

Opening the Doors of Policy-Making: Central Asia and South Caucasus

Policy Papers of the Project Fellows

Editor: Petr Jan Pajas

“Opening the Doors of Policy-Making: Central Asia and South Caucasus” is a PASOS program funded by the United Nations Democracy Fund. Through training seminars and mentored fellowships, the program shared policy and civil society know-how and skills from Central and Eastern Europe to empower civil society organizations and to enhance public participation in public policy development in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

A network of independent policy centers in Central and Eastern Europe and Central Asia

PASOS (Policy Association for an Open Society) aims to promote and protect democracy, human rights and open society values – including the rule of law, good governance, and economic and social development – by supporting civil society organizations that individually and jointly foster public participation in public policy issues at the European Union level, in other European and global structures, and in the wider neighborhood of Europe and Central Asia.

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Editor: Petr Jan Pajas

Printed in Prague, Czech Republic, by Graf Print s.r.o., July 2012

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Sdružení pro podporu otevřené společnosti - PASOS

ISBN 978-80-905105-5-5

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**This publication has been made possible with the support of
UNDEF (United Nations Democracy Fund) global grant No. UDF-GLO-09-2810.**

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Policy Association for an Open Society



Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

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PASOS - Policy Association for an Open Society

Prague, Czech Republic

2012

About PASOS

PASOS – Policy Association for an Open Society, established in 2004, is a network of independent policy centers in Central and Eastern Europe, Western Balkans and Central Asia with the Secretariat in Prague, Czech Republic, led since 2005 by the Executive Director Jeffery Lovitt.

PASOS organizes international networking, training and advocacy events with the aim to promote and protect democracy, human rights and open society values – including the rule of law, good governance, and economic and social development – by supporting civil society organizations that individually and jointly foster public participation in public policy issues at the European Union level, in other European and global structures, as well as in the wider neighborhood of Europe and Central Asia.

PASOS strives to strengthen the capacity and outreach of independent civil society actors working in policymaking. By its networking activities and joint projects of its current 56 members from 28 countries PASOS supports the development and strengthens the impact of public policy oriented think tanks and policy centers throughout the region.

The current Board of Directors of PASOS, chaired by Dr. Agnieszka Łada, from the Institute of Public Affairs, Poland, is composed further of Mr. David Král, from EUROPEUM Institute for European Policy, Czech Republic, Mr. Tevan Poghosyan, from the International Center for Human Development, Armenia, Dr. Marija Risteska, from the Center for Research and Policy Making, Macedonia, Dr. Linda Austere, Centre for Public Policy PROVIDUS, Latvia, Prof. Samuel Greene, from the Center for the Study of New Media and Society at the New Economic School, Russia, and Dr. Vugar Bayramov, from the Center for Economic and Social Development, Azerbaijan.

For further information, see www.pasos.org.

Mr. Petr Jan Pajas is Program Manager at PASOS (Policy Association for an Open Society). He retired from the post of Vice-President (Administration) of the Anglo-American College in Prague after holding the post from 2002-2005. Originally a physicist and mathematician, he was forced to work as a transportation system analyst from 1972-1990. After November 1989, he became known more as a leading NGO spokesman and as an expert on the NGO legal environment. Since 1992, he has worked in cooperation with ICNL - International Center for Non-Profit Law (USA) - and as co-founder and Executive Manager of a consulting company advising NGOs. From 1995-2000 he was Deputy Director of the Center for Democracy and Free Enterprise in Prague. Before, he held several senior NGO roles, including as Executive Director of the Czechoslovak Charta 77 Foundation during 1989-1992, as Executive Director for the Office for Establishing the Central European University in Prague during 1991-1993, and as Executive Director of the Institute of Municipal Informatics of Prague during 1993-1995. He is also the author and editor of a number of books on the European Union, on civil society, and is a university lecturer on EU and Civil Society affairs.

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About the project and the papers

Petr Jan Pajas
Project Manager, PASOS

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PASOS - Policy Association for an Open Society

Prague

2012

Introduction

For PASOS, one of the avenues of strengthening democracy and the rule of law is to increase public and civil society organization participation in public policy debates. It has been observed that in countries which are in the transition process from single-party political system to pluralistic democracies and free market economies face persistent limitations in terms of scope and capacity as regards transparency and citizen involvement in public policy decision-making. There are many unresolved challenges to both the democratization and full implementation of human and citizen's rights, specifically in the region of Central Asia and South Caucasus, where the building of a strong civil society is still in progress and obstacles remain to be overcome.

The differing countries of the South Caucasus and Central Asia allow for differing degrees of public participation and influence of CSO actors on policy-making. The overall scope for influencing government agendas remains low. CSO actors have often limited capacity, and governments have limited willingness to take CSO perspectives into account, also lacking experience with such an approach.

When designing the current Project, PASOS proposed the following:

*In **Armenia**, there is broader cooperation between public authorities and CSOs at the community and regional levels, but the national government does not recognize CSOs' expertise as something that can contribute to the process. In **Azerbaijan**, independent think tanks enjoy a high regard in society, but the extremely low level of cooperation among CSOs limits the effectiveness of civil society's advocacy efforts. In **Georgia**, CSOs and experts are labeled as supporters of one or another competing political camps, and the government does not see them as strong partners in debates over public policy. In **Kazakhstan**, CSOs can participate in government tenders and undertake research only in certain policy areas (e.g. economic policy, environmental protection). In **Kyrgyzstan**, CSOs have comparatively more possibilities to influence the current government which, although weak in its own policymaking capacity, is willing to discuss with interest groups the key decisions influencing large numbers of the population, and plans to commission research and consultancy assignments from suitably qualified CSOs. Certain mechanisms of consultation also exist in **Tajikistan**, although policy analysis is scarce compared with academic research. In **Turkmenistan** and **Uzbekistan**, the governments prefer to deal with organizations directly or indirectly established by the government (known also as GONGOs) rather than to promote the participation of grass root and government independent CSOs.*

Throughout these countries, it is widely agreed (including by representatives of the public sector) that public institutions have little knowledge about policy research and analysis, as opposed to academic research, and lack experience of co-operation with the non-governmental policy community.

Project Description

PASOS has been given a chance to contribute to the improvement of the above-mentioned situation in the eight focus countries of the two regions. From August 2010, PASOS implements the two-year long project *Opening the Doors of Policy-Making: Central Asia and South Caucasus*, financially supported by the UNDEF (United Nations Democracy Fund global grant No. UDF- GLO-09-2810).

The main objective of the Project is to make use of the PASOS member's expertise for training selected civil society activists from the 8 target countries of Central Asia and South Caucasus (3 per country) in the skills of active policy research and advocacy. Some of them, which we call the Project Fellows, have been awarded a possibility to spend three working weeks in carefully selected European PASOS member organizations or a think tank of appropriate field of interest where they could further develop their skills by working on their own policy recommendations. In order to make that effort as close as possible to the PASOS policy papers writing standards, two PASOS mentors assisted the Project Fellows before, during and after their internship in the hosting organization. The results of this efforts is documented by the present publication, in which the eight Project Fellows are publishing their findings and policy recommendations concerning issues of internal policy of their native countries.

Besides this effort to enable one civil society actor from each of the eight target countries to absolve the complete cycle of being trained in policy-making skills and of using the acquired skills in their own policy analysis work, PASOS has also organized a Training of Future Trainers in these skills (again one per each target country).

Within the Project PASOS also organized a special Workshop for Public Administration Officials who were acquainted in more detail with the philosophy behind citizen participation on public policy decision-making and with opportunities and challenges for both the public administration and CSOs, which are usually faced whenever this new approach to more open policy making is being implemented. Participation in this workshop was offered to one or two officials from each of the target countries. At this occasion it was also possible to inform them about the role of think tanks as CSOs specialized in preparation of evidence-based policy recommendations within the decision-making processes.

Last but not least of these efforts, PASOS held during the Project period two Regional Networking Conferences where new contacts were built between CSO representatives and public administration officials. The two conferences enabled to explain in greater detail the general aspects of citizen participation and illustrated that on several cases of both success and failure, as well as through presentations of local and international experts and scholars.

Project Implementation

In particular, the Project was first introduced to the Central Asia CSOs at a conference held in Almaty, Kazakhstan, on October 1-4, 2010. Applications for participation in the Project training events were collected earlier. During the fall of 2010 and spring of 2011, detailed studies were contracted, which summarized the results of the need analysis as regards the existing and envisaged as desirable capacities of CSOs for taking part in public policy making and in spreading the skills related to that within the given target country. An expert from each of the Target Countries provided opinion on these issues applying a research methodology¹ suggested by a PASOS expert, Dr. Linda Austere, from the Centre for Public Policy PROVIDUS, Riga, Latvia. This effort resulted in 8 need-analysis papers about the target countries and a summary of it written by Dr. Austere², which in turn served in the search for and contracting of trainers, whom PASOS engaged to prepare and perform a Training in Policy-Making Skills. The training, in which participated 24

¹ Linda Austere: *Framework for country experts*, PASOS and PROVIDUS, January 2011

² Linda Austere: *Policy research in the North Caucasus and Central Asia: Summary of needs-assessment reports from eight participant countries*, PASOS and PROVIDUS, April 2011

civil society activists (3 per Target Country) took place in Istanbul on June 2-3, 2011, followed by the first Regional Networking Conference on June 4, 2011.

In the second year of the Project, PASOS announced a call for Project Fellowships, to which were invited in the first place those trained in Istanbul. Out of 19 applicants 7 were selected, but one of these resigned shortly before starting the internship. So there was a need to announce an additional call for Azerbaijan and Tajikistan, to complete the group of Project Fellows so that from each Target Country there was one.

The Project Fellows submitted their themes of analytical research or policy advocacy plans. PASOS, with assistance of its members in European countries, identified organizations ready to accept individually the Project Fellows for a three weeks long internship. While the first of such internships took place already during November – December 2011, most of them were organized in the first two months of 2012, and the two latest in May 2012.

Project Fellows

The Project Fellows and their Hosting Organizations are listed below together with some additional data:

Armenia:

Miss Astghik Injeyan, Bc&MBA, from the International Center for Human Development and the Armenian Atlantic Association in Yerevan, working on the paper *“The role of private employment agencies in the process of regulation of labor migration from Armenia”* was from January 26 to February 16, 2012 on internship at PRAXIS Centre for Policy Studies, Tallinn, Estonia. Her tutor there was Mrs. Reelika Leetmaa.

Miss Injeyan obtained her Bachelors degree in Operational Management and her Masters resp. MBA degrees in International Business Management and Commerce and Marketing, respectively, from the Jean Moulin Lyon 3 University (France) and French University in Armenia Foundation (Armenia).

Azerbaijan:

Mr. Fuad Jafarli, Bc&MPA, Chairman of Urban Development Studies Public Association in Baku and citizen of City Sumgait, Azerbaijan, working on the paper *“Policy framework for redevelopment of cities in Azerbaijan”*, was from April 8 to April 27, 2012, on internship at the Foundation for Urban Architecture at the Technical University of Budapest, Hungary, His tutor there was Dr. Éva Beleznyay.

Mr. Jafarli obtained his Bachelors Degree on Political Sciences from the Institute of Public Administration and Political Sciences, Baku, Azerbaijan, and a Masters degree in Public Administration from the Public Administration Institute for Turkey and the Middle East, Ankara, Turkey; he also graduated from a one-year academic Special Program for Urban and Regional Studies as a Fulbright Scholar at the Massachusetts Institute of Technology, Boston, USA

Georgia:

Miss Nino Khelaia, BA&MPS, from the Association “Justice and Liberty” and the Georgian Institute of Politics of the Swiss Academic Caucasus Net in Tbilisi, Georgia, working on the paper “*Assessment of Women’s Role in the Security Sector of Georgia*”, was from November 27 to December 18, 2011 on internship at the Foundation for International Relations and Dialogue (FRIDE), Madrid, Spain. Her tutor there was Ms. Natalia Shapovalova.

Miss Khelaia obtained her BA with Honors in Politics and International Relations from the University of Georgia in Tbilisi and her Masters of Peace and Security Studies (MPS) degree from the Institute for Peace Research and Security Policy at the University of Hamburg, Germany.

Kazakhstan:

Mr. Yevgeniy Golendukhin, Chairman of the Regional Center of New Information Technologies [Региональный Центр новых информационных технологий] and member of the Public Monitoring Commission over the North-Kazakhstan Region, in Petropavlovsk, Kazakhstan, working on the paper called “*Some optimization questions of the National Prevention Mechanism in the Republic of Kazakhstan*” (original is in Russian), was from January 15 to February 4, 2012, on internship at the Centre for Public Policy PROVIDUS, Riga, Latvia. His tutor there was Dr. Ilona Kronberga, supported by Dr. Linda Austere.

Mr. Golendukhin obtained his university (Masters equivalent) degree in Theoretical Cybernetics from the Faculty of Mechanics and Mathematics of the Novosibirsk State University, Novosibirsk, Russia. Later, he graduated from the Petropavlovsk College of Economy and Law with a specialization as an Accounting Officer. He also participated in the Summer School on Human Rights of the Helsinki Fund in Warsaw, Poland (2008).

Kyrgyzstan:

Ms. Ainura Umetova, independent expert and former Head of the Center of Perspective Research of the Institute of Strategic Analysis and Assessment at the office of the President of the Republic of Kyrgyzstan from Bishkek, Kyrgyzstan, working on the paper called *Approaches to Development of Migration Policy in Central Asia and Europe* (original is in Russian), was from January 20 to February 10, 2012, on internship at the Institute of Public Affairs, Warsaw, Poland. Her tutor there was Dr. Justyna Frelak.

Ms. Umetova obtained her university study diploma with a specialization in Economics and Management in Civil Engineering from the Faculty of Management and Economy in Civil Engineering of the Kyrgyz Architecture and Building. She also participated in the winter school on Public Debates and Governance on Kyrgyzstan at the Institute of Public Policy in Bishkek.

Tajikistan:

Ms. Firuza Achilova from the Open Society Institute – Assistance Foundation, Dushanbe, Tajikistan, working on the paper called *ISAF troops withdrawal from Afghanistan in 2014: How Tajikistan should be prepared for that?* was from April 18 to May 5, 2012, on internship at the Foundation for International Relations and Dialogue (FRIDE), Madrid, Spain, and Brussels, Belgium. Her tutor there was Ms. Cristina Manzano, Director of the department of New Directions in Foreign Policy.

Ms. Achilova obtained her university Diploma with Honors in Economy Management from the Faculty of Economics and Business, Khujand, Tajikistan. She also graduated from courses of the Central European University, Budapest, Hungary, in Intergovernmental Fiscal Relation and Local Financial Management.

Turkmenistan:

Ms. K.B. Anelamova, Dipl.Eng., from Ashgabat, Turkmenistan, working on the paper called *Separate Collection of Municipal Solid Waste in Turkmenistan – the problem and solutions* (original is in Russian), was from March 4 to March 25, 2012, on internship at the Association Hnutí Duha - Sunbow Movement, the Czech national branch of the International Movement Children of the Earth, Brno, Czech Republic. Her tutor there was Mgr. Marta Misíková.

Ms. Anelamova obtained her university Diploma of Engineering in Oil Processing and Refinery from the Turkmen Polytechnic Institute, Ashgabat. She participated in several international conferences with ecological orientations and worked in several managerial and CSO leadership positions in Turkmenistan.

Uzbekistan:

Mr. Shukhrat Ganiev, Ph.D., Director of the NGO “ Humanitarian – Legal Center” and Coordinator of the Central Asian Network for Protection of Human Rights Defenders – Uzbekistan from Bukhara, Uzbekistan, working on the paper called *Slovakia – Uzbekistan: How to approach transboundary watercourses issues, similarities and differences* (original is in Russian), was from February 3 to February 24, 2012, on internship at the Slovak Foundation for Political Affairs (SFPA), Bratislava, Slovakia. His tutor there was Dr. Alexander Duleba, Director of SFPA.


Dr. Ganiev obtained his Diploma in Engineering from the Bukhara Technological Institute, and a PhD degree from the Kharkov Polytechnic Institute, Ukraine. He also earned a Diploma in Jurisprudence, Lawyer, at the Kharkov Juridical University, Ukraine.

Evaluation of the Project Fellows

All Project Fellows were from the moment of signing the fellowship contract coached in their work on policy papers by two PASOS mentors. PASOS contracted as the main mentor of the Project Fellows **Mr. Piotr Kazmierkiewicz**, an independent expert working for the Foundation Institute of Public Affairs, Warsaw, Poland, together with **Dr. Linda Austere** of PROVIDUS, Riga, Latvia, to assist in the selection, coaching and support of Project Fellows during their work on political papers.

The mentors were also in contact with the tutors appointed by the hosting organizations for the time of the Project Fellows' internships. Under the guidance of the mentors and tutors, the Project Fellows finalized their papers to the content, as it is being published within the framework of the Project.

The Project Fellows were expected to cooperate with both PASOS mentors, who provided them distant coaching and assistance in completing the policy papers using e-mail correspondence or other communication means. This included consulting the methods applied during the research and topic analysis, and preparing and properly structuring the papers to be as close as possible to the PASOS quality standards for policy papers.



During their 21-day internships at the Hosting Organization (with the exception of one a PASOS member), the Project Fellows could make use of the assistance of a Tutor appointed by the Hosting Organization in continuing research about the chosen topic and drafting a meaningful policy paper or another planned result that could have a usable impact on the internal or external policy of the Project Fellow's country.

It is of importance, as well, that the Hosting Organization enabled Project Fellows to learn as much as possible about organizational structure, research methodology and policy papers development, as applied in the given think tank or specialized CSO. This additional knowledge and skills may now be eventually of use to the Project Fellows if they decide to organize or found think tanks in their own country. The acquaintance with the general situation in citizens participative activities within the hosting country and in the EU, in general, has been mentioned as very useful as well.

The papers of the Project Fellows were submitted on May 25, 2012, for scrutiny by the PASOS Awarding Committee. The Committee consisted of Prof. Dr. Bohdan Krawchenko, Director General of the Central Asia University, Bishkek, Kyrgyzstan; Dr. George Tarkhan-Mouravi, Co-Director of the Institute for Political Studies, Tbilisi, Georgia; and Dr. Vugar Bayramov, chairman of The Center for Economic and Social Development, Baku, Azerbaijan. The Awarding Committee had a difficult task determining which of the Project Fellows papers had reached the quality standards expected from PASOS policy papers, and which of them may be considered as the best one. The otherwise different positions of the members coincided in placing on the leading positions within their ranking the papers of two Project Fellows.

During the Regional Networking Conference in Bishkek, on June 2, 2012, the PASOS Award for the best policy paper of the Project Fellows was awarded to Dr. Shukhrat Ganiev from Uzbekistan and Mr. Yevgeniy Golendukhin from Kazakhstan. The papers of Ms. Nino Khelaia of Georgia and Ms. Astghik Injeyan from Armenia were also mentioned.

It was one of the main objectives of the present Project, to enable at least one person from each of the Project Target Countries to become acquainted with the way in which a good and effective policy paper is created and how it may be evaluated. Every Project Fellow could review the policy paper idea, concept and its text with experts at the Hosting Organization, and with PASOS mentors. Mr. Piotr Kazmierkiewicz gave detailed and concrete evaluations of each paper and equipped thus the Project Fellows with valuable recommendations as regards the further work on the theme, from which they will surely profit during their future professional career.

We hope that the importance of the themes chosen by all Project Fellows for their countries is well-documented in their policy papers published below. We have received positive feedback from some of them, showing that the impact of their efforts is already taking place. Thus, we can show that the objectives of the present Project in this respect have been achieved.

We wish the eight Project Fellows and the newly trained future trainers to apply and further develop, share and cultivate the acquired skills in policy paper writing to the benefit of civil society and people in their respective countries. They all are now respectful partners in the broadening international network of policy oriented citizen-activists and CSOs, which encompass all PASOS members.

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

The Role of Private Employment Agencies in the Process of Regulation of Labor Migration from Armenia

Astghik Injeyan

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This paper has been produced with the assistance of the United Nations Democracy Fund (UNDEF). The content of this publication is the sole responsibility of the author and PASOS as editing and mentoring agency, and it does not necessarily reflect the views of the United Nations, the United Nations Democracy Fund or its Advisory Board.

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Acknowledgements

This paper is prepared in the framework of the project “Opening the Doors of Policy-Making: Central Asia and South Caucasus”, implemented by the Policy Association for an Open Society (PASOS), with the financial support of United Nations Democracy Fund (UNDEF).

The project aims to provide professionals working in civil society organizations with an opportunity to initiate, or further develop, their own projects and to draw on the experience and expertise of an EU think-tank to improve the way specific policy issues are tackled in their home countries by conducting in-depth policy analysis and writing a policy paper, including well-targeted policy recommendations.

As a participant of this project and a winner of the successive fellowship, I became a fellow at PRAXIS Centre for Policy Studies, a leading Estonian think-tank. It was a great opportunity to conduct a comparative research. I would like to express my gratitude to my colleagues at PRAXIS and especially to Mrs. Reelika Leetmaa for continuous support with this research, and specifically for assistance with the interview arrangements with Estonian stakeholders. I am extremely thankful to my mentors Mr. Piotr Kaźmierkiewicz and Ms. Linda Austere for their help with the paper and specific guidance in methodological and technical issues. Special thanks to Mr. Petr Jan Pajas, PASOS program manager, for encouragement and trust, and of course, PASOS for providing such an excellent opportunity to participate in the project.

My special appreciation goes as well to all the stakeholders both in Armenia and Estonia, who agreed to participate in the interviews. I am thankful to state officials, representatives of private employment agencies, and independent experts for provision of valuable documents, statistical data and information pertaining to research issues. Finally, special thanks belong to the reviewers who contributed to the improvement of the quality of this paper with their valuable comments and advice.

Summary

Labor migration has moved to the top of the policy agenda of many countries, whether serving as an origin of or a destination for migration. Armenia is mainly a donor country of labor migrants. Admittedly, migration is closely linked with unemployment and lack of job opportunities in the Armenian labor market, which drives many Armenians to look for work abroad. In 2002-2007, approximately 75% of Armenian emigrants were migrant workers. At least one member of 14.5% of Armenian households is a migrant worker, with men engaged in labor migration eight times more frequently than women. Since no regulatory mechanisms are currently available to control overseas labor, many people, bypassing the legislative regimes of sending and receiving countries, usually end up with a status of an illegal migrant, which causes problems to the host country authorities, the Republic of Armenia and the migrants themselves.

Since labor migration is about human beings and their lives, this field needs a comprehensive and well-thought public policy and regulation. Admittedly, policies and regulations can be regarded from a variety of perspectives, reflecting different aspects of the phenomenon, and as such I have chosen to focus on the role of private employment agencies (PEAs). As job seeking intermediaries, PEAs can play an important role and contribute positively to the economic development of countries of origin and destination, by promoting decent work, and facilitating mobility of labor migrants. The task of the government is to facilitate the process by creating an appropriate internal and external environment where PEAs will be able to act as intermediaries and participate in the process without any fears and excessive risks.

In the external context the government must regulate inter-state relations with the destination countries, specifically through signing bi-lateral agreements, enforcing the right to work of Armenian citizens, protecting their interests, labor and social rights abroad and elaborating a comprehensive policy on overseas labor migration from Armenia. Regulation of relations with the diplomatic missions and consular offices, as well as the clear standardization of mutual support for information exchange and other relevant relations will permit to dispel the atmosphere of uncertainty in reaching out to the external labor market, and the fear of becoming a victim of trafficking. In the internal context precise procedures for PEAs acting in this field, such as PEA's licensing must be defined. There is no specific state agency to which PEAs should be accountable, whereas the designation of such supervisor body can become an effective mechanism for the regulation of PEAs work. The referred negative phenomena emphasize the need for state intervention, legal and legislative regulation even more.

As of today the Armenian government has already made some specific steps towards development of a conducive policy environment for regulating migration flows in and from the country. Particularly, in 2010 Armenia approved the new Concept for the Policy of State Regulation of Migration and a respective Action Plan for 2012-2016. In addition, Armenia has ratified a number of international conventions, signed bilateral agreements, Joint Declaration on a Mobility Partnership and started negotiations on a Visa Facilitation Agreement and a Readmission Agreement with European Union. These are certainly welcome actions, but not yet sufficient, and one of the major gaps is the regulation of PEA activities.

Currently, Armenian PEAs are not involved in overseas labor migration; however some cases were identified, when such companies sent labor migrants for overseas work. There have also been cases where certain Armenian individuals and organizations being paid money for "job mediation" abroad have deceived prospective labor migrants. Thereafter, the latter either disappear or send them abroad without any work guarantees, and the labor migrants are left to the whim of destiny.

The reasons of PEAs non-involvement in overseas labor migration are various. Firstly, PEAs do not have enough skills for finding out about job opportunities abroad and cooperating with adequate partners. They seem not to trust the organizations of the countries that have a worker demand. There is fear of trafficking, lack of access to information about labor and migration regulations in destination countries. Secondly, the government has not yet succeeded in creating an environment, which would enable Armenian PEAs to participate in the facilitation of circular labor migration from Armenia effectively. No sound policy exists regarding this issue, whereas active labor market policies should involve PEAs and should strengthen the cooperation between public employment services and private employment agencies. Establishment of practices and procedures of cooperation between private and public sectors through preparing and signing a Memorandum of Understanding between PEAs and State Employment Service Agency could be an example. Joint activities between these two agencies can be non-commercial or commercial. In the Armenian context an example of non-commercial cooperation can be seen in the exchange of information on job vacancies between private and public agencies. Commercial cooperation can include practices of allocating public resources to private employment agencies in order for the latter to carry out activities such as training of the unemployed. Cooperation agreements signed between private and public employment agencies may effectively give a common floor for both actors to share information, cooperate and be actively involved in improving the functioning of labor market.

Thus, this paper presents the current situation with the Armenian private employment agencies (PEAs), various aspects of their activities and operations, and the role they can play in the facilitation process of labor migration from Armenia. I attempt to address this goal through identifying the existing policy and regulation gaps, juxtaposing those with the Estonian case and introducing relevant recommendations.

Introduction

Emigration from Armenia stretches back decades, as various waves of Armenians have left for political and economic reasons. The years 1989-1992, witnessed the emigration of the population layer that appeared in a socially unfavorable condition as a result of the socio-political disturbances of these years. The majority of this mass, comprising more than 200 000 people – a significant element of brain and capital drain - headed for Russia, with almost all of them settling there for permanent residence. The peak of emigration was in 1992-1994. It was the heaviest from politico-military, socio-economic and living and housing perspectives. Thus, as a result of the outflow of 1988-2001, around 1.1 million RA nationals, or more than 1/3 of the current permanent population have found themselves abroad. It is obvious that this mass phenomenon has had a substantial impact on the realities of the country.

The overall migration situation in Armenia is alarming. It is closely linked with unemployment and lack of job opportunities in the Armenian labor market, which drives many Armenians to look for work abroad. Overseas labor migration is an integral part of national, family and individual life of Armenian labor migrants. At least one member of 14.5% of Armenian households is a migrant worker. More than half of the migrants work in Russia; among other recipient countries are the USA and European countries (Spain, France, Germany, Greece). The two-third of Armenian migrants is engaged in irregular migration and is vulnerable in legal, financial and social terms.

Overseas employment continues to play an important role in the overall economic development of the country. The preparation of the labor migrant's trip from Armenia is organized in most cases via their relatives and friends residing in the destination country, as well by intermediaries, foreign and local recruitment companies and in very rare cases by the migrant themselves without any assistance. Different research findings illustrate that the number of people using the services provided by private employment agencies in Armenia is increasing. The majority of Armenian PEAs are small companies with 1-4 employees and as a rule, with no experience of dealing with overseas labor migration.

PEAs' work is not regulated in Armenia, their activities are out of control and there is no specific state agency to which PEAs are accountable. A licensing system for PEAs used to exist in Armenia. However it was abolished in 2001. Meanwhile, no alternatives for regulating the functioning of PEAs have replaced the former licensing system, and currently they function in a non-regulated manner, and each company has set its own business rules. As of today Armenia has not ratified yet the ILO C 181 Private Employment Agencies Convention. The ratification of the conventions is seen as an additional incentive for further regulation of the field and the improvement of PEAs as an institution.

Recognizing that overseas labor migration will continue in the upcoming years, given the current trends, and that some PEAs will continue to be illegally involved in sending Armenian workers abroad, it is important to introduce an appropriate policy in the field of overseas labor migration, and enable PEAs to get involved in the process of regulation of labor migration from Armenia legally, by creating so-called *labor circularity*. Strong PEAs could actually do a huge service to our society, namely, address the numerous challenges related to the protection of the rights of Armenian migrant workers, and employment in foreign countries in general. To recommend ways on how Armenian PEAs can become a stronger player in the regulation of labor migration, I have looked at the case of Estonia, which as a post-Soviet small state may offer helpful insights on what policies and practices Armenia may adopt for this to happen.

The methodology used for this study includes a desk review, during which I have analyzed the findings of previous research on labor migration, and country-specific information from mass media. In addition, I have conducted structured interviews with Armenian and Estonian government officials, representatives of relevant stakeholder institutions, and field experts.

The major limitation of the study is the challenge of data collection on Armenian PEAs, operating as providers of labor market services. Identifying the number of PEAs in Armenia was a rather complex task,

because of the lack of official data. Another limitation was connected with the up-to-date data on labor migration. The description of the migration situation in Armenia is based on findings of different research carried out until 2008, as afterwards no research addressing the migration volume in the country is available.

This paper consists of two chapters. Chapter One is an overall introductory section, which describes the current practices of labor migration: the social-demographic profile of Armenian labor migrants, main reasons to migrate, the destination countries they choose, routes of migration, the map of migration, as well as the effects of labor migration from Armenia. I then introduce labor migration policies in Armenia: the domestic legislation, relevant institutions, and international commitments.

Chapter Two analyses the current state of Armenian PEAs, and their role in the facilitation of labor migration, look at the issue of regulation of PEA activities and discuss the existing gaps. I then introduce the Estonian experience of PEA work regulation, and discuss the issue of cooperation of PEAs and public employment agencies in Armenia, providing a comparative analysis of the Estonian case.

The paper concludes with a summary of main observations and a list of recommendations at the policy, regulatory and institutional levels.

1. The profile of labor migration in Armenia: practices and policies

In this chapter I attempt to provide an overview of migration trends in Armenia through analyzing the current migration practices and the policy framework. The successive sections present the social-demographic profile of Armenian labor migrants; the main reasons for labor migration; routes of migration; the map of labor migration from Armenia; and the effects of labor migration. The policy framework includes a brief analysis of both local and international policy and regulatory instruments. This analysis will help understand the current migration trends, which is essential in a discussion of the role of PEAs in the facilitation of circular labor migration, since tapping their potential effectively requires a clear understanding of the migration situation of the given country.

1.1. The practice of labor migration

The description of the migration situation in Armenia is based on research data as of 2008, because since then research addressing the migration volume in the country has not been conducted. The preliminary operational indicator of de facto population as of February 7, 2012 is 2,871,509 person.³ The indicators show that the number of de facto population has decreased by 131.000 persons. About two thirds of the Armenian population is irregular migrants, who lack access to adequately paid, clean and secure jobs, according to different studies carried out in recent years.

Almost all research findings suggest a similar trend. 75% of emigrants from Armenia are labor migrants. Labor migration, both temporary and permanent, has been and remains a means of coping with poverty and limited job prospects in Armenia. Since the pressing majority of migrants leave for abroad with the support of their social networks, through the mediation of a third person, or local and foreign employment agencies, they become vulnerable in terms of protection of their rights. The vast majorities of people who go to work

³ According to the results of RA 2001 Population Census, as of the midnight of October 10, this indicator was 3,002,598 person. De jure population number will be produced as a result of data coding, keying and processing of all questionnaires that is foreseen to complete in October 2012. Available from: <http://armstat.am/file/doc/99469153.pdf> (last viewed: 26.04.2012)

abroad do not have either written labor contracts, or work permits, and therefore become susceptible to exploitation.

These and a number of other statistical data presented in the successive sections show that labor migrants face numerous problems. Since overseas labor migration is not regulated, many people, bypassing the legislative regimes of sending and receiving countries, usually end up with the status of an illegal migrant, which causes problems for the host country authorities, the Republic of Armenia and the migrants themselves. The task is to prevent irregular labor migration and help the migrants not to burn all the bridges that will bring them back to their home country.

1.1.1. Social-demographic profile of Armenian labor migrants

Two remarkable differences between migration flows in 2002-2004 and 2005-2006 were recorded: a) an increased involvement of the rural population in labor migration, and b) a significant reduction of labor migrants from Yerevan (AST, 2007). According to an OSCE national migration poll, 14% of families across the country had at least one seasonal migrant in their household between 2005 and 2007. Labor migration survey in 2007 reported involvement of 3.4% of the members of the surveyed households in labor migration in 2005-2006, or the absolute number of labor migrants 96.000-122.000 persons (or 3.0%-3.8% of Armenia's *de jure* population).⁴

The overwhelming majority of Armenian labor migrants are married men of 21-50. The percentage of women migrants dropped from 14.1% in 2002-2004 to 6.5% in 2005-2006. In 2005-2006 at least 13.1% of economically active men and a maximum of 1.7% of economically active women were labor migrants⁵. It is commonly believed that such disproportion between men and women is conditioned by various factors, such as the national mentality, which still perceives women as homemakers, while men solely take the responsibility to provide for the family (ILO, 2009).

More than 75% of migrants who left to work abroad in 2005-2006 had either secondary (43.3 %) or secondary professional (vocational) education (33.0%), and about 20% had a bachelor's or a master's degree.

The biggest group of employed migrants (or roughly one third) was employed in the construction industry (AST, 2007).

1.1.2. Main reasons of labor migration

Labor migration, both temporary and permanent, has been and remains a means of coping with poverty and limited job prospects in Armenia. Temporary labor migration continues to bear a considerable impact on the migration situation in Armenia. As a rule, both short-term seasonal labor migration and long-term or indefinite periods of labor migration are not regulated and flow chaotically in violation of the immigration and labor laws of destination countries, resulting in rather difficult problems, including social, economic, moral, psychological, legal, and political ones.

The reasons of labor migration are various and include the high rate of unemployment and the low rates of salary, labor income for dignified existence, the issues related to the exercise of human rights (civil, economic, political, etc.), undermined trust and faith in the future and moral-cultural factors, including in the sectors of public administration and economy (corruption, low business ethics, etc.).⁶

⁴ Survey: Labor migration from Armenia in 2005-2007. Advanced Social Technologies (AST), Yerevan 2007

⁵ Migration and development: Armenia country study, ILO, Yerevan 2009

⁶ Concept for the policy of state regulation of migration, Yerevan 2010

The main reasons to leave Armenia are

- a) Absence of jobs (22.6%);
- b) Absence of well-paid jobs (24.1%);
- c) Reunification with the family member residing in another country (20.5%) and
- d) Absence of professional work (2.3%)⁷.

As research results show, in the overwhelming majority of cases the decision to migrate is driven by employment problems in Armenia, including lack of opportunities to find well-paid and professional jobs. The unemployment rate remains high in Armenia. ILO has reported 27.5% unemployment rate in Armenia in August 2010. According to the latest data provided by State Employment Service Agency the registered official unemployment rate in the RA was 6.0% as of December 31, 2011.

Another important phenomenon to consider is the tradition of “khopan”⁸. Since the Soviet times from many Armenian villages, men used to leave to work abroad over a period of time, usually from March to December. They usually work in construction industry in Russia, engaged either in housing construction or in renovation and re-design of housing. This has become a traditional way of providing for families. After completing military service many young men from these villages leave to work abroad together with their fathers and uncles (ILO, 2009).

Another factor to affect the decision to leave Armenia and work abroad is the need to make investments or to cover additional costs, such as paying the university fees of their family members, the need to support children who moved to another town within Armenia in order to further their education, wedding expenses, renovation of a flat/house, start-up expenses for a private business, etc. (ILO, 2009).

The long-term migration usually ends up with the family reunification, as after finding a job abroad some labor migrants often take their families to the destination country. The children usually go to school, integrate in the country and get used to the culture and traditions of the hosting country.

1.1.3. Routes of migration

The research findings illustrate that the preparation of the labor migrant’s trip from Armenia is organized in most cases through their relatives and friends residing in the destination country, as well by intermediaries, foreign and local recruitment companies and in very rare cases by the migrant without any assistance. In 2002-2005 only a minority of migrants made concrete arrangements regarding the nature of their work, without having any idea about the remuneration or the type of basic housing arrangements in the host country. In contrast, the survey conducted in 2007 showed that the majority of migrants had agreed on their working conditions prior to the departure.

As to the financing of the trip to the destination country, according to different studies, in majority of cases migrants had to take loans, or even sell their property in order to secure enough funds for travel, although some exceptions where the future employer had financed the trip were also recorded.

A changing tendency has been observed in labor relations, for instance the percentage of migrants whose trips were organized through intermediaries has increased from 55% to 65%. In most of the cases, the trips were arranged by friends and relatives of the migrant in the host country; some migrants were assisted by a private intermediary abroad, or they used the services of a private intermediary in Armenia. Although

⁷ RA labor market analysis; G.A. Gharibyan; Yerevan 2010

⁸ Armenian folk term for leaving to work abroad

the services of local and foreign recruitment agencies were used by a minority of migrants, their percentage had increased from 4.6 % in 2002-2004 to 7 % in 2005-2006 (AST, 2007). The vast majority of people going to work abroad do not have written labor contracts, as they do not have work permits.

1.1.4. The map of labor migration

The map of labor migration from Armenia is rather diverse. The research findings show that for 93% of labor migrants the work destination is the Russian Federation, 1.8% have migrated to the United States, 1.6% to Ukraine, and 1.1 % to Spain.

The choice of the destination country is explained by the presence of friends, relatives and the Armenian Diaspora. The Russian Federation is by far the most popular country of destination for Armenian labor migrants. The percentage of migrants who worked in Russia increased from 88% between 2002 and 2004 to 93% in the 2005 and 2006.⁹

The main reasons why the overwhelming majority of the migrants choose Russia as a labor migration destination country are the presence of friends and relatives, more job opportunities compared with other countries, knowledge of the destination country language, low barriers for entering the country, absence of visa requirements and a large Armenian Diaspora. While the majority of labor migrants choose Russia as a destination country, there are other people who are trying to find jobs in different EU countries, specifically France, Spain, Germany, Greece, Belgium, Poland and Bulgaria.

1.1.5. The effects of labor migration

Assessment of the costs and benefits of the labor migration is difficult, mainly for the absence of relevant data. Seasonal labor migration looks like it can create either the worst or the best aspects of migration, depending on the form it takes. In the most optimistic scenario, seasonal migration can provide employment for people during slow times of the year, when they would otherwise be unemployed at home, allowing them to secure their own economic situation and send money home to their families. The seasonal nature of their work means that these migrants are not permanently separated from their families and can spend half of the year away from their families and can return home to offer much needed labor at harvest time. However, seasonal migrants, especially those staying illegally in the host country, are exposed to many potentially abusive situations.¹⁰

There are several major negative consequences of the contemporary migration processes in Armenia, and one is the *demographic* problems, such as increasingly slow growth of the permanent population and the decrease of the number of the current population (mostly rural), and the continuation of disproportionality in gender and age distribution). The second cluster includes *economic* problems such as irregular brain drain, and decrease in the economic potential of the country, quality labor force and the capital. Finally there are the *social problems*, including long-term absence of the external labor migrants, and decrease of family stability. Moreover, irregular migration has negative consequences both for the sending and hosting countries, and the individual migrant. For instance, the sending country has to face the fact of a large mass of its citizens leaving the country. In many cases their rights are impossible to protect, and there is a need to solve the problems of the deported citizens. As a receiving country, the respective government has to deal with the violation of national laws, additional workload on the social system, and intensification of racist and xenophobic moods among the population.

⁹ Migration and development: Armenia Country Study. ILO, Yerevan 2009

¹⁰ Labor Migration in Armenian Communities: A Community Survey; Yerevan 2008

Admittedly though, labor migration can have a positive impact as well. In the context of circular migration the positive impact of labor migration can be reflected in the benefits the three parties get. The benefits of the sending country are mostly projected by financial flows (remittances that labor migrants send to their families, and investments), temporary outflow of workers, and skills brought back by returning migrants. The benefits of the receiving country include high qualified and seasonal workers to ease labor market shortages. Finally, individual migrant benefits from circular migration by securing an income, getting and improving his/her qualification and engaging in cultural exchange.

1.2. Migration policy framework

The overview of political, policy and regulatory developments in RA, charting the time since the onset of the past decade, allows for several inferences about the present policy environment and tasks still pending for the government and legislators likewise.

There are several legislative documents that currently regulate labor migration in Armenia. For instance, the Law on Foreigners regulates labor migration of foreigners in the Republic of Armenia. However, overseas employment of RA citizens is still unregulated. RA Law on Employment and the Action Plan for Implementation of the Policy Concept for the State Regulation of Migration in the Republic of Armenia in 2012-2016 contain some references to labor migration. The legislation gap in the field of labor migration regulation is still open, though attempts have been made earlier to fill it. For instance, there is a draft Law on Regulation of Overseas Labor from Armenia. However, the RA Government did not adopt the law. The successive sections discuss the Armenian legislation, institutions and international commitments in more detail.

1.2.1. Domestic legislation and institutions

The Republic of Armenia was obliged to face various challenges resulted from the intensive migration processes preceding and succeeding the years of independence. Until 2000, there was no comprehensive national migration policy document in the RA. The 1988-1999 RA migration state regulation policy was directed mainly at the solution of the problems of the large refugee masses coming from Azerbaijan, Nagorno Karabakh and other former USSR territories. During this period the state regulation was mainly based on passive contemplative policy and on day-to-day management of the main issues. In 2000 the spectrum of the state regulation of migration was considerably expanded, overstepping the boundaries of the solution of the refugee issues only: (a) the basis for the national legislation in the area of migration was set up¹¹; (b) Bilateral interstate agreements for regulating relations in the area of migration were concluded with more than 10 states¹²; and (c) serious steps toward integration of the policy in the area of migration were taken. In 2000 and 2004 the RA Government adopted two concepts for state regulation of population migration in the RA. In late 2009 a specialized State Migration Service¹³ was

¹¹ The RA laws on Refugees (1999), on the legal and socioeconomic guarantees for persons that had forcibly migrated from the Republic of Azerbaijan in 1988-1992 and acquired citizenship of the Republic of Armenia (2000), on Political Asylum (2001), on the State Border, on the Border-Guard Troops, on the State Register of the Population (2002), on Foreigners (2007), as well as a number of other legislative and sub-legislative acts related to the state regulation of migration processes. In 2008, a new law on Refugees and Asylum was adopted, whereby the legislative framework for granting asylum to foreigners in the Republic of Armenia was harmonized with international standards.

¹² The RA acceded to the conventions relating to the Status of Stateless Persons (1954), for the Protection of Human Rights and Fundamental Freedoms (1950), on the Nationality of Married Women (1957), Concerning Discrimination in Respect of Employment and Occupation, the Strasbourg Framework Convention for the Protection of National Minorities (1995), the ILO Migration for Employment Convention C97, the ILO Guarantee No 86 Relating to Labor Migrants, etc.

¹³ State Migration Service of the Ministry of Territorial Administration of RA <http://smsmta.am/>

created within the framework of the Ministry of Territorial Administration with extended mandate and functions in this area. The formation of the unit was based on the policy recommendation of civil society representatives and the donor community. It was a major institutional change in the area of migration management.

For the preceding years, along with international integration processes, globalization, as well as new economic and geopolitical realities, the RA state system of migration regulation faced new challenges, and a need for a new concept on regulation of migration appeared.

The RA authorities have declared European integration as a political priority for the development of the Republic of Armenia, as demonstrated in the launch of the European Neighborhood Policy (ENP) with the EU, which has recently been upgraded into a qualitatively new stage – the Eastern Partnership Program. In the framework of the latter Armenia has undertaken the obligation to legislatively and institutionally approximate its migration administration system with that of the EU. The RA Government adopted a number of strategic documents in the area of state regulation of migration processes, which refer to badly managed and illegal migration¹⁴.

With Resolution N51 the RA Government approved the new Concept for the Policy of State Regulation of Migration in the Republic of Armenia on 30th December 2010. The Concept defines 14 major issues¹⁵ of the policy of state regulation of migration. In order to ensure the implementation of the fundamental or priority directions defined within the Concept, the Government approved the “2012-2016 Action Plan for Implementation of the Concept for the Policy of the State Regulation of Migration in the Republic of Armenia”. The state agency responsible for the monitoring of the Action Plan is the State Migration Service of the Ministry of Territorial Administration. At the same time, in order to coordinate the monitoring of the implementation of the Action Plan an Interagency Commission for Monitoring the Implementation of the Action Plan 2012-2016 of the Concept of the Policy for the State Regulation of Migration in the RA” (ICMAP) was established, comprised of representatives of the relevant governmental agencies.¹⁶

1.2.2. International commitments

In the field of labor migration a number of important international conventions were ratified by Armenia¹⁷.

As a follow up to the 1994 CIS Agreement on Labor Migration, Armenia has signed bilateral agreements with the Russian Federation (1994), Georgia (1993), Ukraine (1995) and Belarus (2000) on

¹⁴ The Republic of Armenia National Security Strategy, the Sustainable Development Programme, the Concept for the Development of Co-operation between Armenia and the Diaspora, the RA Demographic Policy Strategy, etc.

¹⁵ 14 major Issues: Conformity of the legislation of the Republic of Armenia in the area of migration with EU legislation and best institutional structures, introduction of a system of migration monitoring, analysis and assessment of the situation, protection of the rights and interests of the citizens of the Republic of Armenia leaving the country for work abroad, continuance of integration into the society of the refugees who were forcefully displaced from Azerbaijan during 1988-1992, as well as to encourage return of the citizens of the Republic of Armenia from foreign countries and their further reintegration in the homeland, to prevent illegal migration from the Republic of Armenia, to increase the level of security of identification documents, to facilitate the right to free movement of the citizens of the Republic of Armenia, to regulate conditions for employment of foreign citizens in the Republic of Armenia and possible massive movements of people in emergency situations, to improve the systems of border control and provision of asylum, to organize effectively the fight against human trafficking and protection of victims of human trafficking, to guide internal migration according to the requirements of national security and sustainable development of the Republic of Armenia.

¹⁶ Relevant governmental agencies: RA MFA, RA Ministry of Labor and Social Issues, National Statistical Service of the RA, RA Police, RA Ministry of Diaspora, RA Min. of Economy, RA Ministry of Healthcare, RA Ministry of Urban Development, RA Ministry of Defence, RA Ministry Of Education And Science, etc.

¹⁷ ILO C97 Migration for Employment Convention, 1949 (ratified by Armenia in 2006); ILO C143 Migrant Workers (Supplementary Provisions) Convention, 1975 (ratified by Armenia on January 27th, 2006); 1996 European Social Charter (revised) (ratified by Armenia in 2004) 18-19 articles; CIS Agreement on Cooperation on Labor Migration and Social Protection of Migrant Workers (signed by Armenia in 1994)

social protection of the citizens working in the territories of these countries. However, in reality the bilateral agreements in the field of labor migration signed between Armenia and the above-mentioned countries are formal and almost none of them are operational. This is the case not only because there has been no consistent implementation, but also there is a lack of appropriate mechanisms. Moreover, the agreements have not been updated from the time of signature. The only exception can be the case with Russia, as some measures are currently being undertaken.¹⁸

Armenia has not yet ratified some important conventions, such as:

1. UN 1990 Convention on the Protection of the Rights of Migrant Workers and Members of their Families¹⁹
2. Council of Europe Convention on the Legal Status of Migrant Workers²⁰
3. ILO C181 Private employment agencies convention²¹

The ratification process of the above mentioned conventions are taken into consideration and envisaged for 2012-2013.

Currently in the field of labor migration Armenia has cooperation proposals from countries of Persian Gulf, in particular Oman and State of Qatar. An agreement of involvement of Armenian skilled labor force, in particular, in sectors of healthcare, engineering, architecture, and technology, in the State of Qatar was discussed.²² United Arab Emirates has also expressed an interest in bilateral cooperation with Armenia in the field of labor migration. In the context of European countries bilateral agreement negotiations are being undertaken with France (circular migration) and Bulgaria. These agreements can serve as alternatives for Armenian migrant workers to avoid illegal migration and its negative consequences.

Through the expansion of legal labor migration opportunities, new perspectives for the prevention of illegal migration seem to emerge, which will be strengthened and developed further by the Mobility and Partnership Initiative. Taking into account the fact that the European integration is considered a political priority for the development of the Republic of Armenia, the mobility facilitation of people, and stimulation and intensification of the contacts between the citizens of Armenia and the EU, are regarded as important elements of Armenia's European rapprochement. Towards this end, Armenia signed a Joint Declaration on a Mobility Partnership.²³ This is a flexible and legally non-binding framework for well-managed movements of people. It is expected to enhance Armenia's ability to manage migration and inform, integrate and protect migrants and returnees, as well as boost Armenia's capacity to curb irregular migration and human trafficking.

The next step is the ratification of Armenia-EU agreements on visa facilitation regime and readmission. As of February 2012, Armenia and the European Union started negotiations on a Visa Facilitation Agreement and a Readmission Agreement. So far, the EU has concluded visa facilitation agreements with

¹⁸ The joint Armenian-Russian working group is established and in the framework of cooperation, the Russian part has elaborated the draft of a new agreement and presented to Armenian counterpart. The working group had two meetings, one in Moscow on June 1st 2011, the second one in Yerevan on June 15-16, 2011.

¹⁹ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en

²⁰ <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>

²¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>

²² 6-8 June 2011, official visit of the Armenian delegation headed by the Minister of Labor and Social Issues Mr. Arthur Grigoryan to Qatar. The second stage of the discussion is planned during the year 2012.

²³ Armenian Minister of Foreign Affairs Edward Nalbandian, the EU Commissioner for Internal Affairs Cecilia Malmström and the Ministers of Internal Affairs of the EU member-states signed Joint Declaration on a Mobility Partnership between Armenia and the EU on October 27, 2011. Ten EU Member States (Belgium, Bulgaria, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Romania and Sweden) participate.

nine non-EU countries, three of which are our Eastern partners Georgia, Ukraine and Moldova. Based on these agreements, both EU and non-EU citizens will benefit from facilitated procedures for issuing visas.²⁴ This is an important prospect, because the successful completion of negotiations would highlight that both sides are committed to work together on tackling common challenges such as illegal migration. Fostering mobility and people-to-people contacts are fundamental for promoting social and economic development. It is expected that a facilitated visa regime will greatly support the developmental impact of migration on the country's economy, and will allow for return of skills, as well as experience exchange between Armenia and EU Member States.

2. Private employment agencies and their role in facilitation of labor migration

In this chapter I present the overview of activities of Armenian PEAs; the regulatory context in which they operate; and practice of cooperation of private and public employment agencies. These experiences are then compared with practices from Estonia. Since cooperation of private and public employment agencies is important for effective regulation of labor migration practices, I have also looked at the current situation in Armenia and Estonia in terms of this aspect.

2.1. Possibilities for private employment agencies to be involved in circular labor migration from Armenia

Being a country with skilled and educated workforce, and having significant rates of unemployment and labor migration, Armenia is in a need of relevant legal regulation of its overseas employment practice, which will facilitate prevention of irregular migration through transforming it into a circular one. Labor markets are imperfect and it is rare to find all relevant information openly available. It takes considerable time and effort for a jobseeker to look for a job, and there is no guarantee that the ideal match will be found²⁵.

Convention No. 181 defines private employment agencies (PEAs) as any enterprise or person, independent of the public authorities, which provides one or more of the following labor market services: (a) services for matching offers of and applications for employment; (b) services consisting of employing workers with a view to making them available to a third party; (c) other services relating to job seeking²⁶.

Different opinions exist on how PEAs function. Some agencies provide poor services to their clients for exorbitant fees and give the industry a bad name; others can play a key role in an efficiently functioning labor market. The growing recognition of their positive contribution has led to a reconsideration of their role in various countries. PEAs can play an important role in facilitation of legal labor migration of workers from one country to another, and help to ensure decent work. PEAs involved in labor migration contribute positively to the economic development of countries of origin and of destination by facilitating mobility and legal labor migration. Based on a genuine, international agreement as provided by the ILO Convention 181, PEAs can recommend a well regulated framework for workers' mobility. PEAs can offer an important access channel to the labor market for migrant workers legally residing in a country, and foster occupational mobility of workers by offering the possibility to acquire professional experience in various working

²⁴ Delegation of the European Union to Armenia press corner

²⁵ ILO Issue paper: Private employment agencies, promotion of decent work and improving the functioning of labor markets in private services sectors; Geneva, 2011

²⁶ Article 1: C181 Private Employment Agencies Convention, 1997

environments.²⁷ In this case PEAs have more possibilities to advice for a new job by saving jobseekers valuable time.

The findings from the interviews with the RA Ministry of Labor and Social Affairs show that at the public level the potentially important role PEAs can play in facilitation of labor migration from Armenia is generally well recognized.²⁸ However, presently, the government has not created an appropriate policy environment for the development of PEAs, and there is no sound policy, which could enable PEAs to be involved in facilitation of circular labor migration. In terms of regulation of labor migration and prevention of irregular migration and trafficking it is high time to boost the role and capacities of PEAs in providing services to Armenian citizens for finding employment in the international labor market and for further protecting their rights.²⁹

2.1.1. Overview of activities of Armenian Private Employment Agencies

The identification of the number of PEAs operating in Armenia was a rather complex task during this study. There is no official data on the number of PEAs operating in Armenia and the information is based on different research results and information gained through personal communication. According to the PEA organizational assessment, 39 relevant companies in the capital Yerevan and two companies in Vanadzor (the second major city of Armenia) were identified, from which 13 companies were recognized as no longer operating, or not dealing with employment services in 2011.³⁰

The data provided by the State Employment Service Agency (SESA) counts almost 17 PEAs actually operating in the labor market out of 48: the rest had either changed their address, telephone number, or are no longer operating. One of the reasons for such a state of affairs might be the absence of regulation of PEA activities in Armenia. Many PEAs open, but disappear very quickly, usually in 2-3 months, after collecting money from jobseekers and thus discrediting the image and goodwill of other PEAs and the whole market.³¹

The majority of Armenian PEAs are small companies with 1-4 employees. Only few of them deal exclusively with recruitment services. Many PEAs are engaged also in other activities, such as accounting, tourism, construction, trainings, real estate, etc. For the companies that provide trainings (language, computer literacy, accounting), job placement is considered as an additional activity: they consider this to be additional assistance to jobseekers after they complete training courses with them.

In most PEAs employment services are limited to job placement, and an orientation session for those having been hired. None seems to carry out the function of searching a quality workforce for employers. They make profit from the fees received from the jobseekers. Armenian legislation does not regulate PEAs fee charging, but leaves this at the discretion of PEAs. The fee charging scheme is more or less similar amongst all the Armenian PEAs. The fee charged from a jobseeker is 2000-3000 AMD (3-5 Euros) for registration, and 20-50% of the jobseeker's first salary after a successful job placement. Although during interviews some PEAs said that before charging the registration fee, they talk to the person and in case they see that it will be impossible to find a proper job for them, they do not register them and do not charge the fee immediately.

²⁷ Clett position paper: Assessment and Recommendations to the ILO Report on Skills for productivity, employment growth and development

²⁸ Interview finding with MLSA

²⁹ Policy brief "Support to Migration Policy Development and Relevant Capacity Building in Armenia", ICHD 2010

³⁰ International Center for Human Development ULISSES Unit

³¹ Interview finding with Armenian PEA representative

The fee includes charges for phone calls (mobile/fix calls to the employer and jobseeker), and services such as preparation of a CV, tests on language skills and other abilities of the jobseeker, job consulting, search for a job vacancy, etc.

Few PEAs charge fees from employers and complain that their services are basically free for them, which they believe to be unfair. There are also PEAs that charge both the jobseeker and the employer. Though they think that it is right to charge a fee from the employer and not from the jobseeker, for the moment it seems to be a hard task. They also expressed hope that this would change. A few PEAs said that sometimes they do not charge fees from the jobseekers that search low-qualified jobs. The Armenian legislation does not contain provisions that would compel PEAs to reimburse the fee if the jobseeker is not offered a regular contract after the probation period. Most of PEAs sign agreements with jobseekers (basically the registration confirmation and terms of payment for service fee).

PEAs mostly offer their services to unskilled and non-technical workers and offer low skill jobs with low salaries (construction workers, cleaners, waiters, etc.). Only few PEAs provide services to medium to high-skilled workforce, which usually comprises the ones who want to change their work to a better and well-paid one. PEAs usually provide labor market services to Armenian companies and representatives of foreign ones, especially for administrative, line and senior managerial, IT, and engineering positions. They specifically target foreign representations and large companies, offering them staffing services, such as headhunting and outsourcing.

