision of services in the areas of social and legal protection, health care, education, etc. Given the international nature of migration, working with migrants in vulnerable situations can go beyond one state and require the creation and use of interstate identification and referral mechanisms.

Contextual approach within the concept of vulnerability

As stated in the Report of the United Nations High Commissioner for Human Rights, “... human rights are universal, inalienable, indivisible, interdependent and interrelated. The international system for the protection of human rights clearly explains that in order to exercise these rights and to observe the fundamental principle of non-discrimination, duty-bearers must take into account the unique and individual circumstances of each person.”²²⁸

The contextual approach implies that any actions or statements can be correctly understood only in a certain context that determines them.²²⁹ Moreover, actions or statements can be correlated both with the individual situation, and with a much broader context—socio-political or historically conditioned.

²²⁵ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. The 37th session, February 26—March 23, 2018. [Electronic resource].—Access mode: <https://www.ohchr.org/RU/Issues/Migration/Pages/HRC37.aspx>.

²²⁶ UNFPA2010b, UNWomenVirtualKnowledgeCentre, OHCHR/WHO.

²²⁷ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016, art. 31 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

²²⁸ Principles for the protection of the human rights of migrants in vulnerable situations and practical guidelines for such protection. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. The 37th session, February 26—March 23, 2018. [Electronic resource].—Access mode: <https://www.ohchr.org/RU/Issues/Migration/Pages/HRC37.aspx>.

²²⁹ Annis, David. 1978. “A Contextualist Theory of Epistemic Justification”, in American Philosophical Quarterly, 15: 213–219.

This contextual approach allows us to introduce a gradation of indicators of vulnerability of migrants at different levels: structural, community, household and individual. Only the consideration of all factors in the aggregate allows us to recognize as clearly as possible that a migrant is in a vulnerable situation. Also, this approach assumes that any social interventions (including changes in legislation) should be taken into account and based on the cultural and historical context in which the legal doctrine of a particular state developed.

1.2.2. Principles of the Guidelines for Identification and Referral

These principles are the starting point for the development of further actions and procedures. The principles are the legal basis on which procedures are created in order for citizens to cooperate with the authorities and the state. If standard operating procedures answer the question “how”, then the principles serve as the fundamental basis for answering the question “why or what for”.

These principles provide a common framework for the identification and referral of certain categories of migrants in vulnerable situations, including migrants affected by sexual or gender-based violence, migrants who stayed at home in extreme poverty, or who returned home and may be stigmatized, as well as those of underage status. These principles are based on international documents on human rights and the protection of migrants’ rights, and also take into account factors of vulnerability.

(a) The legal personality of a migrant in a vulnerable situation

Legal personality means the ability and the opportunity to be a party to legal relations provided for by law. International documents on human rights (Article 6 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights, Article 13 of the New York Declaration) state that every person, wherever he is, is entitled to recognition his legal personality. The main characteristics of legal

personality in the theory of law are legal capacity, mental capacity and passive dispositive capacity. And if mental capacity and passive dispositive capacity are partially dependent on the personal features of a person, his mental characteristics and age, and can be limited in legislation, then legal capacity (the ability of a person to have civil rights and civil obligations) is recognized equally for all citizens. Foreign citizens and stateless persons enjoy equal legal capacity with citizens and have the right to act in defense of their rights.

A migrant in a vulnerable situation should be recognized as legally capable by all other subjects of law, and above all by state bodies. For this, his rights should be objectively enshrined in legislation, and he should not be “forgotten” in national law.

(b) Non-discrimination

Throughout the world, there is an increase in xenophobia and racism towards refugees and migrants, which is of great concern to the international community.²³⁰ Therefore, the principle of non-discrimination is particularly relevant. The rights of a migrant in a vulnerable situation must be respected in terms of non-discrimination based on race, language or ethnic origin, sex, age, sexual orientation, religious beliefs, political views, national or social origin, membership of a national minority, property status, and exploitation or violence.

(c) Ensuring the best interests of children

In the event that a migrant in a vulnerable situation is of underage status, his interests are recognized as priorities in relation to the tasks and goals of any bodies and organizations. In Art. 32 The New York Declaration noted the need to protect the fundamental freedoms of all refugee children and migrant children, regardless of their status, especially with regard to unaccompanied children and children separated from their families.²³¹ The following guidelines are used to protect children:

- In providing assistance and protection to children, priority should be given to ensuring the best interests of the child.

- Children should be guaranteed not only the adoption of measures to protect life, but also the maximum possible development, including both mental and emotional.
- Someone of underage status, despite having a guardian assigned to him, should receive sufficient information support and the opportunity to voice his wishes, concerns, and opinions at all stages of identification and referral, given their age and degree of understanding of the situation, and the views of the child should be given due attention in accordance with his age and maturity.
- Children should be guaranteed the right to receive assistance and support in accordance with the needs of each age group and taking into account the characteristics of each child.

(d) Self-determination and informed consent

Any full-time active migrant in a vulnerable situation has the right to choose and make an independent decision regarding his life. This right extends also to full autonomy on entering into relations with specialists and ceasing cooperation with them. This principle of self-determination should always be considered by specialists, with the recognition that a migrant in a vulnerable situation is always better aware of his needs and special life circumstances.

The practical implementation of this principle is that, from the moment of interview to full restoration in society, any organization or body working with a migrant in a vulnerable situation must explain the actions and procedures before attempting to obtain consent to a proposal or action so that the migrant can understand them. The migrant should be notified of the purpose of the work, the methods used and the ways in which the information is used. Work with a migrant is allowed only after he has given informed consent to participate in it. If the migrant is unable to decide on his own participation in the work, such a decision must be made by his legal Rep-

²³⁰ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016, art. 13 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

²³¹ New York Declaration for Refugees and Migrants: adopted by the 71st session of the UN General Assembly on September 19, 2016, art. 32 [Electronic resource].—Access mode: https://www.iom.int/sites/default/files/our_work/ODG/GCM/NY_Declaration_RUS.pdf.

representatives. It is not allowed to make a referral to any organization without the informed consent of the migrant in a vulnerable situation.

Informed consent means that the migrant in a vulnerable situation is informed of their rights, the possible amount of support and the consequences for him / her and the family regarding the decision taken. Information for decision-making should be provided in a language they know, in an accessible form and be recorded in writing.

(e) Confidentiality and protection of personal data

Information on migrants in vulnerable situations, which contains the circumstances of a crime against them (for example, sexual violence) and the publication of which threatens the life or health of a migrant, family members, and also persons involved in countering a crime or providing assistance, is not subject to disclosure.

Personal information about a migrant in a vulnerable situation cannot be collected, used, transferred to third parties or processed without the written and informed consent of the migrant. A migrant in a vulnerable situation should also be informed of the possibility of accessing his data on demand. In the

process of referral, the involved bodies and organizations should be prepared to manage with a minimum of information about each migrant. All measures relating to a migrant in a vulnerable situation should be preceded by an appropriate risk assessment.

This principle is particularly important when it comes to categories such as victims of human trafficking, refugees, migrants who have suffered from sexual or gender-based violence. Disclosing the personal information of migrants or information about their situation may appear safe for some categories of migrants, while as a result thereof other categories of vulnerable migrants may end up in a situation of discrimination and stigmatization.

(f) Avoiding re-victimization

State bodies, non-profit and international organisations should avoid re-victimization, that is, when instead of assistance and referral, service officers exacerbate migrant suffering.

A migrant in a vulnerable situation can face various deprivations, abuses, and violence, both before and during and after migration. Therefore, the employees of the relevant services should support any migrant in a vulnerable situ-

ation, not judge them, especially (but not only) in a case of violence committed against a migrant. They must listen attentively, without pressure, and not force anyone to speak. Care should be taken when discussing sensitive topics through interpreters.

If a migrant violates national legislation, national law may contain provisions for exemption from liability (for example, exemption from administrative liability of victims of human trafficking), which is good practice in applying the principle of avoiding re-victimization.

(g) Individual multifaceted approach

A migrant in a vulnerable situation should be provided with one authorised specialist (or case coordinator), who is obliged to ensure the receipt of a set of quality services that contribute to his / her effective rehabilitation. The task of the specialist is to assess the possibility of access to the required services for migrants in a vulnerable situation, detection the immediate and structural obstacles, help in their elimination, establish relations with all bodies and organisations involved in the rehabilitation and reintegration process, to ensure continuity and comprehensive services based on an inter-sectoral and interdisciplinary approach.

Section 2. Standard Operating Procedures for the identification and referral of migrants in vulnerable situations in the Republic of Kazakhstan

Authorised bodies and organisations participating in implementation of standard operating procedures:

- Border Guard Service of the Committee of National Security of the Republic of Kazakhstan.
- Ministry of Internal Affairs of the Republic of Kazakhstan
- Committee of the Migration Service of the Ministry of Internal Affairs of the Republic of Kazakhstan.
- Committee on Emergency Situations of the Ministry of Internal Affairs of the Republic of Kazakhstan.
- Ministry of Education and Science of the Republic of Kazakhstan (city and regional departments).
- Ministry of Health of the Republic of Kazakhstan (medical institutions and city regional departments).
- Ministry of Labor and Social Protection of Population of the Republic of Kazakhstan (city and regional departments).
- Ministry of Foreign Affairs of the Republic of Kazakhstan.
- Local executive authorities (akimats).
- Public organisations and international organisations (IOM, UNHCR, NGO partners).

2.1. Draft Standard Operating Procedures for the detection, identification and referral of migrants in vulnerable situations in the Republic of Kazakhstan

Step 1. Detection of migrant in a vulnerable situation

1.1. Detection is the first step in the implementation of a national referral mechanism that guarantees access to aid in state, public and international organisations for vulnerable migrants.

1.2. Detection vulnerable migrants by authorised bodies may be carried out by:

- Based on application of a migrant, or other people in relation to a vulnerable migrant (migrant himself, relatives, friends, witnesses to the vulnerable situation).
- Employees of state authorised bodies, in particular employees of the Migration Service and other authorised bodies (MIA, NSC, Ministry of Foreign Affairs, Ministry of Health, Ministry of Labor and Social Protection of Population, akimats), in the course of their professional and official activities.
- Representatives of international and non-profit organisations whose activities are related to the provision of aid to migrants in vulnerable situations (IOM, UNHCR, IOM NGO partners).

1.3. Detection of a migrant by authorised employees of state bodies, non-profit and international organisations is carried out on the basis of visual characteristics of the migrant,

assessing the behavior of the migrant and his physical and mental state, which permits the assumption of the vulnerable situation; information obtained during a conversation with a migrant about his vulnerable situation or the situation of his family who is with him in Kazakhstan; and in any other ways, when the specialist has reasonable and well-founded grounds to believe that the migrant and his family members may be in a vulnerable situation.

1.4. Representatives of authorised bodies that have revealed a migrant in a vulnerable situation suggest that the migrant, with his consent, fill out the Initial Application of a migrant in a vulnerable situation (*Form 1*), which is issued in Kazakh, Russian, Tajik, Kyrgyz or Uzbek, depending on the native language of the migrant.

Step 2. Initial conversation with a migrant in a vulnerable situation

2.1. After completing the Initial Application, it is immediately transmitted to the responsible specialist of the territorial migration service. This specialist analyzes the application.

2.2. If vulnerability is not detected, the migration service specialist makes a note in the Initial Application.

2.3. If the signs of vulnerability are present, the specialist must:

- make a note in the Initial Application on the existence of vulnerability;
- immediately notify an employee of the social services or NGO partner of the IOM about the migrant so as to arrange the interviewing of the migrant;
- independently arrange an initial conversation with the migrant.

2.4. The purpose of the initial conversation is to reveal the primary needs and requirements of the migrant in a vulnerable situation. The conversation is to be conducted in accordance with ethical principles (pursuant to *Form 2*).

2.5. In case of detection an underage migrant who is unaccompanied by his parents, he must be transferred to the Center for adaptation of minors. If an unaccompanied minor is found, immediate information must be given to the guardianship agencies which are involved in the process of identification of and provision of aid to an underage migrant in order to ensure his best interests.

2.6. During the initial conversation, the migrant is asked to fill out the Application Form for Primary Aid to the Migrant and his family members in a vulnerable situation (*Form 3*). The application form for primary care is issued in Kazakh, Russian, Tajik, Kyrgyz or Uzbek, depending on the native language of the migrant.

The initial application of a migrant in a vulnerable situation

Full name

Date of birth—day, month, year

Place of Birth: country, city, district, inhabited locality

How many family members are with you in Kazakhstan?

Date of first entry into Kazakhstan and border crossing point

Passport number and date of issue, expiry date

If there is no passport, write where it was stolen, lost, taken away (who took it)

Is there an official work permit for Kazakhstan

Do you work willingly, or you are forced

Recently, unlawful acts have been committed against you (assault, theft of money, goods, violent acts of a sexual nature)

Do you have any health problems, if yes, write which

Is Kazakhstan your destination country, or are you in transit to another country

Do you want to return to your homeland, do you have money to return

Document date

Signature

Note by a specialist of the Migration Service

Presence of signs of vulnerability ☐ YES ☐ NO

Ethical principles for holding a conversation or interview with a migrant in a vulnerable situation

1. Provide security, safety and support.
2. Ensure privacy.
3. Ensure confidentiality.
4. Obtain informed consent.
5. Conduct the interview in a sensitive and tactful manner.
6. Listen actively and responsibly.
7. Watch for signs that a person needs a break in the interview process.
8. Avoid the influence of any preconceived opinion or possible prejudices.
9. Believe. Do not judge.
10. To maintain professionalism, treat people with respect and empathy.
11. Provide translation and, if necessary, psychological assistance.

2.7. The migration service specialist should assess the status of the migrant and make a decision on the need to immediately recruit other specialists. If the migration service specialist sees that the migrant needs urgent medical or psychological aid, he must immediately arrange such aid for him.

2.8. If the migrant states that unlawful acts have been committed against him in Kazakhstan, the migration service specialist should immediately inform the criminal police. Migration service specialist should be present when members of the criminal police question a migrant in a vulnerable situation and monitor all procedural actions of the police in respect of the migrant.

Step 3. Arranging the interview of a migrant in a vulnerable situation

3.1. After the migration service specialist reports on a migrant in a vulnerable situation, social workers or NGO partners of the IOM (hereinafter referred to as a social services specialist) should take all possible measures to immediately meet with the migrant and conduct interviews with him. The specialist of the migration service should render all possible assistance in organizing this interview.

3.2. Before starting the interview, the social services specialist is obliged to give the migrant the following information:

- about the interview purpose,
- on identification procedures, mechanisms for protection, social and legal aid that will be provided to a person if recognized as a migrant in a vulnerable situation.

3.3. If the migrant agrees to an interview, he must sign a notification of consent to such interview. If the migrant refuses to be interviewed, he must also sign a notification of refusal to have such interview (*Form 4*).

Step 4. Interpreting

4.1. If a migrant in a vulnerable situation does not know sufficient Kazakh or Russian, he / she must be provided with an interpreter.

4.2. When engaging an interpreter, the following criteria should be followed:

- it is preferable that the interpreter be of the same sex as the migrant;
- friends of a migrant, family members, persons seeking help with him cannot be involved as an interpreter;
- employees of the authorised body for conducting interviews cannot be involved as an interpreter;
- the interpreter must be instructed about his rights and duties during and after the interview, and must sign an agreement on the non-disclosure of information heard during the interview, since the interviewed person is guaranteed confidentiality.

Step 5. The interview

5.1. The interview is conducted pursuant to the ethical principles of interviewing (*Form 2*).

5.2. The interview should be conducted by a social services specialist indoors, preferably equipped with audio and video recording of interviews. If necessary, a psychologist and an interpreter may be present during the interview.

5.3. The interview is conducted in the form of a free conversation, during which the social services specialist, with the help of questions to be posed, establishes whether the migrant is in the vulnerable category. During the interview, the social services specialist fills out the Application (*Form 5*), in which signs of the migrant being in a vulnerable situation are recorded, or the absence thereof.

5.4. The interview should be held as soon as possible in the course of one working day. During the interview, the migrant should be allowed a break for meals and rest. It is desirable that the interview lasts no more than three hours a day. The interview should be conducted in the daytime. In emergency cases, when the position of a migrant in a vulnerable situation requires urgent intervention, an interview can be conducted at night. During an interview, a specialist can use a memo to prepare and conduct the interview (*Form 6*).

Step 6. Interviewing under arrest

6.1. If the migrant in a vulnerable situation is in custody, in the remand center of the Ministry of Internal Affairs, the NSC, the special detention centers for administratively detained persons, the request for interview is to be sent to the agencies to which these institutions are subordinated. The possibility of conducting the interview is to be discussed with the body conducting the investigation and examination of the migrant.

6.2. The interview can be conducted by the investigator / examiner, if he has the appropriate qualifications for the interview, or a social services worker with an appropriate authorisation.

Application form for primary aid for migrants and family members.

I, (Full name)

Date and place of birth

I ask for provision of primary aid (specify what—medical, social, legal)

If family members need help in primary aid, indicate the family member’s name and write what kind of help they need)

Date

Applicant’s signature

Notification of consent to participate in an interview

I, (Full name)

Date and place of birth

I agree to participate in interviewing and accepting me as a migrant in a vulnerable situation (this column is only filled if there is no possibility of interviewing all family members and it is conducted with the head of the family). I also consent to the recognition as a migrant in a vulnerable situation of members of my family

(indicate all family members who need help)

I agree to the use of my personal data obtained during the interview and their transmission to authorised bodies / organisations if this is necessary to provide aid to me and my family members.

