



The Caucasus Institute for Peace, Democracy and Development

Executive Summary

Labour migration from Georgia and bilateral migration agreements: Needs and prospects

The policy paper deals with one of the most important problems facing the country nowadays, namely the problem of labor migration from Georgia, and analyses prospects of concluding bilateral agreements with western countries. Such agreements can help to avoid many problems related to the mostly illegal status of Georgian labor migrants and improve living and working conditions of many Georgian migrant workers in foreign countries. Alternative solutions to the problems related to such agreements are proposed in the policy paper. Some of these problems are particularly important, namely the lack of reliable data on labor migration from Georgia, the need to authorize a single governmental institution to conduct negotiations, etc. At the same time, some alternative measures are presented, which can increase positive effects of migration processes on the country's economy and society.

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Labour migration from Georgia and bilateral migration agreements: Needs and prospects

Problem description

Due to widespread poverty and endemic unemployment in Georgia, many Georgian citizens seek job opportunities abroad. A large proportion of Georgian families currently have at least one member living and working in a foreign country. Many of these migrants enter the host country on a tourist visa and overstay it.

Three periods can be distinguished in terms of outward migration from Georgia. The first lasted from 1990 to 1995 and was caused by economic decline and conflicts (it is estimated that some 650,000 people left Georgia during that period). The second, during 1996-2004, was triggered by economic instability and was followed by the third one which began in 2004. It should be noted, however, that after the Rose Revolution, along with the outward migration, many Georgian migrants who had left the country before returned home.¹

The money sent home by Georgian migrant workers constitutes a considerable portion of Georgia's GDP. So far, however, the government has done little to protect their rights in foreign countries and improve their working conditions. The only thing the government has done for migrants was to create, in early 2008, a special body, the Office of the State Minister for Diaspora Affairs, to deal with the issue. In cooperation with foreign experts the ministry prepared a strategic action plan that includes several legislative initiatives.

Bilateral labour migration agreements are viewed as a tool that can be used to regulate the migration problem. It is noteworthy, however, that such bilateral agreements usually require lengthy preparation. That is why it is unrealistic to expect any breakthrough on this issue in Georgia any time soon. EU countries do not seem concerned with Georgia's migration problems. And without EU involvement such agreements can hardly become a reality. Secondly, several governmental agencies are responsible for migration-related problems at present but coordination between them has been rather inefficient thus far, due in part to the large amount of red tape involved.

Generally speaking, European countries are interested in having skilled and qualified foreign workers.² It has been long proposed that such workers be given a

so-called "blue card" to remove obstacles to their travel. Unskilled workers can be employed in seasonal jobs. The question is whether Georgia has enough skilled labour.³ According to available data, some 50% of Georgian citizens willing to work abroad have higher education (a bachelor or master degree). It is obvious, however, that since the Georgian national education system falls far short of western standards, Georgian university graduates will have great difficulty competing with local workforce. Cheap labour is abundant in the labour markets of Europe and Russia, so they are unlikely to be interested in Georgian guest workers. Moreover, Georgia does not have a national database of workers with respective qualification and skills that would meet the requirements of European labour markets.

Research methodology

Research tools of the project included one-on-one interviews with migration experts on the basis of a specially prepared discussion plan (see Attachment 1). The interviews provided a wide spectrum of opinion, as the experts represented different structures: Georgian government agencies, local NGOs, and international organisations. In all, 10 experts were interviewed in the framework of the project in January-February 2009 (see Attachment 2). The interviews were recorded and transcribed afterwards. Each interview lasted 40 minutes in average.

Significance of the problem

Assessment of past policy

The expert research identified major migration-related problems in Georgia. These problems are caused mainly by the absence of appropriate legislation and the lack of cooperation between the institutions dealing with migration. Furthermore, reliable statistical data on migration is unavailable and migration problems have been never researched in depth. It is difficult, therefore, to analyse the existing situation thoroughly.

During the interviews all experts noted that Georgia did have neither a migration policy nor legislation to regulate inward and outward movement of citizens –

¹ Interview with Varlam Chkuaseli, Danish Refugee Council, a member of the project team

² <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1575&format=HTML&aged=0&language=EN&guiLanguage=en>

³ <http://itlab.ge/iom/pdf/statisticsEN.pdf>

despite the importance of migration for the country and the national economy. In addition, there is no control over employment agencies and labour migrants are not registered. Meanwhile, foreigners can enter Georgia without any difficulty, get employment permission freely and change their status easily. This liberal policy is aimed at boosting international tourism in Georgia. On the other hand, however, it is a major stumbling block to easing the visa regime with the European Union. In fact, the EU will hardly agree to loosen its visa regime with Georgia, unless the Georgian visa system is brought into line with European norms and standards.

Georgia does not have such agreements with the host countries where most Georgian migrants live and work: USA, UK, Italy, Germany, Russia, Greece.

