

Discrimination in the Enjoyment of Social and Economic Rights by Ethnic Minorities and Migrants in Russia



Photo: Stephania Kulaeva.

**Migrant children hiding between heating pipes from
police raids in slums**

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The NGO Anti-Discrimination Centre MEMORIAL was registered in 2007 and continued work on a number of human rights and anti-discrimination projects that were previously coordinated by the Charitable Educational Human Rights NGO “MEMORIAL” of St. Petersburg.

The mission of ADC Memorial is defense the rights of individuals who are subject to or at risk of discrimination (through proactive response to human rights violations, including legal assistance, human rights education, research, and publications).

The strategic goals of ADC MEMORIAL are: the total eradication of discrimination at the state level; adoption of anti-discrimination legislation in Russia; overcoming all forms of racism and nationalism; Human Rights education; and building tolerance among the Russian people.

Since 2003, ADC MEMORIAL has carried out monitoring of Roma rights, producing both human rights reports and recommendations, as well as providing direct legal and psychological assistance to the victims of racism.

Since 2009, ADC MEMORIAL, with the support of Sida, has been developing a project “Legal Assistance and Advocacy to Representatives of National Minorities in the North-west Region of the Russian Federation”. It includes monitoring, advocacy, legal and psychological assistance, Human Rights education, publications.

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Introduction

The Preamble to the International Covenant on Economic, Social and Cultural Rights (ICESCR), in accordance with the principles outlined by the Charter of the United Nations, and the Universal Declaration of Human Rights, states that the “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights.” It also emphasizes that states are obligated “to promote universal respect for, and observance of, human rights and freedoms.” The Russian Federation, as the legal successor to the USSR, has ratified the ICESCR and thereby undertaken to guarantee that the rights enunciated in the Covenant will be exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹

Social and economic rights are broad in scope and are directed at the creation of the conditions for a minimum standard of living. These rights are therefore important not only by themselves, but as the basis for the societal integration of all people regardless of their status, in order to ensure social cohesion, the development of any state, and the protection of individual dignity. Although the role these rights play in the modern world continues to increase, only their full enjoyment can lead to societal progress in all realms.

The enjoyment of social and economic rights is particularly important in the struggle against discrimination. Many foundations of discrimination have become “legalized” within national laws and have become a “legal” means of denying social and economic rights that the state has an obligation to protect. This often takes the form of indirect discrimination i.e. rules and requirements that do not target specific groups officially but which in practice prevent the implementation of social and economic rights on the basis of citizenship and ethnicity. For most disadvantaged groups, integration into the social and economic sphere is impossible without positive measures by the state corresponding to international legal norms of non-discriminatory implementation.

Many social groups experience problems with the enjoyment of social and economic rights. Among the most vulnerable groups are those who lack a legal and formal status (“citizen,” “permanent resident”) who often live in extremely challenging social and economic conditions. The following categories of groups suffering discrimination can be identified:

- **migrant workers** (citizens of a foreign state who live and work in another state for social and economic reasons). It should be noted that there is no single definition of “migrant worker” in international law. There are several definitions used in specific documents. According to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990* (“UN Convention on Migrant Workers”), a migrant is “a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”; in Article 11 of the *ILO Convention on Migration for Employment 97/ 1949 Workers* the term “migrant for employment” means “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.”² These definitions make no reference to the legal status of the migrant’s entry, stay or work in the country and thus cover both documented and undocumented migrants. In the *CIS Convention on Legal Status of Migrant Workers – Citizens of CIS Members and Their Families (signed in Kishinev, November 2008)* ‘a migrant worker is an individual that is a citizen of one of the Parties or a stateless individual, who continually resides on the territory of one Party, is present legally, and engages in remunerated labour on a lawful basis on the territory of another Party’.
- **stateless migrants**, who lack the protection of any state and frequently have no documents;
- **citizens who do not have citizenship documents**, including individuals living on the territory of a state who are citizens but have lost their documents and cannot recover them or who have never received them. This often occurs with children from Roma settlements whose parents have no documents;
- **citizens who have arrived from different regions and are subjected to ethnic discrimination**. They often also lack temporary or permanent registration.

This report will describe discrimination in access to social and economic rights by these groups, who are amongst the most vulnerable and require protection and assistance in order to have even minimum enjoyment of social and economic rights to ensure individual dignity.

1. Social, Economic, and Cultural Rights of Ethnic Minorities and Migrants: Normative Content

a) International Obligations of a State in Implementing Social, Economic, and Cultural Rights; Types of International Rights and Guarantees

Social, economic, and cultural rights are traditionally categorized as the so-called “second generation” rights whose purpose is to ensure a dignified standard of living and the free development of each individual within a society. Social and economic rights are specifically intended to create the conditions under which an individual can be a full-fledged member of society. Their full and qualitative enjoyment is extremely important as a basis for the societal integration of all people regardless of circumstance, social cohesion, and the normal development of a state. Like all other rights, these rights *must be enjoyed without any discrimination whatsoever*, including legal limitations that deny particular social groups access to social and economic benefits.

The Universal Declaration of Human Rights of 1948 established the contents of social and economic rights in general form. “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability,” and so on (Article 25.1). This principle was developed in Article 11.1 of the ICESCR, which provides, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The Covenant also sets forth specific social and economic rights such as the right to safe and healthy working conditions, the right to social security, the enjoyment of

the highest attainable standard of physical and mental health, and the right to take part in cultural life. The enjoyment of social, economic, and cultural rights must also meet the general **prohibition on discrimination**, as provided by Article 2.2. of the ICESCR. Within the framework of this principle, specific instruments have been developed aimed at the protection of the most vulnerable individuals—migrant workers, members of ethnic minorities, and stateless persons—but destination countries often take the position that their adoption and ratification are not in their economic interests, as is reflected in the duration of preparation of such instruments and the composition of states parties. Existing international conventions related to the rights of migrant workers, including the UN Convention on Migrant Workers, contain specific provisions in the area of social and economic rights. For example, the European Convention on the Legal Status of Migrant Workers provides that an employment contract must be concluded in the language of the migrant worker’s origin, and contains the right to information and consultation, to social security, living conditions, and labour conditions. However, Russia has not joined these treaties.

Additionally, various documents and recommendations issued by regional and international agencies and organizations refer to various aspects of social and economic rights and the problem of their implementation. These documents include those of a general and advisory nature but that are nevertheless important for determining the future direction of development of international law. For example, the 20 October 2010 Strasbourg Declaration of the Council of Europe on the rights of Roma³ notes the necessity for positive social measures such as access to education, health care, employment, protection from eviction, and taking measures to improve living conditions. All these measures are aimed at facilitating the social integration of Roma as a vulnerable group.

The right to an *adequate standard of living*, which includes various basic conditions necessary for human existence entails derived rights such as the right to adequate housing, the right to social security, and the right to safe and clean drinking water and sanitation. The scope and content of these rights are being continually further defined, notably by the work of treaty-monitoring bodies such as the

UN Committee on Economic, Social and Cultural Rights. In addition to being present in numerous international conventions and treaties, the right to water was further defined by the UN Committee on Economic, Social and Cultural Rights in its General Comment No.15 (2002) on the right to water and articles 11 and 12 of ICESCR. This general comment confirmed the “right to water” as indispensable to dignified living conditions. States must therefore take active measures to ensure the respect and implementation of peoples’ right to water. States must ensure sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses without any discrimination .

The right to water as an example of a specific component of the right to an adequate standard of living is important not only for regions experiencing a shortage of drinking water but for those regions with abundant water, even in major cities. For example, in St. Petersburg problems with drinking water and water for household purposes are not uncommon in the areas like slums and construction sites where migrant workers live. Settlements occupied by Hungarian Roma migrant workers, as will be described in Chapter 3, lack any sort of running water among other things, and dirty swamp water is used for drinking and cooking. The lack of access to clean drinking water inevitably leads to serious illnesses and the spread of dangerous infections.

Rights related to employment relations, such as the right to work, equal pay for equal work, and non-discrimination in hiring. Such rights are protected both under the ICESCR and, more specifically, under ILO Conventions (series of conventions of the International Labour Organization protect labour rights, for example, the 1958 Convention No. 111 on Discrimination in Employment and Occupation) prohibit discrimination in employment and compensation based on race, color, sex, religion, political opinion, national extraction, or social origin, as well as forced labour (Forced Labour Convention No. 29 of 1931 and Abolition of Forced Labour Convention No. 105 of 1957).

Rights in the area of health care, such as access to medical assistance, free emergency medical assistance, and the right to sanitation are also guaranteed by international law. States must take steps to fully implement the right to the highest attain-

able standard of health, including measures necessary to reduce child mortality, assure healthy child development, and to improve hygiene, as well as prevent, treat, and combat epidemic, endemic, occupational, and other illnesses. According to Article 10.2 of the ICESCR, special protection should be accorded to mothers during a reasonable period before and after childbirth. Maternal (prenatal and post-natal) and child care are considered part of States’ core obligations under article 12 of the ICESCR. The World Health Organization

(WHO), whose Constitution defines health as “state of complete physical, mental and social well-being,” is the directive and coordinating agency for health care within the UN system. According to Margaret Chan, Director-General of WHO: **“We should always keep impoverished and vulnerable groups at the center of our attention.** These groups often remain unnoticed; they live in separate rural regions or in slums and have an insignificant influence on policy”;⁷ Such right should be analysed in conjunction with the Programme of Action of the International Conference on Population and Development and the Alma-Ata Declaration.⁸

Rights in the area of *education*: The right to education is protected under article 13 of the ICESCR and further defined in the Committee on Economic, Social and Cultural Rights’ Comment no.13 on the right to education (1999). It is also guaranteed by *Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms* (“No person shall be denied the right to education”), the Convention on the Rights of the Child and the UN Convention on Migrant Workers. The right to education in the Protocol to the European Convention has been interpreted to include the right to equal access to educational institutions as well as to a minimal level of state-provided education. Access to education is almost always hindered for children from ethnic minority groups and migrants. Many reasons for a de facto denial of education arise due to the incompleteness of legislative norms and administrative procedures. The judgments of the European Court on discrimination in access to the right to education should be used to advocate for improvement of legislation and judicial practice. In the *case of D.H. and Others v. the Czech Republic*⁹, the European Court acknowledged the placement of Roma students into “spe-

cial schools” where they received a low quality of education to be discrimination. Unequal treatment in comparison with non-Roma children was also recognized as discrimination, as *in the case Sampanis and Others v. Greece*,¹⁰ in which the authorities’ discriminatory policy was expressed, among other ways, in educating Roma children in special classes in a building near the main school building. In the case of *Oršuš and Others v. Croatia*¹¹, the European Court recognized the placement of Roma students into “special schools” where they received a low quality of education as discrimination.

Discrimination against children of foreign citizens or stateless persons, which is prohibited at the international level, is often practiced at the national level as a formal denial of education. Registering a child for school in Russia requires a birth certificate, registration, and proof of citizenship. Without registration children are accepted only by individual schools, which often do not meet territorial access requirements, something that also constitutes indirect discrimination.

A state has an obligation with regard to all the social and economic rights enumerated in the IC-ESCR to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Thus the international legal obligations of a state in the area of social and economic rights signify an obligation to implement corresponding social policies by means of consistent, clear, and precise national legislation that establishes the foundations, procedure for implementing, and guarantees of individual rights in the social arena, with particular attention to the problems **of the most socially vulnerable groups and the prohibition of discrimination**, including indirect discrimination expressed in restrictive legislative norms.

b) National Legislation Regulating Social and Economic Rights in the Russian Federation

The general provisions on the status of the individual in the social and economic realm are established by the *Constitution of the Russian Federation*. Labour rights are covered by Article 37, protection of motherhood and childhood by Article 38, social benefits and social insurance by Article 39, right to housing by Article 40, right to health protection and medical assistance by Article 41, right to education by Article 43. All these rights are established for everyone: citizens of Russia, foreign citizens, and stateless persons, as distinguished from political rights which are accorded only to citizens. This is the official interpretation and has been confirmed by the practice of the Constitutional Court.

Thus, in its 1998 Decision on the complaint of Yakhye Dashti-Gafur, the Constitutional Court provided a general interpretation of the concepts of “every,” “individual” and “citizen” as used in the Russian Constitution. According to Article 62 (Part 3) of the Constitution, *foreign nationals and stateless persons are endowed with the rights and obligations of citizens on a par with citizens of the Russian Federation*, except in instances established by federal law or an international treaty of the Russian Federation.

Both in the literal meaning of Articles 22 and 46 of the Russian Constitution (and considering their use of the terms “every” and “individual”) and in the meaning that proceeds from the interaction of these articles with other provisions of Chapter 2 (“Rights and Freedoms of Man and Citizen”) and with the generally-recognized principles and norms of international law, the right to freedom, personal inviolability, and fair trial are individual inalienable rights of each person regardless of citizenship and should therefore be guaranteed to foreign citizens and stateless persons on an equal basis with citizens of the Russian Federation.¹² These legal arguments, expressed by the Court regarding the right to personal inviolability and to fair trial, can also be applied to other rights the Russian Federation guarantees to “everyone,” including social and economic rights.

This has significance for the protection of the social and economic rights of foreign citizens and stateless persons, which frequently remain unmentioned as the subjects of law in sector-specific legislation. Considering that the Russian Constitution has direct operation and may therefore be applied directly by courts, this provision by itself constitutes a guarantee and may constitute grounds for legal action. In practice, however, courts are almost never guided directly by the Constitution. This corresponds to the stance of the Constitutional Court, which has limited the Constitution's sphere of application by courts of general jurisdiction to instances where there is no legislative regulation, particularly as regards social and economic rights, which are worded generally and may not be applied directly in most cases. For example, according to the Constitutional Court, the norm on protection of motherhood and childhood contained in the Constitution may only be used to appeal a denial of benefits as a supplementary argument. Claims must be based on the laws and subordinate instruments that provide for payment of benefits.

Specific kinds of social and economic rights are governed by sector-specific legislation. These include laws and sub-legislative instruments (decrees of the government, edicts of the President, and acts of ministers and of executive agencies of the federal subjects). It should be noted that regional legislation, which establishes social guarantees on the level of federal subjects, plays a particular role in assuring social and economic rights. These guarantees should not be less than the federal ones. Besides laws and subordinate acts, the idea of a social state and mutual responsibility of the state and the individual is being actively developed by official government programs and by decisions of higher courts. These represent a positive trend in the realm of normative regulation of social and economic rights and guarantees in general. Unfortunately, positive changes and developments often do not take the most vulnerable subjects of the law into account. For example, as the Constitutional Court has indicated numerous times in its decisions, "the goals of the social policy of the Russian Federation proclaimed in the Constitution of the Russian Federation ordain the obligation of the state to concern itself with the welfare of its citizens, their social protection and provision with the acceptable living conditions" (Decision N 20-P of 16 December 1997,

Ruling N 17-O 15 February 2005), despite the fact that under international norms this state obligation is universal, corresponding to the right of everyone who cannot independently achieve a dignified standard of living to rely on social and economic support.