Date

Applicant’s signature

Notification of refusal to participate in an interview

I, (Full name)

Date and place of birth

I refuse to participate in the interview, because I do not consider myself a vulnerable migrant. I made the decision myself without any pressure.

Date

Applicant’s signature

Step 7. Making a decision based on an interview

7.2. After clarification, the interviewee and the specialist shall sign the application. If necessary, the application is also to be signed by the interpreter, the psychologist, and representatives of the interviewee.

7.3. A specialist from the social services or NGO partner of IOM, together with an migration service specialist, analyzes the information obtained as a result of the interview and uses it for identification of the person as a migrant in a vulnerable situation pursuant to the identification criteria, or enter a decision that there are no signs of vulnerability.

7.4. In case of disagreement, the decision of the specialists from the social services and the migration service is made by the head of the territorial migration service.

residence permit for the migrant in a vulnerable situation and their family members for a period of 1 month with the possibility of extension.

7.6. On identification of a person as a migrant in a vulnerable situation, he is entitled to:

- obtain free legal advice;
- receive emergency medical and psychological assistance;
- continue to stay in a crisis center or a shelter if the person was previously placed in a crisis center or a shelter as a migrant in a vulnerable situation.

7.7. If the identification results do not identify the person as a migrant in a vulnerable situation, the provision of primary care and further cooperation ceases. The said person, subject to their consent, shall be redirected to non-profit organisations and international organisations to obtain additional advice.

APPLICATION for identification of a person as a vulnerable migrant	
Place of application	<input type="text"/>
Date	<input type="text"/>
Organisation	<input type="text"/>
Position, name of the expert filling in the questionnaire	<input type="text"/>
Name of the legal representative (if any)	<input type="text"/>
Language of the interview	<input type="text"/>
Name of the interpreter (if any)	<input type="text"/>
Consent to identification	<input type="text"/> signature
1. Information on the person	
1.1. Full name	<input type="text"/>
1.2. Sex (m/f)	<input type="text"/>
1.3. Date and place of birth	<input type="text"/>
1.4. Citizenship	<input type="text"/>

1.5. Level of education

primary / secondary general education / primary vocational / secondary vocational / higher professional (graduated / unfinished)

additional (specify)

1.6. Place of residence, telephone for communication (if any)

1.7. Personal documents available (if any)

2. Vulnerability assessment should be carried out in the situation / category of

☐ Migrant in the country of destination / employment

☐ Migrant in transit

3. Assessment of individual vulnerability indicators

No	Indicator	+/-
3.1	Age of the person	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2	Level of professional training and work experience: <ul style="list-style-type: none">no professionno work experienceprofession is not relevant for employment in the country of origin / does not permit the subsistence level of earningsprofession is not relevant for employment in the country of destination / does not permit the subsistence level of earnings	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
3.3	Level of legal literacy: <ul style="list-style-type: none">unaware of the basic rules of legal employment in the country of destinationspontaneous exit	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
3.4	Migration experience: <ul style="list-style-type: none">lack of experience in migrationan intermediary without the right to facilitate employment abroadprohibition to enter the RFarrests / problems with migration law in the past	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
3.5	Level of health: <ul style="list-style-type: none">HIV infectionvenereal diseasestuberculosispresence of hepatitis B and Cviral hepatitisalcohol or drug addictionother (physical disability, pregnancy)	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>

Nº	Indicator	+/-
3.6	Economic factors: <ul style="list-style-type: none"> • inability to cover personal needs with job incomes • inability to send part of earnings to relatives • lack of housing / shelter • lack of regular income • lack of money to go back home 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.7	Factor of violence: <ul style="list-style-type: none"> • involvement in labour exploitation • involvement in sexual exploitation • physical violence • domestic violence 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.8	Legal status: <ul style="list-style-type: none"> • lack of ID documents or obsolete ID documents • lack of registration/residence permit • lack of labour agreement or other documents required for legal employment in the country. 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

4. Assessment of family and domestic indicators of vulnerability

Nº	Indicator	+/-
4.1	Status of vulnerable migrant in the family: <ul style="list-style-type: none"> • sole breadwinner • dependent (please indicate the name) • able-bodied adult family member 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.2	Prohibition to exit from the country: <ul style="list-style-type: none"> • for the only primary breadwinner • for two or more family breadwinners 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.3	Facts of violence and discrimination in the family: <ul style="list-style-type: none"> • domestic violence • gender discrimination • social discrimination 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.4	Lack of supporting relatives: <ul style="list-style-type: none"> • in the country of destination • in the transit country • in the country of origin 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.5	Assessment of financial condition: <ul style="list-style-type: none"> • inability to cover family needs with incomes • a low-income family with a large number of dependents (persons of underage status, elderly parents, LBOs (persons with disabilities)) • debts in the home country 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

5. Assessment of vulnerability indicators associated with the community

Nº	Indicator	+/-
5.1	Lack of social (cultural) connections and support in the community/diaspora: <ul style="list-style-type: none"> • destination country • transit country • country of origin 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.2	Presence in the community of the following: <ul style="list-style-type: none"> • sexual/gender discrimination • ethnic discrimination • social marginalisation 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.3	Lack of the possibility to get a job locally in their own region <ul style="list-style-type: none"> • prior to exit • upon returning 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.4	Traditional multiple expensive cultural celebrations in the community	<input type="checkbox"/> YES <input type="checkbox"/> NO
5.5	Living in an environmentally unfavourable area (region)	<input type="checkbox"/> YES <input type="checkbox"/> NO

6. Situational factors of vulnerability

Nº	Indicator	+/-
6.1	Leaving children in the country of destination in case of prohibition against entering the country	<input type="checkbox"/> YES <input type="checkbox"/> NO
6.2	Presence of dependents in the country of destination (specify how many)	<input type="checkbox"/> YES <input type="checkbox"/> NO
6.3	Transit corridor in the cold season	<input type="checkbox"/> YES <input type="checkbox"/> NO
6.4	Other	<input type="checkbox"/> YES <input type="checkbox"/> NO

Form 6

Instructions for preparing and conducting interviews

1. Conditions for conducting interviews

- 1.1. The interview should be conducted in an isolated room.
- 1.2. Persons allowed to attend interviews: a migrant in a vulnerable situation, an interviewer, an interpreter (if necessary), a qualified specialist who provides support, for example, a consulting lawyer or psychologist (if necessary).
- 1.3. If there are grounds for providing an interpreter for the interview, one must be provided.
- 1.4. Mobile phones shall be switched off.
- 1.5. During the interview, the door should be closed, but not locked, and it is desirable that the door has a “Do not disturb” sign. The specialist who conducts the interview must be in the room with his back to the entrance door.
- 1.6. If there is no closed secluded place, the specialist should try to find as solitary a place as possible in which to conduct the interview.
- 1.7. The specialist should avoid interviewing in a categorical manner or in the form of an interrogation.
- 1.8. The specialist should try to establish contact with the person, give him / her a feeling that he / she is respected and that his / her words are believed.

2. Start of the interview

- 2.1. The specialist should introduce himself to the person, describe his role in the organisation, and also the role of the organisation in providing assistance to the person.

- 2.2. The specialist should make sure that the person feels safe and comfortable.
- 2.3. The specialist should know whether the person is suffering from pain or discomfort, and whether he / she has problems requiring medical aid. If a person reports that he / she has an urgent medical problem, the interview cannot be started until a doctor comes and conducts an examination.
- 2.4. The specialist should explain that the interview can include questions about the history of what happened to him (her), and that some topics might be upsetting, cause pain, or evoke distressing memories.
- 2.5. The specialist should also explain that the migrant can think before answering questions and can take a break at any time if necessary.

3. Explaining the purpose of the interview

- 3.1. The expert is to explain that the more information is given, the more qualitative assistance will be provided by the organisation. Explain any restrictions on the assistance that an organisation can provide, for example, if assistance is provided only to victims of human trafficking, irregular migrants, children, etc.
- 3.2. The specialist should explain that if the organisation is unable to provide direct aid, since it does not have sufficient qualifications, it will try to help and identify a qualified group or person who can provide assistance.

4. Concluding moments before the interview begins

- 4.1. The specialist should make sure before the interview begins that he:
 - informed the person that all answers will be kept in the strictest secrecy;
 - explained to the person that at any time he (she) can ask questions or demand clarification or repetition of what has already been explained or stated;
 - that the person clearly understood everything that he (she) was explained;
 - asked the person whether he / she has questions at this stage and whether he (she) agrees to participate in this interview.
- 4.2. An interview with a person of underage status is to be conducted in the presence of his parents, a guardian or an authorised representative of the guardianship authority, whose presence is necessary to ensure the best interests of such person.
- 4.3. If a person of underage status has suffered from sexual exploitation, the interview should be carried out, where possible, by an employee who has been specially trained to minimize negative consequences for the child's health and psyche. If possible, especially in cases of sexual violence, victims of underage status should be interviewed by specialists of the same sex. During the interview questions should be asked taking into account the age and mental abilities of the child, and vocabulary understood by the child should be used.

Step 8. Needs Assessment

8.1. Within one day after the adoption of a positive identification decision, a specialist from social services or an NGO partner of IOM is required to perform a full assessment of the needs of the migrant and his family members (if required).

8.2. If the migrant is in custody, the specialist shall send a request for permission to meet with the migrant to the authorised body. In this case, the meeting with the migrant must take place within one day from the moment of receiving permission for the meeting.

8.3. When assessing the needs of a vulnerable migrant, the specialist is required to explain the goals and principles of the assessment to the vulnerable migrant. The needs assessment includes an assessment of the social, medical, psychological, educational, legal and other needs of the migrant.

8.4. When assessing the needs of a migrant of underage status, his legal representatives must be present.

8.5. After completing the assessment form and its signing by all interested parties, a plan for individual aid to the vulnerable migrant is to be developed. This plan should contain a complete list of state and non-profit organisations that can help in resolving the situation.

Step 9. Referral of migrant and his family members in a vulnerable situation

9.1. A specialist from social services or an NGO partner of IOM redirects the migrant in a vulnerable situation for the aid and rehabilitation that he / she needs.

9.2. A specialist from social services should inform the migrant in a vulnerable situation about the possibility of sending him to authorised state bodies or other organisations to resolve his problems. The specialist should provide the vulnerable migrant with a list of state bodies, international and non-profit organisations that can help with his problem. The list should include contact data of specialists of authorised bodies, types of assistance that they can provide, and addresses.

9.3. State authorities, organisations and other institutions that can provide assistance and rehabilitation are:

- bodies of the Ministry of Internal Affairs;
- social services;
- employment services;
- medical institutions for the provision of medical aid;
- crisis centers and social help centers to provide short-term and long-term assistance;
- asylums providing services of temporary housing;
- national human rights institutions;
- local authorities (akimats);
- non-profit organisation;
- international organisations

9.4. Before the actual referral, the social services specialist should discuss with the migrant the options for providing information on his case, as well as the principles of confidentiality.

Step 10. Coordination of referral

10.1. The social services specialist should coordinate the partnership between persons, bodies, organisations and institutions responsible for the execution of the individual work plan.

10.2. The social services specialist or an NGO partner of IOM, with the consent of the migrant, should contact the responsible employee in the organisation where the migrant is being redirected and negotiate all the opportunities for migrant referral. The specialist must find out the exact terms of the migrant's admission.

10.3. Depending on the situation, the vulnerable migrant can independently move to the referral organisation, and if necessary he can be provided with transport (if there is a fear that a vulnerable migrant can not independently reach his destination or the destination is too far).

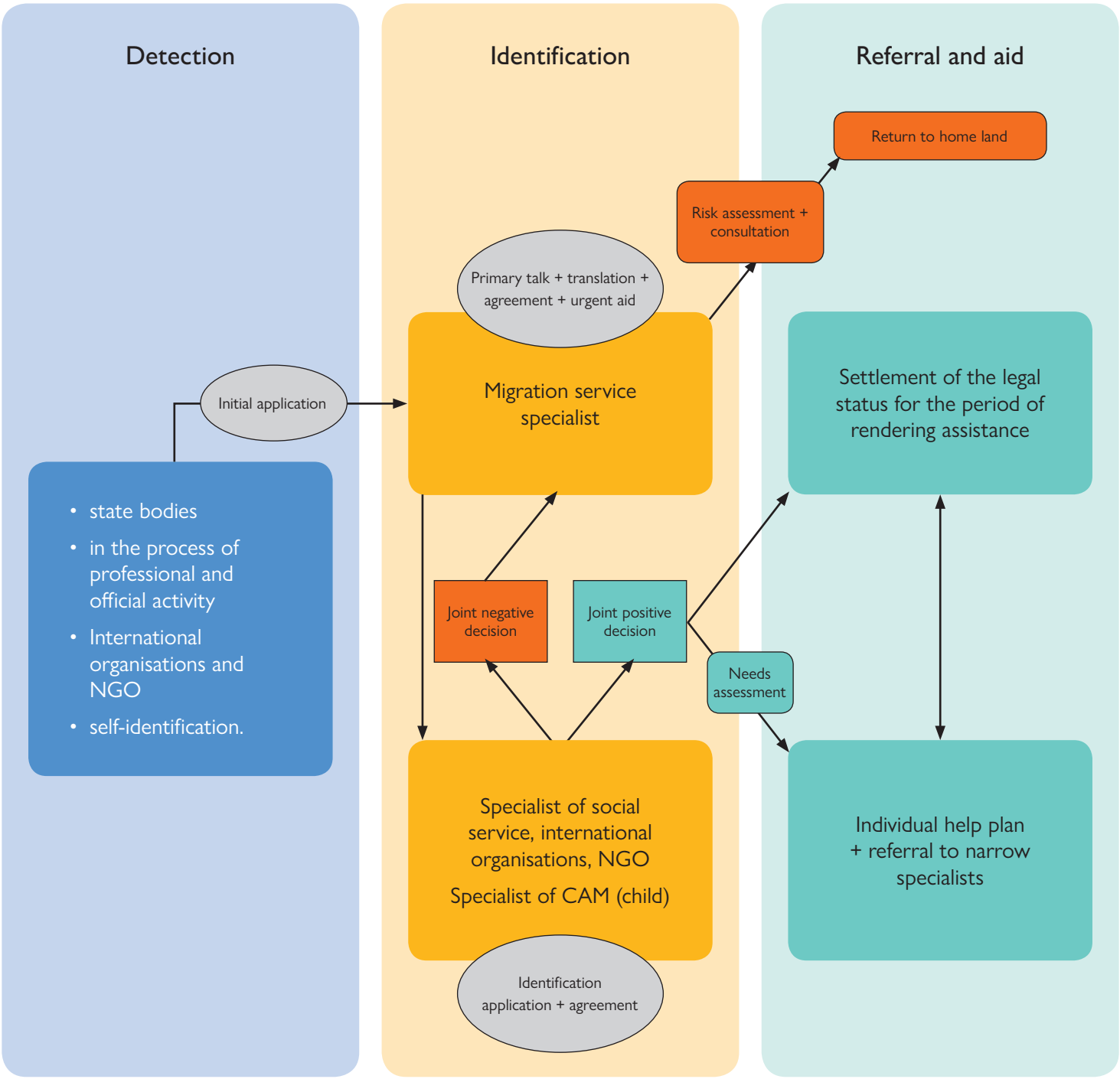
Step 11. Monitoring

11.1. At the end of the first month of assistance, an evaluation of implementation of the plan is carried out and, upon the proposal of the social services, the migration service

officer shall decide on the extension of the term of stay in Kazakhstan or the end of this period (with the corresponding decision on the end of aid provision).

11.2. In the case of extension of the aid provision and the duration of stay in Kazakhstan, the authorised specialist of the migration service and the social services specialist will subsequently regularly monitor the work plan with the vulnerable migrant, at least 2 months in advance.

Draft Standard Operating Procedures for the Detection, Identification and Referral of Migrants in Vulnerable Situations in the Republic of Kazakhstan



Step 1. Detection of a transit migrant

1.1. 1.1. The detection of a transit migrant can occur at the time of his request for aid to state bodies, non-governmental organisations, international organisations, as well as in case of an emergency situation (an accident with a transit bus, emergency medical aid, crimes committed against a transit migrant, etc.).

Step 2. Action on a transit migrant

2.1. If a transit migrant seeks help because he was not admitted to the territory of the destination country, it is necessary to find out the reason for the non-admission. A migrant with such a request is transferred to a specialist of the migration service.

2.2. After finding out the reason for the non-admission of the migrant to the country of destination, the migration service specialist decides on further actions.

2.3. If the migrant declares that he does not want to return to the country of origin because of the threat to his life and safety, the migration service specialist should explain to the migrant the possibilities of the asylum procedure in the Republic of Kazakhstan.

2.4. After explaining the procedure, the migration service specialist should report the migrant to the migration service staff involved in asylum issues.

2.5. If a transit migrant states that illegal actions have been committed against him in the country of transit, the migration service specialist should immediately inform the criminal police officers about this.

2.6. The migration service specialist should be present when a criminal migrant police interrogates a transit migrant and subsequently supervise all police procedural actions regarding the

transit migrant. All actions are carried out only with the consent of the transit migrant.

2.7. If the police finds grounds for instituting criminal or administrative proceedings against the application form of a transit migrant, the issue of providing protection and placement of a transit migrant for the proceedings duration should be resolved.

2.8. A transit migrant can be placed in a shelter or rehabilitation center.

2.9. If a transit migrant needs urgent medical aid, the issue of placing such transit migrant in a medical institution is immediately resolved.