Numerous attempts to develop a labour migration law in Georgia have failed for various reasons. Cooperation with different countries aimed at regulating labour migration has also been unsuccessful. To reach such agreements, the government must have a clear policy on the issue. The policy should acknowledge that labour migration is significant for the country given its high unemployment rate and the fact that the export of labour may become an essential component of Georgia's economic strategy as the regulation of migration processes could increase the country's budgetary revenues.

One specific feature of the Georgian labour migration is that it is largely illegal. In contrast, for instance, migration from South Asia is mostly legal.⁴ Asian migrant workers are a much cheaper labour force compared to Georgian labour migrants. The cost of travel to a host country is also different – Georgian labour migration incurs higher costs than migration from Asian countries does. As a rule, both Asian and Georgian migrants borrow money to reach their host country and then take months, if not years, to repay their debts.

Georgian migrants use different methods to reach a host country and find a job there. Most of them are unable to get official work permits and work mainly in the “black” labour market. This means that they are given the so-called “3D” (“dirty, difficult, dangerous”) jobs and are paid much lower wages in comparison with the local workforce. As the rights of the Georgian labour migrants are not protected at all, they are prone to various forms of exploitation. Life is hard for Georgian labour migrants in foreign countries; they are often unable to get back to Georgia to

visit their families for years on end because of their illegal status and live in constant fear of deportation.

As noted above, Georgian labour migration is predominantly illegal. Accordingly, Georgian migrants usually rely on unofficial, and often illegal, migration industry. That is why Georgian labour migration is rather expensive. If the government begins to regulate the migration processes, part of the illegal money may be diverted to the state budget, while migrants will enjoy official status and a more secure life in their host country. The host country will benefit too, as legal migrants will pay taxes and no longer boost the “black” economy.

Bilateral agreements usually require lengthy preparation. That is why it is unrealistic to expect any breakthrough on this issue in Georgia any time soon.

Urgency of the problem

According to experts, the regulation of labour migration should become a top priority for the government. According to various estimates, almost half a million Georgian citizens currently live and work in foreign countries. Of course, not all of them are labour migrants, as part of them have left the country for good and are not going to return. Although no reliable statistical data on Georgian labour migration is available at present, it is reasonable to assume that several hundred thousand Georgian labour migrants are currently abroad.⁵

Cheap labour is abundant in the labour markets of Europe and Russia, so they are unlikely to be interested in Georgian guest workers.

So far, Georgia has not signed bilateral labour migration agreements with foreign countries to regulate the migration processes. As a result, there are no legal mechanisms to protect Georgian labour migrants when their rights are violated. In fact, Georgian consulates in foreign countries have their hands tied and are not always able to help Georgian migrants when they encounter problems. Moreover, many Georgian labour migrants are reluctant to seek assistance of the Georgian consulates because of their illegal status, even when facing serious problems.

Illegal labour migration has a negative economic impact on both the host country and the home country of the migrants. It also creates problems for mi-

⁴ Hugo, G. (2008) Best Practice in temporary labour migration for development: a perspective from Asia and the Pacific. Paper for Global Forum on Migration and Development, Manila, Philippines. (<http://www.gfmd2008.org/images/cspapers/paper%208%20-%20best%20practice%20in%20temporary%20labour%20migration%20for%20development%20-%20a%20perspective%20from%20asia%20and%20the%20pacific.pdf>), p. 4

⁵ Vadachkoria A, Outward Migration Processes in Georgia (1989-2002), a thesis for PhD in economics, Georgian Academy of Sciences, Institute of Demography and Sociological Studies, Tbilisi, 2004.

grants themselves. Illegal migrants are usually employed unofficially, without proper registration. This means that the government of the host country receives less in tax revenues. At the same time, it has to spend more public funds on education and health care, as migrants use these services along with other residents of the host country. Back home, the governments of home countries and the families of the migrants receive less income than they would get if the migrants were employed legally.

The policy should acknowledge that labour migration is significant for the country given its high unemployment rate and the fact that the export of labour may become an essential component of Georgia's economic strategy as the regulation of migration processes could increase the country's budgetary revenues. One specific feature of the Georgian labour migration is that it is largely illegal.

Thus both host and home countries are interested in regulating the labour migration process. That is why they must join forces to tackle the problem. Given that labour migration is more important for Georgia than it is for the relevant host country,⁶ the Georgian government should be the first to initiate diplomatic moves to regulate the status of Georgian labour migrants in foreign countries.

As the rights of the Georgian labour migrants are not protected at all, they are prone to various forms of exploitation.

World practice of bilateral agreements: a brief review

As a rule, governments sign bilateral labour migration agreements for the following reasons:

1. Economic: some spheres, such as tourism, industries (oil production) or agriculture, often need additional workforce, as local labour resources fall short of demand.

There are no legal mechanisms to protect Georgian labour migrants when their rights are violated.

2. Political: such agreements help forge bonds of friendship and cooperation between countries, and control illegal migration by introducing migration quotas.