Right to Housing

The right to housing established in the Constitution assumes the implementation of a state policy directed at improving population's access to adequate housing conditions. Fundamental acts in this area are the Civil Code of the Russian Federation (in its section on ownership of living premises, their civil transactions, and agreements for residential rental) and the Housing Code of the Russian Federation, which governs housing provided under subsidized housing contracts. The Constitution designates a category of persons as "indigent and other citizens specified by law who need housing" who "shall be granted such free of charge or for affordable payment from state, municipal, and other housing funds." The Housing Code covers precisely these relations. The procedure for providing housing within specific federal subjects and additional measures of social support may be established by regional legislation. For example, the recently adopted Law of Leningrad Province N 5-oz of 2 March 2010 "On Providing Housing To Several Categories of Citizens Registered As In Need of Housing Accommodation After 1 January 2005" contained such standards.

As a general rule, to receive housing one must register as being in need of improved housing, stay on the registry for an extended period of time, and re-register every year. This method of improving housing conditions is available only for citizens of the Russian Federation who have registration. A certificate of registration is required to be placed on the register, and its absence will result in the denial of being considered in need of housing.

With regard to the right to housing it is worth noting the positive significance of the legal positions of the Constitutional Court. In a number of decisions the Court has noted the importance of implementing this right "as one of the necessary conditions of the guarantee of the right to an adequate standard of living." The problem of respecting the social and economic rights of children requires particular attention. The necessity of creating conditions

for the development and formation of a child's identity is of high priority and should not depend on the incorrect or ill-timed actions of its parents.

However, recognizing the importance of implementing the right to housing does not resolve the problems of providing housing even for those who meet all the formal requirements for receiving housing from the state (registering as in need of improved housing conditions and having registration). With regard to the most vulnerable groups of the population, entering into a subsidized housing agreement becomes factually impossible. Even citizens who should be provided priority access to housing under the law because they suffer from dangerous illnesses or have many children experience difficulties.¹³

Other Rights to Adequate Living Standards

The right to an adequate standard of living assumes access to resources such as food, water, and heat, and a favorable environment. In camps, settlements or houses where the most vulnerable groups, including migrants, reside, there are almost always difficulties with a lack of water, electricity, and gas. The lack of heat in the winter and the need to use an open fire for warmth creates a dangerous situation. Home-made electric heaters, assembled with gross violations of electrical installation standards, are set up in trailers for heat, often leading to fires. The media often receives information on fires in trailers inhabited by migrant workers who work on construction sites without legal status — in municipal and outlying construction sites.¹⁴

Another example concerns support from of the state and municipal housing fund. The representatives of one housing agency in Leningrad Province turned off the electricity in one of the houses in order to force a Roma family to move out.¹⁵ The fact that the family was residing there legally and had minor children was not taken into account. Such actions are often taken toward vulnerable groups in situations of conflict in which state and municipal agencies, of course, have various social and economic measures at their disposal to influence vulnerable groups without rights.

Social Security, Family and Child Support Services, Assistance, and Pensions

Social security comprises a number of types of state support, most frequently in the monetary forms of assistance, pensions, or compensation. According to General Comment No. 19 of the ESR

Committee, a social security system should provide the nine principal branches of social security: health care (the Committee notes the particular importance of the right to social security in the context of endemic diseases such as HIV/AIDS, tuberculosis and malaria, and the need to provide access to preventive and curative measures), sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans.¹⁶

The Russian Constitution guarantees state support for the family, motherhood, fatherhood, childhood, invalids, and elderly citizens, and establishes state pensions, social benefits, and other guarantees of social protection (Article 38 Part 1 and Article 39 Part 1). As the Constitutional Court has noted many times, at the same time the procedure for providing specific benefits and their size is established by the legislature within the framework of the “financial and other means and opportunities it has at a given stage of socio-economic development” (Ruling of 10 October 2002 on the complaint of citizen M.D. Ramaldanov for the violation of his constitutional rights by the provisions of the federal law “On additional guarantees in the social protection of orphan children and children without parental care”). The procedure for providing benefits often does not provide payment to foreign citizens and stateless persons, despite the Constitution's mention of the right of “everyone.”

For example, in the federal law “On additional measures for support of families with children”, which provides for receiving maternity grants, a precondition for exercising the right is the existence of Russian Federation citizenship for the child, the mother, and the father, if he has adopted as a single parent. In the event a mother with Russian Federation citizenship dies or her parental rights are terminated, the rights to social support arises in the child's father, **regardless of whether he is a citizen of the Russian Federation or a state-**

less person. However, the reverse is not the case. If a child's father is a Russian citizen but the mother is a foreign national or a stateless person, the right to a maternal (family) grant does not arise.

The federal law "On state benefits for citizens with children" establishes a wider range of beneficiaries. Assistance (in varying amounts) is paid not only to citizens of the Russian Federation but also to:

- foreign citizens, stateless persons, and refugees who permanently reside on the territory of the Russian Federation;
- foreign citizens, stateless persons, and refugees who temporarily reside on the territory of the Russian Federation and are subject to mandatory social insurance.

The third category of foreign citizens—those who are temporarily present—is not mentioned at all in the law. Regional legislation, when establishing additional measures of social support and supplemental payments is based as a rule on an even narrower circle of individuals, most frequently on citizens of the Russian Federation having a permanent registration within the federal subject. For example, the Law of St. Petersburg "On additional measures of social support of student families in St. Petersburg" provides for measures to support "families where married parents (or one parent in a single-parent family) **have Russian Federation citizenship...at least one of the parents has a permanent registration on the territory of St. Petersburg.**"

The President's Address to the Federal Assembly in 2010 notes the necessity of creating "highly favorable conditions" for families with many children: "In some regions (such as Ivanov Province, as far as I know) when a third child is born the family is given a free plot of land where it can build a house or dacha. This is a very appropriate decision and a good example for the other territories. I consider it advisable to make this practice a common one. I charge the Government and the regions to develop a procedure by which a family with three or more children would receive a free plot of land to build a house or dacha. This norm, of course, may be introduced in stages, taking the specifics of the territories into account." The implementation of these and other measures of social policy is not likely to affect the families of foreign citizens and stateless persons. As regards legislation on pension provision, there

is an interesting connection between the right to a pension and the Russian Federation's international legal obligations elucidated by the Constitutional Court in its Ruling on the complaint of a citizen, Praskovya Fyodorovna Yenborisova, for violation of her constitutional rights under Article 14 Point 8 of the Federal Law "On Employment Pensions in the Russian Federation." The Rulings states: **"The Federal legislature, to whose competence the Constitution of the Russian Federation delegates the establishment of the pension system (Article 39, Part 2), possesses ample discretion when determining the legal grounds, the conditions of assigning, and the procedure for calculating pensions. At the same time it must correlate the decisions it makes with the constitutionally significant principles of pension provision and must act within the framework of the Russian Federation's international legal obligations...**proceeding, in particular, from the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, which acknowledges the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions..." The contents of the international acts cited above and the provisions of the Constitution of the Russian Federation that correspond to it are conditioned upon the creation of legal conditions guaranteeing the dignity of the individual in the capacity of constitutional and legal criteria for the legal regulation of pension relationships." Despite the above norms, the Federal Law "On employment pensions in the Russian Federation" provides for the right to an employment pension on an equal par with the citizens of the Russian Federation for foreign citizens and stateless persons, **who have their permanent residence in the Russian Federation** (that is, who have a *residence permit*). This provision was challenged by the petitioner, Zh. S. Adamyan, who was refused an employment pension because she lacked a residence permit, although she had been legally present for an extended time (more than 12 years) on the territory of the Russian Federation before receiving Russian citizenship. In its decision the Constitutional Court emphasized the universal nature of the state's obligations vis-a-vis social protection: "Article 39 (Part 1) of the Russian Constitution guarantees everyone social security for age, illness, disability, loss of breadwinner, nurturing children, and in other instances

established by law. Both in the literal sense of this standard and in the sense proceeding from its interaction with other provisions of Chapter 2 of the Constitution of the Russian Federation “Rights and Freedoms of Man and Citizen,” as well as with the generally-recognized principles and norms of international law...**the right to social security is guaranteed to every person regardless of citizenship of a particular state, and therefore to foreign nationals and stateless persons on an equal basis with citizens of the Russian Federation on conditions and in the manner** provided for by federal law.”

Nevertheless the law remained unchanged. The recognition alone of the rights of foreign nationals and stateless persons, without support from a procedure implementing them, as previously noted, means a de facto refusal to implement social rights. As provided in the General Comment on social security, “States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minority groups, refugees, asylum-seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees.”¹⁷

Right to Health Protection and Medical Assistance

According to “The Foundations of Legislation of the Russian Federation Regarding the Health of Citizens”, “**citizens of the Russian Federation are guaranteed the right to health protection** in accordance with the Constitution of the Russian Federation, with generally-recognized principles and international norms, international treaties of the Russian Federation, and the Constitutions (charters) of the federal subjects of the Russian Federation.” At the same time, as previously noted, the Constitution and international norms guarantee that right to *everyone*, not only to *citizens*.

It must be noted that this right directly connected with a right such as the *right to life*, which increases the danger of consequences when the enjoyment of that right is wrongfully denied to entire

groups. According to data from the Russian Trade and Sanitary Inspection Authority, migrant workers fall ill five times more frequently than the native population, but seek medical assistance less frequently. Many guest workers prefer to endure illness “on their feet,” according to a doctor at a clinical infectious disease hospital explaining the reluctance of migrants to seek medical assistance.

The Decree N 546 of the Government of the Russian Federation of 1 September 2005 “On the confirmation of Rules for providing medical assistance to foreign nationals on the territory of the Russian Federation,” which relates directly to foreign nationals, declares the following: medical assistance to foreign nationals temporarily present (temporarily residing) or permanently residing in the Russian Federation shall be provided by prevention and treatment facilities regardless of their legal organizational form; **emergency medical assistance shall be provided to foreign citizens immediately and free of charge; emergency medical assistance shall be provided to foreign nationals** by the prevention and treatment facilities **of state and municipal health care systems**, as well as by **medical workers or individuals obligated to provide first aid according to the law or special rule**, in the event conditions **occur that present a direct threat to their lives or that require immediate medical intervention** (consequence of accidents, traumas, and poisonings). Once foreign nationals are no longer in the above conditions they may be provided planned medical assistance. Planned medical assistance shall be provided to foreign nationals on a for-fee basis. The problem is that such an arrangement provides many opportunities for abuse, since the type of help the patient needs (emergency or planned) is determined by the medical workers, who may be motivated to provide **for-fee planned** medical assistance.

An Order of the Ministry of Health and Social Development affirms the procedure for providing emergency medical assistance, according to which: **Emergency medical assistance** shall be provided to citizens in conditions requiring immediate medical intervention (accidents, traumas, poisonings, and other conditions and illnesses), **shall be provided immediately by prevention and treatment facilities regardless of territory, institutional affiliation, or ownership**, by medical work-

ers, and by individuals obligated to provide it as first aid according to the law or by special rule.

Emergency medical assistance shall be provided in accordance with the standards for medical assistance. Emergency medical assistance shall be provided free of charge to citizens of the Russian Federation and to other individuals located on its territory (of the Russian Federation).

Financial coverage of measures in providing emergency medical assistance (except for specialized (aero-medical) emergency medical assistance) to citizens of the Russian Federation and **other individuals on its territory are a municipal budgetary obligation.**

An emergency medical assistance station is a medical and preventive institution that provides round-the-clock emergency medical assistance to the ill and the injured both outside an institution and en route to a medical and preventive institution under conditions that threaten the health or life of citizens and are occasioned by sudden illnesses, aggravation of chronic illnesses, accidents, traumas, poisonings, complications of pregnancy, during labour, and other conditions and illnesses. In order to prevent violations of existing legislation while providing medical assistance to foreign individuals present on the territory of the Russian Federation, the Ministry of Health and Social Development in its **letter N 1 0-4/54705-14-BC “On providing medical assistance to foreign citizens” of 24 October 2008** provides additional clarification of the procedure for providing medical assistance to foreign nationals. The Ministry emphasizes that medical assistance to foreign nationals temporarily or permanently residing in the Russian Federation shall be provided by prevention and treatment facilities regardless of their legal organizational form. Emergency medical assistance to foreign nationals shall be provided immediately and free of charge by prevention and treatment facilities of the state and municipal health care system, as well as by medical workers or individuals obligated to provide first aid according to the law or a special rule, when conditions occur that present a direct threat to life or that require immediate medical intervention (consequences of accidents, traumas, and poisonings). As previously indicated, planned medical assistance is to be provided to foreign citizens on a for-fee basis. In this same letter the Russian Ministry of Health requires the institutions of health protection of the federal subjects of the Russian Federation to take these

obligations into account when organizing their work. Federal and regional medical assistance programs are almost always designated exclusively for citizens. For example, the Decree of the Government of the Russian Federation N 811 of 2 October 2009 in Moscow “On a program of state guarantees of the provision of free medical assistance for the year 2010 to citizens of the Russian Federation” sets forth the types and conditions of providing medical assistance, the normative scope of medical assistance, normative standards for financial expenditures per unit of medical assistance, the per capita normative standards for financial support, the procedure and structure of establishing rates for medical assistance, and it also provides for criteria on quality and access to **medical assistance provided to its citizens (hereafter, citizens)** on the territory of the Russian Federation.

Labour Rights of Foreign Workers

In the Russian Federation labour rights are generally established by the Constitution and regulated in detail by the Labour Code. Article 11 of the Labour Code establishes a procedural rule for labour legislation as applied to foreign citizens and stateless persons: “On Russian Federation territory the rules established by this Code, by labour legislation, and by other acts containing labour law norms shall extend to the employment relations of foreign nationals, stateless persons, organizations established or founded by them or with their participation, and to individuals from international organizations and foreign legal entities, unless otherwise provided for by a federal law or international treaty of the Russian Federation.” The details of participation in employment relations by foreign nationals are described by the federal law “On the legal position of foreign nationals in the Russian Federation”. Article 13 of this law specifies the conditions and procedure for a foreign national’s participation in employment relations on the territory of the Russian Federation described in Chapter 2.

Amendments were introduced in June 2010 (13.2, 13.3.) and the concept of “highly qualified specialist” was introduced. A highly qualified specialist is “a foreign national who has work experience, skills, or accomplishments in a concrete sphere of activity, if the conditions of his recruitment to

work in Russia include receiving a salary (compensation) in the amount of more than two million rubles for a period not in excess of one year.” A new mechanism was also created to legalize foreign nationals working for physical persons: the issuance of a special “patent.” The privileges established for highly qualified foreign specialists have a purely economic significance (attracting specialists for the development of the state economy) and do not extend to foreign nationals in a vulnerable position. This standard appears to be a matter of economic rather than social policy).

The Patent as a Means of Legalizing Migrants in the Private Sector

The implementation of the “patent,” as conceived by the legislative bodies should facilitate the process of finding work and legal residence for the vast majority of foreign nationals.