2.10. After completion of all the procedures for providing urgent aid to the transit migrant, the question of his voluntary return to the country of origin should be resolved.

Step 3. Decision on voluntary return

3.1. The return of a migrant to the country of origin can take the form of voluntary return.

3.2. If a migrant commits a crime, an administrative offense, or if there are no legal grounds for exempting from administrative liability, deportation or expulsion by the police is used.

3.3. The main objective of the organisation of the voluntary return process is to ensure that the migrant is not re-subjected to exploitation, repeated situations or violence, and that on arrival he can have access to the necessary to him (her) services in the sphere of public health, jurisprudence, social protection, etc. in the place of permanent residence.

Step 4. Return coordination

4.1. The organisation of a voluntary return of a migrant is possible only after a mandatory

assessment of the level of risk. If possible, an IOM specialist is invited to assist in the voluntary return procedure.

4.2. The risk assessment is to be carried out by the migration service specialist in conjunction with the IOM specialist and the migrant himself.

4.3. The employee of the migration service must notify the Ministry of Foreign Affairs and the Ministry of Internal Affairs about the results of the assessment within 3 days. In the event that the risk assessment is completed and the return is safe, a voluntary return is made.

4.4. In the case of a migrant completing a voluntary return procedure, namely:

- provision with proper documents, tickets and visas,
- establishing contacts with the host country,
- search for their family,
- directly sending a migrant to the country of origin,

the specialist of the migration service meets with the representative of the International Organisation for Migration.

4.5. In case of return to the country of a minor, consent of the representatives of the minor to the return of children must be obtained.

4.6. Financing of the voluntary return of a migrant can be carried out on agreement with the migrant himself. If the migrant is not able to pay for his return, the return can be financed from the republican budget or from IOM and partner organisations (with their consent). Also, the embassy of the country of which the migrant has citizenship, national cultural centers and community organizations should be involved in financing the return of the migrant.

Section 3. Standard Operating Procedures for the detection, identification and referral of migrants in vulnerable situations in the Kyrgyz Republic

3.1. Draft Standard Operating Procedures for the detection, identification and referral of migrants in a vulnerable situation

1. General Provisions

1. Standard operating procedure aimed at the detection and identification of a migrant and his family members in a vulnerable situation is based on the following principles:

- protection of human rights and freedoms which provides for the respect of human rights by subjects involved in identifying migrants and their family members in a vulnerable situation;
- voluntariness providing for respect of migrants and their family members in ruling on the need to provide them with help;
- individual approach which takes into account the individual needs of the migrant and his family members in a vulnerable situation;
- confidentiality which presumes non-disclosure of information received about the migrants and their family members in a vulnerable situation;
- access to information as regards to provision of social and other services.

2. During the detection and identification of migrant and their family members in a vulnerable situation, it is worth noting that work with certain categories of children and families in a difficult life situation, which may include categories of migrants considered herein, is regulated by the Regulation on the Procedure for Detection of Children and Families in a Difficult Life Situation approved by regulation of the government of the Kyrgyz Republic of June 22, 2015 No. 391.

2. Measures aimed at detection and identification

Step 1. Detection of migrant in a vulnerable situation

1.1. Detection of migrant in a vulnerable situation can be carried out by:

- employees of competent state authorities, local state administrations, local self-government authorities in the course of their work;
- representatives of non-profit and international organisations in the course of

their operations associated with providing help and protection to migrants in a vulnerable situation;

- representatives of communities and organizations of migrants;
- representatives of national law enforcement institutions;
- relatives or other persons.

1.2. Detection of migrant in a vulnerable situation can be carried out via:

- oral or written application of a person, their relatives or other persons via a hot line or trust line;
- obtaining of information from media;
- arrangement of events of public importance (campaigns, meetings with population);
- household visits;
- assessment of person's behavior and their physical and mental condition;
- analysis of situation, to which the person was subject;
- obtaining of information from other persons;
- independent application of a person requiring social services.

1.3. Families with children abandoned by migrants, and children of migrants deprived of parental care (one or both parents), except for the subjects indicated in clause 1.1, are revealed by a competent authority for child protection as well as non-profit organizations providing social services to families and children in a difficult life situation.

1.4. Upon detection of a minor in a vulnerable situation, the subject of identification takes immediate measures to notify the competent state authority for protection of the rights and interests of children.

Step 2. Preparation to interview for identification of a person as a vulnerable migrant

2.1. The conditions of a vulnerable situation in which the migrant finds himself are clarified by an expert during an interview.

2.2. Interview with a person, who supposed to be a migrant in a vulnerable situation, should be based on respect of this person's rights should be held in compliance with the basic rules of ethics provided for in legislation.

2.3. The expert holding the interview should ensure following:

- 1) introduce yourself to the person;
- 2) provide brief information on the role or organization providing help;
- 3) describe his position in the organization;
- 4) provide the person with information as regards to the following: goals of the interview intended to reveal the urgent and long-term needs of the person in order to plan and arrange necessary help; the identification procedure; mechanisms for provision of social help in the event that the person is identified as a migrant in a vulnerable situation.
- 5) explain that the interview may include questions pertaining to what they were exposed to and that some topics may upset them or bring up difficult memories;
- 6) notify the person that they can think before answering the questions and can take a break at any point, if necessary;
- 7) explain that the more information the individual can provide, the better the help that the state can provide;
- 8) outline all restrictions to help that the organization can provide, e.g. if help is only provided to children, illegal migrants or other target groups;
- 9) notify the person that any private information as well as other information obtained in course of the interview will be kept confidential;
- 10) ensure that the person has clearly understood everything that was explained; ask the person whether they consent to take part in the interview.

2.4. If a person agrees to take part in identification as a migrant in a vulnerable situation, a declaration of informed consent should be signed to undergo identification under [form 1](#).

2.5. If a person refuses to undergo identification as a vulnerable migrant, a declaration of refusal should be signed to undergo identification under [form 2](#).

Step 3. Interview for the identification of a person as a migrant in a vulnerable situation

3.1. Expert effects identification of a person as a migrant in a vulnerable situation in form of an interview.

3.2. The interview should take place in the form of a conversation, in the course of which the expert should pose questions in order to identify the person as a migrant in a vulnerable situation. The questions should be simple, understandable, and precise. It is necessary to avoid legal and other professional terminology.

3.3. The interviews should be held in a closed private room, where no other persons could accidentally hear or interrupt the person talking. The interview room should be enclosed, and a “Don’t Disturb” or equivalent sign

Form 1

NOTIFICATION

of informed consent to undergo identification as a migrant in a vulnerable situation

I, (Full name)

voluntarily agree to undergo procedure of identification as a migrant in a vulnerable situation.

I hereby confirm that:

1) I was (a) informed of the procedures for identification and its consequences, and

2) I accept the conditions under which identification will be carried out.

I understand that my personal information is necessary to provide me with necessary help. I have been notified on the importance of and need for the collection of personal information and hereby authorize

(name of the expert, position, organization)

to collect and use my personal data in order to provide me with help.

I declare that all information provided is reliable and conforms with my witness.

I understand that providing unreliable information will result in suspension of provision of help.

Applicant’s signature

Date

Expert’s signature

Date

Form 2

NOTIFICATION

of refusal to undergo identification as a vulnerable migrant

I, (Full name)

voluntarily refuse to undergo procedure of identification as a migrant in a vulnerable situation. I hereby also confirm that I was informed of the procedures of identification and consequences of such.

Applicant’s signature

Date

Expert’s signature

Date

74 |

GUIDELINES FOR THE IDENTIFICATION AND REFERRAL OF MIGRANTS AND THEIR FAMILY MEMBERS IN VULNERABLE SITUATIONS

should be hung on the door. It is vital that the person feel comfortable in the room. During the interview, the presence of third parties is prohibited, except for cases, when the person themselves insist on their presence.

3.4. If there is no closed private room, the interviewer should find the most private place, where nobody can overhear the interview.

3.5. Mobile phones should be switched off.

3.6. Persons allowed to attend interviews: interpreter (if necessary), qualified supporting expert, e.g. legal consultant or psychologist (if necessary).

3.7. If there are any doubts as regards the person's ability to understand the language of interview, measures should be taken to provide the services of an interpreter.

3.8. If possible, the interview should be held by a trained expert of the same gender as the person being identified.

3.9. Interviews with underage status persons deprived of parental care should be held in the presence of a representative of the tutorship and guardianship authority, whose participation is required in order to ensure the best interests of the minor persons. During the interview, further participation of the competent state authority for protecting children rights in order to implement measures aimed at the rehabilitation and reintegration of the underage status persons is also being discussed.

3.10. In the course of interviews with underage status persons, age-appropriate questions should be posed. The goal of interviews with underage status persons should be to collect biographical information and information on the social history, namely age, citizenship, presence of parents or tutors, and their location.

3.11. Information contained in questionnaire should not be disclosed. Disclosure of information contained in the application is only possible with the consent of the vulnerable person.

Step 4. Identification of a person as a migrant in a vulnerable situation

4.1. Identification of a person as a migrant in a vulnerable situation should be carried out in order to provide this person with relevant services aimed at overcoming the vulnerable situation.

4.2. In the course of the interview, the expert should complete a questionnaire for identification of a migrant in a vulnerable situation under [form 3](#).

4.3. The application must be completed in the presence of the migrant in a vulnerable situation.

4.4. In case of interviews with family members, the expert should complete the application for identification of a family with children abandoned by migrant under [form 4](#).

4.5. Information contained in questionnaire should not be disclosed. Disclosure of information contained in the questionnaire should only be possible, subject to consent of the migrant in a vulnerable situation.

4.6. Based on the results of the interview, the expert:

- 1) should analyze the data received based on the information received;
- 2) should discuss the possibility of referring the migrant in a vulnerable situation to special services in order for him to receive relevant help, if the person is identified as a migrant in a vulnerable situation.

4.7. Identification of minor should be carried out by a competent state authority in the area of children rights protection in the presence of a psychologist, parents, or tutors of the underage status person.

4.8. If the minor refuses to undergo identification in the presence of parents or those having custody, the interview should be held without their presence. If it is impossible for the parents or those having custody to be present at the time of identification, the interview should be held by a competent state authority in the area of children rights protection in presence of a psychologist.

4.9. All actions conducted in relation to a underage status person should comply with the requirements of national legislation on children, and international treaties.

4.10. In the event that the results of identification do not classify the person as a migrant in a vulnerable situation, the provision of primary help and further cooperation are terminated. Upon the consent of the individual concerned, he is referred to non-profit and international organisations to obtain additional consultations.

4.11. In the event of disputable issues, the assumed migrant in a vulnerable situation may address a competent authority responsible for the relevant area with an oral or written claim. Written claims are submitted in free form and should contain the name of the applicant, his residential address, phone number, essence of the claim, signature, and date.

4.12. Claims and complaints are considered under the procedure set out in the legislation of the Kyrgyz Republic. In case, if a decision on the claim is not satisfactory, the applicant may appeal the competent authority's decision according to the established procedure.

APPLICATION
for identification of a person as a vulnerable migrant

Place of application

Date

Organisation

Position, name of the expert filling in the questionnaire

Name of the legal representative (if any)

Language of the interview

Name of the interpreter (if any)

Consent to identification

signature

1. Information on the person

1.1. Full name

1.2. Sex (m/f)

1.3. Date and place of birth

1.4. Citizenship

1.5. Level of education

primary / secondary general education / primary vocational / secondary vocational / higher professional (graduated / unfinished)

additional (specify)

1.6. Place of residence, telephone for communication (if any)

1.7. Personal documents available (if any)

2. Vulnerability assessment should be carried out in the situation/category of

☐

Migrant upon returning to the country of origin

3. Assessment of individual vulnerability indicators

No	Indicator	+/-
3.1	Age of the person	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2	Level of professional training and work experience: <ul style="list-style-type: none">no professionno work experienceprofession is not relevant for employment in the country of origin / does not permit the subsistence level of earningsprofession is not relevant for employment in the country of destination / does not permit the subsistence level of earnings	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>

No	Indicator	+/-
3.3	Level of legal literacy: <ul style="list-style-type: none"> unaware of the basic rules of legal employment in the country of destination spontaneous exit 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4	Migration experience: <ul style="list-style-type: none"> lack of experience in migration an intermediary without the right to facilitate employment abroad prohibition to enter the RF arrests / problems with migration law in the past 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.5	Level of health: <ul style="list-style-type: none"> HIV infection venereal diseases tuberculosis viral hepatitis alcohol or drug addiction other (physical disability, pregnancy) 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.6	Economic factors: <ul style="list-style-type: none"> inability to cover personal needs with job incomes inability to send part of earnings to relatives lack of housing / shelter lack of regular income lack of money to go back home 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.7	Factor of violence: <ul style="list-style-type: none"> involvement in labour exploitation involvement in sexual exploitation domestic violence 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.8	Legal status: <ul style="list-style-type: none"> lack of ID documents or obsolete ID documents lack of registration/residence permit lack of labour agreement or other documents required for legal employment in the country. 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

4. Assessment of family and domestic indicators of vulnerability

No	Indicator	+/-
4.1	Status of vulnerable migrant in the family: <ul style="list-style-type: none"> sole breadwinner dependent (please indicate the name) able-bodied adult family member 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.2	Prohibition to exit from the country: <ul style="list-style-type: none"> for the only primary breadwinner for two or more family breadwinners 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.3	Facts of violence and discrimination in the family: <ul style="list-style-type: none"> domestic violence gender discrimination social discrimination 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

Nº	Indicator	+/-
4.4	Lack of supporting relatives: <ul style="list-style-type: none"> • in the country of destination • in the transit country • in the country of origin 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.5	Assessment of financial condition: <ul style="list-style-type: none"> • inability to cover family needs with incomes • a low-income family with a large number of dependents (minors, elderly parents, persons with disabilities) • debts in the home country 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

5. Assessment of vulnerability indicators associated with the community

Nº	Indicator	+/-
5.1	Lack of social (cultural) connections and support in the community/diaspora: <ul style="list-style-type: none"> • destination country • transit country • country of origin 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.2	Presence in the community of the following: <ul style="list-style-type: none"> • sexual/gender discrimination • ethnic discrimination • social marginalisation 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.3	Lack of the possibility to get a job locally in their own region <ul style="list-style-type: none"> • prior to exit • upon returning 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
5.4	Traditional multiple expensive cultural celebrations in the community	<input type="checkbox"/> YES <input type="checkbox"/> NO
5.5	Living in an environmentally unfavourable area (region)	<input type="checkbox"/> YES <input type="checkbox"/> NO

6. Situational factors of vulnerability

Nº	Indicator	+/-
6.1	Leaving children in the country of destination in case of prohibition against entering the country	<input type="checkbox"/> YES <input type="checkbox"/> NO
6.2	Other	<input type="checkbox"/> YES <input type="checkbox"/> NO

APPLICATION
for identification a family with children abandoned by a migrant and in a vulnerable situation

Place of application

Date

Organisation

Position, name of the expert filling in the questionnaire

Name of a person answering questions in the name of the family

Status of this person in the family

Language of the interview

Name of the interpretor (if any)

Consent to identification

signature

1. Individual factors/questions on the primary breadwinner

Nº	Indicator	+/-
1.1	Who was the main breadwinner in the family, and who is currently absent? <ul style="list-style-type: none">fathermotherbothother (specify)	<div><input type="checkbox"/></div> <div><input type="checkbox"/></div> <div><input type="checkbox"/></div> <div><input type="checkbox"/></div>
1.2	If one of the spouses is remaining (father or mother, is the marriage officially registered with the main breadwinner)	<input type="checkbox"/> YES <input type="checkbox"/> NO
1.3	Is the breadwinner absent because of going abroad: <ul style="list-style-type: none">in order to get employed;for other purpose (indicate)	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
1.4	To which country did the main breadwinner go?	
1.5	Is there any connection with the absent breadwinner of the family?	<input type="checkbox"/> YES <input type="checkbox"/> NO
1.6	In case of a positive answer, is the main breadwinner planning to return?	<input type="checkbox"/> YES <input type="checkbox"/> NO
1.7	In case of a positive answer, how soon?	