3. Development: such agreements may aim to clamp down on illegal employment practices in global labour markets, for instance in the field of health care, providing assistance for developing countries.⁷

It is noteworthy, however, that many bilateral agreements failed to produce any tangible results. As a rule, only agreements based on practical needs, rather than politically motivated deals, are really effective. The agreements tend to be more or less successful if they are dictated by the markets. Many other factors also play a role, for instance geography. If a host and a home country are far away from each other, travel between them may prove costly and, therefore, an employer may agree to pay for the travel expenses of a migrant worker.

Bilateral labour migration agreements provide governments with a tool to regulate, encourage and liberalize labour migration. With these agreements host countries can determine – on the basis of cultural, strategic, or historical links – what kind of workforce they need and where it should come from. After WWII such agreements became commonplace between northern and southern European countries. But the expansion of the European Union has rendered many such agreements obsolete, though they are still in force. About 44,000 migrants received temporary jobs in Germany alone in 2003 on the basis of bilateral agreements signed with the governments of central and southern European countries. Under the Polish-German labour migration pact, many Poles are able to seek seasonal jobs in Germany. There were 318,549 seasonal guest workers in Germany in 2003, including many Polish citizens.⁸

Bilateral agreements with developing countries provide EU member states with even more opportunities – they use these agreements to regulate labour migration and employment procedures, and address problems of illegal exploitation, human rights abuses and trafficking. On the whole, the labour migration laws of EU countries are rather tough on both employers and guest workers. There is no legislation in this field and opportunities for entering these countries legally are scarce. Existing formalities differ from country to country.

Every host country must take into account the following factors: First of all, the number of officially admitted guest workers must be determined exclusively by economic needs. Secondly, guest workers

⁶ There were about 12m illegal migrants in the USA in 2008. Most of them were from the following countries: Mexico (7,030,000), El Salvador (570,000), Guatemala (430,000), Philippines (300,000), and Honduras (300,000). Compared with these data, the number of Georgian illegal migrants in the USA is far less significant. Michael Hofer, Nancy Rytina, and Bryan C. Baker. Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008. (http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf)

⁷ Handbook on efficient labour migration policies in host and home countries, OSCE, IOM, ILO, 2006, p. 203

⁸ Comparative analysis of the labour migration legislation of 27 EU member states. International Organisation of Migration, Tbilisi, 2008.

should be permitted to get jobs only in the sectors of the national economy that are starving for workforce. At the same time, governments should impose certain limitations to prevent an oversupply of labour and protect the national labour market and local employees.

As mentioned above, some European countries have already gained enough experience of bilateral labour migration agreements. It is important to identify differences between various forms of employment for labour migrants: employment, self-employment and seasonal employment. Several specific cases are described below.

a) Europe

Portugal signed bilateral agreements with several countries in 1997-2005: Cabo Verde, Brazil, Romania, and Ukraine. The agreements specify norms and principles of the temporary residence and employment of guest workers from third countries, and guarantee social protection and normal workplace conditions. In addition, the agreements help streamline and regulate the migration process. Portugal also signed wide-ranging agreements with Portuguese-speaking countries to regulate migration of their citizens (i.e. movement of citizens between the commonwealth countries). Under these agreements, certain categories of professionals, such as researchers, athletes and journalists are eligible for multiple entry visas.

Spain has taken significant steps regarding migration regulation. Namely, it signed bilateral agreements with the countries that are its main suppliers of migrant labour. Although the agreements are designed mainly to regulate migration processes, they address some other issues as well, such as the announcement of vacancies, selection of candidates, job contracts, employment permissions in Spain, travel and accommodation, etc. The agreements also include joint activities in tackling irregular migration, measures against labour exploitation, the violation of social rights, identity document forgery, and, most importantly, trafficking, and measures to facilitate the reintegration of returning migrant workers in order to help them apply the new knowledge they gained abroad for the benefit of their home country. Under the 2006 agreements all illegal labour migrants should be deported from Spain.⁹

Poland has opted for a different practice. It does not have bilateral agreements. Instead, Polish national

legislation provides citizens of some third countries with some privileges. For instance, to get a seasonal job in Poland, citizens of neighbouring countries (Ukraine, Russia, Belarus, Germany) do not need official permits. Seasonal workers are guaranteed three months of employment during a six-month period, in agriculture, orchard work and livestock farming.¹⁰

Given that labour migration is more important for Georgia than it is for the relevant host country,⁶ the Georgian government should be the first to initiate diplomatic moves to regulate the status of Georgian labour migrants in foreign countries.

b) Asia

Asian countries are actively involved in migration processes. Small wonder, therefore, that they have developed complex migration policies and efficiently regulate labour migration. According to various authors, migration from South Asian countries is largely legal, indicating that the existing agreements work in practice. Georgia could learn a lot from the South Asian experience.

As a rule, only agreements based on practical needs, rather than politically motivated deals, are really effective.