There is no data available about the number of persons who were provided with jobs by PEAs due to the fact that PEAs are not obliged to disclose data on their activities to public authorities. However, some high level PEAs have their own statistics for internal use and can provide it in case they are asked.

The findings of interviews with Armenian PEAs show that they have no experience of sending workers abroad, although some of them expressed interest to be involved in such a process if there are guarantees, trustworthy partners, appropriate regulation and environment. PEAs do not possess enough information about the risks of human trafficking and irregular migration, which they can disseminate to jobseekers. They do not have the necessary skills and financial means for finding out about job opportunities abroad and cooperating with adequate partners outside the country. No institution attempts to address this lack, for instance, through consultancy or mediation. Some of the interviewed PEAs have taken an initiative in establishing contacts with foreign partners; they checked the credibility of the company in the destination country through different channels. However, their initiatives were not successful because of the lack of guarantees and trust, difficulties in obtaining travel documents, lack of access to information about labor and migration regulations in the destination country, and non-existence of an appropriate environment.

Some steps are already being undertaken to address PEAs capacity building in the field of labor migration, in order to bridge this capacity gap, by creating an intermediary facility for PEAs to engage Armenian migrant workers in circular labor migration and strengthening capacities of PEAs. Different projects sponsored by donor community and facilitated by NGOs are addressing this issue in Armenia. One of the recent projects is the "Strengthening Evidence-Based Management of Labor Migration in Armenia", jointly implemented by ICHD (International Center for Human Development) and IOM (International Organization for Migration). The Umbrella Information Support System for Employment Services (ULISSES) is a sub-project of the above-mentioned project. The mission of the ULISSES unit is to ensure that Armenians wishing to work in the EU are able to do so through quality employment services with an adequate account for job, health, financial and personal security and the possibility for returning home and injecting their capacities into the home economy. The project strives to assist competent and striving Armenian PEAs to integrate into the European labor market through its technical platform.³²

³² <http://www.ulisses.am/eng/about-ulisses/>

2.1.2. Regulatory context of PEA activities in Armenia

During the interviews one of the PEA representatives said that the RA Labor Code is the only tool they use for their work, as there is no other law regulating PEA activities. The PEAs are not united and each of them acts individually.³³

PEAs work is not regulated in Armenia, their activities are out of state control and there is no specific state agency to which PEAs are accountable. A PEA licensing system used to exist in Armenia, but it was abolished in 2001. Meanwhile, no alternatives have been offered instead. Currently PEAs function in a non-regulated manner, and each company has set its own business rules.

As a way of self-regulation some acting PEAs joined together into a Sectorial Union of Private Employment Agencies³⁴ under the Republican Union of Employers of Armenia (RUAE) in an attempt to become involved and represented in regulation activities of job placement in Armenia. The Union's mission includes protecting its members' interests, presenting them in labor and social-economic relations, and contributing to the formation of union member's positive image. In 2010 International Labor Organization, RUAE and Private Employment Agencies Sectorial Union discussed and adopted the Code of Conduct of Private Employment Agencies, which includes 10 principles³⁵. Today the Union has nine members. One of the interviewed PEAs complained of the union, noting that it does not have any value and stressed the fact that it is headed by another PEA, which is not well treated by some PEAs.

No legal basis to regulate the recruitment of workers is in place. The task of the government is to facilitate the process by creating an appropriate internal and external environment, where PEAs will be able to act as intermediaries and participate in the process without any fears and excessive risks. In the external context the government must regulate inter-state relations with destination countries, specifically through signing bi-lateral agreements, realizing its citizens' right to work, protecting their interests, labor and social rights, and elaborating a comprehensive policy on overseas labor migration from Armenia. In the internal context precise procedures for PEAs acting in this field, such as PEA's licensing or PEAs registration, must be defined.

Armenia has not ratified yet the ILO C181 Private Employment Agencies Convention³⁶. Based on the RA Prime Minister's Resolution N51, as of December 29, 2011, the Ministry of Labor and Social Affairs has committed to ratify ILO C 181 Private Employment Agencies Convention in 2012-2013. According to MLSA the convention must be ratified by certain redundancies taking into consideration the country requirements.³⁷ For the moment, these redundancies are not known, as it is in the process of elaboration. The change the convention can bring is seen in that the PEAs will act in a visible field, they will have a right to participate in the implementation of state projects together with public bodies, thus creating an appropriate environment for an open competition. This will be an additional incentive for further regulation of the field and the improvement of PEAs as an institution. After the ratification of ILO convention, the introduction of licensing of PEAs is expected. Two types of licensing of PEA activities are expected:

1. Compulsory licensing for those PEAs that would be involved in sending workers for overseas labor;

³³ Interviews findings with Armenian PEA representatives

³⁴ Sectorial Union of Private Employment Agencies <http://pea.am/Default.aspx?lang=eng>

³⁵ Private Employment Agencies "Code of Conduct" <http://pea.am/Standarts.aspx?lang=eng>

³⁶ This Convention recognizes that private employment agencies can contribute to the functioning of the labor market and sets general parameters for the regulation, placement and employment of workers recruited by PEA and, in particular, temporary work agencies. By March 2012, 23 countries had ratified it and its accompanying Recommendation 188.

³⁷ Interview finding with MLSA; Concept on study and prevention of irregular migration originating from Armenia, action 13

2. Regulation for PEAs, which would like to be involved in state projects.³⁸

Participation of the private sector in overseas employment relations necessarily requires introduction of instruments, through which the government can monitor and evaluate the actions of the private sector. The findings of the interviews with MLSA show that the introduction of a licensing system for PEAs mediating employment abroad is seen as an influential instrument of state regulation of labor migration. At the same time, licensing of private companies can be viewed as a way to fight illegal facilitation of labor contracts and trafficking.

The draft Law on Regulation of Overseas Labor envisaged important points regarding the activities of PEAs. An essential attribute of the draft was its focus on licensing employment agencies. The draft envisaged inclusion of private companies in the state overseas program. However, the Government did not adopt the draft law. The existing migration concept defines the need of introduction of a system of state control over the activities of private organizations acting as agents in relation to overseas employment. Effective monitoring of the process may help the government oversee the legality of contracts offered to its own citizens and also effectively ensure the protection of the migrants' rights.

2.1.3. Estonian example of regulation of PEA activities

While studying the Estonian experience, some similarities in the field of labor migration were found between Armenia and Estonia. Like Armenia, Estonia is a small country with population of 1.340 million³⁹, and has a rather high rate of unemployment⁴⁰. As the migration statistics for both countries show, the main reasons of labor migration are connected with the absence of job opportunities in home countries. The emigration profile is rather common: construction field workers, high-qualified professionals, choice of destination countries with no language barriers, etc. In line with similarities, there are also many differences, which are introduced below.

After Estonia joined the European Union (EU) in 2004, Estonian migration policy and practices have been greatly influenced by those of the EU. Free movement of workers regulates the labor migration in Estonia. In the Member Countries of the European Economic Area (EEA) the free movement of workers is a fundamental right, which permits nationals of one EEA country to work in another EEA country on the same conditions, as the member state's citizens. For all those Estonians who want to find a job in other EU countries, *Eures*, a job mobility portal with its network in Estonia, plays a key role.⁴¹

Estonia also has not ratified ILO 1997 convention, but basically is following it. PEAs are forbidden to charge job-seekers for employment mediation services. Labor Market Services and Benefits Act states that only employers or other private companies or sole proprietors may be charged fees for employment mediation by legal entities governed by private law and sole proprietors.

On the basis of the law, the private employment agencies have the right to provide the following three services in Estonia:

- a) Provision of information on the situation on the labor market, and the labor market services and benefits, including information about the state of and changes to the labor market, the nature of labor market services and the conditions of obtaining these services;

³⁸ Interview finding with MLSA

³⁹ <http://estonia.eu/about-estonia/country/population-statistics.html> (last viewed on 10.05.2012)

⁴⁰ According to the Estonian Unemployment Insurance fund officially the registered unemployment rate in Estonia is 7.2%, according to Labor Force Survey data the unemployment rate is nearly 19%

⁴¹ Force Survey data the unemployment rate is nearly 19%

<http://www.eures.ee/?lang=en>

- b) Career guidance - advising the unemployed and those who have received notice of the termination of their employment or services of education, training and employment options appropriate to their character, educational background and skills. Career guidance is designed to assist people in issues related to their choice of work and profession, getting jobs and developing a career for themselves;
- c) Job mediation - finding suitable work and suitable employers for the unemployed and for jobseekers.

In the beginning of 1990s when Estonia gained independence, the work of PEAs was rather free; the only restriction was that PEAs were not allowed to take money for the job mediation from jobseekers. There was not any supervision body and it was quite free.

In 2002-2005 the Estonian Ministry of Social Affairs introduced a licensing requirement and started issuing licenses. The license was valid for 3 years. In 2005 the PEA's licensing process was abolished and replaced with a requirement according to which the PEAs had to register in the Registry of Economic Activities (REA). The registration procedure is quite simple. This registry was established for the purpose of accounting and supervising companies operating in the areas of activity subject to special requirements. These areas of activity are set forth in legislation. The Ministry of Social Affairs (MSA) enters companies seeking to provide labor market services into the register of economic activities. A state fee of 19.17 euros must be paid to the account of the Ministry of Finance, and an application should be submitted to the MSA, in order to enter the register. MSA shall register the enterprise within 5 working days; must inform it within 5 working days about amendments of the registration data or termination or suspension of activity of the enterprise.

Providers of labor market services have to submit to the MSA by 15 April each year, in the event that more than three months have passed since the registration of the company or the amendment of the registration at the request of the company. If a company does not submit such confirmation by this date, it is immediately informed by MSA of its failure to meet its obligations and of the resulting cancellation of the registration. Registrations that are not confirmed are canceled by 30 April. If a company submits confirmation that the registration data is correct, MSA will restore the registration within five working days of receiving the confirmation. If a company does not submit confirmation that the registration data is correct, the registration is deleted six months after being canceled.

Once the organization is registered it will be issued with a labor market service provider registration number. A company whose registration is canceled is deemed to be considered as not registered as a provider of labor market services. Should the details of a registration change or a company's activities end or be terminated, the registered company must inform MSA of these changes to the data within five working days by submitting an application form for the amendment of the registration.

The MSA will make a decision regarding deletion of the registration and will come up with a record reflecting this decision within five working days of receipt of a correctly completed application, and a record of the cancellation of a registration within two working days of receipt of a correctly completed application. A letter to this effect is then sent to the applicant by registered post or to the e-mail address marked in the application or delivered to the applicant against signature on the working day following the day on which the decision regarding deletion of the registration was made.⁴²

The register is open to public and if there is someone who wants to know whether the PEA has the right to provide labor market services, he or she can check this information online. In case it turns out that the PEA takes money from jobseekers, the MSA removes these companies from the register and they cannot provide labor market services any more. There is no supervisory body that will check those companies and the MSA reacts only when there are complaints.

⁴² Interview findings and information provided by the representatives of Ministry of Social Affairs of Estonia

Not all the studied Estonian examples are applicable to Armenia. The limits of the Estonian experience of labor migration regulation transfer to Armenia are linked with Estonia's status as EU Member State, which is a significant difference. Estonian migration policy and practices are greatly influenced by those of the EU. Free movement of workers regulates labor migration in Estonia. By the help of *Eures* job portal Estonians are able to find jobs in other EU countries. This is an opportunity that is not available to Armenian jobseekers and Armenian PEAs cannot rely on such a resource in their activities.

The Estonian experience of PEAs registration with the Register of Economic Activities can be seen as a possible instrument and a good example for monitoring PEAs work. When the licensing system for the operation of PEAs is installed in Armenia, there will be a need of a monitoring system for private companies. The Estonian example can be used as a database with the information on licensed agencies, their addresses, activities, etc. In this case the illegally operating PEAs, not registered in the database, can be much more easily identified. This register can serve as a PEA database and all relevant information concerning PEAs will be available to the public.

2.2. Cooperation of private and public employment agencies: Myth or reality?

The relationship between private agencies and public employment services differs by country. On the one hand, they compete and that can be a positive factor for development; on the other hand, public and private employment agencies are complementary: public placement agencies provide free intermediation services, do job advertisement exchanges, and other relevant activities.

In the Armenian context the relationship between the private and public employment agencies is seen as a matter of competition. Both actors see each other as competitors and there is lack of trust towards each other.

The interviews conducted with the representatives of State Employment Service Agency, Ministry of Labor and Social Issues, as well as private employment agencies, show that cooperation between the public and private sector is almost non-existent. According to the interview findings, no joint activities have been implemented so far, although there were some initiatives. The reasons interviewees identified were that the interest and working principals of both sides are too different and do not match each other for further cooperation.

In past years State Employment Service Agency (SESA) has suggested to initiate a draft of a national memorandum setting out how the public and private sector could work together in the area of recruitment and employment services. The output of the suggestion was several joint meetings in the Ministry of Labor and Social Issues for a period of time, which, however, did not have any further practical implications. According to SESA, there was no interest of cooperation from PEAs side at that period of time.

There were some changes however since then. In 2011 a round table was held with the Minister of Labor and Social Issues, where the representatives of some PEAs participated as well.⁴³ According to SESA, there are few PEAs that work properly and do their work professionally and SESA is interested in cooperation with those PEAs. Unfortunately, the number of these PEAs is very limited compared with those that act as quasi PEAs and offer non-professional services to jobseekers and discredit the goodwill of other PEAs.

As to the PEAs interest in cooperation with public employment service (PES), some of them expressed such an interest, mentioning though that currently no visible steps are being initiated by state agencies.

R188 Private Employment Agencies Recommendation (article 17) suggests several areas for such cooperation, including the pooling of information; the use of common terminology so as to improve labor

⁴³ Interview findings with SESA

market transparency; exchanging vacancy notices; launching joint projects, for example in training; concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed; training of staff; consulting regularly with a view to improving professional practices.

Article 13 of the Convention promotes cooperation between the public employment service and private employment agencies to ensure labor market efficiency, with the national labor market authority retaining responsibility for formulating labor market policies.

Although Armenia has not ratified the ILO 181 Private Employment Agencies convention, still cooperation between PEAs and PES is possible in different ways. Joint activities can be non-commercial or commercial. An example of non-commercial cooperation can be the exchange of information regarding job vacancies. One of the interviewed PEAs told that they use SESA job announcements for their work. It is clear that in case of non-cooperation this action is not legal. In order to avoid such cases, SESA can define a list of reliable PEAs and start exchanging information on job vacancies.

The commercial cooperation can include public resources being allocated to private employment agencies to carry out activities such as training of the unemployed. In this case PEAs will not be able to justify their practice fee charging from job seekers for job consulting and training.

Cooperation can be set up as well by preparing a Memorandum of Understanding between the public and private employment agencies, which will define the ways both sides can work together. The cooperation needs to depend on the trust private and public actors have in each other. Lack of trust, often due to unclear legal regulations can significantly prevent the delivery of more efficient services.

2.2.1. Estonian example of cooperation of private employment agencies with public employment agency⁴⁴

Means of cooperation between private and public employment agencies can be found in a range of countries. The interviews conducted with Estonian private employment agencies and Unemployment Insurance Fund (UIF) show that both public and private sectors think that there is a certain level of cooperation between public and private employment agencies in Estonia. For instance,

- PEAs participate in job-fair presentations as co-presenters with UIF;
- The UIF mediate jobs for PEAs by providing the needed workforce;
- PEAs and UIF exchange job advertisements on their websites.

UIF provides jobseekers with offers of private employment and temporary work agencies. UIF is very careful in the context of job mediation with PEAs, as sometimes there are very difficult problems caused by their job mediation, especially to the European countries. There are many parties between the final employer and the person. So, in case the advertisement is on the UIF homepage and the jobseeker gets in trouble because this very job advertisement, he/she turns to UIF saying that they did not check the PEA's background. UIF's possibilities to check the PEA background are quite limited. They can see if this company is registered in Estonia, if it is a job mediation company, by checking in the register of economic activities. If PEAs are not good partners, quite often UIF has to refuse to publish their ads in order to avoid further problems for jobseekers.

⁴⁴ Interviews findings conducted with UIF, Estonian PEAs and Stuffing Association

The above presented Estonian experience of cooperation between PEAs and UIF is a good example for potential PEA-PES cooperation. It shows that even in case when Estonia has not ratified the ILO convention, the cooperation is still possible between private and public employment agencies. In this case cooperation serves as a common floor for both actors to share information, cooperate and be actively involved in improving the functioning of labor market.

Conclusion

To conclude it may perhaps be worth to emphasize that Armenia is mainly a donor country of labor migrants where at least one member of 14.5% of Armenian households is a migrant worker with men engaged eight times more frequently than women. High rate of unemployment, absence of well-paid jobs are the main problems of labor migration. To address this somewhat alarming situation, the Armenian government has already undertaken serious actions.

In 2010 Armenia approved the new Concept for the Policy of State Regulation of Migration, which contains some references to labor migration in line with other major issues. In order to ensure the implementation of the defined issues, the Government approved the 2012-2016 Action Plan for Implementation of the Concept for the Policy of the State Regulation of Migration in the RA. State Migration Service of the Ministry of Territorial Administration was designated as the state agency responsible for the monitoring of the Action Plan. In order to coordinate the monitoring of the implementation of the Action Plan an Interagency Commission for Monitoring the Implementation of the Action Plan was established comprised of representatives of the relevant governmental agencies.

In addition, Armenia has ratified a number of international conventions in the field of labor migration, signed bilateral agreements, Joint Declaration on a Mobility Partnership and started negotiations on a Visa Facilitation Agreement and a Readmission Agreement with European Union.

The paper focused specifically on the role of Armenian PEAs in the migration processes. The research findings showed that PEAs role in the facilitation process of the migration process is rather intangible, though their potential is significant, which is proved by the interview findings. Actions such as introduction of a licensing system for PEAs, and ratification of ILO C181 Private Employment Agencies convention in 2012-2013, can become effective cornerstones for tapping this potential and improving PEAs as an institution.

The overview of political, policy and regulatory developments in RA for the past decade allows for several inferences about the present policy environment and practice, which can be grouped by target audiences:

Government:

There is no comprehensive policy on overseas labor migration from Armenia;

There is not conducive environment, where PEAs will be able to act as intermediaries and participate in the process of circular labor migration.

PEAs:

PEAs lack sufficient capacities to get information and ensure data collection;

Private and public employment agencies do not seem to cooperate.

Moreover, although Armenia has signed bilateral labor agreements with various countries, these are mostly of formal nature, and almost none of them is operational, not only because there has been no consistent implementation, but there is a lack of appropriate mechanisms.

Law on Regulation of Overseas Labor from Armenia that was not adopted by the RA Government needs to be returned to the government's agenda.

There is lack of a monitoring system for private companies delivering intermediary services related to local and overseas employment, and no adequate supervisor body is in place for the regulation of PEAs work.

There is lack of resources for the support services to protect the labor and human rights of migrant workers abroad.

Recommendations

In terms of regulation of labor migration and prevention of irregular migration, it is high time to boost the role and capacities of PEAs in providing services to Armenian citizens for finding employment in the international labor market. Strong PEAs could actually do a huge service to our society, namely, address the numerous challenges related to the protection of the rights of Armenian migrant workers and employment in foreign countries in general. Several recommendations are offered in the hope that they may become a solid platform for shaping new policies and approaches:

At the policy level

- Elaborate a comprehensive policy on overseas labor migration from Armenia, enabling PEAs to be involved in facilitation process of labor migration from Armenia.

At the regulatory level

- Create an environment, where PEAs will be able to act as intermediaries and participate in the process of circular labor migration without any fears and excessive risks, through:
 - a) Regulation of inter-state relations with destination countries in particular in the field of labor migration;
 - b) Realization of its citizens rights of work abroad;

- c) Establishment of mechanisms for protection of labor and social rights and interests of Armenian citizens abroad;
- Revise and amend bilateral labor agreements with countries other than Russia, considering the lessons learned from the process of revising the bilateral agreements between Armenia and the Russian Federation;
- Revamp the draft Law on Regulation of Overseas Labor and put the draft into official circulation, as (a) the draft introduces provisions for the regulation of relations linked to labor migration; (b) it defines the elements of the regulation of overseas labor, the regime and conditions for engaging in overseas labor, the roles and responsibilities of state agencies and intermediary companies related to regulation and facilitation of labor migration;
- Establish a monitoring system for private companies delivering intermediary services related to local and overseas employment through using the lessons learned and best practices, particularly focusing on the Estonian experience of PEA registration with the Register of Economic Activities in the areas of activity subject to special requirements;
- Invest resources into support services to protect the labor and human rights of migrant workers abroad. Investments targeted at both enhancing capacities at consulates of Armenia abroad, as well as promoting other mechanisms, such as insurance.

At the institutional level

- Designate a lead state supervisor body for the regulation of PEAs work related to facilitation of overseas labor migration from Armenia;
- Elaborate mechanisms related to PEAs information and data collection on administrative records of provided labor market services through quarterly reports;
- Establish practices and procedures of cooperation between private and public sectors through preparing and signing a Memorandum of Understanding between PEAs and State Employment Service Agency. The aim of cooperation is ensuring quality management standards at employment services and promoting both cooperation and competition practices. Elaborate mechanisms and procedures of cooperation between PEAs and State Employment Service Agency through using the lessons learned from Estonian experience of cooperation between PEAs and Unemployment Insurance Fund.

Last but not least, one cannot argue that if a person decides to search for work abroad, he or she will use different channels to reach the goal and quit the country for finding better life opportunities elsewhere, often by ending up with the status of an illegal migrant. The objective of this paper is to suggest mechanisms for preventing this from happening, for reverting irregular labor migration into a circular one and helping the migrants not to burn all the bridges back home.

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number UDF-GLO-09-281

Urban Redevelopment Policy Framework for Azerbaijan

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***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
and it does not necessarily reflect the views of the United Nations,
the United Nations Democracy Fund or its Advisory Board.***

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Abbreviations and acronyms

SCUPA State Committee on Urban Planning and Architecture

UNECE United Nations Economic Commission for Europe

PAAFE Public Association for Assistance to Free Economy

HARVARD GSD Harvard University Graduate School of Design

Abstract

Urban redevelopment plays a key role in the urban decision-making process for politicians, developers and dwelling owners in both developed and developing nations. This paper proposes to identify gaps and possible development of policymaking processes for redevelopment process in Azerbaijan. The framework takes into account aspects not previously recognized by researchers and practitioners. Policy and strategy in redevelopment of cities need more comprehensive analyzes and step-by-step actions in upcoming years.

Recommendations for this policy paper are made with regards to develop policy in a country and 4 elements reviewed for next steps:

- Recent urban planning changes and cities redevelopment activities occurring without a redevelopment plan and city politics will be reviewed
- Housing stock supply and privatization
- Some success stories from Central and Eastern Europe countries
- Conclusions and recommendations

This paper gives some recommendations using cross-border examples on redevelopment and fitting some of them to local conditions considering current political and administrative situations.

Executive summary and recommendations

The ultimate success of redevelopment mostly depends on government will and functionality. Redevelopment is not only involves physical and spatial changes, it also means changes to urban sociology and interpersonal communication. On the other hand, each redevelopment project is a massive infrastructure change in a specific area. Considering all above mentioned, we might highlight seven primary reasons for re-examining urban redevelopment in Azerbaijan:

- Rapid infrastructure change scales obliges us to review urban space for further development;
- Infrastructure and a built-up environment have not been regenerated and renovated for decades;
- There is a large number of developers interested in developing real estate in high-value central parts of the cities;
- Limited housing stock need to be extended, considering redevelopment of existing low density to high density areas;
- The population needs to have clear and detailed information on redevelopment, resettlement and compensation issues (financial issues);
- The recent plans of the government on redevelopment and future redevelopment actions need to be very complex;
- Public awareness and engagement in the redevelopment process is very low;
- Resettlement accompanied by enforcement.

I. Introduction: a history of urban development in the former Soviet Union

Explaining redevelopment of cities

“The forces framing the definition of urban decline and the solutions implemented have changed over time. New technologies—especially the dominance of automobile, truck and air transport in a world of cities previously built for railroads and ships—have made some places obsolete and others centers of growth. Globalization and the related institutional structure, scale and dynamics of the economy have transformed the components of economic competitiveness. Politics in its broadest sense has reflected the changing balance of power among social classes, the role played by race and migration, and the fall of Communism. Ideas, in terms of major ideological currents as well as in more specific conceptions of “the urban problem” and of the part that redevelopment programs might play in mitigating it, have likewise mutated.” - Norman & Susan Fainstein.

To understand urban development in Azerbaijan, one needs to review development and redevelopment of cities in different historical stages. Firstly, the country was one of the former Soviet Union states where a centrally planned economy completely controlled all government functions, included urban development. Secondly, most of the development concentrated on extension of housing stock and redevelopment was not a big concern of the government. And finally, the new political conditions in a post-socialist area also influenced urban development.

New urban planning and development activities seem absolutely different from the point-of-view of Western scholars and practitioners rather than professionals from emerging countries. Cities, which are the locomotive of global development, are a battlefield of politicians, the local community, and real estate developers. Free economy conditions and huge public engagement created new approaches for urban planning, using negotiation and public awareness for further community growth.

In the countries where the market economy and construction regulations settled down, the process of redevelopment gained new features. Redevelopment is not only a renewal process of regeneration in specific areas; it also means creating a new social fabric for the cities.

The Soviet urban planning system, accompanied with its heavily planned characteristics, dominated all development activities with the center and did not consider market supply side for development because of only state property existed. An initial period of Soviet planning was based on housing development and building new residential sites for the workers. Soviet planners also concentrated their efforts on improving living conditions in neighborhoods and took into account grasping new urban fringes for spatial development, instead of launching renewal and regeneration programs in the historical downtown parts of cities. Indeed, it happened in some parts of the centers of cities on occasion, but these activities didn't have a great impact on redevelopment.

Mono-centric features of socialist cities also created a “powerful city,” which was very popular among architects in the Stalinist period to show the face and magnificence of socialism. That period became a start point of many new established cities; however, at the same time the historical cities were upgraded from slums to modern apartment houses. That housing “market” was mostly in service of “the high party hierarchy” and did not reflect the real picture of Soviet cities.

In contrast, Khrushchev's housing reform, which was called "the greatest social housing project of history," and which moved 75 million people from slums to comfortable apartments within 10 years of the project implementation period, was one of the great redevelopment projects of the history, as well.

Brezhnev's period also pushed redevelopment activities by demolishing urban agriculture zones in areas near the cities and powered urban sprawl in Soviet cities. As can be seen, Soviet urban planning system emphasized housing stock expansion in the period between 1930-1980.

Reflecting these facts, the raising of Soviet cities is obvious and at the same time, it is clear that after decades of multifamily housing projects, they need strong renewal and regeneration intervention by governments and business. Azerbaijan faced the necessity of modernizing old physical infrastructure and replacing it with new ones, and redevelopment projects are a starting point.

Urban Development History of Baku: Policy Goals

Baku is one of the largest metropolitan areas of the former Soviet Union. It grew and expanded with a rapid pace, increasing the number of inhabitants in a short historical period from 22,000 in 1859 to 2 million at the beginning of 2000's. Such a spike accompanied with tremendous spatial and land use changes the whole area – most of the Absheron Peninsula is occupied with settlement areas. Since the collapse of the Soviet Union, the city has played the role of the regional industrial center for the South Caucasus region. However, the city has kept a strong position as an ancient city, a cultural center with unique architectural monuments dating back several centuries.

The historical old city was the main starting point of sprawl. During the first oil boom, which happened by the end of the 19th century, until the Soviet occupation in 1920's, the city had developed around the old city walls. Both oil millionaires and poor working class who migrated from different parts of Czarist Russia preferred to settle down around the historical part of the city. After 1920 socialist Russian occupation, industry and private property in Azerbaijan was eventually nationalized. The Socialist period and planned economy dictated their own rules; so private property notion went down over the decades. The planned economy also brought strictly planned spatial development and land use mechanisms. However, these plans seldom focused on redevelopment of cities and their regeneration because of the housing construction on sprawling urban and suburban territories. The state, with its strong housing policy and pressing implementation targets, in most of the cases allocated only limited sources for redevelopment. Redevelopment generally meant a resettlement from rural type dwelling houses, and government decisions were not to be challenged.

Baku keeps its mono-centric city status. Yet, all political and economic activities occur at the central part of the city with a concentration and mix of activities created within the last 100 years. The city center played a significance role once again when the second oil boom (starting by the end of 1990's) brought in a huge amount of capital from public and private funds. The most interesting fact is that developers focused on real estate development at the city center because of the increasing importance of downtown area. In addition to that, due to a well-provided infrastructure and multi-profile features of the downtown, investments statistics also supported development in the central part of Baku. It was obvious that Baku development went along with the high value of land and the property on it.

However, the mixed features of the city center – with its rich and poor neighborhoods – has not changed its face for a long time. The Soviet planning system and city building didn't pay much attention to redevelopment of historically "shiny town" (low-income population residential area) at the downtown. The governments had no will to regenerate and renew the historic parts of the city even for almost 70 years. The last master plan adopted by the government in 1987 had a tangible goal to develop Baku as a regional spatial unit and considered redevelopment of central districts, too. It should be mentioned that compared to

other city development documents, the last urban planning document has explicitly shown the plot and future plans for using of the land.

The collapse of the Soviet Union was the reason to forget such infrastructure projects, and governments struggling with the economic downturn, lacking the market economy experience, and facing local political instability postponed realization of all such projects. The war in Nagorno Karabakh with Armenia ended with a loss of 20% of the territory of the country and roughly 1 million IDP's moved to safer regions of Azerbaijan.

Internal migration has changed Baku gradually and by the end of 1990's it became one of the most hyper-urbanized cities of the Eurasia region. According to UN-HABITAT reports, the pace of urbanization of Baku still remains very high compared to other European cities – 3.5% (UN-HABITAT, 2008). In new Baku, with surrounding suburban, illegal towns, and settlements, the population number has grown to 2.5 million for the first time.

Program of City Redevelopment and Policy Formulation

The conceptual evaluation of urban redevelopment in Azerbaijan needs political will, and an integrated institutional and legal framework. It needs to be said that the country must have a strategic vision on spatial planning, public engagement, and improved negotiations between the parties.

- i) The fact that the migration process to the cities, especially to Baku, is increasing shows that there needs to be a flexible and constantly revisable comprehensive and strategic plan;
- ii) Elaboration of the Cities Redevelopment Strategy within the Strategic Plan document for Baku and other big cities is one of the major concerns. The government strongly needs to have a good strategic vision and ideas on redevelopment for the next years (e.g., a 5 or 10 year program). It could be a part of the National or the Regional Spatial Development Plans as well. This document must be integrated with public investment projects of the government because the main provider and contractor of redevelopment projects is the Government of Azerbaijan.

Public Administration Reforms for Redevelopment of Cities

Reforming public administration, transferring part of redevelopment activities to the local governments and other related institutions are important policy reforms for the government. Still, Azerbaijan has a weak public administration delegation in a local level; administrative and financial decentralization needs some important reforms. The local branch of central government units and municipalities are responsible for the same services and the border of delegated functionality is not clarified yet.

Country Economic and Spatial Development Plans

Success stories with similar conditions would be useful for further redevelopment actions. Central Eastern European countries such as Hungary adopted a National Development Plan (National Spatial Development Plans in Baltic countries) where redevelopment and regeneration is one of the important topics for the upcoming year. The Azerbaijan government should have a National Spatial Development Plan to identify whether huge urban regeneration process is important or not in upcoming years.

II. Housing Policy as a Core of Redevelopment

“...get rid of way to privatization is not the only choice and, in fact, has many disadvantages. Careful privatization close to market price, together with housing allowances, rent increase and institutional changes in housing management constitute a new model for the rental sector in which the sector can be self-financing (apart from the problem of deferred maintenance) and does not cause further financial loss for the local government.” (Hegedus and Tomic)

In the 1990s, the privatization process of urban territories and public spaces proceeded at a fast pace and seriously changed the development fabric. In fact, it has explicitly shown where such reforms might go within next years. The massive “get rid of” privatization of real estate for its nominal price, especially housing, added new huge money to accelerate the pace of development of real estate in emerging countries.

Privatization started at the end of 1990’s and had a significant influence on the government-owned housing stock. The government used the “get rid of” approach in housing privatization where the symbolic price for privatization gave a chance to tenants to become owners of former socialist-type housing. Furthermore, the privatized real estate market dominated over price regulations and accelerated the growth of price of a square meter without any market demand and supply.

It is most interesting that the real price of housing after of massive privatization showed a tangible artificial growth in value. For years, real estate companies and developers used the market regulated prices for redevelopment, which did not reflect the true value.

Firstly, in most of the cases developers had a negotiation with the local redevelopment area community without any regulating agencies and assessment values.

Secondly, no independent or government agencies were attracted to the value assessment at the first stage of redevelopment in Baku or other cities.

Thirdly, in the follow up of a nonexistent system of regulation and controls, the private market has developed a “dot” construction along the downtown area of Baku.

Finally, such aggregation of money in the real estate market pushed up the construction business in urban and suburban areas; the tenants had a chance to obtain an apartment or land for construction or enough financial sources for businesses and start-ups.

In addition to that, this business mechanism fixed a price of real estate in various city parts. In recent years, a profit-driven housing construction market with limited consideration of spatial and social issues has increased. Between 2000 and 2005, about 500 high-rise buildings (12–25 stores) and thousands of new luxurious low-rise buildings were constructed, completely changing the land use pattern and the character of the city.

Existing housing stock of the country is more than 109 million m². Before 1993, the privatization had a very simple procedure – paying the nominal costs, anyone from the family could become the owner of an apartment. During this period, certain groups did not have to pay these costs. Indeed, after the adoption of the above-mentioned laws, there was no charge for privatization. Article 3 of the Law on Privatization of the Apartment Stock lays out several principles of privatization. These included absolutely voluntary nature of privatization and fulfillment of rights of the population for the privatization of apartments they are residing in under the terms and rules stipulated in the Law. Article 6 defined cases when privatization is not allowed.

Existing House Stock in Azerbaijan

The housing stock of Azerbaijan consists of existing housing and new housing estates. The existing housing stock can be classified by the period of its construction:

- Constructions before the Soviet period (i.e. prior to the 1920s), which are located mainly in the historical parts of cities. In general, these estates need reconstruction and renovation to fulfill modern housing standards. Parts of these homes are in a very poor physical condition.
- Housing estates built before the Second World War (1920–1940) are mainly situated in rural areas. Those constructed in urban areas have shared kitchens and bathrooms.
- Housing estates constructed after the Second World War. The mass construction of prefabricated housing began in the 1960s. Many new districts were planned and constructed with these houses. The levels of these estates fall down below modern standards, especially in terms of construction and technical condition. Energy efficiency is a major concern due to the low quality materials used in these buildings.
- After Azerbaijan gained its independence, the pace of housing construction declined during the 1990s, with mainly private cottage-type estates being constructed. After 2000, the so-called cooperative construction became more widespread, especially for multifamily complexes in the country's larger cities (UNECE, 2009)

In other words, the Azerbaijan housing market needs more redevelopment actions for renovation, replacement and improving living conditions through expansion and renovation of housing stock.

The Need for Housing

One of the critical points is that government-owned housing stock is very limited and most of them are in poor condition. The government should adopt a plan for further housing policy which must indicate affordable space for each person (square meters). The renovation and resettlement of old housing stock also must be mentioned and elements of resettlement policy should be one of the main purposes of this program.

Economy of Housing Policy

The population growth and re-urbanization process in the following years will demand new areas for housing construction. It must be noted that most such requirements would need continuous supply both in the central parts and fringes of the cities. High values for the land will require new approach to provide house for low-income groups. The government and private sector should provide affordable and social housing for potential resettled tenants especially in central parts of the cities.

III. Redevelopment activities

New redevelopment actions after the socialist period have occurred only after 2000's. At the first stage of development real estate developers initiated construction in the central and most valuable part of Baku.

The government started redevelopment projects later and the first such experiences became visible in 2009. By this time, the government had listed the principal points of redevelopment in Baku; one of them was the central part of city, which could be seen at the last Master Plan from 1987. It should be noted that document was expected to be effective at least for 20 years, but it expired in 2005.

Unexpectedly, the government, by an Act of the Cabinet of Ministers, launched a new project for construction of a new park and underground auto parking, which was included into the last Master Plan of Baku city without any preparation in 2009. The area, which is supposed to be a historical part of the city, started to be demolished from 2010.

In fact, the redevelopment issues and concerns in Azerbaijan started with this project. Later, in 2012, after completing the cleaning up process, the Public Association for Assistance to Free Economy (PAAFE) reported that 2,524 apartments and commercial buildings were demolished during implementation of the first stage of the redevelopment process.

If one is to review the development of this project, some gaps in the whole redevelopment process can be seen.

Firstly, this redevelopment project was approved and launched by the government without any program.

Secondly, public awareness and negotiations process were minimal and in most of the cases enforcement for leaving the homes by tenants took place several times.

Finally, redevelopment was not based on any rules or regulations and an institutional approach was absent through the project implementation.

After 3 years of a long conflict, the government completely demolished the project and started redeveloping the territory under the new park. However, there is still the institutional and legal framework to be questioned. Consequently, 3,930 buildings and apartments were demolished for redevelopment purposes. It can be seen that the government has the political will for redevelopment and physical renewal, but reforms are needed for further stages and the legal base for this redevelopment was approved by the government only in 2012.

Recent Redevelopment Operation

Since 2008, when the government launched new redevelopment plans in Baku city, the situation has changed. After couple of years the government declared the compensation value for tenants; the sum couldn't exceed 1,500 AZN (\$1,800) per square meter on planned demolished and redevelopment areas. In fact, this value was approved without any estimation and real estate assessment.

On February 24, 2012, the Cabinet of Ministers approved the rules on "Preparation on resettlement plan and resettlement instruction" related to application of the law "on purchase of lands for government needs." It is also worth mentioning that a presidential decree on the application of the aforementioned law was signed on May 24, 2010. According to article 1.4 of the decree, the rules should be approved within three months.

Future redevelopment goals

Recently, SCUPA revealed the redevelopment plan of central Baku area to 2030. According to the media, there should be demolished historical buildings and the downtown city size should extend from 1,479 ha to 1,550 ha. The plan covers the whole central part of Baku through building new multifamily housing apartments. Such redevelopment action will require optimized activity from the government.

The following are among the kinds of urban redevelopment programming which can be implemented:

1. Legal framework for urban redevelopment

To prepare legislative and other relative acts on redevelopment. Except for some regulations, overall redevelopment activities are not reflected in any legislative document or bills. Considering the needs and further redevelopment activities, there must be prepared legislation on housing, resettlement policy, developers' roles and obligations, value assessment methods, etc.

2. Redevelopment authorities' creation needs

Creation of a new redevelopment authority on the central and local government level is a necessity. There is some good experience on such agencies both in developed and emerging countries. In the United States, great metropolitan areas have regional redevelopment authorities, which coordinate all activities related to those areas. In Hungary, the city government and local authorities created joint redevelopment offices in the area of redevelopment (e.g. RV 8 at the 8th district). Such authorities must identify redevelopment needs of the specific region, and work closely with developers and local tenants. Creating of redevelopment authorities is a best example how to properly implement such projects. One of the benefits of redevelopment authorities would that they would work with local tenants, and increasing awareness of dwelling owners about ongoing projects, compensation, resettlement procedures, etc.

The Azerbaijani government could create such authorities in local governments as a branch or small working group for temporary periods.

3. Need assessments for new redevelopment projects

The local governments need to have a neutral expert jury (the Budapest experience) for reviewing and approving projects. One of the main gaps of redevelopment is that the government does not have a collaborative decision-making mechanism for proposed and ongoing projects. Despite the number of ongoing mega- and micro-redevelopment projects, architects and planners are left off the decision-making process. Other responsibilities of such an expert group is to review the relevance of any project involving urban design. An exception might be the intervention of this jury on political decisions affecting the projects.

4. Value assessment for real estate

The central and local governments need to have independent value assessment of real estate for tenant satisfaction in cases of compensation. The government and developers need to implement independent value assessment for real estate to get a real snapshot of real value and capitalization of real estate markets in

case of redevelopment. It needs to involve independent value assessment companies in the redevelopment process. Real estate companies should be involved in the process and alternative value assessment methods have to be applied. One of the options could be RISP value assessment in the future. This methodology could be applied in Azerbaijan on a small scale. The developers - both government and private – could use realistic prices for real estate to avoid future tensions between local tenants.

5. Public awareness

Society needs to be informed about the redevelopment story. New media tools and traditional information means as well should be used for raising the efficiency of redevelopment. According to research, society needs more information and communication on the redevelopment process. It could lower the tension between parties and bring about a proper solution for further redevelopment actions.

6. Support of public participation

An active role for civil society should be advanced. Public engagement emerged more slowly with respect to urban development and, consequently, redevelopment activities happened without any participatory process on central or local level. For the decades, planning documents did not mention the role of public in any city development plan and there is a need to shift toward an active public opinion process.

Recently, the Azerbaijani parliament enacted new legislation on an “Urban Planning Code” which also considers public participation in the planning process and redevelopment. It gives some positive color to public engagement through the redevelopment process.

References

- UN-HABITAT: *Harmonious Cities State of the World Cities 2008/2009*, 2008
- URBACT II– NODUS: *Linking Urban Renewal and Regional Spatial Planning*, Final Report of the Working Group, 2010
- Weinstein, Liza and Xuefei Ren: *The Changing Right to the City: Urban Renewal and Housing Rights in Globalizing Shanghai and Mumbai City & Community*, 8, 4 December 2009
- Richardson, William Harrison: *Planning a Model Soviet City: Transforming Vladivostok Under Stalin and Brezhnev*, Urban Transformation: Controversies, Contrasts and Challenges 14th IPHS Conference, 12-15 July, 2010 Istanbul-Turkey
- Norman Fainstein and Susan Fainstein: *The Changing Character of Urban Redevelopment Since 1945*, Harvard GSD introduction paper. Prepared for The Handbook of Urban Planning, Oxford
- Summary of the Final Report on Budapest*, Hungary ACT consultants, Paris, 2007
- Jozef Hegedus and Ivan Tosics: *Rent reform – Issues for the Countries of Eastern Europe and Newly Independent States*, Housing Studies, Vol.12, No. 5, 1998
- Gabor Loschmandi: *Large –Scale Restructuring Process in the Urban Space of Budapest* (paper), 2007
- Kahramonova, Shahla: *The problems of Renewal of Old Quarters in Baku Historical Center Reviewed*, 2011, for detailed information use <http://www.corp.at>
- PAAFE: *Map and Statistics of Violation of Property Rights in Baku*, Baku, Qanun, 2012

APPENDIX

1. Baku urbanization pace due to master plans since 1940 (source; UNECE)



2. Central part of Baku city. According to the new plan, it will be redeveloped through demolishing low dense building area and construction of a new mix using high-rise buildings.





Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

Assessment of Women's Role in the Security Sector of Georgia

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***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
and it does not necessarily reflect the views of the United Nations,
the United Nations Democracy Fund or its Advisory Board.***

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Introduction

This briefing paper is concerned with the situation of the role of women in the security sector of Georgia, in particular in the Georgian Armed Forces (GAF). It seeks to identify concrete problems within this unit and to promote the process of creating a gender-sensitive institution. The paper focuses on women's rights and obligations, their place in the Armed Forces, and their increased integration into traditionally male-dominated fields; and it defines core barriers which obstruct women from exercising their rights in the security structures and provides recommendations to the Government of Georgia based on the best practices of the OSCE states.

Looking to the recent reform context in terms of security sector and gender, the most important development has been the creation of a National Action Plan by the Parliamentary Gender Advisory Council – the document that was worked out based on UN Resolution 1325 and that aims to increase gender perspective awareness in the security sector institutions and plan implementation of responsive activities. However, challenges in the field still remain considering that discussion about introducing gender mainstreaming into the security sector reform is just beginning.

The proposed alternatives as argued in the paper to be relevant for constructing more gender-responsive military can be briefly stated as followings:

- Groups advocating for women's interests should be included in the advisory bodies of the security structures, including the National Security Council.
- Creation of women's associations and professional unions should be supported.
- State organizations should show their goodwill and express readiness to carry out full-fledged research with the participation of NGOs on the issues of women's rights in the security sector.
- Prepare educational and training programs on women's role in the security sector.
- Prepare legislative changes for ensuring protection of women's rights.

The paper does not aim to recommend to the government to artificially increase the number of women in the security system. On the one hand, it seeks to identify problems, and taking into account democratic principles and international experience, it offers recommendations and practical examples to the government, which in the long run will strengthen the role of women in the security system of Georgia. For identifying the existing problems the paper uses the information obtained through the free legal assistance program implemented by the Association "Justice and Liberty," which refers to women's issues in security structures. Methodologically, the research is also based on information obtained through various interviews with different stakeholders (UN Women, various ministries and civil society representatives) who to some extent have worked on the issue of gender and the security sector. Specific issues that have been examined include women's participation, recruitment, and retention optimum utilization of their capacities in the security sector.

The paper seeks to address principally the Ministry of Defense and more specifically the Armed Forces. However, different security sector institutions (Police forces under the Ministry of Internal Affairs) and Parliamentary bodies (the Gender Advisory council within the Parliament) also represent the target addressees.

Why it is necessary to integrate gender issues into security sector reform?

Security sector governance in Georgia represents an emerging issue and integration of gender mainstreaming in the security sector reform (SSR) process is even more rudimentary. Incorporated and comprehensive analyses of gender and SSR, is a challenge due to the diversity of institutions involved – the Ministry of Defense (MoD), the Ministry of Internal Affairs (MIA), the Parliamentary Gender Advisory Council. Therefore, it is almost not represented in the existed research and analyses.

Integration of gender issues in security sector reform, and building a gender-responsive system in general is measured by different indicators throughout different institutions: for example, in the policy sector the overall goal of SSR is creating gender responsive police service; in the military, the most important indicator is increased gender equality within the military sector, whereas on the Parliamentary level the major indicator is the parliamentary oversight over security sector that in principle, is supposed to identify and depict gender-related concerns.

Gender mainstreaming in Georgia's security system is a part of UN resolution 1325⁴⁵ principles (based on the principles of the resolution 1325, the Gender Advisory Council of the Parliament of Georgia worked out an action plan that will be discussed in more details below), and Georgia's goals related to NATO aspiration. Given that Georgia has long ago firmly announced its willingness to become a member of European and Euro-Atlantic organizations one day soon, the preliminary process of integration with those institutions involves careful observation of security sector reform (SSR) by various local or international actors. The most important questions put forward during the long-term process of security sector reform in Georgia are those about how, by whom, and under what circumstances is the reform policy conducted, and how legitimate the entire process is. Legitimacy of these processes is obviously being gained through different channels; how intelligible a concrete security policy is for the broader population, how transparent and accountable is the system, or what quality service the system delivers to citizens. Legitimacy certainly differs according to concrete units of the security system, be it the armed forces or the police, but in one way or another, reforms in security sector need public awareness and support. Gender matter integration into security sector reform, apart from increasing operational effectiveness, represents one of the sources for raising legitimacy and accountability of security sector reform that should ideally meet security and justice needs for men and women.

To make this all happen, it usually becomes necessary for security sector analysts to individually address each challenge of SSR and identify opportunities that could serve for good for constructing a security system that works for citizens. Incorporation of gender mainstreaming in security sector reform represents one of those less frequently deliberated aspects. This paper will try to draw its attention on gender and security policy and identify concrete needs and prospects of public policy considering international experience and best practices relevant to the Georgian context. It is important to highlight that the research does not aim to argue for artificially increasing the number of women in the security system – this is the issue of broader discussions - but to propose such pattern of attitudes that could increase the role of existing number of women in the Georgian Armed Forces.

In addition to legitimacy affairs, analyses of gender in the security sector cannot be viewed separately from the human rights perspective. An analysis of women's role in the security sector is not only an issue of democratic governance and accountability, but it is also a principal human rights issue. For that reason it has a special practical relevance to the Georgian context, to look to the gender aspect of human rights in security

⁴⁵ United Nations Resolution S/RES/1325 (2000) Security Council Distr.: General; 31 October 2000; 00-72018

sector reform, especially given that post-war realities in Georgia coincided with the steady and accelerated pace of reform period.

Gender and Security Sector under the Current Reform Context

In the sphere of gender and the security sector, the only document that can be considered as a foundation for further reforms is UN resolution 1325, which encourages all the signing states to undertake and fulfill all sorts of necessary steps (such as ensuring “ increased representation of women at all decision-making levels in national, regional and international institutions,” or incorporating a “gender perspective into peacekeeping operations”) for women’s equal representation in the security sector. On the bases of Resolution 1325, on the national level there was created a National Action Plan by the inter-institutional Parliamentary Gender Advisory Council at the end of 2011.

The Key purpose of the National Action plan, which was planned for the upcoming three years 2012-2015, is to work out first stage, immediate outcome oriented indicators, such as training the representatives of police or Armed Forces, in order to increase gender perspective awareness and knowledge about gender mainstreaming. The next three-year stage after 2015 is considered to be committed to much longer-term objectives, such as the overall outputs and results of the trainings carried out in the first stage.

On the legislative level, the most important progress achieved throughout the last five years was the adoption of the Law on Gender Equality that will be discussed below. Even though, the law does not specifically touch upon the matters of women in the security sector institutions, it created a legal foundation on the bases of which there was established the permanent advisory body at the Parliament – the Parliamentary Gender Advisory Council. Throughout the recent period, gender aspects have been elaborated in different parliamentary working groups, with the participation of civil society representatives, but it had no formal, institutionalized or stable character. In addition, recommendations worked out in such platforms that were not attended by public officials meant that government institutions usually perceived such input as being unrealistic and unfeasible. With the creation of the Parliamentary Gender Advisory Council, most of the ministries were able to get involved in the working process and brought their considerations to the table.

As the National Action Plan was finalized after the nearly one-year long working sessions of the Gender Advisory Council, on the basis of the Council, there has been created the Coordinating Group that will be responsible for monitoring the implementation of those obligations mentioned in the National Action Plan.

Another important aspect of the work of the Gender Advisory Council is that as a result of the cooperation between various governmental institutions during the working sessions, there has been put forward an initiative to sign the memoranda with the State Department of Statistics and various ministries in order to create a unified database with segregated statistical data about the number of men and women in different governmental bodies.

Women’s participation in the military - International best practices and their relevance to Georgia

Despite the fact that since time immemorial women always played an important role in the defense and security issues of countries, it is only in the last thirty years when women started to acquire a relatively wide and significant role within the system of modern military or police units. Although barriers related to women’s participation in the security sector have been lifted in the majority of the OSCE participating states, women

still encounter difficulties at every stage of their career in the military. Traditional gender stereotypes in the majority of cases create obstacles which hamper women's participation in this sector, such as widespread assumptions that a woman can never be equal to a man in terms of physical abilities and that the quality of men's work is much higher than that of women.

Nevertheless, in today's world, principles and opinions supporting women's increased participation in security structures are becoming increasingly prevalent. Some of those principles will be considered below:

- **Democracy and principles of equality**

During the process of democratization, implementation of gender equality principles is of significant importance. International human rights instruments and basic laws of democratic countries unanimously acknowledge equal rights and freedoms of all people, irrespective of their race, color, language, sex, and so on.

Women's participation in the security sector is one of the major issues in the field of human rights. Hence, it is logical that democratic countries and societies are expected to take into consideration key democratic principles pertaining to the equal rights of people, and in this respect, having certain limitations imposed regarding women's participation in the security sector becomes unacceptable. Furthermore, these democratic principles dictate the need to maintain a balance between the roles and functions of men and women in all spheres of their activities.

- **Changes of cultural values in the society**

One of the decisive factors for the increased role of women in the security sector is the changing of cultural values regarding women's role in society. Gender roles, i.e., public perceptions and expectations about what is feminine versus masculine and what should a "real" woman and man be like, are not static, but evolving notions. Gender roles are constantly revisited and changed depending on the requirements of a specific context. This is accompanied by the struggle for women's rights for obtaining equality with men in private and public spheres. The struggle for women's rights at global and national levels, on the one hand, and transformation of gender roles on the other hand, have resulted in a change in attitude regarding the role played by women in the security sector, which, in its turn, has contributed to speeding up the process of women's greater involvement in the security sector.

- **New directions in the security sector**

In the twenty-first century, the bureaucracy and computerization of the armed forces has diminished the stereotype of soldier as warrior, which has meant an increased need in administrative, logistical, medical and other noncombat services in the armed forces. An increased number of noncombat services is one of the factors enhancing women's growing involvement in the armed forces.

In today's world, particular attention is paid to positive contributions made by women in the security sector. Modern security structures have developed a great deal of new roles, which can be easily performed by women, such as mission monitoring, distribution of humanitarian and medical aid, other medical assistance and so on. Thus, the demand for women in service and the labor force is emerging in the security sector. Since women adapt better to the existing environment and the nature of services, they are achieving positive results.

- **Increased interest of women in the security sector**

Considering the above, women's interest in employment in the security sector has increased. On the one hand, it is defined by women's desire to work in a high-risk environment, and on the other hand by the fact that this sector offers women opportunities of employment and career growth. In this case the labor market for women had become more open, which enables their employment and further professional development. Hence, in recent years, increasing numbers of women have become interested in the security sector and have attempted to be engaged in these types of professional activities. All these factors result in the security sector attempting to develop spheres where utilization of women's labor and their role would be efficient both for work and for the entire direction of the sector.

- **Women's positive contribution and importance of their participation**

Women's involvement in the security sector is beneficial for these institutions in the first place. Furthermore, this process is important for society as a whole: equal representation of women and men in the state institutions, especially in traditionally male dominated sectors, speaks of the aspirations of the particular society to develop and strive for equality.

Taking into account the fact that women represent half (and often more than a half) of society, they should have equal opportunities to join the security sector as men. Moreover, as a result of women's participation, the security sector is able to respond more adequately and effectively to current challenges by taking into consideration the specifics of modern conflicts (hostilities taking place in close contact with civilians), terrorism and organized crime (e.g., trafficking).

Statistics

In the course of my research activities, I requested public information from Georgia's security institutions regarding the number of women employed there. The data processed by various methodologies and in various forms was received from all institutions, except the Ministry of Defense. The Ministry of Defense did not provide data with an argument that it contained some classified information. Our organization used the data received a year ago regarding the number of women employed in the Ministry of Defense. Since we did not have a chance to verify them, these figures are marked with a question mark in the table below.

Institution	Number of women having military and/or officer's ranks	Number of women having military and/or private's or sergeant's ranks	Number of women serving in civilian positions
Ministry of Penitentiary, Probation and Legal Aid Services	264	265	25
Ministry of Defense	1,646 (?)	(?)	226
Special Forces of State Defense	65	110	-

Source "Association justice and Liberty"

The above statistical data reveals how limited the representation of women is in these institutions. For example, the staff of the Ministry of Defense comprises 37,000 persons, of which only 5% are women. The situation is similar in the other institutions. Unfortunately, during the research we were unable to present the current state of the issue in dynamics according to different years, since we were unable to obtain such information from these institutions. However, based on our experience, we can state that during the last 5 years the dynamics ascended and compared to previous years the number of women in this sector has increased. It is also important to note that women's employment in Georgia's security sector varies not only by ministries, but also by the inter-ministry departments, and by various types of armed forces (in the armed forces).

Legal analysis

Currently, Georgian legislation does not suggest any regulation specifically on the topic of gender and the security sector. In terms of gender equality in general, there have been some improvements since 2010. For example the Law on Gender equality was passed in spring 2010.⁴⁶ However, after the working sessions of the Parliamentary Gender Advisory Council, the Ministry of Justice began reviewing the current

United Nations Resolution S/RES/1325 (2000) Security Council Distr.: General; 31 October 2000; 00-72018
 გენდერული თანასწორობის შესახებ კანონი. 2010.03.26
http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4106

legislation, specifically in the context of gender and security sector institutions. Absence of regulations is often interpreted in two ways by public officials and civil society representatives. The first argument usually invoked by public servants says that no regulations means no restrictions, whereas a second argument is about presenting limited legislation in terms of providing information on the peculiarities of women's participation in the security sector that obscure women's involvement in those institutions. Both arguments might be seen as reasonable depending on the lens through which one looks to the problem; however, it is obvious that explicit regulations could have worked for a sophisticated approach (for instance, writing up on the rights of women employed in the security sector, their working conditions or other related issues so that women do not meet obstacles at the recruitment, career advancement and development stages) to gender mainstreaming, and would avoid such duplicated assumptions.