Patents began to be issued on July 1, 2010. Citizens of the Russian Federation have the right to hire foreign nationals under an employment contract or a retainer services contract for the performance of work (provision of services) for personal, domestic, and other similar needs unconnected with business activities. A foreign national must also have a patent. The possession of a patent and a receipt for the payment of taxes confirms a physical person’s right to work and a foreign national’s legal presence on Russian Federation territory. If the patent expires or the tax is not paid for the upcoming month, the foreign national must leave the Russian Federation within 15 days. His presence on Russian Federation territory is legal for these 15 days.

In practice it is still difficult to evaluate the role of the introduction of this mechanism, although according to information from the Elena Vladimirovna Dunaeva, Director of the Federal Migration Service (FMS) of St. Petersburg and Leningrad Province, approximately 8,000 foreign nationals obtained patents between July and December 2010.¹⁹

The patent’s fundamental goal appears to be the advance payment of taxes to the state (in other words, a form of paid services), rather than observing the rights of migrant workers, since the presence of a patent does not ensure either the proper

execution of contracts in the private sector nor their observance by contracting parties that are citizens of the Russian Federation. Its going into force is intended to solve the problem of “informal” employment, which is widespread among migrants. The problem, among other things, is connected with the difficulties of administrative procedures for obtaining documents that provide permission to work. The new procedure, however, may become an additional basis for abuse in practice. Thus, shortly after the new institution was introduced, the FMS demanded that a citizen of Tajikistan obtain a patent (and pay a duty of 1,000 rubles each month) regardless of the fact that he already a work permit. The migrant appealed to ADC Memorial. The law in fact views patents and work permits as alternative mechanisms; in other words, a citizen with a work permit need not also obtain a patent.

Right to Education

The Constitution of the Russian Federation also guarantees the right to education as a right of everyone. The UNESCO Convention Against Discrimination in Education establishes the obligation of states to **provide foreign nationals residing on their territories with the same access to education as their citizens have for the purpose of eliminating or preventing discrimination in education.**²⁰

Unfortunately, access to education on a national level for foreign nationals and stateless persons, as well as for persons who lack documents for some reason, is significantly hindered or rendered impossible.

In the preamble to the existing Law “On Education”²¹ only “citizens” are included in the concept of “students” (“Education in the present Law means a purposeful process of education and study in the interests of the person, society, and the state, accompanied by the establishment of the attainment by a **citizen (student)** of educational levels (educational prerequisites) established by the state.” This corresponds to the law enforcement practice of denying admittance into institutions of general education to foreign citizens, stateless persons, and children without documents.

For example, children are enrolled in first grade in accordance with Russian Federation laws “On education,” “On Russian Federation citizenship,” the stan-

dard statute of an institution of general education, and the charter of an institution of general education.

General Enrollment Provisions: children who will be six years and six months old by 1 September and who are in suitable health to study in a school will be enrolled in school. The number of classes and their occupancy are established by a state educational institution in accordance with its founder, within the size limits established by a license to conduct educational activity. **The following documents are required to enroll in school:**

1. Parental application;
2. Copy of the birth certificate;
3. Medical card with a mandatory signature that the child may attend a public school of general education;
4. A copy of insurance policy.
5. Certificate of registration;
6. Copy of citizenship insert;
7. Copy of one of the parents' passports with the registration page.²²

Thus, only Russian Federation citizens who also have a registration are accepted. Additionally, the registration must be in St. Petersburg for at least one of the parents. Despite the fact that the new draft law "On education in the Russian Federation"²³

that has been issued for public discussion rejects the term "citizen" in favor of the term "student" ("a student is an individual registered according to the established procedure in an organization engaged in educational activity or who has concluded according to the established procedure an agreement to receive educational services and is engaged in an educational or professional program" (see Article 2 of the draft) and contains no mention of citizenship, it would seem that changing the practice of implementing the right to education for foreign nationals requires the adoption of a special act regulating the procedure for accepting children of foreign nationals and persons required to submit documents they may not be in a position to present.

c) States' Agencies of the Social and Economic Rights Sphere: Implementation Problems

As part of its obligations under the ICESCR, the State is expected to take both legal and policy measures to ensure effective implementation of ESC

rights. The Russian government has undertaken attempts to improve the situation, which was reflected in the prolonged process of developing and implementing administrative reforms, which remain incomplete. The concept of reform is based not even on ideas of a social state but on a "service" state, one that provides services to its own citizens, which doesn't entirely correspond to Russian legal reality. The implementation of social and economic rights in such a system is done as a "state service," with citizens as "service recipients" who possess rights to demand one or another service (for example, registration for improved housing conditions and the payment of maternal aid are services) of a certain quality and within certain time limits. Almost all functions of state agencies as a result of reform are treated as services which, in the opinion of the reform's developers, should lead to improved quality of service to the population. Additionally, concepts of "electronic services" and the "no wrong door principle" for simplifying the procedure for citizens to access state resources are being introduced. For example, a special portal (<http://www.gosuslugi.ru/ru/>) has been created with information on all state services (medical, social, law enforcement, transportation, conservation, and many others), with detailed regulations for each action by civil servants and their deadlines. The reformers' goals—"transparency" of the work of state agencies, fighting corruption, and improving the time for review of appeals—are necessary and reasonable, but the implementation, as usual, not only delays the end result but distorts good intentions.

In reality there are on the one hand detailed regulations of services for the payment of assistance and maternity grants and on the other a refusal to register a child at the place of the mother's residence, rendering the receipt of guaranteed state support of maternity and childhood impossible. In one of the Roma settlements in the northwest (Novgorod Province) registering a child and receiving assistance was successful only after written intercession was sent to the local administration from ADC Memorial.

Further, the implementation of "progressive" legislative norms in the social arena often leads to "blowback." Thus as a result of another set of changes in regulating the activity of schools in St. Petersburg (as institutions providing *state services* in the realm of education), the "market" principle

of payment for additional lessons was introduced. This then led to the cancellation of benefits that had been established for handicapped children.

These “contradictions” reflect a lack of understanding of the essence of social and economic legal rights, an “electronic format” without content. They render the principle of effective administration meaningless and make the implementation of social and economic rights for entire groups dependent on formalities. This is “willingly” utilized, for example, by schools that don’t accept children without a packet of specific documents, which Roma frequently have problems obtaining. Thus formal requirements that are not discriminatory by themselves become a de facto instrument of discrimination and of denying access to education and to social services for Roma children. The European Court treats such a state of affairs as *indirect discrimination*.

d) The Difficulty of Administrative Procedures and Formal Grounds for Denying Social and Economic Rights

It is clear from the examples mentioned that the implementation of norms of national legislation, administrative procedures, and “internal instructions” of agencies responsible for providing social services block the implementation of social and economic rights in the majority of cases.

The most vivid example of an “administrative barrier” affecting almost all groups is the requirement of permanent and temporary residence registration, the lack of which represents an insurmountable barrier to the enjoyment of almost all social and economic rights. This barrier affects both Russian Federation citizens who have come from other regions and individuals who have no permanent place of residence, as well as children without documents, foreign nationals, and stateless persons.

When this institution was introduced, its principal distinction from the institution of the Soviet residence permit known as the “*propiska*” was proclaimed to be that it was replacing a permit-based procedure with a notification-based one. The Constitutional Court has announced many times that registration is essentially only a means of counting citizens on Russian territory and is notification-based, indicating only presence (stay-

ing) at a concrete place of residence. The Court has also stated that the lack of a *propiska* cannot be grounds for limiting rights and freedoms.²⁴

However, the implementation of registration rules led to the administrative instrument growing far beyond the bounds of a simple notification to the state of an individual’s location. The presence or lack thereof of registration can even be said to have become a new means **of discrimination in many instances**, whose victims are the least prosperous groups since registration is required for the enjoyment of medical assistance, education, and to receive aid and pensions—in practically all socio-economic areas. The latest amendments, the role and results of which are as of yet difficult to evaluate, are designed to bring registration back into the fold of legal and social state policy.

The amendments are introduced by the Decree N 885 of 11 November 2010 of the Government of the Russian Federation “On the introduction of changes to the Rules of registration and removal of Russian Federation citizens from the registry according to place of stay and place of residence within the borders of the Russian Federation.” Beginning on 1 January 2011, notification of registration may be given online, in a simplified procedure. Regardless of amendments in a generally positive direction, there are no guarantees even under the new procedure that the registration will cease being a mandatory requirement for the enjoyment of rights and will disappear from the lists of “required documents” established by state agencies for access to social services.

Social and economic rights are most frequently violated in relation to the most vulnerable groups, including victims of structural discrimination, whose basis is often membership in an ethnic minority. As the example of permanent registration demonstrates, these formal conditions for access to the enjoyment of social and economic rights are often a de facto “prerequisite” which cannot be negotiated by those most in need of social protection. Without ownership or the right to use living quarters, people as a rule do not have a permanent registration and do therefore not qualify as “in need of improved living conditions.” They also experience difficulties in applying for assistance and are practically without free medical care.

Thus a discriminatory approach by state agencies that provide social services results in deprivation of the opportunity to exercise social and economic rights. Any application for social services in whatever field (health, education, or social security) demonstrates the approach of the state agencies and services to the exercise of social and economic rights by foreign nationals, stateless persons, and ethnic minorities who experience difficulties acquiring personal documents. It is a manifestation of the discriminatory approach to these groups, which is exacerbated by the fact that categories that experience discrimination live in extremely difficult social and economic condition. The inability to independently enjoy their rights and the lack of will of state agencies to take positive measures toward their integration leads to difficult and often irreversible social consequences.

1 CESCR, Art.2.2.

2 Under Article 11 of ILO Convention on Migrant Workers (Supplementary Provisions) 143/1975, “migrant worker” means “a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker”.

3 The text of the Declaration is accessible on the website of the Council of Europe: <https://wcd.coe.int/ViewDoc.jsp?id=1691607&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

4 General Comment no.15, para.2.

5 General Comment no.15, para.1.

6 General Comment no.14 (2000), The right to the highest attainable standard of health para. 44a) E/C.12/2000/4.

7 <http://www.vipgroup.net/certificate/about.php>.

8 See General Comment no.14 (2000), para.43.

9 D.H. and Others v. the Czech Republic [GC], no. 57325/00, ECHR 2007-XII, amicus curiae submitted by FIDH under article 44 § 2 of the Regulations of the Court (req. No 57325/00), 12 October 2006. see <http://www.fidh.org/Coercive-sterilisation-of-Roma-women-segregation?envoiamis=1>.

10 Sampanis and Others v. Greece, no. 32526/05, 5 June 2008.

11 Oršuš and Others v. Croatia [GC], no. 15766/03, 16 March 2010.

12 Decision N 6-P of the Constitutional Court of the Russian Federation of 17 February 1998 N 6-P “In the matter of verifying the constitutionality of Part 2 Article 31 of the law of the USSR of 24 June 1981 ‘On the Legal Status of Foreign Citizens in the USSR’ in connection with the complaint of Yakhye Dashti-Gafur.”

13 A resident of Petrozavodsk (the capital of Karelia, Northwest District), who came with her husband from Dagestan, appealed to ADC Memorial. Despite the fact that her husband suffers from an open form of tuberculosis, which he acquired while providing medical assistance in a hospital,

and the family has two small children, the municipal administration did not provide housing, and efforts to appeal the inaction in court led to lost time; court proceedings related to state agencies last for years. In her words, she often heard the civil servants tell her they should “go home” to the southern region her family came from.

14 On 13 January 2008 in St. Petersburg at about 6 am a fire occurred in a trailer. The cause of the fire was an electric teapot and a gas jet that was being used as a hotplate. As a result seven individuals who were citizens of Uzbekistan that worked at the site died from carbon monoxide poisoning. (<http://www.fontanka.ru/2010/11/10/073/>).

15 ADC Memorial practice – legal assist to the Roma family.

16 See General Comment no.19 (2007), The right to social security (art. 9).

17 General Comment no.19. para. 31.

18 This story contains a link to the statistic: <http://www.tv100.ru/news/view/31166/>

19 The newspaper “Saint Petersburg Vedomosti,” 2 December 2010.

20 Convention Against Discrimination in Education, Art. 3(e).

21 Law of the Russian Federation On Education, 10.07.1992 N 3266-1 (as amended on 29.12.2010).

22 Information on enrollment procedure can be found on the website of one of the schools in St. Petersburg: http://school497.spb.ru/index.php?option=com_content&task=blogcategory&id=49&Itemid=96; the same list of documents is specified in almost all the cities of the school and the region.

23 <http://zakonoproekt2010.ru/edu/01-12-2010>

24 For example, in the Decree of 2 February 1998 and the Ruling of 28 March 2003 N 102-O, of 29 May 2003 N 209-O, and 16 October 2003 N 334-O.

25 According to a report by the World Bank dedicated to the prospects of migration (presented 8 November 2010) the largest migration channel in the world in 2010 is from Mexico to the USA, the second largest is from Russia to Ukraine, and the third is from Ukraine to Russia. According to WB data, 12.2 million migrants live in Russia now (<http://www.rg.ru/2010/12/07/migracia.html>).

26 M. Sergeev: Russia, a Magnet for Migrants (http://www.ng.ru/economics/2008-03-21/6_migranty.html).

27 The opinion of E. Tiuriukanova, a leading scholar from the Institute of Social and Economic Studies of Population // Ibid.

28 S. E. Metelev. International Labour Migration and Illegal Migration in Russia. Moscow, 2006. Pp. 154-56.

2. Violation of Rights and Discrimination Against Migrant Workers

The provisions of Article 2 of the Universal Declaration of Human Rights, Article 2 of the ICESCR and of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms carry a general obligation of non-discrimination of any kind, including that based on citizenship and national origin. This acquires particular significance for states that receive migrants.

Russia is the largest center of migration in the Eastern hemisphere.²⁵ According to data from the International Organization for Migration (IOM, 2008), approximately half of those arriving in Russia lack stable employment in their homeland.²⁶ According to specialists, around 40-50% of migrants may be considered extremely poor, since their earnings in their native countries are insufficient even for food and essentials.²⁷ This migration has an involuntary nature and many migrants are in an undocumented situation.²⁸

Once in Russia, they are often subject to an openly hostile attitude of the population which creates an environment which fosters violations of their social and economic rights. In recent months and years, they have been targeted with violent attacks committed by neo-nazi groups, while very few state institutions consider that they have a duty to provide support and protection to the victims. It is important to bear this background in mind when considering the particular social and economic problems faced by migrants. An attack documented by ADC Memorial committed by nationalists against citizens of Tajikistan in St Petersburg, is a clear illustration.

The Yu. Brothers (Fariddun, Firdavs, Firuz, and Furkat) contacted ADC Memorial after being attacked by armed nationalists. One of the brothers had received serious knife wounds and only survived because he was able to summon his brothers for help, who had managed saved him from the armed attackers. From the very beginning of the investigation into this incident, police failed to carry out the actions necessary to investigate the crime as a hate crime, despite its high degree of public danger; on the contrary, they attempted to assemble evidence that the foreign citizen victims were themselves at fault.