Both host and home countries are interested in regulating labour migration. That is why bilateral agreements are reached at their mutual initiative. For instance, only migrants from several countries are permitted to work in China: Indonesia, Mongolia, Philippines, Thailand, and Vietnam. All these countries have signed bilateral agreements with China. Malaysia has bilateral agreements with Bangladesh, Indonesia, Pakistan, Sri-Lanka, Thailand and Vietnam. In 2003 Thailand signed agreements with Cambodia, Laos and Myanmar on official employment of labour migrants.¹¹ Korea has set up a national system of employment permits and signed bilateral agreements with 14 countries, including Indonesia, Sri-Lanka, Thailand, and Vietnam.¹²

Over the last several years Indonesia, one of the suppliers of migrant labour, signed a bilateral agreement with major host countries that employ Indonesian migrants, including Malaysia, Korea, Japan, Australia, United Arab Emirates, Jordan, Qatar and Syria. Under the agreement with Malaysia, which was signed in 2006, job contracts are mandatory for labour migrants and their wages should be paid without delay.

⁹ Detailed information on other countries is given in Comparative analysis of the labour migration legislation of 27 EU member states. International Organisation of Migration, Tbilisi, 2008.

¹⁰ Ibid., p.110

¹¹ <http://www.adb.org/Documents/Books/ADO/2008/part020304.asp>

¹² Hugo, G. (2008). *Best Practice in temporary labour migration for development: a perspective from Asia and the Pacific*. Paper for Global Forum on Migration and Development Manila, Philippines. p. 17.

The agreement also regulates the amount of wages and ensures freedom of worship for migrant workers. At the same time, employers are obliged to provide the workers with bank accounts and deposit their wages in full. Employment agencies are prohibited from demanding that labour migrants cede part of their wages in payment for their services. The agreement stipulates the procedure to settle legal disputes and provides Indonesian migrants with the right to bring lawsuits in Malaysian courts.¹³

Every host country must take into account the following factors: First of all, the number of officially admitted guest workers must be determined exclusively by economic needs. Secondly, guest workers should be permitted to get jobs only in the sectors of the national economy that are starving for workforce.

c) Latin America

Members of the ACN – the Andean Commonwealth of Nations (Bolivia, Columbia, Ecuador, Peru and Venezuela) – signed an accord on free movement of labour migrants from member countries across the entire ACN territory.

The Mercosur countries – Argentina, Brazil, Paraguay and Uruguay – reached an agreement in 2002 that citizens of these countries, as well as those of Chile and Bolivia, can freely and legally move to and reside in any Mercosur country. The agreement includes measures for re-unification of families and gives the migrants the same political, economic, social and cultural rights as residents of a host country have. Residence permits are valid for two years and can be extended afterwards.¹⁴

Prospects for bilateral labour migration agreements between Georgia and other countries

As noted above, bilateral agreements apply only to certain categories of migrant workers. Of course, bilateral agreements are useful and necessary, but even if Georgia signs such agreements with some countries, the problem of thousands of unskilled workers who currently live and work illegally in foreign countries, will not be solved. In case of Georgia, therefore, the importance of such agreements should not be overestimated. It is also highly unlikely that the Georgian national education system will be able to educate skilled and sufficiently qualified workers anytime soon.¹⁵

Moreover, there are not enough professional workers in Georgia itself to fill vacancies in the local labour market and foreign specialists are often invited to the country as a result.

It seems reasonable, therefore, to focus attention on another problem at the present stage, namely on the absence of a database with comprehensive information about the domestic labour market. Nobody knows how many workers there are in Georgia, what professions and qualification they have, or how many of them need re-training. If preparation for bilateral agreements begins in earnest, priority should be given to countries with the largest communities of migrant Georgian workers. According to unofficial sources, almost 40 per cent of the Georgian labour migrants reside in Russia (the amount of money remittances to Georgia corroborates this assumption). But chances of such agreement with Russia are likely to remain nearly zero for a long time to come. That is why it is necessary to identify the countries that can offer the best opportunities to Georgian labour migrants and cooperate with them on the regulation of labour migration.

It is noteworthy that several Georgian governmental bodies are responsible for bilateral agreements: the Ministry of Economic Development, the Ministry of Foreign Affairs, the Ministry of Justice, and Office of the State Minister for Diaspora Issues. Naturally, coordinating the activities of so many structures is not an easy task and the need to do so complicates the task at hand.

Alternatives

The first option is to push ahead with efforts to reach bilateral agreements. Georgia has a good chance to sign such agreements and agree quotas with several countries, though it will be a drop in the ocean in view of the army of Georgian migrants that moved abroad. Besides, there is no guarantee that Georgia will be able to use its quota fully. This means that the relevant agreement will have only limited positive effect. It would be better, therefore, to focus on seasonal migration, as Georgia has more resources in this field.

The EU-Georgia Action Plan (AP), signed in the framework of the ENP (European Neighbourhood Policy), came into force in 2006. Among other things, the AP addresses migration and asylum issues. Namely, it states:

“4.3.2 Migration issues (legal, illegal, readmission, visa, asylum)

¹³ Hugo, G. (2008). *Best Practice in temporary labour migration for development: A perspective from Asia and the Pacific*. Paper for Global Forum on Migration and Development. Manila, Philippines. p. 17.