Neither does the Labor Code⁴⁷ distinguish between differences in the labor conditions of men and women. Gender considerations are only mentioned in connection with allowances granted in case of pregnancy, delivery and adoption, namely:

- It is prohibited to employ pregnant or breastfeeding women to perform laborious or dangerous and harmful work;
- It is prohibited to employ pregnant women or women who have recently delivered, or people with disabilities over time without their consent;
- It is prohibited to employ pregnant women, breastfeeding women, or women who have recently delivered on night shifts (from 10 pm to 6 am). Moreover, the employment of those taking care of children under 3 years of age, or people with disabilities without their consent is also prohibited;
- The employed breastfeeding mother of a child under one year of age is granted breastfeeding entitlement upon her request, which should be not less than one hour. The time spent on breastfeeding is counted as working hours and is reimbursable;
- The employer is obliged to ensure the safety of pregnant women and their engagement in labor which poses threat to the welfare, physical and mental health of the mother and the fetus, should be avoided.

Furthermore, women are also granted 447 calendar days of maternity leave for pregnancy, delivery and taking care of children, in addition to annual leave. Of these days, 126 days are reimbursable, but the total number is increased to 140 days in case of pregnancy complications or delivering twins. These days can be distributed freely upon discretion of women over pregnancy and post-delivery periods.

Apart from this leave, upon request, women could be paid during their leave partially or fully. The time out of work, which pregnant women take to conduct medical examination, is deemed to be acceptable paid leave upon the presentation of relevant medical documentation.⁴⁸

In Georgia, women's service in the military is not obligatory. According to the Law on Military Duty and Military Service⁴⁹, military duty is compulsory for the registered citizens of Georgia between the ages of 18-27. Registration for military service is compulsory for all men, while women are not obliged to do so.⁵⁰

⁴⁷ United Nations Resolution S/RES/1325 (2000) Security Council Distr.: General; 31 October 2000; 00-72018 http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4106

⁴⁸ saqarTvelos Sromis kanonTa kodeqsi, muxli 17-19; muxli 27-30. Labor Code of Georgia, Articles 17-19; 27-30

⁴⁹ საქართველოს კანონი სამხედრო ვალდებულებებისა და სამხედრო სამსახურის შესახებ. 1997. 09.19

⁵⁰ saqarTvelos kanoni `samxedro valdebulebisa da samxedro samsaxuris Sesaxeb~ muxli 9, muxli 11. Law of Georgia on Military Duty and Military Service, Article 9, Article 11

Current developments show that women have the right to serve in compulsory military services if they desire to do so. However, the order of drafting into armed forces for women is the same as for men. As a rule, women do not express desire to serve in compulsory military service.

When issues are raised regarding the lack of women in decision-making posts in the security sector, the questions that naturally follow are regarding the artificially created environment obstructing women to develop their career in these structures. If a woman does not go through compulsory military service, she will practically be deprived of the chance to start working in the security structures of Georgia, unless she undergoes special training. The availability of special training is relatively limited. Such approaches create unfavorable conditions for women and contribute to the lack of motivation on their part to get engaged in these services. However, professional military services have partially responded to this problem, though some of the issues are yet to be tackled. For example, problems of legal character, pertaining to various norms, still exist.

The dispute is on going over the issue of appointing women to combat positions. According to Georgian legislation, women cannot participate in combat operations despite the fact that the law does not directly ban them from undertaking such operations. In practice, during various military operations, women had expressed the desire to participate in combat operations, but their requests were turned down per the application of legal provisions.

Reforms that have been ongoing in Georgia in the past years have made military and police services much more prestigious. This especially refers to the police service and the formation of the Patrol Police, which has noticeably improved public trust towards law enforcement agencies. Measuring general attitudes towards the military is more complicated given that there are no opinion polls in this regard.

Women's rights and practices

Issues pertaining to the rights of women and related practices in the security system of Georgia can be grouped in the following manner:

- **Limited representation of women in leadership positions**

Based on the available statistical data, representation of women in leadership posts in Georgia's security system is extremely limited, which obstructs women's efforts to protect their rights. In the first place, this is caused by the fact that political will has not been sufficiently expressed, and attention paid to these issues is fragmented.

- **Lack of participation of women in decision-making**

As the number of women in leadership positions is limited, clearly, their participation in decision-making is limited as well. For example, women are not involved in the decision-making process at various levels in headquarters. One of the issues here is that according to current legislation, headquarters and its management are not required to involve women in the decision-making process – this issue is not regulated at all. Hence, their non-involvement in these processes disregards women's interests, their opinions and right to be in an equal position when decisions are being made.

- **Ban on appointing women to combat positions**

It has already been mentioned that the prevention of women from combat positions is a debatable issue, which results in the exclusion of women from the decision-making process. In addition, it should be taken into consideration that women desire to have an equal position with men and to have an opportunity to express their preferences and utilize their capacities.

- **Inequalities by various security institutions**

Based on practical experience, women in security institutions are assigned positions which are confined to the service sector, such as: supplies, medical care, administration, cleaning and so on. However, worldwide practices show that their role bears utmost importance, for example, in peacekeeping operations and other military-humanitarian missions. Despite the fact that Georgia is prominently represented in various peacekeeping and other missions for years now, women have never taken part in them. The aforesaid hinders development and advancement of women's career.

- **Posts created and adjusted to male professions**

Armed forces and military units in general are conservative institutions that have traditionally been staffed only by men. Hence, they have established rules attuned to men, which are seen as another obstacle for women's participation. This issue exists in Georgia as well and requires additional study. Within the security sector, posts that are relevant for women should be identified and, in order to avoid additional barriers, working places with equal functions for men and women should be created.

- **Traditional gender stereotypes**

One of the factors that hampers women's access to military or police institutions and their career success is traditional gender stereotypes, such as "men's jobs" which women cannot perform. Consequently, serving in the armed forces or police, which are defined by cultural and structural inequalities, women do not enjoy equal status with men. Most of the resistance comes from the existing deep-rooted beliefs in cultures, where men are leading figures. In these cultures, military service is considered an inherently male field. Another issue is the family factor. The majority of women having military or other special ranks admit that family members' opinion regarding their service in security sector institutions is negative. Taking into account the specifics of their work (stand-by or state of emergency), married women especially experience this issue.

- **Risk of sexual harassment and other types of violence and discrimination**

One of the obstacles towards women's active participation in the security sector is the risk of sexual harassment and violence from superiors or male colleagues. Many women in military service who became victims of sexual harassment at work have approached the legal service of the Association "Justice and Liberty." These cases are mainly related to career advancement or dismissal from work. As a rule, such women do not report acts of sexual harassment or violence to higher authorities as prescribed by law. The majority of these women try to avoid such actions. Some of them prefer to leave the job than to reveal such facts. All the above leads to the depletion of the female labor force from the security institutions. This also results in the lack of motivation and preference of women to be employed in these structures. International experience shows that there are many mechanisms that help to prevent sexual harassment and violence.

Unfortunately, these mechanisms do not exist in Georgia. Discrimination is expressed in various forms: biased attitude during the recruitment process in military service, biased evaluation of the work performed, absence of special internal standards and regulations regarding a supportive environment for women, maternity leave or combat functions. The disparity in career opportunities for men and women also clarifies as to why decision-making posts are so unequally distributed among women.

- **Ambiguity and lack of legal norms ensuring equal utilization of women's rights**

As noted previously, there is no specific normative base in Georgia, which ensures protection of women's rights and their increased role in the security sector. Moreover, there are no provisions regarding the general protection of women's rights. For instance, sexual discrimination is punishable according to the Criminal Code of Georgia only when a crime is committed, while there is no administrative responsibility envisaged if there are signs of the criminal action present which can be regulated by military disciplinary rules. Sub-normative acts, which regulate various issues, such as physical training and hygiene, could also be problematic.

- **Insufficient and ineffective education policy**

The findings showed that the State does not follow any defined policy for identifying and solving women's problems in the security sector. There are no training or educational programs in the relevant ministries and institutions to discuss women's issues. As a result, the situation created in these systems is quite ambiguous as neither men nor women know how to ensure equal conditions in the security sector and how to take into consideration each other's interests. International experience gives interesting examples in this regard, which overall reflect positively on women's conditions. Thus, the lack of relevant policy and systemic approaches towards women's problems is the key factor that defines women's problems in Georgia's security sector.

- **Lack of organizations ensuring women's rights in the security sector**

Despite the fact that Georgian legislation allows for the establishment of professional unions, such organizations do not exist in the country, and evidently, neither do women's unions or associations. While conducting the research for this paper, we tried to find non-governmental organizations advocating for women's rights in the security sector; however we did not succeed in identifying any. As noted above, there is no body (council) or a position/post in law enforcement institutions which would defend women's interests. Moreover, there is no such body outside the State structures. The above mentioned problem needs to be addressed in order to precede working on women's issues in general, solving their problems or advocating their interests, otherwise it would be difficult to work in this direction. Below, there will be given examples of international experiences, which proves the significant importance of such organizations.

Experience of NATO States

During the last 10 years, OSCE participating states have taken interesting and positive steps towards increasing the role of women in the security sector. In addition, various international organizations, like UN and NATO, have developed various directives and recommendations which facilitate the creation of equal opportunities for women in the security sector as well as protection of their rights and interests. In this regard, it would be important for Georgia to study and to incorporate this experience, while embarking on further reforms. In this part of the paper, there will selectively be discussed experiences that might be considered necessary and useful for Georgian reality.

Organizations for women serving in the military

In 1976, considering the importance of gender issues, NATO founded the Women's Committee, composed of representatives from each of the NATO members. The Committee was created for the purpose of advising NATO military leadership on the issues relevant to women's rights. The Committee developed a document with a set of recommendations on gender issues for NATO countries. It recognizes various and equal needs of personnel and allows them to equally participate in peacekeeping operations in conflict zones. Local culture and its gender peculiarities should also be taken into consideration while planning and implementing peace operations. According to the recommendations, NATO military operations should take into consideration gender issues in three main areas: the planning stage of operations and their implementation, education and trainings, and evaluation.

Women's organizations engaged in military service, such as the U.S. Defense Department Advisory Committee on Women in the Services, and Netherland's Defense Organization for Women, play a significant role in the increased involvement of women in the armed forces. Various mechanisms were used to influence defense leadership in order to improve women's conditions in the military, to inform women on their rights and to offer assistance in cases of gender-based discrimination. From this angle, the introduction of special counseling services should be considered.

Since 1992, the Netherlands Defense Organization for Women has been trying to influence policy makers and to promote women's rights in the Dutch armed forces. The network has two objectives: to encourage women employed in the Dutch Ministry of Defense and to provide them with the relevant information; and to strengthen women's roles in the armed forces and promote their advancement.

This network of women's organizations is bringing together active women in the military. The network has organized meetings, roundtable discussions, produced leaflets, activities that facilitate further improvement of contacts among the network members. This is an informal network of professionals, created to bring benefit for both the armed forces as a whole and women serving within the armed forces. The network is a source of knowledge and competence, which is often used by policy-makers in the defense sector.

The Danish Defense Collegiums formed an organization which comprises 50 people. It employs local citizens, both men and women, and they provide anonymous, legal consultations for everyone who addresses them with requests. Consultations are free of charge for victims of sexual harassment and violence, and also for those who suffer from negative working conditions. These people hold confidential meetings with a neutral person who advises them and provides assistance. If needed, legal consultants can submit information to responsible officials or try to deal with them through mediation. Consultants are dealing with various forms of oppression, such as sexual harassment and violence, coercion and discrimination.

In 2001, the government of the Czech Republic also adopted a document on Government Priorities and Procedures for the Enforcement of the Equality for Men and Women. In 2002 and 2003, the Ministry of Defense issued other ordinances and instructions for the enhancement of equal opportunities for men and women in the armed forces of the Czech Republic. The policy has four goals:

1. Establishment of a legal framework for ensuring equal opportunities for men and women;
2. Raising awareness regarding relevant laws;
3. Creating guarantees for equal career opportunities for men and women;
4. Evaluation and monitoring of the implementation of equality principles among men and women.

Annual lectures are conducted for high-ranking officials on how to create equal opportunities for men and women.

Following intensive investigation into the degree of seriousness and nature of sexual harassment and violence against women in the military, some countries decided to implement special measures. For example, in Denmark, based on the findings of research conducted by psychologists of the Danish Defense Collegiums, the leadership of the Danish Defense Department developed and adopted numerous legal initiatives and laws for preventing sexual harassment and violence. A hotline was established and local legal consultation centers were formed. Today the legal consultant's role is widespread among the local population and representatives of society. Officials actively use this medium while dealing with conflicts. Furthermore, in 2006, the Danish Armed Forces introduced special regulations and laws which impose punishment for such actions. These initiatives and laws reduced the instances of sexual harassment and violence in the Danish Armed Forces.

International experience shows that women can be as successful as men while serving in law enforcement. Positive traits and characteristic of women should be utilized to contribute to the efficiency of military as well as police operations.

During the past two decades, women in many countries of the world succeeded in expanding their functions, and crushed the stereotype that police and military are only for men. Today, there is evidence of positive outcomes resulting from women's increased participation. This is confirmed by NATO Special Directive of 2 September 2009 regarding mainstreaming gender in NATO Management Structures in accordance with UN Security Council Resolution 1325, including in Protection During Armed Conflict. The directive underlines that women's advancement in the organization is NATO's priority as well as the fact that their approaches and experience are beneficial during the planning and implementation of NATO operations and protection of civilian women and girls during armed conflicts. The directive also states that it is necessary to include experienced and qualified gender advisers in the preparatory and planning stages of NATO operations. Furthermore, participants of such operations should be well aware of local cultural peculiarities and therefore should not impose their own cultural norms.⁵¹

⁵¹ Bi-sc DIRECTIVE 40-1. Integrating UNSCR 1325 and gender perspectives in the NATO command structure including measures for protection during armed conflict 2009. Ggv. 13

Recommendations

Notwithstanding some of the achievements mentioned in the previous chapters, analysis of documents, legislation and interviews reveal that there are no specific programs implemented for ensuring protection of women's interests and rights, or expansion of their roles in Georgia's security sector. Furthermore, until now, there are no bodies either in the state structures or outside, which would be able to contribute to the improvement of women's conditions in this respect. An additional problem is the fact that in state structures statistical data is not maintained adequately and problems are not studied in order to improve the situation. Even though there has been expressed interest by various ministries to cooperate with the Department of Statistics and to ensure creation of a unified and segregated data base, it is important to pursue and implement the goals in the closest future and make the outcome available to wider public for further analysis.

While taking into account all these issues, some of the recommendations might contain a wide spectrum. The main goal should be the increased representation of women in leadership posts and decision-making bodies of Georgia's security structures. Key recommendations are developed in order to create the basis for further steps:

- **Groups advocating for women's interests should be included in the advisory bodies of the security structures, including in the National Security Council**
- **Creation of women's associations and professional unions should be supported**

The two above-mentioned recommendations should be considered in a wider context, which means that the protection of women's interests should be ensured at all levels. For instance, women's advocacy groups should be given an opportunity to have representatives in security institutions. Their main function would be to solve the existing issues, as well as lobby for women's interests and integration of women's perspectives in the course of various reforms. In this sense, we consider that one of the acceptable institutions is the National Security Council of Georgia, which has a group of advisers. Advocating for women's interests in this group would be a good start to create and support similar groups in the other security sector agencies.

It is of utmost importance that the list of women's issues, their interests and perspectives comes from individuals employed in Georgia's security structures. Therefore, the recommendation of this paper is to support the creation of organizations within the institutions as well as outside – in the form of NGOs that will advocate for women's interests. If both recommendations were implemented, women's increased roles would significantly improve, which would automatically reveal existing problems and bring new possible schemes for reforms in this sphere.

- **State organizations should be requested to carry out full-fledged research with the participation of NGOs on the issues of women's rights in the security sector**

It is important that programs and approaches regarding women's issues are defined not only by NGOs but also by state institutions as well. In this regard, it is important that state institutions show their goodwill and express readiness to solve the problems identified. It is necessary to create a common database of information which will allow for tracking the dynamics of the developments. Hence, state institutions should carry out studies in the area of women's problems. This would be the first step in order to involve women's advocacy and also women employed in these institutions. Based on the findings, it would be desirable for

state institutions to state their position with regards to the problems identified, develop programs and recommendations for pursuing further reforms.

- **Prepare educational and training programs on women's role in the security sector**

For the integration of women in the security sector it is extremely important to strengthen education policy. Practical experience shows that educational and training programs should be attended not just by women employed in the security sector, but also by servicemen. In this case, a common view toward the issues will be formed and developed. In addition, it is necessary for women to be well informed about the opportunities, which are provided to them. In this context, creation of additional consultative committees that would provide various services for servicewomen (e.g. psychological, career development, leadership, etc.) is highly suggested.

- **Prepare legislative changes for ensuring protection of women's rights**

In the process of implementing the above-described recommendations, presumably there will be issues which would require legislative or other normative acts. Since the expressed political will is not sufficient without the support of stable legal guarantees, it is very important to adopt new laws. While changing legislation, the opinions of NGOs and international recommendations should be taken into consideration. This would increase the efficiency and trust among stakeholders.

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

Some Optimization Questions of the National Preventive Mechanism in the Republic of Kazakhstan

(Analysis of the Bill “On Insertion of Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning the Questions of Establishing the National Preventive Mechanism”)

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**The author wrote the original version of this paper in Russian;
in the case of any differences with the English translation,
please consider the Russian as the author's original.**

***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
and it does not necessarily reflect the views of the United Nations,
the United Nations Democracy Fund or its Advisory Board.***

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Abbreviations

CAT – Convention against Torture
CEC RK – Criminal Executive Code of the Republic of Kazakhstan
CC RK – Criminal Code of the Republic of Kazakhstan
CPC RK – Criminal Procedural Code of the Republic of Kazakhstan
MoI RK – Ministry of the Interior of the Republic of Kazakhstan
MoJ RK – Ministry of Justice of the Republic of Kazakhstan
NIHR – National Institute for Human Rights
NPM – National Preventive Mechanism
NGO – Non-Governmental Organization
OPCAT – Optional Protocol to the Convention against Torture
POC – Public Observer’s Commission
RLA – Regulatory legal acts
SIS – Section of Internal Safety

Summary

This document was drafted in order to improve the effectiveness of the bill *“On the Insertion of Amendments to certain Legislative Acts of the Republic of Kazakhstan Concerning the Questions of Establishing a National Preventive Mechanism Aimed at the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment”* (hereinafter the Bill “On NPM”) elaborated by the representatives of a working group with the objective to bring the bill as near as possible to the international rules and requirements of the Optional Protocol to the UN Convention against Torture.

Establishment of the National Preventive Mechanism (NPM) is an important step for the Republic of Kazakhstan that shows the country is moving toward a society that does not tolerate official torture. For just this reason the human rights activists focused their attention on how effective will be the NPM work. Kazakhstan has successively moved in the direction of developing the means for fighting against tortures and cruel treatment.⁵² It would be desirable to maintain such practice also in future.

Kazakh society needs a public body with representatives who can freely make monitoring visit to all facilities where people are detained. In order to comply with the basic principles stated in the Optional Protocol to the UN Convention against Torture, so the organization should meet the following criteria:

- Be financially and organizationally independent;
- Be in conformity with the Paris Principles;⁵³
- Be allowed to access documents related to detained people and to confer with such detainees;
- Have the right to establish contacts with the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment of the UN Committee against Torture.

⁵² See Annex No. 1.

⁵³ Principles for NIHR (National Institutes for Human Rights) adopted by the UN General Assembly Resolution 48/134 on 20 December 1993.

If the NPM does not include these functions, it will not be able to carry out fully its mission. Such a failure will not only negatively influence the process of fighting against tortures and cruel treatment, but it will also worsen the image of our state.

After reviewing the latest wording of the Bill “On the NPM,” the Public Monitoring Commission for the North-Kazakhstan Region, a group of analysts, submitted the following proposals for amending the Bill:

1. Extend the list of facilities falling under the jurisdiction of the Bill to all types of facilities where people are detained.
2. Consider the possibility of financing the regional subdivisions of the NPM in a way that differs from commissioning services within public social order.
3. Commission separately the procedure of the NPM establishment from the mechanism of interaction/subordination of its subdivisions among each other.
4. Include in a set of right for NPM representatives, the right to use multimedia equipment, to make unannounced (surprise) visits to detention areas, with the possibility to make visits on days off and holidays, as well as at any time outside working hours, including at night.
5. Incorporate into the Bill a specific legal status for NPM participants (POC and NGO) and for implementation of the monitoring procedure when applied by the NPM representatives with regard to facilities under inspection.
6. Transfer the subject-matter part dealing with the basic issues of NPM functions from the act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society” (hereafter only the “Act on Detention Facilities”) into the CEC RK.
7. Include in the Bill the possibility of NPM members’ access to any documentation concerning the numbers of clients, detention terms and questions related to application of special means (the latter relates to facilities of the Committee of the Criminal Executive System (CCES) and MoI RK).

The above-mentioned document has been drafted with the aim to insert the amendments into the Bill “On the NPM” while it is still possible, in accordance with the legislation of the Republic of Kazakhstan.

1. About torture problems in detention facilities of Kazakhstan

1.1. Ascertaining the existence of torture

The majority of complaints about torture are directed to regional public observer commission, which are currently the really operating public institutes for monitoring of penitentiary facilities. As law enforcement agencies virtually never follow up on such complaints, it is legitimate to question the current system of investigating torture reports.

In 2009, only one person was charged with committing torture,⁵⁴ as would follow from the CC RK, article 347-1. In the first 10 months of 2010, *four* persons were convicted on torture charges. In contrast, according to reports from Kazakhstani human rights organizations, altogether 263 appeals complaining against torture and cruel treatment has been recorded.

For all practical purposes, one may state that at the present time in Kazakhstan there is virtually no legitimate system for investigating and prosecuting cases of torture. Moreover, the existing regulatory laws do not guarantee the impartiality in conducting the examinations of complaints concerning tortures with respect to people kept in detention facilities.

In November 2008, the UN Committee against Torture stated that torture was common practice in Kazakhstan.⁵⁵ UN Special Rapporteur Manfred Novak said that the use of torture and cruel treatment goes beyond the scope of individual cases.

1.2. Why and where torture occurs

The practice and official statistics show that investigatory bodies and courts apply often the Article 308 of the CC RK (“Excess of Power or Empowerment of the Office”) with regards to punishment of persons guilty of committing torture

The main indicator of efficiency of the investigation activity remains as before “percentage of the crime detection” related to committed offences and not the protection of constitutional rights and personal interests.

Torture often occurs in boarding houses for the mentally ill people; children’s homes; army barracks, and other national facilities that restrict the liberties of their clients. Such facilities often do not give people housed in the facilities an opportunity to exercise all of their rights. In such facilities, victims do not report torture for a number of reasons:

- Victims – persons detained – may not report torture because they legitimately expect nothing will be done about the complaint. Management, they reason, is not interested with such “minor matters”. And the client of the facility may not simply know other means hoe to solve the situation.
- Other victims lack the physical and/or mental attributes needed to compose a complaint. Some of them do not have relatives who might notice the effects of torture on the victims and could report the crime on their behalf.

In the above-mentioned cases, it should be noted that the staffs at the facilities are not the only potential torturers. The fellow clients torture some victims, which is possible since the facility staff do not adequately oversee their clients.

⁵⁴ Analytical Overview of the Process of Fulfilling the RK National Plan by the National Authorities of the Republic of Kazakhstan in the Field of Human Rights for 2009 – 2012, and the formal information of the Committee for Legal Statistics and Special Records of the RK Office of the Prosecutor General

⁵⁵ UN Committee against Torture in the Opinion concerning the second regular report on observation of the Convention against Torture submitted by Kazakhstan, November 2008.

If we speak about the facilities of the Ministry of the Interior, several different reasons exist here for torture:

- It is no secret that confessions can be extracted under torture. Under current practice, the effectiveness of a law enforcement agency is measured by how many crimes it solves, which indirectly encourages the use of torture to help inflate statistics.
- Prison officials sometimes justify the use of torture and cruel treatment as a way to maintain discipline and order in prisons, while other convicted persons may be involved as offenders of the crime.
- Non-observance of Article 134 of the “Act on Detention Facilities” is a typical example. More specifically, there occurs the pernicious practice where in the protocol on detention is indicated time, which does not correspond to the real event time. Thus, the cases of torture often occur in between the time a person is physically detained and the time when the person has been officially detained. However, from the time of actual detention to the time shown in the protocol, the person has no legal status whatsoever. And just during this period of time the detained person is subjected to increased danger of violence. Such cases are possible because in the Article 7 of the CPK RK there is not a definition of the actual detention time.
- Keeping people in premises not intended for that purpose increases the chance a detainee will be tortured. These places include apartments unofficially rented for the purpose of interrogating suspects, ancillary premises of police stations, police vehicles, and so on. Such cases usually occur when the person is being held unofficially. Torture is sometimes used to force witnesses to testify.
- Because courts are usually willing to allow evidence obtained under torture to be used in proceedings, it encourages the practice.
- Unfortunately, pernicious practice existed often in the cases, when torture actions were committed during investigation led by a section of internal safety (SIS) of the facility against employees who complained officially against such treatment. This self-serving system meant that complaints are typically dismissed as invalid, as investigators protect their colleagues.

This practice, it should be noted, is being addressed by the insertion of an amendment to the Article 192 of the CPC RK which defines the jurisdiction, according to which preliminary investigation of criminal cases provided for by Article 141-1 (tortures) of the CC RK is carried out by those bodies of internal policy or financial police that have brought up an action against the person that is not an employee of this body”.⁵⁶ This is a positive step.

1.3 Political significance

Existence of a strong “Act on NPM” is not only important from the point of view of effective fight against torture, but it will help to improve Kazakhstan’s international image. On the other side, absence of a serious mechanism as an instrument for torture prevention will enable to implement political attacks and speculations

⁵⁶ According to the documents of “Analytical overview of the process of fulfilling the RK National plan by the national authorities of the Republic of Kazakhstan in the field of human rights for 2009 – 2012.”

from different parties using the existence of torture even when Kazakhstan ratified the Optional Protocol to the Convention against Torture, and, consequently, should acknowledge all duties imposed by this Protocol.

Stakeholders on this issue include:

- The local human-rights community;
- National institutes related directly to the subject matter of the bill being under consideration – representatives of administrative machinery of the RK Human Rights Commissioner, the RK Office of the Prosecutor General and interested line ministries: M. of Justice, M. of the Interior, M. of Finance and others;
- International human-rights organizations.

As indicated above, Kazakhstan officially opposes torture (Annex 1). Several substantial steps have been taken in this respect, the most important of which was drafting the Bill “On NPM”. According to OPCAT terms, this mechanism has to be established in Kazakhstan not later than in 2011.

In 2010 a working group for drafting the Bill “On NPM” was established. The group included representatives of the government and international human-rights organizations. Several versions of the Bill have been proposed and further elaborated. In March 2012, when at the OPCAT deadline arrived, its final version was finished, and it was planned to submit it to the Parliament.

The Bill was presented in several versions during its drafting and it was subjected to modifications depending on recommendations from various parties. Nevertheless, the working group was not able to reach a final consensus. Representatives of the human rights community disagreed initially with some proposals from the Ministry of Justice. Nevertheless, human rights activists decided to take active part in the working group in order to exploit fully these means in preparation of the Bill and use the possibility to insert their recommendations into it.

In March 2012 the final version of the Bill was released, which possibly will be submitted in this form to the Parliament. Kazakhstan human rights activists are obliged to use just now all legal instruments and means that may influence the completion of this Bill.

2. Assessment of the effectiveness of the Bill

2.1 An overview of basic aspects of the Bill

The working group for drafting the Bill “On the NPM” established by the Ministry of Justice in 2010 has produced the draft, the latest revision of which has appeared in March 2012. Members of the working group were not able to reach the consensus not only with respect to the contents but also to the form of the drafted law. Representatives of the human rights community insisted on creating a special law, however they did not achieve their objective – the Bill was approved in the form of amendments to a series of legislative

acts⁵⁷ under the title "Act of the Republic of Kazakhstan "On Insertion of Amendments to certain Legislative Acts of the Republic of Kazakhstan concerning the Questions of Establishing the National Preventive Mechanism aimed at Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment", referred here to as the Bill "On NPM". The only proposal that has been incorporated was the model of the National Preventive Mechanism called "Ombudsman Plus".

The following aspects are present in the Bill as regards activity of the NPM:

- In order to prevent torture and other cruel, inhuman or degrading treatment and punishment in correctional facilities and investigatory solitary confinement cells the NPM is being implemented according to the Act "On Detention Facilities" (see Article 19-1 of the RK CEC).
- Participants of the National Preventive Mechanism shall be the Human Rights Commissioner, public observer's commissions and public associations.
- Financing of the regular visits of special facilities ensuring temporary separation from the society is provided from the Republic's budget (see Article 15-1 of the RK Act "On Detention Facilities").

The rights of representatives of the National Preventive Mechanism are provided as follows in the Bill:

- 1) Access to information on number of detained persons in specified detention facilities⁵⁸ and on number of such facilities.
- 2) Access to any information related to the treatment of detained persons as well as terms of their detention.
- 3) Access to any detention facility.
- 4) The right to speak privately with detained persons or persons that may submit the appropriate information according to the NPM opinion; in case of a need to allow service of an interpreter.
- 5) The right to choose which detained persons and facilities to visit.
- 6) To be in contact with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment of the UN Committee against Torture.
- 7) To receive for inspection all appeals and complaints filed by detained persons, as well as requests for improvement of detention conditions, provision of medical services, organization of work, leisure and learning.
- 8) To interact with other participants of the NPM by exchanging information mentioned above.

We should like to focus attention on the aspect that, according to the Bill "On the NPM", the following special detention facilities are falling within the jurisdiction of the Bill:

⁵⁷ Criminal Executive Code; Criminal Procedural Code; Code on Administrative Infractions; Acts of the Republic of Kazakhstan "On Compulsory Treatment of Sick People suffering of Alcoholism, Drug Addiction and Glue Sniffing", "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society", "On Prevention of Infringement of the Law among Juveniles and Prevention of the Children's Neglect and Homelessness", "On Judicial Authorities".

⁵⁸ Meant are all facilities ensuring temporary separation of detained persons from the society

- Ministry of Interior (solitary confinement cells of temporary detention, detainee's reception and distribution centers, and all other special reception centers);
- Committee of the Criminal Executive System of the Ministry of Interior – CCES Mol (settlements, investigatory solitary confinement cells (ISCC));
- A part of facilities of the Ministry of Health (in which sick people, and those suffering by alcoholism, drug addiction and glue sniffing are compulsory treated);
- A part of facilities of the Ministry of Education (special educational organizations, educational organizations with special detention regime).

2.2 Assessment of the effectiveness of the Bill and its implementation

The bill can be improved. The following are the most important recommendations.

1. *Scope of facilities under the control of the NPM*

The National Preventive Mechanism defined in the Bill does not involve all detention facilities mentioned in OPCAT. These include:

- Most children's homes;
- Facilities for disabled and elderly people;
- Psychiatric organizations;
- Detention facilities overseen by the Executive Branch of the Government;
- Places of detention in custody of the National Safety Committee;
- Places of detention in custody of the Ministry of Defense.

Tragically, such facilities are the places where torture is most likely to occur, but effective instrument for fighting against it is not available.

In "Guiding Principles related to the National Preventive Mechanisms⁵⁹" it is stated (Chapter II "Basic questions concerning the NPM functioning", Section A "For states", par. 24): "The state shall permit the NPM to visit all detention facilities ..., as it is stated in par. 4 and 29 of the Optional Protocol. For these purposes national jurisdiction applies to all places of detention in custody, over which it exercises the effective control".

Moreover, according to OPCAT's Subcommittee on the Prevention of Torture Prevention is supposed to be allowed to visit the same facilities as the NPM. It is provided for in Article 11 (a) of the OPCAT: "The Subcommittee on Prevention: a) Visits the places indicated in Article 4..." Therefore, experience of visits acquired by the Subcommittee on Prevention shall be used as an example for the NPM. The following is

⁵⁹ Subcommittee on Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment. The twelfth session, Geneva, 15 – 19 November 2010, SAT/or/12/5.

stated in the "Fifth annual Report of Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment:⁶⁰ "... In 2011, the Subcommittee has tried to extend its activity related to unconventional places of detention in custody including immigrations centers and centers of medical rehabilitation" (par. 49).

2. Mechanism of financing the NPM

As regards the financing mechanism of that part of the NPM, which consists of NGOs, the regulations of the Ministry of Justice envisage that financing of NGOs may cause their financial and also functional independency. First, the criteria for selecting the most acceptable NGO as given in the regulation are very faint (minimization of the proposed cost of activities related to NPM is essential). Thus, any unsuitable NGO may be eliminated. Even when the regulation is being implemented, many outstanding works and problems may be found causing refusal of the proposed services in the future. And one more serious aspect: The NGOs as a rule do change their roles as regards provision of social services. Consequently, by such a financing system the NPM representatives from NGOs will consider their participation on NPM work only temporary, taking into account that if any of the government representatives will not like their impartiality – in this case the Ministry of Justice – they will not be invited to work for the NPM in the next period. Ministry of Justice also has the authority to choose which NGOs will work on the issue and can dismiss them at will.

At a roundtable held in Astana in October 2010, Manfred Novak, the United Nations Special Rapporteur, said the financial provisions of the NPM were unacceptable.

Nothing is said in the bill about financing the Public Observer Commissions (POC); it is only said that "Financing of regular visits ... is carried out from the Republic's budget." The lack about what will be financed raises many questions. Does the phrase mean that it will be a case by case financing, or several visits will be financed? Or will the financing mechanism be developed separately through the administration of the Commissionaire for Human Rights. In any case, by absence of mechanism regulated in advance and specific amount of financing the basic question is raised: Will the NPM participants, except for Ombudsman, be able to receive the funds for their work on permanent basis? If unambiguously positive answer may not be given to this question, the mechanism being newly established may in no case guarantee independent monitoring.

3. Lack of the procedural description for establishment of the NPM and for the interaction mechanism of its subdivisions among each other

The procedure of the NPM, its structure, and the mechanism of its structural and territorial subdivisions' interactions with each other are not spelled out in the Bill. The principle of NPM members' interaction among each other is incomprehensible: The institute of the Commissioner for Human Rights, public observer's commissions and NGO work on the basis of a commissioned public order. Question is, whether there should be certain dependency/subordination among all the above-mentioned institutes or each of them should exist and work on its own?

⁶⁰ The Committee against Torture. The forty eighth session 7 May – 1 June 2012. Item 5 of the preliminary agenda "Organisational and other questions", SAT/s/48/3.

It is stated in the “Guidance Principles related to the National Preventive Mechanisms⁶¹” that “The term of office of the NPM member/members shall be provided for in a special law” (Chapter I, “Basic Principles”, par. 9); this is in support of more detailed regulation of the NPM work mechanism, which in practice is fully missing in the existing Bill.

4. Absence of the right to make unannounced visits to detention facilities

Surprise visits are the most important instrument for the detection and prevention of torture. Absence of right to make such visits substantially limits the chances of NPM to detect the commitments of torture. Essentially, unannounced visits as a part of monitoring enable to assess objectively the facility – various deficiencies, which may induce torture application, and against which the fight should be focused. According to the worldwide experience, the possibility of a sudden visit stimulates the particular policy inside the facility to request from each member of its staff to prevent torture and cruel treatment in the section under his/her control.

5. Visits outside normal working hours

This item is a logical extension of the previous one. Experience shows that most torture takes place outside normal working hours. It is not important whether such cases result from illegal actions of a staff member or from interrelations among clients of facilities. The off-work time or night is the time of increased risk of torture appearance. Monitoring exercised during these periods of time would enable the NPM members to see the most hidden details. The monitoring system will be genuinely impartial only if it enables a comprehensive approach. Essentially, the visits outside working hours will allow the NPM representatives to assess from all points of view the situation connected with tortures and cruel treatment in the detention facilities.

The current version of the bill does not allow NPM visits outside normal working hours, at night, or on holidays.

6. Lack of right to use multimedia equipment

Utilization of such instruments has been required during several personal meetings with clients of detention facilities. Only through such devices the physical injury of a client may be recorded, his/her complaints heard and notes of them taken. In addition, the above-mentioned instruments will help to restore justice in case of groundless complaints. Only through video- and photo- technique it will be possible to outline the true picture of events. Just, in order to restore justice, both facilities’ administrators and representatives of human rights organizations, participants of the National Preventive Mechanism should be interested in application of such technique.

7. No clear definition exists of which detention facilities the NPM personnel may visit

In subparagraph 3, paragraph 1, Article 15-2, which is to be inserted into the Act “On Detention Facilities” there is to the NPM members given the right to visit the facilities falling under jurisdiction of the Bill “On the NPM”: “*Visiting any special facilities ensuring temporary separation from the society*”. The principle

⁶¹ The Subcommittee for Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment or Punishment. The twelfth session. Geneva, 15 – 19 November 2010, CAT/op/12/5.

of territorial competence is not applied; consequently the law includes all facilities situated on the RK territory. To avoid different interpretation of this law the situation needs to be clarified through adding the wording “*on the whole RK territory*”. Since representatives of POCs face in their experience the situation where, due to lack of clear regulation of the territorial principle for visiting facilities, they were allowed at the beginning to visit facilities situated in other regions, but after some time they were denied the access.

8. Non-compliance with international rules

The NPM needs to comply with the Paris Principles, as it is directly provided for in Article 18/4, OPCAT. Unfortunately, at the present time, it does not. For example, the Bill mentions financing of NGOs participating in the NPM within the framework of social services regulations. This reflects the lack of continuous financial support, which contradicts the provision provided by in the Paris Principles as concerns National Human Rights Protection Institutes.

9. Requiring inspectors to abide by other laws regulating detention

This paragraph enables the representatives of interested parties (inspecting institutes) to interpret different rights and obligations of the NPM representatives in a bias way. The POC representatives are currently subjected to similar violation. Upon the request (of the facilities administration), it is very easy to show out any human right defending institute not possessing independent legal status just by referring to the departmental instructions.

For example, consider this case. Upon the request of POC of the North Kazakhstan Region (NKR) to explain on what grounds their representatives are not allowed to some facilities, the following answer was received on August 9th, 2011, from the NKR Regional Office of the Prosecutor General: “*On April 4th, May 20th, July 5th and 11th of this year, the secret and searching measures were taken in the facility ES-164/3. In this connection, in order to avoid barriers in implementing such measures, the possibility to visit the facility at other time was suggested...*” It is explained there, why it was refused to the POC representatives to meet the convicted person from whom the complaint for tortures was filed: “*... Meeting the persons escorted in transit is forbidden by paragraph 153 of Regulations on Investigatory Solitary Confinement Cells...*” In the latter case the monitoring visit of the POC person is being interpreted as a meeting, which sounds at least ridiculous from the Regional Office of the Prosecutor.

Unfortunately resorting to such methods may occur quite often. Only comprehensive definition of the NPM representatives’ status and legal rules will contribute to avoiding such breaches.

10. Move the parts concerning the NPM from the CEC RK into the Act “On Detention Facilities”

All articles in the Bill regulating the activity of the National Preventive Mechanism should be transferred from the CEC RK into the above-mentioned law.

In addition, Articles 19-1 and 19-2 of the CEC RK have regulated the public observer’s commissions’ actions. In the CEC RK was left only the modified Article 19-1 which says: “*For prevention of torture and other cruel, inhuman or degrading treatment and punishment in correctional facilities and investigatory solitary confinement cells the National Preventive Mechanism is being implemented according to the Act of*

the Republic of Kazakhstan "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society".

Such a transfer considerably decreases the importance of bringing up any aspects related to the NPM.

In addition, the Articles 19-1 and 19-2 of the CEC RK have regulated the actions of POCs. In case of proposed amendments to the CEC, all information concerning the POC activity will escape and the POCs will be able at the best to carry out their activity according to amendments being inserted into the Act "On Detention Facilities" within the NPM. However POCs have been established for more extensive activity (enlightenment, consultations etc.) than simply to the work within NPM. It means that amendments proposed in the Bill substantially reduce the scope of the POC powers.

Through this reform the POCs in practice lose their powers to work in penitentiary facilities and the whole system of public control of prisons ceases to exist. Presence of rules in the Act "On Detention Facilities" (Articles 50 and 51) related to the POC activity doesn't solve the problem because the subject of regulation of concerned act and CEC is different.

11. Impossibility of the NPM members' access to any documentation concerning the numbers of clients, detention terms, and questions related to application of special means (the latter one relates to the CCES and Mol RK facilities)

The possibility to receive any information concerning the number and detention terms of the facility clients is stipulated in the Bill; however, it is not provided for in what manner (subparagraphs 1 and 2, paragraph 1, Article 15-2, proposed for insertion into the RK Act "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society"). In a free interpretation such wording may be constructed sufficiently arbitrarily. Therefore, it doesn't guarantee the possibility to receive such information from documents of the facility. Moreover, access to documents overlaps with internal departmental instructions that the NPM participants are obliged to comply with according to the paragraph 1 of Article 15-6 being proposed in the Bill: "Participants of the National Preventive Mechanism are obliged when exercising their powers to observe regulatory and legal acts regulating the issues of activity in special facilities ensuring temporary separation from the society..."

12. Procedure of anchoring the rules on National Preventive Mechanism

The bill has selected the model of anchoring the references in several RLA and regulation of all rules on the NPM in the Act "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society".

Such methodology aroused substantial criticism of the working group members in connection with several circumstances: thus, attempt to include the rules on the NPM in the concerned Bill leads to considerable contradictions, limited understanding of the NPM mandate and due to its complexity it will impede the effective fulfillment of the NPM functions as follows:

1. The subject of regulation of the Act "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society" **is limited exclusively to special facilities.** The Act preamble states: "Current Act provides for the legal bases for activity of special facilities ensuring temporary separation from the society according to the legislation, as well as sets up rights and duties of persons detained in them." In conformity with the Article 2 of the Act "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary

Separation from the Society” the term “special facilities” means solely the investigatory solitary confinement cell, solitary confinement cell of temporary detention, reception center, distribution center, and special reception center. The Bill includes into the Act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society” the rule on NPM, which, as envisaged, will be effective not only in special facilities. Consequently the situation is created where the Act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society” regulates the rights of convicted persons, rights of sick people suffering of alcoholism, drug addiction and glue sniffing and rights of persons under legal age.

2. **All provisions concerning the rights of the NPM participants contain references to “special facilities”**, which legally deprives the NPM members of the possibility to exercise their rights in other facilities. For example, the Article 5 of the Bill, according to which “the NPM participants have the following rights: Receive any information on number of persons detained in special facilities ensuring their temporary separation from the society”. It is obvious that all other facilities, to which the NPM has to extend its activity, such as correctional facilities, as well as facilities for treatment of sick people suffering of alcoholism, drug addiction and glue sniffing, are not covered by it. And this is valid for all other provisions on the NPM activity: Everywhere the special facilities are referenced
3. Mechanism of reference rules will lead to the result that the **heads of facilities themselves will not allow the NPM members to enter into facilities**, because the mechanism of references is very complex and does not fit the logic of Kazakhstan legislation, even if powers of the NPM members are duly specified in the Bill. Thus, the head of a detention camp admitting the NPM members to come on the camp territory has, in conformity with the Bill, to follow the reference rule in CEC, and, thereafter, the rules of the Act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society”; however, it will not be the case as the head of facility has not to be guided by the rules of the Act, laying down the legal bases of activity of special facilities that ensure temporary separation from the society under legal terms. According to Article 1 of the CEC the criminal executive legislation of the Republic of Kazakhstan consists of the CEC itself and other Acts of the Republic of Kazakhstan, as well as of regulatory legal acts providing for the procedure and terms of discharging and serving one’s term in prison and other criminal impact on convicted persons. The Act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society” doesn’t specify the procedure of serving the term of imprisonment. Consequently, following the logic of the Act “On Regulatory Legal Acts”, according to which the rules of the Code take precedence over the rules of any Act, the head of the facility may lawfully refuse the access to the NPM members.

3. Recommendations

3.1 Proposed modifications and amendments to the Bill

We propose to insert the following amendments into the Bill "On the NPM":

1. Retain the Article 19-2 from the Criminal Code of the RK, since this is just the one that gives the POCs the space for work
2. Add the following facilities to the list of identified in the Bill as places where people may be considered detained:
 - Children's homes of various types;
 - Facilities for disabled and elderly people;
 - Psychiatric organizations;
 - Places of detention run by the Executive Branch of the Government;
 - Places of detention in custody of the National Safety Committee;
 - Places of detention in custody of the Ministry of Defense.
3. Finance NPM activities using the same reimbursement system used by the country's lawyers.
This mechanism will help reduce costs, because the amount of money needed to conduct an investigation can be calculated in advance, depending on the following values:
 - Distance from the regional center;
 - Number of clients in the facility;
 - Frequency of visits to facilities.

All the above values may be standardized for entire territory of the RK.

In favor of the proposal in question the following is stated in the "Guidance Principles related to the National Preventive Mechanisms"⁶² (Chapter I, "Basic Principles", par. 12): "The NPM shall enjoy full financial and functional independence while fulfilling its functions in accordance with the Optional Protocol."

This is the only existing possibility how to avoid dependency on the state, so far. However, in case of the choice of this financing mechanism the question is raised: "On whom the NPM financing is focused?" After all in conformity with the bill the special financing is envisaged only for NGOs working within the NPM activity – participating in monitoring of facilities. Such change of the financing mechanism is still another argument in favor of imposing the procedure of the NPM establishment and mechanism of interaction/subordination of its subdivisions among each other.

4. In a separate manner to prescribe the procedure of the NPM establishment and the mechanism of interaction/subordination of its subdivisions among each other:
 - Specify, as a minimum, the organization carrying out the NPM coordination activity;

⁶² Subcommittee for Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment. The twelfth session. Geneva, 15 – 19 November 2010, SAT/or/12/5.

- Determine the mechanism of vertical interaction among the territorial subdivisions;
- Define the status and pattern of interaction among the institute of the Human Right Commissioner, public observer's commissions and non-governmental organizations working on the bases of the commissioned public social order;
- Determine the procedure of the NPM establishment, frequency of its members' selection and time when its general assembly takes place.

It is stated in the "Guidance Principles related to National Preventive Mechanisms⁶³" that "The term of office of the NPM member/members shall be provided for in appropriate legislation" (Chapter I, "Basic Principles", par. 9); this also supports the introduction of a specific regulation of the NPM work mechanism, which is missing in current Bill.

5. Extend the rights of the NPM representatives by the following ones:

- Right to use multimedia equipment;
- Right to make unannounced visits;
- Right to make visits on holidays, as well as in any outside working hours, including night hours;
- Right of every participant to visit any facilities specified by the Bill

6. It is required to include in the Bill a special legal status for NPM participants with respect to the facilities being inspected by them.

In addition, the legal status is needed also for the monitoring procedure implemented by the NPM representatives. Otherwise there will be legal discrepancies between the internal instructions of inspected facilities and the rights of the NPM representatives, since the internal instructions may say nothing about the NPM representatives, as well as about monitoring visits made by representatives of the National Preventive Mechanism. Formal certificate confirming that the participant belongs to the NPM structure is required for acknowledgment of such a status. It would be logical if such document would be issued by the administration of the Commissioner, since the National Preventive Mechanism is being established according to the model Ombudsman plus POC.

7. It is necessary to transfer the subject-matter part where basic issues of the NPM functioning are considered from the Act "On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society" into the CEC RK.

Such transfer will considerably increase the importance of taking up any aspects related to the NPM activity. Deployment of information in the RK Criminal Executive Code would be of much greater importance which could ensure far better efficiency of the NPM work with respect to exercise of basic rights of its participants.

8. It is necessary to include into the Bill the possibility of the NPM members' access to any documentation concerning the numbers of clients, detention terms, and questions related to application of special means (the latter one relates to CCES and MOI RK).

In the section stipulating the NPM participants' rights (paragraph 1 of Article 15-2 proposed for insertion into the RK Act "On Procedure and Conditions for Detention of Persons in Special Facilities

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ensuring their Temporary Separation from the Society”) it will be better to replace the sentence on receiving the information in the following context:

- 1) Receive any information on number of persons detained in special facilities ensuring their temporary separation from the society, number of special facilities ensuring temporary separation from the society, as well as points of receiving any information on number of persons and their treatment, to indicate the possibility of access to any documentation concerning the number of persons and their treatment;
- 2) Become acquainted with any information related to the treatment of persons detained in special facilities ensuring their temporary separation from the society, as well as terms of their detention.

It would be optimal to include the introductory sentence for description of the same functions in the wording: “Ensure the access to any documents related to...”

The work of the NPM participants will be more independent on the facility staff members when receiving any permitted information. Moreover all data received from the documentary sources will be absolutely impartial. Independency, accuracy and impartiality are the main criteria, to which the NPM strives for increasing efficiency of its work.

9. It is necessary to transfer the referenced rules on the NPM functions into the Act “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society” and to include full information on the NPM in each RLA regulating the work of group of the facilities falling within the jurisdiction of the Bill “On the NPM”.

When drafting the rules of the NPM activity, the text shall not be mechanically copied, but in the wording related to the NPM activity should be taken into account the specificity of the facility types, because even the system of access to various types of facilities is different. Such differences may be observed also now, when the circle of the monitored facilities is maximally limited. It is ridiculous to visit the facilities for compulsory treatment of sick people suffering of alcoholism, drug addiction and glue sniffing and at the same time to follow the rules valid for visiting the special facilities.

3.2 The necessity to complete the current wording of the Bill

In the case when the National Preventive Mechanism will get legal bases for its making its work more effective, it will be in position to influence considerably the situation with torture accidents in detention facilities of Kazakhstan: it will increase the impartiality of investigation of criminal acts related to torture; number of the torture precedents will be reduced due to often made monitoring visits of public observers (NPM members) in the detention facilities.

Absence of most of the above-mentioned recommendations would result in nonconformity of the Bill in its current text with the basic international principles of the National Preventive Mechanism; apparently this will be noticed by international experts and treated as a policy characteristics not contributing to the good political image of Kazakhstan.

But the main thing is that any – even the least – departure from these recommendations will reduce the efficiency of the NPM work. And the more the drafted Bill will not be compatible, the less effective it will be. As a result, it may turn out that it will be accepted only in order to comply formally with duties assumed by

Kazakhstan by ratifying the OPCAT. However, most important is the fact that the country will miss to achieve the basic objective pursued already in the course of 20 years – the torture eradication.

Sources

- Overview of the process of the RK National Plan fulfillment in the area of human rights for 2009–2012 by the Republic of Kazakhstan Authorities, Research Centre of the Law Policy, Almaty
- Project of The Act of the Republic of Kazakhstan “On Insertion of Amendments to certain Legislative Acts of the Republic of Kazakhstan concerning the Questions of Establishing the National Preventive Mechanism aimed at Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment” (the version as of March 2012)
- Analytical document “Existing mechanisms of monitoring the confinement facilities in Kazakhstan and their conformity with the OPCAT rules”, Research Centre of the Law Policy, June 2009, Almaty
- Summary document “Inventory of places of detention in custody in the Republic of Kazakhstan within the Optional Protocol to the Convention against Torture”, Research Centre of the Law Policy, June 2009, Almaty
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment;
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment;
- Decree of the President of the Republic of Kazakhstan No. 947 “On establishment of function of the Human Rights Commissioner” (September 2002);
- The Decree of the Government of the Republic of Kazakhstan No. 924 of 16 September 2005 „On approval of the education rules of the regional (cities of the republic’s importance, the capital city) public observer’s commissions”.

Appendices

Appendix 1

Measures taken by Kazakhstan concerning the fight against torture

- ***Ratification of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) in August 1998***

Kazakhstan, having ratified the concerned document, recognizes the CAT's definition of torture. In addition, ratification requires the signatories to take effective measures to prevent torture prevention⁶⁴, to punish torturers⁶⁵, provide anti-torture education for detention workers⁶⁶, and make regular reports to the UN Committee against Torture.

According to Article 2 of the Convention, "Each Contracting Party takes effective legislative, administrative, judicial and other measures to prevent acts of torture on its territory".

In accordance with Article 19 of the Convention "Contracting Parties submit to the Committee through the United Nations Secretary-General the reports on measures taken by them for fulfillment of their obligations in conformity with current Convention, namely within one year after its entry into force for appropriate Contracting Party. Contracting Parties submit further once in four years additional reports on any new measures taken and also other reports that may be required by the Committee".

Article 20 of the CAT provides for the possibility to conduct investigations of the torture on the territory of the Contracting Parties with the participation of a UN Committee representative (with consent of the Contracting Party).

- ***Insertion of Article 347-1 "Torture" in the Criminal Code of the Republic of Kazakhstan in December 2002***

This Article include a legal definition of torture provides for term of imprisonment up to 10 years for those found guilty of committing torture. Human-rights activists have criticized the definition because the wording contained in the national legislation does not comply fully with international definitions of torture.

Mild punishments meted out to those found guilty of committing torture has come under criticism from human-rights activists. In addition, those who passively participate in torture by issuing instructions to commit torture or who ignore acts of torture committed under their watch were not mentioned in the Article.

Each Contracting Party takes effective legislation, administrative, judicial and other measures for prevention of the torture acts on any territory falling within its jurisdiction (par. 1 of Article 1 CAT).

Each Contracting Party ensures consideration of all torture acts according to its criminal law. The same relates to attempt to expose to torture and to actions of any person representing the complicity or participation in a torture (par. 1 of Article 4).

Each Contracting Party ensures that learning materials and information concerning prohibition of tortures should be fully included in the training programs of the staff members of the law-enforcement bodies (par. 1 Article 10).

- **Approval in 2011 of the Act of the Republic of Kazakhstan “On Insertion of Amendments to Certain RK Legislation Acts Related to Questions of Further Humanization of Criminal Law and Increasing the Guaranties of the Rule of Law in the Criminal Trial”,** in conformity with which the Article 347-1 (Tortures) was deleted and instead of it the Article 141-1 (Tortures) was inserted in CC RK.

It means that the Article “Torture” was transferred from the Section “Crimes against justice and procedure of the punishment execution” into the Section “Crime against constitutional and other human and civil rights”. This amendment was of great importance as it brought the definition of torture closer to international standards. Moreover, passive participant in the torture were mentioned: **“... or due to incitement or tacit assent of other person or with their knowledge”**, which has extended the circle of possible participants in such an offence.

- **Insertion in Article 116 of the Criminal Procedural Code of the Republic of Kazakhstan of the provision in 2002, according to which evidence obtained under torture application are declared invalid**
- **Transfer of penitentiary facilities and investigatory solitary confinement cells from the branch of the RK Ministry of the Interior to the branch of the RK Ministry of Justice**
- **Approval of the Decree of the Republic of Kazakhstan President No. 947 “On establishment of the Human Rights Commissioner” in September 2002**

This Decree envisaged the establishment of the Human Rights Commissioner (Ombudsman) as the national independent institute for human rights. In addition, the establishment of National Center for Human Rights by the Ombudsman, which is a national institution, is mentioned in the Decree. Activity of the Center is regulated by a provision approved in the Decree of the President of the Republic of Kazakhstan No. 992 of 10 December 2002. Activity of the Ombudsman and Center is aimed at the fight against possible human rights breaches. The Ombudsman is provided with powers to make unexpected visits to many facilities, to have access to documents of such facilities, and to carry out monitoring and hold individual discussions with clients of facilities. The office of the Human Rights Commissioner is funded from the state budget of Kazakhstan.

The Commissioner complements by his/her activity the existing national means of the human and civil rights and liberty protection. The **Commissioner’s** activity doesn’t involve any limitations of competency of other national authorities implementing the human rights protection according to the Constitution and laws of the Republic of Kazakhstan.

“Establishment of both the Human Rights Commissioner and the institute supporting him/her i.e. National Centre depends on decrees of the Executive Branch of the Government, which may give rise to serious concerns related to independence of such authorities. Venetian Commission of the European Council pointed out to necessity of “anchoring” the Ombudsman institute in the Kazakhstan Constitution. The recommendation was given that the Constitution text needs not obligatory comprise detailed

provisions concerning the Ombudsman institute, and that is is sufficient to provide the organization with constitutional status. Besides, it was recommended to specify further at length the details concerning functioning of the institute in other laws of the country in the form of a regulatory act approved by the Kazakhstan legislative body.”⁶⁷

- ***Establishment and legislative approval of public observer’s commissions (POC) for monitoring the penitentiary facilities on the basis of legislative amendments of 29 December 2004 in the Criminal Executive Code of the Republic of Kazakhstan***

Details of establishment and functioning of commissions were approved in the Decree of the Republic of Kazakhstan Government No. 924 of 16 September 2005. These commissions may consist of non-governmental organizations and independent experts. They are provided with the following powers by visiting the penitentiary facilities:

- 1) In composition of at least two POC members to make unimpeded visit of correctional facilities and investigatory solitary confinement cells on the basis of procedure provided for by the authorized body of the criminal executive system;
- 2) Hold discussions with convicted persons with their consent as well as receive appeals and complaints related to breach of their rights and legal interests;
- 3) Appeal to the administration of correctional facility and investigatory solitary confinement cell and (or) authorities of the Office of the Prosecutor for petitions related to securing the rights and legal interests of persons detained in corrective facilities and investigatory solitary confinement cells.