On December 11 at around 10 a.m., Firdavs was going to work through the Tavrichesky Park in St Petersburg (200-300 meters from Tavrichesky Street) and his younger brothers were at home. Coming toward him were four radical nationalists, Nazi skinheads (three men around 20 years old and one young woman, all dressed in black and wearing black boots with white laces). One of the men pushed Firdavs and the others surrounded him and began shouting (calling Firdavs a wog), and then the woman spat out her gum at Firdavs. All four then rushed at him and began beating him. The attackers were armed with a knife and a knuckle duster. Passers-by saw what was happening but did not interfere; only one woman tried to stop the violence, urging them to put down their weapons, but without success.

Firdavs sent a callback SMS to his brother's telephone. His brother immediately called him back. Firdavs had time to yell that he was being beaten in the park, and his brothers came running to his aid. They ran to the park and saw their brother lying on the ground in a puddle of blood and the Nazis beating him. One of the attackers immediately attacked the youngest, Furkat, and he became involved in the fight. Firuz, who arrived later, saw his brothers being attacked and also began defending them. At that time Furkat was struggling with an attacker armed with a knife and one of the Nazis was also wounded as a result.

The brothers then took Firdavs, who was seriously wounded, to a polyclinic. He was bleeding, had knife wounds in his eyes, chest, and shoulder, a concussion, a bruised kidney, and injuries to the forehead, as confirmed by medical records. The doctor on duty examined Firdavs, found seven serious wounds, determined the injuries to be life-threatening, and called an ambulance. Firdavs was taken to the hospital where the attackers, as it later turned out, were also taken.

At that time his brothers Firuz, Fariddun, and Furkat were taken to the police station. Furkat was charged with inflicting serious bodily harm. He was detained for five days and then released, but his documents were retained for several more days. The nationalist aggressors who attempted to murder Firdavs and inflicted life-threatening wounds on him have not been charged with anything either in December, 2010 or January, 2011.

Three days later (on December 14) the wounded Firdavs was released from the hospital, although his condition required future hospital treatment, as confirmed by medical records (for example, the stitches were only removed from his eye on the eighth day). Firdavs continues to have problems with his vision; breathing difficulties (injury to the nose), a concussion, and shock have also been noted. On December 24 Firdavs vis-

ited an ophthalmologist, who observed his injured and swollen eye, which limits his functional work ability.

Firdavs was visited in the hospital by his fourth brother Fariddun (he had requested the day off and has verification from his employer; on the day of the incident he had been working in another place).

The Nazis who were in a nearby ward at the same hospital identified him as having attacked them. Policemen detained Fariddun right in the hospital, put handcuffs on him, and took him to the police station.

At the police station, they began beating Fariddun, in the presence of the Nazis who had attacked Firdavs no less. Police officers tried to get him to confess that he took part in the fight, despite the fact that he had an alibi. He was released the next morning. Charges were also filed later (in 2011) against Firuz and Fariddun for administrative violations; they had allegedly been cursing that day in the middle of town (on Liteyny Prospect). The charge was so obviously contrived there are grounds for those who filed it to be found liable for exceeding their authority.

The matter remains under investigation at the present time. All the brothers are being provided with legal assistance and they may succeed in having proceedings instituted against the nationalist attackers, demonstrating thereby that the brothers were forced to defend themselves.

Migrant workers are often forced to migrate due to socio-economic reasons. Their primary goal therefore is the search for work in their host state. They suffer numerous violations of labour law by employers, intermediary firms, and other unscrupulous participants in employment relations. Moreover, in order to work legally, foreign nationals must fulfill all administrative requirements of the host state, which also creates numerous difficulties and encourages abuse.

This report examines only some of the problems foreign nationals encounter in attempting to exercise their right to work and other social and economic rights in the Russian Federation.

The Quota System and the Problem of Legal Status

The current Federal Law "On the legal status of foreign nationals," which establishes quotas for migrants, is based on the principle of protection of domestic labour market. Quotas are confirmed

yearly by the Government of the Russian Federation upon the proposals by executive agencies of Russian federal subjects. The quotas take the demographic situation in the relevant region (town, republic) into account, as well as that region's capabilities for employing foreign nationals.

The initial system of quotas applied only to citizens for whom visas were required. Quotas for foreign nationals arriving through a visa-free procedure were introduced in 2007. In 2008 professions and qualifications essential to the Russian economy began to be considered when issuing work permits. Applications for assignment of the quota by regions must be submitted by August 1 of the preceding year. Regional authorities in their turn collect applications from commercial entities, which must submit applications for the following year before May 1 of the current year. In recent years the Government of the Russian Federation has regularly decreased the quotas for foreign workers. According to Decree No 895 of the Government of 12 November 2010, Russia's requirement for migrant workers for 2011 will be 1.7 million individuals. This is approximately 200,000 less than for 2010. Of these the most frequently hired will be workers to work in mining and capital mining operations, as well as in construction and installation and construction repair. More than 530,000 work permits were allotted to these categories. Unskilled workers make up the second most numerous category, with 388,600 permits. In third place with 109,500 permissions was the category of leaders of institutions, organizations, and enterprises.²⁹ The Ministry of Health and Social Development is supposed to issue an order dividing the quotas among the regions based on their specific requirements. The draft of the order is already prepared and is undergoing approval procedures in the departments concerned. Most regions have lost a portion of last year's quota. "The decrease in number of workers hired from abroad can be explained by the fact that in July 2010 new mechanisms for attracting foreigners were introduced, namely the patent system for workers coming for employment with a physical person and the invitation of foreign citizens who are highly qualified specialists to whom quotas don't apply," explained Tatyana Blinova, Director of the Department of Employment and Labour Migration of the Ministry of Health and Social Development.³⁰

Specialists disapprove of the quota system in general. It is not based on a real need to protect the domestic labour market and does not permit adequate assessment of the need for foreign workers, since at the time application is made only the largest employers can predict their worker requirements for the coming year. Directors of state agencies also acknowledge the deficiencies of the quota system: "For large-scale business with thousands of workers, the quota system should work," says K. Romodanovsky, Head of the Federal Migration Service (FMS) "But for small and mid-size businesses a more flexible approach is needed."³¹

Finally, this system essentially not only fails to eliminate irregular immigration, but encourages it. Quotas are generally reached by the fourth month and almost every migrant worker that comes to Russia in May or later of each year no longer has an opportunity to be legalized. Human rights organizations advocated for proposals that would eliminate the quota system, leaving for the state only the function of regulating the relationships of foreign workers and their employers under which both the employer and the foreign worker would bear increased responsibility for complying with employment agreements.

Lack of Support to Migrant Workers From Home States

Another factor that aggravates migrant workers' situation in the Northwest is the lack of diplomatic state representatives from the countries of their citizenship. Although St. Petersburg is the second most populated city in Russia and receives a significant portion of migrants from CIS countries, it has no consulates from Uzbekistan, Tajikistan, or Kyrgyzstan. If citizens of these countries lose their documents or have other problems, they must go to the consulates in Moscow, since consulate rules require a personal appearance. Because of this, a foreign national risks being detained by Russian law enforcement while traveling to Moscow. Secondly, he must spend money on a ticket while in an extremely difficult material situation. Foreign nationals often request to be accompanied by ADC Memorial staff for safety reasons while traveling to their consulates, as documents of foreign nationals are confiscated by employers and salary not paid for an extended period of time. It should be not-

ed that in Russia it is not possible to buy a train or airplane ticket without an identity document.

The Russian Ministry of Internal Affairs and the FMS routinely criticize the Central Asian governments for the lack of representatives in St. Petersburg.³² The overall lack of the necessary social and legal help from the countries of citizenship should also be noted. Yet according to the Vienna Convention on Consular Relations, one of the basic functions of any consular institution is "helping and assisting nationals, both individuals and corporate bodies, of the sending state." Representatives of these governments often do not display the necessary concern for their citizens who find themselves in a difficult situation on Russian Federation territory. This is so not only in instances that require social and material assistance but also with regard to situations of difficulties completing the necessary documents.

Migrant workers' lack of legal support and assistance from their countries' consulates at their place of temporary residence combined with abuses by employers of their status and lack of rights leads to the development of semi-criminal structures that hide behind the mask of the "ethnic diaspora" and who present themselves as "honorary consuls." These structures not only fail to provide legal assistance, but commit fraud. Samida A. consulted an attorney with the St. Petersburg Regional Social Organization of Compatriots of Uzbekistan "UMID" after her passport was retained by an unscrupulous employer. She was required to pay 8,000 rubles without any contract for the provision of consultative services. Samida received no legal assistance and was not even advised to make a police report.

According to Z. N. Kayumov, General Consul of the Republic of Uzbekistan, RSO "UMID" also engages in falsification of certificates of return that verify the identity of citizens of Uzbekistan who have lost their passports. Criminal cases have been instituted against citizens of Uzbekistan detained in the Pulkovo-2 airport with false certificates.³³

Problems Securing Documents for Foreign Nationals: Intermediary Firms Complicit in Human Rights Violations

One consequence of the quota system and the difficulty of receiving permission to work and permission for temporary residence is that migrant

workers, instead of obtaining these documents at the FMS, turn to intermediary firms. These firms engage in placing foreign nationals on the migrant registry, arranging work permits for them, assisting in clearing the medical commission, and so forth, although the law requires apply directly to the FMS. So the activity of these firms is not clear and not perfectly legal; even the state announcements heard in crowded places such as the Metro warn migrants away from their services, but these firms continue their activities. Thus the following limited companies, amongst others, are active in St. Petersburg: “Zakonnoe pravo” (“Legal Law”), “Pravo” (“Law”), “Vozrozhdenye” (“Renaissance”), “Novyi Svet” (“New Light”), “Inostranets” (“Foreigner”), “Edinstvo” (“Unity”).

There are several reasons why migrant workers can be subject to abuses by these firms:

- the migrants low level of literacy, insufficient language skills, and lack of primary (fundamental) legal knowledge;
- the lack of necessary, widely accessible, and sufficiently official information provided by authorized state agencies, which should assist migrant workers find their bearings and integrate into the social and employment environment with the fewest difficulties; the requirements of Russian migration law and the legal (official) procedure for receiving documents necessary for legal work, the basics of labour legislation, and so forth have not been sufficiently made known to foreign nationals;
- the widespread advertising campaign by intermediary firms that deceptively claim to be “associated” (by using the term “municipal” and official state and municipal symbols), with official services that assist migrants and entice them with promises of swift document formulation, no queues, and guaranteed provision of temporary registration, health record and training books, work permits, and so forth;
- advice from “close” acquaintances, friends, or compatriots, who often claim to have used the services of these firms.³⁴

One of the main reasons these intermediary firms flourish is the difficulty of administrative procedures for processing documents legally, such as queues at FMS, groundless refusals, and the requirement of additional services. These firms’ follow a certain pattern of activity. Upon the first visit to the office the migrant is promised assistance within a short period of time

(usually 14 days), including placement on the migration registry, clearing the medical commission necessary to obtain a work permit, concluding an employment contract with an employer, and obtaining a work permit with the FMS. The cost of services ranges from 11,000 to 16,000 rubles (275 to 400 euros) which covers payment of the state duty, translation of the passport into Russian, “assistance” in clearing the medical commission, the execution of an employment contract “with an employer who is prepared to pay taxes on your behalf,” and the actual payment for obtaining a work permission or yearly registration (around 5,500 rubles). The client need only pay the entire sum in advance and then pick up the work permit at FMS. If a migrant agrees he is requested to deposit money and sign a service agreement, which does not correspond to the requirements of Russian legislation and is invalid from its signing, as demonstrated below.

According to the agreement’s terms, the firm provides only consultative services and has no liability for its actions. Moreover, the contract contains a statement of services rendered (the “consultation”) beneath which the migrant is requested to sign. The client is not provided with an opportunity to become acquainted with the signed contract and remains sure that he will be called in two to three weeks and asked to pick up his prepared document.³⁵

Several subsequent scenarios of exploitation by such agencies are possible:

- 1) Provision of services is delayed, and foreign nationals must leave Russia in order not to violate migration law. Often, however, after spending all their money on pseudo-legal assistance, the migrants cannot afford to leave. Thus, they remain in the country in an undocumented situation.
- 2) A fictional migration registration and a false work permit are prepared, along with false health record and training books, which turn out to be invalid upon verification through the official site of FMS in St. Petersburg. Once this happens foreign nationals are at risk of being detained by law enforcement officials at any time and prosecuted, including criminally. They may also become the target of wrongful actions by law enforcement officials, including extortion and violence.
- 3) Foreign nationals have their passports confiscated when services are provided. Migrants then become extremely vulnerable when

faced with any checks or actions by the police. All these scenarios most frequently lead to the same result: the foreign national is in an undocumented situation. However, a different result is possible. Intermediate firms sometimes prepare valid work permits, indicating that, despite the assurances of the FMS, it is not only the state structure that can provide authentic documents to foreigners. An informal connection clearly exists that allows the acquisition of valid documents through private intermediary firms with some sort of connection with the FMS. Large numbers of migrants turn to intermediary firms and to people presenting themselves as their employees. The vast majority of migrant workers interviewed by experts from ADC Memorial received permissive documents, whether valid or fake, through these types of businesses. Legal support and expedited receipt of documents without delays costs 2 1/2 to 3 times more than if the migrant had formalized his own documents with the FMS, in which case he would have had to pay the state duty for a work permit (2,000 rubles) and undergo a for-fee medical exam (around 2,500 - 3,000 rubles).

Zevetdin S., a citizen of Uzbekistan, arrived in St. Petersburg in June, 2009 and immediately completed a notification to be placed on the migration registry. At the beginning of August he appealed to the legal support firm "Edinstvo" (44 Nevsky Prospect), where he was promised he could obtain a work permit and a yearly registration in St. Petersburg within two weeks for 11,000 rubles. In a telephone conversation the manager stated that he "worked closely with the FMS" and "up to 50% of the amount paid would be remitted to the relevant state agencies." After paying for the "services" the firm maintained no contact with its clients, and when the 90-day deadline for registering in St. Petersburg expired, the manager informed the migrants that the firm could not submit the documents to FMS in time and now they would have to return to Uzbekistan, re-enter the Russian Federation, and then apply to the firm "Edinstvo" with a new migration card. In response to people's demands for a refund the manager stated it was impossible due to the "crisis situation." Zevetdin could not find money to leave, lost his legal status, and is employed illegally in one of the villages in Leningrad Province doing repair and redecoration on apartments. On 15 February, Gulasal E., a citizen of Uzbekistan, requested assistance in obtaining a work permit from the firm "Zakonnoe pravo." Gulasal was promised she would receive her permit within 14 working days. She paid the firm 11,500 rubles (5,500 for services and 3,000 for assistance in clearing the medical commission without a line, 2,000

rubles for the state duty, and 1,000 rubles for executing an employment agreement). Gulasal signed a contract for the relevant services. The firm continually pushed back the time to provide the services; Gulasal was only informed on March 15 that her passport needed to be translated into Russian. Then she was informed that she could pick up her permit at the FMS on March 30. However, the employees there refused to issue her permit, saying that the FMS had not received any documents for her. As a result Gulasal had to return to Uzbekistan.