¹⁴ Handbook on ...2006

¹⁵ This view was shared by most of the experts interviewed.

Develop cooperation on migration issues

- *Elaborate and start implementing a coherent, comprehensive and balanced national action plan on migration and asylum issues;*
- *Establish an electronic database for the monitoring of migration flows;*
- *Improve coordination between relevant national agencies dealing with migration.”*

Georgia's chances of reaching bilateral agreements largely depend on the country's economic and political development. A more liberal visa regime for Georgian citizens, an idea openly advocated by some EU officials, will be a significant step forward that can improve Georgia's prospects for bilateral agreements.

Another important aspect is the reputation of Georgian labour migrants in European countries. As a rule, inability to speak the official language of a host country is the most serious problem of Georgian migrants that reduces their chances of finding a job. Over recent years host countries have gained sufficient experience of dealing with labour migrants from Georgia. This factor can play a positive role, but it is just as likely to have a negative impact. Georgian migrants are welcome in some countries (for instance Greece) but have very bad reputation in others (for example Austria).¹⁶

Another option is to set up consultation centres in countries with the largest number of guest workers from Georgia (Russia, Greece, Turkey) and invite local lawyers to deal with the migrants' problems. The experience of foreign countries (for instance Philippines) shows that such centres can be very useful. But their beneficiaries are mainly migrants who already live and work – legally or illegally – abroad. The centres will in no way create any obstacles to bilateral agreements. On the contrary, they may prove even more helpful than the agreements.

Recommendations

The following recommendations were prepared on the basis of the research results and past experience.

- Put a single governmental structure in charge of labour migration regulation and make it responsible for co-ordinating the development and implementation of migration policy.
- Identify the country's priorities in the field of labour migration. Develop respective policy papers and strategies.
- Take steps, without delay, to count the exact number of labour migrants (prepare appropriate meth-

odology if necessary) to ensure that at least in several years a full database on migration will be in place. Set up a working group to develop a methodology for estimating migration statistics.

Even if Georgia signs such agreements with some countries, the problem of thousands of unskilled workers who currently live and work illegally in foreign countries, will not be solved.

- Resume and intensify negotiations on bilateral agreements with the host countries that have the largest communities of Georgian labour migrants and are most likely to sign such agreements with Georgia.

Nobody knows how many workers there are in Georgia, what professions and qualification they have, or how many of them need re-training.

- Also, give priority to the countries with the best opportunities for seasonal employment.
- Simultaneously, set up consultation centres in the host countries with the largest communities of Georgian labour migrants. The centres should deal with the problems of all Georgian migrants, including illegal ones.
- Research the Georgian labour market and use the research results for the development of a national employment strategy.

It would be better, therefore, to focus on seasonal migration, as Georgia has more resources in this field.

- Carry out comparative analysis of the labour markets of potential partner countries and develop re-training programs in compliance with the requirements of host countries. Professional training centres of the Georgian education ministry should apply these programs to help Georgian labour migrants acquire necessary skills and knowledge.¹⁷

Another option is to set up consultation centres in countries with the largest number of guest workers from Georgia (Russia, Greece, Turkey) and invite local lawyers to deal with the migrants' problems.

- Set up consultation centres for migrants in Georgia. The centres should offer the migrants advice and training on psychological, legal, financial, and language problems before they move to a foreign country.

¹⁶ Interview with Mark Hulst, International Organisation of Migration.

¹⁷ For instance, there are a lot of vacancies for nurses and other medical staff in USA and UK. The demand is satisfied only partly, mainly by migrants from Philippines, Jamaica, and African countries.

- Set up consultation centres for returning migrants in Georgia to provide them with advice and training on psychological and business issues and facilitate their reintegration.
 - Prepare special programmes to help channel the money remitted home by migrant workers into the small business development projects. In Mexico, for instance, the government adds three dollars to every dollar invested by migrants into small business development. This measure encourages entrepreneurship and initiative among migrants and their families.
 - Train the personnel of the consular services of the Georgian foreign ministry in the legal aspects of migration, such as the migrants' rights (including illegal migrants) and Georgia's international obligations in the field of migration.
 - Make a full inventory of Georgia's employment agencies and examine their activities. This will help identify problems of the field and optimise programs of these agencies.
- What do you think about bilateral labour migration agreements?
 - Can you tell any success stories about such agreements?
5. Have you ever heard of such agreements? If yes:
 - Which institution is responsible for these issues?
 - Which countries are involved in negotiations?
 - At what stage is the preparation of the agreements?
 6. What are major obstacles to these agreements?
 7. Is it important, in your opinion, to gather information about the labour market for regulating the labour migration efficiently?
 8. Is information about the structure of the Georgian labour market, including oversupply of professionals and career crowding, readily available in Georgia? If yes:
 - What is the structure of the labour market?
 - Which professions are oversupplied?
 9. Which countries should become, in your opinion, Georgia's priority cooperation partners? Why?