2. Family and domestic factors

No	Indicator	+/-
2.1	Economic	
2.1.1	What incomes comprise the family budget at present? <ul style="list-style-type: none">• income from the professional activity of able-bodied family members• social allowances, pensions, grants for certain family members• funds received from abroad from absent family members• subsistence economy• other (specify)	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.1.2	Does the family have its own housing?	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.1.3	If the family has no own housing, it lives: <ul style="list-style-type: none">• jointly with relatives, friends• in rented housing• in non-residential premises (adopted for living)• in a shelter or in a group home• on the street• other (specify)	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.1.4	What are the financial burdens of the family: <ul style="list-style-type: none">• debts before natural persons;• unpaid loans;• mortgage;• other (specify).	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.1.5	Are net incomes of the family and social payments (grants) enough to cover the basic needs of the family?	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.2	Social	
2.2.1	Number of underage children deprived of parental care:	
2.2.2	Age of the minors	
2.2.3	Is there formal custody of minors?	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
2.2.4	Of the relatives, who can assume official custody?	
2.2.5	With whom do underage children deprived of parental care actually live? <ul style="list-style-type: none">• one parent (father or mother)• grandmother, grandfather• other relatives• neighbors• other	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>

No	Indicator	+/-
2.2.6	Do the underage status persons attend <ul style="list-style-type: none"> • preschool institution • school; • vocational education institution, elementary vocational training institution • none 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.7	Are the children deprived of parental care in residential care facilities (secured by the state)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	Since when? <input type="text"/>	How many children? <input type="text"/>
2.2.8	Does the family receive medical services at the place of residence?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.9	Does any of the family members suffer from severe life threatening or chronic disease, injury? In case of a positive answer, does the family member receive necessary medical treatment?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.10	Is any of the family members disabled? In case of a positive answer, do they receive help?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.11	Does any of the family members suffer from alcohol or drug addiction? In case of a positive answer, do they receive help?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.3	Psychoemotional	
2.3.1	What are relations among the family members, among family members and relatives, people close to the family: <ul style="list-style-type: none"> • non-involvement • patriarchal relations in the family • co-dependent relations • domestic violence • other 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.3.2	Does any (several) of the family members suffer from depression?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4	Legal	
2.4.1	Are there any problems with the formalization of legal documents?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4.2	Is any of the family members in conflict with the law, or has anyone been brought to administrative or criminal responsibility?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4.3	Is any of the family members missing? If yes, who?	<input type="checkbox"/> YES <input type="checkbox"/> NO

3. Community level

No	Indicator	+/-
3.1	Does the family have social (cultural) connections and support in the community/diaspora?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2	Is there a practice in the community as regards to this particular family: <ul style="list-style-type: none"> • gender discrimination • ethnic discrimination • social marginalisation 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3	Is it possible for able-bodied family members to get employed in their local region?	<input type="checkbox"/> YES <input type="checkbox"/> NO

1. General Provisions

1. Migrants and their family members in a vulnerable situation (migrants with re-entry ban, families of migrants abandoned by the primary breadwinner; children of migrants deprived of parental care (one or both parents) have different needs and require different services: social allowances, medical services, temporary housing, psychological consultations, documentation. Within the framework of functions and authorities of one state authority or non-profit organization, it is impossible to provide the full amount of the said services; as such, interaction between institutions is required to provide the most complete and high-quality help to migrants and their family members in a vulnerable situation.

2. The mechanism for the referral of migrants and their family members in a vulnerable situation provides for application to a separate state authority or non-profit organizations, which in the course of providing help interact with other state authorities and organizations/institutions and exchange information for comprehensive help provision.

3. The regulatory basis for the referral mechanism can be a presence in the legislation or departmental acts of obligations and an algorithm of actions of state authorities and non-profit organisations participating in the provision of help to migrants and their family members in a vulnerable situation or the availability of standard operating procedures (instructions, methodological recommendations, regulations) for the provision of general services (medical, social, educational, etc.) both for the entire population and for vulnerable categories.

4. Referral mechanisms can be established at various levels, i.e. national, regional, and/or municipal/local (district level).

5. Approximate standard operating procedure for the referral of a migrant and his family members in a vulnerable situation is based on the following principles:

- integrity providing for interaction of state authorities, local self-government authorities, non-profit and international organisations in order to solve problems of the migrant and his family members in a vulnerable situation;
- voluntariness of participation of the migrant and his family members in the referral process to obtain relevant necessary services;
- interdepartmental interaction providing for coordinated actions of state authorities, local self-government authorities, non-profit and international organisations in solving the problems of the migrant and his family members;
- targeting and accessibility of social and other services for the migrant actually in need and his family members.

6. In case of the referral of a migrant and his family members in a vulnerable situation, it should be taken into account that interdepartmental interaction in the course of work with children and families in difficult life situation, which may include categories of migrants considered in this research, is regulated by standard regulations on the Commission for children's affairs²³², Commission for social issues under local executive self-government authorities,²³³ Regulation on the procedure for detection of children and families in difficult life situations²³⁴, etc.

2. Measures to assist migrants in a vulnerable situation as part of the referral system

Step 1. Preparatory measures

1.1. Upon completion of identification of a person as a migrant in a vulnerable situation, the next step is his referral to state authorities, non-profit and international organisations to receive necessary help and rehabilitation.

1.2. If a person is identified as a migrant in a vulnerable situation, he has the right to free legal consultation, medical and psychological

help, and continued stay in the asylum, if the person was previously placed in a asylum.

1.3. Actions aimed referral the migrant in a vulnerable situation for the provision of help and rehabilitation can be performed by the following referral entities:

- migration service
- social services;
- competent authorities in the area of children rights protection;
- employment services;
- medical institutions for the provision of medical aid;
- bodies of internal affairs;
- crisis centers, centers for social help to family and children, social rehabilitation centers, organizations for orphans and children deprived of parental care, etc.;
- asylums providing services of temporary housing;
- municipalities (local self-government authorities);
- non-profit organisation;
- international organisations

1.4. Depending on the entity of detection and identification of migrant in a vulnerable situation that was first to implement identification of a vulnerable migrant, the referral procedure is set up in view of the need to provide relevant help to a migrant in a vulnerable situation.

1.5. It is recommended to hold meetings with partner organizations to discuss cooperation aimed at establishment of a referral system and a coordination mechanism.

1.6. To ensure functioning of the system of referral of migrants in a vulnerable situation, local state administrations are recommended to establish a permanent interdepartmental coordination authority for referral and provision of help to migrants in a vulnerable situation.

1.7. It is offered to include in the interdepartmental coordination authorities representatives

²³² Regulation of the government of the Kyrgyz Republic of June 10, 2008, No. 285

²³³ Regulation of the government of the Kyrgyz Republic of May 21, 2014, No. 264

²³⁴ Regulation of the government of the Kyrgyz Republic of June 22, 2015, No. 391

of local state administration, regional divisions of competent state authorities in the area of social protection, public health, education, internal affairs, registration of the population, executive local self-government authorities, non-profit and international organizations.

- 1.8. Competence of interdepartmental coordination authorities should include the following:
- approval of the list of needs of a migrant in a vulnerable situation;
 - compilation and approval of an individual plan of work with a migrant in a vulnerable situation;
 - support in solving of issues detected in the course of monitoring of individual work plan implementation (if necessary).

1.9. To effect the monitoring and assessment of the effect of measures aimed at providing help to migrants in a vulnerable situation, it is recommended to create a data base of migrants who have received rehabilitation help which will make it possible to reveal the migrants who have required support for a prolonged period of time as well as to obtain reliable information on efficiency of referral measures.

Step 2. Providing information to and receiving consent from migrant in a vulnerable situation

2.1. Referral of migrant in a vulnerable situation is performed in order to provide the individual with the help necessary.

2.2. Expert from the entity of identification that was the first to perform identification of a migrant in a vulnerable situation notifies the individual on the possibility of referral to state authorities, and other institutions and organizations, subject to the individual's request and/or if necessary.

2.3. The expert provides the migrant in a vulnerable situation with complete and reliable information on state authorities, institutions and organizations which can provide help to the individual and the family, including the following information:

- contact details of the expert (full name, position, phone number), who can be contacted to receive necessary help;
- what help can be received from a certain state authority, institution, or organization, including the information on free services, rules, and procedures for receiving of help;

- exact location (address) of the state authority, institution, or organisation, working hours

2.4. With the migrant in a vulnerable situation, the expert discusses the principles of confidentiality and reminds him on the right to choose, which type of information will be provided to state authorities, institutions, and organizations.

2.5. Subject to the consent of the migrant in a vulnerable situation to receive help, expert must receive their written declaration under [form 1](#).

2.6. In case of referring a migrant in a vulnerable situation, the expert should hold a preliminary discussion on the migrant's referral by phone with an expert of the relevant state authority, institution, or organization. This should be ensured to protect them from multiple questionnaires which may result in psychological trauma caused by the situation of vulnerability.

Form 1

NOTIFICATION

of consent to receive help and rehabilitation

I, (Full name)

agree to receive assistance and rehabilitation in the organisations listed below:

1.

2.

3.

I hereby confirm that:

1) was (a) informed of (a) the procedures for obtaining assistance,

2) I accept the conditions under which assistance will be provided.

Name of the applicant

Signature, date

Full name of a guardian or
a legal representative (for a underage status person)

Signature, date

2.7. The referral procedure is set out by the expert performing identification of migrant in a vulnerable situation in view of the need to provide help in accordance with their individual requirements.

2.8. It is necessary to provide a migrant in a vulnerable situation with the possibility to independently participate in the referral process for receiving the help necessary.

2.9. If a migrant in a vulnerable situation is a underage status person, their referral to organizations for receiving help is carried out with the participation of the underage status person's legal representative.

2.10. The opinion and requests of the underage status person is worth taking into account. It is important that they are provided with all necessary information as regards to their rights to receive help.

2.11. The information should be provided in view of the age and development level of the underage status person. If necessary, the presence of an interpreter must be ensured at all stages of the procedure.

Step 3. Conducting assessment and compilation of the needs list of the migrant in a vulnerable situation

3.1. Assessment of needs of a migrant in a vulnerable situation provides for an assessment of the social, medical, psychological, legal, educational, domestic, and other needs of migrant. The assessment and determination of needs take into account the results of identification and opinion of a migrant in a vulnerable situation.

3.2. Prior to the needs assessment, the expert should explain the goal of the assessment and its use to the migrant in the vulnerable situation.

3.3. In case of needs assessment of underage status persons, the presence of their legal representative and a psychologist is necessary. The needs assessment accounts for the underage status person's age and gender.

3.4. The expert should jointly assess the needs and define the list of needs according to [form 2](#), along with the migrant in the vulnerable situation

Step 4. Development of a Plan for individual work with a migrant in a vulnerable situation

4.1. Based on a needs assessment of the migrant in a vulnerable situation for social and other services, a draft Plan of individual work with the migrant in a vulnerable situation is prepared according to [form 3](#).

4.2. Draft Plan of individual work with a migrant in a vulnerable situation should include a list of measures and services aimed at the provision of necessary social, legal, medical, and other help and should be compiled for the term required for its completion in view of the migrant's individual needs.

4.3. The draft individual work Plan indicates in which institutions migrant in a vulnerable situation is being sent to receive help.

4.4. The draft Plan of individual work with a migrant in a vulnerable situation is sent with all necessary materials attached for consideration and approval to the interdepartmental coordination authority for the provision of help to migrants in a vulnerable situation.

4.5. The interdepartmental coordination authority for provision of help to migrants in a vulnerable situation should consider the materials within ____ days and issue a resolution approving the Plan of individual work with a migrant in a vulnerable situation.

4.6. As regards migrants' children left without parental care (one or both parents), expert of the competent authority in the area of children rights protection performs a comprehensive assessment of the situation and develops a draft individual plan for child protection. The individual plan should continue measures aimed at providing psychological, medical, legal, and rehabilitation help.

4.7. The draft individual plan for protection of a child left without parental care (one or both parents) is submitted for consideration and approval to the Commission for children's affairs under the established procedure. The Chairman of the Commission for children's affairs approves the individual plan for the protection of a child left without parental care (one or both parents) and sends it for implementation to the head of the regional division of the relevant state authority.

4.8. The head of the regional division of state authority takes measures to implement the individual plan for the protection of a child left without parental care (one or both parents).

4.9. An expert of competent authority in the area of children rights protection monitors the implementation of the individual plan for the protection of a child left without parental care (one or both parents).

Step 5. Implementation of the Plan of individual work with a migrant in a vulnerable situation

5.1. The Plan of individual work with a migrant in a vulnerable situation provides for access to legal, medical, educational, social, and other help, including provision of asylum, recovery of documents, establishment of families or tutors for underage status persons, and support in employment.

5.2. The expert monitors the implementation of the individual plan of work and control compliance with the time limits for its implementation.

5.3. In cases requiring special attention, the expert informs interdepartmental coordination authority for the provision of help to migrants in a vulnerable situation on problems occurring in the course of implementing the Plan of individual work. By decision of the interdepartmental coordination authority, the Plan of individual work may be adjusted.

5.4. The measures aimed at supporting the migrant in a vulnerable situation expire in the following situations:

- upon achievement of goals of providing help and rehabilitation;
- if a vulnerable migrant refuses help and rehabilitation.

5.5. The expert makes a note on termination of measures aimed at the provision of help and rehabilitation in the Plan of individual work with a migrant in a vulnerable situation.

The needs assessment of a migrant in a vulnerable situation

Position, name of the expert filling in the questionnaire

Name of the applicant

Date

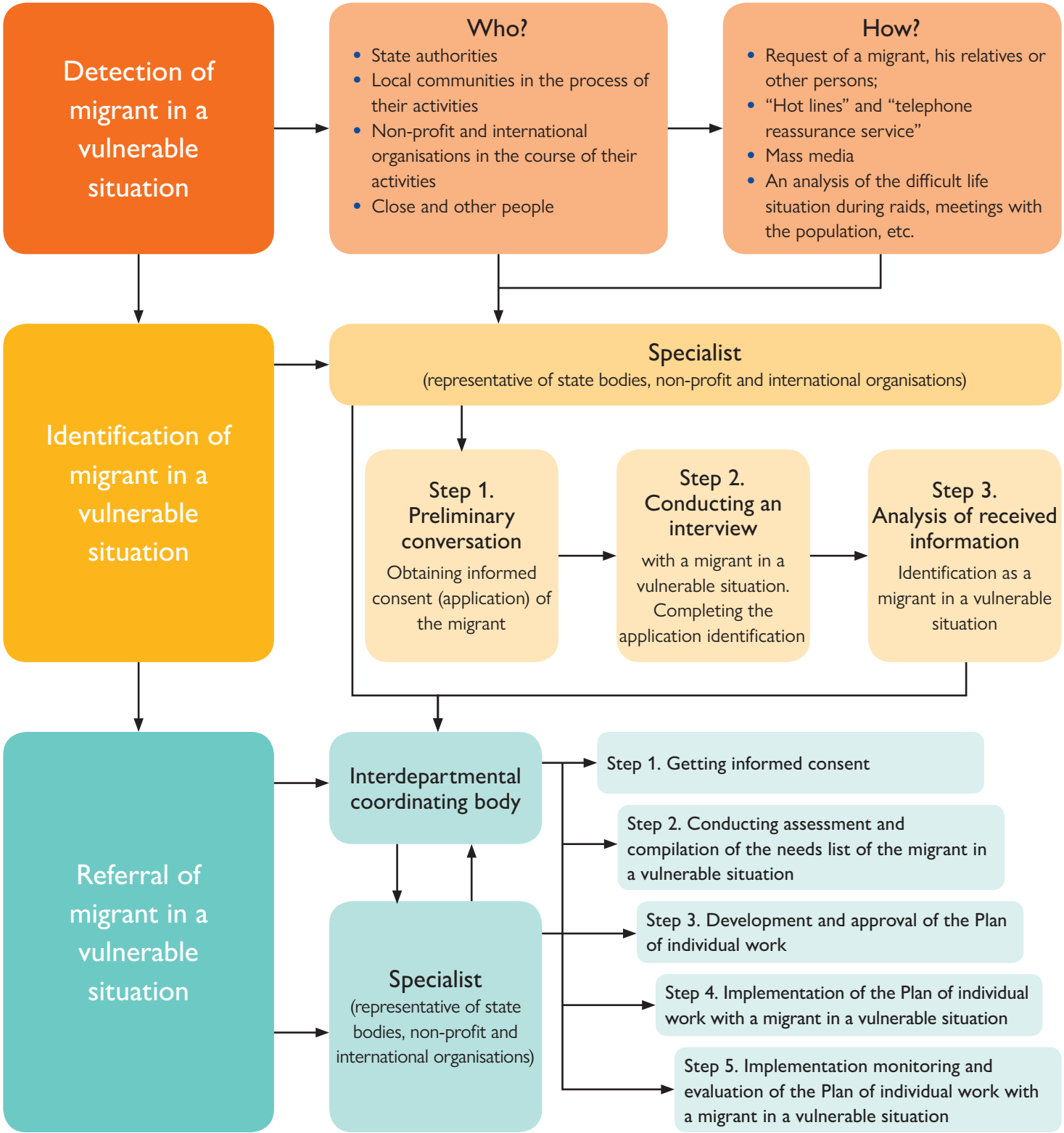
Needs	Needs
Social and medical	
Admission to hospital	
Consultation of a therapist	
Consultation of a psychotherapist / consultant psychiatrist	
Consultation of a gynaecologist	
Consultation of a neuropsychiatrist	
Medicines	
HIV/AIDS test	
STI test	
Alcohol or drug addiction treatment	
General health condition (explain)	
Psychological	
Individual consultations	
Emotional support	
Support in recovering contact with family and close friends	
Legal	
Consultation on issues of family law	
Consultation on law of inheritance issues (inheritance by law, appeal against illegal will, etc.)	
Consultation on housing-and-municipal dispute issues (illegal expulsion, etc.)	
Consultation on issues of labor law	
Consultation in the area of administrative law (return of child custody, recovery of documents, etc.)	
Legal support in administrative proceedings	
Consultation on commencement of profitable activities	

Needs	Needs
Social and domestic	
Humanitarian aid (clothes, food, etc.)	
Financial aid	
Professional re-training	
Receiving education	
Employment	
Safe stay (asylum)	
Other needs	
Comments of the expert	

Form 3

The needs assessment of a migrant in a vulnerable situation							
Position, name of the expert filling in the questionnaire							
Name of the applicant							
Date of compilation							
Needs revealed	Measures aimed at the provision of help and rehabilitation	Time limits for completion	Expected result	Responsible for execution	The mark on execution / non-execution (the reason)	Signature of responsible person	The progress achieved
Social and medical help							
Legal help							
Psychological help							
Social and domestic help							
Other help							

Draft Standard Operating Procedures
for the Detection, Identification and Referral of Migrants
in Vulnerable Situations in the Republic of Kazakhstan



Section 4. Draft Standard Operating Procedures for the detection, identification and referral of migrants and their families in vulnerable situations in the Republic of Tajikistan

Step 1. Identification of vulnerable migrants and their families

1.1. The identification of vulnerable migrants and their families is a set of actions aimed at finding the suspected migrants and their families in vulnerable situations.