Financing of the POC work and participation of the NGO experts and representatives in it is not envisaged.

- ***Insertion of amendments in the RK Constitution in 2007 laying down the procedure of judicial prosecution of arrest***

- ***Ratification of Articles 21 and 22 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) in February 2008***

These articles will allow the citizens – victims of tortures on the Kazakhstan territory – to file with the UN Committee against Tortures the complaints against persons guilty of it. In case of acknowledgment of the torture cases, the Committee shall approve the recommendations aimed at restoration of rights. Recommendations of the Committee are not compulsory; however failure to follow them may have negative impact on the state image.

⁶⁷ Quotation from the LPRC analytical document “Existing mechanisms of monitoring the confinement facilities in Kazakhstan and their conformity with the OPCAT rules”.

- ***Ratification of Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT) in October 2008***

It is the following logical step after ratification of CAT and its Articles 21 and 22. Just here in the Optional Protocol the idea of the torture eradication and prevention was further developed. This document has in mind the establishment of the National Preventive Mechanism (Article 3): "Each Contracting Party shall establish, appoint and support one or several bodies on the national level for making visits in order to prevent tortures and other cruel, inhuman or degrading treatment and punishment (hereinafter the "National Preventive Mechanisms")". This document mainly specifies the rights, duties and terms of the NPM establishment. In addition the OPCAT stipulates also the possibility of a monitoring visit of the state by representatives of the UN Subcommittee for the Torture Prevention. According to the Protocol requirements, the state shall establish the NPM at its own place within one year after its ratification. However, the possibility to extend this term for 3 years is provided for.

After ratification of the Optional Protocol the working group was established in Kazakhstan for elaboration of the Act on National Preventive Mechanism, in which representatives of national structures and NGO were included. Several bill versions have been proposed and drafted. And now, when in conformity with the OPCAT time schedule we have come close nearer to the moment of approval of the Act on National Preventive Mechanism, its final version was ultimately drafted.

- ***Establishment of a working group by the RK Human Right Commissioner in 2008 with participation of the Kazakhstan public human rights organizations and representatives of all law enforcement departments for consideration of cases when tortures and other cruel, inhuman or degrading treatment and punishment were applied. Representatives of all law enforcement bodies and representatives of civil society are included in its composition***
- ***Approval of the regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 7 "On Application of the Rules of Criminal and Procedural Legislation Related to the Questions of Observance of the Personal Liberty and Inviolability of the Human Dignity, Counteractions against Tortures, Violence and other Cruel or Degrading Treatment and Punishment"***

One of the main objectives of this Resolution was the observance of rules resulting from the UN Convention against Torture.

This resolution points out to the necessity not to resort to replacement of this offence by other milder act in misuse of official powers: "... tortures shall be differentiated from other actions connected with misuse of authority or official powers, responsibility for which is provided for in Article 308 of CC. In conformity with the provision provided for by the Section 3, Article 12, of CC on Competition of General and Special Rules the actions linked with causing physical and psychological suffering to the victim are qualified according to the special rule – Article 347-1 of CC if they were committed by an

official for achieving the objectives stated in this Article. At the same time an additional qualification of actions according to Article 308 of CC is not required”.

- **Approval by the Order of the Office of the Prosecutor General of the “Instruction on examination of statements of tortures and other unlawful methods connected with cruel treatment of persons involved in the criminal proceedings and detained in special-purpose facilities and their prevention”**
- **Signature in 2010 of compatible Order of the Ministry of Justice, Ministry of Health, Ministry of the Interior and National Safety Committee “On ensuring the obligatory participation of specialists in the field of medical jurisprudence in performance of medical examination of presence of physical injuries with persons detained in the solitary confinement cell of temporary detention, investigatory solitary confinement cell and facilities of the criminal executive system”**
- **Approval in 2010 of the compatible Order of the RK Ministry of Justice, RK Office of Prosecutor General, RK National Safety Committee, RK Agency for fighting against economic and corruption crime “On interaction of law enforcement bodies and subjects of civil society by conducting the examination of complaints for tortures and other unlawful methods of conducting the inquiry and investigation as well as criminal prosecution according to available facts”**
- **For the sake of impartiality it is necessary to note that transfer of penitentiary facilities and investigatory solitary confinement cells from the Department of the RK Ministry of Justice to the Department of the RK Ministry of the Interior according to the Decree of the RK President No 129 of 26 July 2011 has appeared to be the step contradictory enough, which in the first place didn’t correspond with plans specified in the Concept of the national legal policy for 2010–2020**

In addition, in conformity with experience of the penitentiary facilities’ administration of other developed states the administration of closed facilities has not to be obligatory governed by the police functions. To optimize the mechanism of fighting against tortures, prepare the convicted persons for their release, extent their perspectives in the field of rehabilitation and socialization the shift to more open manner of these facilities, contacts with public, learning of new specializations and the job security for convicted persons is required. Just such development trend will enable to improve the overall situation in facilities of the criminal executive system.

Appendix 2

ACT OF THE REPUBLIC OF KAZAKHSTAN On Insertion of Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning the Questions of Establishing the National Preventive Mechanism Aimed at Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment

Article 1. Insert amendments in the following legal acts of the Republic of Kazakhstan:

1. In the **Criminal Procedural Code** of the Republic of Kazakhstan of 13 December 1997 (as published and amended by later laws [*full list removed by the editor*] until 16 January 2012):

In Article 82:

In the second section add the subparagraph 5-1) in the following wording:

"5-1) Participants of the National Preventive Mechanism – with respect to persons and circumstances being known for them from discussions with persons by visiting the correctional facilities and investigatory solitary confinement cell, special facilities ensuring temporary separation from the society, educational organizations with special regime of detention, facilities providing compulsory treatment of sick people suffering by alcoholism, drug addiction and glue sniffing except for cases representing the threat for national safety."

2. In the **Criminal Executive Code** of the Republic of Kazakhstan of 13 December 1997 ((as published and amended by later laws [*full list removed by the editor*] until 16 February 2012):

1) Specify the Article 19-1 in the following wording:

"Article 19-1. National Preventive Mechanism

"For prevention of tortures and other cruel, inhuman or degrading treatment and punishment in correctional facilities and investigatory solitary confinement cells the National Preventive Mechanism is being implemented according to the Act of the Republic of Kazakhstan "On procedure and terms of the persons' detention in special facilities ensuring their temporary separation from the society";

2) Delete the Article 19-2;

3) Specify the paragraph 4 of Article 21 in the following wording:

"4. Production of films, photos and video recording with respect to convicted persons, their interviewing including utilization of means of the audio- and video technique is performed with consent of persons detained in correctional facilities and investigatory solitary confinement cells."

3. In the Code of the Republic of Kazakhstan **on Administrative Infringements** of the law of 30 January 2001 ((as published and amended by later laws [*full list removed by the editor*] until 17 February 2012.):

1) Add the Article 388-1 in the following wording:

"Article 388-1. Hindering the participants of the National Preventive Mechanism in exercise their powers.

1. Hindering the participants of the National Preventive Mechanism in exercise their powers by physical and official persons who expressed their refusal to provide information on number of persons detained in facilities and organizations, which they have right to visit, information on treatment of persons kept in correctional facilities as well as refusal to hold discussion with persons detained in such

facilities and organizations expressed by their representatives and other persons who may provide the participants of the National Preventive Mechanism with information – entails imposing a fine in amount of five monthly calculation indicators for physical persons and seven monthly calculation indicators for officials.

2. Actions envisaged by the first section of current Article committed repeatedly in the course of the year after imposition of administrative penalty entail imposing a fine in amount of ten monthly calculation indicators for physical persons and fifteen monthly calculation indicators for officials.”
[Renumbering provisions removed by the editor]

4. Add the Article 10-1 in the Act of the Republic of Kazakhstan of 7 April 1995 **“On Compulsory Treatment of Sick People Suffering by Alcoholism, Drug Addiction and Glue Sniffing”** (as published and amended by later laws [full list removed by the editor]) In the following wording:

“Article 10-1. National Preventive Mechanism

For prevention of tortures and other cruel, inhuman or degrading treatment and punishment in facilities, in which compulsory treatment of sick people suffering by alcoholism, drug addiction and glue sniffing is provided, the National Preventive Mechanism is being implemented according to the Act of the Republic of Kazakhstan “On procedure and terms of the persons’ detention in special facilities ensuring their temporary separation from the society”.

5. In the Act of the Republic of Kazakhstan of 30 March 1999 **“On Procedure and Conditions of the Detention of Persons in Special Facilities Ensuring their Temporary Separation from the Society”** ((as published and amended by later laws [full list removed by the editor] until 14 February 2012), add the Articles 15-1, 15-2, 15-3, 15-4, 15-5, 15-6, 15-7 and 15-8 in the following wording:

“Article 15-1. National Preventive Mechanism

1. For prevention of tortures and other cruel, inhuman or degrading treatment and punishment the system of regular visits by the National Preventive Mechanisms participants of special facilities ensuring temporary separation from the society is established.

Participant of the National Preventive Mechanism shall be the Commissionaire for Human Rights, members of public observer’s commissions, members of public associations entered into the contract for implementation of the national social order for ensuring the activity of the National Preventive Mechanism.

2. Financing the regular visits of special facilities ensuring temporary separation from the society shall be provided from the republic’s budget in accordance with procedure established by the Government of the Republic of Kazakhstan.

3. The following shall be submitted by Participants of the National Preventive Mechanism to authorized bodies of the criminal executive system in the area of public health, education, interior affairs, the Public Prosecutors Office authorities as well as administration of special facilities ensuring the temporary separation from the society:

1) Recommendations to improve treatment of persons detained in special facilities ensuring the temporary separation from the society and terms of their detention as well as prevention of tortures and other cruel, inhuman or degrading treatment and punishment;

2) Proposals to improve the legislation of the Republic of Kazakhstan.

4. Visits of special facilities ensuring temporary separation from the society by public observer’s commissions and public associations shall be made at least twice per year in composition of minimum four people.

Article 15-2. Rights of participants of the National Preventive Mechanism

1. Participants of the National Preventive Mechanism shall have the following rights:

- 1) Receive any information on number of persons detained in special facilities ensuring their temporary separation from the society and number of special facilities ensuring their temporary separation from the society;
 - 2) Access to any information related to treatment of persons detained in special facilities ensuring their temporary separation from the society as well as terms of their detention;
 - 3) Visit any special facilities ensuring temporary separation from the society;
 - 4) Carry out the private discussions with persons detained in special facilities ensuring their temporary separation from the society without witnesses, personally or in case of need through an interpreter and also with other person who according to the National Preventive Mechanism participant's opinion may submit appropriate information;
 - 5) Unimpeded choice of locations that they wish to visit and persons with whom they wish to hold a discussion;
 - 6) Establish contacts with the Subcommittee for Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment of the United Nations Committee against Torture, send information to it and meet with its members;
 - 7) Receive the appeals and complaints concerning the questions of application of tortures and other cruel, inhuman or degrading treatment and punishment to persons detained in special facilities ensuring their temporary separation from the society as well as improvement of the detention terms, providing the medical service, work organization, leisure and learning;
 - 8) Interact with other participants of the National Preventive Mechanism, exchange the information, consider the questions related to the application of tortures and other cruel, inhuman or degrading treatment and punishment to persons detained in special facilities ensuring their temporary separation from the society as well as improvement of the detention terms, providing the medical service, work organization, leisure and learning;
2. Visiting the special facilities ensuring the temporary separation from the society may be refused in case of natural disasters, introduction of the state of emergency, extraordinary situation or belligerency in the region where concerned special facilities are situated as well as by mass riots in special facilities in question.
3. No one authority or official may impose, apply, allow or admit any sanction or restriction of rights, liberty and legal interests with respect to any person detained in special facilities ensuring temporary separation from the society for communication of any information to participants of the National Preventive Mechanism except for cases representing the threat for the national safety.

Article 15-3. Annual reports of participants of the National Preventive Mechanism.

Participants of the National Preventive Mechanism shall submit to the Commissionaire for Human Rights in the Kazakhstan Republic the annual reports of the regular visits results, recommendations and proposals to be taken into account in his/her annual reports concerning his/her activity results and publications in the mass media at the expense of funds provided for performance of his/her activity as well as for placing on his/her official website.

Article 15-4. Requirements for participants of the National Preventive Mechanism.

1. Participants of the National Preventive Mechanism shall be adult citizens of the Republic of Kazakhstan.
2. Participants of the National Preventive Mechanism shall not be:
 - 1) Persons not having expunged sentence or deleted conviction from their criminal records;
 - 2) Persons suspected or accused of committing crimes;
 - 3) Persons recognized by the court to be deprived of legal capacity or having limited capacity;
 - 4) Employees of law enforcement bodies and civil servants.

Article 15-5. Revocation of powers of the National Preventive Mechanism participants

1. Powers of the National Preventive Mechanism participant shall be revoked in case of:
 - 1) Occurrence of circumstances provided for in paragraph 2 of Article 15-4 of current Act;
 - 2) Written statement of a member of the public observer's commission or public association concerning revocation of his/her powers;
 - 3) Death of a member of the public observer's commission or public association or in case that judicial decision on declaration of his/her death becomes effective;
 - 4) Adoption of related decision of at least two thirds of members of the public observer's commission or public association legalized by the protocol of such commission or association;
 - 5) Repeated violation by participant of the National Preventive Mechanism of procedure and term of visiting the persons detained in custody resulting in breach of the of law and order, group obedience of persons detained in custody, mass riots in special facilities ensuring temporary separation from the society including those having entailed the death or other injury of employees or persons detained in such special facilities;
 - 6) Breach of requirements of this Act;
 - 7) Occurrence of other cases provided for by law of the Republic of Kazakhstan.
2. Revocation of powers and replacement of a participant of the National Preventive Mechanism and public association shall be carried out according to the legislation concerning the national social order as well.

Article 15-6. Obligations of participants of the National Preventive Mechanism.

1. Participants of the National Preventive Mechanism shall be obliged by exercise of their powers to comply with regulatory legal acts regulating the questions of activity of special facilities ensuring temporary separation from the society as well as rights and duties of persons detained in special facilities ensuring their temporary separation from the society.
2. Participants of the National Preventive Mechanism shall not be allowed to interfere with the activity of special facilities ensuring temporary separation from the society as well as with operative investigational, criminal procedural activity and proceedings concerning the administrative infraction and with the public prosecutor's activity.

Article 15-7. Confidentiality of information.

Information not related to the questions of prevention of tortures and other cruel, inhuman or degrading treatment and punishment shall not be subject of disclosure.

Data collected by participants of the National Preventive Mechanism having personal character shall be published only with written consent of the person detained in special facilities ensuring his/her temporary separation from the society or with written consent of his/her statutory representative in case of person recognized to be deprived of legal capacity.

Article 15-8. Interaction with national authorities.

National authorized bodies shall consider recommendations and proposals of participants of the National Preventive Mechanism concerning improvement of the Republic of Kazakhstan legislation.

National authorized bodies shall be obliged to inform the participants of the National Preventive Mechanism on measures taken with respect to results of consideration.

6. In the act of the Republic of Kazakhstan of 9 July 2004 **"On Prevention of Infringement of the Law among Juveniles and Prevention of the Children's Neglect and Homelessness"** (as published and amended by later laws [full list removed by the editor] until 8 February 2012:

Add the Article 18-1 in the following wording:

"Article 18-1. National Preventive Mechanism.

“For prevention of tortures and other cruel, inhuman or degrading treatment and punishment in educational organizations with special regime of detention the National Preventive Mechanism shall be implemented according to the Act of the Republic of Kazakhstan “On procedure and terms of the persons’ detention in special facilities ensuring their temporary separation from the society”.

7. In the Act of the Republic of Kazakhstan of 18 March 2002 “**On Judicial Authorities**” ((as published and amended by later laws [*full list removed by the editor*] until 8 February 2012:

Add in paragraph 1 of Article 23 the subparagraph 9-1) in the following wording:

“9-1) Implementation of social projects by territorial (regional, towns of republic’s importance and the capital) judicial authorities within the National Preventive Mechanism;”

Article 2. This Act becomes effective from 1 January 2013.

President of the Republic of Kazakhstan signature

Appendix 3

Chamber of Deputies (“Majilis”) of the Parliament of the Republic of Kazakhstan

Explanatory Note to the Bill of the Republic of Kazakhstan “On Insertion of Amendments to certain Legislative Acts of the Republic of Kazakhstan concerning the Question of Establishing the National Preventive Mechanism aimed at Prevention of Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment ”

The Bill is drafted in order to implement the obligations assumed by the Republic of Kazakhstan through ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment of 25 September 2007 (hereinafter the “Optional Protocol”).

The Optional Protocol aims at establishing the system of regular visits by international independent international and national authorities of places where persons confined into prison are detained, in order to prevent tortures and other cruel, inhuman or degrading treatment and punishment (Article 1).

According to Article 4 of the Optional Protocol the places above shall be considered to be any places falling under jurisdiction and control where persons deprived of liberty are detained on the basis of the national authority’s order or instruction or with its knowledge or tacit assent (places of detention in custody). Deprivation of liberty means any form of detention in custody or confinement in prison or putting a person in national or private place where he/she is detained in custody by order of any judicial, administrative or other authority and has not right to leave it at his/her own will.

In this connection the Contracting Parties of the Optional Protocol shall be obliged to maintain, appoint or establish one or several National Preventive Mechanisms.

The objective of this Bill is anchoring in capacity of the National Preventive Mechanism the system of regular visits by the Commissionaire for Human Rights, public observer’s commissions and public associations of correctional facilities and investigatory solitary confinement cells, facilities, in which compulsory treatment of sick people suffering by alcoholism, drug addiction and glue sniffing is provided, special facilities ensuring temporary separation from the society, adaptation centers for juveniles, special educational organizations and educational organizations with special regime of detention.

Currently the criminal executive code and the Act of the Republic of Kazakhstan “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring their Temporary Separation from the Society ” provides for the public control of correctional facilities, investigatory solitary confinement cell and special facilities ensuring temporary separation from the society through establishment and activity of public observer’s commission. Moreover the Commissioner for Human Rights has right to visit such facilities within his/her competency.

At the same time the Optional Protocol aims at creation of system of the regular visits through establishment of National Preventive Mechanisms founded by decentralized bodies. In doing so the states shall be obliged to guarantee their functional independency as well as independency of their staff members and provide necessary funds for their functioning (Articles 17 and 18).

In this connection the definition of the National Preventive Mechanism and terms of its activity are provided for in the bill. In particular the amendments are foreseen envisaging the requirements for participants of the National Preventive Mechanism, their rights and powers, principles of activity, guarantees of confidentiality by exercise of their powers, provisions on interaction of participants of the National Preventive Mechanism with national authorities, annual publication of reports of participants of the National Preventive Mechanism with assistance of the Commissioner for Human Rights.

The amendments shall be introduced by the bill in the Criminal Executive and Criminal Procedural Codes of the Republic of Kazakhstan, Code of the Republic of Kazakhstan on administrative infraction, Act of the Republic of Kazakhstan “On Procedure and Conditions for Detention of Persons in Special Facilities ensuring

their Temporary Separation from the Society”, “On Compulsory Treatment of Sick People suffering of Alcoholism, Drug Addiction and Glue Sniffing”, “On Judicial Authorities”, “On Prevention of Infringement of the Law among Juveniles and Prevention of the Children’s Neglect and Homelessness”.

Implementation of the Act will require additional costs in amount of Tenge 200m per year. The Republic’s budgetary commission approves appropriate sum.

The objective of current Act shall be the conscientious fulfillment of duties assumed by the Republic of Kazakhstan within the framework of the Optional Protocol concerning the establishment of the National Preventive Mechanism.

The Prime Minister of the Republic of Kazakhstan signature

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

Approaches to Development of Migration Policy in Central Asia and Europe

(Comparative analysis on the examples of the Kyrgyz Republic and Poland)

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**The author wrote the original version of this paper in Russian;
in the case of any differences with the English translation,
please consider the Russian as the author's original.**

***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
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the United Nations Democracy Fund or its Advisory Board.***

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Glossary of Terms

Migration – A spatial activity (movement) of the individual, designed to acquire new territories and resources associated with the relocation.

International migration (foreign, interstate migration) – Relocation of population across international borders.

International labor migration – Interstate movement of labor force with change of permanent residence.

Emigration – Departure of country population abroad.

Immigration – Entry of other countries' population onto the territory of such country.

Inter-regional and internal migration – Movement of people from one region to another country with the purpose or intention of finding a new place of residence.

Seasonal migration – Migration associated with short-term (within one year) entry to work in those sectors of the economy, which are seasonal in nature (agriculture, fishing, service sectors).

Shuttle migration (cross-border) – A daily, less frequently weekly movement from one country to another and back again. Migrants who cross a border to work in a neighboring country in this way are also called "frontal workers".

Illegal immigrants – Individuals who enter other countries illegally to find work as well as those individuals crossing the border on a legal basis (by private invitation, as tourists, etc.) followed by illegal employment.

Forced migration – Migration primarily caused by political and environmental factors. It is primarily expressed in the movement of refugees.

Refugees — Persons leaving their country of residence due to extraordinary circumstances.

Social integration — (lat. redintegratio- means restoration; lat. integer – entire, unbroken,...) – Adoption of an individual by team members. The process of establishing optimal relationships between relatively independent connected social objects (individuals, groups, social classes, states) and their subsequent transformation into a single integral system with coordinated and interdependent parts based on common goals and interests.

Summary

1. This analysis offers considered approaches to the development of the Migration Policy in the Kyrgyz Republic and Poland. Poland's experience in dealing with migration processes and their manifestations may serve as an example of how are presented activities of non-governmental organizations, what are the analytical frameworks on which the priorities of state policy are based, what issues were overlooked in Migration Policy consideration and how this may affect the situation in general. From the analysis of the migration situation, despite the different prerequisites, the conditions and extent of the migration processes, the nature of socio-economic impacts occur within the same model. However, the most important issues for the Kyrgyz Republic are: changes in the demographic structure, socio-cultural factor, and the differentiation in regional development. This defines the approach and priorities for the review and analysis of issues in Migration Policy countries. The aim of this work is to substantiate the necessity of developing the Migration Policy in the Kyrgyz Republic by providing coherent arguments for the state approach in the management of migration flows.
2. The migration mobility of the population has become a defense mechanism in adaptation of the population in response to the new stage of socio-economic transformation. Migration processes in Kyrgyzstan are an important prerequisite for keeping the country from the crisis development in social and economic spheres. However, the massive migration outflow leads to the following challenges:
 - Deficit of skilled professionals, especially in remote regions. On the one hand, the educational system fails to provide the necessary personnel for the functional operation of the economy, on the other hand, low salary levels accompanied by the rising cost of living encourages looking for better conditions which may secure an acceptable life level.
 - Mass migration flows are limited to two directions, and any change in economic conditions and migration policies in destination countries will cause a change of the situation in Kyrgyzstan.
 - The development of the country's social and economic situation becomes dependent on the development of labor migration and money transfers from migrants.
3. The economic development of regions determines the differentiation of internal flow processes. A consequence of the internal mobility of the population were the processes of depopulation in remote regions and border areas (areas of outgoing of internal migrants), the increase in the number of depressed territories, unauthorized seizure of lands and buildings on the outskirts of large cities, leading to increased social tension in urban areas.
4. Poland has created a multifaceted trajectory of mobility. Poles have a mental fixation to the enduring tradition of **emigration**. Political changes in 1989 led to profound social and economic changes. Formats of migration flows are characterized by seasonal migration and activation of "shuttle" business. Counting the recent history and peak outflow of the population both began in 2004 after Poland joined the European Union (EU). Migration motivations are primarily the result of the EU's open borders, then secondly, the difference in wages between Eastern and Western Europe, and thirdly, the rapid deterioration of the labor market. Since 2004 there has been **intensification of the inflow of migrants** from cross-border territories. This trend has been influenced by Poland's accession to the EU. However, in comparison with other EU countries, Poland has the lowest number of immigrants – immigrants make up approximately 0.08% of the total population.

Internal migration mobility is characterized by the established trend of the outflow of population from “east to west” – from less developed *voivodstvo* (Unit if Poland administrative division smaller than a region) bordering with the former Soviet countries to more developed central and western *voivodstvos*. The main factor forcing people to leave the native territories is the significant difference in the standard of living and quality of life among the regions.

5. Purpose of the Migration Policy is to regulate migration flows in a way ensuring protection of interests of the person, territory and state. Considering demographic trends in the mid- and long term perspective, migration processes will play a pivotal role in development of demographic situation in Poland. Being aware of the forthcoming challenges, the Migration Policy proceeds from the necessity to:
 1. Elaborate mechanisms of return back to Home state.
 2. Elaborate clear conditions of the Immigration Policy, caused primarily by economic factors, in the context of labor market requirements and the necessity to maintain a stable social security system.

Issues of internal migration of population from country regions were not reflected in the Migration Policy. At the same time, an internal outflow creates social problems, which may be not evident currently, but will pose real risks in the long-term, such as load on central cities and the necessity to expand them, uncontrolled population flows through the country territory, depopulation of remote regions and problems with the adaptation of internal migrants on new territories.

6. Responsibility for the implementation of the Migration Policy in Poland is shared between different bodies, with the Ministry of Internal Affairs as a key one in decision-making. Such complicated administration system leads to insufficient coordination of actions by the competent authorities involved in the management of migration flows. The key problem is poor coordination and communication between bodies (and possibly – lack of it), which impedes an efficient and quick response to current challenges.

Lack of a single authority responsible for the development of migration situation is an illustrative example of conditions in the Kyrgyz Republic. Considering relevance of issues within development of migration mobility of population, determinant influence of migration for development of economy of the country, specific for Kyrgyzstan lack of succession of previous decisions and *“formal governmental approach to coordination of activities in stabilization and regulation of migration processes”*, distribution of responsibility in management of migration processes between ministries, all that shows heedlessness of such decision. Issues of distribution of functions between ministries and designation of responsibility for creation of Policy in migration, its implementation, still remain open. Therefore we can expect a decrease in efficiency of the system of management of human migration in the long view.

7. Poland’s Migration Policy is built on an inflow of immigrants. First of all, it is attributable to understanding of the need in foreign labor force against a background of a significant outflow of Polish migrants to the Western Europe. Implementation of programs for integration of migrants causes numerous problems related to perception of migrants (refugees) in Polish society. At the same time, there are problems with conduct of those migrants who are not interested in integration processes. This category of migrants sees Poland as a transit territory.

In order to solve the above-mentioned problems a massive program of measures to build communications between the Poles and migrants has been initiated, creating the concept of immigrants’

role on the background of the mass outflow of labor force, as they make large contribution to filling the gaps in some sectors of the economy. As was noted before, Poland conducts a wide discussion about the question of necessity to expand integration programs to all categories of migrants, including labor migrants (illegal), which will ease stay of foreign citizens in Poland on the one hand, and will improve efficiency of economic return on the other hand.

Kyrgyzstan practically does not have a policy for the migration of population. Despite the year-to-year growth of the number of migrants, governmental approach to foreign citizen (illegal economic migrants) is limited by control and registration of immigrants within an allowance for the labor force established by the Kyrgyz Government. Thus we can state that governmental approach to immigrant is condensed on only one purpose. Existence and implementation of integration programs, especially in border regions, would solve some problems in coexistence of different communities.

It is evident, that each country shall independently determine its capacities for integration programs and the number of foreign citizen whom it may accept in the context of control of migration flows. At the same time matters of integration of foreigners determine the “maturity” of a country, capability of the society and state to transform.

For a summary of recommendations, see **3. Recommendations for the development and regulation of Migration Policy in the Kyrgyz Republic.**

Introduction

One of the unique phenomena of human nature is its spatial mobility as the search for new opportunities and resource development. Migration mobility determines the system of social phenomena, creating conditions for the transformation of society. Under such conditions at the country level it is necessary to develop mechanisms to regulate migration processes in order to reduce the risk of development on one hand, and multiply the effect on the other. The state’s desire to influence the management of migration processes⁶⁸ defines the policy. The Migration Policy reflects the position of the state in respect of the territorial population movements through the regulatory system and measures to coordinate the formation of migratory processes.

A part of this analysis offers considered approaches to the development of the Migration Policy in the Kyrgyz Republic and Poland. Poland’s experience in dealing with migration processes and their manifestations may serve as an example of how are presented activities of non-governmental organizations, what are the analytical frameworks on which the priorities of state policy are based, what issues were overlooked in Migration Policy consideration and how this may affect the situation in general. The analysis of the migration situation should be that, despite the different prerequisites, the conditions and extent of migration processes, the nature of socio-economic impact is manifested in a single model. However the most important issues for the Kyrgyz Republic are: changes in the demographic structure, socio-cultural factor, and

⁶⁸ Regional migration policy in 2000(s): contents, instruments, contexts K.V. Grigorichev

the differentiation in regional development. These factors determine the approaches and priorities for the review and analysis of issues in the migration policies of countries in the present work.

The current migration situation in Kyrgyzstan is characterized by the deterioration of the demographic situation in the country due to outflow of young and middle-aged people, which is the basis for the operation of social systems. These processes lead to the depopulation of remote regions of the country and uneven distribution of spontaneous population of the territory, an increase in the number of depressed territories. Within the framework of migration issues a special significance is the socio-cultural factor, which does not directly affect the development of the state, but transforms the system of social relations in society.

Obviously, the internal problems as a consequence of migration processes overlap the problems of immigrants in the country. In this respect Poland's experience in implementing integration programs for immigrants can serve as a vivid example for creation of a Kyrgyz Migration Policy.

Thus, in order to regulate migration processes it requires a state policy that takes the peculiarities of regions, evolving demographics, and correlated prospective goals into account for the purposes of socio-economic development. It should be laid down in mechanisms for working with all actors involved in the process of migration.

This work is based on a comparison of policy approaches in the field of migration. Full analysis and understanding of migration development processes required evaluation of the migration situation in the Kyrgyz Republic and in Poland, which are presented in the first chapter. Based on the analysis, we may identify common trends typical of these countries:

- Within the total mass outflow rate is the main working-age population. The period of economic transformation in the early 90s showed insufficient demand for highly qualified professionals in domestic markets. The current outflow of the economically active working population and youth leads to artificial "ageing" population.
- Both Poland and Kyrgyzstan are characterized by regional preferences of migrants by country of destination.
- The uneven economic development of the regions determines the mood of the migration. There is a migration from the peripheral regions in the economically developed centers.
- The number of women in the emigration process exceeds the total number of men. Economic uncertainty in their country of residence forces them to be more socially active.

Analysis of the situation has allowed understanding the approaches to Migration Policy in Poland, as reflected in the second chapter of the analysis. For example, the Policy defines measures to regulate immigration, which emanate from the need to enhance the quality requirements of the labor force. The influx of migrants creates serious challenges to social and cultural plans. Problems of integration of immigrants into Polish society become urgent. The analysis of the positions of experts shows that the responsibilities of regulation of migration processes between governmental agencies do not ensure high quality management control. Development of policy documents for the country goes beyond the expert potential and representatives of the science community alone. Broad participation of civil society, in particular those of non-governmental organizations that work directly on the emerging issues, is needed.

The second chapter also assesses the possibility of applying Polish experience in the Kyrgyz Republic. The final part of this work presents recommendations for the development and regulation of the Migration Policy of the Kyrgyz Republic. The suggestions are systemized into the following key areas:

- Organization of migration flow management
- Labor market regulation
- Development of regions
- Development of social and cultural environments.

The purpose of this study is to substantiate the need for the development of the Migration Policy of the Kyrgyz Republic by providing coherent arguments to the state approach in the management of migration flows.

This research document is intended for representatives of state authorities, local authorities, and representatives of public organizations. This document allows to determine the problem for members of governing bodies in the field of migration and to perform practical activities in the field of migration processes management.

Research Methodology

This work utilizes the following methods as research methodology: desk studies, expert interviews, and comparative analysis.

- The desk study is based on statistical data analysis from the National Statistic Committee of the Kyrgyz Republic, the Central Statistical Office of Poland and the National Bank of Poland. We studied the analysis of experts on the subject and the following policy documents: The Concept of State Population and Migration Policy of the Kyrgyz Republic, "The Polish Migration Policy: the Current Status and further Actions, 2011".
- The study conducted 13 interviews with experts from the leading analytical structures of Poland, representatives of state institutions and civil society working in the field of providing support to migrants.
- The comparative analysis is built on comparison of policy approaches to migration flow management.

Acknowledgements

The author of the study would like to express her profound gratitude to the experts and management of the Instytut Spraw Publicznych (Institute of Public Affairs) for their support in conducting research and organization of meetings with experts. Special thanks also go out to the Project Coordinator for the Migration and Development Policy Program, Karolina Grot, and the Manager of the Migration and Development Policy Program, Justyna Frelak.

Further gratitude is bestowed on all experts associated with the informative meetings: Kinga Wysienska, Zuzanna Brunarska, Maryla Koss, Ola (Aleksandra) Chrzanowska, Krzysztof Lewandowski, Paulina Babis,

Agnieszka Łada, Jacek Kucharczyk, Mikołaj Pawlak, Mirosław Bieniecki, Mirosława Keryk, Izabela Przybysz.

The author would also like to express gratitude to the Project Mentors Piotr Kazmierkiewicz and Linda Austere for their assistance and preparation of this work.

1. Characteristics of migration mobility on the population

This section presents an analysis of migration processes in Kyrgyzstan and Poland in terms of key aspects of the nature of migration and population mobility. The task of this section is to show that despite the different prerequisites, the conditions and extent of migration processes manifest themselves in the general trends of population migration. As stated above, the logic of this document is based on the consideration of three primary factors, the priority for the Kyrgyz Republic: changing demographics, changing socio-cultural factors, the differentiation of regional development.

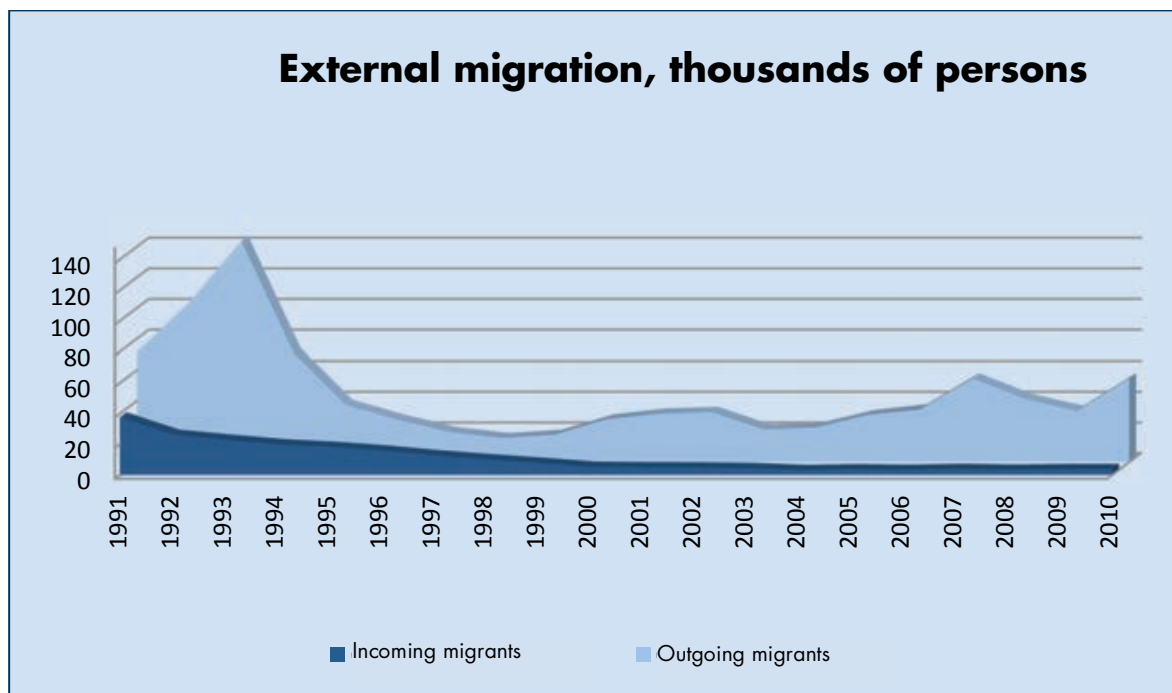
1.1. Current development of migration trends in the Kyrgyz Republic

Socio-economic, political, and civilizational changes in former Soviet countries have had a significant influence on the development of the economic system, the structure of the labor market, and standard of living of the population of the region. This process led to an increase in the gaps in economic development between countries. Consequently, one of the characteristic peculiarities of the period was intensification of migration processes. The migration mobility of the population response was a defense mechanism adapting the population to a new stage of socio-economic transformation. Migration processes in Kyrgyzstan are an important prerequisite for keeping the country from crisis development in the social and economic spheres. The key factor in determining the significance of migration flows is the continuing tendency of the mass exodus out of Kyrgyzstan.

The main reasons for migration can be classified into several groups:

- Economic
 - Higher level of salary in the country of migration
 - Low standard of living in Kyrgyzstan
 - Socio-economic instability
- Political
 - Socio-political instability (events on March 24, 2005 and April 7, 2010.)
 - "Playing" language cards on the domestic political scene, periodically emerging discussion about the status of the Russian language
- Security
 - Growth of nationalist sentiments (events in Osh in 1990 and 2010)
 - Feeling of frustration and insecurity, fear for their future and that of their children.

Figure 1. External migration – Kyrgyz Republic 1991-2010: thousands of incoming (dark blue) and outgoing migrants (light blue)



Source: National Statistics Committee of the Kyrgyz Republic

It is necessary to emphasize that the current low standard of living and socio-economic instability are decisive and determine the migratory mood of the population. However, it is necessary to bear in mind that the presence of a strong Kyrgyz diaspora in Russia may, in the long term, cause a permanent exodus from the country. This issue should be studied independently with an evaluation of the potential risks for the Kyrgyz Republic.

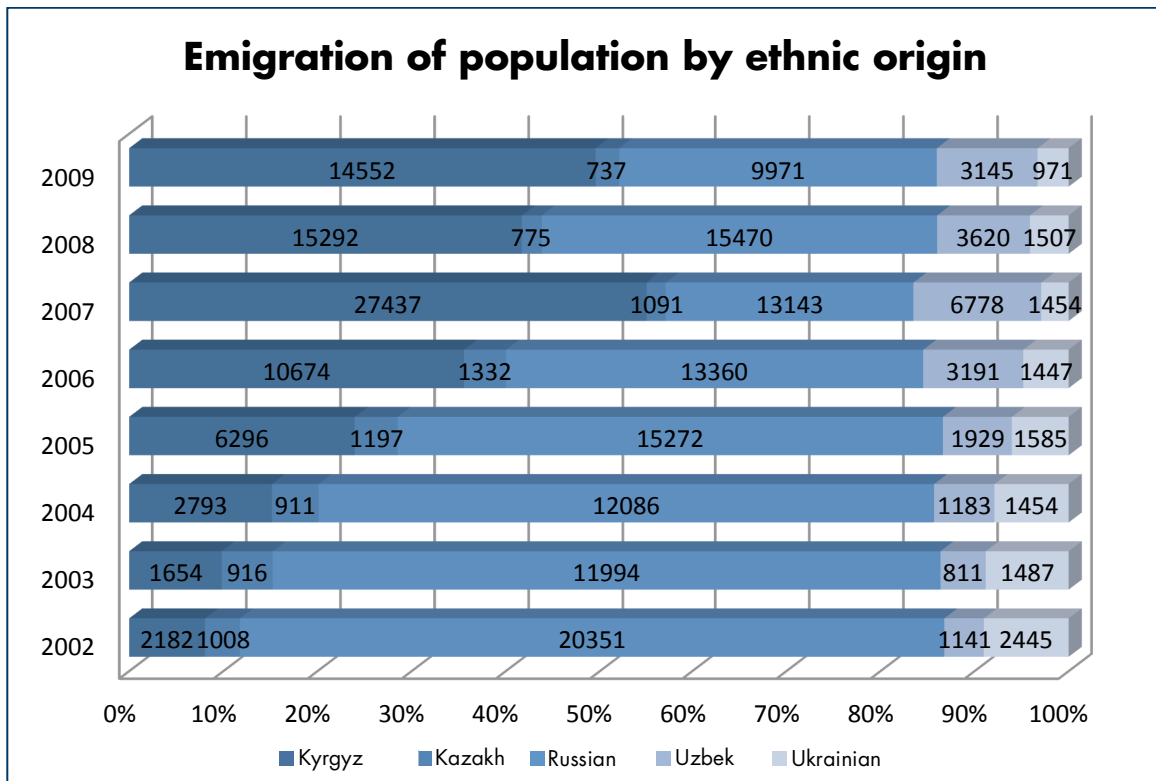
Analyzing the migration processes in Kyrgyzstan should involve consideration of several factors that determine the migration situation:

- Kyrgyzstan is a multiethnic country, a feature of the analysis of mobility due to the migration of ethnic representation of migrants in different periods of development of the state. The late 80s and early 90s geopolitical processes in the world (reunification of Germany and collapse of the Soviet Union) caused a massive outflow of population, which has decided to return to their historic homeland. During the period from 1989 to 1991, 214,900 people migrated from Kyrgyzstan. In 1992, 103,000 people moved away from Kyrgyzstan, and the migration peaked in 1993 when the outflow amounted to 143,600 people. The National composition of migrants was as follows: 122,016 Russians, 25,426 Germans and 15,918 Ukrainians. This period may be described as ethnic migration.

The process of migration witnessed in the mid-90s, due to the economic troubles in Kyrgyzstan, saw the natural process of growing export of labor among the indigenous population. About 200,000 Kyrgyz moved

looking for work from 1994-1997. The period from 2002-2006 saw the share of Kyrgyz leaving the country total 16.7% of all departures (see Appendix No. 1).

Figure 2.



Source: National Statistics Committee of the Kyrgyz Republic

Thus, the migration mobility as part of the demographic situation development shows a significant impact on the changing ethnic composition of Kyrgyzstan.

- The scale of the economy of the country does not create a sufficient number of jobs and does not provide an adequate level of remuneration corresponding to the growing needs of the population.

With the development of the economies of receiving countries of migrant workers, foreign labor migration has become a stable and long-term determinant of the economic and social levels of households. According to various experts, the current labor migration in Kyrgyzstan reached 500-700,000 people (one fifth of the working population⁶⁹). The largest labor market for migrant workers from Kyrgyzstan became the Russian Federation (see Figure 3). Thus, according to official⁷⁰ data from the Federal Migration Service of Russia for 2010 and 2011, 75,501 Kyrgyz received job permits, 44,235 persons received patents for work (special permission for foreigners to stay in Russian Federation and work there for up to 90 working days), and the number of migrants who passed official registration is 340,974 persons⁷¹ in Russia. The second largest as regards the number of migrants from Kyrgyzstan is the labor market of Kazakhstan. According to

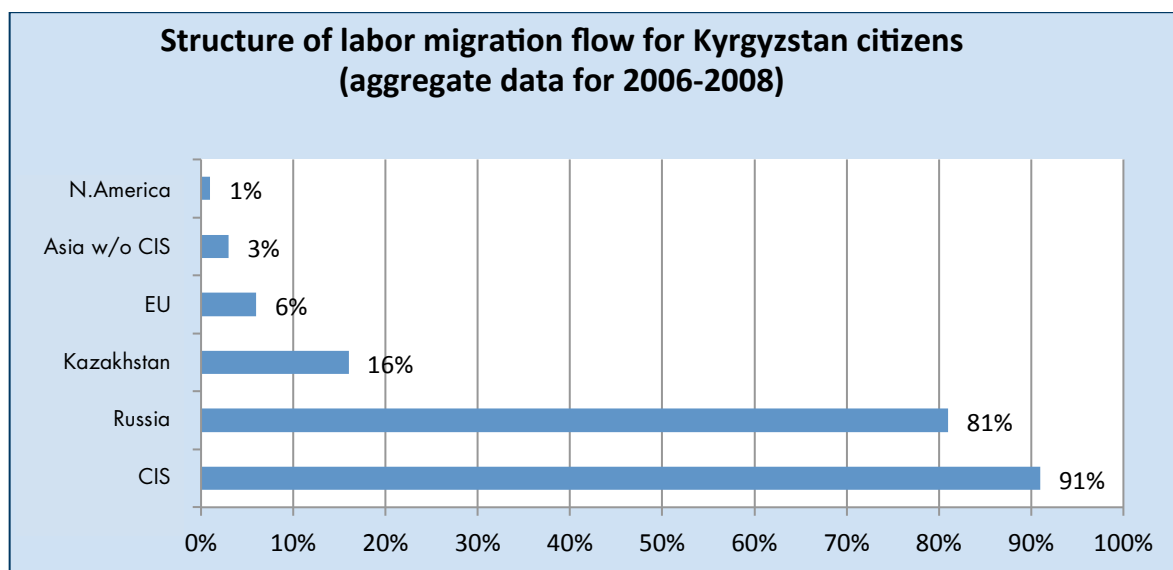
⁶⁹ Working population in 2010 amounted to 3,347 million people

⁷⁰ It should be considered that non-official data are many times as large as official statistics

⁷¹ Analytical report of the Ministry of Labor, Employment and Migration of the Kyrgyz Republic for 2011.

expert estimates, the number of migrants in Kazakhstan can vary from 50,000 to 100,000 persons. Typically, migrants are employed in non-prestigious occupations, jobs, which local residents refuse to work on. The results of a sociological survey conducted in Russian cities confirm this trend, as only 30 per cent of workers feel competition with local employees.⁷² The main areas of activity in Russia for Kyrgyz are trade, construction, transportation, residential repairs, and the service sector. In Kazakhstan our citizens work on tobacco and horticultural plantations.

Figure 3.



Source: Gallup World Poll: 2006-2008.⁷³

The most active participants in the process of labor migration are the working-age population up to 45 years. In this case, it should be noted that in the last decade the number of women in the migration process outgrew the number of men, as 53% of all migrants are now women. In general migration processes make significant changes in the labor potential of the republic. Qualitative analysis of the structure of migration flows allows registering the following trend: between 1989 and 1999 the main share of migration outflow was represented by middle- or old-aged people with a high level of education. The main reason for the migration of highly qualified professionals was their lack of demand on the domestic market. For example, the number of people employed in industry has steadily declined from 18.2% in 1991 to 7.7% in 2003. According to a sample survey conducted by the National Statistic Committee in 2002, almost one third of the unemployed had higher or secondary vocational education. During the period from 1999 to 2009 the total number of immigrants of working age individuals averaged 73.2%. The sharp increase in this category of persons was witnessed in 2007, when their numbers in the general flow of immigrants was 85.6%. However, it must be emphasized that the annual migration outflow to the total population of Kyrgyzstan, on average over 10 years, did not exceed 0.6%. Thus, on their own the quantitative indicators of emigration of the population do not represent significant risks for the country, given the surplus of labor resources in the

⁷² Analysis of migration in Russia. World Bank. April 2006

⁷³National report "Migration policy of the Kyrgyz government: confrontation or adaptation to strong human flows?" 2009.

country and unresolved questions of internal employment policies. The real challenges lie in the following aspects:

- Deficit of skilled professionals, particularly in remote regions. On the one hand the educational system does not reproduce the images necessary for the functioning of the economy, on the other hand, low wages with an increase in the cost of living encourages looking for better conditions, which may provide an acceptable standard of living.
- Mass migration flows are limited to only two directions and any change in economic conditions and migration policies in destination countries would entail changing the situation in Kyrgyzstan
- Evolution of a social and economic situation of the country becomes dependent on the development of labor migration and remittances.

An increase in welfare families among migrant workers has been observed, and we should note the following trends in this respect:

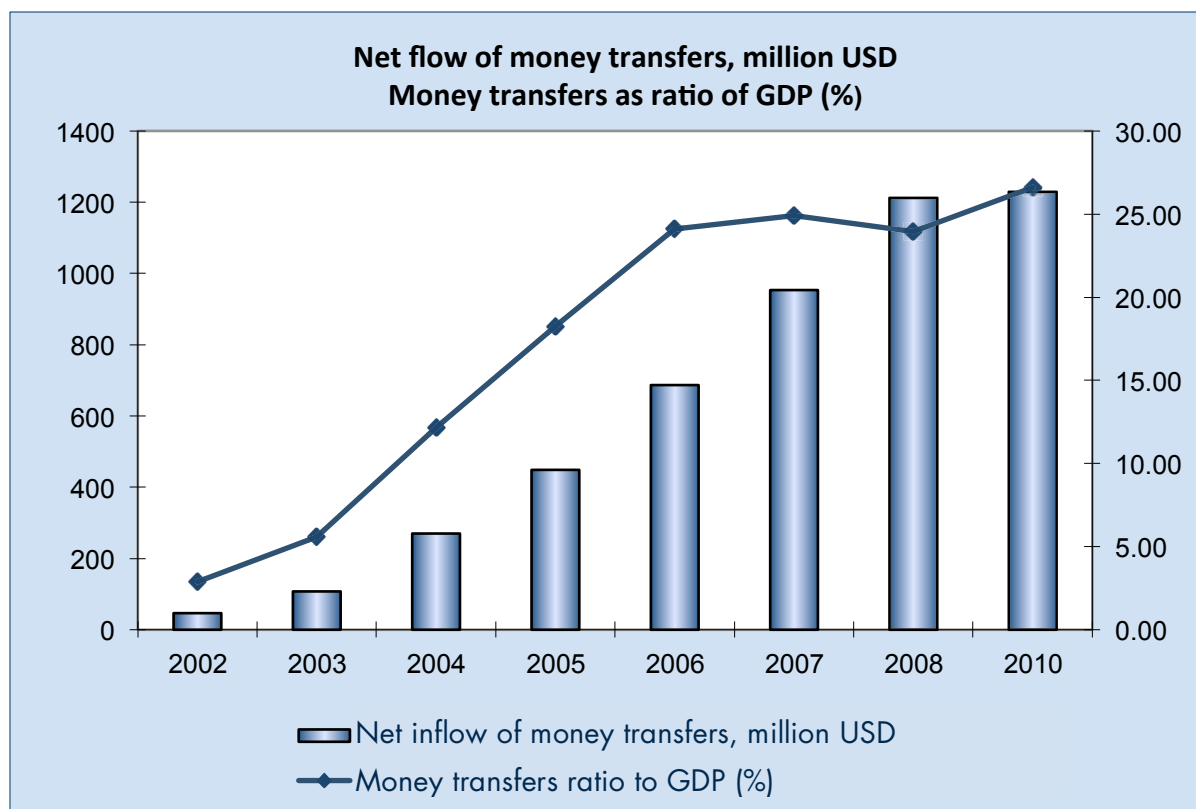
- There is a change of household living standards of migrant workers, who provide financial support to their families.
- Changing consumption patterns as the population improves its living conditions. A proportion of the savings goes to education.
- A part of the funds are expended on the development of small business, the conditions for entrepreneurial activity.

However, the income of migrant workers enable them to provide charity care, aimed at the development of local territories (small Motherlands), which is expressed in the construction or repair of public facilities (schools, kindergartens), opening small businesses (confectionaries, sewing shops).

- Being aware of such dependence, the countries receiving migrant workers can use this fact to their advantage when dealing with political issues.
- The economic development of regions defines differentiation processes of internal flows of persons.

Differences in living standards between urban and rural areas, and the crisis state of the agricultural sector of the republic, have pushed migration flows from the agricultural regions of the country into economic centers. An additional factor that may influence the activity of migration or rural residents is the rate of population growth (traditionally higher than in urban areas), which exacerbates the problem of quantitative mismatch of labor demand. In the period from 1991 to 2000, one million people moved from rural areas. The main areas of concentration of internal migrants are the Bishkek and Chuya regions. According to official data, 251,500 people moved to Bishkek, and 165,600 people to the Chuya Region from 1999 to 2008. However, it should be borne in mind that the process of internal population movements are not subject to precise accounting and strict rules of registration of migrants, so the data is substantially underestimated.

Figure 4.



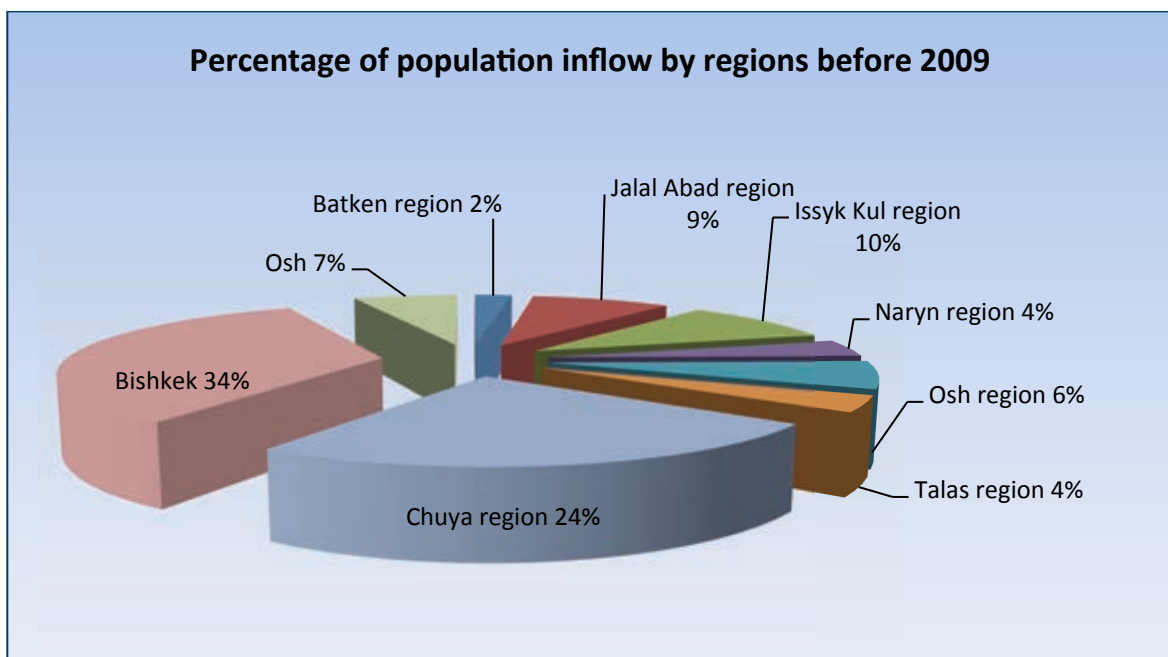
A consequence of the internal mobility of the population were the processes of depopulation in remote and border areas (regions of outgoing internal migrants), the increase in the number of depressed territories, unauthorized occupancy of lands and buildings on the outskirts of large cities, leading to increased social tension in urban areas.

Analysis of Regional Development in regions of the Kyrgyz Republic allows recording of the following trends:

- For the period from 2001 to 2010 in all regions of the country, except the city of Bishkek, demonstrated a decline in the share of GRP production into the production of gross domestic product;
- The major share of GDP is accounted for by Bishkek, where the average for the analyzed period was 32.3%;
- The smallest contribution to the GDP belongs to the Batken Region (3.5% average), the Talas Region (4.08% average) and Naryn Region (4.11% average).
- However, regional development faces a complex of social problems: high poverty, high unemployment, the exodus of the workforce. The average ratio of the average monthly salary to the subsistence level has reached the highest value in Bishkek, reaching 2.36 times the average. The lowest ratio for the 2008-2010 period was 0.99 times the average in the Osh Region, which suggests that the average monthly salary in this region, averaged over a three year period, was less than the subsistence level (see

Appendix No. 2). The average poverty rate for 2008-2010 amounted to 32.4% in the Republic. The highest poverty level is observed in the Naryn (46.9%), Issyk Kul (45.4%) and Jalal Abad (40.6%) regions and, additionally, the poverty level exceeded the average level for the Republic in the Talas (39.4%) and Osh (39.2% – including the city of Osh) regions.

Figure 5.



The presented graph shows that the greatest poverty reduction was achieved in the southern regions. This trend may reflect the fact that on one hand, the southern regions intensified international projects aimed at improving the standard of living. On the other hand, the traditional trend of preference for Kyrgyzstan (specialization) regions of the outflow direction has an impact on regional development. The population of the southern regions, and the Chuya Region, usually migrate to Russia and Kazakhstan, which increases the flow of funds coming into the region from migrant workers, while residents of northern regions prefer to travel within the country borders. Consequently, the dynamics of improving living standards in these areas is less intense (see Appendix No. 3).