Bakhtiyor H. and Hamid R. submitted 11,000 rubles each to OOO "Zakonnoe pravo" to apply for work permits and concluded the relevant contracts on 6 March 2010. The manager, Yuliya Topalova, assured the clients that the "medical exam" paid for would not even require their personal participation and that their work permits would be ready by mid-April. Then, after fruitless attempts by Bakhtiyor and Hamid to learn anything about the results of the firm's work they were informed that at the beginning of May that both of them would be required to go through a medical examination personally, and that the documents to apply for work permits had not even been submitted to FMS. On 7 May the temporary registration period ran out for both migrants, and now they are forced to remain on the outskirts of St. Petersburg, hiding from the police, with neither money nor hopes of obtaining work or returning home. Even a trip to the center of town for negotiations with the firm that deceived them is impossible³⁶.

Thus, after agreeing to use "legal counsel firms" as intermediaries, a migrant worker almost always risks becoming victim of fraud. However, even if he acts according to the law and applies directly to FMS, prepares and submits the documents for a work permit himself, goes through a medical examination on his own, he will be forced to make use of the services of intermediary firms in some way. For example, there are special lines for medical examinations from intermediary organizations and employers; referrals for medical examinations are given only to representatives of particular firms or particular individuals. Sanzhar T., a citizen of Uzbekistan who appealed to ADC Memorial arranged his documents through the firm "Inostranets," but wanted to obtain his referral for medical examination on his own from the FMS. The cost of a medical exam without waiting is 3,000 rubles. The clerk told him that referrals are collected by representatives of the firm and are not usually given to applicants directly. Sanzhar mentioned "Inostranets" and the clerk replied: "That's not a firm we work with." Then Sanzhar mentioned another name and the clerk

specified: "From Mazayeva?" She then telephoned this Mazaeva (apparently another intermediary) and asked whether she could give a referral to an individual who wished to submit documents on his own. After receiving an affirmative answer, the clerk printed the referral immediately, filled it out, and gave it to Sanzhar.

Thus, as things stand a migrant is forced to resort to semi-legal assistance from "law firms" and other intermediaries. On his own, in a legal manner, it is practically impossible to go through important procedures like a medical examination and submission of documents at FMS. This is the precise reason thousands of people who come to Russia every year for work continue to turn for help to law firms and often the only guarantee of migrants' obtaining legal status is the word given by swindlers.

The efforts of migrant workers to obtain either the documents promised by the firm or a refund are generally without result. Firms use the tactic of refusing to meet with clients even if the migrants request assistance from human rights workers. For example, the manager and attorneys of the firm "Inostranets" refused to meet with staff from ADC Memorial for a long time. Rather than representatives of management, the Memorial office was visited by people providing "legal defense of business." They stated that their task was to supervise the managers of several firms like "Inostranets" and to resolve conflicts that arise during the work of these firms. Although the "legal defense of business" promised to "sort things out," their visit did not lead to any actions in favor of the cheated migrants.

The fact that the number of firms openly promising assistance in obtaining documents to migrants does not decrease indicates that law enforcement agencies are not taking the necessary steps to suppress this type of business conduct; to oversee the activities of these agencies, to prosecute and sanction those acting unlawfully. There are positive developments, however. In the summer of 2010, upon the petition of ADC Memorial, a criminal case was instituted against firms working under the general brand "Inostranets," and the petitioners were recognized as victims.³⁷ The petition is currently being reviewed by the city procurator, and the firm's offices are being audited.

The Risks of Working in the "Informal Sector"

With regard to work in the **informal sector of the economy**, the following international legal recommendation must be taken into account: "States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers, in particular those provided for in Articles 6, 7 and 8 of the Covenant. *These measures must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice*" (General Comment no. 18 on the Right to Work (art. 6 to ICESR).

The concept of the responsibility not only of states but of private companies (including compliance with labour rights) is also being debated within the UN framework as part of the work undertaken by the UN Special Representative of the Secretary-General on the issue of human rights and transnationals and other business enterprises. While the Special Representative will be submitting its final report, including its Guiding Principles, to the Human Rights Council in June 2010, the latter has already unanimously adopted – on 18 June 2008 – the "Protect, Respect and Remedy" framework proposed by the Special Representative.³⁸ Such framework confirms that while States bear the primary responsibility to ensure the protection of human rights, companies also have the responsibility to respect human rights at all times. In the event a state's actions are ineffective and that victims cannot have access to an effective remedy, additional mechanisms of influencing legal entities that violate human rights must be introduced.

Migrant workers who have lost their legal status as a result of the actions of intermediary firms and who lack the means to return to the country of their citizenship must nevertheless earn a living. Since they cannot obtain work legally, they often become the victims of crime: illegal confinement (usually by confiscating and retaining their pass-

ports), forced labour, beatings, and damage to their health. Often migrants, hoping for the assistance of “acquaintances” in obtaining work are subject to threats not only to their own earnings but to their lives and health. Such conduct is in contradiction with Russian labour legislation as well as with both the UN and the ILO standards on labour rights.

In mid-January 2010 a construction company that had missed all delivery dates for an elite 16-floor complex called “Saima” that belonged to ZAO Lenstroitrest (Vyborg, Leningrad Province) decided to complete construction immediately by utilizing the assistance of criminal intermediaries and cheap migrant labour. Seven citizens of Uzbekistan were invited to work by a certain Ruslan Verdyuk, who presented himself as a foreman. The “foreman” proposed the migrants install aerated concrete partition walls for the sum of 11,000 rubles for the entire brigade per story. No job placement contract, temporary registration, or permission to work in Leningrad Province was arranged. Dissatisfied with the conditions of the oral agreement, the migrants announced several days later that they were declining the work. In addition three of them had been detained by FMS officials on the street and fined for violating the residence regulations, and their passports had been confiscated until they paid a fine of 5,000 rubles each. Verdyuk decided to force his charges to work. During the night he broke into the apartment where the migrants had settled, accompanied by two pseudo-policemen (solidly-built men in camouflage). The “policemen” took the workers’ passports and cell phones, accompanying their actions by threats and beatings, and Ruslan told them that the migrants would receive their documents, money, and possessions back only after completing the full scope of work at Saima. He then left, padlocking the door from the outside. Fortunately one of the workers had managed to hide his cell phone and reached human rights workers. After long negotiations Verdyuk agreed to return the four passports to his captives. After many days of confinement, the migrant worker victims left Vyborg with fine receipt but with no money or cell phones. In addition to obviously criminal “employers,” which are directly involved in the commission of abuses, foreign nationals often work without official permission, which means that juridical persons cannot be prosecuted for using an oral employment agreement instead of a contract.

In mid-November 2009, ten citizens of Uzbekistan and Tajikistan, who worked at the fish processing plant “ROK-Baltika,” located in the village of Vistino in Kingisepp District of Leningrad Province, requested help from ADC Memorial. For several years migrant workers had been recruited to work at a fishing collective farm

by the intermediary firms OOO “Victoria” and OOO “Prodservis.” They unloaded trailers, sorted the catch, worked in the canning area, and loaded and transported the finished product. The intermediary firm and the fish plant did not execute official contracts with their workers, but limited themselves to oral agreements on a project basis. Sometimes for accounting reasons they would execute fictitious contracts with individual that indicated an extremely low “official” salary. According to workers at the fish processing collective farm, up to 80 migrant workers laboured in production at various times. In May of 2009 new workers came to the collective farm from Central Asia. They had temporary registration and permission to work in St. Petersburg.

It turned out that six of them needed permission to work in Leningrad Province, and in May they gave their passports to the secretary of the fish processing plant “ROK-Baltika” to arrange this permission. She in turn gave the documents to the firm “Prodservis.” As of July of 2009 these people wound up without identity documents. A criminal case was instituted against OOO “Prodservis” and all documents connected with the company, including passports, were confiscated by the Directorate for Combating Economic Crimes, and the leadership was placed under scrutiny. However, the clients of “Prodservis” did not cease working at the fish plant; they worked twelve hours a day, mostly in the packing area, without receiving a salary. Lacking passports, the workers became easy prey for the border patrol, and police, and the FMS. The workers (both those with and without documents) were detained five or six times during regular raids by these agencies and forced to pay a fine of 2,000-2,500 rubles each time. The leaders of the fish plant unflinchingly responded to their continual requests for payment of the money earned with promises to settle accounts “tomorrow,” and the migrants continued working. The forced labour continued until November 8, 2009. When the migrants’ assistance was once again required to unload a trailer, all ten of them refused to work, demanding the return of their passports and the payment of their salaries. It was then the migrants appealed to ADC Memorial. After pressure from human rights workers, OOO “Rok-Baltika” was forced to begin paying salaries, but the amount paid corresponded to the fictitious contracts of the workers with the intermediary firm OOO “Viktoriya” and came to around 3,000 to 4,000 rubles per month. For example, Hasan Urunov received only 30,000 rubles for his more than five months of labour as a driver. Gulom Kabylov received payment only for August and September in the amount of 21,000 rubles, only half of what he had been promised. Rasul Choriev, an unskilled worker, received 6,000 rubles for five months of work. Moreover, the managers of the fish plant devised yet another means of

profiting from the workers' situation. The striking workers were ordered to pay 70 rubles per day each for the time spent on the territory of the business, supposedly as compensation for electricity. In total, the workers were charged 97,000 rubles for five months of lodging.

The deceived workers decided to leave Leningrad Province and began gradually at their peril, to make their way to St. Petersburg without documents or money in order to find even any sort of work there. In January, 2000 they contracted to clear snow in the Petrodvorets District of the city. Around ten persons, mostly citizens of Uzbekistan, wound up under the care of several intermediaries (including a local policeman). Their unofficial "employer" this time was the regional Housing and Communal Services Department (HCSD). The migrants were promised payment of 10 rubles for each square meter of snow cleared, with the payment deferred until the end of February. Nobody kept track of the cleared meters. As a result after almost a month of heavy labour the workers had to make do with 4,000 rubles for three people.

Due to their irregular situation, the migrants are afraid to turn to the police to protect their rights, since they correctly surmise that law enforcement officials would treat them not as victims of crime but as criminals who had violated the residence regulations of Russian Federation territory.

For this reason migrants attempt to protect their rights by turning to dubious intermediaries (individuals), sometimes from the migrants' environs. In exchange for a specific share, these intermediaries arrange for the payment of salary by unscrupulous employers, release from custody, and resolve other conflicts that foreign nationals find themselves in the Russian Federation.

The intermediaries often act "under cover" of providing legal assistance to migrants. Sometimes this dubious intervention is organized by citizens of the states from where the migrants come, making use of connections and influence and often using criminal means of influence. Negotiations using third parties to resolve settlement of labour disputes can be considered a positive experience but unfortunately not a model. Labour legislation provides for these mechanisms, but they apply only for individual companies and when individual and collective contracts and the active assistance of labour unions are present, as is rarely the case for migrant workers. Instances of peaceful resolution of conflicts are fairly rare in the "informal sector."

In August 2010 citizens of Tajikistan requested help from ADC Memorial (Hurshed and Farhod N, Djamshed and Farhod S.). The case concerned the non-payment of promised wages for construction work. From April through September, 2009 migrant workers worked in a brigade under the leadership of a foreman, who it later turned out was not formally employed with the construction company. An appeal to the procuracy produced no results since there was no proof besides the testimony of the workers themselves that the work had been done. At the intervention by ADC Memorial several meetings were arranged with the participation of representatives of the construction company, the workers, and ADC Memorial staff. As a result of negotiations with the company's representatives an agreement was reached to pay compensation to the workers. In this case the protection of rights in court would have been impossible, as not only was there no employment contract but even the oral agreement had been concluded with a "foreman," who was not on staff with the construction firm. Unfortunately, given the full impunity with which businesses that violate the rights of migrants can act, protected by representatives of state agencies, the companies have no real motivation to negotiate with anyone, let alone with representatives of human rights organizations.

Yet another example of confronting a lawbreaking company directly is the filing of claims in the workers' interest (with demands to observe labour rights, pay salary, etc.). This can only be effective if there is a real possibility that unscrupulous employers may be prosecuted by a state agency (labour inspection, prosecutor, judge) upon filing of a request.

The above-described violations of migrant workers' rights are widespread not only in private companies or in the "shadow economy" but among the organizations that provide social services. For example, organizations of the housing services system often employ migrant workers unofficially. According to information from the St. Petersburg Prosecutor's Office, illegal employment of migrants in housing services occurs in all districts of the city. The same picture can no doubt be observed in other regions of the Russian Federation, since housing services is one of the main areas that uses migrant labour. Although employers and officials have been prosecuted, the rights of foreign workers continue to be violated. Procuratorial inspections are aimed at uncovering violations rather than at the protection of the rights of "illegal workers." According to a statement by the press service of the municipal Procurator: "The Procuracy of St. Petersburg con-

tinues to inspect employers that recruit foreign citizens for work as caretakers and yard-cleaners. As a rule the targets of the audits are management companies and Housing and Communal Services Departments who increasingly frequently fill their vacancies with foreign nationals who have come from countries in a visa-free procedure.

Preliminary audits through the city have shown that only very few management companies enter into employment contracts with foreign nationals and notify the Federal Migration Service, the State Workforce Agency, and the tax services that they have been hired. At the same time, the fact of illegal employment of migrants in the sphere of HCS continues to be uncovered in all districts of the city. As a rule, the unofficial employment is accompanied by the settlement of migrants in dilapidated or condemned housing under the control of management companies, which ensures the cleaners are attached to a specific territory. For example, in August, 2010 a large number of foreign nationals were discovered living in a dilapidated building at 28 Staro-Petergof Prospect during an audit. Two among those detained worked as janitors nearby without the appropriate formalities.

According to the results of a audits, the city procurator instituted two administrative cases under Article 18.15 of the Code of Administrative Offences (unlawful soliciting of labour activity in the Russian Federation of a foreign national or stateless person) against the technical manager from the management company ZAO "Stiles," who had taken them on for employment. The case has been examined and the technical manager was held administratively liable and fined 50,000 rubles.³⁹

Due to heavy snow in the winter of 2009-2010 problems arose in St. Petersburg clearing the snow and ice from roofs. Many municipal housing services solicited foreign workers (without utilizing contracts) to perform the difficult and dangerous work of clearing snow and ice from the roofs. The communal services did not provide safe working conditions and when accidents occurred (often falling off the roof with fatal results) could not be held responsible due to the lack of a contract and formalities. Many foreign nationals who received serious traumas in clearing snow from roofs but could not receive any compensation due to their irregular status turned to ADC Memorial in 2010. One of them lost the ability to work as a result of falling off a roof, but even in that instance it was impossible to demonstrate the responsibility of the communal services that solicited migrants to perform dangerous seasonal work under illegal working conditions⁴⁰.