Attachment 1

Discussion plan

1. Please describe your organisation.
 - What are its mission and objectives?
 - Has it carried out migration-related projects? If yes, specify the projects.
2. Do you cooperate with other organisations dealing with migration problems? If yes:
 - Name these organisations.
 - Specify migration problems these organisations focus on.
3. Can you specify outward migration flows from Georgia? *If respondents do not mention cross-border or seasonal migration, ask them – Can you specify cross-border or seasonal labour migration flows?*
4. What are, in your opinion, the major problems of labour migration from Georgia? *Detailed description of the problems – as a rule, answers to this question should include intergovernmental agreements.* If no:
 10. Which countries need the labour migrants that Georgia can provide?
 11. Should Georgia encourage seasonal or cross-border labour migration? If yes:
 - What means of encouragement should be applied?
 12. What do you think about the Georgian government's policy on labour migration? (detailed answer)
 - Legislation – What laws are in place? Do the laws help solve problems of labour migrants?
 - Projects – What projects are in place? Do the projects help solve problems of labour migrants?
 - Programs – What programs are in place? Do the programs help solve problems of labour migrants? (*ask the respondents about professional development and employment programs*).
 13. What laws are in place, if any, to protect Georgian labour migrants? How do the laws provide protection? Do the laws protect rights of the labour migrants that are legally employed in a foreign country?

Thank you!

Attachment 2

List of experts

First name, Second name	Institution
Ghia Kakachia	Ministry of Labour, Health Care and Social Security
Etheri Qamarauli	Ministry of Foreign Affairs
Merab Ergemlidze	Office of the State Minister for Diaspora Issues
Archil Qaraulashvili	Office of the State Minister for Euro-Atlantic Integration
Mark Hulst	International Organisation of Migration
Tsiuri Antadze	International Organisation of Migration
Aaron Erlich	Centre of the Caucasus Research Resources
Kote Razmadze	Ministry of Refugees and Resettlement
Valery Nanobashvili	Ministry of Economic Development
Mirian Tukhashvili	Tbilisi State University
Varlam Tchkuaseli	Danish Refugee Council

Mariam Giorgobiani

International agreements on labour migration (Legal aspects of the problem)

Under international law, international agreements are divided into two categories: multilateral and bilateral. Bilateral international agreements are the most widely used tool of international cooperation. As a result of the development of modern technologies, communications and trade, countries have become increasingly interdependent. That is why they need to elaborate and abide by a framework of common norms and principles.

Bilateral agreements on labour migration have become widespread of late in response to the challenge illegal migration poses to the world. These agreements are motivated by various factors, both political and economic. They help governments prevent illegal migration and related problems, the most serious being human trafficking.

Labour migration agreements are based on an evaluation of the economic situation in signatory countries. These agreements regulate inward labour migration and identify sectors of the national economy that labour migrants need most of all. Countries can impose migration quotas to regulate and control the number of migrant workers in their territory and reduce illegal migration.

It can be assumed, therefore, that labour migration agreements can facilitate and regulate measures to address migration-related problems. However, these

agreements can also create some legal problems. This aspect concerns the national legislations of signatory countries.

The national legislations of signatory countries should correspond with international human rights and labour standards. Among most important universal mechanisms of human rights protection are the 1948 Universal Declaration of Human Rights and 1966 international pact for civil and political rights, and international covenant on economic, cultural, and social rights.

Prior to signing international agreements on labour migration, countries should bring their national legislations into line with international norms and standards. A host country's legislation should contain provisions for the protection of migrant workers' rights. Countries should be confident that their citizens working in other countries enjoy at least the rights guaranteed by current international human rights mechanisms.

Bilateral agreements may provide migrant workers with some privileges, meaning, in some cases, that labour migrants enjoy more rights than citizens of a given host country.

Even if national legislations of countries fully comply with international norms, provide equal rights for both

local and migrant workers, and have sufficient safeguards against discrimination of labour migrants, there may be still some legal problems regarding, for instance, the protection of private sector employees. That is why apart from developing appropriate legal norms, countries must also create special mechanisms to control and regulate employment and prevent discrimination and exploitation of migrant workers in households and private companies. National legislations should also regulate private employment agencies in order to ensure that their clients, migrant workers, do not fall victim to trafficking.

Thus, apart from advantages and benefits, bilateral labour migration agreements impose certain responsibilities on signatory countries.

Let us take a look at EU countries' legislation and policies on labour migration.

Italy has migration quotas only for countries it has signed agreements with on regulating the admission and readmission of migrants. On the other hand, Italy reduces its quotas for the countries that do not participate in measures to prevent illegal migration.

In the case of Spain, bilateral agreements aim at full-scale improvement of national policies. Apart from employment, these agreements include provisions on cooperation in fighting against illegal migration, exploitation and the violation of social rights, forgery of documents and trafficking.