It is therefore evident that the main factor influencing the internal mobility of the population is the existence of disparities in the socio-economic development of regions in respect to supply and demand for labor, and accordingly, the regional differentiation of household income.

1.2. Specific factors of the creation and development of the migration situation in Poland

Migration trends in Poland are defined in different formats depending on the directions and forms of migration flows. **The process of emigration** has a long history. According to experts, the mobility developed in Poland is a multifaceted way. The Poles have an enduring tradition of emigration⁷⁴. It may be a result of the emigration flows observed in the second half of the 18th and 19th centuries when the situation was characterized by outflow of people for political reasons (refugees: leaders and soldiers of the revolt). The mass economic outflow was marked at the turn of the 19th and the 20th centuries. According to the expert data, about 10% of the total population left Poland before the World War II. Emigration for economic reasons is characterized by temporary migration to Germany to seasonal works in the agricultural sector.⁷⁵

As part of this paper we distinguish three important periods that characterize the migration mobility of the population at the present time:

- 1989 – changes in the political system and transition to a market economy – an estimated outflow of experts (Golinowska, Marek 1994) amounted to 250,000 immigrants to West Germany.
- 2004 – Poland’s accession to the European Union – with emigration sharply increasing from 2004, the major flows are directed to the UK (approx. 1 million people) and Ireland.
- 2011 – opening of the borders of the German labor market to new EU members, including emigrants from Poland.

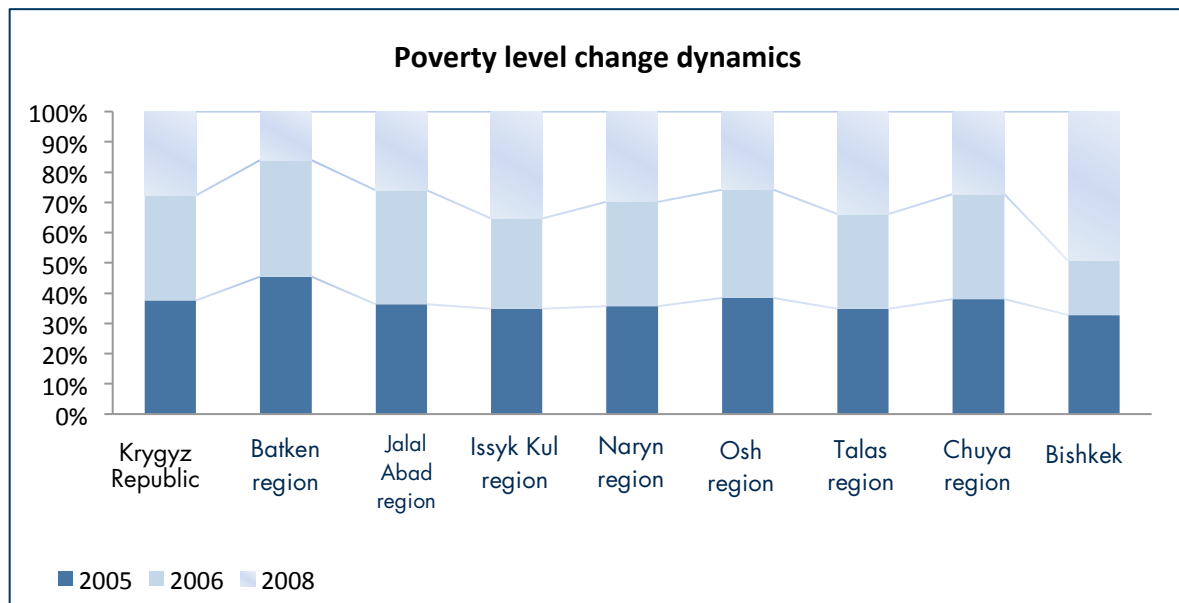
Experts have identified several key factors that “push” people to search for better living conditions outside the country:

- fear of lack of funding to maintain the already achieved economic conditions;
- a sense of hopelessness and despair (no possibility to improve the situation);
- lack of opportunities for career growth and prospects of professional development;
- the belief that any change will not lead to improvement.

⁷⁴ Migration to the UK from Poland: Continuity and Change in East-West European Mobility. Kathy Burrell

⁷⁵ Migration trends in some countries candidates to the EU ... Izabela Koryś, 2003

Figure 6.



Format of migration flows are characterized by: seasonal migration (since 1991 about 200,000 people⁷⁶ have been involved in seasonal work in Germany alone), and activation of a “shuttle” business, which is involved in the border areas. The “shuttle” business was a specific form of spatial and territorial mobility, as was the systematic movement of capital between the two countries. The attractiveness of this form of income for the population was in that it did not require any significant financial cost, no qualifications and specialized knowledge and skills from participants of the process. It was a temporary form of international mobility attributable to the development of the situation on the markets of member countries.

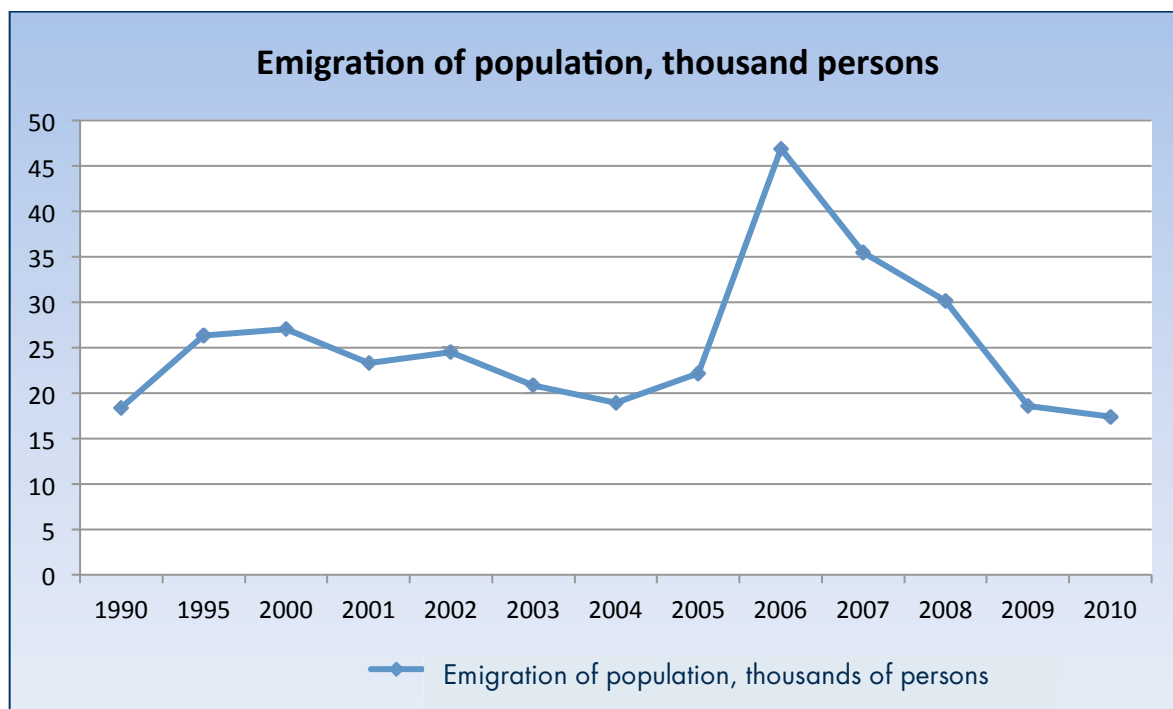
The role of seasonal migration seems to be more significant in the long run in terms of socio-economic consequences. The main streams, as already noted above, were seen in Germany. This country remains a major destination for migrant workers, usually adults, who are engaged mainly in agriculture, which does not require skilled education or the socio-professional status of the migrant, and the salary is relatively low. Seasonal migration is a population strategy aimed at diversifying sources of household income as a relatively inexpensive way to replenish the budget of migrant families, and it allows maintaining an acceptable standard of living in the home country. According to research, migrants tend to neglect their professional responsibilities in the domestic labor market in favor of the opportunity to be involved in seasonal work every year. Such migratory behavior has made it possible to improve the social situation of migrants in the local communities. According to experts, “this type of earning a living is becoming a permanent strategy and the way of life.” However, migration leads to changes at the level of the national economy: first, remittances are changing consumer behavior, influencing the increase in consumer demand, which in general leads to higher standards of living in Poland, and secondly, migration outflow reduces social tension on the labor market.

In the analyzed period we should separate the issue of demand for highly qualified professionals on the domestic market. O. Stark and C. Simon introduced the concept of “educated unemployment”. The social upheavals of transition “push” specialists from the scientific community into other sectors of the economy, or

⁷⁶ State of the Art of the Migration Research in Poland. Anna Kicingier, Agnieszka Weinar, 2007

to emigration. However, it is worthy to note that international migration is perceived as less attractive and preference is given to employment in newly created private companies.

Figure 7.



Source: *Demographic Yearbook of Poland 2011*

Counting the recent history and sharp increases of population outflow has been registered since 2004 after the accession of Poland to the European Union (EU). According to various estimates, approx. 2.3 million Polish citizens stayed outside the country in 2008.⁷⁷ Migration motivations are, firstly, the EU's open borders, and secondly, the difference in wages between Eastern and Western Europe, and thirdly, the rapid deterioration in the labor market (the unemployment rate reached 20% in 2003⁷⁸). Labor migration is an attractive way to improve the economic conditions of residence, primarily for residents of remote regions, which are most threatened by unemployment. The strategy of migration behavior consists of the following: men staying in the host countries of labor migration as a tourist destination, search for work, create acceptable living conditions, reinforce their own status, and then bring their own families as official emigrants.

With the accession to the EU the geography of migration flows significantly expanded beyond the traditional destinations of Germany – to the USA, Canada, France, and, as migrants gradually began exploring new destination countries to Italy, Greece, UK, Ireland, Austria, Sweden, and The Netherlands (see Appendix No. 4).

⁷⁷ *Polish Migration Policy: current status and further actions, 2011*

⁷⁸ Migration to the UK from Poland: Continuity and Change in East-West European Mobility. Kathy Burrell

It should be noted the division to the country's eastern and western parts characterizes Poland. The western zone, which borders Germany, is considered the most advanced, compared to the eastern border with the Ukraine and Belarus. However, Poland had the traditional division of territorial representation of immigrants, depending on the regions (*voivodstvo*). Residents of north-eastern regions of Poland, e.g. from Podlaska, and southern regions tend to migrate to the USA, while the south-western part of the country has developed the traditional dynamics of population outflow to Germany. If we examine these trends by countries of destination, then according to statistical data emigration to Germany stabilized, while migration mobility to the United States decreased, and a relatively high population outflow (with strong dynamics) is registered towards the UK and Ireland.

Europe is one of the main destinations for emigration, attracting more than 80% of the total outflow of migrant population. Nevertheless, Germany remains a key country for migrants from Poland, as nearly 90% of emigrants who choose European countries, settle in Germany. As shown in Figures 8 and 9 for the 2002-2010 period, the outflow of population towards Germany reached 38% and 39% respectively.

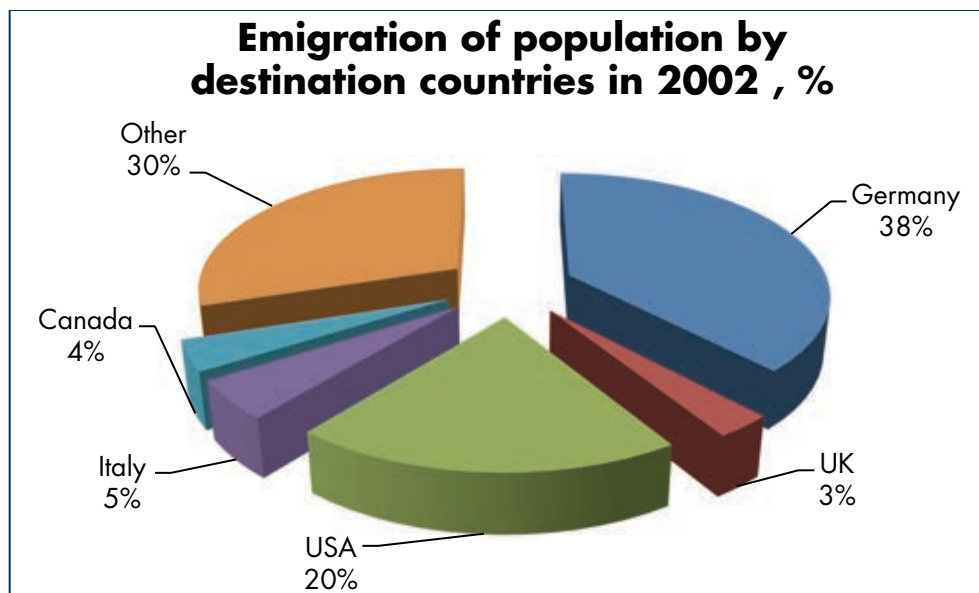
In addition to Germany, the UK and France are also popular countries. In recent years, the migration outflow to the Netherlands and Italy has doubled, whereas the emigration of the population in Sweden has decreased (it can be assumed that the cause is the economic recession, which seriously affected the welfare of the state). Besides Europe, the main destination countries for migrants are the USA (10% of all relocations), and Canada (4%).

The following peculiarities should be distinguished for analysis of current trends in migration mobility:

- If, as a rule in Germany the outflow is mainly represented by the adult population, and people with low a level of education and qualifications from small towns and remote areas, the UK and Ireland see the younger generation migrate from the central cities with high levels of education.
- Migration of the working-age population covered in the general flow of migrant men aged 20-50 years accounts for 27%, while women of reproductive age are 35.9%⁷⁹. Prior to 2002-2004, migration had a generally seasonal nature. Polish migrants are mainly employed in the secondary labor market without regularization. Expatriates are employed in niches where there is no opportunity for career growth and social services do not provide coverage: in niches such as construction, agriculture, and for women – employment in the service sector as the provision of home care.
- At the present stage a new type of migrant stands out – the most dynamic and socially-active part of the population with high needs and ambitions, which seek to acquire new experiences, and other (higher than that of their parents) standards of living.

⁷⁹ Demographic Yearbook of Poland 2011

Figure 8.



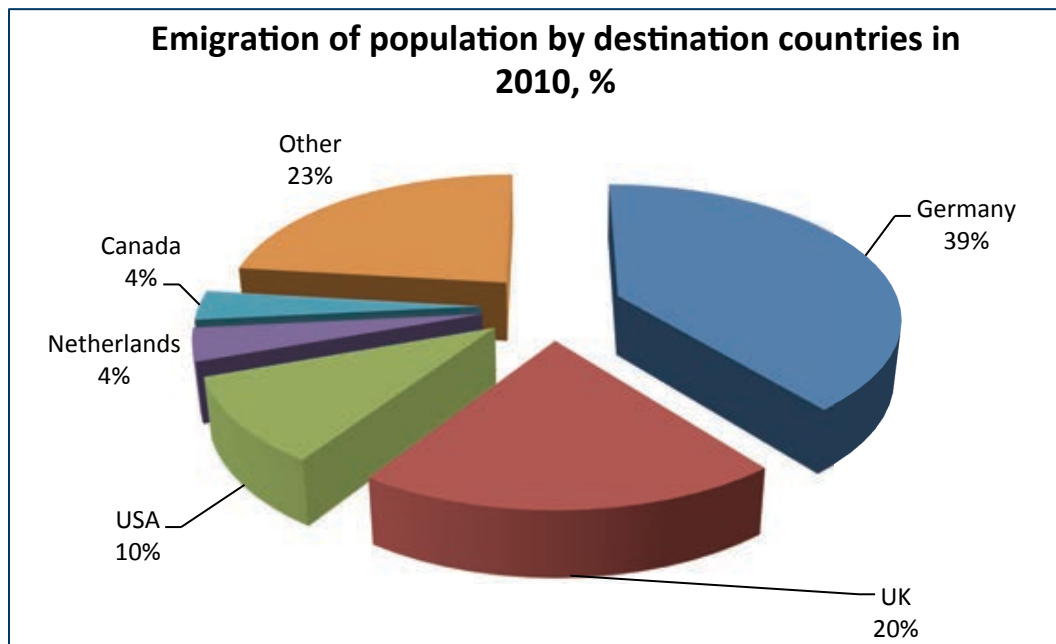
Source: *Migration Trends in Selected EU Applicant Countries: Poland*, Izabela Koryś

Thus, it is clear that behavioral change migration strategy, in addition to purely economic motives, increasingly manifested educational motives and ambitions. There is emerging a new class of workers who are not interested in the functioning of the secondary labor market in the country of migration.

A significant event for Polish migrants, according to expert opinion, happened in May 2011. Despite the fact that Poland joined the European Union in 2004, Germany and Austria, anticipating a massive influx of migrants, officially open their labor markets for new EU member countries, including Poland after seven years. Up until this point, even considering that Poland is a member of the Schengen zone and the movement of its citizen is unrestricted within the borders of the Schengen agreement, the issue of illegal migrant workers in Germany remained unresolved. The problem for migrant workers consisted in that they did not have the opportunity to work officially. After May 2011, those emigrants who worked illegally legalized their status, but the mass influx of migrants anticipated by German authorities did not happen. This issue is a topic for discussion in expert circles. Some believe that global recession has negatively affected the socio-economic development of Germany. Poland is one of the few EU countries demonstrating economic growth, and the 4-5 years after joining the EU it observed dramatic economic development and investment. "The rapid development on the one hand led to the need for labor, while on the other hand the whole of Europe was open to our workforce. Within 3 years, unemployment has fallen from 18% to 8%⁸⁰." Other experts believe that a short period (9 month) to evaluate and analyze migratory behavior makes it impossible to make definite conclusions.

⁸⁰ From interview with experts.

Figure 9.



Source: Demographic Yearbook of Poland 2011

Poland is traditionally considered as a country of emigrants. Experts believe that about 20 million people with Polish roots live outside the country.⁸¹ However, since 2004 **intensification of the inflow of migrants** from neighboring territories has been observed. The change in the trend factor is influenced by Poland's accession to the EU, but compared to other EU member states Poland has the lowest number of immigrants in the total population (immigrants make up approx. 0.08%). Migrants prefer to move to more developed EU member states, and consider Poland as a transit country.

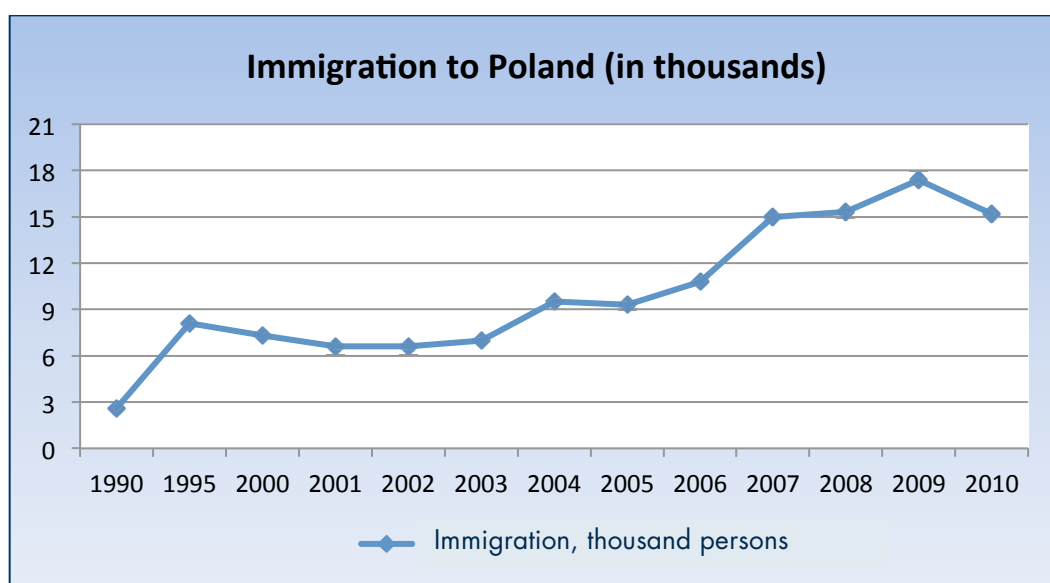
According to expert conclusions, migrants from the former Soviet Union (Russia, Ukraine, Belarus) are the largest group, estimated at several hundred thousand people. Migrants from these countries account for 15% of the total number of migrants in Poland. However, there are data, which show that the citizens of the Ukraine alone constitute 47% of the total number of registered foreigners.⁸² Minor geographic distances, relatively simplified border procedures, relatively low costs, as well as cultural and language affinity, serve as attractive factors for the involvement of an increasing number of migrants that use the model of circulatory migratory behavior. The essence of this model lies in short-term employment; the influx of migrants is usually shown in shadow economy on the secondary labor market. This may indicate that migrants from the former Soviet Union are more attracted to short-term economic migration. Migrants within this category are especially in demand in the agricultural and construction sectors (men), or as aids in managing households, overseeing children and elderly people (women). According to expert data, favorable conditions for migrants are formed in the border regions. The similarity of mentality, minimum cultural differences, and a common language group allows migrants from neighboring territories to relatively quickly integrate into Polish society, or enter into mixed marriages.

⁸¹ From interview with experts.

⁸² According to statistic data on foreign citizen registered for temporary stay during two months. 2001.

The second largest group of immigrants, the Vietnamese, in the peak phase of development size of the Vietnamese diaspora was estimated at 100,000 people⁸³. For the purpose of a complete analysis it is necessary to highlight the historical aspect of visiting Vietnamese in Poland. In the late 80s and early 90s, on the onset of the political and economic system changes in the Soviet Union, Vietnamese (\approx 25-30 thousand people) began to move from the GDR (German Democratic Republic) to Poland. In the heyday of the “shuttle business” they gradually won the monopoly for selling textile products. With the development of the Vietnamese market economy they were able to attain a higher level of trading relations – from local markets to chain supermarkets⁸⁴. After Poland’s accession to the EU in 2004, the expectation that the Vietnamese will migrate to more prosperous EU member states never materialized, and, contrary to the first generation of Vietnamese residing in Poland, they rooted themselves in the territory and adapted to the local customs. Traditional forms of conducting business based on the family owned business allows for faster adaptation and efficient integration into the developing Polish economy. The current situation has changed: western firms gradually replace Vietnamese companies. Nevertheless, the Vietnamese diaspora is one of the most developed, in addition to the support of their compatriots, and provision of jobs, the community issues four newspapers in Vietnamese within Poland. Experts are noting the positive history of migration of Vietnamese in Poland.

Figure 10.



Source: *Demographic Yearbook of Poland 2011*.

However, the successful economic development, and incorporation of the Polish economy into the global economy is becoming a key factor in inflows of highly skilled specialists from developed countries into the

⁸³ Izabela Koryś: *Migration trends in selected EU applicant countries: Poland, 2002*

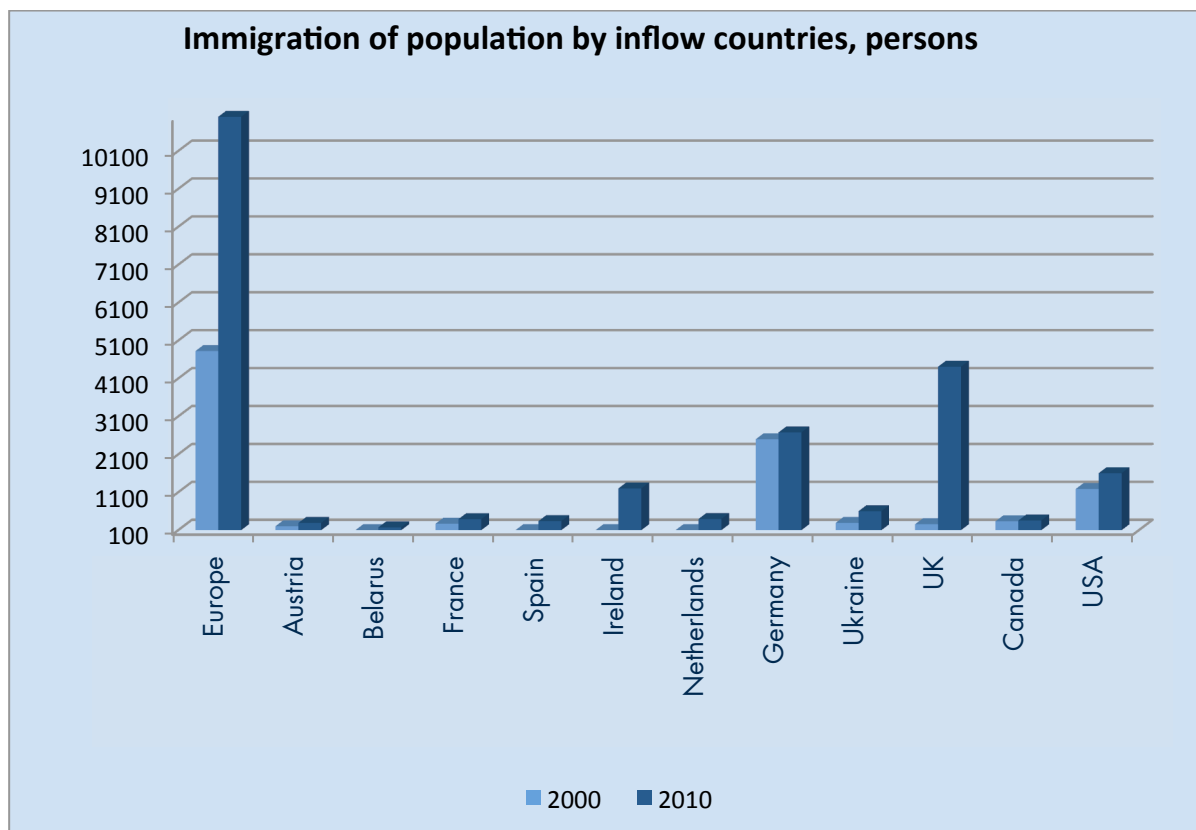
⁸⁴ From an interview with experts

EU, USA and Canada.⁸⁵ As a rule, the immigrants of this category are employed in the primary sector of the labor market as consultants, experts, business executives, and teachers.

Figure 11 shows that immigration from EU countries at times overrides the influx of population from former Soviet Union. It is assumed that the official data may not reflect the real picture, because, as a rule, immigrants from the Ukraine⁸⁶, Belarus and Russia are in Poland illegally. Migrants from EU and USA prefer to legalize their status. In this respect, as a good example serves the sample dynamics of work permits for citizens of the Ukraine, Belarus, Vietnam and China during 2008-2010.

However, data from the Ministry of Internal Affairs indicate that Poland is becoming more attractive as a country for immigration. By the end of 2009, 92,574 foreign nationals had a residence permit, which is 10% higher than in 2008. A further 29,340 work permits for migrants from the EU have also been issued, which exceeds the 2008 level by 62%.⁸⁷

Figure 11.



Source: Demographic Yearbook of Poland 2011.

⁸⁵ Migration Trends In Selected EU Applicant Countries: Poland. Izabela Koryś, 2002

⁸⁶ "It should be notes that the Ukrainians rank first among groups of illegal migrants identified in Poland. From the document: *Ukrainian migration policy: peculiarities and modern development.*

⁸⁷ "It should be notes that the Ukrainians rank first among groups of illegal migrants identified in Poland. From the document: *Ukrainian migration policy: peculiarities and modern development.*

Thus, the bulk of the flow of immigrants is presented in the following forms: temporary migration, transit, and flexible. It should be noted that migrants are not interested in being present in the Polish economy on an ongoing basis. However, we can talk about the current capabilities of a sustainable number of foreign workers. In general, the dynamics of immigration flows reflects the attractiveness of the country and speaks about the possibilities of economic development. Today, the improvement of the socio-economic level of Poland can play a significant role in the European migration map.

Table 1.

The dynamics of work permits

Country	Number of work permits issued to citizens		
	2008	2009	2010
Ukraine	5,400	9,504	13,150
Belarus	No data	669	No data
Vietnam	No data	2,577	6,317
China	2,040	4,636	2,252

Source: Polish Migration Policy: modern state and further activities, 2011.

Internal migration is characterized by the mobility of the formed trend of outflows “from east to west” from the less developed *voivodstvos*, bordering the former Soviet Union “Part A” (Lublin, Bialystok, Biala, Podlaska) to better developed central and western *voivodstvos*, “Part B” (Warsaw, Cracow, Poznan, Gdansk, Katowice, Wroclaw). The main factor that causes people to leave native lands is the significant difference in the level and quality of life among the regions.

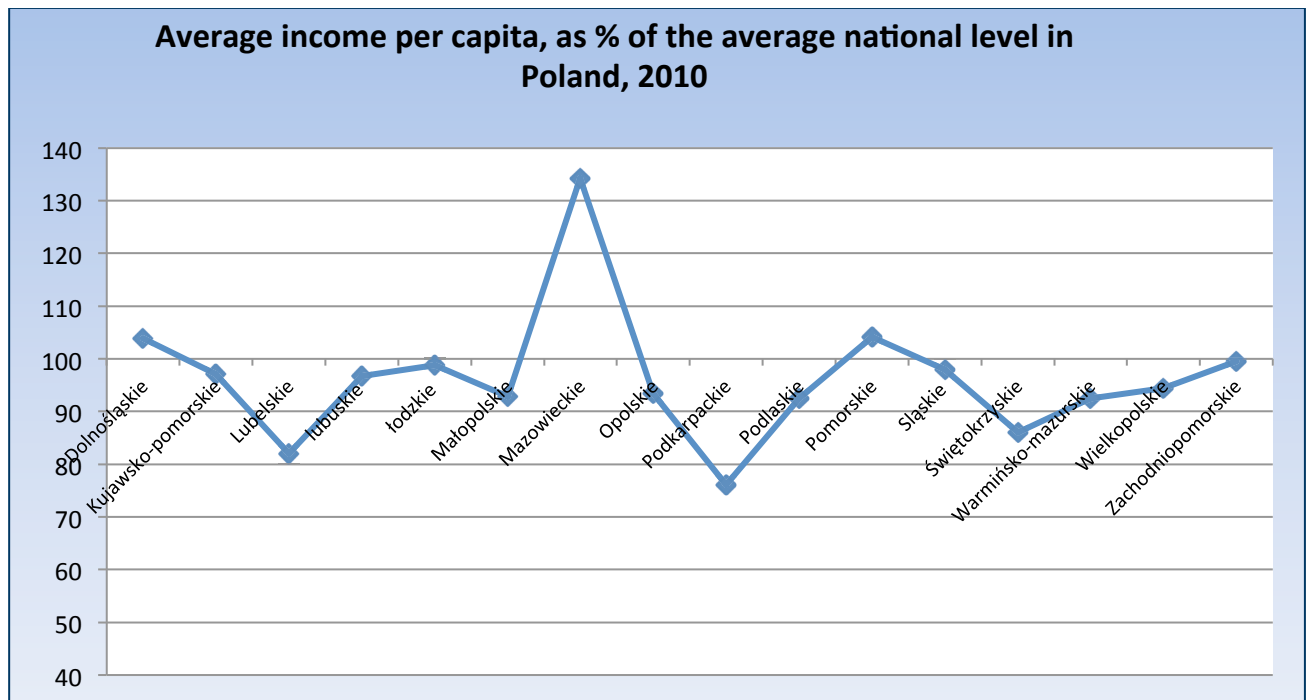
According to statistical data, the highest level of income in 2010 was registered in the Mazowieckie *voivodstvo* (PLN 1602⁸⁸), which has exceeded the national average by 34.4%. The Dolnośląskie, *voivodstvo* and Pomorskie *voivodstvo* also exceeded the national average by 3.9% and 4.2% respectively. The lowest incomes were registered in Podkarpackie (PLN 907) and Lubelskie (PLN 978) *voivodstvos*, which is below the national average of 23.9% and 18% respectively. Significant differences can be seen between the highest and the lowest incomes (reaching a value of 58.2 multiple). It should be noted that the above trend continues for several years. Thus, over the period 2005-2010, an increase in income compared to the national average was registered in the Mazowieckie (11.1 times) and Kujawsko-pomorski (9.9 times) *voivodstvos*. The most significant decrease of revenues for the analyzed period was observed in the Opolskie *voivodstvo* (11 times), Lubelskie *voivodstvo* (6.3 times) and Śląskie *voivodstvo* (6.2 times).

At the same time, based on assessment of the material status of households by *voivodstvo*: as “very good” is marked the Mazowieckie (4.1%), Dolnośląskie (3.3%) and Zachodniopomorskie (3.2%) *voivodstvo*,

⁸⁸ PLN – Polish national currency

while the “poor” mark is given to Świętokrzyskie (18.5%), Warmińsko-Mazurskie (17.1%), Lubelskie (16.3%) *voivodstvos*, we can confirm the existing economic gap between regions, which determines the migration sentiments of domestic migrants.

Figure 12.



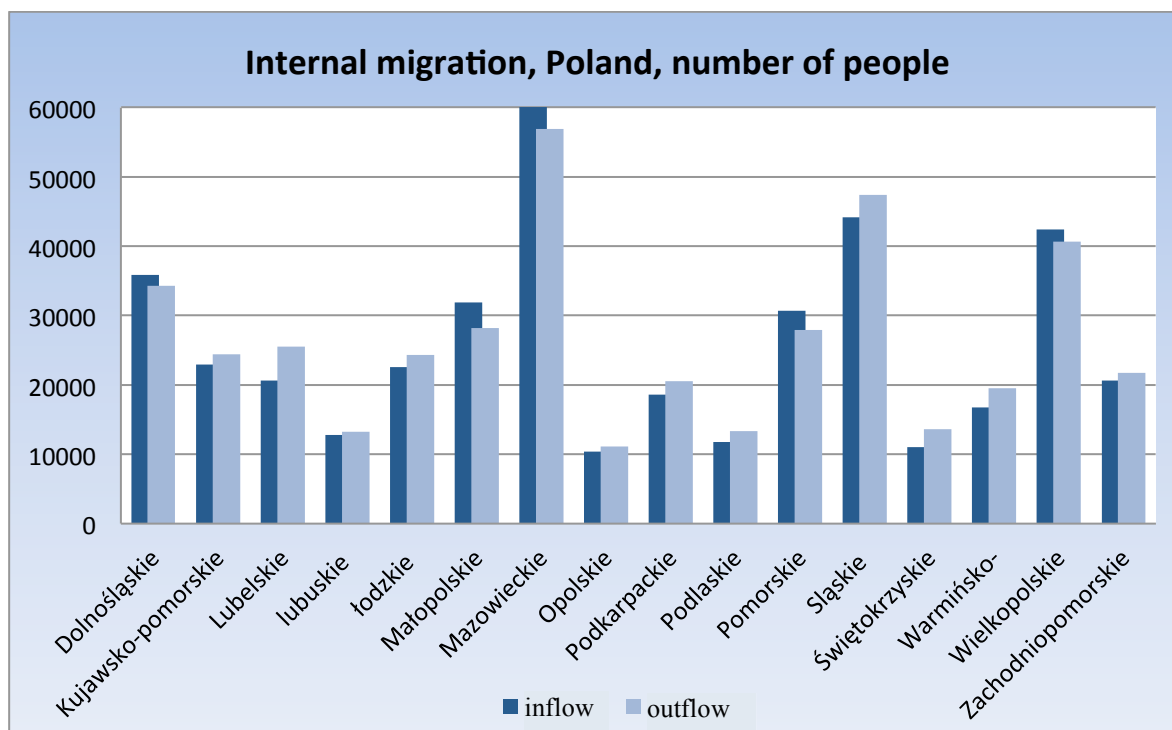
Source: Household Budget Surveys in 2010. Central Statistical Office

Analysis of internal flow indicates a high level of inflow of migrants in central regions of the country, for example, 69,615 people moved to the Mazowieckie voivodeship in 2010, which represents 16.5% of the value for the whole country, 42,363 people moved to the Wielkopolskie voivodeship – 10% of the value for the whole country (see Appendix No.5). At the same time in regions that are expecting slow economic growth, population outflow exceeds inflow. A striking example is the excess in the Lubelskie (23.6%), Świętokrzyskie (23.2%), Warmińsko-Mazurskie (16.2%), and Podlaskie (13.8%) *voivodstvo*. The situation is exacerbated by the fact that the main driving force is the population aged 20-45. The consequence of this trend was the change in the “age demographic”⁸⁹ depopulation of regions. According to the population census of 2002, the difference between the number of persons registered and actually residing in the Opolskie *voivodstvo* is 153,000, and almost 113,000 people in Slaskie *voivodstvo*⁹⁰. However, the interesting change, characteristic for all *voivodstvo* of the country, is that women are more mobile and more susceptible to migration than men. For example, in 2010 the migration of women was 54.1% versus 45.9% of male migration. It could be assumed that such changes are associated with a significant numerical superiority of women over men, but the number of women only exceeded the male population by 1.1% in 2010

⁸⁹ From interview: “There are regions where population is mainly represented by the oldest generation, regions where the main group of population is young people”

⁹⁰ Migration trends in some EU candidates ... Izabela Koryś, 2003

Figure 13.



Source: Demographic Yearbook of Poland 2011.

According to some experts, internal migration does not pose problems. Regional policy is concentrated around large cities. Survival of remote areas is insured by the self-organization of small business, development – at the expense of illegal economic business.⁹¹ At the same time, Poland is a country with decentralized regions. Regional policy is designed so that each *voivodstvo* is given the opportunity to create their own financial conditions through the development of business structures, or any other economic activity on their own to rebuild their own infrastructure. In general, such a strategy could stimulate the economic development of regions, but misses the attention of the existing territorial and spatial development model, which triggers the differentiation of economic regions. The outflow of labor contradicts an effective regional policy, which is based on comparison of working conditions and the availability of labor resources between regions.

1.3. Conclusions on the chapter

The above estimate of migration processes in the Kyrgyz Republic and Poland allows establishing common trends specific to these countries:

- The working population accounts for the largest share in mass outflow. The period of economic transformation at the beginning of the 90s is characterized by the lack of demand for highly skilled labor

⁹¹ From interview

in the domestic markets. The current outflow of economically active working-age population and young people leads to a change in the demographic characteristics of the region – an artificial “ageing” population.

- Both Poland and Kyrgyzstan have characteristic regional preferences for migrants by country of destination. Most of the working and reproductive population participates in the migration process, which entails a reduction in the birth rate within the country. The reproductive behavior of women is changing.
- As a result, the outflow of the workforce in the country is population of retirement age, students, schoolchildren, i.e. the population that is not involved in work activities, thereby increasing the burden on the Social Fund.
- The uneven economic development of regions defines the mood of the migration. There is a migration from the remote areas into the economically developed centers, which leads to the depopulation of rural areas and small towns.
- The number of women involved in the process of immigration exceeds the number of men. Economic disorder in the country of residence makes them more economically active, changing their social behavior, and women take on the creative family budget role (which is not characteristic for eastern women). In the longer term this trend will lead to changes in the traditional way of family life, and thus change the role of women in society.

Analysis of the migration situation leads to the following conclusion: In recent years, cross-border mobility is a key determinant of the development on the local, national and global levels. The development of personality, media knowledge, experience and skills are of no less importance. The consequences of migration mobility at all levels are determined by the framework – the risks and threat on the one hand, the use of opportunities on the other. Thus, the obvious question of coordination and control of migration processes becomes evident. This approach requires the development of the Migration Policy, which clearly outlines the work with the migration process.

2. Governmental Migration Policy as a response to the current systemic challenges

This section is proposed for consideration by the Polish experience in the development of the Migration Policy. The first part of the Chapter is based on the selection of approaches to the Migration Policy. As an approach to policy in the sphere of migration, the author proposes to proceed in the following positions, which define the development of the state and are sensitive in terms of the impact of migration and, therefore, require consideration in the development of Migration Policy:

- Changing demographic structure as a condition for the formation of Migration Policy
- Impact of migration on the state of socio-cultural relations
- Factors of region development and validity of migration flows

The second part assesses the experience of Poland in the field of Migration Policy and its application in the Kyrgyz Republic. Under this section, the following questions, which determine the approach to the development of the Migration Policy of Poland are the basis of the implementation of mechanisms to regulate migration processes:

- Historical factor
- Institutional management system
- Organization policy development process
- Content policy.
-

Thus, the purpose of this section is to create awareness among decision-makers about the necessity to take certain steps to develop a Migration Policy.

2.1 Approaches to the Migration Policy and procedures for migration processes

Migration Policy is a policy of the state in regard to the mechanical movement of the population in the area.⁹² The purpose of the Migration Policy is to regulate migration flows so as to protect the interests of the individual areas of the state. The processes of globalization gradually “erase” the value of traditional state boundaries, simplifying the system of cross-border movements. At the present time there is a tendency where people think they do not have a rigid connection to the territory of origin – migration is thus a way of life. International mobility is a phenomenon that can be defined as: “of *interest to understand another world, gain new experience, use resources and technologies of new territories.*” At the same time, massive cross-border flows of people are caused by economic reasons, poor conditions in the country of residence, local conflicts and wars. In this respect, countries are faced with changes that define socio-economic and socio-political conditions of development. As part of this work under the challenge this should not mean direct military or forced factors, but a system of social manifestations contained in migration processes.

2.1.1 Changing demographic structures as a key factor in Migration Policy

Evaluation of migration situation in Poland suggests that, in general, the outflow of the population is not critical. According to statistical data for the period from 2000 to 2010, the average value of immigration to population is 0.08%⁹³ a year. However, taking account of demographic trends:

- There is a steady population decline since 1996, at an average of 0.02% per year;⁹⁴
- There is negative dynamics of natural population increase from 42.7 thousand people in 1996 to -3.9 thousand in 2005. By 2010 the situation leveled, and the population increased by 34.8 thousand people, but only 6 of 16 *voivodstvo* recorded a positive trend of population growth;
- There is a process of decline in labor supply, ageing workforce, and the general trend of ageing population;⁹⁵

⁹² Report “Immigration and naturalization policy in Russia: the current situation and the direction for development”

⁹³ It should be noted that calculations are based on official statistics

⁹⁴ Except 2009 and 2010 when slight population growth has been registered.

- The medium- and long-term migration processes will have a definitive role in development of the demographic situation.

In an interview with the Head of the Department of Migration Policy of the Ministry of Internal Affairs the following was stated: *"We will see a dramatic situation in Poland in 10 years. Even now there is already a dramatic situation in matters of demography. Our higher educational institutions lack Polish students, and they may be forced to close due to poor student recruitment."*

Thus, the current demographic situation in Poland characterizes the so-called second type of reproduction: an increase in life expectancy with a low birth rate and low morbidity. A similar situation is observed in countries of immigration: Russia, the Ukraine and Belarus. Consequently, the prospects for completion of the labor market in Poland's growing economy will occur due to the inflow of migrants from third countries.

Aware of the forthcoming challenges, the government has made efforts with the active participation of society, to develop a national Migration Policy that reflects the main strategic areas of action.⁹⁶ A part of the demographic policy approach is based on the need to:

- Develop mechanisms for the return of Poles back to their homeland.
- Develop clear terms of Immigration Policy, preconditioned primarily by economic drivers in the context of needs of labor market needs and the need to maintain the stability of the social welfare system.

In order to identify opportunities to initiate processes of re-emigration, an Interagency Workgroup has been established, whose task was to develop mechanisms to support emigrants outside the country. The purpose of such measures is to prevent the assimilation of immigrants in the host country by maintaining constant communication with them. One example of such contact is specially designed Internet portal that provides information about the possibilities for economic activity in Poland, and continue to create guidebooks that contain all necessary information. However, a significant factor in working with immigrants is an activity aimed at migrant children and youth education via the Internet (emphasis on Polish education, learning the Polish language to maintain communication skills in their native language). This approach allows the user to, firstly, maintain contact with their parents, and secondly, in strategic terms, that working with young people will bring dividends in the future.

Tasks for strengthening contacts with Polish organizations are being formed within the Polish foreign policy in order to create a positive image of Poles living abroad, and prevent possible discriminatory practices to immigrants. Assistance to Polish communities abroad has been set as one of tasks. The Senate is involved in this work, which indicates the level of importance of the issue and recognition of existing problems at the level of Parliamentary deputies.

A repatriation course is being developed for the return of the Poles back to the country. By the end of 2010, 4,979 people had settled in Poland under the repatriation program.⁹⁷ It should be noted that various groups both at the governmental level and in the civil sector are interested in this course. In September of 2008, a workgroup on repatriation matters was established with participation of the central governmental

⁹⁵ "In 2030 population will reduce by 1.3 million, number of persons over 60 years old will increase to 10 million, at the same time number of working population will reduce from 70.8% in 2007 to 63.9% in 2030." From the document "Polish Migration Policy: Current State and Further Activities."

⁹⁶ In 2007 a workgroup was created to elaborate the Document, on July 20, 2011 the Inter-Departmental Migration Committee approved the "Polish Migration Policy: The Current Situation and Further Activities."

⁹⁷ "Polish Migration Policy: Current State and Further Actions."

agencies. The workgroup developed proposals on amendment of repatriation rules. In September 2010 the Civil Committee of Legislative Initiatives "Return to the Motherland" introduced a draft Law to return to Poland for persons of Polish origin who were deported and exiled to the former Soviet Union. The workgroup established by the Committee on Affairs of Poland⁹⁸ and Poles abroad developed the concept of regulatory status of persons of Polish origin. In general, the task of the repatriation policy is to create suitable conditions for acquiring citizenship for persons of Polish origin, providing a complete package of civil rights starting with a permit to work in Poland, conducting economic activity to the possibility of receiving free primary and secondary education.

In the context of attracting additional population a mechanism involving the "Karta Polaka" (Identity Card of a person of Polish nationality) was introduced, which simplifies the procedure for obtaining a residence permit for employment, facilitates the stay in Poland for those people who have Polish roots. One of the reasons for the introduction of the "Karta Polaka" lies in the ideology to unite the Polish world by supporting self-identification with the Polish culture, history and traditions. But at the same time it serves as an element of the policy to attract highly educated young people.⁹⁹ Thus the "Karta Polaka" creates a certain system of criteria, which allows attracting young qualified professionals to meet the needs of the economy.

Despite the fact that Poland does not consider itself a country of immigrants, the increased scale of immigration processes form a broad discussion of immigration issues in the government, as in the civilian sector. As noted above, economic growth requires additional manpower, together with the restrictive procedure of legalization of migrants, inhibits the integration of immigrants into the Polish economy. The development of the situation sees an acute need to develop approaches to improve production procedures and legislation in a coherent Immigration Policy.

In August 2011 the Polish Council of Ministers adopts the guidelines on the draft Law on Foreigners submitted by the Minister for Interior Affairs. The draft includes numerous simplifications for foreigners living in Poland. First of all, it proposes to extend the maximum term of temporary residence permits from two to three years. It stipulates the possibility of issuing a single permit for residence and employment. Secondly, the proposals include changes for foreigners studying in Polish universities. A residence permit for first year students will be granted for one year and three months. If the education continues in subsequent years, foreigners can obtain a temporary residence permit for two years. Furthermore, there is a possibility of granting a temporary residence permit for one year to foreign graduates of Polish universities who wish to find a job in Poland.

At the same time, on August 26, 2011 the President of the Republic of Poland signed the Law on the Legalization of the Stay of certain Foreigners who are within the Territory of the Republic of Poland. Under this Act, since January 2012, foreigners residing in Poland illegally have the opportunity to legalize their status in Poland. Persons who were continuously in the country since December 20, 2007 will receive a residence permit for a fixed term (two years). This allows employment based on a labor contract.

Policy analysis allows us to conclude that the state builds a Migration Policy in such a way as to draw on the special rights of preferred migrants in terms of country of origin, education, skills and investment opportunities. Thus, according to accepted laws, creating new policy conditions, the state also determines for

⁹⁸ Polish diaspora

⁹⁹ From interview.

itself new tasks proceeding from the main goal – Immigration Policy should be the priority of the labor market, ensuring the competitiveness of the Polish economy:

1. To introduce a mechanism to monitor the needs of the labor market, which will regulate the labor market, depending on the required qualifications.
2. To open the labor market for legal migrants.
3. To facilitate access to the labor market for students and foreigners with a high level of education.
4. Active recruitment of labor from other countries.
5. To develop a simplified mechanism for working in Poland.
6. To promote cyclical and seasonal migration.

The rationality of Polish politics in times of crisis is justified by the intention to stabilize and protect its own regional labor markets from the mass influx of unskilled labor, which generally reduces the ability of the country's economy to compete with other EU countries. The above measures within a demographic approach represent an interesting experience that may be useful in the Kyrgyz Republic. The relevance for the Kyrgyz Republic is in the attraction of qualified labor resources, and support for migrants, and cooperation with the Kyrgyz diaspora abroad.

2.1.2. Impact of migration on the state of socio-cultural relations

This section considers a number of trends that create new socio-cultural spaces in the country as a consequence of migration. The state is faced with the need to consider the complex features of the coexistence of different socio-cultural codes of carriers: first, the relationship between the existing and foreign culture, and secondly, the change in the traditional values of society under the influence of current trends of emigration and the population. This thesis leads to the necessity to elaborate a comprehensive approach to dealing with social manifestations.

First. One of the component areas of the Migration Policy of Poland is the issue of immigrant integration into Polish society. As noted in the first chapter, the processes of immigration in Poland recently observed that quantitative indicators of immigrants are not widespread.

According to official authorities, to date these factors are not critical, and the integration of immigrants is not a major problem. However, this does not mean that the trend will not change under the new economic conditions, so the development of policies is an attempt to create a regulatory process of immigration under the context of a mass influx of migrants.

According to experts, the complexity lies in the fact that there is no previous experience in creating elements of integration for foreigners, due to a lack of necessity. Today, the problems of integration are widely discussed at different levels – in the expert community, the government, and civil sector. The stay of immigrants in the country creates many social problems, and there have been instances of discrimination by local residents: the host society is traditionally closed and has a reluctant perception of other cultures. At the same time, the discontent of citizens manifests in the large amount of social assistance provided to foreigners, which falls on the shoulders of taxpayers, and the widespread belief among the society that migrants take their work and social allowances, which could have been paid to Polish nationals.¹⁰⁰ Thus, integration is a two-way process of mutual adaptation between immigrants and the host society.

¹⁰⁰ From interviews with experts working on integration programs

Intentions recorded in the developed Policy are aimed at developing an intercultural dialog and prevention of any form of discrimination against foreign nationals. The strategic component is defined in the need to begin working in schools with children through education, tolerance for other cultures and the ability to function in a multicultural environment, and by increasing the teachers' intercultural competences in working with foreign students.

Such measures include officials, local authorities and governmental employees, which by the nature of its activities deal with foreign nationals. Action is taken within the framework of an information campaign aimed at dispelling the existing negative stereotypes of immigrants in order to prevent conflicts caused by existing differences in cultural and religious backgrounds.

The second logical direction of the integration activity decrees the integration of immigrants into the Polish society. The program works with refugees and labor migrants. The challenge rests in the fact that these groups have different needs, different legalization procedures for labor migrants who are more socially active, and therefore requires the development of specific integration programs. Poland currently has an annual individual integration program for refugees, who according to the program can receive social housing, legal assistance, job search assistance, provision of social benefits, and help in finding a variety of free training sessions and courses, including language classes. Non-governmental organizations actively participate in the area of assistance to refugees and migrant workers in facilitating the living conditions in Poland and integration into Polish culture. One of the target groups are women who are assisted in resolving problems arising for their children in schools, on how to build relationships with teachers, what measures should be taken in the event of a conflict. The task of these projects is to improve the status of children in schools and society through their mothers.

However, it should be noted that there is a solid belief among experts both from analytical frameworks, and working in the field of assistance to immigrants, that the integration policy is very limited, and there are categories of immigrants (labor migrants, students) for whom a similar program is needed. According to some experts, the state does not support migrant workers: work with them is intuitively constructed using a minimalist approach, and the government considers migrants only in the framework of their usefulness in the labor market. In this respect, teaching qualified specialists from Russia, Ukraine, and Belarus the Polish language would bring dividends from an economic point of view. Experts recommend the provision of a basic package of documents for migrant workers following the example of Portugal, and municipalities in the UK. The application package should contain all the necessary information to help immigrants settle in the surrounding environment: basic legislation on whom and where provides assistance to migrants, where they can find language courses, how to obtain official registration, etc. An important condition for successful implementation of the proposed measures is that they should be included into programs.

Second. Current trends of migration mobility are changing the cultural codes of social behavior, as the basis of the traditional way of life typical of Polish society. Adverse social manifestations primarily affect the families of migrants: families dissolve, family behavioral patterns change, women's reproductive behavior changes, and there is a tendency of growth left in the care of the elderly. Experts have noted the problem of alcoholism growth among women whose husbands are labor migrants¹⁰¹. Particular attention attracts such a phenomenon of consequences following parental migration or "Euro-orphanity", where children are brought-up away from parental education.

¹⁰¹ From interview with experts.

Acknowledging the complexity of social problems and understanding that the solution lies beyond the scope of the Migration Policy, as the scale of migration correlates with the level of economic development and quality of life, the government aims to equalize the living standards of Poles with the developed countries of the EU. However, the policy includes efforts to mitigate the situation. Migration Policy is based on the support of the families of migrants in the country of migration with a view to limiting the negative effects of the “Euro-orphanacy” problem. Measures are being taken to adapt the children to the Polish educational system, and to improve access to learning their native language. The aim is to develop a system for monitoring social processes in the country related to the migration of people in search of work, in particular the social consequences for the families of migrant workers. The purpose of this policy is to make it clear that the state does not forget about its citizens abroad, and they are under the protection (protectorate) of the state.

2.1.3. Factor of regional development and validity of migration flows

Analysis of the development of the socio-economic indices of a *voivodstvo* in Poland, as presented in the first chapter, sufficiently exposes the situation of interdependence between regional development and the outflow of population. It should be added that in the period from 2005 to 2008 the eastern part of Eastern Poland (Polska Wschodni), i.e. *voivodstvos* Lubelskie, Podkarpackie, Podlaskie, and Świętokrzyskie, there has been a reduction in net¹⁰² income from 85.4% to 83.8%.¹⁰³ In the central region (Łódzkie and Mazowieckie *voivodstvos*) this indicator grew from 114.4% to 115.8% (see Appendices No. 6, and 7)

However, it is equally important that the migratory behavior of the population constitutes indicators preconditioning the attractiveness or comfort of living within the territory. These parameters include the provision of the necessary living conditions to the population.

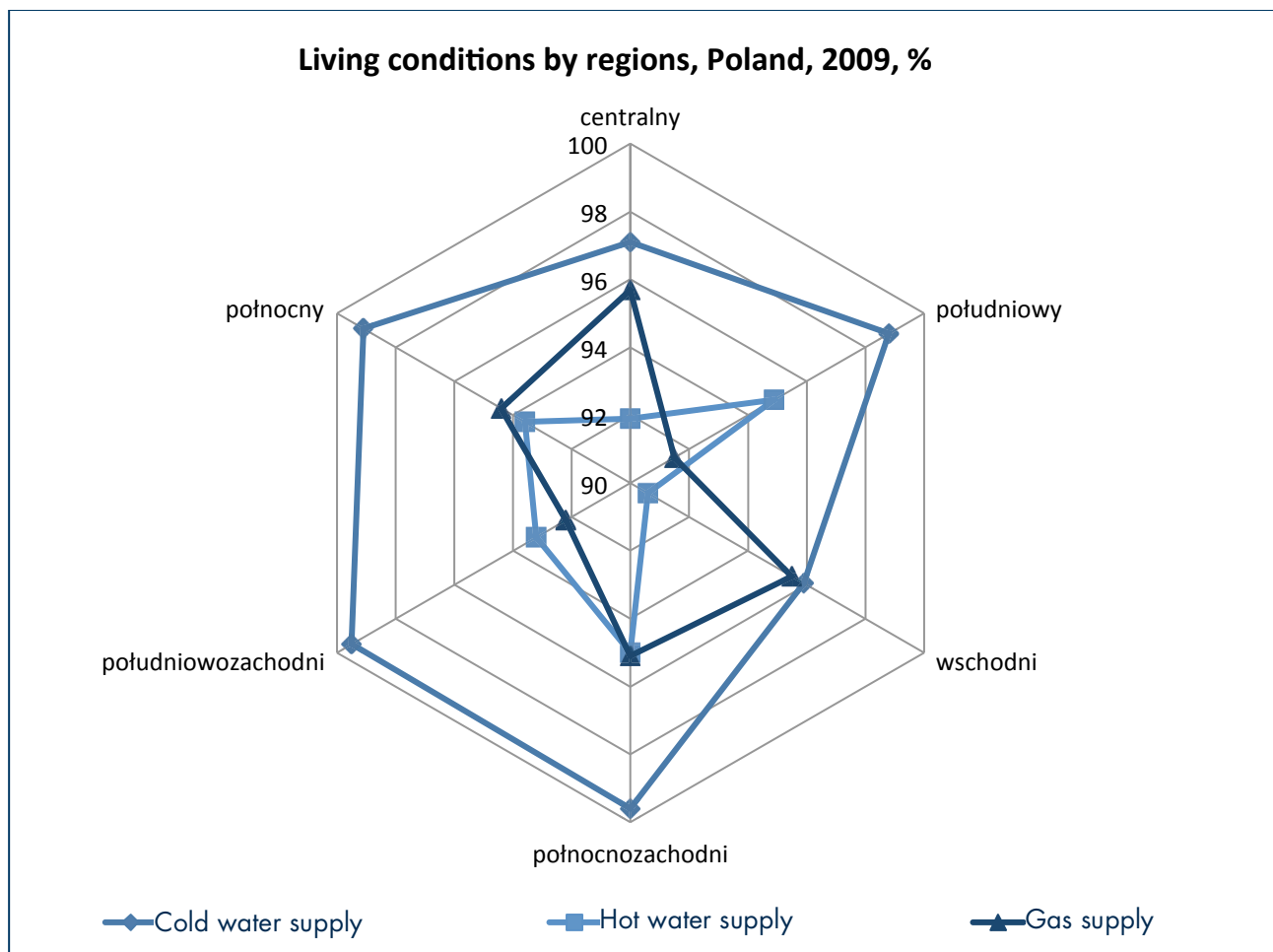
According to the data on the level of security of the necessary living conditions, a low level is registered in the eastern region (Wschodni), where such factors as the availability of heating in this region has the worst rate 32.1% in comparison to the best country indicator in the central region (Centralny) – 46.3%.