Violation of the Rights of Migrant Workers by Intermediary Recruitment Agencies

Labour rights established by legislation may be exercised within the relationship between two subjects, the employer and employee, under state supervision. Both the employer and employee have rights and responsibilities in the labour realm, the violation of which can result in liability. If this procedure is violated even basic labour rights and guarantees such as the right to a fair wage cannot be implemented. Migrant workers frequently find themselves in such a situation. Due to violations of work permit rules they cannot avail themselves of the protection of labour law. Employers use various arrangements to avoid complying with the rights of migrant workers, presenting them as a mutually convenient relationship. Foreign nationals are provided with the opportunity to receive work without observing the "formalities," often without the necessary documents, and the employers receive cheap labour. In this sense it is particularly important to take into consideration, according to General Comment 18, that the "States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection."⁴¹ Since almost all employers that recruit migrants attempt to avoid the formalities of employing foreign workers, it becomes the normal situation for the labour market, and those who attempt to hire migrants officially are in an economically less favorable position than their competitors. As the practice of protecting the rights of migrant workers in St. Petersburg demonstrates, one of the widespread arrangements is the use by employers of the services of intermediary firms that specialize in hiring of foreign workers ("outsourcing"). Almost all foreign nationals that have sought assistance in protecting their rights have no employment contracts (or even retainer contracts) with the organizations where they actually work. They worked in retail grocery store chains, such as one widespread St. Petersburg chain of grocery owned by an influential business group. They also worked at the gas stations of a prominent oil company. All arrangements, including the concluding of employment contracts and the payment of salary

were handled by small outsourcing firms. Regardless of the ultimate employers' tremendous demand for foreign nationals to perform unskilled work, they do not offer official employment for foreign nationals. Their employment advertisements require "only citizens of the Russian Federation". For soliciting migrant workers, however, the services of specialized firms are used. Among the firms we learned of from the migrants: are "Lingtoniya," "Klinmaster," "Megapolis," "Nis," and many others.

Generally speaking the arrangement for recruiting workers can be described as the interaction of three fundamental subjects: the foreign workers, the intermediary firms, and firms that are the ultimate employers, as a result of which the legal relationship between employer and employee that is necessary to enforce labour rights disappears. Employees ("managers") of the intermediary firms actively solicit foreign nationals, promising employment. According to evidence submitted by migrant workers, they receive information from unofficial channels (from acquaintances, often even before arriving in Russia). If the migrants lack the necessary documents (primarily work permits), these firms offer assistance in obtaining them that is not always legal (as previously demonstrated), and subsequently deduct the cost of their services from the migrants' salary. The necessary medical documents (certificates, health record and training books) are often prepared without direct interaction with medical institutions. Foreign nationals sign employment contracts with an intermediary firm, but a copy of the contract is generally not given to the workers (although providing copies for each of the parties is one of the basic legislative requirements for any contract). This is done intentionally, since should a conflict arise it becomes practically impossible to prove the fact of an employment or any agreement relationship with the firm. As the general director of one of the outsourcing firm stated during questioning by law enforcement agencies: "How will you prove it? I'm seeing these people for the first time!" Any attempts to request a copy of the contract from the firm is met either with refusal or a threat of being fired.

Subsequently the hired migrants are sent off to one of the large chains (of stores or gas stations) for work as packers, loaders, cleaners, and unskilled workers. The actual place of work can change

depending on an employer's requirements. The worker is simply told that the next day he should report to Store No. 126 instead of No. 125 as previously. As already noticed, employment relationships between the "store" and the worker do not formally exist, and therefore employers don't consider it necessary to comply with the rights and guarantees of occupational safety (it may establish a 14-hour day without days off, vacation, or paid sick leave). The salary is paid by the staff of the outsourcing firms. Delays in pay are considered the norm and are explained as a lack of funds.

The de facto employer and the intermediary firm are almost always connected by a retainer services contract, of whose conditions the workers are not informed. Presumably the stores pay a part of their profit to the intermediary firms to cover the work of the foreign workers. The hiring firms themselves decide what part of these sums to pay to the workers, retaining the rest of the money as profit. It is pointless to appeal to the workplace if salary is delayed or not paid. The employers will indicate they've already paid the "salary" of the workers to the hiring firm, whose payment arrangements with the migrant workers don't involve them.

This arrangement not only encourages the violation of migrant workers' rights (and is used specifically for that reason) but hinders the subsequent protection of rights. Law enforcement agencies (such as labour inspection and the special subdivisions of the FMS) refer to the lack of a legal prohibition on outsourcing, and it is difficult to demonstrate factual employment relations in court. It is often impossible to obtain documents that confirm the work (for example a shift chart) since naturally it is not to the employer's advantage. Additionally, when contacting law enforcement agencies the status of a foreign national will be checked, as will the authenticity of all documents, which also hinders prosecution of intermediaries and employers. Foreign nationals either leave for their country of citizenship without ever receiving their salary or obtain documents through firms (most frequently fictitious notifications of registration) and therefore cannot rely on the protection of the state. Any protection of labour rights is made difficult by the unequal position of employee and employer, particularly for categories of workers like migrant workers. If the migrant's position is irregular, an attempt to

request protection of one's rights from law enforcement agencies can lead to administrative expulsion.

After receiving a false registration, as well as false work permits and a health record and training book that is also false (of which the migrant workers are unaware since they usually do not have Internet access to verify the documents and the intermediary firm has assured them of the legality of the documents provided to them), the migrant workers begin seeking appropriate work. It is at this point they encounter representatives from an employment agency engaged in illegal services. There are many such firms, and they all work according to a specific plan of operation. One of these firms of "suppliers" of migrant workers to the labour market of St. Petersburg and Leningrad Province is OOO "SPb."

The activity of OOO "Megapolis SPb," according to information on its website and confirmed by foreign nationals that have sought help from ADC Memorial, is the so-called provision ("rental") of personnel to a third party; that is, one of the variations of lowering the overhead of a company that participates in the arrangement. Usually this type of service is called "outsourcing" or "outstaffing," but these terms are very provisional since they have no legislative definition. The essence of the service is that one company enters into an employment relationship (OOO "Megapolis SP6") with the workers. The company provides its personnel for the ultimate use of another company according to a retainer service contract for the performance of a specified amount of work. The work is usually unskilled and heavy labour in the client company's operations. The personnel recruited by the contracting company takes the place of the client company's staff on a full or partial basis and are hired only for work on request of the client company. The client company does not pay salaries vacations or sick leave etc. to these workers, but settles accounts for services directly with their employer.

Here is a sample online advertisement for "personnel outsourcing": "Let us replace two of your on-staff idlers with one of our freelance industrious and unassuming Tajiks where you need it. He'll do the very same work for less money. He won't shirk his duties, call off work, or demand his rights. Whether you need one or a thousand workers, even with a demanding work schedule, there is no problem. You'll have them in a week! If you don't care for one of them (perhaps his hair is too long),

he'll be replaced within a day. Contact us. It's easy and won't take more than a couple of days. Starting next week you'll be saving up to 35% of your payroll."⁴²

Mikhail Maksakov, the "Director of the Division of Field Marketing" of the firm Bounty Retail-Promo-Merchandising, confirmed in an email to ADC Memorial that he does engage in deliveries of a "live product" in any quantity and for any type of work and his "outsourcing company" is flourishing⁴³. After executing employment agreements, OOO "Megapolis SPb" does not distribute them to the migrant workers upon various pretexts, which will not only hinder but render impossible any future legal procedure for resolving a labour dispute with the employer. After signing an employment agreement with OOO "Megapolis SPb" migrant workers are sent to work at various companies in St. Petersburg and Leningrad Province: the grocery store chains "Pyatyorochka" and "Kvartal," the seaport, and construction companies.

Despite the fact that the Labour Code of the Russian Federation establishes and provides detailed regulation of the right "of every employee to equitable work conditions, including conditions meeting safety and health requirements, the right to rest and leisure, limitations of working hours, provision of daily rest, days off and non-working holidays, paid annual vacations," these rights are almost always violated with respect to migrant workers. Even within the same workplace different working conditions can be created for Russian citizens and migrant workers. An employee soliciting a workforce through "outsourcing" considers himself free from providing the labour and social guarantees provided for by labour legislation. Migrant workers' lack of contracts, problems with documents, weak knowledge of the law, and fear of law enforcement all place them in a vulnerable position, one that is completely dependent on the actions of the employer, which leads to systematic violation of working conditions with impunity.

Thus according to the testimony of workers at a large St. Petersburg grocery store, their workday consists of 15 hours (from 8am to 11pm). Only a 10-15 minute break is provided for lunch and there are frequently no days off. Sick days are also not paid and therefore many foreign workers go to work even when they are sick.

After working for 45 days, migrant workers receive a salary for 30 days only. The amount OOO “Megapolis SPb” owes its workers doubles with every period worked. Leaving the amount of salary owed for 15 days serves as a unique method for retaining the employee. The longer a worker continues working at OOO “Megapolis SPb” the harder it is for him to leave, since the sum of salary owed that will not be paid upon leaving is an economic restraining factor. Although the promised salary comprised 600-650 rubles per day, the migrant worker receives a salary of 7,000-9,000 rubles after working 45 days. The rest is retained for formulating health record and training books (even when migrants formulate it themselves), for an apron (uniform), and “for termination.” The companies also deduct various fines (not provided for by the Labour Code as penalties) for being late to work, coming back late from lunch, and leaving work “early.” However, the rights of Russian Federation citizens, are observed in the scope provided for by the Labour Code.

Abdulaziz K. concluded a contract with OOO “Megapolis” and was not given a copy of the contract. Abdulaziz worked at a Lukoil gas station, with a workday of 8am to 10pm. Between July 1 and August 18 he had one day off. In August, 2010 he was asked to sign a letter of resignation 15 days before separating from employment. Abdulaziz quit on August 18, but did not receive his wages for July and August. He had been promised 600 rubles a day. The managers of “Megapolis” initially promised to pay what was owed “next week,” then stopped answering his calls. Parviz A. signed an employment agreement with OOO “Megapolis SPb” on July 24. He was not given a copy of the contract. At the direction of OOO “Megapolis SPb” he worked as a packer for the “Kvartal” retail chain. His work day was 15 hours long, from 8am to 11pm, with no days off. His promised salary was 650 rubles per day.

He didn’t work after September 20 since on that day he was informed he was dismissed. He was not paid for the time he worked between 24 July 2010 and 20 August 2010. He requested payment of his salary from OOO “Megapolis SPb” many times without result. On September 28, 2010 a manager from OOO “Megapolis SPb” informed Parviz that he would not be paid.

Sherzod M. signed an employment agreement with OOO “Megapolis SPb” on May 25. He was not given a copy of the contract. At the direction of OOO “Megapolis SPb” he worked as a loader for the “Pya-

torochka” retail chain. His work day was 14 hours, from 8am to 11pm, with no days off. His promised salary was 650 rubles per day. On 25 August 2010 he quit. He was not paid for the time he worked between 15 July 2010 and 25 August 2010. He requested payment of his salary from OOO “Megapolis SPb” many times without result. On September 28, 2010 a manager from OOO “Megapolis SPb” informed Sherzod that the company director had said not to pay him anything.

In practice, this outsourcing method involves the sale and purchase of a person, the migrant worker, in the guise of concluding a contract between buyer and seller regarding the transfer and acceptance of a person like an object for a fixed amount in monetary compensation or another form. The contract need not be a formal sales contract. It can be a paid services agreement that stipulates the migrant worker’s obligations (even indirectly) to perform work and services for the purchaser under the contract. The exploitation of a person, the migrant worker, in this instance includes the use of him and his servitude by different individuals for slave labour (services). This exploitation is often coupled with the confiscation or destruction of the migrant’s identity documents, which is one of the dangerous methods, along with the threat of dismissal, that places the victim in a dependent position and turns him into an object of trade and deprives him of the opportunity to break the enslaving employment agreement and return home at will. The confiscation of a migrant’s identity documents, indisputably an element of enslavement, is done at the very beginning. After hiring the documents are retained until the second stage, financial enslavement. Such violations of national and international labour rights result in violations of the human (citizen’s) right to personal freedom, which is violated when an individual who appears to be free to travel or to have freedom of choice, is constrained by financial enslavement (unpaid salary for a period worked and the imposition of fines) and limitations on his freedom of movement (confiscating personal identity documents, the lack of means to return home, and so on).

In 2009 ADC Memorial prepared a court petition to protect the labour rights of foreign nationals who work via “outsourcing.” The petitioners worked continually in the “Pyatyorochka” chain of stores under the arrangement described above on since 2008. They did not receive copies of their

employment agreements. As became known to them later, OOO “Agrotorg,” the operator of the store chain, solicited them for work in its stores, but officially the petitioners are employees of an organization that specializes in providing workers according to an outsourcing arrangement.

Thus, in February-March of 2010 the petitioners’ official employer was OOO “Klin Master.” The workers have never been in this office and do not know the officials. They were paid a salary at their place of work in the store that was based on the number of days worked (14 hours a day), according to the work shift table at the store: 650 rubles a day for men, 550 rubles for the women who were store assistants, and 450 rubles for the women who clean during a 12-hour workday.

The salary was paid regularly until 1 February 2010 but was not paid during February and March. The plaintiffs repeatedly contacted the directors of their stores demanding the payment of the arrears. At first they received promises that the unpaid salaries would soon be taken care of, but then received a refusal due to their services not being paid by the outsourcing firm.

In April 2010 the stores where the petitioners continued to fulfill their employment obligations transferred them (without their consent) to another outsourcing firm. Contracts were again signed with an intermediary firm, which then sent the foreign nationals to their actual employer, a chain of stores and gas stations. Contracts to provide services were concluded between the intermediary firms and the companies that were the de facto employers. The workers’ salary was paid by the managers of the outsourcing firm. The foreign nationals appealed to ADC Memorial after both organizations refused to pay them their salary for several months of work. A lawsuit was filed seeking the declaration of the existence of an employment relationship and recovery of unpaid salary. The suit described the entire arrangement of soliciting migrant workers and violating their rights, with a calculation of the time actually worked. Since the workers had no employment contracts, they had to request the court adopt an “informal” approach and declare a de facto employment relationship, which was not typical for employment disputes in the Russian Federation.

The judge of the Kuibyshev District Court of St. Petersburg examined the case and issued a decision on 3 June 2010 recognizing the existence of a de facto employment relationship between the plaintiffs and OOO “Agrotorg,” despite the absence of an employment contract. The court decision justly noted that providing an employment agreement (no later than three working days from the day the employee begins work) is an employer’s obligation, and its failure to do so should not prejudice the interests of the worker. The worker is a vulnerable party, and foreign workers, who have much fewer legal opportunities to protect their labour rights by virtue of socio-economic reasons are in an even more vulnerable position.