Let us examine Georgia's migration regulation policies and identify obstacles that prevent Georgia from signing bilateral labour migration agreements.

Several governmental agencies are responsible for regulating and controlling labour migration in Georgia today. Negotiations are under way with several countries, including Spain, Italy, Turkey and Greece. Still, bilateral agreements on labour migration between Georgia and these countries remain a very remote possibility.

It is essential for Georgia to sign bilateral agreements with the countries that host the largest communities of Georgian labour migrants. According to the latest research by the International Organization of Migration, Georgian migrant workers are often discriminated against by their employers. Namely, they are underpaid and socially unprotected.

The only bilateral legal document protecting Georgian migrant workers in a foreign country is with Azerbaijan, though that regulates only the social status of the migrants.

It will be a very hard task for Georgia to join the European mobility initiative and reach bilateral labour

migration agreements with EU member states, as they have high standards of migration regulation, and even with non-EU countries, which do not have strict requirements for such agreements.

Georgia does not have a legislative base to regulate migration processes. That is why Georgia should develop a balanced policy on migration, one capable of regulating both legal and illegal migration, in order to balance control and facilitation mechanisms.

Georgia should set up a governmental body to elaborate a migration policy, to improve and modernize migration legislation, to change or maybe even fundamentally alter the procedure for entering Georgia, and streamline the visa procedure (visa categories should be defined in more detail; new categories should be developed for short-term, long-term and transit visas), to regulate permanent residence problems (including residence permits) and return to a home country, re-admission and deportation. It would be useful to revise the criteria for deportation of foreign nationals. Detained foreigners should be kept in special detention centres, which should be built at border checkpoints too. Those breaching the migration legislation should be held to account under the administrative code. Those foreigners who illegally cross the border into Georgia and violate migration legislation should receive maximum detention terms.

Georgian migration legislation does not regulate, fully and legally, cases of foreigners involved in business activities in Georgia. Upon entry into Georgia under an ordinary visa, foreign citizens are not subject to any restrictions or regulations regarding their employment or economic activity. There is no legislation on labour migration, while the existing laws say nothing about any restrictions on the business activity of foreigners in Georgia.

Georgia must also create a common legislative base for gathering and exchange of information on migration between different governmental agencies.

The above-described measures require a lot of time and effort. But efficient legislation is a *sine qua non* for bilateral agreements.

A draft labour migration agreement was repeatedly submitted to the Ministry of Justice for legal assessment but to no avail – due to the absence of relevant legislation the draft has not been approved yet.

Analysis of international practice and experience has shown that bilateral agreements help signatory countries tackle migration-related problems and control migration processes in their territories, i.e. prevent trafficking. Georgia could also benefit from such agreements, especially with the countries that host the largest communities of Georgian migrant work-

ers. It would be also useful for Georgia to join the EU mobility partnership. It is noteworthy, however, that agreements alone cannot solve the problem. Such agreements must really work in practice and heed the “**Pacta sunt servanda**” principle. This means that relevant legislation should be in place and related issues must be regulated.

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Overview of best practices in concluding labour migration agreements

1. Prior to negotiating an agreement, an **assessment** is needed in both the sending and receiving countries **on the situation on the local labour market**.¹ In the receiving country, information should be available on the sectors with demand for labour force, the extent and permanence of the shortage and the impact of the inflow of labour migrants on the level of unemployment among local nationals as well as on the demand for social services. In turn, the effects of departure of the receiving country’s labour force should be evaluated in the country of origin for possible skill deficit in particular professions.

In general, the assessment of the situation on the labour market is a formal requirement forming part of the procedure for issuing a work permit to a third-country national (TCN) in an EU Member

State, ensuring that the TCN does not take a position that could be offered to a domestic worker or a qualified EU national.² However, for the mechanism to work properly and not represent merely a bureaucratic hurdle, instruments such as vacancy and unemployment databases are needed. Another factor that can help improve access to information on available labour supply is the establishment of permanent dialogue with local employers and opening of communication channels with employers (either in the form of consultative bodies or direct communication). Unfortunately, studies in several new EU member states show that, unlike in countries where consultative mechanisms are in place between domestic employers and labour offices, the requirement of the so-called labour market test results in unnecessary delays in employing migrants.

¹ This is highlighted by one of the conclusions of the expert seminar on “Bilateral temporary labour arrangements: good practices and lessons learnt”: “Systems need to be established that assess the origin and receiving labour market regarding short term employment needs and changes to these and provide updated information in a transparent way. International agencies can greatly contribute to identifying and sharing these labour market characteristics and trends.” (Point 13 of the Analytical Paper to the Compendium).

² Case in point is the German procedure, according to which issuing a work permit to a worker under a seasonal agreement is subject to a case-by-case investigation of the situation on the local labour market. See: N. Parkhomenko, *Ukrainian Labour Migration in the Enlarged Europe*, CPCFPU Kiev 2005, p. 31.