Thus, a great exodus from the eastern regions is evident. The central and southwestern regions of the country became attractive when in 2010 the flow of working population to the central region was 65.9 thousand people, and 55.2 thousand people migrated to the south (Południowy). Positive dynamics of migration balance is monitored in five *voivodstvos*: Dolnośląskie, Małopolskie, Mazowieckie, Pomorskie, Wielkopolskie.

¹⁰² Income after payment of all taxes.

¹⁰³ *incomes and living conditions of the population in Poland (report from the EU-SILC survey of 2009)*

Figure 14.



Source: *Incomes and living conditions of the population in Poland (report from the EU-SILC survey of 2009)*

Issues of internal migration of the population from country regions were not reflected in migration policies. However, internal flow creates problems which may not be visible at present, but in the long run they will create real risks, such as load on central cities and the need for their expansion, uncontrolled flows of population, depopulation of remote areas, problems of adaptation of domestic migrants in new territories. It can be assumed that these issues fall under the competence of the Ministry of Regional Development, which is directly responsible for the operation of the regions. At the same time, as noted in the first chapter, Poland is characterized by the decentralization of regions, and therefore at the local level, authorities should independently identify and establish mechanisms for sustainable resource development.

2.2 Evaluation of the experience of Poland in the area of Migration Policy and its application in the Kyrgyz Republic

It is expedient to define the following matters of this section that define the approaches to the development of Migration Policy and implementation mechanisms for the regulation of migration processes:

- 1. Historical perspective**
- 2. Institutional management system**
- 3. Organization of the process of policy development**
- 4. Contents of the policy**

1. Historical perspective

In order to understand migration processes in Poland, it is necessary to address the issues which revealed the necessity to create state policy in the field of migration and launch processes of transformation in society. One of these factors is historical perspective, which reflects the evolution of the situation.

Initially the Polish Migration Policy was chaotic,¹⁰⁴ as a response to the challenges of the consequences of the migration process; there was talk of the need for urgent action in a changing economic and socio-political situation in 1989. These include the following: creation of legislation as an effective migration control tool, institutional reorganization, the development of a strategic approach to the planning and implementation of state measures in the process of migration.

In the context of European integration, the country faced a number of challenges: as a country of emigrants, Poland was not ready to receive the massive inflow of migrants and refugees. Problems of insufficient knowledge of international regulations, tools, standards of procedures for the entry and residence of migrants, as well as in defining rules for regulation of migration flows (arising out of transit and immigration) manifested under these conditions. However, the institutional system did not comply with modern challenges. In these circumstances the state authorities had to take urgent measures to stabilize the migratory situation, which resulted in realization of major legal and regulatory documentation. Experts note this period as a period of “learning” migration and policies to respond to the dynamic phenomena in the process of migration.

In 2004, with the entry of Poland into the European Union, it became necessary to revise the legal framework for compliance with the standards and procedures adopted in the EU, as the country becomes an important element of European migration control system. During this period Poland experienced several waves of human mobility – economic emigration to improve the quality of life, immigration from the former Soviet Union and Asian countries, influx of refugees. These conditions posed a difficult task to firstly, protect the labor market from the influx of economic migrants, secondly to strengthen border security from/to the influx of illegal migrants as an EU member (and for compliance with the EC). In the development of the situation there was a need to elaborate approaches, develop procedures and improve legislation as a coherent Migration Policy.

In the Kyrgyz Republic, as noted above, the actual question of mass outflows (usually illegal) is factual, and in these circumstances, the primary objective of harmonizing national legislation (of receiving countries

¹⁰⁴ From interview with experts.

and countries of outflow) in the area of migration takes primary importance. This means creation of common approaches for understanding the possibilities of migration management, giving a new impetus to cooperation among states. This stage was passed in Poland upon joining the EU.

At the same time, recent trends within the framework of Eurasian integration (Eurasian economic area, Customs Union) force consideration of a system of measures (mechanisms and procedures) for the smooth entry of migrant workers from Kyrgyzstan into the new geo-economic education in the Eurasian area. It should be expected that in the long-term, integration partners would toughen conditions for migrant workers to protect their own labor markets. In this respect Poland's experience in terms of the process of joining the EU, harmonization of procedural issues, and building communications may be helpful for Kyrgyzstan. However, since this issue falls beyond this analysis, it should be examined through additional research.

2. Institutional management system

As a consequence of the political changes in the past 15 years, in order to address issues associated with migration, Poland created legal and institutional framework conforming to existing European standards. It should be added that the process of creating the framework continues to reflect the changes in the policy of the European Union in migration and provision of asylum.

The reforms, which began in the 90s, identified two key agencies responsible for the planning and implementation of measures in respect to verification of entry and the stay of foreigners in Poland. The central coordinating role was assigned to the Ministry of Internal Affairs, which is responsible for internal security as the main functional task defined within the strategic supervision of the stay of foreigners on the territory of Poland. The authorities of the Border security service have been defined within the framework of the implementation of controls in respect to foreigners, investigation and enforcement of such procedures as readmission, detention and deportation of illegal migrants.

Prior to 1989, the Border service was deemed as a military organization for conservation and protection of the borders, and in the early 90s with the mass inflow of illegal migrants, the development of the processes of labor migration, human trafficking, etc., it became necessary to review the concept of the border service to make it compliant with current realities. The new concept is based on three basic components: the professionalization of personnel (by increasing the number of civil personnel), better control of external borders, and control of the legality of the stay of foreigners throughout the country. It should be emphasized that the new reforms gained impetus in the years preceding accession to the EU and Schengen Agreement.

The Department of Migration Policy has been created under the management of the Ministry of Internal Affairs. This inter-departmental group has been established with the principal task of developing strategic documents and program directions of the Migration Policy. It should be noted that each institutional agency (Ministry of Labor and Social Policy, Border service, Foreign Office, etc.) has created the appropriate directions. In order to ensure the consistency of decisions taken in respect to foreign nationals and to strengthen the institutional framework of migration management, they decided to allocate activities between the responsible agencies. Extending the powers of the Foreign Office, specifically:

- Resolving matters of legalization for foreign citizens
- Resolving the expulsion of aliens

- Granting and withdrawal of refugee status
- Organization and management of refugee centers
- Provision of essential services to refugees
- Administration of issues in granting citizenship
- Administration in respect to repatriation, etc.

The competence of the Ministry of Labor and Social Policy includes the issuance of work permits to foreign citizen. Other issues related to the regulation of migration processes fall under the jurisdiction of the Ministry of Internal Affairs. At the same time, as confirmed by governmental representatives, the weakness of this system is the absence of a coordinator to work with immigrants from governmental agencies.

Thus, the responsibility for implementation of the Migration Policy is distributed between different agencies, the key of which when making decisions is the Ministry of Internal Affairs. According to the author's opinion and expert analysis of the results of recorded interviews, this complicated system leads to insufficient coordination among responsible agencies that are involved in regulation of migration flows. Experts note that the key problems of coordination and inadequate communication between agencies (or possible lack of it), impedes efficient and quick responses to modern challenges.¹⁰⁵

At the same time, practical experience shows that the Ministry of Labor and Social Policy is beginning to play a larger role in the Polish system of migration control, and is responsible for the launch of integration programs and promotion of the inclusion of migrants on the labor market. However, until 2004 the issue of the migrant's role in Polish society (economy) had low priority. The relevance of issues in the area of migration is preconditioned by the situation and challenges facing the state in different stages of formation. Thus, it can be assumed that Poland is in the process of "borderline" transition when relevant to migration from the point of view of national security is changing in the context of ensuring social rights of migrants and preventing their social exclusion.

The absence of a single structure responsible for migration development is a vivid example for the Kyrgyz Republic. Prior to the creation of the new governmental agency on December 26, 2011, the Ministry of Migration and Employment coordinated all issues in relation to migration. Within the new governmental structure, control of migration processes is distributed between two agencies – Ministry of Foreign Affairs and the Ministry of Youth, Labor and Employment. Considering the importance of the issues within the development of migratory mobility, the definitive role of migration for the development of the economy, specific for the Kyrgyzstan absence of succession of previous decisions and the "formal governmental approach to coordination of activities in respect to stabilization and regulation of migration processes"¹⁰⁶, distribution of responsibility in respect to the regulation of migration processes among ministries shows the improvidence of such decision. The distribution of functions among ministries and determination of responsibility for creation of Policy in respect to migration and its implementation are still open. Thus, we can expect a reduction of the efficiency of the management system in respect to migration within this perspective.

At the same time the Polish experience in reforming the Border control service was not only interesting for Kyrgyzstan in respect to working with migration flows. Problems concerning the need to reform power structures within the ministries are raised at various levels with increasing frequency, and a draft Concept for reforming the internal affairs structures in Kyrgyzstan for 2012-2014 has been developed. However, the implementation of the proposed initiatives is impeded by a certain level of corruption among employees,

¹⁰⁵ From interview with experts.

¹⁰⁶ Legal state regulation of migration processes. Ch.I. Arabaev, A.M. Abakirova

limited access and the lack of development opportunities, lack of necessary equipment and modern technology, and a low level of material and technical equipment within the internal affairs agencies.¹⁰⁷

As it is evident from the Polish experience, the state Migration Policy should not be limited to questions which determine the relevance of the policy at the moment. A comprehensive strategic approach that considers the whole range of issues related to migration processes has been implied.

3. Organization of the policy development process

In 2007 the Ministry of Internal Affairs established a workgroup for the elaboration of migration policies. Experts of analytical agencies, representatives of non-governmental organizations, which are directly related to provision of assistance to migrants, researchers from scientific institutions, participated in the preparation of the strategic analysis and subsequent paper. Many experts stressed that the development of the document was accompanied with a constructive dialogue between the civil sector and governmental agencies, and the Department of Migration Policy played the main role within it. The positions of experts were not only heard, but they were also considered as recommendations in the final version of the document *"Polish Migration Policy: the current situation and further actions."* As stated in an interview: *"The most important thing is that the authorities have the political will to speak. It was a really productive, focused work on both sides."*

At the level of organizational matters, the process of cooperation between various agencies and the civil sector should be noted. The process of preparing a strategic document included implementation of communication technologies – a communication area allowing representatives of various governmental agencies and authorities, non-governmental organizations to join forces in solving the same problem. It should be noted that the process of communication between different actors at the initial stage was perceived as a complicated task. It required use of communication techniques to align and record different, sometimes opposing positions. The positive effect of such cooperation lies in the fact that, as noted in the Department: *"This mechanism has allowed us to raise expertise in migration in every ministry."*¹⁰⁸ Thus, in the process of working on a programmatic document, the Department of Migration Policy has created "new" experts on population migration, who in their "native" structures have already become bearers of ideas in migration policies.

A distinctive feature of the document is its further development, as the developers plan to assess the implementation of the instrument every four years, to update the document, and ensure the actual embodiment of the Policy. The primary task is to clearly specify the action aspect of the document, which is proposed as the next step in developing clear measures, deadlines, responsible persons, etc.

If we talk about experiences and lessons for Kyrgyzstan, then particular significance should be placed on the process of organizing work on the policy document, and it is notable for the fact that the involvement of analytical agencies and the civil sector to the process belongs to the official authorities.

The second point, which should be emphasized, is that despite the absence of a mass influx of immigrants into Poland their share within the total population is 0.08%. In view of the expected economic growth, and hence the spike in the inflow of migrants, the Government is already thinking about the creation

¹⁰⁷ Draft Concept of reforming internal affairs structures of Kyrgyzstan for 2012-2014.

¹⁰⁸ From interview with head of the Migration Policy Department.

of migration management tools: mechanisms, procedures, and legislation. Thus, Poland uses a “pledge” to create actual legislation to regulate the various procedures to prepare for a massive influx of migrants.

The matter of influx of population from border areas of adjacent countries is relevant for Kyrgyzstan in this respect. It is necessary to understand that the demographic “pressure” in neighboring countries has forced the population of these countries to gradually and illegally acquire territories of Kyrgyzstan, and we should expect the intensification of this process in the future. Kyrgyzstan is not “collateral” and prevailing deterrents (legislative, power, etc.) do not allow you to effectively address the problems of modern territorial expansion. Consequently, there was a need for a new approach to working with boundary areas, legislative initiatives, and programs for integration of “aliens” within Kyrgyz society.

4. Policy contents

Analysis of the migration situation of countries allows recording the peculiarities of the Policy development. Poland’s Migration Policy is built around the influx of immigrants as a factor of labor constraint on the domestic market. The situation necessitates the introduction of various integration programs for refugees, migrant workers, in relation to the challenges of socio-cultural adaptation of immigrants in Polish society. System integration programs, covering a limited category of migrants was only created after joining the European Union. In turn, work on the national migration strategy was initiated after Poland joined the EU and Schengen Agreement area. This is primarily due to the realization for the need of foreign labor in the context of the significant outflow of Polish migrants to the Western Europe. However, it was necessary to reflect and react to new trends in the Migration Policy, such as the emergence of large diaspora migrants (Armenian, Vietnamese) and the creation of stable routes and forms of circular migration between western regions of Belarus and Ukraine, on the one hand, and Poland on the other.

According to the Migration Policy within the framework of the integration program for vulnerable foreigners, the following measures should be taken:

- Increasing the level of cooperation among immigrant communities within the process of integration of foreigners.
- Promoting the adoption of measures increasing awareness about problems of immigrants in Polish society.
- Promoting activities of awareness concerning the integration processes.
- Monitoring activities within the integration processes, etc.

The implementation of programs for migrant integration creates many problems related to the perception of migrants (refugees) into Polish society. Hostile attitudes towards migrants by local residents continues for several reasons: differing socio-cultural behavioral patterns and organization of living space, competition in the labor market, the well-established societal concept that funds aimed at supporting social programs for migrants should have been spent to support vulnerable classes of the Polish population.

However, there are a number of problems related to the behavior of migrants, who are not interested in participating in integration. This category of migrants is perceived in Poland as a transit territory between the country of departure and destination country.

An extensive program aimed at building communications between the Poles and migrants has been deployed, and the perception that migrants are needed in the context of the mass outflow of the labor force plays an important role in addressing gaps in some sectors of economy is being formed within society. As noted above, Poland initiated a wide-ranging discussion about the necessity of integration programs for all categories of migrants, including migrant workers (illegal), to facilitate the stay of foreign nationals in Poland on the one hand, and enhance the economic return on the other.

The generation of current tasks in the field of migration for the Migration Policy did not include matters related to the domestic flow of migrants. The author believes that this omission could lead to negative trends in the long run, since analysis has shown that Poland already suffers from a deficit in human resources in remote regions of the country.

The main emphasis in Kyrgyzstan concerns **labor migration**, where the outflow of population is considered to be a resource for development of the country. Within such policy the socio-economic situation is determined by the development of processes for labor migration and remittances from migrants. Government policy consists in supporting the training of highly skilled workers and training migrants with the necessary labor, special, and social skills to meet the requirements of different environments and to compete in the labor markets of receiving countries.

In addition, governmental policies aimed at addressing the problems of **internal migration mobility** of population mobility, which is a consequence of the low level of economic development of the regions and the lack of acceptable living conditions. Consequences of internal migration are:

- The uneven distribution of natural population. The current trend of domestic migration results in overcrowding the capital and its suburbs.
- The trend of retrogression in the demographic situation due to the outflow of young and middle age population, which forms the base for the functioning of the social system.
- Growth of depressed areas.
- Change to the qualification matrix and education potential of the region. For example, creation of skilled labor gaps due to ageing employees and their reduction in socially important branches of economy.
- The imbalance of manpower, production, caused by natural processes of movement of domestic migrant workers.

The decision marked the issues provided by the formulation and implementation of regional programs, and the employment policy, which would contribute to increasing employment in regions and small towns. This approach will reduce the scale of internal migration of population of working age in the Bishkek and Chuya regions. However, it does not eliminate the problems of quality living conditions, such as provision of social infrastructure (power, gas supply, heating, etc.) for the population.¹⁰⁹

However, policy in **population immigration** is practically unformed. The annual growth of immigrants and the public attitude towards foreign citizen (illegal economic migrants) is limited to ensure

¹⁰⁹ As noted by L.L. Rybakovskiy: "The feature of migration of the population, due to which it becomes an activity appearing as one of the basic needs of a human, becomes of the principal importance for development of the mechanism of influencing the migration behavior" Migration of population: forecasts, factors and policy. L.L. Rybakovskiy

control and registration of immigrants within the labor allowance established by the Government of Kyrgyzstan. As noted in the Program of measures: *"It is necessary to regulate the number of foreign migrant workers in the forthcoming years."* Policy in this sphere consists in developing clear requirements and criteria: Standard – duration of stay, financial and administrative – increased supervision of law enforcement.

With regard to investors and highly qualified specialists, the opportunity to obtain work permits with the right to yearly renewal is provided. For all other categories of foreigners working legally: workers and private entrepreneurs are limited to three years. It is assumed that such approach would encourage foreign citizens who make an economic contribution to the economy of the Republic.

Measures for work with refugees are determined by the laws and regulations and compliance with international standards and practices within the framework of signed conventions, as well as by improving the monitoring of the stay of foreigners on the territory of Kyrgyzstan:

- Further improvement of the legislation and procedures aimed at reducing the time needed to process applications and raise the efficiency of work;
- Development of activities in preparation for an emergency situation associated with the mass influx of refugees;¹¹⁰
- Continuation of activities aimed at the voluntary return of refugees to their homeland, migration to third countries;
- Further development of effective cooperation with the United Nations Office of the High Commissioner for Refugees.

Thus, it may be stated that the governmental approach towards immigrants consists in narrowly focused actions. Availability and implementation of integration programs, especially in areas close to the border, would remove some problems related to the co-existence of different communities on the one hand, and respect and observance of laws of the Kyrgyz Republic by emigrants on the other.

It is evident that in the control of migratory flows, each country should independently determine its capacity for integration programs and the number of foreign nationals it can accept. However, the integration of foreigners defines the "maturity" of a country, the ability of both society and the state to transform.

The main difficulty in implementing the proposed initiatives will be determined by the absence of a strategic vision of migration processes in Kyrgyzstan. The current governmental approach in the field of migration is based on an understanding of the need to address pressing problems as they arise. It can be assumed that some concepts created before the latest reforms (2011) in the government and changes in its structure are being implemented because of momentum, and therefore such approach overlooks current trends.

Contemporary institutionalized management of migration processes already creates problems in respect of the distribution of responsibilities in the area of regulation of migration issues. There are open questions concerning the distribution of functions between ministries and establishment of responsibility for shaping Migration Policy and its implementation. The creation of an interdepartmental group could be one solution, but this work presents certain difficulties in formation of a communication space among agencies, which would require a certain lag time to coordinate the positions among ministries.

¹¹⁰ It is necessary to consider proximity of borders to Afghanistan.

As regards elaboration of Program documentation, it should be noted that Kyrgyzstan has experience in elaborating strategic documents with the participation of a wide range of experts, and civil society, although such work is generally formal by nature, which is ultimately reflected in the implementation of the document. The following causes could be marked in this respect: lack of political will on the part of the decision-makers, and the lack of effective communication methodology between civil society and the government.

In the case of preparation and implementation of integration programs the main problems will be attributed to assignment of additional funding from the country's budget. At the same time, it should be borne in mind that society does not understand the necessity to facilitate the integration of migrants, and the current situation is due to a small number of immigrants in society.

2.3 Conclusions

The need to define the regulatory policy development system for migration processes is associated with socio-economic events, which transform social development processes:

- The changing demographic structure of the population and an ageing workforce create the need for the influx of migrants. In addition to attracting economic migrants, one of the mechanisms initiates the re-emigration process.
- At the same time the process of emigration reveals negative social consequences that distort traditional family values. The new phenomenon of "Euro-orphans" in Poland is a striking example. Similar processes have been observed in Kyrgyzstan – labor migration has become a family business. Migrants often leave their families to search for work or leave small children in the care of relatives and neighbors. The younger generation is formed independently of parenting. This leads to the destruction of family values and traditions, and an increase in the number of street children and juvenile delinquents.
- Existing disparities in economic development of regions is the main factor behind internal mobility. If no measures are taken to align the level of regional development, the economic gap between regions will deepen in the long-term. In Poland, the issues of regional development fall within the competence of the respective ministry, which determines the policy for regional development. However, the outflow of population from remote regions is becoming increasingly intense, and this process presents new challenges for the country, but it currently remains misunderstood by official authorities.¹¹¹
- The Policy defines measures to regulate immigration processes that come from the need to improve the quality requirements of manpower (preference for skilled workforce). The influx of migrants poses serious challenges to the socio-cultural plan. Problems of integration for immigrants into Polish society become a topical issue.

¹¹¹ In interviews with experts, representatives of non-governmental organizations and public officials the process of outflow of population from regions was not stated as an urgent problem which requires the appropriate measures.

- Established different political and socio-economic conditions determine the difference between tasks of Migration Policy. Migration processes cover a wide spectrum of activities, institutional leadership, policy making, and depend on the significance of migration for the development of the country and the determination of policy priorities.
- The process of policy preparation involved communication technologies – a communication area has been created which allows representatives of different governmental agencies and departments to consolidate their efforts in resolution of the same problem.
- However, as shown in analysis of expert conclusions, the allocation of responsibilities to regulate the migration process between governmental agencies does not result in the quality of management: *“We do not have a coherent policy. Migration Policy is highly fragmented, bureaucratic and divided between several ministries.”*¹¹²
- Development of the policy document requires not only the participation of expert potential and representatives of the scientific community, but the widespread participation of civil society is needed, especially from non-governmental organizations directly involved in the emerging issues.
- The strategic component of the policy lies in the fact that there are mechanisms to regulate the massive influx of immigrants, which is expected in the medium-term. There are currently no integration programs being evaluated for working with different migrant communities.
- The distinctive aspect of the elaborated Migration Policy document is the possibility to update it within a given period: it is planned to evaluate the implementation of the document to ensure the real implementation of the Policy.
- Despite the significant difference in the levels of development of Poland and the Kyrgyz Republic, different conditions and the extent of development of migration processes, we may extend and successfully use the existing Polish experience in working with migration processes and their manifestations.

3. Recommendations for the development and regulation of Migration Policy in the Kyrgyz Republic

The conceptual viewpoint of the author in respect to creation of the Policy is based on the assumption that the increased need to rethink processes of migration mobility from the point of transformation of socio-cultural environment in respect to regulation of migration flows and definition of the Policy as a governmental platform for migration is growing. Selection of the economic benefits of labor migration only creates the risk of missing other opportunities for development and provokes a governmental platform which lacks the necessity to make additional efforts for the development of the territory.

Current conditions of development of the Kyrgyz Republic require an integrated approach to the creation of Migration Policy. In this instance the following condition should be preconditioned – policies should correlate with the regional development concept, and be correlated with employment policy and

¹¹² From interview with experts.

education policy. However, in the first stage it is necessary to define a state agency which will elaborate the Migration Policy.

Primary objectives:

Within the process of managing migration flows

To the Government of the Kyrgyz Republic

- To establish a permanent governmental authority (or a single interdepartmental agency) to coordinate the activities of all state institutions responsible for migration management. Such authority will be in a better position to collect, process and analyze statistic information in relation to migration.
- To review the distribution of responsibilities among state agencies dealing with migration – it is necessary to elaborate a mechanism of interaction for actors involved in migration management by regulating the relations and communications between them.
- To launch a public debate on the issues of Migration Policy with broad coverage by experts and civil society, with international organizations and analytical agencies.
- To develop the concept of Migration Policy, which is to establish goals, objectives, means and tools for effective management of migration processes.
- To elaborate an adequate modern technology system of registration of external and internal migrants within the harmonization of statistical data. In doing so it is necessary to consider that the registration system should correlate with statistical data of the destination countries of migrant workers.
- To develop a program for training personnel to work with both migrant workers and those immigrants who need help. To initiate the process of occupational retraining of employees of governmental institutions and local authorities who work directly with immigrants.

Within the framework of the labor market

To the Ministry of youth, labor and employment and business structures

- To restore and develop the system of professional education of migrant workers. The state policy should be to support the delivery of high quality professional education, learning the language of the country of potential migration, knowledge of basic laws as well as migratory behavior in respect to staying in another country.
- It is necessary to elaborate a human resources development program which will contribute to resolving the problems of employment, identifying the needs of the labor market and creating a demand for labor. The introduction of a mechanism to monitor the needs of the labor market for this purpose, will allow for the regulation of the labor market depending on the required qualifications.
- To create jobs for unemployed citizens in public works paid by the government, promotion of entrepreneurship through micro loans that will contribute to the reduction of tension on the labor market.

Within the framework of regional development

To relevant ministries, local authorities, State agency for construction and regional development

- To elaborate a regional rating system for regions reflecting key criteria for life support for the population as well as social indicators.
- To take measures to reduce potential migration from regions of the country and stabilize migration sentiments in order to reduce spontaneous migration flows through regional economic development, the main purpose of which is to improve the quality of life of the population as an objective basis for meeting human needs through the establishment of a system of material and socio-cultural welfare.
- To take “inventory” of staffing in the regions of the country and identify needs in pedagogical and medical personnel with relevant qualifications.
- To elaborate a system of measures to satisfy need in Kyrgyzstan regions for pedagogical and medical education in order to ensure social development. Further increase the accessibility and quality of medical services by means of improvement of the material and technical base of healthcare institutions.
- To launch a process of the development of economic and social infrastructure of regions to ensure an improved living environment, achievement of a decent standard of living and the quality of life of the population. To develop a program of preferential loans for the creation of small businesses and shops for processing local raw materials.

Within the framework of socio-cultural factors

To relevant ministries, non-governmental organizations and analytical agencies

- To develop a information portal (as in Poland) that will not only allow communication with migrants outside of the Republic, but will also contribute to the education of migrants about the economic opportunities that exist in the labor market of Kyrgyzstan.
- To consider the possibility of developing integration programs for immigrants.
- To develop mechanisms for providing state social support to the abandoned children of migrant workers or elderly members of the family. It should be noted that such support should not be limited to financial assistance. It is equally important to ensure access to education and medical care.
- To develop a program for the social rehabilitation of labor migrants after returning to their homeland. This concerns socially vulnerable groups who face difficult conditions in the country of labor migration and need governmental support upon their return.

The above recommendations are addressed to the two key ministries which are currently working in the field of migration: the Ministry of Foreign Affairs and the Ministry of Youth, Labor and Employment, which may make use of the resources of local authorities, expert support, specialists working in the framework of migration management, and through assistance from international organizations such as the International Organization for Migration, etc.

However, the author’s position is based on the need to create a single governmental authority whose functional activities will be concentrated around coordination of migration processes, development of governmental policy goals and objectives, as well as the position of the state in respect to the migration of the population. In this respect Zhogorku Kenesh of Kyrgyzstan, Government of Kyrgyzstan will have to review

the current structure of the government to evaluate the possibility of creating such authority. This initiative could be implemented depending on the political will of the ruling parties.

In general, the Migration Policy of the state should proceed from national interests, the interest in developing local territories, and respecting the interests of migrants. This approach involves a change in the format of social relationships to ensure structural changes on both the local and regional levels. Thus, depending on policies and objectives of management, migration can play an important role in achieving the positive concepts of social development.

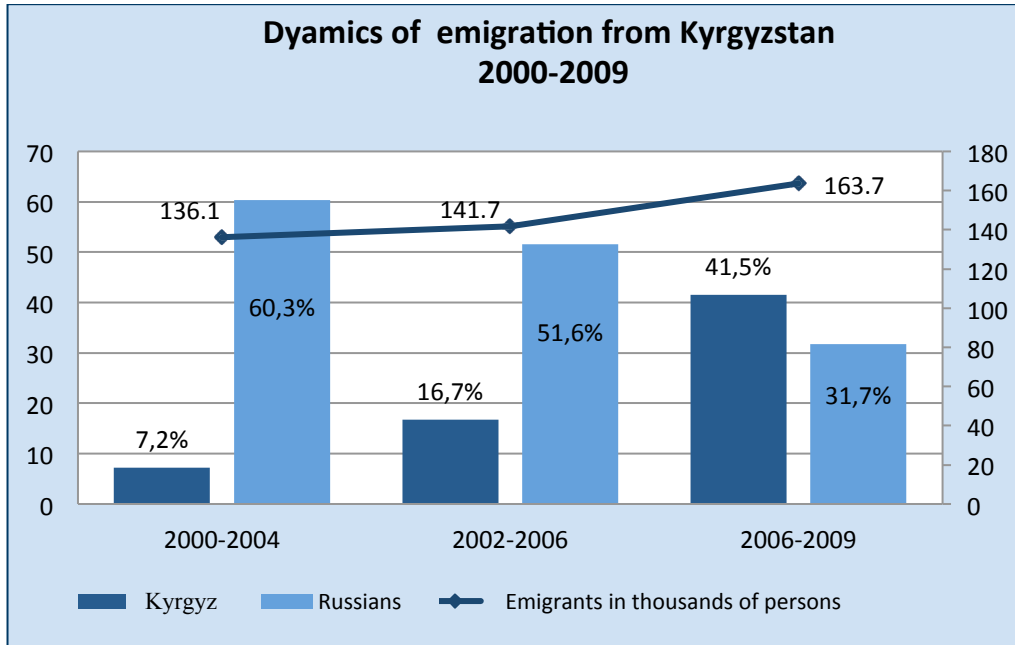
References

1. *External Migration of Russian Speaking Population of Kyrgyzstan: Problems and Consequences*. Bishkek, 2000.
2. Rybakovskiy L.L.: *Migration of Population (Theory)*. Moscow, 2003
3. Arabaev Ch.I., Abakirova A.M.: *Legal State Regulation of Migration Processes*. Bishkek, 2004
4. Bondyreva S.K., Kolesov D.V.: *Migration (Nature and Phenomenon)*. Moscow-Voronezh, 2004
5. Chotonov U.Ch.: *On the Problem of Migration Processes in SCO Countries. Central Asia and World Culture*. Bishkek, 2008. No. 1-2.
6. *Labor Migration from Kyrgyzstan*. Bishkek, 2008.
7. *Bulletin of the Academy of Pedagogic and Social Sciences*. Moscow-Voronezh, 2007
8. *Migration. Roundtable Materials*. Moscow, 2007
9. *Kyrgyz Republic: Regional Development (Problems and Ways to Solve Them)*. Bishkek, 2011
10. Lukashova I., Makenbaeva I.: *Impact of the Global Economic Recession on Labor Migration from Kyrgyzstan to Russia*. Bishkek, 2009
11. Grigorichev K.V.: *Regional Migration Policy in the 2000s: Contents, Tools, Contexts*.
12. *Analysis Of Migration in Russia*. World Bank. April 2006.
13. *Migration Policy in CIS countries: needs and alternatives*, Budapest, 2011
14. Izabela Koryś: *Migration Trends In Selected EU Applicant Countries: Poland*, 2002
15. Izabela Koryś: *Migration Trends In Selected EU Applicant Countries...* 2003
16. Kathy Burrell: *Migration to the UK from Poland: Continuity and Change in East-West European Mobility*.
17. Anna Kicinger, Agnieszka Weinar: *State of the Art of the Migration Research in Poland*. 2007
18. Małgorzata Szyłko-Skoczny, Maciej Duszczyk: *Polish immigration Policy – opportunities and challenges for the labor market*.
19. Mikolaj Pawlak, Mirosław Bieniecki: *Labor Atopies of Integration. Lessons from Belgium, Great Britain, Catalonia and Portugal*. 2009

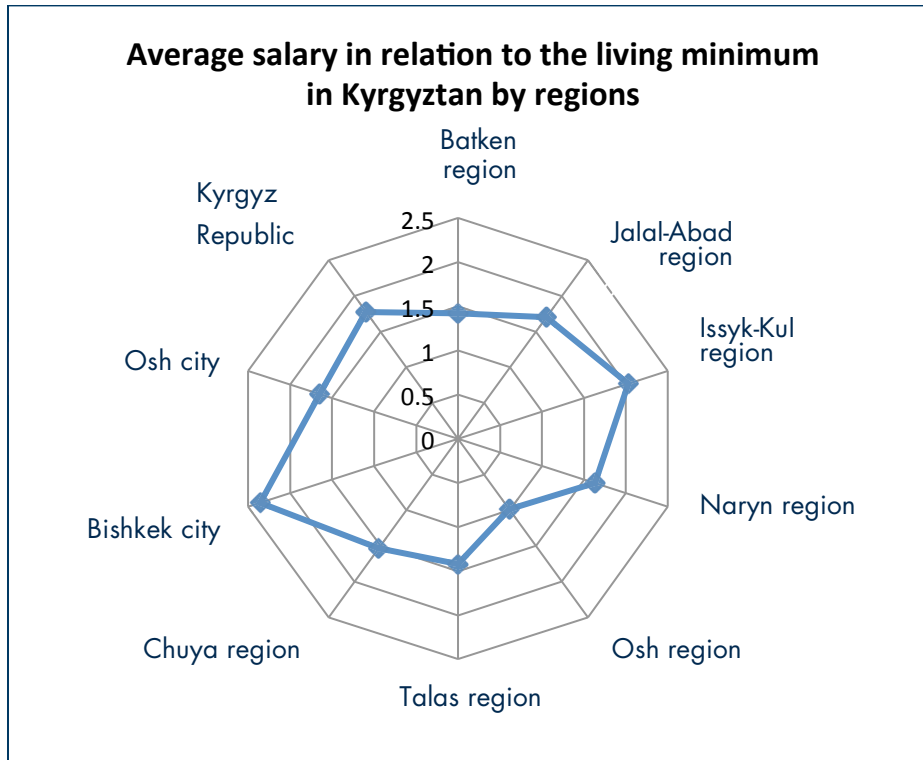
20. Katarzyna B. Budnik: *Emigration Triggers: International Migration of Polish Workers between 1994 and 2009*, Warsaw 2011
21. *Developing Georgia's Migration Policy: lessons from Poland* Warsaw, 2011
22. *Polish Migration Policy: the current situation and further activities*, 2011.
23. Report "Immigration and naturalization policy in Russia: the current situation and the direction for development "
24. Gradirovskiy S., Esipova N.: *National report. Migration Policy of the Kyrgyz government: confrontation or adaptation to strong human flows?* Bishkek, 2009
25. Report Ministry of labor, employment and migration of the Kyrgyz Republic for activities in January-November 2010.
26. Analytical report of the Ministry of labor, employment and migration of the Kyrgyz Republic for 2011
27. Demographic Yearbook of the Kyrgyz Republic 2011
28. *Incomes And Living Conditions Of The Population In Poland* (report from the EU-SILC survey of 2009)
29. *Household Budget Surveys in 2010*. Central Statistical Office
30. Demographic Yearbook of Poland 2011

Appendices

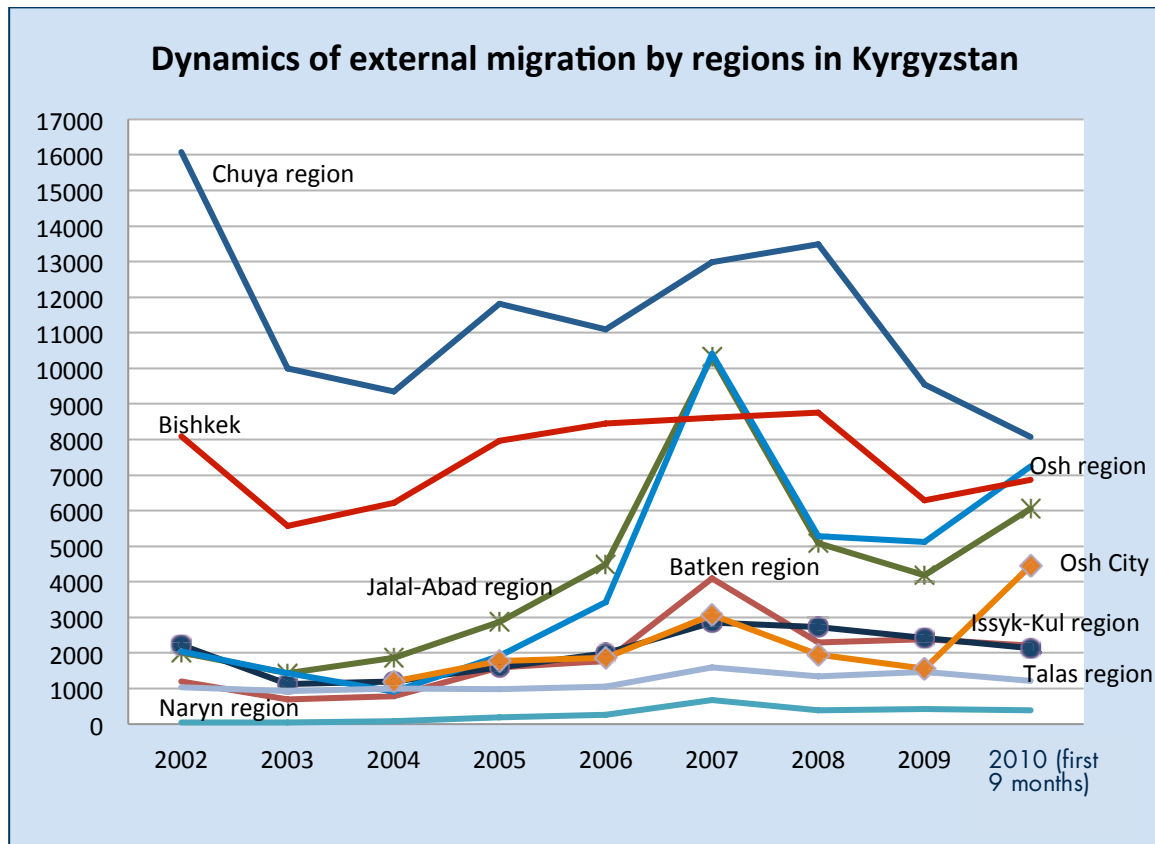
Appendix 1



Appendix 2



Appendix 3



Appendix 4

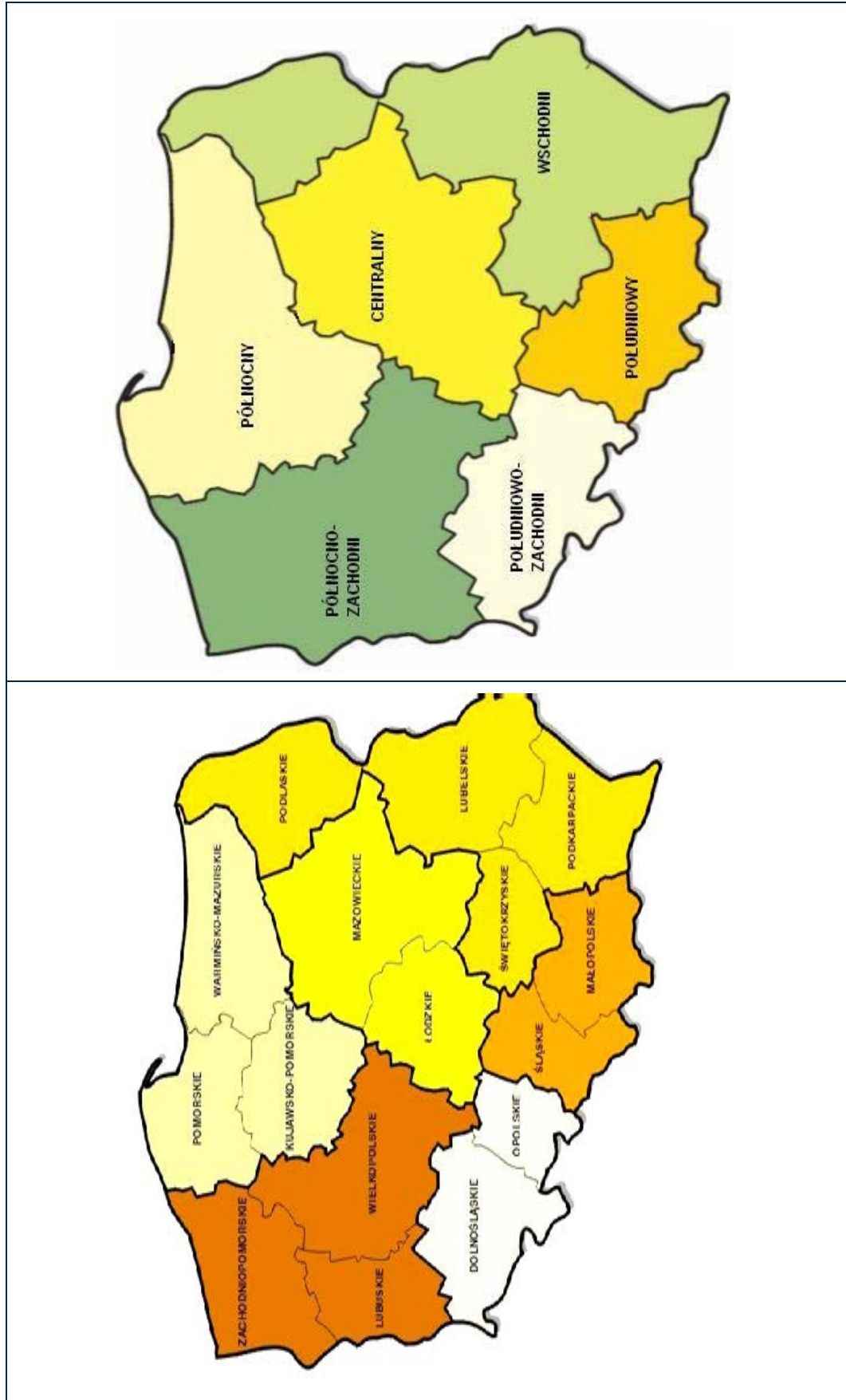
Emigration of Kyrgyz population by target countries and regions

Target countries and regions	Emigrants in thousands of persons									
	1990	1995	2000	2005	2006	2007	2008	2009	2010	
Europe	13,898	20,987	22,914	18,416	41,221	31,163	25,710	15,726	14,651	
European Union (15 m.s.) including	13,497	20,650	22,636	18,047	40,446	30,229	24,706	15,137	13,997	
Germany	11,587	18,161	20,472	12,646	12,646	12,646	12,646	12,646	6,818	
Great Britain	87	154	189	3,072	17,996	9,165	6,565	3,502	3,472	
European Union (27 m.s.)				18,128	40,622	30,465	24,951	15,259	14,143	
North and Central America	4,092	4,874	3,798	3,460	5,067	3,912	4,010	2,539	2,392	
Other countries and continents	450	483	287	366	648	405	420	355	491	
Total	18,440	26,344	26,999	22,242	46,936	35,480	30,140	18,620	17,360	

Appendix 5 Average monthly incomes and expenditures and material status of households by regions (voivodstvo) of Poland and groups of households

Voivodstvo	Average monthly incomes and expenditures per inhabitant in relation to the national average, %		Incomes	Expenditures	Assessment of the material status of households in per cents of household status groups					Internal migration		
	Incomes	Expenditures			very good	good	medium	bad	very bad	ingoing	Outgoing	
			In Polish zloty									
Dolnośląskie	103.9	102.8	1,239.17	1,018.93	3.3	20.9	54.3	13.5	8.1	422621	422621	
Kujawsko-pomorskie	97.1	93.2	1,158.49	923.63	2.0	23.8	58.1	11.6	4.5	35,848	22,929	34,269
Lubelskie	82.0	83.3	978.49	825.53	1.3	20.2	55.6	16.3	6.7	20,650		25,517
Lubuskie	96.7	98.1	1,153.06	972.30	2.8	22.8	46.9	17.1	10.4	12,781		13,255
Łódzkie	98.8	104.5	1,178.73	1,035.64	1.9	15.7	60.3	14.9	7.3	22,572		24,329
Mazowieckie	92.9	95.8	1,107.54	949.82	2.5	25.9	53.3	13.3	5.0	31,841		28,168
Mazowieckie	134.3	131.1	1,601.97	1,299.85	4.1	25.4	53.2	12.2	5.1	69,615		56,928
Opolskie	93.5	103.1	1,115.73	1,021.90	2.6	27.0	56.2	10.0	4.2	10,428		11,099
Podkarpackie	76.1	82.7	907.28	820.00	1.7	19.5	58.6	14.5	5.8	18,579		20,552
Podlaskie	92.5	85.8	1,103.20	850.56	4.8	25.4	49.9	15.2	4.8	11,731		13,347
Pomorskie	104.2	100.8	1,243.12	999.05	2.6	23.1	54.6	11.5	8.2	30,661		27,912
Śląskie	98.0	101.5	1,168.42	1,005.93	2.9	24.1	54.3	12.7	6.0	44,185		47,379
Świętokrzyskie	86.0	83.9	1,026.36	831.70	2.0	19.8	52.9	18.5	6.9	11,044		13,611
Warmińsko-pomorskie	92.5	87.4	1,103.39	866.15	1.8	21.3	54.8	17.1	5.1	16,772		19,493
Wielkopolskie	94.4	90.9	1,125.74	901.27	2.1	20.7	59.9	11.5	5.8	42,363		40,657
Zachodnio-pomorskie	99.5	97.3	1,186.91	964.94	3.2	22.5	54.4	12.6	7.3	20,622		21,733

Appendix 6 Map of Poland - division into regions and voivodstvos



Appendix 7 Net income levels and amenities status of households of Poland by voivodstvo and regions

Voivodstvo	Region	2005			2006			2007			2008			Living conditions by amenities of households [2009], %			
		Net income levels after taxation, %			Net income levels after taxation, %			Net income levels after taxation, %			Net income levels after taxation, %			Cold water	Hot water	Gas	Heating
łódzkie	Centralny – Middle Poland	114.4	114.2	115.1	115.8	97.1	91.9	95.7	46.3								
Mazowieckie	Poludniowy	105.0	103.1	102.0	100.5	98.8	94.9	91.5	40.2								
Śląskie	Southern Poland	85.4	84.7	83.3	83.8	95.9	90.6	95.5	32.1								
Lubelskie	Wschodni																
Podkarpackie	Eastern Poland																
Podlaskie																	
Świętokrzyskie																	
Lubuskie	Polnocozachodni	95.3	98.5	98.3	96.3	99.6	95.0	95.1	35.4								
Wielkopolskie	North-West Poland																
Zachodniopomorskie																	
Dolnośląskie	Poludniowozachodni	105.4	103.7	105.3	100.9	99.5	93.2	92.2	35.7								
Opolskie	South-West Poland																
Kujawsko-pomorskie		92.3	93.8	94.8	97.0	99.1	93.6	94.4	41.0								
Pomorskie	Polnocny																
Warmińsko-Mazurskie	Northern Poland																

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

**ISAF troops withdrawal from Afghanistan in 2014:
How should Tajikistan be prepared for that?**

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***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
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Introduction

A declaration made by U.S. President Barack Obama in 2011 that American troops will withdraw from Afghanistan by the end of 2014 has sparked discussions about the impact to security in the region. Several coalition members, including France and Australia, have already announced their intention to speed up the withdrawal of their troops, so the situation may change anytime and go far beyond the planned one.

Highlights:

- ***In each possible scenario of further developments in Afghanistan, Tajikistan is challenged to be faced with the threats, like those which are existed so far - drugs, weapons and radical extremism.***
- ***The threats coming out from instable Afghanistan is the issue of the regional security, which should be addressed in cooperation with all Central Asian States.***
- ***Stability in Afghanistan brings economic opportunities for Tajikistan.***

The question of the future of Afghanistan as a state is on the agenda of its neighbor countries, too, including Tajikistan, which has a 1400-kilometer boundary (mostly in the mountains) with the northern part of Afghanistan. Tajik-Afghani border control was and still is one of the key issues of security not only in Tajikistan but also throughout the region. Drug traffic from Afghanistan to Russia and Eastern Europe is not the only problem here; there is always a threat of spreading Islamic radicalism and cross-border clashes, which still take place. In 2009, terrorist Mullo Abdullo and hundreds of militants crossed the Tajik-Afghan border into the Rasht Valley and organized several attacks against the Tajik military.

Concerned with stability issues in Afghanistan, the Tajik government sought opportunities, “knocking on the doors” of all potential international partners who could assist on strengthening the borders and to help prepare for change in Afghanistan, with a mind of those changes will cost Tajikistan.

This analysis shows that in each possible scenario in Afghanistan after the foreign troops withdraw, the threats to Tajikistan are the same as those that have existed so far: drugs and weapons trafficking, and Islamic radicalism. It is very important to bear in mind that the role of the countries that neighbor Afghanistan is critical in building stability there.

The paper sets the goal to consider the question of the ISAF troop withdrawal and its outcomes and impacts, from the perspectives of one of those neighbor countries – Tajikistan. It is addressed to Tajik policymakers and officials who are looking for answers to these questions:

What will happen in Afghanistan after 2014? What are the threats to the region? How should Tajikistan and its partners prepare?

Afghanistan possible scenarios and impact on Tajikistan

Currently a lot of experts attempt to predict the possible scenarios after the withdrawal of the ISAF troops in 2014. Ones say that USA is going the same road and have made the same mistakes as the USSR did in 1989, and will make the same mistakes (box 1). Others argue that current situation cannot be compared with the one that faced the USSR, due to the following factors:

- a) Unlike the USSR, the Americans are going to provide not only financial but also military support to the Karzai government after 2014.
- b) Unlike Najibulla, who was confronted by a popular uprising, Karzai's only opponents are the Taliban, which is not representative of the whole population.
- c) Finally, the third line of argumentation insists that the withdrawal of ISAF forces in 2014 does not mean that the Americans and their partners will leave the region completely, and are likely to maintain a civilian presence.

However, the situation can be change before 2014, due to several factors and political developments, most notably:

1. Election results in the United States in 2012 could lead to the changing of the U.S. government's position on the issue.
2. The internal stability situation in Afghanistan:
 - (1) The Taliban could agree to start negotiations
 - (2) Continued provocations by American soldiers will increase popular protests, which could lead to changes in the scheduled tasks.
3. A possible military conflict between Iran and Israel, which, in case of action with American involvement may mean that the United States would maintain a military presence in Afghanistan. Or, in such an event, the United States could decide to focus only on Iran and leave Afghanistan prior to the scheduled time.

In any case situation in Afghanistan can influence and have spillover effects on the situation in neighboring countries, especially Tajikistan. For Tajikistan it is very important to consider the outcomes of troops withdrawal and be prepared to preempt or address their immediate or long-term implications. What kind of impacts could the situation in Afghanistan have on Tajikistan – social? Security? Economic?

The paper offers analysis of possible scenarios based on the experts opinions and consider what kind of impact each single case would have to Tajikistan.

Box 1.

"...we can notice the amazing similarity and parallels in the mistakes and failures between USSR in 80s and USA and coalition now:

1. Both Soviet and USA interventions were self-assigned mission –mission for political and economical modernization of Afghanistan;
2. Both USSR and USA reached their primary goals (to remove Amin and to destruction of Al-Qaida) but in both cases the military actions were continued, despite of reaching preliminary goals;
3. Both USSR and NATO did not realize that their heavy-equipped troops are not adequate tools to fight with Maajhedi and Taliban in the Afghan landscape;
4. Like USSR the coalition trains Afghan soldiers and create semi-people's volunteer crops from local people, continues militarization of the society will lead to the situation where the sounds of the bombing would be heard for the years in Afghanistan"

Wulf-W.Lapins./Germany

Scenario 1. – Stability and development in Afghanistan

The situation goes as planned – the withdrawal takes place as it was scheduled and eight American bases remain to help the maintain stability. Karzai, with the support of the White House, reaches a compromise with the Taliban, which becomes a part of the political system of Afghanistan. Western and neighbor countries build a long term development program with Afghanistan as a partner.

Impact on Tajikistan – This is the ideal scenario. Any agreement with the Taliban would be a great success, as such. It is unlikely, however, that drugs and weapons trafficking will disappear.

Illegal trade of drugs and weapons - During more than 30 years of war and instability, a huge amount of weapons have entered the country and many people still earn money in the drug trade, given the scarce alternatives. So, even in the case of stability, drugs and weapons trafficking will remain problem.

Partly solving isolation – Stability in Afghanistan can give Tajikistan the opportunity to implement infrastructure projects and would be an opportunity for Tajikistan to gain access to global markets via Afghanistan.

Energy security –The opportunity to building electricity transmission channels from Turkmenistan to Tajikistan would free Tajik society from the energy crisis from which it suffers each winter.

Economic opportunities – Rather than just being a hub of natural resources, Tajikistan, along with other countries of the region, can implement different development projects with Afghanistan, such as in agriculture, trade, and the hydroelectric sector. For example, the Sangtuda hydropower station can supply electricity to Afghanistan.

Regional cooperation – Finally, Tajikistan could become a strong partner of Afghanistan and could play a significant role in both the development of the partner country and to fulfill a positive regional cooperation.

Response: In that case Tajikistan, along with other countries could realize its national interests through joint initiatives with Afghanistan. Tajikistan would have the opportunity to continue to implement its “multi-vector” foreign policy, choosing partners based on interests and not based on threats. Tajikistan will, nevertheless, still face the challenge to protect its borders from drugs and weapons trafficking and border clashes, which will take place from time to time.

Scenario 2. Taliban take power

ISAF troop’s withdrawal takes place and responsibility for security is handed over to the Karzai government. The Taliban became more active and popular among the population. Faced with financial problems, and under pressure from their societies, who demand withdrawal promises be fulfilled, the Americans and coalition members do not continue supporting Karzai. Karzai cannot handle the situation independently and the Taliban take power.

During 10 years of military intervention, the United States and its partners could not defeat the Taliban, and it is evident that, having started the process of withdrawal, it cannot not succeed within 1-2 years. Moreover, observer reports, articles, and field reports show the growing strength of the Taliban. At the same

time, incidents involving individual American soldiers worsen the situation and increase opposition among the Afghan population to the American presence, which certainly plays in favor of the Taliban.¹¹³

Some experts believe that the issue of Afghanistan could be solved only politically but not militarily and, according to them, the United States is currently conducting or preparing for negotiations with the Taliban office in Qatar. In February 2011, U.S. Secretary of State Hillary Clinton undertook her first attempt to hold negotiations to end fighting with the Taliban, proposing conditions to be fulfilled by the Taliban – disconnect with Al-Qaeda, and recognize the current Afghan government and constitution. The Taliban announced that negotiations will not take place until the total withdrawal of foreign troops and all Taliban members held in American and Afghan prisons are released. Given the diplomatic stalemate and strong indications that the current Afghan government cannot handle the situation independently and keep the country stable, we cannot exclude the possibility that after the withdrawal of ISAF troops, as a result of negotiations with the Afghan government or military, the Taliban come to power.

Impact on Tajikistan:

Security threats - Some experts believe that the Taliban pose no direct threat to stability in Tajikistan, as the Taliban have no goal of expanding their power into the territories of neighboring countries. The main mistake of the Taliban, which became the main motive for the American intervention, was hosting Al-Qaida in its territory. Until September 11, 2001, the world did not care much about the internal situation in Afghanistan. However, Tajikistan and other Central Asian states suffered from the other radical Islamic movements acting on the destabilization of the region, with the support of the Taliban in Afghanistan. Therefore, the indirect threats from the Taliban should not to be overlooked. After the Taliban came to power in Afghanistan, other radical Islamic movements like Islamic Movement of Uzbekistan, Salafiya, and Hisb-ut-Tahrir became more active in the region, having found a safe launching pad in Afghanistan. Such a situation leads to the destabilization along the Tajik-Afghan border and in the territory of other Central Asian states.