1.2. The identification of migrants and their families in vulnerable situations is the first step in providing them with the necessary assistance from government, public and international organizations.

1.3. Identification of a vulnerable migrant can be carried out by employees of authorized state bodies, local governments, non-governmental and international organizations, as well as by relatives of a vulnerable migrant or other persons. In the case of families with children who are left behind by migrants, in addition to the listed organisations, authorized bodies for the protection of children, non-governmental organisations that provide social services to families and children in difficult situations are also involved in the identification procedure.

1.4. Detection of vulnerable migrants and their families can be carried out by:

- when receiving an oral or written statement describing the situation from the most vulnerable migrant;
- when a message is received from an organisation or agency, as well as from relatives or friends of the victim or other persons;
- in the process of actively searching for information about other vulnerable groups (socially disadvantaged, as well as users of other social services);
- when a message is received from local government bodies, self-government bodies of settlements and villages or non-governmental organizations;
- when receiving messages from consulates;
- through communications in the media;
- in the course of operative-search and investigative measures;
- in the course of the analysis of human behavior and their physical and mental state;
- by assessing the situation, to which the person was subject;
- as a result of self-identification, etc.

1.5. If, in detection vulnerable migrants and their families, there are underage status persons, insane persons, those with psychological problems or who are not able to fully participate in the identification procedure, the subjects provided for in 1.3. of this SOP are immediately notified to the authorized state body for the protection of the rights of the child, to medical and psycho-neurological institutions, respectively

Step 2. Preparation to interview for identification of a person as a vulnerable migrant

2.1. In preparing and conducting interviews with vulnerable migrants and their families, the interviewer should be guided by the following ethical principles:

- a) unconditional support for vulnerable migrants and their families;
- b) security and protection of vulnerable migrants and their families;
- c) confidentiality and protection of personal data of vulnerable migrants and their families;
- d) non-discriminatory treatment of vulnerable migrants and their families;
- e) delicacy and tactfulness during the interview;
- f) protection of the interests of vulnerable migrants and their families;
- g) participation of vulnerable migrants and their families in the adoption of all decisions affecting them;
- h) obtaining informed consent and providing objective information to vulnerable migrants and their families;
- i) individual approach to vulnerable migrants and their families;
- j) emotional support for vulnerable migrants and their families;
- k) attitude different from treatment of victims of illegal migration;
- l) empathy for vulnerable migrants and their families;
- m) special attention to the interests and well-being of children of vulnerable migrants.

2.2. Before the interview the interviewer:

- introduces herself/himself and their organisation, briefly informs about the purposes of the interview and explains the

role of the organization in providing assistance to vulnerable migrants and their family members;

- explains that the interview may include questions about the details of what happened to the migrant and that some topics can upset the migrant, cause hard memories and even cause pain;
- informs that the interviewee can think before answering questions and can take a break at any time, if this is necessary, while s/he has the right not to answer questions that upset them;
- explains that the volume and completeness of the information provided will determine the effectiveness of the assistance provided;
- clarifies any restrictions regarding assistance provided by the organization (for example, if assistance is provided only to victims of human trafficking, people with HIV infection, illegal migrants, children, etc.);
- explains that if, for certain reasons, the organization is unable to provide direct assistance, it will make efforts in the designation of a qualified group or a person who will be able to provide assistance;
- explains that the identity of the migrant and all the data provided by her/him will be kept in strictest confidence;
- explains the interviewee can at any time ask questions or at any moment demand clarification or repetition of what has already been explained or stated;
- must make sure that the person with whom the interview is conducted clearly understands everything that is explained to her/him;
- has to clarify whether the interviewee has questions at this stage and whether they agree to proceed with the identification procedure.

2.3. If the interviewee expresses her/his consent to be identified as a vulnerable migrant, s/he signs a statement of informed consent for the identification (*Form 1*).

2.2. If the interviewee does not agree to pass the identification as a vulnerable migrant, s/he signs an application for refusal of identification, where s/he can specify the reason for the refusal (*Form 2*).

NOTIFICATION

of informed consent to undergo
identification as a migrant in a vulnerable situation

I, (Full name)

voluntarily agree to undergo procedure of identification as a migrant in a vulnerable situation.

I hereby also acknowledge the following:

1) I was explained the order and procedure for identification as a migrant in a vulnerable situation, as well as the consequences of identification;

2) I accept all the conditions under which identification will be carried out;

3) I can at any time refuse to be identified as a migrant in a vulnerable situation without explaining the reasons.

I understand that my personal information is necessary to provide me with necessary help.

I authorize

(name of the expert, position, organization)

to store and use my personal data in order to provide me with help.

I confirm that all the information provided is reliable and conforms with my witness.

I understand that providing unreliable information will result in termination of help provision.

Applicant's signature

Date

Expert's signature

Date

NOTIFICATION

of refusal to undergo identification as a vulnerable migrant

I, (Full name)

refuse to undergo procedure of identification as a migrant in a vulnerable situation for the following reason(without explaining the reason).

I hereby also acknowledge the following:

1) I was explained the order and procedure for identification as a migrant in a vulnerable situation, as well as the consequences of identification, and

2) this waiver does not deprive me of the right to be identified at any time in the future.

Applicant's signature

Date

Expert's signature

Date

Step 3. Conducting an interview
for identification of a person
as a vulnerable migrant

3.1. Identification is carried out by inter-
viewing.

3.2. During the interview, the interviewee is
asked questions in order to identify the per-
son as a vulnerable migrant. Questions should
correspond to the level of education of the
interviewee, be correct and understandable.

The use of complex legal and other profes-
sional terms is unacceptable.

3.3. The interviewer must have the necessary
professional knowledge and experience in the

field of migration, be able to use the appropriate method of conducting conversations in order to establish a trusting atmosphere in the interview process, as well as be able to identify the factors that led the migrant to a state of vulnerability: individual (low social, economic or human capital; lack of awareness of their rights; low legal literacy, or ignorance); situational (for example, the death of a family member, a predicament), structural (unemployment, low wages, complex legalization processes, patriarchal norms, etc.) or family (presence of a large number of dependents or seriously ill family members, orphans with a low social and human capital).

3.4. If possible, the interviews should be conducted in an isolated room where outside people can not hear (overhear) the speaker or interrupt the interview. The interview is conducted in private with a vulnerable migrant (tete-a-tete), but if necessary, a teacher, a psychologist, an interpreter, a lawyer and others can be involved.

3.5. During the interview, all means of communication are switched off (office and mobile phones, fax, portable transmitters, etc.), TV, radio, etc. If the interviewee insists, it is necessary to leave them the phone, but ask to switch it into a silent mode.

3.6. If the room is lockable, it is necessary to hang on the door a sign “Do not

disturb” or “Attention! The interview is in process!” or another similar sign so that nobody can interrupt the conversation.

3.7. In the absence of a closing isolated room, the interviewer should try to find a room in which the conversation can not be overheard and broken.

3.8. When conducting a conversation, it is necessary to avoid categorical style.

3.9. It is necessary to request the interviewee’s consent to conduct the conversation with this interviewer, and also to find out whether the interviewer’s sex/gender is important to the interviewee.

3.10. It is necessary to establish contact with the victim, help her/him feel that they are respected and their words are believed.

3.11. Interviewing a minor and filling out her/his questionnaire must without fail be conducted in the daytime with the obligatory participation of a teacher, a child psychologist, as well as a parent or guardian of a minor, or an authorized representative of the guardianship and trusteeship authority, and in the event that a child suffers from chronic physical or mental illnesses, it is also necessary to ensure the participation of the appropriate physician, preferably his or her treating physician, whose presence is necessary for the best interests of the minor.

sician, whose presence is necessary for the best interests of the minor.

3.12. In the course of preparing questions and conducting interviews with a minor, it is necessary to take into account the age, physical qualities, mental development and mental abilities of the child. The vocabulary understood by the child should be used.

Step 4. Identification of a person as a vulnerable migrant

4.1. Identification of a person as a vulnerable migrant is a set of actions taken to obtain information about a person’s being in a vulnerable position and providing her/him with relevant services aimed at overcoming a vulnerable situation.

4.2. During the interview, the specialist fills in a questionnaire for identification of a vulnerable migrant (Form3). Completion of the questionnaire must be carried out in the presence of the person interviewed.

4.3. The information contained in the questionnaire is not subject to disclosure, its confidentiality is protected by the legislation of the Republic of Tajikistan. Disclosure of information contained in the questionnaire is only possible with the written consent of the vulnerable person.

Form 3

APPLICATION

for identification of a person as a vulnerable migrant

Place of application

Date

Organisation

Position, name of the expert filling in the questionnaire

Name of the legal representative (if any)

Language of the interview

Name of the interpreter (if any)

Consent to identification

signature

1. Information on the person

1.1. Full name	<input type="text"/>		
1.2. Sex (m/f)	<input type="text"/>	1.3. Date and place of birth	<input type="text"/>
1.4. Citizenship	<input type="text"/>		
1.5. Level of education	<input type="text"/>		
	primary / secondary general education / primary vocational / secondary vocational / higher professional (graduated / unfinished)		
additional (specify)	<input type="text"/>		
1.6. Place of residence, telephone for communication (if any)	<input type="text"/>		
1.7. Personal documents available (if any)	<input type="text"/>		

2. Vulnerability assessment should be carried out in the situation/category of

<input type="checkbox"/> Migrant in the country of destination / employment	<input type="checkbox"/> Migrant in transit
---	---

3. Assessment of individual vulnerability indicators

Nº	Indicator	+/-
3.1	Age of the person	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2	Level of professional training and work experience: <ul style="list-style-type: none"> • no profession • no work experience • profession is not relevant for employment in the country of origin / does not permit the subsistence level of earnings • profession is not relevant for employment in the country of destination / does not permit the subsistence level of earnings 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3	Level of legal literacy: <ul style="list-style-type: none"> • unaware of the basic rules of legal employment in the country of destination • spontaneous exit 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4	Migration experience: <ul style="list-style-type: none"> • lack of experience in migration • an intermediary without the right to facilitate employment abroad • prohibition to enter the RF • arrests / problems with migration law in the past 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.5	Level of health: <ul style="list-style-type: none"> • HIV infection • venereal diseases • tuberculosis • viral hepatitis • alcohol or drug addiction • other (physical disability, pregnancy) 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

No	Indicator	+/-
3.6	Economic factors: <ul style="list-style-type: none"> • inability to cover personal needs with job incomes • inability to send part of earnings to relatives • lack of housing / shelter • lack of regular income • lack of money to go back home 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.7	Factor of violence: <ul style="list-style-type: none"> • involvement in labour exploitation • involvement in sexual exploitation • domestic violence 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.8	Legal status: <ul style="list-style-type: none"> • lack of ID documents or obsolete ID documents • lack of registration/residence permit • lack of labour agreement or other documents required for legal employment in the country. 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

4. Assessment of family and domestic indicators of vulnerability

No	Indicator	+/-
4.1	Status of vulnerable migrant in the family: <ul style="list-style-type: none"> • sole breadwinner • dependent (please indicate the name) • able-bodied adult family member 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.2	Prohibition to exit from the country: <ul style="list-style-type: none"> • for the only primary breadwinner • for two or more family breadwinners 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.3	Facts of violence and discrimination in the family: <ul style="list-style-type: none"> • domestic violence • gender discrimination • social discrimination 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.4	Lack of supporting relatives: <ul style="list-style-type: none"> • in the country of destination • in the transit country • in the country of origin 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
4.5	Assessment of financial condition: <ul style="list-style-type: none"> • inability to cover family needs with incomes • a low-income family with a large number of dependents (persons of underage status, elderly parents, LBOs (persons with disabilities)) • debts in the home country 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

5. Assessment of vulnerability indicators associated with the community

No	Indicator	+/-
5.1	Lack of social (cultural) connections and support in the community/diaspora: <ul style="list-style-type: none">• destination country• transit country• country of origin	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
5.2	Presence in the community of the following: <ul style="list-style-type: none">• sexual/gender discrimination• ethnic discrimination• social marginalisation	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
5.3	Lack of the possibility to get a job locally in their own region <ul style="list-style-type: none">• prior to exit• upon returning	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div> <div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
5.4	Traditional multiple expensive cultural celebrations in the community	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
5.5	Living in an environmentally unfavourable area (region)	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>

6. Situational factors of vulnerability

No	Indicator	+/-
6.1	Leaving children in the country of destination in case of prohibition against entering the country	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
6.2	Transit corridor in the cold season	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>
6.3	Other	<div><input type="checkbox"/> YES <input type="checkbox"/> NO</div>

4.4. When interviewing family members of a vulnerable migrant, the specialist fills in an appropriate questionnaire for identification of a family with children abandoned by a migrant (Form 4).

4.5. Based on the results of the interview, the expert:

- 1) analyzes the data received from the person, emphasizing the internal inconsistency and discrepancies of the data provided;

2) carries out identification of a person as a migrant in a vulnerable situation on the basis of the data obtained in accordance with the identification criteria;

3) assesses the situation and considers the possibility of referring a migrant in a vulnerable situation to the relevant institutions to obtain the necessary assistance;

4) in the event that a person is identified as a migrant in a vulnerable situation, issues a notification of consent of the migrant in a vulnerable situation to a referral in order to receive appropriate assistance and rehabilitation.

4.6. Identification of a minor is carried out by an authorized state body in the field of the protection of the rights of the child, with the obligatory participation of a teacher, a child psychologist, as well as her/his parents, a guardian or an authorized representative of the guardianship agency, and in case the child suffers from chronic physical or mental illnesses, a doctor, preferably her/his treating physician.

If the minor disagrees to go through identification in the presence of parents, guardians or other above-mentioned persons, the interview is conducted without their presence. If it is impossible for the parents or those

having custody to be present at the time of identification, the interview should be held by a competent state authority in the area of children rights protection in presence of a teacher and a child psychologist.

Step 5. Activities for referring a vulnerable migrant to assistance, rehabilitation and reintegration.

5.1. The next stage after identification of a person as a vulnerable migrant is to redirect her/him to state bodies, non-governmental or international organizations to obtain social protection, rehabilitation and reintegration services, needed by the person. Referral is a set of actions undertaken to organize the access of migrants in a vulnerable situation and their family members to rehabilitation and reintegration services.

5.2. If a person is identified as a vulnerable migrant, s/he has the right to:

APPLICATION
for identification a family with children abandoned by a migrant and in a vulnerable situation

Place of application

Date

Organisation

Position, name of the expert filling in the questionnaire

Name of a person answering questions in the name of the family

Status of this person in the family

Language of the interview

Name of the interpretor (if any)

Consent to identificationsignature

1. Individual factors/questions on the primary breadwinner

Nº	Indicator	+/-
1.1	Who was the main breadwinner in the family, and who is currently absent? <ul style="list-style-type: none">• father• mother• both• other (specify) <div></div>	<div><div></div><div></div><div></div><div></div></div>
1.2	If one of the spouses is remaining (father or mother, is the marriage officially registered with the main breadwinner)	<div><div></div> YES <div></div> NO</div>
1.3	Is the breadwinner absent because of going abroad: <ul style="list-style-type: none">• in order to get employed;• for other purpose (indicate) <div></div>	<div><div></div> YES <div></div> NO</div> <div><div></div> YES <div></div> NO</div>
1.4	To which country did the main breadwinner go? <div></div>	
1.5	Is there any connection with the absent breadwinner of the family?	<div><div></div> YES <div></div> NO</div>
1.6	In case of a positive answer, is the main breadwinner planning to return?	<div><div></div> YES <div></div> NO</div>
1.7	In case of a positive answer, how soon? <div></div>	

2. Family and domestic factors

No	Indicator	+/-
2.1	Economic	
2.1.1	What incomes comprise the family budget at present? <ul style="list-style-type: none"> • income from the professional activity of able-bodied family members • social allowances, pensions, grants for certain family members • funds received from abroad from absent family members • subsistence economy • other (specify) 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.1.2	Does the family have its own housing?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.1.3	If the family has no own housing, it lives: <ul style="list-style-type: none"> • jointly with relatives, friends • in rented housing • in non-residential premises (adopted for living) • in a shelter or in a group home • on the street • other (specify) 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.1.4	What are the financial burdens of the family: <ul style="list-style-type: none"> • debts before natural persons; • unpaid loans; • mortgage; • other (specify). 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.1.5	Are net incomes of the family and social payments (grants) enough to cover the basic needs of the family?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.2	Social	
2.2.1	Number of underage status children deprived of parental care:	
2.2.2	Age of the underage status persons	
2.2.3	Is there formal custody of underage status persons?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.4	Of the relatives, who can assume official custody?	
2.2.5	With whom do underage status children deprived of parental care actually live? <ul style="list-style-type: none"> • one parent (father or mother) • grandmother, grandfather • other relatives • neighbors • other 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO

No	Indicator	+/-
2.2.6	Do the underage status persons attend <ul style="list-style-type: none"> • preschool institution • school; • vocational education institution, elementary vocational training institution • none 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.7	Are the children deprived of parental care in residential care facilities (secured by the state)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	Since when? <input type="text"/>	How many children? <input type="text"/>
2.2.8	Does the family receive medical services at the place of residence?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.9	Does any of the family members suffer from severe life threatening or chronic disease, injury? In case of a positive answer, does the family member receive necessary medical treatment?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.10	Is any of the family members disabled? In case of a positive answer, do they receive help?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.2.11	Does any of the family members suffer from alcohol or drug addiction? In case of a positive answer, do they receive help?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
2.3	Psychoemotional	
2.3.1	What are relations among the family members, among family members and relatives, people close to the family: <ul style="list-style-type: none"> • non-involvement • patriarchal relations in the family • co-dependent relations • domestic violence • other 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
	<input type="text"/>	
2.3.2	Does any (several) of the family members suffer from depression?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4	Legal	
2.4.1	Are there any problems with the formalization of legal documents?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4.2	Is any of the family members in conflict with the law, or has anyone been brought to administrative or criminal responsibility?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.4.3	Is any of the family members missing? If yes, who?	<input type="checkbox"/> YES <input type="checkbox"/> NO
	<input type="text"/>	

3. Community level

No	Indicator	+/-
3.1	Does the family have social (cultural) connections and support in the community/diaspora?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2	Is there a practice in the community as regards to this particular family: <ul style="list-style-type: none"> • gender discrimination • ethnic discrimination • social marginalisation 	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3	Is it possible for able-bodied family members to get employed in their local region?	<input type="checkbox"/> YES <input type="checkbox"/> NO

- free legal aid;
- receiving medical care provided by public health organisations;
- obtaining free psychological help in the form of psychological counseling, psychological correction, psychological prevention;
- humanitarian aid;
- stay in a shelter;
- receiving assistance in training, re-qualification or certification of professional skills;
- getting advice and assistance in finding a job.