The court found that the lack of an employment contract in and of itself does not demonstrate the lack of an employment relationship. Having acknowledged this, the court assessed OOO “Agrotorg” for the entire arrears of the plaintiff’s salary. Although the decision is being appealed by the defendant’s representative and a final decision has not yet been rendered, the case’s result in essence is an example of a positive judicial step in protecting the rights of migrant workers.

Potential Positive Changes in Legislation: The Prohibition on Job Placement of Foreign Nationals By Intermediary Firms

On 8 November 2010 draft legislation⁴⁴ was introduced in the State Duma of the Russian Federation that prohibits employers from concluding a retainer services contract with workers with whom there are grounds for concluding an ordinary employment agreement. It also directly prohibits personnel outsourcing whereby a worker, registered with one organization, actually works in another (including a worker who is a foreign national). Article 8 of the Law of the Russian Federation “On Employment of the Population in the Russian Federation” would be supplemented with a prohibition on organizations that provide job placement assistance from concluding employment contracts with job seekers with the goal of transferring them (providing them) to other organizations or individual employers for the purpose of using their personal labour.

A memorandum to the draft legislation notes that, “an individual that has concluded a retainer services contract to perform work or provide services does not enjoy the guarantees provided to a worker in accordance with labour legislation and mandatory social insurance. Individuals who perform work or provide services without formulating any contract whatsoever, which in practice occurs frequently, are in an even more disenfranchised position.” This has the utmost relevance to migrant workers, who almost always work either without any contract or enter into a contract with an “outsourcing” firm rather than with their actual employer, which is reflected in working conditions, the rate of pay, and other social guarantees. In order to prevent employers from avoiding entering into labour contracts by using mechanisms of “hired labour,” the draft legislation proposes to supplement Article 56 of the Labour Code of the Russian Federation “Concept of the Employment Agreement. Parties to the Employment Agreement” with a new section that specifies who is an employer in the so-called “third-party employment relationship.” That is, when a worker performs work pursuant to an employment contract for a juridical person or an individual employer who is a client of a retainer services contract, rather than for the individual with whom he contracted or that factually permitted him to work, the juridical person or individual employer for whom work is performed should be recognized as the employer.

Additionally, the draft legislation supplements Article 13 of the federal law “On the legal position of foreign nationals in the Russian Federation”, introduced by the Chairman of the Duma Committee on Labor and Social Policy, Andrei Isayev, and State Duma deputy Mikhail Tarasenko. It proposes the addition of the provision that “*foreign nationals have equal rights with citizens of the Russian Federation in the realm of employment relationships.*” This affects payment for labour, work schedule, time for rest, and work safety. This declaration is significant in defining the position of the state itself. It would make it possible to rely on a concrete legislative norm in court or in protecting migrant workers’ labour rights (for example in the case mentioned above involving outsourcing).

The adoption of this draft law and, even more importantly, its effective implementation, can sig-

nificantly improve respect for migrant workers’ labour rights and is an important positive measure on the part of the state in the area of guaranteeing labour rights and protecting against discrimination.

Violation of Migrant Workers’ Rights by Law Enforcement Officials

Migrant workers’ irregular status renders them vulnerable to the police. Countering irregular migration is often conducted not by prosecuting criminal intermediaries, unscrupulous employers, or simply thieves, but as a struggle against the migrants themselves, who have wound up in a difficult position. This frequently takes the form of punitive anti-migration expeditions, accompanied by blackmail, racist insults, and beatings.

Tatyana K., a resident of the city of Pushkin (region of St. Petersburg) witnessed one of these police raids. The migrants, citizens of Uzbekistan and Moldova, had no legal documents. They lived right in the factory shops and were afraid to go outside, so Tatyana purchased food for them in the evenings. According to her, in January of 2010 FMS officials “arrived to verify the existence of documents. They cursed, grabbed people, and beat and insulted them. They also asked for my documents, but wouldn’t provide theirs; they called everyone names. Then they gathered everyone into a group, demanded 2,000 rubles from each of them, and placed them in the car. They took them all to the court in Pushkin and continued to demand money. One person bought his way out but the others were held for two days.” Similar raids occurred approximately once or twice a week. The most recent raid occurred, according to Tatyana, in mid-March 2010. At that time the FMS officials demanded the migrants “take off or it’ll be worse.” After that most of the workers left the factory.

The confiscation of personal documents from the migrants by employers, intermediary firms that promise to provide employment documents, and law enforcement officials is widespread. These illegal actions serve both as a means of oppressing the migrants in the employment relationship and as a means of blackmail. According to the migrants questioned, bribes to law enforcement officials can come to half the workers’ earnings.

In October 2010 Samida A., an Uzbek, began working at a grocery stand in St. Petersburg. The manager demanded that Samida leave her passport with her as security, saying “If you work well for

15 days, we'll give you your passport back." On 19 October the manager took Samida's passport, registration, and work permit under the pretext of legalizing her employment. After taking inventory, the manager informed Samida by telephone that she must return a 13,000 ruble shortfall or her passport would not be returned. In response to Samida's demand for the return of her documents, the manager informed her that she had ripped up her passport and there was no point in calling her. Samida had been working without an employment contract. The money she earned (700 rubles per day, more than 10,000 rubles total) was not paid to her and her documents were not returned.⁴⁵

On 20 September 2010 Batyr S. was detained upon leaving the Metro station "Prospekt Prosveshcheniya" in St. Petersburg by policemen from the 58th precinct in order to verify his documents. When Batyr attempted to call a friend, the policeman grabbed his phone and threw it at the wall. Batyr and a friend were taken to the local precinct and detained until morning. In the morning they were assessed fines for "petty hooliganism" and let go. Batyr's friend, who paid his fine right away, was given his documents, but Batyr refused to pay the fine and his passport remained with the police. On the telephone, policemen from the 58th precinct explained that they couldn't have retained the passport "because that's illegal." On 27 September Batyr demanded the 58th precinct give him a copy of the report and the decision imposing a fine. The police again began demanding he pay a "fine" of 2,000 rubles and said they did not have his passport. When Batyr refused to pay and again demanded a copy of the documents regarding his conviction, he was told he could pay 500 rubles to get his passport back. Batyr refused to pay that sum either. Fearing prosecution, officials at the 58th precinct returned Batyr's passport to him and refused to confirm in a report the fact that it had been confiscated.

On 19 May 2010 during rounds a policeman noticed the false work permit of Umid and Shuhrat N. Umid sat at the local station on Pilot Street for around two hours. A fine was extorted from him. After he refused to pay, he was taken to the 68th precinct. An Uzbek named Bekzod was with Umid, and Umid spoke Uzbek with him. There were many policemen nearby, including a young police lieutenant who did not care for the conversation in a different language, saying "What are you jabbering in Uzbek for?" Umid answered, "He's an Uzbek, and I'm an Uzbek, and I'm speaking Uzbek with him. You're Russian, and I speak Russian with you, but he's Uzbek." Around 9pm the first sergeant ordered Umid to come into the office, where the lieutenant was waiting for

him. The lieutenant began beating Umid. He spat on him, beat him, and said, "You're not going to speak Uzbek; you'll be crazy when I get done with you."

Umid was struck and kicked for almost two hours. The policeman would get tired, rest, smoke, spit, and beat him some more. "You're an Uzbek, I hate you!" Umid spend the entire night in the precinct, locked in. On the morning of 20 May he was taken to the Department of the FMS in the Moscow District, where he was assessed a fine of 3,000 rubles for violating the migration regulations. He was not provided any medical assistance either at the police or in court, and Shuhrat's brother Umila took him home. On 21 May Umid's coworkers took him to the urgent care, where he was sent to Municipal Hospital No. 26 in an ambulance. For six days Umid lay without qualified assistance, and then he was forced to return to Uzbekistan for treatment.⁴⁶

Violation of Migrants' Rights at the Detention Center For Foreign Nationals

Migrants who are in an undocumented situation (due to having lost their personal documents for various reasons or who have false work and temporary residence permits prepared by intermediary firms) risk winding up at the Detention Center For Foreign Nationals if their status is discovered and they cannot pay off the police or those conducting FMS raids. However, at this institution there is no hurry to swiftly establish the identity of those detained, and therefore they must languish at the Center in prison-like conditions⁴⁷ Zahidjan I., a citizen of Uzbekistan, has been in St. Petersburg since 2007. Due to a lack of identity documents that were confiscated by law enforcement officials he has been in the DCFN since 4 March 2010. Nothing is known about any actions taken to establish Zahidjan's identity. In July 2010, ADC Memorial sent a request to DCFN for information on the measures it has taken to establish Zahidjan I.'s citizenship and deport him to Uzbekistan, and offering assistance in establishing his identity and in formulating a Certificate of Return through the Uzbek Consulate. No answer was received from DCFN, although the deadline established by law for a reply has passed.

Oibek K., a citizen of Uzbekistan, arrived in St. Petersburg eight years ago. Having wound up as an "illegal" within a year, he worked in Vyborg (Leningrad Province). In the summer of 2004 a policeman stopped Oibek on a commuter train for violating the migration

regulations. The policeman assessed Oibek a fine and confiscated his passport in order to guarantee the fine. Within two weeks the fine was paid, yet when Oibek inquired at the railway division of the police he was told his passport was lost. Oibek continued working in Vyborg. In 2007 with the help of his brothers and countrymen he was about to receive a Certificate of Return at the Consulate General of Uzbekistan in Moscow; however he could not go to Uzbekistan for a month, and the certificate expired. In September, 2008 Oibek was detained and wound up in the DCFN. He spent a whole year there, expecting to be deported, before he was released. Staff from the Center could not confirm his identity and citizenship and simply let him go. It turned out that FMS did not receive confirmation of his identity and citizenship due to a spelling error in his patronymic. Since 5 April 2010 Oibek has been located in the temporary detention center, and the staff of the DCFN have not taken any steps to determine his identity. Staff of ADC Memorial were able to confirm Oibek's identity at the Consulate General of the Republic of Uzbekistan and provide the relevant certificates and documents to the temporary detention center, after which Oibek was deported to Uzbekistan.

Zul'fiya A., a citizen of Uzbekistan, has lived in Russia since 9 April 2010. In August, 2010 she was detained near the Moscow railway station by officers from the 5th police precinct. Her yearly registration, prepared with the assistance of an intermediary for 13,000 rubles, turned out to be false, like the work permit she had received through an intermediary firm. On 17 August 2010 she was sentenced to be deported and fined 3,000 rubles for violation of the migration regulation and placed in the Temporary Detention Center for Foreign Nationals.

Undocumented migrants placed in the Center are held for a maximum of 12 months. They often end up back there after leaving, since without documents they cannot leave the country. The workers at the Center offer unofficially to shorten the time spent there. The cost of this "service" is between 25,000 to 75,000 rubles.⁴⁸ Considering this, it becomes clear why workers at the Center are not interested in performing their obligations in establishing the identity of the migrant who has wound up there and deporting him out of Russia.

But even if undocumented migrants voluntarily turn to law enforcement state agencies to resolve their problems with legal status, those among them who have a passport will be deported for violating migration law, and those who have no documents verifying their identity will be placed in

the St. Petersburg DCFN, where they are held in prison-like conditions for a year, and then either return home or leave the institution and continue residing in Russia in irregular situation.

Valery Ya. came to St. Petersburg on a business trip in 2001 and lost his Ukrainian passport, but stayed in Russia. He lived without documents until 2009. In 2009 he appealed to the FMS for the purpose of legalizing his status and acquiring Russian citizenship. He was prosecuted for extended violation of the migration regulations. The Court of Sosnovy Bor fined him 2000 rubles and sentenced him to administrative expulsion. Since Valery's identity had not been established, he was placed in the Center, where he remained from August 2009 to August 2010.

Problems Returning to the Country of Citizenship

As indicated above, paying salary owed does not solve all problems of undocumented migrant workers. After receiving their earned money they continue to live and work illegally in Russia, without a work permit or lawful registration on the territory of St. Petersburg and Leningrad Province. They continue to remain vulnerable both to authorized state agencies (the migration service, law enforcement, labour inspection, and others) and to private persons and organizations which take advantage of their disenfranchised position to exploit them. The only opportunity for this category of foreign nationals to acquire legal status is to exit and re-enter Russia with the required documents processed according to the migration and labour legislation.

D. is a citizen of the Republic of Kazakhstan who came to Russia and began preparing documents to acquire Russian citizenship through the simplified procedure. He placed himself on the migration registry and utilized the services of the intermediary firm OOO "Imperii prava," which registered him at the Hotel Oka. However, the FMS refused to accept his documents and declared his registration invalid.

In order not to violate migration legislation and in order to re-submit documents for the acquisition of citizenship at a later date, D. was forced to immediately obtain a new migration card, for which he had to leave and re-enter the Russian Federation.

Intermediary firms offer migrants, who find themselves in such a situation, the ability/opportunity to obtain migration cards without personally appear-

ing at the border; the migrant need only give his passport to an employee of the firm. This “service” is illegal, as the migrant is supposed to cross the border himself. Moreover, those who use such offers often receive counterfeit migration cards.

D. decided not to take the risk and left for the nearest foreign country: Ukraine, traveling through Gomel (Belarus). Since D. had limited on financial means, he chose the least expensive method of travel offered by another intermediary firm, “Inostranets”: a trip to “renew migration cards” on the Belarus-Ukraine border (the “Gomel” border post) via a minibus with a driver and a companion (a guard). The cost of the “service” was 4,000 rubles.

The route from Saint Petersburg to Ukraine through the “Gomel” border post crosses the entire territory of the Republic of Belarus. Doing so takes three to four days in the winter, considering the condition of the roads. The interior of the minibus is not designed for such a long journey; it is cramped, unheated, and has uncomfortable seats. In December, 2008 D. traveled to the border, accompanied by ten others (citizens of Armenia, Georgia, and Tajikistan). Many of them had made such a trip more than once.

The migrants passed through the Belarussian border post “Gomel” towards Ukraine without delays or problems. Their task was now to enter Ukraine, whose border post was located around 500 meters directly on the road from the Belarussian post. Some of them stopped not far from the Belarussian border, and some went to Ukraine. When they returned they related that the Ukrainian border guards had extorted money from them for crossing the border (1,000-3,000 rubles) and had also offered to sell them blank migration cards (for 500 rubles), although the blanks are provided free of charge by law. After paying the required amounts, they returned to the place where they waited for those of the group who had stopped.

Those who did not have that kind of money decided not to go to Ukraine but to return to the “Gomel” border post with everyone. An hour and a half after leaving the territory of the Republic of Belarus, the migrants returned and attempted to re-cross the border. However, the border guard would not permit any of them to re-enter the Republic of Belarus without an explanation.

A group of migrants, bewildered and frightened, with no money, found themselves in an unfamiliar, foreign place between two countries. After an hour of wandering the migrants returned to the Belarussian border post, where one of them, a former officer, spoke with the border guard who had refused them entrance about the

difficult circumstances in their countries of origin that had forced them to become migrants, about the common bond between officers, and about mutual assistance.