Illegal trade of drugs and weapons - The scenario sees an increasing volume of drug production and trade, which is the primary source of finance for terrorism and radicalism. Consequently, the spread of illegal weapons to and through the territory of Tajikistan may increase destabilization in the region, especially in Tajikistan.

Refugees – In this scenario, there also exists a threat of a flow of refugees from Afghanistan, which could be accompanied by epidemics of various diseases.

Isolation – In case of instability in Afghanistan, Tajikistan is likely to face the challenge of losing the opportunity to have an alternative route to access to global markets through the

Box 2 .

"...To most of Afghans the current situation reminds the Soviet army withdrawal 22 years before...

In 1989 after 10 years of war the Soviet troops leaved the territory of Afghanistan. The Najibulla government declared that Afghan revolution was capable to protect itself from enemies and there was no need for the Soviet troops. At the same time Najib started the negotiations with Mojahedin, which had equate the attempt as a sign of weaknesses of Najib government and later overthrow him.

After Soviet troops withdrawal a local army of 200000 solders was formed which was equipped by the rest of the Soviet armory. Mojahedin removed Najibulla government and the country was absorbed in the civil war for the years..."

Behruz Abdulvand/Konstantin Winter, international conference in Dushanbe, September 2011

¹¹³ According to a RAND study on the effectiveness of the U.S. military's information and psychological operations in Afghanistan between 2001 and 2010, U.S. efforts started to become less persuasive in 2006 as the Afghan public grew tired of foreign occupation.

territory of Afghanistan. Due to its location and geographical features, Tajikistan's main transport connection to global markets is presently through the territory of Uzbekistan. During the last few years, the government of Uzbekistan has blocked transit of all types of goods, including those necessary for development of new infrastructure projects. The Tajik government has announced plans to build a railway connection and new electricity transmission channels in cooperation with Iran and Turkmenistan through the territory of Afghanistan. Both could allow importing customer goods, fuel and electricity – scarce in Tajikistan, especially during wintertime. A preliminary agreement between presidents of Tajikistan, Iran, and Afghanistan was concluded in March 26, 2012. The new connections may free Tajikistan from dependence on the transit route through Uzbekistan, which has started the dismantling the railway connecting it to the southern part of Tajikistan.

Threats to economic development – The rise of a Taliban-run government in Afghanistan may hamper the possibility of economic cooperation of Tajikistan and Afghanistan, as well as other countries in the region, especially taking into account the UN Security Council resolutions on sanctions against the Taliban and Al-Qaeda (1989, 1988 from 17/06/11).

Response: Although there is no threat of direct attack from Taliban, Tajikistan will have to strengthen the border to avoid an increase of drugs and weapons trafficking, as well as the activities of radical extremist movements. The country will need significant military and technical support.

Scenario 3. – Civil War in Afghanistan

ISAF troops withdraw and the responsibility for security provisions will be handed over to the Karzai government. The Taliban became more active and even though there are still American bases in Afghanistan, which support the Karzai government, the government cannot defeat the Taliban (and/or any other ethnic-based or region-based groups) and the war becomes a long one.

Most experts believe that Afghanistan, without the support of the Western countries (especially military), will slide into the civil war (box 2), due to the several factors:

1. The multiethnic society of Afghanistan, which includes Tajiks, Uzbeks, Khazari, and Pushtun, could lead to strife;
2. The low capacity of the current government and its army cannot maintain security in the country;
3. The low quality of life, lack of perspective, and viable opportunities to earn sustenance exacerbates economic and security challenges. The war in Afghanistan has continued for more than 30 years. Generations have grown during this period who are used to living and working war. People older than 30 years have already experienced two wars involving the USSR and the United States.
4. Continued militarization of Afghan civilians and training of the Afghan soldiers and civilians by ISAF will lead to increased security risks. Besides the skills and arms in the possession of the people, another social factor increases the security risks – war has been “nested” in the world perception of the Afghan people for a long period.

Impacts on Tajikistan:

A civil war in Afghanistan will have negative impacts, including:

Increasing drug trade and use – chaos in the country and necessity to finance the war will lead to the increase of drug production and trafficking. With increased reliance of the economy on the illegal drug trade, more and more people will be involved in its trade and use (including people from Tajikistan);

Religious extremism – lack of control and order in Afghanistan will be the ideal environment for radical extremists and terrorists to base themselves in its territory, which could be a threat to Tajikistan and will lead to the more and more frequent border clashes;

Isolation – the civil war in Afghanistan will significantly challenge or make impossible the realization of joint economic initiatives, including those connected to road building, which was expected to release Tajikistan from its isolation;

Refugees – instability in Afghanistan will increase the number of refugees in the border regions of Tajikistan and humanitarian crises with which Tajikistan will have to deal.

Response: It is clear that in the case of a civil war Tajikistan could not deal with the coming threats independently – a 1400-kilometer border, which is mostly in a mountainous region, is not easy to control. In that case, Tajikistan has to find partners who could help keep security in the region. It is evident that the most visible and objectively interested partners are first of all those countries in the region that will also be challenged with threats in case of instability in both Afghanistan and Tajikistan.

Tajik foreign policy

Tajik foreign policy, as the government has declared, is based on the principals of “open doors” and “multi-vectors.” These principals of the foreign policy have mostly come out of the difficult economic and social situation in the country. Thus, the central objective of the policy is focused on creating opportunities by developing relations with as many states as possible to reach strategic goals. However, the weaknesses of local diplomatic staff and its institutions challenge the implementation of the foreign policy.

What is the Tajik government doing to address the coming threats to its instability from Afghanistan after 2014?

Analyzing official statements made during meetings with international partners and donors, as well as the activities undertaken so far by the Tajik government, the possible threats could be separated in the following directions:

1. High level debates and discussions on Afghanistan

Tajik officials, including the president of the country, officially admit and declare that the stability in Afghanistan is the matter of stability in the whole region and actively participate in different international initiatives on discussing the Afghan perspective after 2014. (In March 2012, Tajikistan hosted the RECCA V – the Regional Cooperation Conference on Afghanistan, where different mechanisms for economic development and projects were discussed). However, none of these regional countries, which could suffer

from an unstable Afghanistan, have really undertaken actions to join efforts that consider common regional issues.

Despite the common history and the very similar traditional and cultural identity, the Central Asian states (CAS) are reluctant to have close bilateral collaboration and each state tends to find strategic partners outside the region. The collaboration mostly exists within regional unions and organizations, like CIS, the Shanghai Organization for Cooperation, the Organization of the Collective Security Treaty, and so on. However, 20 years after the collapse of the USSR there were no significant accomplishments achieved within the framework of regional cooperation and most neighbor countries still have unsolved claims against each other (Tajikistan-Uzbekistan, Uzbekistan-Kyrgyzstan). It is clear that being the “hub” of almost all types of natural resources, CAS could reap much more mutual benefits and successes should the countries cooperate more – in security, trade, agriculture, energy sectors, in anti-drug trafficking efforts and struggling against increasing radicalism in the region.

It is very important to point out that the new strategy of the United States (named the New Silk Road) on Afghanistan's stabilization mostly emphasizes the role of CAS, especially neighbor countries, in the further stabilization and development of Afghanistan. “A continuation of the Tajik-Uzbek Cold War would significantly increase the degree of difficulty of keeping Afghanistan stable after the withdrawal of American and NATO troops, now scheduled for completion in 2014,” according to Stephen Blank, a professor at the US Army War College. In this regard, it is very important for the CAS to unify the strategies and visions of further development of the region, taking into account not only national but regional interests as well.

2. Economic cooperation

The Tajik government, along with other CAS members, is interested in economic cooperation with Afghanistan, which is now exists mostly as small scale cross-border trade, electricity supply infrastructure projects in a small volume, and the education of Afghan students in Tajik high schools. However, with the United States and other developed countries turning to the CAS with a great interest and desire to inflow funds to Afghanistan, Tajikistan could use the current situation for expanding its economic cooperation and at the same time resolve internal economic and social problems. For example, small-scale hydropower stations projects in the border regions could give the opportunity not only to export to Afghanistan but also to provide electricity to border Tajik districts. It is important to emphasize that Tajikistan has a competitive advantage (in terms of language and culture) over its neighbor countries which will strive to have more economic ties with Afghanistan. Even in 1980s, Tajik specialists were actively involved in different projects, especially infrastructure projects, in Afghanistan, implemented by the government of former Soviet Union. The president of Tajikistan, in his speech in RECCA V in Dushanbe in late March of 2012, expressed the willingness of Tajikistan to support Afghanistan in the training of specialists in different fields, including agriculture and military. Thus such kind of initiatives could be a good opportunity to earn the attention of international donors (like ADB, USAID, EU) on the implementation of joint projects with the wide participation of Tajik specialists. It is very important at this stage to clearly identify and use the opportunities of projects that are favorable to Tajikistan and to try to work for the benefit of other states. (A good example would be Kyrgyzstan, which could renovate its airport Manas with money given by American government for the use of the airport's facilities to transit cargo to Afghanistan).

1. **Border control projects** – The issue of the permanent military presence of any country (even Russia) is negatively perceived by the Tajik government and is considered a threat to its internal stability as well. At the same time, Tajikistan is not able to control its borders independently, as increasing border clashes show. Taking into account both facts we can consider only indirect support which is being provided or offered by other countries and organizations as an option to improve border control. However, recent

expert analysis questions the effectiveness of such initiatives.¹¹⁴ A recently published report on the effectiveness of the projects financed and implemented by various donors and organizations like the United States, the EU, the OSCE, and the UN reports on several obstacles that hamper the success of such projects in the CAS, which are plagued by high levels of corruption and alack of political will. At the same time, currently the EU is reviewing its strategy with regard to security in Tajikistan. It might increase its attention and cooperation with Tajikistan and has been working on border issues for many years through the BOMCA program. However the assistance would be indirect – trainings and capacity building, and EU will not likely provide direct assistance for border management. Therefore, such kinds of projects could be a good option for Tajikistan to strengthen its borders.

Recommendations: From security threats to cooperation opportunities

The ISAF troop withdrawal is certainly comes at a very critical period for Tajikistan, which is now faced with new threats and opportunities. For Tajikistan, it is very important to use these opportunities for the benefit of the country, and, at the same time, making a contribution to the development and stability of a neighbor country – Afghanistan. After withdrawal, many countries, especially the United States, will be ready to invest much on the development of Afghanistan. Tajikistan could be a good partner in the implementation of such projects. This situation will let Tajikistan realize its foreign policy, based on the “multi-vectored” principals, and to realize its national interests.

But for this it is necessary to:

1. Improve the effectiveness of current projects and programs on border control

– hoping for the new possible assistance it is critical to deal with existing programs. In this regard, the government of Tajikistan, especially for the State Committee on Border Security, has to evaluate the implementation of current projects and programs financed by international donors and work over its sustainability and effectiveness, reducing situations of corruption and involving credible people in the projects in terms of capacity and responsibility/power/authority.

2. Identify and clarify the position and role of Tajikistan in development projects in Afghanistan and be proactive

– before speaking with any potential partner, it is very

Project BOMCA provides technical assistance to Border Guards, Customs Service, Drug Control Agency and other agencies involved in border management in Tajikistan. The assistance mainly focused on enhancing capacity development, advocating institutional reform through implementation of National Border Strategy, strengthening counter-drugs capacities, modernization and upgrading of infrastructure, provision of specialized equipment, harmonization of training curriculum

Project coverage: Tajik-Afghan border in South-Eastern part in GBAO, Tajik-Uzbek border in North-Eastern and North-Western parts in Sogd oblast and South-Western part in Khatlon oblast of the country.

Donor Agencies: European Commission.

Project Partners: Tajik Border Guards, Customs Service, Drug Control Agency, Ministry of Health, Ministry of Agriculture, Ministry of Foreign Affairs. (http://www.undp.tj/index.php?option=com_content&task=view&id=315)

¹¹⁴ Central Asia: Western Border Aid Has Little Positive Impact – Report, <http://www.eurasianet.org/node/65509>

important to be prepared and clearly draw a picture of further partnership. In this regard, it would be better for Tajikistan to use project proposals which could help to resolve internal problems as well and are based on the national interests mentioned above - **isolation, food, and energy security**.

3. Be reliable partners – while implementing international projects, Tajikistan must fulfill agreed obligations.

4. Work on regional cooperation with Central Asian countries, including Uzbekistan.

Certainly, the security and guard of the Tajik-Afghan borders are the responsibilities of Tajikistan but how can a 1400-kilometer border which mostly lies in the mountains be controlled by the current low capacity Tajikistan has? At the same time the threats coming out from an unstable Afghanistan affect not only Tajikistan, but also other Central Asian states and even Russia.

Taking into account that too many international players are involved in the Afghan issue, the Central Asian states have a vested and direct interest in the stability of Afghanistan. Kazakhstan, Uzbekistan, Turkmenistan, and Tajikistan are currently developing economic cooperation with Afghanistan, which could also facilitate access to the Indian and Pakistani markets. Obviously in the case of instability each of these countries will suffer from its negative effects and lose many economic opportunities.

Bearing in mind that Afghan stability is a sensitive question, which could postpone the building of road communication through the territory of Afghanistan, it will be necessary to restart negotiations with Uzbekistan.

Thus, reflecting on the challenges imminent after 2014, it is rational for Tajikistan to consider first partnerships with its direct neighbors.

Furthermore, the poor relations between Tajikistan and Uzbekistan could be an obstacle for the implementation of international strategies for keeping Afghanistan stable – like the initiatives within the New Silk Road and Organization of the Collective Security Treaty.

5. Be active in the discussions of Afghanistan's future developments at the Regional Economic Cooperation Conference on Afghanistan, including the next in Tokyo in July (RECCA VI). The RECCA is a good opportunity for finding donors and partners for joint development projects.

Conclusion

To understand and forecast the possible scenarios in Afghanistan after 2014, analysis of the current situation and discussion of the future is not enough. It very useful to look at the past of Afghanistan. The analysis of the past and the current situation of Afghanistan lead to the following conclusion:

1. In each possible scenario of further developments in Afghanistan, Tajikistan is challenged with the threats that already exist - drugs, weapons, radical extremism, refugees, disease.
2. In the case of instability in Afghanistan, Tajikistan will lose economic opportunities, including opportunities for energy security and relief from transport isolation imposed by Uzbekistan.

3. Because Tajikistan is unable to deal with these threats (drugs, weapons, radical extremism, refugees, disease) independently, it is rational to cooperate with other Central Asian states, which also suffer from these problems. The role of the neighbor countries is very important in the stabilization of Afghanistan, which could also benefit economically from cooperation.

4. The analysis of the possible scenarios shows that even if the Taliban come to the power, the **direct threat** from them to the CAS **is less** than generally supposed, as attacking and occupying neighboring countries has never been on the agenda of the Taliban. They have, instead, always sought official recognition from their direct neighbors. However, the threat of the development and spread of extremist movements that could find shelter and support on Afghan soil still exists. An open question, still pending a clear answer, is to what extent has the Taliban felt and recognized the price of such cooperation.

5. The end of the game with so many players is difficult to predict and forecast. Too many interests of the big international actors are at stake in Afghanistan and while continuous instability is in favor of the some of those, others are eager to achieve lasting stability.

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

**Separate Collection of Municipal Solid Waste
in Turkmenistan – the problem and solutions**

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**The author wrote the original version of this paper in Russian;
in the case of any differences with the English translation,
please consider the Russian as the author's original.**

***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
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1. Introduction

At present, the problem of municipal solid waste (MSW) recovery is one of the most severe facing humanity. The waste recovery sector is only beginning to develop in Turkmenistan, while in the majority of Western countries there have been found partial solutions to these problems, including recycling of MSW for the benefit of the national economy.

Paper, paperboard, left-over food, textiles, wood, leaves, ferrous and nonferrous metals, bones, glass, leather, rubber, stones, ceramics, polymer materials are the usual components of municipal waste commonly found in waste containers. Bulky waste can be found there too: construction waste, old furniture, home appliances and others. Much waste is toxic. Just one AA battery can contaminate 20 cubic meters of waste with heavy metals and chemicals; broken thermometers and other mercury-containing devices bring great amounts of mercury to landfills, in France this number is equal to 5 tons per year.

During the last 20 to 25 years, the use of polymer materials has been growing, while other components of the total amount of waste remain practically without changes. In industrially advanced countries, such as Japan and countries of the European Union, it is the highest: 10-15%. In Moscow, it is only 6%, but the growth is obvious: in 1960 the share of polymers in municipal waste of the Russian capital was only 0.7%. Use of polymer packages was quite rare in 1960s.

The better living standards in Turkmenistan become, the greater the import of products in beautiful packages that go to waste. People even do not suspect how harmful these packages are. At present, separation and sorting of municipal solid waste in Turkmenistan has not been implemented yet, and public awareness campaigns are at the initial stage.

In this document, an attempt has been made to consider the problems connected with municipal solid waste in Turkmenistan, to compare international practices on the separate collection of municipal wastes and to find ways to facilitate a solution to these problems.

It is impossible to consider every aspect of the problem under discussion, as there is not enough statistical data for Turkmenistan. The provided information was not collected systematically and is based on Internet sources.

In this document, the following issues are considered:

1. The current situation with municipal solid waste in Turkmenistan.
2. International practices on separate collection and recycling of municipal waste.
3. A variant of an information campaign for Turkmenistan is offered.

In conclusion, there are offered key findings and proposals for changing the current situation with municipal solid waste in Turkmenistan.

2. The current situation with municipal solid waste in Turkmenistan

In this section the author describes the current situation with municipal solid waste in Turkmenistan. A list of legal documents connected with this issue is provided. At the end of the section the reasons for inadequate attention to issues of municipal solid waste recycling are specified.

Turkmenistan validated the Aarhus Convention on April 30, 1999, thereby confirming its intention to follow and comply with the highest world standards for environmental protection. Alongside with the consistent fulfillment of obligations under the Aarhus Convention, Turkmenistan continues to improve its

national legislation aimed at construction of a civil society, further reinforcement of legal guarantees of public participation in environmental decision-making, and access to information.

Public access to ecological information and to environmental decision-making is stipulated practically in all environmental laws of Turkmenistan. For example, the law on "Environmental Protection" of Turkmenistan has a special chapter IX that states "Civil rights to favorable environment, public participation in environmental protection." Chapter 28 thereof specifies that "citizens of Turkmenistan have a right to participate in environmental protection ... associate in public organizations dealing with environmental protection, take part in discussion of draft laws and other regulations ... write, make complaints, file applications on the issue of environmental protection, demand and receive timely and trustworthy information about environmental conditions and environmental protection measures, participate in finding solutions aimed at environmental enhancement and make suggestions to cancel decisions about placement and usage of environmentally hazardous objects." Other environmental legal documents contain similar provisions.

In accordance with the constitution of the country, public participation is considered a very important part of representative and direct democracy (chapters 26 – 29 of the Constitution of Turkmenistan). In Turkmenistan, there is a system of local government bodies in the form of local people's councils and Gengeshi (rural councils) established in regional centers, settlements, and cities. Public participation in the solution of state and public issues and forms of their participation are specified by laws and legislative acts of Turkmenistan that regulate district authorities and local government bodies (for example, Laws of Turkmenistan on "Hiakims", "Gengeshi", "Elections of People's Representatives", "Elections of Deputies of Majlis of Turkmenistan", "Elections of Members of Gengeshi", President's acts about cassation of the officials' activities, etc.)

Following the provisions of the Aarhus Convention, Turkmenistan fulfills its obligations to increase public awareness on ecological problems. The importance of public awareness on ecological problems and provision of access to ecological information is emphasized in the "Law on Ecological Expertise," the National Environmental Action Plan of Turkmenistan. Up-to-date public awareness on ecological problems in general and on problems connected with MSW in particular is an integral part of effective solution of ecological problems.

In Turkmenistan, as in many other countries of the world, improper handling and recovery of municipal solid waste contribute to environmental contamination. From year to year, alongside with the increase in population, the amount of MSW grows; a system of waste recovery and recycling is not properly running. Low levels of public awareness about the problem with MSW also negatively influence this situation. As a rule, people are used to shifting responsibility about a solution of the problem with MSW to local authorities. Very often people think that all problems connected with MSW can be solved by means of the latest achievements in science and technology, new techniques, etc. However this one-sided approach only worsens the situation, and most of the people do not notice the fact that the problem with MSW begins at the threshold of their own houses that is people themselves (or their neighbors, relatives, etc.) leave waste illegally, or make a mess in public places. MSW mainly contains leftover food, paper, paperboard, glass, and plastic materials – about 75% of all MSW ⁽¹⁾.

A number of measures have been taken in Turkmenistan aimed at decreasing the negative effects of municipal solid waste on the environment. Contamination of the environment with MSW is forbidden on the legislative level ("The Law on Environmental Protection," Sanitary Code, Forest Code, Code on "Water," Code on "Soil"). A modern waste recovery (including medical waste) plant was built near Ashkhabad. Municipal authorities of towns and districts take measures to keep streets clean. In April 2011, under a

special resolution of president of Turkmenistan, the Ministry of Public Services of Turkmenistan was established. This Ministry is responsible for collection, removal and burial of municipal solid waste.

There are about 4 million tons of industrial and municipal waste generated every year nationwide (data of 1994). It should be noted, that the given numbers are approximate, as the statistic reporting form 2 – TP (waste) – was canceled in 1991 ⁽¹⁾.

In accordance with the action plan aimed at implementation of the State Program of the President of Turkmenistan “Health”, the Ministry for Nature Management developed a statistical reporting form for industrial and municipal waste and an “Instruction on keeping records of industrial waste and its usage” according to form No. 2 – industrial waste – and conciliated them with the Ministry of Health and Medical Industry and the State Statistics Committee of Turkmenistan. The form was approved by the State Statistics Committee of Turkmenistan and is effective since 1998.

According to the preliminary calculations in residential areas there is about 150 - 220 kg of municipal solid waste created per person per year. Shops, public catering facilities, educational institutions, and hospitals are helping push the amount of MSW created each year by 30-50%. In such a way, 1 million tons of MSW originate from residential areas every year, and this number is likely to increase.

Waste is removed under agreements with community facilities, “etraps” (units of territorial administration of Turkmenistan). The Ministry of Environmental Protection gives permission for storage of waste.

With the increase of population, the amount of municipal solid waste also increases. In Turkmenistan, the landfills are managed only in Ashkhabad; it means that waste is recovered under control in a certain place (on specially prepared grounds).

The main components of municipal waste are the following: dust, paper, plastics, and food, which is the dominant factor.

During Soviet times, Turkmenistan was a part of participated in a program that collected waste paper separately. Public information campaigns were organized that encouraged wastepaper collection. With the dissolution of the USSR, this system collapsed. Recently, the collection of waste paper collection was revived by several small enterprises seeking profit in recycling waste paper into toilet paper and paperboard.

Inadequate attention to municipal waste recycling in Turkmenistan can be explained in two ways. First, the size of the country lets landfills be placed far from each other. Second, because the country has a vast store of natural resources, there is little interest in turning to waste as a raw material. A market for secondary raw materials and resources has not developed.

3. International practices on separate collection and recycling of municipal waste

In this section the author examines examples of positive solutions to the issue of separate collection and recycling of municipal solid waste. International practices on the use of economic incentives are provided and public participation in joint solution of issues connected with separate collection and recycling of municipal solid waste is illustrated.

American scientists have shown that due to recycling of waste it is possible to receive about 7% of iron, 8% of aluminum and 19% of tin metal. To simplify waste recovery, in some American cities it is forbidden to produce products in plastic cover that cannot be recycled; about half a million of inhabitants of the country sort waste depending on the type of the material before its discharge. In the USA, 98% of the produced glass

is subject to recycling. Financial and legal support of waste recovery existing in the State of Missouri should be mentioned separately. In this state it is forbidden to bury such categories of waste as auto tires, accumulators of all types and used machine oil. Furthermore, in Missouri they have a council dealing with waste management, this council receives about 7 million dollars every year due to taxation. These funds are spent on organization of campaigns related to waste recovery, promotion of recycled products and financing of waste recovery companies.

Experience of Germany in waste recovery can be an example for countries that want develop their waste recovery industry. All citizens sort waste putting it in different containers placed near their houses. Grey containers are for newspapers, magazines and paperboard, yellow containers are for jars and bottles and package materials, and green containers are for organic waste. These containers are emptied regularly at a charge being equal to several hundred marks paid by citizens every year. Furthermore, local drugstores accept medicines with expired shelf life, and unworkable batteries can be left at a special point in any supermarket. Illegal waste removal in Germany is punished by a fine from 50 to 100 euro depending on the decision of local municipal authorities.

In Switzerland the waste recovery system was properly arranged long ago. Glass is sorted according to its color and is put in special containers; old batteries shall be put in special boxes placed near supermarkets. More than 80% of all sold batteries in the country are recycled and then resold.

The system of waste collection in Sweden resembles the one of Germany. The Swedes also sort all waste depending on the material and put it in different containers that are emptied twice a week ⁽⁶⁾.

In the Czech Republic they started to organize this sector in 1991 with preparation of a legal basis, regulating relationships between enterprises and ecological institutions, urban cleaning services and population. After 8 years a regional system of waste management was implemented. Only in 2003 the Parliament approved a plan of waste management in the Czech Republic.

At present, in the Czech Republic only 25% of MSW is recycled. In accordance with the requirements of the European Union (Directive 94/ 62/EC) it is planned to raise this number to 65 %.

In more than fifty countries of the world the recycling law is in effect, as well as government programs on inspection and acceptance of motor vehicles, recycling of tires, melting of car bodies and burial of waste that is not subject to recycling. No more than one third of the car reaches the landfills.

There is also economic regulation of industrial waste handling; the responsibility for recycling and recovery of such waste is carried by the enterprises. The use of scrap metals is widely spread in the industry. Standardized labeling of products makes the recycling work very effective ⁽²⁾.

Positive effects of waste recycling are becoming more and more obvious. Firstly, the problem of constant widening of landfill is solved. Secondly, the environmental pressure is reduced. Thirdly, new work places are created, which helps to solve the employment problem to some extent.

Furthermore, proper arrangement of waste recycling is quite profitable. The turnover of waste recovery enterprises in Germany, for example, amounts to 4.5 billion euro a year.

By legislative actions Western countries implement certain obligations related to separate collection of some kinds of waste. For example, in France it is forbidden to collect unsorted waste for further recycling and burial since 2002, in the Netherlands they forbade to bury organic residues for promotion of their separate collection and composting. In national plans recycling figures for different components of waste are determined. Furthermore, activities aimed at reduction of costs connected with selective collection of MSW and optimization of costs is conducted.

Forming of a market of waste and by-products is a very important and essential aspect of the problem that restrains the development of the recycling system reflecting the idea of selective waste collection. If there is no market of secondary raw materials and resources, the system of selective waste collection is not going to develop, and landfills are likely to grow in the neighborhood of the cities. Incentive government programs as well as public understanding of the problem are required to facilitate creation of such markets with the participation of private enterprises.

The development of the system of selective waste collection has an important social meaning. In France with population of about 55 million people, approximately 50 thousand workers are engaged in recycling sector. Creation of a production and “ecological” infrastructure can be regarded as a reserve of new work places and a stabilizing social factor ⁽³⁾.

Economic incentives

Economic incentives may play an important role: differentiated charges for removal (recovery) of waste depending on its amount.

Positive value of such charges is determined not only by the fact that the town council receives necessary funds – people are to pay for waste in any case whether in form of local taxes or equal and pretty large charges for waste. It is not even the question of “justice”. Differentiated charges present a fundamental right and obligation of a citizen of a democratic society – “a right to know”. In this particular case charges for waste reflect the right and obligation to know what expenses are carried by the society due to consumption behavior of a separate citizen (and encourage to change this behavior). We have already mentioned that practically all recycling programs are economically possible due to high prices on placement of waste in landfills. But the fact that recycling is more profitable than landfills in the context of social costs is not enough for active public participation. This fact should be made known to every citizen, and differentiated charges for waste turn out to be an “economical channel” for such information.

Differentiated charges for waste are usually taken depending on the amount of waste. As a variant, you may keep records of waste containers (if they are of standard volume) and then provide an invoice. More often it is done in a different way – the town council (or a private company) sells special bags (or sticks for bags) the price of which include the cost of removal, and citizens are supposed to leave their waste in such bags. Sometimes the fixed yearly charge is taken and a certain number of bags/sticks are provided, in case you exceed this number, you shall buy additional bags. In such a case it is very important not to make the fixed charge too large, otherwise citizens will have no motivation for decrease of waste. Furthermore, if at the end of the year citizens have empty bags they paid for, and they cannot have their money back, it will not increase credibility of the town council.

At the same time recyclable materials collected in a special container are removed without any charge or at a lesser charge. For example in one of Pennsylvanian towns a bag for ordinary waste costs \$2, and for recyclable – \$0.75.

Differentiated charges for waste encourage people living in detached houses to make composts for yard waste themselves. By the way, in some settlements where yard waste accounts for a significant part of waste, there is a differentiated charge not for all waste but only for yard waste. Removal of waste is paid for in an ordinary way, but for yard waste, leaves, grass, etc. citizens shall buy special bags. Firstly, it encourages people to compost their waste themselves, and secondly, composted waste being removed is separated from other waste, which facilitates organization of municipal composting.

Differentiated charges for waste also encourage decrease of waste. It influences not only consumption behavior, but also encourages using things for the second time: to have them repaired, give them to a charitable institution instead of disposal. Sometimes one of the local citizens stores in his/her garages previously used objects and then sells them at very low prices. It is more profitable to give such things to him/her, then throw away and pay money for that. It should be noted, that due to differentiated charges this scheme couldn't work without human participation in form of a special ground where people could leave unnecessary but still good things, and others could take them. Such a ground would be filled with ordinary waste in on time.

One more economical instrument management should be noted, that is determination of a loan rate at which people can hand in used objects (decision about determination of such rates is usually accepted on a higher level than municipal one). In western countries the loan rate is usually determined for those products that are undesirable in the common stream of waste (for example, car batteries). This approach also has a negative side. For example, a very high loan rate can encourage thefts of such car batteries, etc.

Nevertheless, if the loan price is reasonable, this instrument can be very effective. One of the examples is Russian (Soviet) system of loan rates for glass containers. This system has been working for several years despite of the change of the social structure and economic conditions ⁽⁵⁾.

Public participation

It is very important to note, that neither economic incentives, nor laws and regulations cancel moral incentives and, consequently, the necessity to work with the public. Even for an obligatory program to work, it is necessary to have it accepted by the public as reasonable and meaningful. Otherwise it may even encourage illegal acts.

Attraction of people is very often the most difficult task especially for engineers from public services, which accounts for negative attitude to waste recycling in general. Inability to attract people is very often disguised by such arguments as "our people are not Germans, they will never collect different kinds of waste separately". In fact about 8-10 years ago the same arguments could be heard from American specialists, who claimed that American generous spirit is incompatible with German accuracy required for sorting of waste.

Is it possible to count on public participation in programs on collection of recyclable materials? Some key findings of the researches carried out in Pennsylvania are provided below.

- **31% of people** are enthusiastic about taking part in recycling programs regardless of material benefits. It is very important to note, that these are people who are enlightened on the issues of recycling and who often take part in various programs. Such a big group of volunteers is the result of previous work with the public, experimental projects, etc. In those areas where public attention is only beginning to be drawn to the issue of recycling, this group can be significantly smaller. However, there are always some people who are concerned about ecological issues.

- **46% of people** are not so active, but they are quite sympathetic towards collection of recyclable materials. They will not become leaders but will take part in the program without any material benefits if a) more active neighbors serve as a model; and b) participation in the program is not too difficult.

So, if the program is organized correctly, more than three fourth of population will take part in it, even without material benefits!

- **21% of people** are not really sympathetic towards collection of recyclable materials; they think it demands too many efforts, and that not-for-profit organizations, and authorities, but not the population itself shall deal with it, etc. Involvement of this category of people requires great efforts and provision of material benefits for them.
- **2% of people are hopeless** – they do not want to take part in the program under any conditions.

That is the state of affairs in the rich and stable America. It can be expected that the level of activity in Turkmenistan will be less in particular due to a low level of awareness about harmful influence of municipal solid waste on life and health of people ⁽⁷⁾.

4. Turkmenistan within the context of international practices

In this section the author offers to use the positive experience of Europe for the solution of the problem of collection and recycling of municipal solid waste. A plan for an information campaign for the public and governmental institutions on this issue is provided.

Analysis of the situation with municipal solid waste in Turkmenistan and its comparison with international practices makes it obvious that the creation of a complex system of waste management, introduction of separate waste collection, development of a Law on waste or improvement of the existing regulations, development of by-laws are not only vitally important, but inevitable.

Participation and support on the part of business, government, public organizations, all population groups, an efficient law, non-waste industry, and environmental friendliness are obligatory elements of the complex solution of ecological problems.

International practices prove that for solution of this problem it is necessary to attract private investments and public organizations, the potential of which should be actively used in work with people.

As experience of the scientific development and production center “Hnuti DUHA” (the Rainbow Movement), that operates in the Czech Republic, shows it is possible to solve many problems through attracting of public organizations. For example in 2009 with the support of an international organization a project aimed at improvement of waste handling in Křtiny was successfully executed. As the result of the project, the local authorities developed and implemented a Concept on waste in Křtiny.

In the Czech Republic there are about 200 large and small companies dealing with separate collection and removal of MSW with further recycling. Almost every town has a special division responsible for separate collection of MSW ⁽²⁾.

To facilitate the decision making on this issue in Turkmenistan, a plan of the Information Campaign is provided in this document.

As there is no experience in holding of such information campaigns in Turkmenistan, the following Plan of preparation and holding of an information campaign on separate collection and removal of MSW is

offered on the basis of the experience of the scientific development and production center “Hnuti DUHA” in the Czech Republic. Implementation of this plan requires at least 2 years, as it is necessary to find funds for carrying out of researches of qualitative and quantitative composition of municipal solid waste in rural areas and preparation of a report with recommendations that shall be submitted to the Ministry of Public Services of Turkmenistan.

5. Plan of preparation and holding of an information campaign

The Goal of the Information Campaign

1. Drawing of attention through increase of public awareness in Turkmenistan about the problem of the environment contamination with municipal solid waste and forming of public opinion in rural areas.
2. Lobbying of a decision on separate collection, removal and recycling of MSW in the Ministry of Public Services of Turkmenistan.
3. Explanation of decision on separate collection and removal of MSW taken by the Ministry of Public Services of Turkmenistan among rural population of Ahal Province (as a pilot project).

Objectives

1. Publication in a newspaper of an article about contamination of the environment with municipal solid waste.
2. Carrying out of researches of qualitative and quantitative composition of municipal solid waste in rural areas.
3. Preparation of recommendations based on the results of the conducted research.
4. Submission of recommendations to the Ministry of Public Services of Turkmenistan for making a decision on separate collection, removal and recycling of MSW.
5. Carrying out of an information campaign among rural population of Ahal Province in order to explain the taken decision on separate collection and removal of MSW.

Target Groups: Specialists of the Ministry of Public Services and rural population of the Ahal Province (region) of Turkmenistan.

Territorial coverage: As a pilot project – rural areas of the Ahal Province of Turkmenistan

Expected Results

1. In Turkmenistan the data are updated and recommendations on qualitative and quantitative analysis of the components of MSW in rural areas are prepared.

2. Recommendations are submitted to the Ministry of Public Services of Turkmenistan for taking a decision.
3. Lobbying is conducted for taking a decision of the Ministry of Public Services on separate collection and removal of MSW in rural areas.
4. To explain the rural population the decision taken by the Ministry of Public Services an information campaign on separate collection and removal of MSW is conducted.
5. An article aimed at forming of a public opinion about separate collection and removal of MSW in rural areas is published in the media.

On the basis of the analysis of information available for Turkmenistan and its comparison with the international practices on separate collection of municipal waste the following findings were obtained.

6. Key Findings

1. There is vast global experience of work with population and local authorities on the issues of separate collection of municipal solid waste.
2. Turkmenistan has a great potential for use of this experience in practice.
3. To solve issues of separate collection and removal of MSW in rural areas it is necessary to attract public investments and international organizations within the frame of the Government Program on Support of Small and Medium Enterprises for 2011-2015.

7. Proposals

1. For the in-depth study of this problem it is necessary to conduct a detailed research on separate collection of municipal solid waste in Turkmenistan with the attraction of international experts.
2. For solution of problems in the sphere of separate collection and removal of MSW in rural areas it is advisable to attract representatives of small and medium business and local scientific development and production centers for work with people.
3. It is necessary to develop a market of secondary raw materials and resources in Turkmenistan with the attraction of small and medium business.

There is only one conclusion from the above-mentioned information: recycling is very important and it is necessary to admit that and take the corresponding measures. If we do everything correctly and use natural resources rationally as well as possibilities of recycling, our Earth will not be exhausted but will continue to prosper and exist for the benefit of people.

8. Bibliography

- 1) Statistical books "Environment Protection and Rational Use of Natural Resources in Turkmenistan" for 1990, 1994, 1995, 1997, the National Institution of Statistics and Forecasts of Turkmenistan
- 2) www.hnutiduha.cz
- 3) www.cci.glasnet.ru
- 4) <http://recyclers.ru/modules/section/item.php?itemid=33> "Recycling as a key element of the modern system of collection and recover of municipal solid waste"
- 5) www.ecolife.org
- 6) <http://ru.wikipedia.org> "Municipal Solid Waste"
- 7) <http://www.waste.ru/modules/section/item.php?itemid=111> "Problems of Separate Collection of MSW"

Opening the Doors of Policy-Making: Central Asia and South Caucasus

UNDEF Project Number: UDF-GLO-09-281

**Slovakia – Uzbekistan:
How to Approach Trans-Boundary Watercourse Issues,
Similarities and Differences**

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**The author wrote the original version of this paper in Russian;
in the case of any differences with the English translation,
please consider the Russian as the author's original.**

***This paper has been produced with the assistance
of the United Nations Democracy Fund (UNDEF).
The content of this publication is the sole responsibility of
the author and PASOS as editing and mentoring agency,
and it does not necessarily reflect the views of the United Nations,
the United Nations Democracy Fund or its Advisory Board.***

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Acknowledgements

Submitting this analysis to the reader's judgment, first of all I would like to express my gratitude to the organizers of the project PASOS "Opening the Doors of Policy Making: Central Asia and Southern Caucasus" and the United Nations Democracy Fund, thanks to the support of which the professional arrangements and work has been carried out on the design itself under the guidance of PASOS field-oriented people within several months, including a 3-week study trip to the Slovak Foreign Policy Association (SFPA).

In particular I would like to express my enthusiasm about and gratitude for the assistance and guidance of the experts of PASOS – Mr. Petr Pajas, Mr. Piotr Kazmierkiewicz, and Ms. Linda Austere.

I would also like to appreciate the devoted aid and support from the side of Mr. Alexander Duleba - director of SFPA - and his colleagues, whose assistance enabled me to study on the spot the experience of Slovakia in its way of coping with the conflict and to meet the experts and specialists in water handling and supply, to receive documents, to work in and simply to enjoy Slovakia.

Personal Foreword of the Author

Dear reader!

There is no other issue among those occurring currently in Central Asia as hot as, and comparable with, the shortage of fresh water. As the commonly used resource of the countries in the region, water availability may turn out to be both the stumbling block and the decisive reasonable power in unifying efforts of the republics of Central Asia.

When talking about transboundary water-resources management, we bear in mind the existence of successful coping with the issues, as we can see, for instance, in the EU countries, who avoided both the growing strain and a stalemate, which stands in contrast to the situation in the transition period countries of the post-Soviet area.

Can we fully apply such a positive example? What can the governments of the countries that are sharing water resources do? What can international institutions and the public communities do?

The decision of Tajikistan to erect the high rise Rogun dam has brought about an outcry of political passions that may crucially affect the political situation. As many experts say, the planned Rogun dam's height of 335 meters may become a potential threat in case of earthquakes. That is why the reduction of the planned Rogun dam height is the fundamental claim of Uzbekistan because there arise additional questions concerning filling the lake to the dam working parameters, which might result in complete depletion of the water basin in the lower reaches of the Amu Darya river.

The lawful technical claim of experts to review the dam height has been confronted with politically backed slogans on the sovereignty of water-resources disposal and claims that expert conclusions do not reflect the facts.

The present analysis is based upon a comparative research of the situation caused by disputes concerning water disposals between Slovakia and Hungary on the one hand and between Uzbekistan and Tajikistan on the other hand. It seemed important to demonstrate the relationship between growing hazards of social destabilization in the Central Asia region due to the lingering inter-state dispute concerning the Rogun dam on one side, and the positive example of the Slovak Republic with building the water scheme Gabčíkovo-Nagymaros on the border with Hungary on the other side. On the first sight, the two regions differ by nature and climate conditions. However, closer research shows common features. Nevertheless, it

was not the objective of the analysis to simply copy the experience of Slovakia once the significant differences between the countries in both geographic and geopolitical senses are obvious. Nevertheless, when selecting the above example, the main goal was to demonstrate the experience of a country already confronted with seemingly hopeless situation of reappearing disputes and yet arriving to a common understanding and constructive solution acceptable for both parties of the dispute..

The analysis provides preliminary clarification of the International law regulating transboundary water resources with such important documents as the Convention on Transboundary Waters of the EEC UNO, Protocol on Water and Health Matters of the EEC UNO/WHO and the Water Frame Directive of the EU (WFD). The role of the International Court of Justice as a body playing a decisive role has been demonstrated in the case of the Slovakia-Hungary dispute.

Analysis concentrated also on a possibility of applying the current legal, regulatory and technical information foundation for the case of the Central Asia Region.

The example of dividing waters of the Danube is important as a model of a reasonable approach of neighbors to utilization of water resources. It is an example of understanding that the river itself cannot be treated as a sovereign property. It shows that the river represents a resource for all the countries through which it flows. Currently, more than 50 million inhabitants of the six states of Central Asia depend on a thoroughly elaborated approach and thoughtful decisions concerning the use of water resources; first of all of the issues of those river flows, which have a transboundary character and never may be considered as a property of a single country.

Summary

Uzbekistan, being one of the key countries of the Central Asia region both geographically and geopolitically, currently faces a multitude of problems common to the whole post-Soviet area. In the course of 20 years of independence, the systems of relationships were worked out, new for the countries of the region, founded on the priorities of international legal regulations. There is no doubt that the common platform of regional interests and historical experience, as well as cultural and ethnic similarity, help the countries of Central Asia to successfully overcome arising problems.

One of these is a growing deficit of water in the Amu Darya river basin. The issue has gradually aggravated due to substantial annual population growth in the region. As a result, the water demand is growing in agriculture, as well as in mining, processing and other industries. At the same time, we observe substantial water losses in the irrigation schemes of both Uzbekistan and Tajikistan. The major part of the problems of diminishing water resources is related to not quite reasonable irrigation systems and inefficient water utilization in the communal sector.

The situation is progressively worsening due to the fact that the countries, which are donors of the river basin, are forced to utilize an ever-increasing proportion of the watercourse to produce electricity, erecting thus new water power stations (WPS). In doing so, they increase the threat of consumption of waters over the critical balance of water resources during the period of accumulating the active water mass or its discharge.

One of the really crucial hazards may be a different point of view on the strategy of river basins utilization as it develops between the countries, is who are water donors (Tajikistan, Kyrgyzstan) and who are water-using countries (Uzbekistan, Turkmenistan, Kazakhstan, and, in future, also Afghanistan). Each of these countries/water-users promotes its own independent policy of water consumption, making thus very

complicated provision of a precise value of the water-feeding needs, and, accordingly, complicating forecasting of future consequences of large-scale water projects.

When looking after experience of other countries, where the question of the shared use of one river has been solved successfully, we identified as the most successful the solution demonstrated in the case of the Slovak Republic during construction of the water scheme Gabčíkovo–Nagymaros along the border of Slovakia with Hungary. Even in the case of seemingly so different circumstances in geography and geopolitical positions of the regions of Europe and Central Asia, this comparison may, anyhow, serve as the source for a search of an example of a really efficient, win-win co-operation in the utilization of a shared river.

The major conditions for successful solution of the dispute about the transboundary basin of the River Danube have been found above all:

- I. The role of such an institution as the International Court of Justice in decreasing the strain in coping with the bilateral dispute and in finding the way from a hopeless situation can hardly be overestimated. The application of a similar form, using the experience in the solution of international disputes, is very likely to work also in coping with the water issue in Central Asia, in particular between Uzbekistan and Tajikistan. The presented analysis includes also a detailed description of the dynamics in shipbuilding in connection with the dispute concerned.
- II. Using the state-of-the-art technologies while erecting the water scheme Gabčíkovo–Nagymaros, Slovakia was able to secure 100% compensation of the water at the outflow across the border with Hungary. The same issue has been one of the key claims of the Uzbek party concerning the use of the Amu Darya River by Tajikistan. The analysis points out that the technological problem in question has already been worked out as concerns methodology, which may be recommended to technical experts for review.
- III. A permanent monitoring system of the quantity of water resources consumed from the river Danube is operating on a bilateral basis and is fully transparent both for the non-governmental organizations (NGOs) and the citizens of the transboundary countries.

The analysis presents a model of crisis solution through usage of inner resources like ground water, in case of unpredictable circumstances like drought and water scarcity, climate peculiarities and their influence on the crisis in food supplies in the watercourse area. Also in the case like this, the possibility of setting up the Common Water Bank serving to both the countries-users and countries-donors may be one of the reasonable schemes of achieving a mutually favorable co-operation model. In such a case the eventual maximum advantage dividends could be used as futures for investment into development of water-saving technologies in the region.

Recommendations

The research has shown the urgent necessity to change the very approach of coping with the issue of the Rogun dam construction, which seems to be the major impediment on the way to a reasonable dialogue for overcoming the hopeless situation in the water dispute between Tajikistan and Uzbekistan.

The major conclusions and recommendations are the following:

- I. There is the need to set up a bilateral expert and technical commission consisting of competent knowledgeable people of Uzbekistan and Tajikistan and to expose the project of the Rogun dam construction to careful expert review.
- II. Stemming from the stipulations of international law, to apply the mechanism of the International Court of Justice to the situation of Tajik- Uzbek dispute; the Uzbek side may initiate it by submitting the case to the International Court of Justice.
- III. Uzbekistan should use the international legal standards base and UNO mechanism to review the legal status of the rivers Amu Darya and Vakhsh, in the sense of the applicable regulations of the Helsinki Convention of 1992. According to the above-stated stipulations, the river flowing on the territory of the five countries of the Central Asia should fall under the status of a transboundary river.
- IV. The proposed project of the Rogun WPS implies erection of one of the world's highest dams – over 300 meters high. Uzbekistan, basing its position on the above-mentioned conclusions of the experts and on requirements to prevent a technological disaster, has been bound to ask the Tajik side to reduce the height of the dam to a value recommended by the joint experts' commission.
- V. The system of permanent monitoring consumption of the transboundary waters of the Amu Darya river basin may serve as one of the warranties of reliable and mutually beneficial activity of both parties in the dispute. Uzbekistan should set up and tune the monitoring system of the river basin providing permanent access to the members of the Common Expert's Commission.
- VI. It is important to develop a precise standard base for regulation of the monitoring matters concerning the ground water. The software of the Slovak Technological University¹¹⁵ aimed on preparation of ground-water protection systems and permanent monitoring can be recommended for the implementation of native system of recording, controlling and protecting the water resources of Uzbekistan.¹¹⁶
- VII. Uzbekistan as the user country of the river-basin water is bound to arrange for and to create a special group of scientific research institutes dealing with water issues, the target of which would be to implement up-to-date water-saving technologies and to study the similar experiences of other regions.

¹¹⁵ Prof. Soltesz, SUT, Bratislava

¹¹⁶ Measures of reasonable utilization of water sources and coping with the issue of trans-border water usage Internet-portal "www.12.uz"

1. Survey of the applicable international law regulating transboundary water resources

The approach to transboundary water disputes in the world as a rule originated mostly from the application of various international agreements and legal regulations. Regardless of the substantial number of applicable international agreements concerning the utilization of transboundary waters, until recent time there was no universal international legal act to sum up the major principles and regulations of the states' behavior in this field of international relations and/or "an international law of water resources," as is often called this domain of international legal regulations.

The first attempt to set up the system of applicable regulations of international law in this field, e.g. codification of "common" international legal regulations, was carried out in the middle of the 1960s by the professional nongovernmental international organization – the International Law Association (ILA). Based on the research of international agreements, common rules, international court practices, the Association developed and agreed to on its session the so-called Helsinki rules.¹¹⁷ As a follow up after the Helsinki rules there were agreed more than 14 additional recommendations providing for the rules concerning multiple aspects of the protection and utilization of international watercourses. All the above regulations were incorporated into a system and represented in a unified document of the International Law Association under the name *Consolidation of ILA Rules concerning International Water Courses*. The new *Rules Concerning Water Courses* were agreed at the Berlin Conference of ILA in August 2004.

Regardless of the fact that the rules set up and adopted by the ILA are often only recommendations without binding power for any country, they are generally looked upon as a reflection of common international law, having resulted from the quite-long practice of countries. The above rules were taken as the base of many bilateral and multilateral agreements, including the only universal agreement in this field – the *Convention of the UN on the Non-Navigational Use of International Water Courses (1997)*.

Its principal provisions, in particular the rule of equitable and reasonable utilization, are legally binding even for those countries who have not acceded to agreement to the extent where they reflect the generally recognized standards of common law. At the same time, due to the framing nature of the Convention, its provisions are quite general and are intended to serve, above all, as a kind of a model for drafting more-detailed agreements on particular water courses reflecting specific circumstances and needs of certain river basins and/or regions.

The same kind of agreements represents the *Convention on the Protection and Utilization of Transboundary Water Courses and International Lakes*¹¹⁸ and the Reviewed Protocol on Shared Water Courses (PSWS). The Helsinki Convention was signed on March 17, 1992, and took effect on October 6, 1996. This is the first document aimed on providing a legal base for the cooperation, protection and reasonable use of transboundary waters within the whole region. The EEC UN sphere of action includes the countries of Europe, North America, Middle Asia and the state of Israel. Currently there are 35 countries – participants of the Convention – including the European Union. Until the present time, more than 174 agreements and documents have been concluded or signed, the major part of which are of a regional nature.

The United Nations and other organizations are applying a coordinated regional approach to cope with water issues. This is based on several principles: the prevention of water conflicts through reasonable and equitable usage of transboundary water resources, the principle of "the one who pollutes, pays for it," and the principle of protection and water resources management within the whole ecosystem. The above principles are incorporated in the fundamentals of the UNECE Convention on the Protection and Use of

¹¹⁷ "Usage of the Waters of International Rivers", called "Helsinki rules". Helsinki, 1966

¹¹⁸ "Usage of the Waters of International Rivers", called "Helsinki rules". Helsinki, 1966

Transboundary Watercourses and International Lakes,¹¹⁹ adopted at the Helsinki conference in 1992 and entering into force on October 1996. The Convention covers the following range of issues:

- Prevention, control and reduction of transboundary impacts
- Cooperation on research and development of techniques for prevention, control and reduction
- Exchange and protection of environmental information

In compliance with this Convention, transboundary waters are any surface or ground waters, which mark, cross or are located on boundaries between two or more states. In case when the transboundary waters flow directly into the sea, they end at a straight line across their respective mouths between points on the low water line of their banks.

2. Legal basis of water resources management in Uzbekistan

The UNECE *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* of March 17, 1992, and the UN *Convention on the Right to Usage of International Water Courses* of May 21, 1997, stipulate that all the decisions concerning utilization of transboundary rivers, including the construction of hydro-energy structures, should not inflict substantial injury to the environment, or infringe upon the interests of the bordering countries.

Uzbekistan has been so far the only state of Central Asia, having signed both the major Conventions, targeted with coping with transboundary water issues based on generally-recognized standards and principles of international law, that could become the point of departure of setting up an efficient system of shared use of the resources of transboundary rivers in the region, since they take into account and balance the interests of the countries of the “lower watershed” (Uzbekistan, Turkmenistan, Kazakhstan) and of the “upper watershed” (Tajikistan, Kyrgyzstan).

Uzbekistan has officially accessed to amendments of the Articles 25 and 26 of the given Convention. The respective Decision of the President of the Republic of Uzbekistan No. 1636 has been signed on November 3, 2011. The Ministry of Foreign Affairs of Uzbekistan has officially been informed about the fact, the UN General Secretary acting as a depository of the Asian Convention.¹²⁰

In Uzbekistan were established and operate such institutions of water issues regulation as the International Fund of Salvaging Aral Sea (IFSAS) and its organizational structures, the Inter-Governmental Coordination Water Distribution Commission and its Science and Information Center, the organizations of the watersheds for rivers Amu Darya and Syr Darya. The third phase of the Program of the Basin of the Aral Sea (PBAS-3) is under development, expected to enter into force during the years 2011-2013.

¹¹⁹ UN Convention on transboundary Waters, United Nations. 1996.

¹²⁰ Speech of the leader of the delegation of the Republic of Uzbekistan, Mr. Pharkhod Khakimov, at the international conference “Euro-Asian Cross-Border Cooperation in the Field of Water Resources Management”. Geneva, 2011

3. Legal basis of water resources management in the EU

International standards in the form of conventions have been so far the only and principal legal instruments regulating water disputes in Central Asia. Uzbekistan is the only country in Central Asia, which adopted and ratified them.

Besides that, there exists also the so-called Block of Legal Regulations in the management and utilization of water resources, such as the EU Water Framework Directive,¹²¹ which entered into force on December 22, 2000. The Water Framework Directive demands from the EU Member States to reach by 2015 a good qualitative and quantitative status of all water bodies (including marine waters up to one nautical mile from the shore). The directive also demands from the EU member states to establish river basin districts and river basin management plan for each of them. The Water Directive is without doubt more substantive and its application in Central Asia concerning disputes similar to that between Tajikistan and Uzbekistan, and may bring about a quite precise demarcation of the disputed parties positions. When analyzing the usage of the river Danube waters by transboundary European countries and, in particular, by Slovakia and Hungary as an example of a success, we may also consider such an agreement as the EU Water Initiative.¹²²

The Water Directive includes the whole array of provisions and approaches that can be successfully applied during drafting of international agreements, national legislation and water policy as a whole. This applies even to those countries that are not members of the European Union. This concerns, above all, the principle of water resources management based upon a basin approach, the application of a “combined” approach to control over point-like and diffused sources of water pollution, criteria used for definition and indicators of water quality in water pools of various kinds, the use of an economic mechanisms (a water-pricing policy, including the principle “the one who pollutes pays for it,” as well as involvement of the general public in the water-management process.

The EU Initiative consists of several geographical components: for Africa, for the Mediterranean Sea, for Latin America, and for Eastern Europe, Caucasus and Middle Asia (EECMA). The objective of partnership in water issues between the EU and the countries of EECMA is to overcome the problems in the water sector within the regions of Eastern Europe, Caucasus and Central Asia that are approached at the moment in quite different manners, while the programs and projects are not unified, which appears to be one of the main possible improvements in the implementations of the EU- EECMA Initiative.

4. Integrated Water Resource Management

The most attractive and major component of the Program concerning coping with water use disputes in Central Asia is its second one: Integrated water resources management, including the issues of transboundary river basins and regional seas. This component is capable of coping with the issue of resource distribution of the River Amu Darya flow on the level of intergovernmental and interregional corporations.

The possibility to apply this legal-standard scheme in the Central Asia region is attractive since its crucial aspect consisting in involvement of the International group acquires justification through EU EECMA initiatives, where the co-operation forms have already been found for the sphere of integrated water

¹²¹ Directive 2000/60/EU of European Parliament from October 23, 2000, providing for the frames of community actions in the sphere of water policy

¹²² EU Water Initiative was germinated at the World Summit of Sustainable Development, Johannesburg, 2002

resources management (IWRM). Regardless of all the advantages, IWRM has so far not yet surpassed one barrier – the fact that the cross-boarder status has not yet been recognized for the rivers Amu Darya and/or Vakhsh as by one party of the dispute about the “Rogun case,” namely by Tajikistan. This complicates seriously the possibility to apply the above-stated regulations because all the documents and protocols were elaborated with the aim to be applied for the cross border rivers. Having this in mind, the possibility of the joint participation of Slovakia and Uzbekistan in the program EU EECMA makes of the above documents important tools to be applied as a principal international legal basis linking the EU area with the Central Asia region. For Eastern European countries and in particular for Slovakia, the observation of the EU Framework Water Directive and other principles of EU policy is one of the major orientations of the implementation of the National Development Plan (NDP).