5.3. The activities for referring a vulnerable migrant and her/his family members in order to provide them with assistance and rehabilitation can be carried out by the following state bodies, non-governmental and international organisations:

- Ministry of Labour, Migration and Employment of the Republic of Tajikistan and its structural subdivisions (migration services, employment agencies, adult education centers);
- Ministry of Internal Affairs of the Republic of Tajikistan and its subdivisions;
- Ministry of Health and Social Protection of the Republic of Tajikistan, its structural medical institutions and other social services;
- Ministry of Justice of the Republic of Tajikistan and its subordinate legal support centers;
- state and non-governmental crisis centers and social help centers to provide short-term and long-term assistance;
- shelters providing temporary accommodation services;
- bodies of local self-government;
- non-governmental organisations;
- international organisations.

5.4. After detection and identification of a vulnerable migrant, the procedure for referral is established, taking into account the need to receive social protection, rehabilitation and reintegration services necessary for a person.

5.5. In order to ensure the functioning of the mechanism for redirecting vulnerable migrants, local government bodies establish interdepartmental coordinating bodies for redirecting, rendering assistance to vulnerable migrants, their rehabilitation and reintegration, working on an ongoing basis.

5.6. Interdepartmental coordinating bodies include representatives of local government

bodies, territorial units, authorized state bodies in the field of health and social protection, education, internal affairs, executive bodies of local self-government, non-governmental and international organisations.

5.7. Inter-agency coordination bodies have the following competencies:

- approval of the list of a vulnerable migrant's needs;
- compiling and approving an individual work plan with a vulnerable migrant;
- support in solving of issues detected in the course of monitoring of individual work plan implementation.

Step 6. Informing vulnerable migrant

6.1. After the procedure for identifying a vulnerable migrant and identifying his / her necessary needs, he / she should be referred to other organisations having relevant programmes and centres if there are no such programmes and centers in the authority that identified the vulnerable migrant. The vulnerable migrant is referred to the relevant organisations and centres only with the consent of the migrant herself/himself (*Form 5*).

6.2. It is necessary to provide the vulnerable migrant with complete and reliable information about government agencies, institutions and organisations that can assist her/him, including the following information:

- contact details of the expert (full name, position, phone number), who can be contacted to receive necessary help;
- what help can be received from a certain state authority, institution, or organisation, including the information on free services, rules, and procedures for receiving of help;
- exact location (address) of the state authority, institution, or organisation, working hours

6.3. It is necessary to discuss the principles of confidentiality with a vulnerable migrant, to remind him/her of the right to selectively provide information to state bodies, institutions and organisations.

6.4. When a migrant in a vulnerable situation is subsequently referred to a state body, institution or organisation, the specialist must

first coordinate with the representative of the relevant authority before referring a migrant to them. It is necessary to protect a migrant in a vulnerable situation from numerous interviews that could cause psychological trauma.

6.5. The procedure for referral is established by the person who has identified a vulnerable migrant, taking into account the need for assistance in accordance with the individual needs of a vulnerable migrant.

6.6. Provide a migrant in a vulnerable situation with the possibility to independently participate in the referral process for receiving the help necessary.

6.7. If a vulnerable migrant is a minor, then on all issues related to her/his referral to the social protection and rehabilitation agency that provides assistance, it is necessary to consult the parent or guardian of the minor.

6.8. The opinion and requests of the minor person is worth finding out and taking into account. It is important that they are provided with all necessary information as regards to their rights to receive help. The information should be provided in view of the age and brain development level of the minor. If necessary, the presence of an interpreter, a psychologist, a children's teacher must be ensured at all stages of the procedure.

Step 7. Conducting an assessment and drawing up a list of the needs of a vulnerable migrant in the necessary assistance and services

7.1. The specialist of the relevant organisation from the list specified in clause 5.3. of this Guide, within 10 working days, must travel to the place of residence (location) of a vulnerable migrant and his/her family members and assess the needs of a vulnerable migrant and members of his/her family, involving relevant authorities and institutions, if necessary.

7.2. A comprehensive evaluation is carried out in the form of a correct conversation with a vulnerable migrant and members of his/her family, which clarify:

- social problems and needs of a vulnerable migrant and his/her family;

NOTIFICATION
of consent to receive help and rehabilitation

I, (Full name)

voluntarily accept
assistance from

in

I hereby also acknowledge the following:

1. I was informed about the procedures for obtaining assistance.

2. I do not have the opportunity to independently provide myself with the finances and resources provided by

3. I accept the
conditions on which
provides help for me.

4. Neither me, nor my relatives will have any claims to

as well as to other involved physical and/or legal persons, in case of my refusal to receive
assistance from

Name of the applicant Signature, date

Full name of a guardian or
a legal representative (for a underage status person) Signature, date

- medical problems and needs of a vulnerable migrant and his/her family;
- psychological and pedagogical problems and needs of a vulnerable migrant and members of his/her family;
- legal problems and needs of a vulnerable migrant and his/her family.

7.3. In accordance with the information collected, the specialist, together with a vulnerable migrant, should assess the needs of a vulnerable migrant and determine the list of needs for obtaining the necessary assistance and services (Form 6).

Step 8. Plan of individual work
with a vulnerable migrant

8.1. After assessing the needs of a vulnerable migrant in the necessary assistance and

services, the **specialist** develops a draft Plan of Individual Work with a Vulnerable Migrant (Form 7).

8.2. The draft Plan of Individual Work with a Vulnerable Migrant includes a list of activities and services to provide the necessary social and domestic, socio-medical, socio-psychological, socio-educational, socio-legal and other types of assistance, indicating the timeline of their implementation and responsible persons.

8.3. If the Plan of Individual Work is drawn up for a minor, then the legal representatives or a guardian of the child must be present when developing the Plan. The plan takes into account the views and wishes of a child, special attention should be given to his/her age and level of development.

8.4. The draft Plan of Individual Work with a Vulnerable Migrant is forwarded for consideration and approval to the inter-agency coordinating body for assisting vulnerable migrants.

8.5. The Interdepartmental Coordinating Body for Assistance to Vulnerable Migrants considers the submitted materials within 10 days and approves, by its decision, the draft Plan of Individual Work with a Vulnerable Migrant.

Step 9. Implementation and monitoring of
implementation of the Plan of Individual
Work with a Vulnerable Migrant. Grounds
for stopping assistance and service
provision for a vulnerable migrant

9.1. Plan of Individual Work with a Vulnerable Migrant provides for the access of a vulnerable

The needs assessment of a migrant in a vulnerable situation

Position, name of the expert filling in the questionnaire

Name of the applicant

Date

Needs	Needs
Social and domestic services	
Obtaining services, privileges and benefits in social welfare	
Obtaining a living space for temporary stay in social service institutions	
The need for a premises for the organization of rehabilitation and treatment activities, medical and labor, educational activities, cultural and consumer services	
Assistance in preparing food	
Need for furniture and soft inventory	
Need for social and household services for personal care	
Need for transportation	
Need for childcare assistance	
Social and medical services	
Assistance in obtaining medical care in health care facilities	
Provision of care taking into account the state of health, including provision of sanitation services (wiping, washing, hygiene baths)	
Assistance in carrying out rehabilitation measures of a social and medical nature	
Provision of primary health care	
Assistance in organizing clinical examination	
Hospitalization in medical and preventive institutions, assistance in obtaining sanatorium-and-spa treatment	
Provision of medicines (free of charge or on preferential terms)	
Assistance in provision of health services, sanatorium-and-spa treatment for children in need for them	
Assistance to families who bring up children with mental and physical disabilities in their care, training in self-service, communication, self-control skills; assistance in obtaining a hearing aid, glasses, orthopedic and technical means of transportation.	
Socio-psychological services	
Socio-psychological counseling	
Psychological diagnostics and examination of personality	
Psychological correction	
Psychotherapeutic help	
Provision of psychological assistance, including through conversation, communication, listening, encouraging, motivating to activity, etc.	
Socio-psychological support for migrant families in which citizens with psychological disabilities, people with physical disabilities live	

Needs	Needs
Social and pedagogical services	
Social and pedagogical consulting	
Social and pedagogical diagnostics and examination of personality	
Pedagogical correction of behaviour	
Organization of vocational guidance, vocational training and employment	
Teaching parents of children with disabilities, including children with physical disabilities, the basics of rehabilitation at home	
Services related to social and labour rehabilitation	
Social and legal services	
Advising on issues related to the right of citizens to social services in the state and non-state systems of social services and protection of their interests	
Assistance in obtaining reimbursable benefits, subsidies, compensations, alimony and other payments, in improving housing conditions in accordance with the legislation of the Republic of Tajikistan	
Assisting in the preparation of documents, preparation and filing of complaints on violations or infringements of the legitimate rights of citizens, actions or inaction of social services or employees of these services, local executive authorities	
Advising on social and legislation issues (civil, housing, family, labour, pension, criminal law, the rights of children, women, fathers, disabled people, etc.)	
Providing legal aid in matters related to pension provision, the benefits and advantages established by the legislation, social payments	
Representation and protection of rights and interests in court	
Assistance in upholding housing and property rights	
Providing legal aid to citizens in registration of documents for custody, guardianship, adoption of children left without parental care	
Providing legal aid in preparing documents for employment, obtaining a passport and other documents of legal significance	
Assistance in preparing documents for sending children and adolescents (if necessary) to social services for temporary residence	
Providing legal aid in protection and observance of the rights of children and adolescents to raising and care, including in cases that threaten their lives and health	
Assistance in resolving employment issues: employment, referral to retraining courses, search for temporary (seasonal) work, work with a shorter working day, work at home	
Advice on self-sufficiency of citizens and their families, development of family entrepreneurship, home-based businesses, and on other issues of improving their financial situation.	
Information services	
On employment opportunities in new destination countries	
Pre-departure training	
Information on the availability of services for vulnerable migrants and their family members	
Information on organizations supporting vulnerable migrants and their family members	
Information services on migration and employment issues	

Needs	Needs
Other needs	
Comments of the expert	

Form 7

The needs assessment of a migrant in a vulnerable situation

Position, name of the expert filling in the questionnaire

Name of the applicant

Date of compilation

Period of validity

Needs revealed	Measures aimed at the provision of help and rehabilitation	Time limits for completion	Expected result	Responsible for execution	The mark on execution / non-execution (the reason)	Signature of responsible person	The progress achieved
Social and medical help							
Legal help							
Psychological help							
Social and domestic help							
Other help							

migrant to social and domestic, socio-medical, socio-psychological, socio-pedagogical, socio-legal, information and other types of assistance.

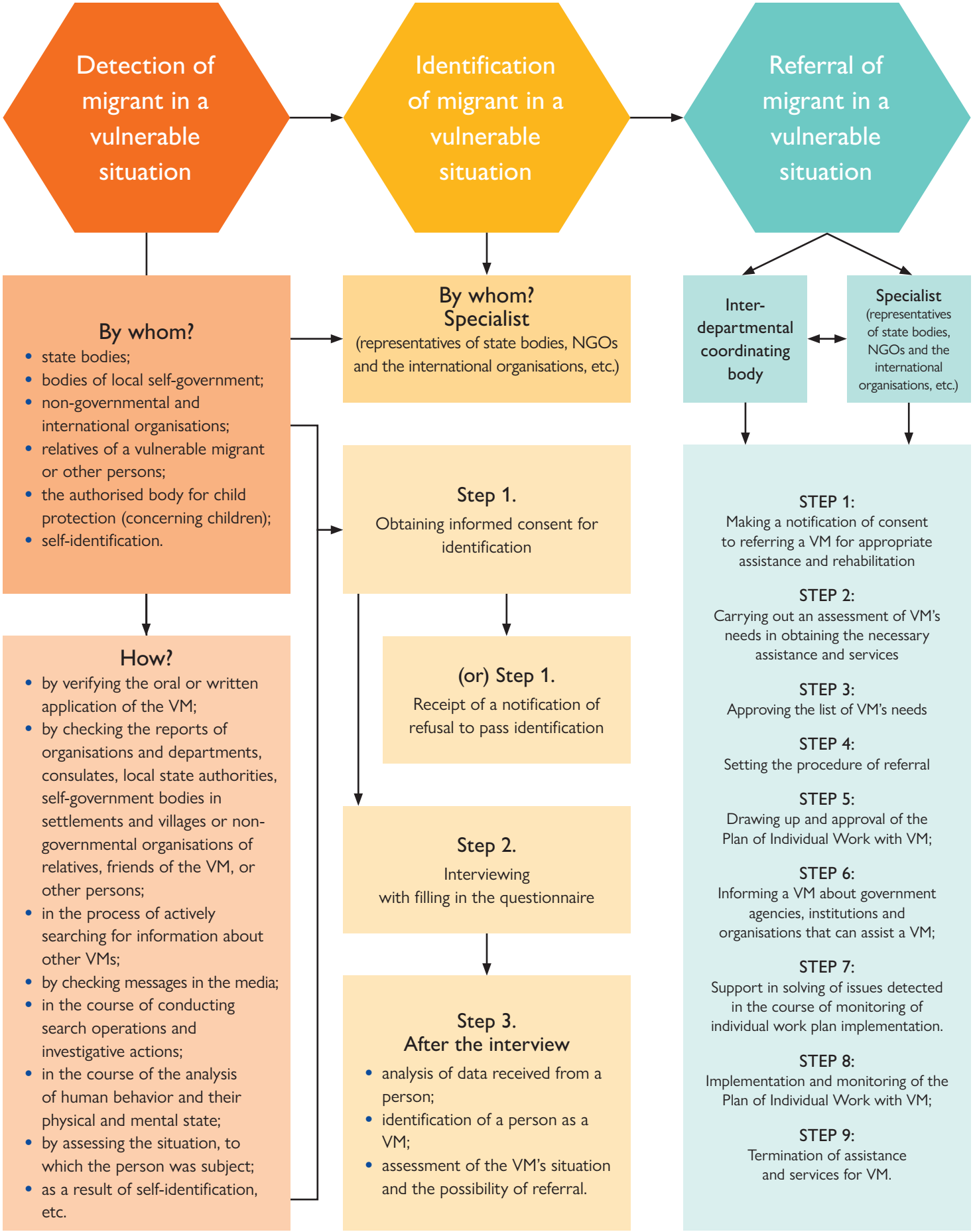
9.2. The specialist monitors at least once in every three months the implementation of the Plan of Individual Work in accordance with the established deadlines.

9.3. In case of problems in the implementation of the Plan of Individual Work or the need to improve the plan, the specialist refers to the interdepartmental coordination body for offering aid to vulnerable migrants, by decision of which the Plan of Individual Work can be modified or complemented.

9.4. Assistance and services to a vulnerable migrant are terminated:

- upon achievement of goals of providing help and organising rehabilitation;
- in case of a vulnerable migrant’s death;
- if s/he commits a crime and is convicted by a court sentence to imprisonment;
- if a vulnerable migrant refuses help and rehabilitation.

Scheme of standard operating procedures
for detection, identification and referral of
vulnerable migrants in the Republic of Tajikistan



Section 5. Conclusions and recommendations

5.1. Key findings

Migration of the population is an important component of state social processes which are closely related to demographic, political, sociocultural processes. In this regard, consideration of migration policy should only take place within the framework of ensuring sustainable development policies and integrating them into demographic policies, employment policies and security. In this context, accession of the countries of the region to the United Nations' sustainable development goals and designation of sustainable development strategies with attention to the topic of migration is currently the central line of action.

Analysis of legislation in the **Republic of Kazakhstan** has confirmed the hypothesis that the citizenship principle is a formal obstacle for labor migrants to obtain access to services, especially for those with an unregulated status, despite the fact that some migrants are in a difficult life situation. A vivid example are transit labor migrants in emergency situations in the territory of Kazakhstan. It should be noted that migrants have the opportunity to receive emergency medical aid, regardless of status, is an important step towards recognizing and ensuring their inalienable human rights. Since international law does not imply a distinction between working migrants who operate legally or illegally, a migrant in a vulnerable situation must be recognized personable by all other legal entities, and primarily by the state bodies. For this, their rights should be objectively enshrined in national legislation.