2. Foreign workforce is generally considered a **secondary source of labour** in the markets of EU member states. The receiving governments need to consider not only the needs of employers in sectors with a demand for labour, but also the cautious, and at times clearly negative position of trade unions, local governments and political parties. Although from the economic perspective, circular migration is often preferable as the workers who already know the local market and cultural realities and have some command of the language integrate more easily with the local communities, the receiving states tend to limit opportunities for prolonged employment and residence (with the exception of high-skilled migrants). Thus, most agreements require that migrants return to the country of origin after several months of employment and that they undergo the same burdensome entry procedure. This aspect aims at increasing the ability of the receiving state to reduce the inflow of migrants at periods of economic downturn, and avoid the political reaction to “uncontrolled migration”.

At the same time, the model of the agreement must fit the existing or expected migration patterns. The Polish-Ukrainian agreement for years remained dead letter as it was based solely on the political will to cooperate and paid little attention to the actual needs of either migrants or employers. The agreement contained no incentives for hiring Ukrainian migrants and placed them in the same position as other potential foreign workers, who needed to apply for individual work permits. The agreement failed to stimulate labour migration for other reasons, as well—among them was the fact that the conclusion of the agreement was not followed by the development of special procedures or the establishment of executive agencies. As a result, while a large number of Ukrainians continued to mi-

grate to Poland in search of work, hardly any used the agreement.

3. Labour migration bilateral agreements with member states of the EU go hand in hand with collaborative efforts to **control irregular migration**, countering trafficking in human beings and countering migration-related organized crime. From the EU perspective (both at the Union level and among individual member states), facilitating regular labour migration is part of a larger package, in which controlling irregular migration is a top priority. Since the 1990s, readmission agreements are increasingly seen as prerequisites for managing migratory flows through and from countries in the EU’s neighbourhood.³

The experience of states of major labour migration bound for the EU, such as Ukraine and Moldova, indicates that bilateral agreements regulating labour migration need to contain elements of **protection for migrants against fraud** on the part of intermediary companies and employers. It is not sufficient to leave regulation of the form of contract, guarantees in case of termination, determination of wages and working time to the legislation of the country of destination – rather specific clauses should be found in the agreement itself. The Ukrainian Ministry of Labour is in progress of negotiating agreements on protection of social security of labour migrants with several countries of destination of Ukrainian workers. These often follow the signature of basic labour migration agreements, which concentrate on the volume of migration, the procedure of legalizing employment and conditions workers’ entry into the receiving state. These “second-wave” agreements reflect the fact that temporary and seasonal migration is likely to assume circular and permanent forms, which require more comprehensive legislation, including aspects of social security.

³ For instance, Priority area 4 of the EU/Georgia Action Plan mentions “readmission” as part of a dialogue on the movement of people, and stresses security threats, such as “organized crime” and “trafficking” as areas of cooperation. Moreover, the Plan calls on Georgia to step up its border control reforms. It is striking that while cooperation on regular labour migration is not addressed directly in the document, the actions related to controlling irregular flows are highlighted in several parts. Even the section on “facilitating the movement of persons” focuses on “prevention and fight against illegal migration” and “readmission of own nationals” (section 4.3).

Web – Resources on Migration and Migration Policy

<http://www.iom.int> – IOM, International Organization of Migration

<http://www.iom.ge> – IOM in Georgia

<http://www.migrationpolicy.org/> – Migration Policy Institute, one of the most important organization working in this field

<http://www.migrationinformation.org> – Comprehensive resource on migration

<http://www.compas.ox.ac.uk> – Center on Migration, Policy and Society (COMPAS), University of Oxford, information on researches and other activities conducted by this organization

<http://www.samren.org> – Migration processes and migration policy in countries of S. Asia

<http://www.migrationdrc.org> – Research center on migration and development

<http://www.icmh.ch/default.html> – Swiss organization working on migration related health issues

<http://www.forcedmigration.org> – Resources on forced migration

<http://www.fmreview.org> – Internet magazine on forced migration

<http://www.ccis-ucsd.org/> – Center for Comparative Immigration Studies, University of California, San Diego

www.uscis.gov/simgtn/statistics/ – US Migration Statistics

Resources on Bilateral Agreements

IOM, Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements

http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/studies_and_reports/compendium_version_2.pdf

Agencia Espanola de Cooperacion Internacional para el Desarrollo, Bilateral Temporary Labour Arrangements: Good Practices and Lessons Learnt—Analytical Paper

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Chapter 12, “Managing the Labour Migration and Development Equation”

http://iom.ch/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/studies_and_reports/WMR2008/Ch12_WMR08.pdf

Chapter 13, “Achieving Best Outcomes from Global, Regional and Bilateral Cooperation”

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<http://www.gfmd-fmmd.org/en/system/files/Background+Paper+Session+1.2+EN.pdf>.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/549>

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<http://register.consilium.eu.int/pdf/en/05/st15/st15744.en05.pdf>

http://www.epc.eu/TEWN/pdf/339002765_Global%20Approach%20to%20Migration.pdf

http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf

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