Since the year 2006, NDP / IWRM under the UNECE *Convention on Protection and Use of Transboundary Watercourses and International Lakes* (Water Convention) were carried out in four countries: Armenia, Kyrgyzstan, the Republic of Moldova, and Ukraine. In the year 2011, political dialogues opened in Azerbaijan, Georgia, Tajikistan, Turkmenistan, and Uzbekistan.¹²³

The substance of integrated water-resources management (IWRM) is the principle of mutual dependence of various water users. The processes of NDP / IWRM in nine countries differ substantially from each other as regards to the strength of IWRM principles implementation in each of the countries, as well as the time schedule and dynamics of the processes taking place. Implementation of the IWRM principles depends on IWRM objectives as established in each individual country, and also on the legislative and institutional framework under given political and social-economic circumstances.

Nevertheless, NDP / IWRM follows the same principles as those fixed in the UNECE Water Convention, EU Framework Water Directive and in other political documents of the UN and the EU dealing with water issues¹²⁴. Integrated management assumes that all sorts of water consumption are approached as a whole.

5. Analysis of discrepancy dynamics

5.1. Global factors – global growth in fresh water scarcity as a destabilizing element

The draughts occurring in the years 2000, 2001, 2003 and 2005,¹²⁵ regardless of the attempt to apply stringent control over water consumption, have totally devastated the work of the farmers in the lower watershed of the River Amu Darya, confronting more than 6 million people of Uzbekistan, Turkmenistan and Kazakhstan with the question of how to secure foodstuff supply. As the deputy minister of melioration and water distribution of Uzbekistan said, if the first drought was "the worst in 95 years" (2000), than the second one proved to be even more terrible, at least for such country regions as the Priarale, Khorezmsk Oblast, and

¹²³ B. I Libert and G. Rol: Water Initiative EU on National Dialogue in the Sphere of IWRM in Central Asia and Caucasus, EEC UN Palace of Nations, Genève, Switzerland.

¹²⁴ Transboundary Water Management in Eastern Europe, the Caucasus and Central Asia, Peipsi Center for Transboundary Cooperation, Tartu, November 2011

¹²⁵ Juraj Mesík: Climate Change and the Future of Civilization, Global Challenges, February 2011.

Karakalpakstan, situated in the lower watershed of the river Amu Darya and were worst exposed to minimal flow. Nevertheless, the water scarcity for irrigation in the Amu Darya river basin continues to grow, causing the increase in direct relation growth in the foodstuff deficit. According to the data of UN Food and Agricultural Organization (FAO), Central Asia has been suffering deficit of water "already the third year in sequence".¹²⁶ Without doubt, the situation of climate change and drought are not specific for the Central Asia region; the fresh-water scarcity exists all over the world. For instance, the research of individual experts on global climate changes on the Earth,¹²⁷ includes forecasting on irrigation water scarcity even for the major grain growers – namely Russia, Canada and the United States, regardless of up-to-date technologies in irrigation and water distribution.

The above-mentioned research also indicates how water scarcity has been interwoven with foodstuff deficits and instability growth in the countries of Maghreb. In the opinion of the research authors of the "Arab Spring", there is something else in the Northern Africa countries than the echoing food deficits and the growth of youth despair going out to fight dictatorships.¹²⁸

Major stress factors of the African Mediterranean like, for instance, demographic boom, water scarcity and the respective crop failures, are currently typical also for Central Asia. From the year 1990 until the year 2011, the population of the two countries of the region – Tajikistan and Uzbekistan – has doubled to over 13 million people; i.e. to 32% over the original figure.¹²⁹ Water consumption grew 1.8 times, excluding the use of other-than-river water resources. Taking into account that in compliance with the below-stated projections, the drought degree and the world's territory exposed to it shall only grow, it is possible to count with a similar picture of price growth of foodstuffs accompanied by stress growth. In the Appendix 1A it can be seen that the indicated area of Northern Africa and Central Asia (red color)¹³⁰ will suffer most due to scarcity of irrigation water and foodstuff deficit growth in the coming years. Nevertheless, the growth dynamics of the water scarcity areas colored in red draws very close to the regions of Central Europe in the middle of 21st century, so that it is only a question of time when the resources of European rivers will be simply exhausted and the region will start to experience absolute fresh-water scarcity.

5.2. Ground water as a supplementary resource

During meetings, which took place on the author's research stay, the experts of the Slovak State Institute of Water Resources demonstrated the early warning model of water conflicts, where the probable global changes are already taken into account. The model has been applied to forecasting the water balance of the country. Top priority was given to the ground waters of Slovakia, considering the water consumption and pollution growth of the waters of the cross-border river Danube. Having at its disposal over 55% of the pure ground waters of the common balance of Central Europe, Slovakia is in this feature quite similar to Uzbekistan, where, according to the preliminary data, we also have deposits of voluminous lenses of pure ground fresh waters in the lower watersheds of Amu Darya, which are in volume comparable with the volumes of the rivers' irrigation waters. It should be added that Slovakia adopted quite substantial laws efficiently protecting ground-water resources, in compliance with the Act No. 364/2004 Coll. on Water

¹²⁶ Juraj Mesík: Middle East and North Africa (MENA): What was addressed by the „Arab Spring of 2011“?

¹²⁷ Juraj Mesík: Climate Change and the Future of Civilization, Global Challenges, February 2012.

¹²⁸ Dr. Juraj Mesik has been extensively involved in the development of the environmental movement and the broader civil society. Mr. Mesik is also the author of numerous commentaries and analytical articles

¹²⁹ Russian Federation Government: Statistical Report, 2010.

¹³⁰ <http://www.fao.org/worldfoodsituation/wfs-home/foodpricesindex/en/>

Resources, and the Act No. 221/2005 Coll, which deals with details of detection, quality assessment and monitoring of standing surface waters and ground waters.

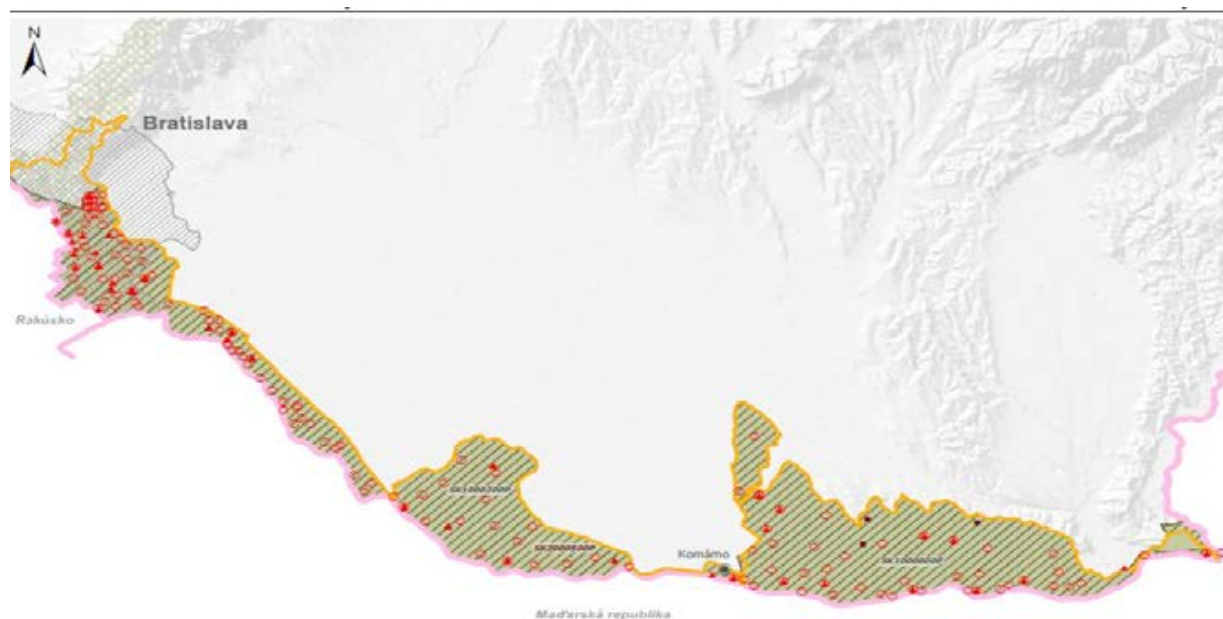
Unfortunately neither Uzbekistan nor other countries of the region have so far elaborated in their legislation a precise regulation base codifying the questions of ground waters motoring. One can see it when studying the reports of international centers of ground waters assessment – e.g., the Underground Aquifer Karatag/Northern Sukhandarya center.¹³¹

Similar, however of lesser volume, is the partially outlined Quaternary underground aquifer, characterized by:

- Boulders, rolled down fragmented sediments (Tajikistan) and gravel drifts with admixtures of rich loam (Uzbekistan)
- Orientation of the underground water flow to the side of Uzbekistan
- Partial connections with surface waters.
- The length of the border (km) 46–50
- Area (km²) 3,428 –3,550
- Thickness: average/maximal (m) 50–100 / 100
- Utilization and functions of ground waters: Potable water supply
- Measures on ground-waters management: Shared monitoring of ground waters.
- Other information: Crucial need in upgrading the ground-waters monitoring network (Uzbekistan and Tajikistan)

¹³¹ The Karatag underground aquifer has been already described within the First Assessment under the name Karotog. The names of some underground aquifers from those times have been reviewed. An updated list is generally derived from the list of UNESCO and International Centre of Ground Waters Assessments (ICGWA) in 2009.

Figure 1. **Monitoring system of the ground-waters quality in the area of Žitný Island**¹³²



5.3. Gabčíkovo–Nagymaros (Slovakia -Hungary) – the role of the International Court of Justice

The Danube is the second-longest European river after the Volga. The river is flowing on the territory of 14 countries, marking borders of some of these. Altogether the river basin belongs to 19 countries, making it the largest-in-the-world transboundary river basin. In the basin district live 83 million people of diverse cultures, languages and history.¹³³

At the beginning of 1990's, the collapse of the socialist camp and dissolution of the Council of Mutual Economic Cooperation (CMEC) gave rise to and dramatically intensified a conflict situation concerning the construction of the waterpower station Gabčíkovo-Nagymaros. The issue of WPS erection in Slovakia caused a deep crisis in Slovak-Hungarian relations. After Slovakia put the water scheme into operation, a scandal between Bratislava and Budapest become a lingering international conflict. In 1992, Hungary turned with a suit on Slovakia to the International Court of Justice (ICJ)¹³⁴ in The Hague, to OSCE, and to the UN Security Council.

The case of Gabčíkovo-Nagymaros became the first of international water dispute accepted by the ICJ for review. In particular, this fact has been one of the causes influencing our choice of Slovakia for the comparative analysis and for describing a credible example of coping with a water dispute. The judicial precedence of the ICJ is important from the standpoint of the legal assessment by international structures. It helps to legitimate the case of one party in the dispute, since it may be considered incontestable and should be accepted by the countries of Central Asia as an undisputed standard in the future.

¹³² Ministry of Environments of the Slovak Republic: Implementation of the Directive 2000/60/EC of the European Parliament and of the Council of European Union establishing a framework for Community action in the field of water policy, 2006

¹³³ www.tourua.com/ru/maps/world_maps/info-26.html

¹³⁴ International Court of Justice (ICJ) – major court body of United Nations, established by UN Articles of Incorporation (June 26, 1945) to reach one of the major aims of UN: “to carry out by peacefully, in compliance with the principles of equitability and international law, the reconciliation or resolution of international disputes or situations that may lead to an infringement of peace”.

As it is generally known, there are no coercing measures for countries to observe international liabilities and due to that the rightfulness of countermeasures is recognized by court practice, which was demonstrated in the course of reviewing and taking a decision in the case of the project Gabčíkovo-Nagymaros in 1997 by the ICJ, namely in its decision: "taken in response to the previous international unlawful action of the other state and ... aimed against this state".¹³⁵

Figure 2. **A photo of the man-made canal - 40km - and the natural riverbed of the Danube river in the area of the water scheme**¹³⁶



Countermeasures - measures lawfully applicable by the injured country against the country, responsible for an internationally unlawful action, aiming to stimulate it to meet imposed liabilities, even those that would be unlawful in another case. Countermeasures represent the element of a coercing mechanism of the law-infringing country. They do not have a punitive nature.

The countermeasures are taken in such a way to allow for the resumption of the infringed liability. Hungary and Slovakia have agreed during court proceedings to the well-known principle to take measures of precaution. The Court came to the conclusion that the state of necessity appeared as an exception, based upon recognized international common law.

The ICJ, during its review of circumstances under which Hungary could refer to the concept of environmental necessity, having interrupted its work on the dams "Gabčíkovo-Nagymaros" in 1989, refused to refer to the above principle and/or apply it. Though the alarm of Hungary concerning environments in the area of the Project Gabčíkovo-Nagymaros involves its "fundamental interests." The ICJ emphasized that Hungary had not proved the existence of a true "threat in 1989, and that the measures taken by Hungary were the only possible response.

The situation of absence or insufficient evidence of a true hazard for Tajikistan in the case of not constructing and operating the Rogun dam is consistent with the position of Hungary in the dispute Gabčíkovo-Nagymaros in 1989. The official approach of Tajikistan, concerning seemingly insufficient energy capacity and its compensation by Rogun WPS, would be confirmed if backed by arguments of technical expertise on the energy sources condition.

¹³⁵ ICJ - Court decision in the case "Gabczikovo -Nagmarosh" (Hungary and Slovakia) 25.09.1997

¹³⁶The Ministry of Environment of the Slovak Republic: Implementation of the Directive 2000/60/ES of European Parliament and Council of October 23 2000, Establishing a framework of Action for Community Measures in the Field of Water Distribution (in Slovak)

Responsibility for any damage to the environment is considered as the conceptual foundation of governmental liabilities concerning infringement of international law (IL) regulations. Application of the common principle of IL, on countries' responsibility for protecting the rights of other countries within own territory, has been extended through the Court's decisions in cases of caused damage. Currently, the issue of compensation for the damage caused to the environment is acquiring particular importance.

In the case of Hungary, the ICJ postulated that at that time there existed serious uncertainty factors concerning future damage to fresh water deposits and to the environment.

Figure 3. **Model of the water scheme in the area of locks Gabčíkovo-Čunovo**



In this context, IJC emphasized in its decision on the case Gabčíkovo-Nagymaros: "... The afflicted country was entitled to compensation for the caused damage from the country that completed an internationally unlawful action."¹³⁷

A similar interpretation in the situation with the Uzbek-Tajik water dispute would secure insurance guarantees on the level of international community in the case of a disaster caused by technology failure or collapse of the dam. The same possibility for the ICJ to render its opinion will demand a careful preliminary

¹³⁷ ICJ – decision.

expert review of all the components of the water power station by the party involved in the construction – which has been requested by the Uzbeki side many years ago. Note that in its decision on the case Gabčíkovo-Nagymaros, the ICJ ruled out “As soon as the state of need terminates, the liability to meet the agreed duties reenters into force.”

In the case Gabčíkovo-Nagymaros, the ICJ also postulated, that: “Even if the state of urgent need has been detected, it does not provide grounds for terminating the agreement ... As soon as the state of urgent need is withdrawn, the liability to meet agreed duties is re-established.”

In case of serious infringement of a multilateral agreement even solely by one of its participants, it may be suspended or terminated as far as the infringing participant is concerned or for all the participants. Such a decision shall be passed unanimously, except for by the infringer, and is final. In case of a bilateral agreement, its infringement by one party entitles the other party to refer to the infringement as the grounds for termination or suspension of the agreement validity. Similar formulation of an ICJ decision for the participants of the conflict opens the way to an appropriate and comprehensive preliminary legal expertise. The necessity to analyze the positions of the Uzbek-Tajik dispute may cope with many questionable issues of the Rogun dam, even at a preliminary stage and thus prevent the parties from infringements. Concluding discussion of the Gabčíkovo-Nagymaros case, we would like to emphasize that the ICJ applied the whole array of principles and stipulations of the UN Convention (1997)¹³⁸ even though it had not entered into effect. Therefore, the most remarkable phenomenon was the fact that the dispute between Slovakia and Hungary was tackled during many years without bringing about political and social hysterics and in accord with the existing regulations of international law through the institution of the International Court of Justice. Without doubt, this may be taken as an example of a civilized approach to coping with interstate problems – no matter how complicated they may be at the first sight.

Figure 4. **Water scheme Gabčíkovo-Čunovo**



¹³⁸ UN Convention “ On the Law of the Non-Navigational Uses of International Watercourses” New York, May 21 1997. On Session 51 of UN GA the Convention was agreed by 103 countries, against – 3 (China, Turkey and Burundi), abstained – 27 countries, until May 20, 2000 needed 35 ratifications were not attained and the Convention did not take effect. The Convention is open for signatures for the time being.

Figure 5. **Navigable man-made watercourse of the Danube (the length of about 40 km)**



Figure 6. **Environment-friendly power stations on the tributaries of the water scheme Gabčíkovo-Čunovo**¹³⁹



¹³⁹ Water Distribution Constructions, state company, figures 2010.

Figure 7. **Linkage of the old and man-made arm of the Danube watercourse at Gabčíkovo-Nagymaros**¹⁴⁰



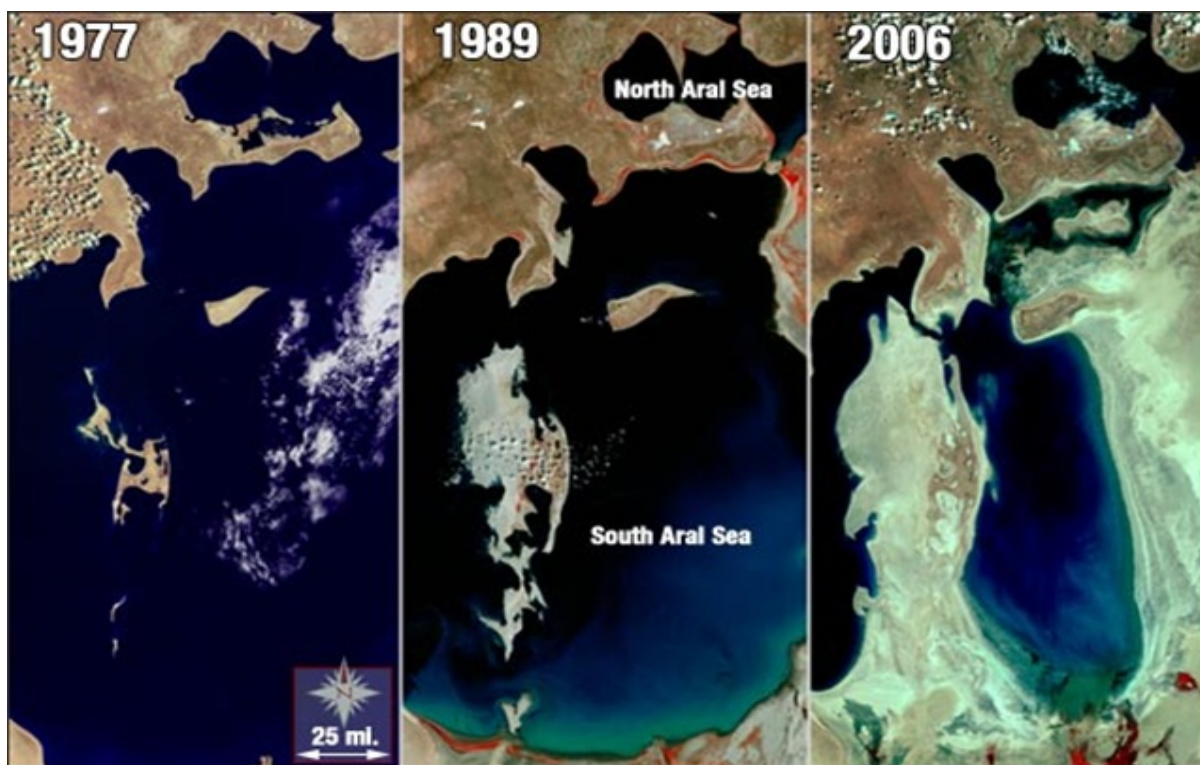
It would be possible to apply the legal instrument of coping with the water dispute between Tajikistan and Uzbekistan and respective institutional bodies established in both the countries – members of the UN – using the experience of coping with a conflict through the International Court of Justice in the “Gabčíkovo-Nagymaros” case, without risking a hopeless situation. It is probable that the Tajik party shall apply the diversification of energy sources without claiming the monopoly of the right on ex-territoriality status for the river Amu Darya. In this connection, there is the remarkable example of Slovakia, as regards the careful use of water resources. The country possesses one of the largest mountain river basins in Europe and accordingly also a great opportunity to produce electric power on watercourses of the rivers while utilizing this for less than 20%, as regards the total balance of energy sources. And the need for energy of Slovakia is potentially higher, taking into account the degree of development of the energy-consuming infrastructure of Central Europe.

5.4. Rogun dam – politics or necessity? (Tajikistan - Uzbekistan)

The issue of water scarcity appearance in Uzbekistan is bound to be addressed, first of all due to the number of people living along the Amu Darya river in the regions of Uzbekistan on the middle and, especially, on its lower watersheds. The situation in the above areas differs. This follows from the fact that the causes of scarcity are not only natural, e.g. due to the population growth in the region, but also man-made; we are talking about the administration of a water-distribution system using out-dated Soviet-era technologies, but also about the work of governmental institutions and offices in the sphere.

¹⁴⁰ Water Distribution Constructions, state company, figures 2010.

Figure 8. **Changes of the Aral Sea from 1997 to 2006 as seen from the space**



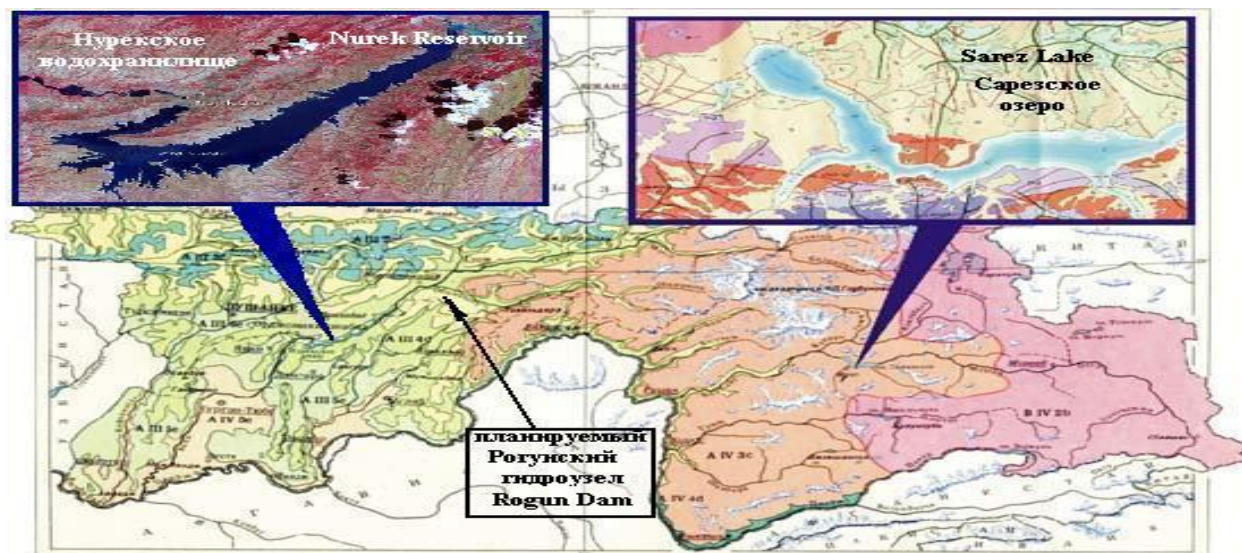
The photo above from space shows how non-renewable water consumption from the Aral Sea brought about its dramatic reduction. Within the period of 17 years, the time difference between the photos, show the sea turned into two pools and the territory, freed of the decreasing waters, changed into a white-salty desert. The latest photos were made with European Cosmic Agency (ECA) from the board of the satellite Envisat (the largest world satellite, engaged in the monitoring of environments). However, even the voluminous water mass of the Amu Darya river that is at disposal for the time being may fully satisfy the growing needs of the population living in the lower watershed of the river, as show expert calculations¹⁴¹ if we do not start taking additional water from the Amu Darya.

Attempting to tackle the issue of energy independence, Tajikistan, as the country of the “upper watershed,” commenced the erection of the Rogun dam on the River Vakhsh cascade. The question would not be so sensitive for Uzbekistan and the other countries of the “lower watershed,” if the project were less ambitious. In the given case the height of the dam wall is expected to be over 300 meters, which might lead to disastrous consequences in the future, according to the opinion of some experts.

¹⁴¹ Kay Vegrikh, employee of the Institute of Asian and African countries of London University, Great Britain.

General data on the Rogun dam¹⁴²

Figure 9. **The River Vakhsh cascade and the Rogun water-scheme under construction**



In compliance with the project, Rogun is a dam-based WPS with the high-rise (335 m) rock fill dam. If the project is completed, the dam of HPS will become the highest in the world. The structures of WPS:

The River **Vakhsh** (Kyzylsu, Surkhob) —The river in Kyrgyzstan and Tajikistan, after confluence with the River Pyandzh creates the River Amu Darya. Total length is 786 km, the watershed area is 39.1 thousand km², and average flow rate is 156 m³/s. The springs come from the Pamir Mountains, near the summit of Korzhenskoy Peak (7105 m over sea level). There is the natural reserve Tiger's Beam in Vakhsh estuary. There are 569 lakes in Vakhsh basin of the common area of 17. 37 km², mostly situated on the heights from 2800 m to 3500 m.

- Rock fill dam of the height 335 m made of the local materials
- Construction and operation tunnels;
- Underground building of HPS, including a machinery hall (length 220 m, width 22m, maximum height 78m) and a transformer room (200x20x40 m).
- Designed capacity— 3,600 MW
- Average yearly production — 13.1 billion kWh.
- In the building of HPS there should be installed six Hydro-electric units of the capacity 600 MW each.
- The dam of HPS should make large Rogun reservoir with the full volume of 13.3 km³ and usable volume of 10.3 km³.

¹⁴² Material from Wikipedia.

The lake has been planned to be used both for energy and irrigation purposes in the arid earth of an area of more than 300,000 hectares. Construction of the WPS has been scheduled in several stages; the energy production capacity of the first phase should reach 400 MW under average yearly output of 5 billion kWh.

The design of the WPS has been exposed to critics due to placement in the area of high seismic activity, slides and mud streams, and also the presence of the Ionakhsh tectonic fracture, filled out with rock salt. The dam designers declare the dam is safe – in particular that its structure is earthquake-proof and that in order to protect the salt sediments there are planned special measures.¹⁴³

On the international conference dealing with reduction of disasters involving water (Dushanbe, 2010), there were attempts to prove that the construction of the Rogun WPS will be a great advantage for Uzbekistan and the Vakhsh is not a transboundary river! Such an approach, typical for Tajik experts, can unconditionally bring to nil the entire International Legal Base, that could provide backing when coping with disputes between the two parties, since from the very beginning it ruins a possibility to involve international specialists and international legal bodies in a way similar to the case of Slovak-Hungarian dispute over the Danube.

As one expert said: *“Vakhsh originates at the confluence of the rivers Surkhob and Obi-Khingou. And Surkhob originates at the confluence of the Rivers Kizil -Su and Muk-Su. The river Kizil-Su flows along Alay valley, that is through the area of Kyrgyzstan. Now, try to imagine that Kyrgyzstan decides to erect the same water reservoir as Rogun on the river Kizil –Su, which would stop the water flow for several years to fill the reservoir up. The water flow rate of the river Kizil –Su is not too big – it represents about 10-15% of the total flow rate of the river Vakhsh. But what a tremendous injury would be inflicted on Tajikistan in such a winter as was there in 2008. In such a case the Tajik energy experts would immediately recognize the transboundary status of the river Vakhsh ...”*¹⁴⁴

Similar declarations just more and more postpone efficient coping with the issue, leading to the conclusion similar to saying that the current scarcity of water resources in the lower watersheds of the river Amu Darya has been caused neither by natural causes nor by the work of institutes dealing with the given issues. The true cause is that the issue turned out to be a political question.

According to the opinion of many experts on Uzbek-Tajik dispute, if both the parties agree and coordinate their actions, provide certain guarantees to each other and observe them, then no dispute arises. The threat of Amu Darya being drained due to the Rogun dam forces Uzbekistan to quote International Law and to consider appropriate certain rather unrealistic retaliatory claims of the sort as “not to construct any WPS” or “to stop consuming water. ”

Another expert’s declaration: *“I am fully convinced that it is possible to find such energy schemes that will satisfy both parties, if only the politicians were not allowed to intervene into this issue ...”*¹⁴⁵

The German newspaper *Südhüringer Zeitung* points out among other things on the Rogun dam, the validity of the decision of the Tajik administration to erect the world’s-highest dam. In addition, it is mentioned that the dam is located in a region of high seismic activity, where a large earthquake can lead to a disaster of an unimaginable scale. Saying this, it points out the tricky nature of the project to construct the given large-scale water system.

The international conference on the issue “Environmental disaster of the Aral Sea. Can we ever salvage drying up the sea?”¹⁴⁶, organized jointly by the European Parliament, UN, European Commission and

¹⁴³ 15/12/2011 *We need Rogun* by Geogiy Petrov, the top expert of the Institute of water sources Academy of Science RT.

¹⁴⁴ The comment of the expert on the issues of engineer geology and geophysics (Mr. Leonid Pavlovicz Papirin). Taken over from the materials on www.fergana.ru

¹⁴⁵ Papirin L.P. International Conference on Reduction of Natural Disasters, involving water ..(Dushambe 2010).

OSCE, have elucidated the opinions of some experts as regards the construction of hydro-technical structures similar to Rogun WPS, which could aggravate environmental circumstances in the region of the Aral Sea, where the situation is far from simple even now; it can *"multiply the socio-environmental and humanitarian disasters."* In the words of the conference participants, *"the building of the water system beginning from the end of the 1980's has been carried out with substantial deviations from the designed solutions. Suspension of the erection in the year 1992 was completed without conservation, as a matter of the fact. The mighty mud streams have seriously damaged constructions supporting tunnels and other structures. At the time of taking the decision about reopening the works on the dam erection, many construction fragments of the dam were no more of use. The water system is being erected in a seismic area, it may evoke new earthquakes and threaten thus the safety of the lives of hundreds of thousands of people."*

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¹⁴⁶ Website of Environmental movement of Uzbekistan from conference proceedings.

¹⁴⁷ Website of Environmental movement of Uzbekistan from conference proceedings.

Figure 10. **Tremendous slide of volume 0.9 cubic kilometers over the tail water basin of the Rogun dam** ¹⁴⁸



¹⁴⁸ Starkov V.I. and Starkova E. J.: The Research of Deformity Processes on The Head of Rogun WPS, The Institute of seismic construction and seismology, Academy of Science of the RoT.

Figure 11. **Incomplete wall of the Rogun dam – at 35% of the designed height**¹⁴⁹



Figure 12. **This is the unique bridge enabling driving to the basic structures of the WPS**¹⁵⁰



¹⁴⁹ Photographs were taken from the sources and Internet web sites NASA, Google, Ferghana.ru, Wikipedia, <http://energyfuture.ru>, <http://www.plotina.net>, www.pamir.ucoz.com, and <http://sarez-lake.ru/>
¹⁵⁰ On materials: www.ferghana.ru

5.5. Rogun dam – the possible implications for the region

A major part of the scientific community has been forecasting, that *“in case of a collapse of the dam after full completion of the construction of the Rogun WPS in its design parameters, the wave may develop of the height (depending of the degree of filling out the lake) from 245 to 280 meters passing through the area of Nuretsk WPS (starting point) and 6-7 meters in Karakalistan Republic (termination point) that will demolish all the cascade of WPSs (6 water schemes), the area of 1.3 - 1.5 million hectares will be flooded and also over 700 settlements on the territory of Tajikistan, Afghanistan, Uzbekistan, Turkmenistan, inhabited by about 5 million people, including 3 million in Uzbekistan will be inflicted. Besides that, construction of the Rogun reservoir will cause a reduction of agricultural area fertility, the dramatic aggravation of the potable water supply to about 18 million people living in the lower watersheds of the river, a depletion of the gene pool, and a dramatic reduction in biodiversity”*.¹⁵¹

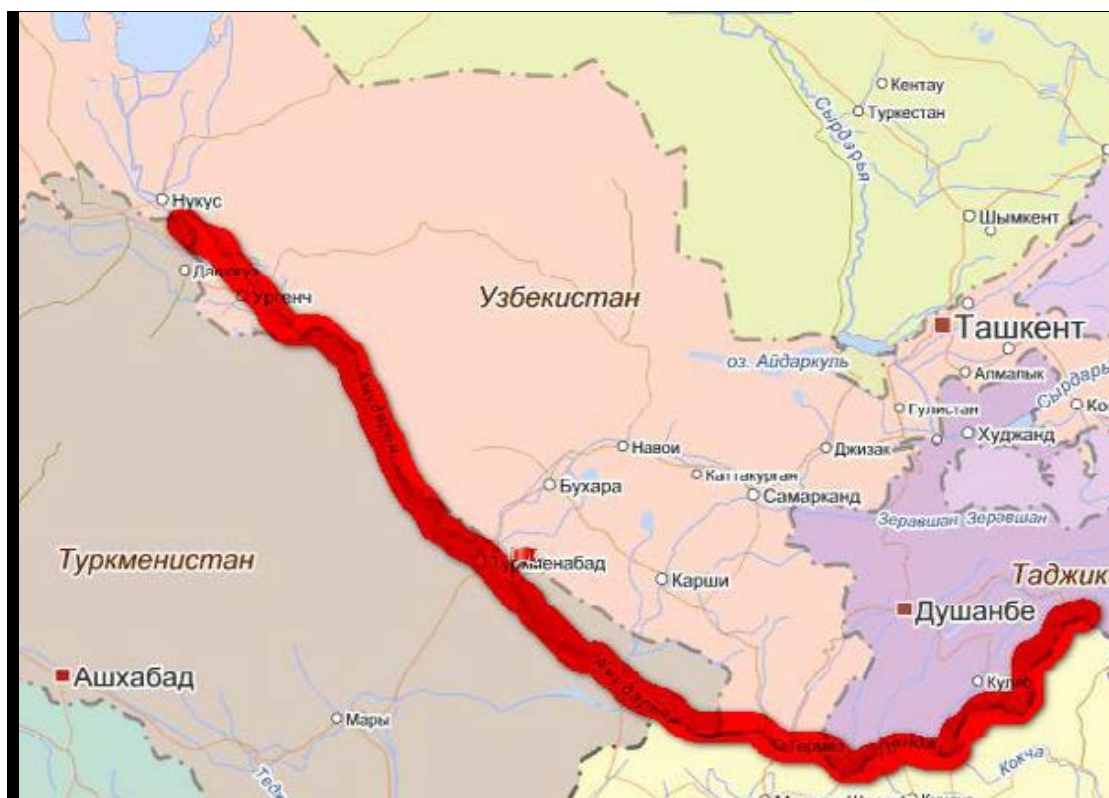
One of the principle arguments in favor of erecting a dam on the River Vakhsh was the achievement of seemingly full energy independence for Tajikistan after the Rogun turbines begin to produce power. The above argumentation has been exposed to critics of various expert groups albeit the most painstaking critics as to contents was provided by engineer scholarly group "ERG".¹⁵²

This expert group considers that *«...even in the case of putting the Rogun project into operation as fast as possible, the first electricity may be generated by the Rogun WPS under the most favorable development of events not earlier than after 3-4 years. In the course of the first years before operation, Rogun WPS will not generate, but consume energy. The full investment return under some calculations will take about 30 years.*

¹⁵¹ Subject of alarm and threat. Erection of Rogun HPS in Tajikistan and Middle Asia population safety. See Internet-newspaper "White sail " 23.06.2011

¹⁵² <http://erg.globalnet.uz/index.html>

Figure 13. **Disasters track along the Amu Darya river flow in case of a failure of the Rogun dam** ¹⁵³



Besides that, by the time the Rogun reservoir fills up, the power, made by all the power stations of the Vakhsh cascade, situated below of the Rogun water system, will decrease, since the water accumulating in the upper reservoir will be taken away from the energy-making process of the lower-placed power stations. *Construction of the Rogun WPS will not increase the energy security of Tajikistan; on the contrary, during the first several years it will cause the opposite effect. The power output of the entire Cascade of the River Vakhsh WPSs (representing 90% of the total electric power capacity of Tajikistan) will drop to 20-25% during the first 5-7 years...*"

In the opinion of experts, to fill up the Rogun dam reservoir totally will take about 4 and up to 6 years using 100% of the river Vakhsh water – while the vegetation period of grain and cotton plants may demand in the period of ripening maximum of water during 15 up to 30 days. Repetition of the water scarcity event in the following year will devastate seed banks. Absence of the full irrigation in the third year would commence an unrecoverable process of soil degradation (its fertile layer)¹⁵⁴. Considering that irrigated agriculture represents, as a matter of the fact, the only and major source of living for the millions inhabitants of Uzbekistan, Turkmenistan and Karakalpakia, it is not hard to imagine the situation in the future: the forced

¹⁵³ According to Proceedings of the International Conference "Environmental disaster of the Aral Sea. Can we salvage drying up sea?", 2010.

¹⁵⁴ Rogun HPS will harm agriculture and environments making almost \$20.6 bill. within 5 years // Information Office "Regnum" 24.04.2011.

migration of village populations into other districts of the region, aggravating thus the process of urbanization in such mega-cities like Tashkent and Almaty. We need to take into account that from 500,000 to 1 million migrants will be added every year to the millions of labor-seeking migrants to the Russian Federation in response.

6. Conclusions

Events of the last years are showing clearly to which extent the sequence of changes taking place has been interwoven. Water scarcity and following crop failures are one of the causes of instability in countries where seemingly nothing could herald agitation of the population.

Here is the extract from the conclusion of one of the experts of SFPA¹⁵⁵:

- *“ The crisis is going to deepen faster depending on the outburst of population growth, the dropping of oil and gas exports, the growth of food prices and droughts ...”.*
- The “Arab Spring” attracts people with absolutely unrealistic expectations of fundamental solutions concerning the crisis of the tools of resource policy. Disappointment results in the appearance of theocracy and/or military dictatorship.
- *“Europe does not have and will not have the resources to help – programs of democratization may turn out to be useless ...”*

In the course of the thousand of years, Central Asia was collecting the experience of generations in how to resolve crises and conflicts. However, our history shows that even the experience of generations is helpless when the question of water scarcity occurs. Among all the blood-shedding battles of the past, every third one was commenced due to the desire to be the Lord of Water.

The decay of the Soviet Union at the beginning of 90s and the disintegration of the once-unified water infrastructure resulted in the situation in which the countries of the upper reaches started to look upon the rivers as a property, thereby abusing the legal vacuum that has arisen.

Albeit 20 years of independence has passed, when each post-Soviet country of the region started enjoying the full rights of UN membership and took over the liabilities to meet requirements of the Water Conventions, and which, in addition, agreed to be bound to cope with the arising disputes in compliance with the given regulations – the relationship to transboundary rivers cannot be in single-country jurisdiction any more.

The experience of the Slovak-Hungarian dispute on Gabčíkovo-Nagymaros has demonstrated how it was possible to solve the use of waters in the river Danube avoiding appearance of hopeless situations through applying solely the tools of the International Law and a reasonable dialogue.

- The situation analysis has also demonstrated a certain paradox in the approaches of the compared regions:
- Slovakia, while controlling a strategic reserve of more than 50% of the ground and river deposits of pure water of the all Central Europe, is developing models of a way out of water crisis related to future water scarcity. ¹⁵⁶

¹⁵⁵ Juraj Mesík: What has been addressed by the “Arab Spring of 2011”, Middle East and Northern Africa (MENA) SFPA, 2011

- Analogical salvaging models of behavior and alternative solutions were not found in any region of Central Asia, where already today is experienced heavy water resources scarcity.

The right to take decisions on erection of the Rogun dam cannot be the prerogative of one country; as well the right over water distribution for the millions of region inhabitants cannot be politicized.

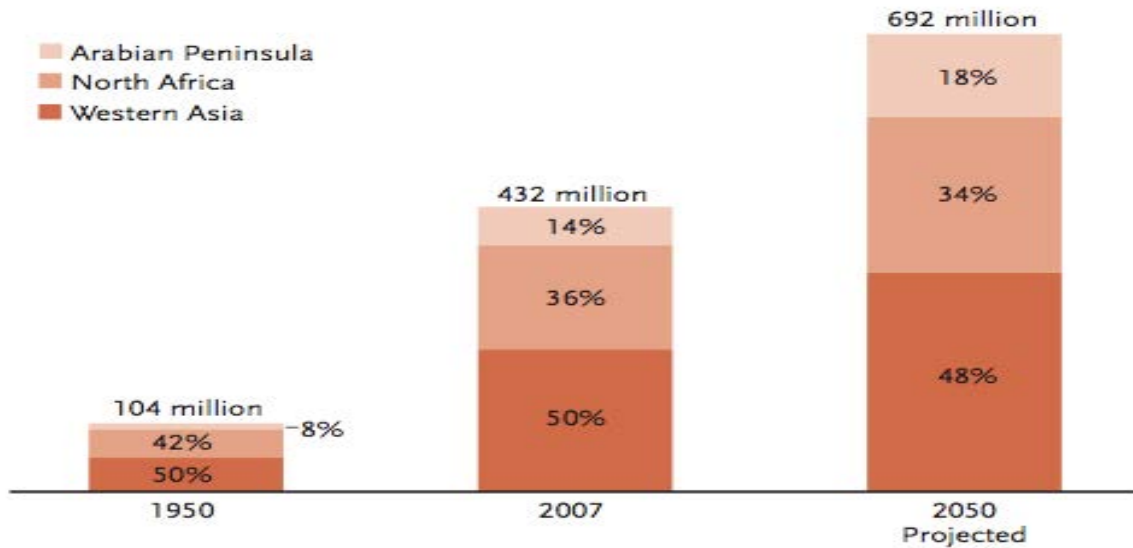
The instability created due to water scarcity in the countries consuming Amu Darya river waters will be inevitably reflected in the prosperity of the neighbors.

¹⁵⁶ Appendix 2, 6, and 8.

Appendices

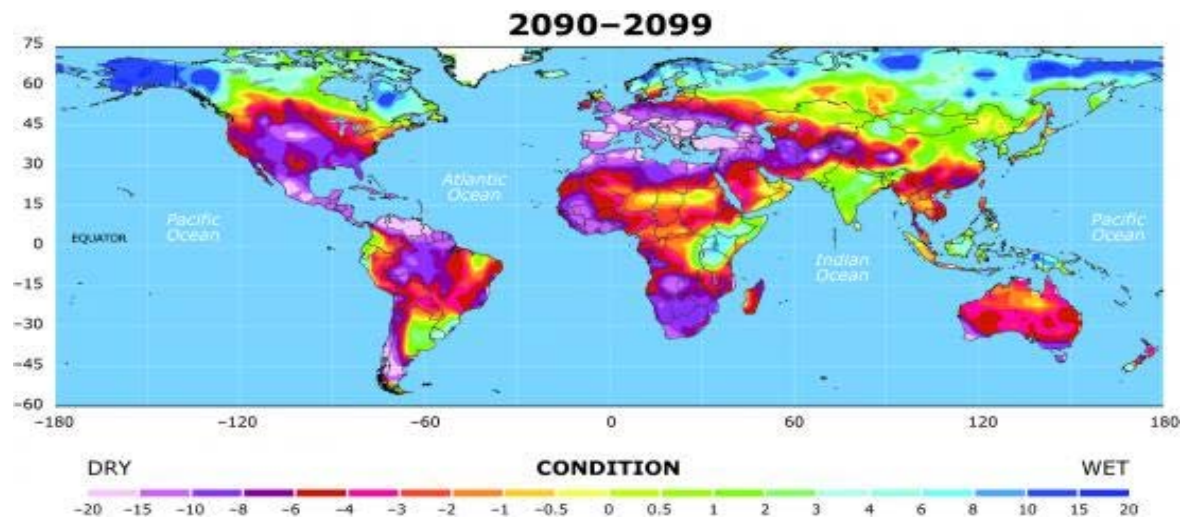
Appendix 1

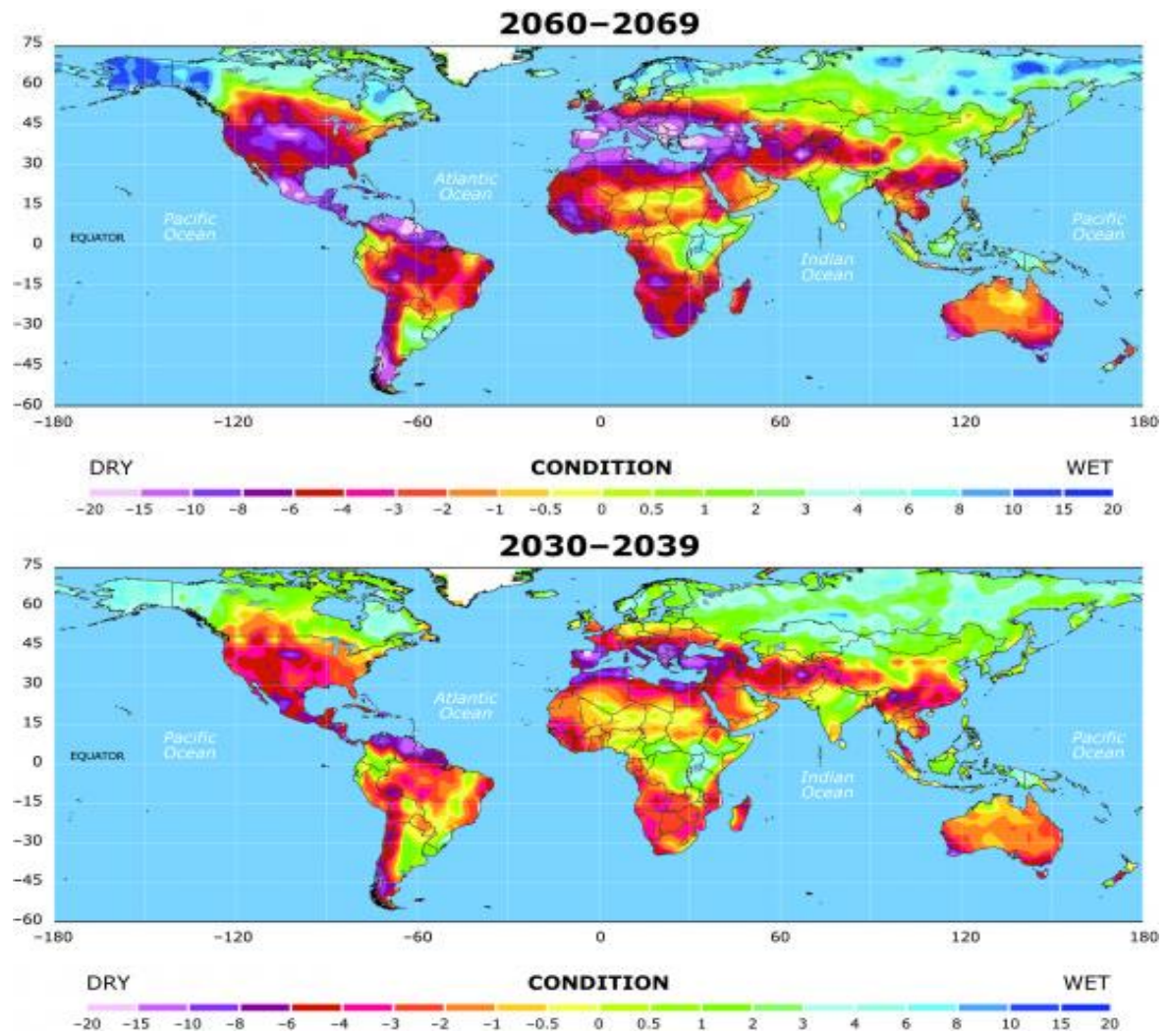
Population Growth in the MENA Regions: 1950, 2007, and 2050



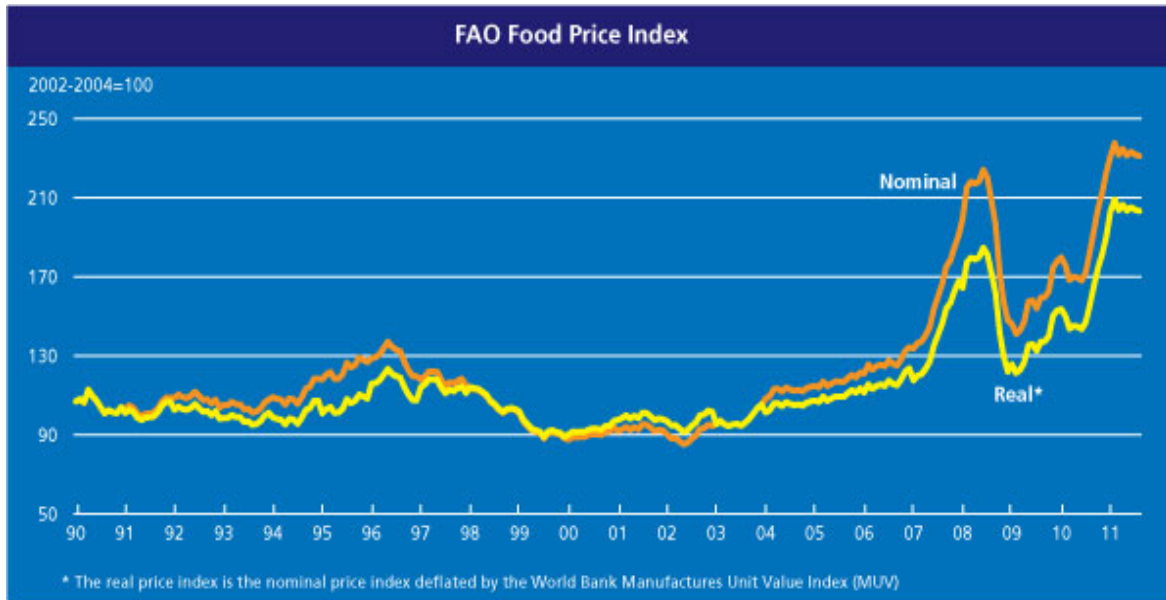
MENA: Middle East and North Africa

Source: UN Population Division, *World Population Prospects: The 2006 Revision* (2007); <http://esa.un.org>, accessed April 7, 2007).





Appendix 2

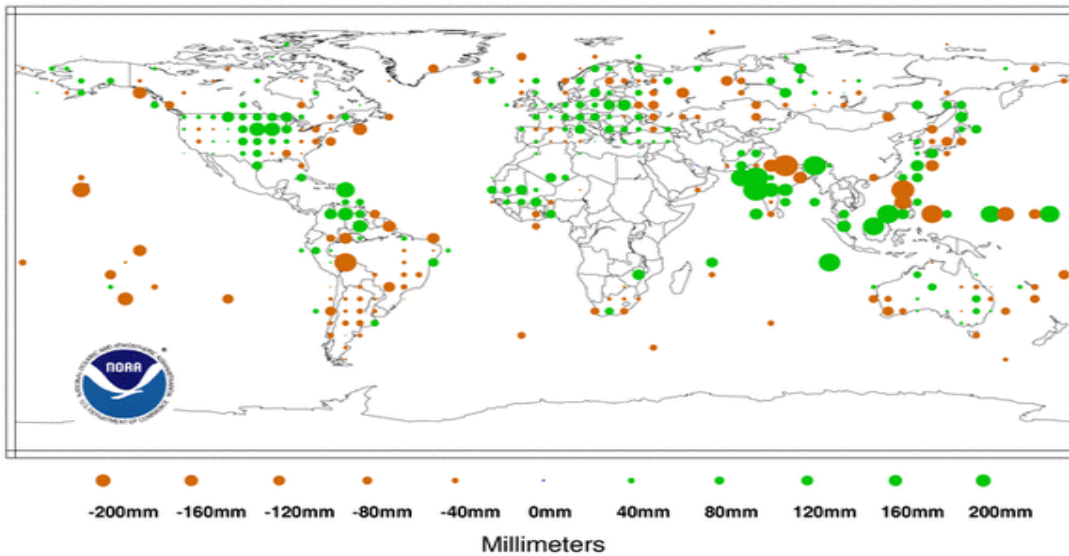


Appendix 3

Precipitation Anomalies Jun-Aug 2010

(with respect to a 1961-1990 base period)

National Climatic Data Center/NESDIS/NOAA



Appendix 4

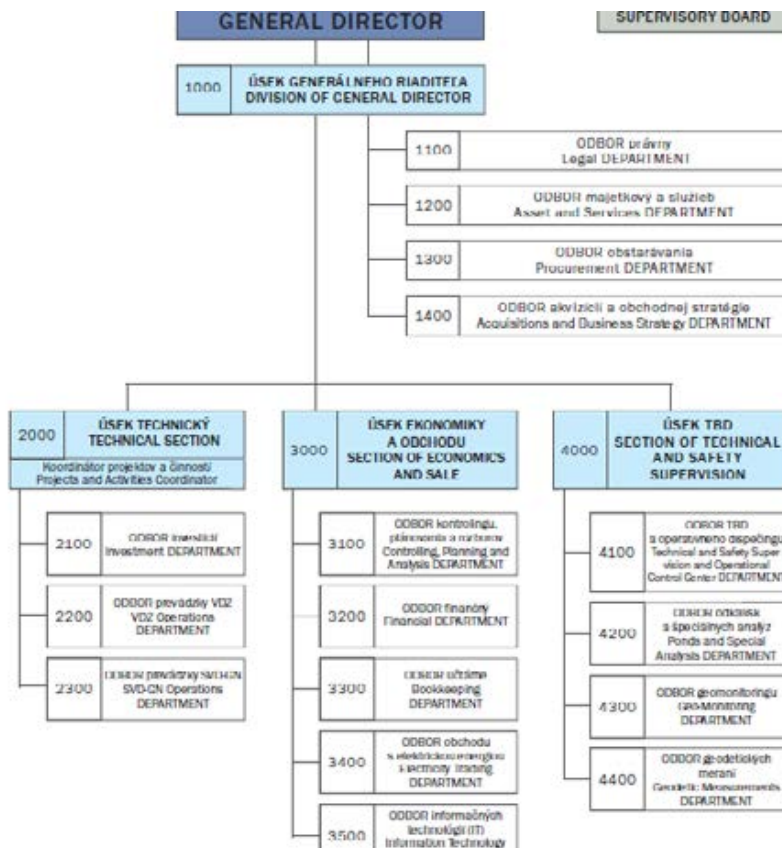
Trans-boundary waters in Caucasus and Central Asia

Map origin: ZOI. Environmental Network, March 2011



Трансграничные воды на Кавказе и в Центральной Азии. Карта производства: ZOI Environment Network, март 2011

Appendix 5

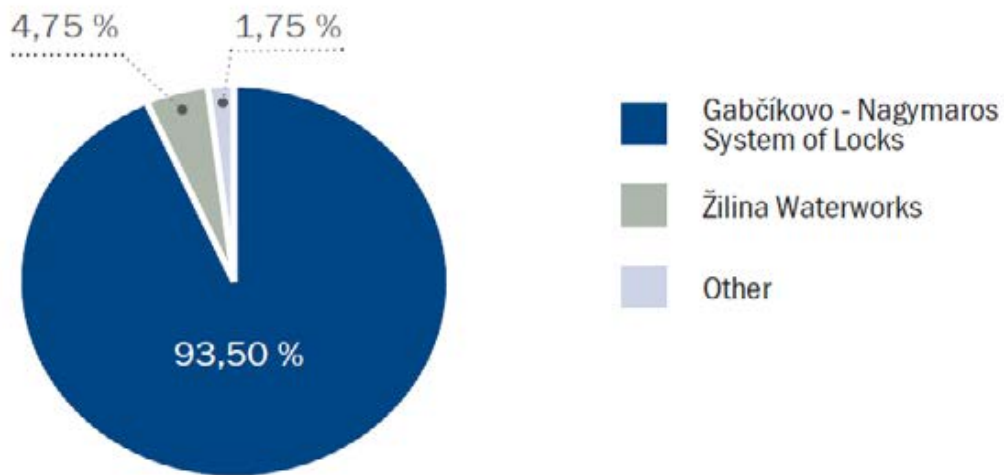


Appendix 6

Structure of Slovakia investments into water schemes in 2010

general part | [company activities](#)

Structure of investments in 2010



Appendix 7

Water plan of Slovak Republic