Access to legal aid is the next principal link allowing migrants to assert their rights, especially in the labor sphere, thus reducing vulnerability to various kinds of violations.

It should be noted that at the national level, there are separate mechanisms for identifying and referring refugees and asylum seekers as well as victims of human trafficking. The legislator has justifiably classified them as particularly vulnerable categories. However, until now the conceptual apparatus concerning labor migrants has not been harmonized with international documents. In order to harmonize national legislation with international standards for the protection of rights

of migrants in vulnerable situations, the country can be recommended to adhere to the main Conventions on protecting migrants' rights, such as the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ILO Migrant Workers Convention No. 97 (1949) and ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975).

For the countries of origin, the **Kyrgyz Republic** and the **Republic of Tajikistan**, a prerequisite for reducing vulnerability is the condition that migrants in vulnerable situations are highlighted in national legislation as a special part of the population that needs additional protection and support. Social legislation in the countries of origin almost does not contain a reference to a significant number of own citizens returning from labor migration and has nothing to do with measures to reintegrate them into society, except for victims of human trafficking and a good practice in Tajikistan to include "banned" migrants as a separate socially unprotected group.

As a rule, common social policies of the origin countries cover all unprotected strata of the population, mainly correlating them with the difficult economic situation, and no additional grounds are specified, such as the vulnerability associated with migration. At the same time, migrants returning to their countries have difficulties in accessing certain social, medical, and other services in their own country, even though they are its citizens, which puts them in a more vulnerable position, compared with those have not left. These restrictions are due to a long stay away from the home country and are associated, as a rule, with the registration requirements at the place of residence, availability of certification documents, loss of social ties and the fear of contacting the governmental institutions.

Speaking about countries of origin, as it was already mentioned, one should not forget about those who are most affected by the situation of migration—abandoned families with children. For example, as it was revealed

during the research, due to a lack of proper legal regulation, migrant children left without parental care and without an official custody remain invisible to the social services and have high risks of becoming victims of violence and exploitation. Families with numerous dependents left without means of subsistence by the primary breadwinners, along with the dire economic situation, may fail to have legal documents in different spheres, their own housing, be in situations of domestic violence, be factually tied to their home, and thus be cut off from access to their basic rights and freedoms. Such situations could be solved via justified inclusion of "unnoticed" categories in the sphere of social policy or the addition of categories of the population in a difficult life situation, vulnerable population groups, etc.

State measures aimed at protecting borders and regulating the entry and exit of working migrants are also on the agenda. The lack of clear criteria and procedures for applying restrictions imposed in the exit countries put migrants in an even more vulnerable position at home and restrict their exercise of the right to work. The establishment of additional "filters" in entry countries in the form of, inter alia, expensive insurance, licenses, etc., can also encourage some poor labor migrants to search for detours or search for illegal intermediaries. This can also lead to legal violations and an even more vulnerable position for the migrants themselves.

In all the countries under consideration, commissions on migrants, refugees, Authorised human rights bodies, children's rights, etc have been established. Thus, the existing institutional framework in states, both in destination or transit and of origin, makes it possible to include issues of migrants in vulnerable situations on the agenda. It can be recommended to strengthen the capacity of these government agencies to protect the rights of migrants.

Undoubtedly, the activities of commercial entities that are actively involved in the migration process—private employment agencies, commercial carriers—should also be more clearly regulated, so as not to endanger the life and health of migrants and national citizens before, during, and after migration.

All the above-mentioned areas are reflected in detailed recommendations on amending the legislation of the three countries in order to bring it as close as possible to international standards in the field of protecting the rights of a migrant in a vulnerable situation.

Analyzing the migration situation, social, institutional and legal fields, and with a view to facilitating the practical realization of rights of migrants in vulnerable situations in national legislation, the authors noted the following regional peculiarities of Central Asia with regard to situations of migrant vulnerability:

- for the countries of origin (Tajikistan and Kyrgyzstan), it is important to include in the conceptual field the vulnerability of “banned” migrants, as well as a wider range of people affected by negative migration effects, such as families with

children left by a breadwinner who went abroad in search of earnings,

- for the country of destination and transit (Kazakhstan), the category of transit migrants and undocumented working migrants, especially women and children, is relevant.

For these categories of migrants and their family members to assert their rights, the authors of this study propose a Guideline for the identification and referral of migrants and their family members in vulnerable situations. This Guideline and the draft standard operating procedures contained therein can be used as a basis for developing local regulations and subordinate acts at national levels. In this context, it is important to adhere to the basic principles and approaches to solving of migrants’ complex individual situations reflected in the Guideline.

The authors suggest that coordination structures created on the basis of local authorities (e.g., akimats) can become the main institutions aimed at detection, identifying, and referring migrants and their family members in vulnerable situations in the region. This is connected with global trends and processes of decentralization of state power, proximity of local authorities to a person for a better understanding of vulnerable situations and the organization of adequate assistance at the local level.

Gradual consolidation of referral mechanisms in the states, introduction of standard operating procedures, as well as their further specialization and consolidation in narrower departmental instructions, will be a gradual evolutionary process of the legislation development and implementation of norms regarding the prevalence of human rights, including migrants in vulnerable situations.

5.2. List of recommendations and proposals for improving legislation, institutional development and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Republic of Kazakhstan)

The country has approved The Immigration Policy Development Concept of the Republic of Kazakhstan for 2017–2021 and the Action Plan for the Implementation of the Immigration Policy of the Republic of Kazakhstan for 2017–2021. Within the framework of this concept, the Ministry of Labour and Social Protection of the Population implements an approach that necessitates updating the foundations and creating a “hybrid” migration management system. At the same time, for the Kazakh authorities, the problem of labour migrants has not been a priority for a long time and, according to the experts, in the near future Kazakhstan will be more and more concerned about the problems of internal migration. However, the visible prerequisites for growth of the economies of neighboring Central Asian countries, with the exception of Uzbekistan, are not expected in the coming years, and this means that the flows of labour migrants arriving in Kazakhstan as a destination and transit country will grow. In this regard, the authorities intend to strengthen the regulation of migration flows at the legislative level, and the requirements for labour migrants from neighboring countries are to be toughened. Under these conditions, it is especially important that in regulation of external migration the problems of migrants in a vulnerable situation are taken into account.

There is no concept of “migrant in a vulnerable situation” in the immigration legislation of Kazakhstan. The absence of such a concept does not provide an opportunity to ensure the protection of the rights of migrants caught in a vulnerable situation at the legislative level. In the course of work on research and interviewing, both with government officials and non-governmental organisations, it became apparent that everyone had a different understanding of the concept of a “migrant in a vulnerable situation.” In the course of this study, an attempt has been made to propose a term, as well as indicators for classifying the situation of a migrant as vulnerable.

Below are the recommendations that, in the opinion of the authors, will make it possible to define the term and, as a result of introducing changes in some regulations, will allow migrants in a vulnerable situation, regardless of their status, to have access to legal, social and medical aid.

Thus, it is necessary to ensure legislative protection of the basic rights for all migrant workers, regardless of their status. In Article 1 of the Law **“On Migration of the Population”** dated July 22, 2011, the term “migrant in a vulnerable situation” should be inserted. The law should also be supplemented with

a separate article, which provides for guarantees of legal, social and rehabilitation assistance to a migrant who is in a vulnerable situation, regardless of her/his status. This provision will make it possible to amend other by-laws that guarantee legal, social and rehabilitation assistance.

It is recommended that transit migrants have access to justice and effective remedies, including in cases of violence and ill-treatment by both official bodies and private individuals. For this purpose in Art. 1 of the Law “On Migration of the Population”, it is necessary to introduce the concept of a “transit migrant”, i.e., a migrant following the transit through the territory of the Republic of Kazakhstan. Also, the Law “On Migration of the Population” is recommended to be supplemented with an article stating that transit migrants following through the territory of the Republic of Kazakhstan and have been denied entry to the country of destination are entitled, upon appeal to the representatives of the authorities of Kazakhstan, to be protected by the Republic of Kazakhstan, to justice and effective remedies, including in cases of emergency situations, violence and abuse and exploitation.

Article 8 of the Law of the Republic of Kazakhstan **“On Education”** proposes to sup-

plement the rule that the children of migrants who are in a vulnerable situation, as well as migrants with irregular status, have the right to secondary education at the time of providing legal and social rehabilitation assistance to their parents. This norm will allow children of migrants in a vulnerable situation to easily obtain secondary education in educational institutions of the Republic of Kazakhstan. Since in practice cases of voluntary admission of this category of children to educational institutions are not uncommon, if such an amendment is adopted, the education authorities will be able to refer to this article when admitting migrant children to educational institutions.

The Code of the Republic of Kazakhstan “**On People’s Health and Healthcare System**” recommends the introduction of a provision providing full medical assistance to migrants who are in a vulnerable situation (if recognized as migrants).

The law of December 29, 2008 “**On Special Social Services**” recommends the inclusion of an clause on the possibility of providing special social services to migrants who are in a vulnerable situation. In Article 3 of the Law “Scope of this law” it is necessary to define the concept of “migrant who has found himself in a vulnerable situation”. Article 6 of the Law “The grounds by which a person (family) can be recognized as being in a difficult life situation” is also to be supplemented with the term “migrant in a vulnerable situation”.

In order to provide **legal aid** and grant the right to file complaints to migrants with irregular status and transit migrants as the most vulnerable categories, an effective sys-

tem should be built. Due to the fact that the level of trust in government structures among these categories of migrants is low, it is possible through the mechanism of state social order to allocate funds for working with these categories of non-citizens to public organizations that will be authorized to reveal them and provide them with legal aid.

Also, it is recommended to introduce in the article 6 of the Law of the Republic of Kazakhstan **On Legal Practice** a rule that allows lawyers to provide free legal assistance to migrants who are in a vulnerable situation, transit migrants, and provide for a mechanism for 100% reimbursement to lawyers in this case. Such a norm would also allow migrants to receive professional independent legal aid.

In the sphere of rendering legal aid and exercising the **right to judicial protection** within the framework of reforming the judicial system of the Republic of Kazakhstan, it is proposed to consider the possibility of creating separate courts that will deal with migrants and refugees. It is also necessary to accelerate the creation of the State Fund for the Payment of Compensation to Victims of Trafficking in Human Beings.

At the **institutional level**, it is necessary to ensure proper training of personnel in the main agencies that have regular contact with migrants: in the Committee of Migration Service of the Ministry of Internal Affairs of the Republic of Kazakhstan, in the Committee of Labour, Social Protection and Migration under the Ministry of Labour and Social Protection, and in Border Service. Employees of these agencies can reveal a migrant, facilitate her/his identification and referral, and help a

migrant in an emergency situation and in violation of her/his rights. The Ombudsman for Human Rights and the Ombudsman for Children can pay more attention to the problems of labor migrants and their children and to cover these issues in their reports.

Regarding **the law enforcement**, it is recommended that the focus of attention and punishment be changed from migrants with irregular status to employers. For this, it is possible to:

1. Conduct information campaigns aimed at employers, calling for the legal employment of workers, preventing child slave labour, describing sanctions for illegal hiring of foreign workers.
2. Develop an effective mechanism for detecting cases of illegal use of foreign labour, including ensuring the proactive position of labour inspectors who will have the right to access employers, make informed decisions and impose sanctions for such violations. Organize the training of such inspectors for effective identification and referral.

Since women are often employed in the shadow sectors, do home-based work, special measures must be taken to protect the work of homeworkers, in particular from sexual harassment, violence and forced labour, and to ensure the simplicity of the procedure for notification regarding such cases.

Kazakhstan should also strengthen control over private road carriers to reduce roadside accidents in which both Kazakhstan citizens and transit migrants may suffer.

5.3. List of recommendations and proposals for improving legislation, institutional development and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Kyrgyz Republic)

The formation and development of the institutional mechanism in the sphere of Kyrgyzstan’s migration policy throughout its independence is characterized by instability and inconsistency.

Until now, Kyrgyzstan’s migration policy has focused more on issues of external labor migration as an important tool for providing the labor-abundant population with employment abroad. Declaring the benefits for the country

from external migration in the form of participation of citizens of the Kyrgyz Republic in the global labor market and familiarization through this process with new technologies and production organization standards, the national documents do not cover the issues of returning such hypothetically “improved” human capital to the country.

The priorities and policy measures essentially do not cover reintegration issues of return-

ing migrants or the creation of conditions for their investment activity and efficient use of money transfers.

The legislation of the Kyrgyz Republic has sufficiently developed a regulatory framework designed to regulate the whole range of problems faced by socially vulnerable population categories, as well as persons staying in the country due to negative situations in their homeland. There is a vast array of le-

gal documents at the national level, as well as documents of the international level to which Kyrgyzstan has become a party via signing / ratification which have become an integral part of the national legislation.

At the same time, it is necessary to note a significant share of measures which remain non-implemented in practice and which aim to provide full protection and support from the state to those who need them. It should be understood that to a large extent this situation is objectively conditioned by the current state of the country's economy, which directly affects the budget possibilities of the Government as well as of state and local municipal bodies. Civil society organizations have a role in solving existing problems in this sphere, and their activities, in turn, are accompanied by financial and methodological support of specialized international organizations. Among the latter, the International Organization for Migration (IOM) should be highlighted.

Along with the objective factors influencing the formation of a functioning national mechanism of social, legal, and other support for certain population categories, there are facts of shortcomings and misunderstandings of these issues on the part of the relevant state structures. This category also includes labor migrants, as well as their family members who live in the territory of the host country and who have been separated from migrants in their motherland. Given the marked specificity of the latter category, in fact, not all program documents of state and municipal structures not differentiate them in the general population. For this reason, it is not possible to implement purposeful and systemic legal and other support for the resolution of problems present in the sphere of migration.

In general, the analysis of the situation related to such a large category of the Kyrgyzstan population, as labor migrants and their family members, demonstrates the need to synthesize it as a separate group from the general population of the country.

The legislation of the Kyrgyz Republic requires a certain supplement, which accounts for the significant number of citizens who find themselves in a difficult life situation, against the background of their involvement in migration processes. In particular, the **Code of the Kyrgyz Republic On Children**: it is

proposed to supplement the concept of “children left without parental care” by the target group of “migrant children left without parental care”, and also add appropriate measures to ensure their rights and interests.

In order to provide a guaranteed volume of social services to migrants in a vulnerable situation and help them overcome their difficult life situation, it is possible to include in the notion of “difficult life situation”, formulated by the **Law of the Kyrgyz Republic On the Basics of Social Service for the Population in the Kyrgyz Republic**, the vulnerable situation of “the consequences of human trafficking” to ensure that victims of human trafficking are provided with a guaranteed volume of social services.

Under the concept of “children left without parental care”, the reasons and situations are listed why children are left without parental care. However, the situation related to the lack of protection of the rights and interests of migrant children left without parental care (parent) due to their long stay in migration, has not been reflected in the Law. In view of the urgency of the problem, it is proposed to include the notion of “migrant children left without parental care” into the indicated concept.

It is also proposed to provide victims of human trafficking and migrant children without parental care with the right to social services; Article 7 “Complex of social service organizations and institutions” should be supplemented to include such an institution as an “asylum (shelter) for victims of human trafficking”; Article 4 “Social Service Objects” should be supplemented with the category “migrants in a vulnerable situation”.

As the measures for the rehabilitation and reintegration of returned migrant workers who are in a vulnerable situation in the country's legislation are almost absent (as is the socially vulnerable categories of citizens as “migrants in a vulnerable situation”) and the provision of state support to migrants in vulnerable situations is carried out in a general way and on general grounds—i.e. as individuals in difficult life situations—we believe it is possible to make changes and additions to a number of legislative acts of the Kyrgyz Republic covering, first of all, social protection, employment, and health.

The concept description of “migrant in a vulnerable situation” in this study was very difficult, as there is no concept of “migrant” in the legislation of the Kyrgyz Republic in the field of migration, while the **Law of the Kyrgyz Republic “On External Migration”** defines “immigrant”, “emigrant.” In this context, it is proposed to supplement the Law with the concept of “migrant”.

The issues of ensuring migrants' (who are foreign citizens) access to medical services need to be consolidated in a normative legal act as for now, these issues have been regulated by the Provisional Regulations on the procedure and conditions for the implementation of compulsory medical insurance for foreign citizens and stateless persons temporarily staying or temporarily residing in the Kyrgyz Republic, approved by the order of the Ministry of Health of the Kyrgyz Republic and the Mandatory Medical Insurance Fund under the Government of the Kyrgyz Republic.

The market for rendering services related to the employment of citizens of the Kyrgyz Republic abroad is in, by far, the highest demand today. Every year, thousands of Kyrgyzstan citizens go to work abroad through private employment agencies. The regulation on the procedure for implementing activities relating to the employment of citizens of the Kyrgyz Republic abroad is aimed only at regulating the procedure for issuing permits for the right to carry out this activity. **Due to the absence of a normative legal act on private employment agencies which would lay down the legal status and nature of the activities of private employment agencies in providing labor market services, it is proposed to adopt an appropriate regulatory legal act as well as to amend the Labor Code of the Kyrgyz Republic and the laws of the Kyrgyz Republic On Promotion of Employment of the Population,“ ”On licensing system of the Kyrgyz Republic,” and other legislative acts.**

The **Law of the Kyrgyz Republic “On Prevention and Countering of Human Trafficking”** was adopted in 2005, but the procedure for the implementation of social rehabilitation of victims of human trafficking (Article 24) and the rules for organizing shelters, the order of their activities, management, funding standards and organization of activity monitoring (Article 21). In this re-

gard, it is proposed to develop and adopt the aforementioned documents by the decision of the Government of the Kyrgyz Republic.

With the assistance of the International Organization for Migration, a package of normative legal acts has been developed to identify victims of human trafficking and to introduce a mechanism for their referral with a view to assisting in social rehabilitation. The Ministry of Internal Affairs of the Kyrgyz Republic is recommended to speed up the promotion of document projects.

State and municipal institutions provide only those services included in the **Unified Register of Public Services** and the **Basic Register of Municipal Services**. The services of employment, social protection, health care related to overcoming the negative consequences of migration by citizens are not specifically stipulated in the legislation; therefore,

it is proposed to include in the above-mentioned service registers a list of services that should be provided to migrants in a vulnerable situation—e.g. social care for victims of human trafficking in shelters and crisis centers—in accordance with the development of standards for the provision of these services.

The Law of the Kyrgyz Republic “On State Social Order” is aimed at solving social problems that are not covered or insufficiently covered by the activities of state bodies and/or local government bodies and creating alternative mechanisms for effective provision of social services to the population.

According to the Law, one of the spheres of implementing the state social order is **assistance to migrants, internally displaced persons, and refugees**. State structures and local self-government bodies are very passive in the implementation of this area of the Law.

Only two state bodies have programs of state social order for 2018. At the same time, there are no measures to assist migrants in difficult life situations, i.e. the sphere of the state social order “assistance to migrants, internally displaced persons and refugees” has been overlooked by state bodies and non-profit organizations. In this regard, the participation of state authorities and local self-government in the implementation of the Law of the Kyrgyz Republic “On State Social Order” should be intensified in the context of this study.

The adopted program documents of the Kyrgyz Republic did not reflect issues on ensuring the right of migrants in a vulnerable situation to receive social and other services, which constitutes a significant gap. In this regard, it is essential to include these issues in the draft of the Concept of the State Migration Policy of the Kyrgyz Republic, developed by the State Migration Service.

5.4. List of recommendations and proposals for improving the legislation, developing the institutions, and improving law enforcement practices in relation to the identification and referral of migrants in vulnerable situations (Republic of Tajikistan)

Involvement of citizens of the Republic of Tajikistan in migration flows has a number of positive and negative consequences, both for migrants themselves, and for the state and society as a whole. Migration processes are being intensified due to the difficult economic situation of the country and unemployment. Migration policy is also significantly affected by the imperfection of legislation in the field of migration.

Adopted in 1999, the Law of the Republic of Tajikistan “On Migration” is substantially outdated, thus requiring the adoption of a new law regulating public relations in the field of migration, but even the new draft law “On labour migration” does not meet the modern-day requirements. In order to bring the Draft Law of the main legislative act of the country on regulation of labour migration in line with the norms of international conventions, it is recommended:

- to bring the term “labour migrant” in accordance with the provisions of Article 2 of the International Convention on the

Protection of the Rights of All Migrant Workers and Members of Their Families, and in particular to exclude from this article the phrase “on a legal basis”.

- to introduce the concept of “vulnerable migrant”—a person (migrants with a ban on repeated entry into the country of destination, migrants with HIV/tuberculosis, migrants who have become victims of human trafficking and/or victims of smuggling of migrants, refugees, and asylum seekers) in the force of various causes found in a situation that objectively violates its life activity and which can not overcome this circumstance independently;
- to introduce the concept of “family with children left by a migrant”—a family of a labor migrant who is in a vulnerable situation and who can not overcome these circumstances on his own;
- to introduce the concept of “state of employment” using the concept of this term, referred to in Art. 6 ICRMW²³⁵.
- in clause 2 of Art. 5 of the Draft Law to use “non-discrimination” instead of “avoid-

ing restrictions,” given the fact that the subject of regulation in this case is the prohibition of discrimination, but not restriction.

- to review the provisions of Article 8 (clause 5) and Article 15 (Part 2 clause 3) of the Draft Law and bring it in line with the requirements of Art. 12 of the International Covenant on Civil and Political Rights and Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families regarding the inadmissibility of a broad restriction on the right of citizens to travel and enter the state, with the exception of certain clear requirements.
- to include in chapter 5 of the draft law “Labour migration of foreign citizens to the Republic of Tajikistan” a section on the rights and obligations of migrant workers, and to provide minimum standards set forth in the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families for the Protection of the Rights of Migrant Workers in the Republic of Tajikistan for employment.

²³⁵ The term “state of employment” means a state in which, as the case may be, a migrant worker will be engaged, is or will be engaged in paid activity (Art.6, par. b) of the ICRMW)

Also, in the course of the study, a number of shortcomings were revealed in other regulations that deal in some way with migrants in vulnerable situations as well as recommendations for removal of said shortcomings:

Thus, the **Law of the Republic of Tajikistan “On the Protection of the Rights of the Child”** dated March 18, 2015, No. 1196²³⁶, contains the concept of “a *child left without parental care*”. That refers to a child who was left without the care of his parents or a single parent, due to the restriction or deprivation of their parental rights, the recognition of parents as missing, the declaration of the parents being deceased, the admission of incapability (limitedly capability), serving punishment by parents in correctional facilities, evasion of parents from the upbringing of the child or from protecting his rights and interests, including with the refusal of parents to accept their child from educative, educational, or medical institutions, as well as remaining in other cases without parental care. Due to the fact that when a parent leaves for labor migration, the child actually remains without parental care, it is necessary to introduce this factor into the concept with the following phrase “... in connection with the departure of parents for migration”.

The Law of the Republic of Tajikistan “On Enforcement Proceedings” dated **March 20, 2008**²³⁷. According to Article 42¹ of this Law, enforcement agents may restrict the exit of labor migrants “in case the debtor fails to fulfill the requirements of the executive document without a good reason.”

The restriction of freedom of movement, from the point of view of international law, can be established only by the judiciary, and in no case should enforcement agents have such wide discretionary powers. Exit restrictions place citizens of Tajikistan in a vulnerable situation, since the exiting the country for the purpose of labor migration is the main source

of the well-being for tens of thousands of families in Tajikistan. Failing to find a necessary job in the homeland, a migrant worker and his family turn into low-income citizens in a few months or even weeks.

As such, it is necessary to exclude this provision of the Law, as it contradicts Article 8 of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families²³⁸ and Article 12 of the International Covenant on Civil and Political Rights.²³⁹

The Law of the Republic of Tajikistan On Social Service dated January 05, 2008²⁴⁰. The Law describes the following concept and explanation of a “difficult life situation” as a situation that objectively disrupts the normal life of a citizen or a situation that he can not overcome on his own, namely: disability; old age; disease; consequences of industrial injury or occupational illness; loss of the breadwinner; loneliness, orphanage, abandonment; lack of place of residence; stable psychological dependence, consequences of violence or situations associated with a risk to life; other difficult life situations. As it can be seen from this concept, it is exhaustive and does not extend to the vulnerability of the situation of migrants. To provide for vulnerable migrants, the volume of social services provided by law should include the concept of migrants in a “difficult life situation” who are in a vulnerable situation.

Law of the Republic of Tajikistan On the Promotion of the Employment of the Population dated August 01, 2003.

According to the Law, the state provides additional guarantees to the citizens who need social protection and who have difficulties in finding work and who are not able to compete as an equal in the labor market. However, the Law does not provide a concept of “people in need of social protection”, “people suffering difficulties in finding work”, and “not

able to compete as an equal in the labor market.” In view of the fact that vulnerable migrant workers need social protection, suffer difficulties in finding a job, and are not able to compete as an equal in the labor market, it is necessary for the law to make provisions for these concepts and extend their coverage to vulnerable migrants (migrants with a ban on repeated entry into the country migrants with HIV/TB, migrants who have become victims of human trafficking and/or victims of smuggling of migrants, refugees, and asylum seekers).

The Law of the Republic of Tajikistan “On the responsibility of parents for the education and upbringing of children” dated **August 02, 2011**²⁴¹ places the primary responsibility for protecting children from child labor and exploitation on parents, and not on authorized government employees as agents of the state. In this regard, it is necessary to bring Article 12 of this Law in accordance with the provisions of ILO Convention No. 182 On the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

Law of the Republic of Tajikistan On Countering Human Trafficking and Administering Aid to the Victims of Human Trafficking dated July 26, 2014²⁴². In 2016, in order to implement the norms of this law and protect the rights and legitimate interests of victims of human trafficking and vulnerable migrants, and to ensure the effectiveness of countering human trafficking, drafts of the following by-laws and other regulatory acts were prepared:

- Regulation of Interdepartmental Commission On Countering Human Trafficking;
- Model Regulation of territorial commissions On Countering Human Trafficking;
- Model Regulation of specialised governmental and non-governmental organizations On Administering Aid to the Victims of Human Trafficking;

²³⁶ Akhbori Madjlisi Oli of the Republic of Tajikistan, 2015, No. 3. Art. 218.

²³⁷ Akhbori Madjlisi Oli of the Republic of Tajikistan, 2008, No. 3, Art. 192.

²³⁸ It was ratified by Tajikistan in 2001, and came into force in 2002.

²³⁹ Tajikistan acceded to this international legal document on January 4, 1999.

²⁴⁰ Akhbori Madjlisi Oli of the Republic of Tajikistan, 2008, No. 1, part 2. Art. 24.

²⁴¹ Akhbori Madjlisi Oli of the Republic of Tajikistan, 2011, No.7–8, Art. 616.

²⁴² Akhbori Madjlisi Oli of the Republic of Tajikistan, No. 2014 (Part 1), 2014, No. 393.

- Regulation of the State Fund On Administering Aid to the Victims of Human Trafficking;
 - The Rules of the Establishment of Specialised Centers for Administering Aid to the Victims of Human Trafficking;
 - The Rules of Identifying Victims of Human Trafficking;
 - Resolution of the Government of the Republic of Tajikistan On the Approval of the List of Offences Relating to Human Trafficking, etc.
- Also, the working group prepared draft laws on amendments and additions to the Code of Criminal Procedure, the Criminal Code and a number of other normative and legal acts of the Republic of Tajikistan concerning issues of counteracting human trafficking. These projects of normative legal acts are submitted to the Government of the Republic of Tajikistan, which are under consideration. The adoption of these documents will improve the legal framework for counteracting human trafficking and protecting the rights of victims of human trafficking and those of vulnerable migrant workers.

LIST OF ABBREVIATIONS AND ACRONYMS

KR —Kyrgyz Republic;	SO —state bodies;	UNDP —United Nations Development Programme;
RK —Republic of Kazakhstan;	SBC —state border committee of the corresponding state;	UNFPOA —UN framework programme for offering aid;
RT —Republic of Tajikistan;	IGA —income-generating activity;	SOP —standard operating procedures;
RF —Russian Federation.	EEU —Eurasian Economic Union;	CIS —Commonwealth of Independent States;
	EU —European Union;	TB —tuberculosis;
	VHT —victims of human trafficking;	HT —human trafficking;
	MIA —Ministry of Internal Affairs of the corresponding state;	UNHCR —United Nations High Commissioner for Refugees;
	MFA —Ministry of Foreign Affairs of the corresponding state;	CC —Criminal Code of the corresponding state;
	IO —international organizations;	CPC —Criminal Procedural Code of the corresponding state;
	IOM —International Organization for Migration;	CRO —Children’s rights ombudsman of the corresponding state;
	NGO —non-governmental organization;	MDG —Millenium Development Goals;
	SND —Strategy for national development of the corresponding state;	PEA —Private employment agency;
	CSTO —Collective Security Treaty Organization;	

GLOSSARY

A refugee is a person who because of well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion is outside the country of his nationality [or, in the case of stateless persons, his habitual residence] and can not be protected by the government country or does not want to use such protection, either because of such fears or for reasons unrelated to considerations of personal convenience²⁴³.

Detection is a set of actions undertaken to detect and recognize suspected migrants and their families in vulnerable situations.

Gender discrimination is an integral concept denoting the violation of fundamental human rights directed towards a private person or groups of persons and based on gender; includes actions that inflict physical, mental, sexual harm, or suffering, the threat of such acts, coercion, and other restrictions on freedoms.

Migrant children left without parental care are minors left without the care of the sole parent or both parents due to the parents' migrant activity and who thus find themselves in an environment that prevents their normal upbringing and development.

Children who have been separated from their families are children separated from both parents or with their legal or traditional caregivers, but not necessarily with other relatives, and are not in the custody of an adult person who by law or custom is responsible for caring for them. Children can be separated from their families at any stage of migration²⁴⁴.

Discrimination is any distinction, exclusion, restriction, or preference based on race, color, descent, ethnic origin, sex, age, gender, sexual orientation, gender identity, disability, religion or belief, nationality, migration or residence status or other status with the aim or effect of destroying or impairing the recognition, use, or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life²⁴⁵.

A victim of human trafficking is a person who has committed a human trafficking offense under the Palermo Protocol.

Identification is a set of actions carried out for the purpose of classifying a person as a migrant in a vulnerable situation or members of their families in a vulnerable situation on the basis of vulnerability criteria (indicators).

Criteria (indicators) of vulnerability are individual, family-household, community, institutional, and situational characteristics and conditions on which a person can be classified as a migrant in a vulnerable situation.

Interdepartmental coordination body for offering aid to vulnerable migrants is a consultative body established to coordinate the interaction of state bodies, local authorities, non-profit, international and other organizations in implementing measures related to rendering assistance to vulnerable migrants.

A migrant is any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is..

A migrant in a vulnerable situation is a migrant who, due to various circumstances, has found himself in a vulnerable situation. These migrants may become migrants with re-entry ban; migrants with HIV/TB; migrants who have suffered trafficking; transit migrants in emergency situations, migrant workers with an unregulated status, especially women and children, etc.

Referral is a set of actions undertaken to organize the access of the migrant in a vulnerable situation and their family members to rehabilitation and reintegration services.

Rehabilitation is the process and system for restoring the optimal state of health as well as psychological and social well-being after a long stay in a vulnerable situation in accordance with the needs of the migrant or a member of his family.

Reintegration is inclusion of a migrant in a vulnerable situation or members of his family in the social structures of his country of origin upon return, creating a circle of contacts (friends, relatives, neighbors), as well as participation in the structures of civil society (associations, mutual assistance groups, etc.) and economic life region.

Sexual discrimination is a violent act in which the victim is forced, by means of threat or deception, into some form of sexual activity, manifested in sexual harassment, coercion, or rape.

Domestic violence includes the violent and deliberate acts of a physical, psychological, sexual nature of a family member against another member of the family, violating his rights, freedoms, legitimate interests and causing him physical and/or mental suffering.

²⁴³ See A/AC.96/830. UNHCR mandate for the protection of refugees in accordance with paragraph 6 A (ii) of its Charter (resolution 428 V) of the General Assembly.

²⁴⁴ Committee on the Child's Rights, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, Article 8.

²⁴⁵ Durban Declaration, clause 2.

Family with children left by a migrant refers to the family of a labor migrant who is in a vulnerable situation and who can not overcome these circumstances independently.

Social stigmatization is attributing to a migrant or his family members in a vulnerable situation certain characteristics of a negative slant that limit the full realization of the rights of these persons.

Social services is a set of social services associated with the activities of social services for social support, the provision of social, domestic, medical, psychological-pedagogical, social and legal, other services and material assistance, social adaptation and rehabilitation of citizens in a difficult life situation.

A specialist is a representative of state bodies, local self-government bodies, non-profit and international organizations, having appropriate qualification and authority to conduct identification and referral.

Entities of detection, identification and redirection of a vulnerable migrant are state bodies, local governments, international organizations, non-profit and other organizations, irrespective of the form of ownership, carrying out, within their authority, the detection, identification, and referral of a vulnerable migrant.

Human trafficking refers to the recruitment, transportation, transfer, harboring or receipt of persons for the purposes of exploitation by the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or the vulnerability of the situation, or through bribery, in the form of payments or benefits, to obtain the consent of a person who controls another person. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs²⁴⁶.

A difficult life situation is a situation that objectively disturbs the normal life of a citizen, or a situation that he can not overcome on his own.

A migrant worker is a person who will be engaged, is engaged in or was engaged in paid activity in a state of which he or she is not a citizen²⁴⁷.

Settlement of status is a series of legislative and administrative measures used by states to confer a legal status that allow migrants without a settled status to remain lawfully therein²⁴⁸.

A vulnerable situation is a situation in which the ability of a person to enforce and respect his rights is limited as is his ability to protect them or to resist the violation of his human rights and recover his fundamental rights independently.

A member of a migrant's family in a vulnerable situation is a person who is married or in a civil marriage with a migrant in a vulnerable situation, as well as dependent children and other persons who are recognized as family members in accordance with the laws of the country.

²⁴⁶ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime dated November 15, 2000 http://www.un.org/ru/documents/decl_conv/conventions/protocol1.

²⁴⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 2. See also ILO Convention No. 97 On Migration for Employment (Revised), 1949, Art. 11, and ILO Convention No. 143 On Migrant Workers (Supplementary Provisions), 1975, Art. 11.

²⁴⁸ Art. 69 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families



International Organization for Migration (IOM)

The UN Migration Agency



Government of the United States