After some thought the border guard took the migrants’ documents, gave them an entrance stamp for Belarussian territory and new migration cards to fill out. At another window they received a stamp on the new cards and all the migrants from this group entered the Republic of Belarus.

A half an hour later all the border formalities were completed and the migrants, after enduring considerable stress, returned to the minibus and set off back to St. Petersburg. On the way they discussed one question: What would they have done if they had never been let back into Belarus?

However, returning to the country of citizenship also involves specific difficulties. Many migrants often lack the financial ability to leave Russia again, and those who have no documents at all can only cross the border of the Russian Federation illegally, which is fraught with negative consequences.

Migrant workers whose migration cards have expired and who have obtained false documents through intermediary firms and avoided the attention of law enforcement agencies during their stay on Russian territory, risk being detained when crossing the border at the airport or train station.

When arranging temporary residence permission for migrant workers, intermediary firms either “prolong” the time a migrant worker spends on Russian territory, or resort to various types of forged documents. According to Russian law, a migrant worker is obligated to leave Russian territory within 90 days (without a work permit) or within 12 months (with a work permit). However, intermediary firms, in violation of the law, are ready to solve this problem also. They take the passport and migration cards from the migrant workers, promising they will process the documents independently on the border without the migrants’ participation. As a result the migrant workers receive their passports and migration cards back with notations that they have crossed the Russian border and re-entered Russian territory. Considering that only the document’s owner can cross the border, it’s very clear that the migrant workers are receiving documents with false notations on crossing the border. These unlawful actions are discovered

at border posts upon leaving the Russian Federation. And while a migrant worker who is present in the Russian Federation without the appropriate migration registration or work permit risks being administratively prosecuted and expelled from the country, being detained on the border with false documents is a criminal act for which prison can be imposed. According to border service workers, such incidents are common, and the migrant worker winds up in jail rather than going home.

K., who left for Uzbekistan with three children, was detained at the “Pulkovo” airport while at passport control. During a document check using special technology, it turned out her documents were false. The documents had been received through an intermediary firm and K. was unaware of their invalidity. Had she been aware, she would have attempted to cross the border at a point that did not have the special technology. Although undocumented migrants are usually placed in solitary confinement in such cases, an exception was made for her since she had no one to leave her children with.

Children whose parents have overstayed their migration cards or have other problems with documents are in an especially vulnerable position.

Safina M., a citizen of Uzbekistan, entered Russia in August 2009. On 16 January 2010 she bore a child while lawfully married, and the child was issued a medical certificate of birth. Her migration card had expired by that time since she could not travel to her country of origin due to her health. In December 2010 her husband asked ADC Memorial for help. In order to travel to Uzbekistan, data on a child must be written in the mother’s passport. Since there was no Uzbek consulate in St. Petersburg, Safina had to go to Moscow, risking being detained by the police for having an expired migration card. If that happened her child might wind up without documents at all.

Children without documents detained by police in Northwest Russia will wind up via court decision in a closed social institution, the shelter “Tranzit” located in St. Petersburg.⁴⁹ Parents may reclaim their children only if they have personal documents and can prove their relation to the children. A mandatory condition is the presence of travel documents to the country of origin. If contact with the parents has been lost (or they have been detained in the DCFN), children are deported to the country of origin apart from their parents. The staff of the shelter will contact the children’s services of the relevant country and the children will be placed in special institutions (this system remains

from the Soviet period in Tajikistan and Ukraine).⁵⁰ However, even successfully crossing a border post is no guarantee of safety for a migrant worker returning home, especially if traveling by train or car. Even with valid documents, foreign nationals traveling home can become the victims of extortion.

Anvar M. and the members of his construction brigade Il’ham Yu., Suvon T., and Noib M. worked in the Valdai District of Novgorod Province on the construction of individual homes and were deceived by unscrupulous employers who did not pay them for their work. On 22 December they returned to Uzbekistan on the “St. Petersburg - Astana” train. Two sergeants assigned to the railway division of the police, which had accompanied the train, went through the train confiscating documents (passports, migration cards, and temporary registrations). In reply to the migrants’ requests to return their personal documents or at least to identify themselves, the document checkers demanded the payment of an immediate “fine” of 1,000 rubles, without making out any sort of citations or explaining the basis for the collective infraction committed by the migrants. The victims of the uniform racket of “law enforcement” turned out to be exclusively citizens of Kyrgyzstan, Uzbekistan, and Tajikistan returning home from working. Having learned by bitter experience dealing with the police and FMS, the migrants for the most part agreed to pay. During a second pass the policemen returned the migrants’ documents to them in exchange for money. However Anvar and the members of his brigade could not “redeem” their personal documents since their employer had not paid them. The policemen lowered the sum of the “fine” to 500 rubles, and Anvar was informed. Only intervention by an ADC Memorial worker who happened to be traveling in the same car interfered with the police abuse.⁵¹

29 Decree No. 895 of the Government of the Russian Federation of 12 November 2010 (<http://www.garant.ru/hot-law/federal/287233/#review>).

30 Address at a roundtable at the Russian Federation State Duma on the problems of unemployment. (http://www.rosprof.ru/joom/content/view/128/58/index.php?option=com_content&task=view&id=2951&Itemid=68)

31 Ibid.

32 St. Petersburg needs an Uzbek and Tajik Consulate (<http://www.rosbalt.ru/2010/02/08/710913.html>).

33 Data from human rights monitoring conducted by ADC Memorial.

34 According to many foreign nationals who have turned to ADC Memorial, transportation and other types of companies are often active in their home countries. The companies have connections with similar concerns in Russia that provide various “services,” from transportation and crossing the

- border to issuing documents that can only be obtained on Russian Federation territory.
- 35 According to many migrants workers who have turned to ADC Memorial.
- 36 All documents and written testimony of the applicants' stories that are mentioned in this report are located in the archive and electronic database of ADC Memorial.
- 37 Incident Report Log 21462 of 5 July 2010, sent by the Ministry of Internal Affairs of the Central District to the Chief of the Investigations Directorate at the Ministry of Internal Affairs of St. Petersburg for inclusion in criminal case No. 265600 // ADC Memorial Archive.
- 38 A/HRC/RES/8/7
- 39 <http://www.prokuratura.sp.ru/news.html?pathnews=news/2010/10/11/2>.
- 40 Testimony of A. Dilrabo // ADC Memorial Archive.
- 41 General Comment 18, para.10.
- 42 <http://www.belowtheline.ru/announces/detail.php?ID=2508/>
- 43 ADC Memorial Archive.
- 44 <http://www.duma.gov.ru/faces/lawsearch/gointra.jsp?c=451173-5>
- 45 ADC Memorial Archive
- 46 For more details see <http://www.memorial.spb.ru/www/662.html?lang=ru>, The ADC Memorial Archive contains recordings by witnesses of the victim.
- 47 Regarding the detention conditions at the DCFN at 6 Zakhar'evskaya Street, see Chapter 3, The Case of Lakatosh v. Russia.
- 48 Statements by detained individuals and their relatives, ADC Memorial Archive.
- 49 <http://fiodor.ru/about>.
- 50 K. Kirillova. Child migrants in state institutions: the most vulnerable // ADC Memorial Bulletin No. 29, April 2010.
- 51 A. Yakimov. Sketch of a special forces operation // Ibid.
- 52 On the number and composition of the population of Ukraine for the national census of 2001 (<http://www.ukrcensus.gov.ua/results/general/nationality>).
- 53 Nazarov, Kh. Kh. The Contemporary Ethnic Development of Central Asian Roma (Lyuli). Ethnic Processes Among National Groups. M. 1980. P. 167.
- 54 ICESCR, Art.5.2
- 55 In the media and the ethnographic literature this ethnic group is more often called "Mugat." This report will use the term "Mugat Roma" (as they call themselves).
- 56 A. S. Abashin. Central Asian Bohemia(http://www.sakharov-center.ru/museum/exhibitionhall/prishelci/hall_exhibitions_current_prishelci.htm)
- 57 Kyrgyzstan: The Mugat Eke Out An Existence on the Fringes of Society (<http://www.tazar.kg/news.php?i=6530>)
- 58 Report of the social organization "Nashe pravo" on working with members of the Mugat Roma society in the Karasu Region of Osh Province of Kyrgyzstan (2005).
- 59 Tent city of Mugat Roma near St. Petersburg (<http://www.izvestia.ru/spb/article3112744/>); The fate of a tent camp of Mugat Roma near Yuzhno-Sakhalinsk (http://www.zemliaki.info/publ/2010_god/5_2010_god/k_nam_priekhal_tabor/12-1-0-110).
- 60 D. A. Shakirov They live on what they find (<http://mediazavod.ru/articles/86519>).
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3. Migrant Roma: Dual Discrimination

Roma groups reside in many CIS countries. In Ukraine, for example, according to census data, 47,600 persons that called themselves Roma were counted in 2001. Uzbekistan, Tajikistan, and Kyrgyzstan contain a significant number of Central Asian Roma, whose numbers are fairly difficult to estimate.⁵² According to Soviet ethnographic researchers, in 1980 their general number approached 30,000 persons and was growing.⁵³

As members of excluded and disenfranchised groups with a historically lower standard of living and education than the surrounding population, Roma in CIS countries that send migrants abroad are also involved in the active migration processes in the post-Soviet territory, primarily immigrating to Russia. In attempting to improve their lives outside their country of origin, migrant Roma encounter additional difficulties in enjoying social and economic rights, as simultaneously members of two groups discriminated against. The practice of dual discrimination against Roma migrants in Russia at the present time threatens not only their socio-economic position but even their physical survival. Thus as a consequence of discriminatory practices, immigrant Roma societies from Ukraine and Central Asia wind up deprived of any possibility of improving their situation.

Moreover, as a party to the Covenant, the Russian Federation acknowledges that "No restriction upon or derogation from any of the fundamental human rights...shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."⁵⁴

Central Asian Roma in Russia

One of the most visible groups of Roma migrants in the Russian Federation are Central Asian Roma (they refer to themselves as Mugat, Lyuli in Uzbek, Djugi in Tajik).⁵⁵

Their ancestors settled in the Middle Ages on the territory of what is today Tajikistan, Uzbekistan, Kazakhstan, and Kyrgyzstan, creating settlements (mahallas) on the outskirts of wealthy

cities. Leading a semi-nomadic life style, for centuries they have remained illiterate and existed on the edge of poverty. The men traditionally are employed largely with handicrafts and the women with fortune-telling and begging.

The policy of the USSR in providing universal education and employment of Roma in agriculture and manufacturing played a specific positive role in integrating Mugat Roma into the surrounding society. Central Asian Roma became scientists, artists, athletes, and leaders in the Soviet years. Mugat Roma received personal documents and registration according to permanent address, which officially made them full-fledged citizens of the Soviet Union.⁵⁶

After the fall of the Soviet Union, the Central Asian countries were struck by a severe systemic crisis that was accompanied by a catastrophic fall in the standard of living, economic stagnation, and inter-ethnic conflicts. According to data from the human rights organization "Nashe pravo," in 2004 more than 3,500 Mugat Roma lived in Osh Region of Kyrgyzstan and had an unemployment rate of 90%.⁵⁷ Central Asian Roma in the post-Soviet period are forced to survive in conditions of poverty, ruin, and unemployment, and have returned to begging and a semi-nomadic lifestyle. Up to 50% of Central Asian Roma families receive no social assistance due to the lack of identity documents.⁵⁸ For the same reason legal job placement among Central Asian Roma is also not possible either in Russia or in their countries of origin.

In 1994 a civil war began in Tajikistan, and thousands of Mugat refugees streamed onto the territory of the Russian Federation for the first time. Subsequently Central Asian Roma became involved in seasonal labour migration. Entire communities of Mugat migrants travel to Russia in the spring and summer, founding camps and illegal settlements on the outskirts, dumps, and industrial areas of big cities from St. Petersburg to Sakhalin.⁵⁹ Mugat migrants are becoming migrant workers of necessity. Many of the men work as construction helpers and finishers and collect scrap metal, while women and children can be seen begging for charity on the streets.

The standard of living of Mugat migrants does not meet fundamental sanitary norms and requirements of safety and hygiene. In the Mugat villag-

es, which often number several hundred residents, there is no heat, running water, or electricity. The lodgings of the Roma migrants usually consist of triangular structures of plywood and cardboard 5-6 meters long and 2-3 meters wide, and are often equipped with home-made iron stoves. The diet of Central Asian migrants is meager and characterized by its low quality of ingredients. Food scraps found in the dump are often used in the food.⁶⁰ In these conditions illness such as HIV, tuberculosis, hepatitis, intestinal disorders, and infestation with worms are assuming epidemic proportions.

Children, including infants, comprise a significant part (up to 70%) of the overall number of Mugat Roma both in the Central Asian countries and in the Russian Federation.⁶¹ Mugat Roma generally give birth at home, and in most cases mothers and their children are not observed in the hospital and receive no medical assistance. Newborns are not registered in state institutions, do not subsequently have the opportunity to obtain personal documents,⁶² and end up deprived of the right to citizenship and education. Thus an information letter from the state institution "Kontakt," a "Municipal Center For Prevention of Neglect and Drug Addiction Among Juveniles," which was sent to ADC "Memorial" on 27 November 2006 indicates that a camp in St. Petersburg has been discovered where 50 minors live "without identity documents, they do not attend school and have no normal accommodation."⁶³ Besides the extreme living conditions and dreadful poverty, Central Asian Roma migrants in Russia encounter xenophobically-motivated violence by neo-Nazi groups. Pogroms of settlements are accompanied not only by the destruction of the Roma migrants' meager property but with beatings and even murder. In September, 2003, six-year-old Nilufar Sangboyeva was killed by Nazi skinheads during a pogrom of a camp of Tajik Roma migrants near St. Petersburg.⁶⁴ Pogroms against camps of Tajik Roma migrants are also carried out within the framework of regular raids by the FMS and police special operations with the characteristic names "Migrant" or "Illegal Migrant." They are accompanied by arson and destruction of the Mugat Roma's property. In the summer of 2009, immediately after being visited by unknown law enforcement officials, a camp of Tajik Roma migrants was set on fire in the settlement of Gorelovo in Leningrad Province. No criminal case was brought "due to the lack of requests by the victims."⁶⁵

Thus Mugat migrants lack the opportunity to improve their living conditions, receive an education, social support, or medical assistance, find work legally, or protect their rights in court, since they are undocumented migrants on the one hand and members of Roma communities on the other. Discrimination in compliance with social and economic rights with respect to this group of the population of Russia and Central Asia has a complex, structural nature, and will lead to the worsening of the position of Mugat migrants in future. No positive measures exist to surmount the catastrophic poverty and isolation of undocumented Mugat migrants and to facilitate their legalization and integration into Russian society.

Hungarian-Speaking Magyar Roma in Russia

A no less vulnerable group of Roma migrants are the Hungarian-speaking Roma from Zakarpatskaya Ukraine (Zakarpatskye Province). Most of these Roma refer to themselves as "Magyars."⁶⁶

A third of Ukraine's Roma—around 14,000 people—live in Zakarpatskye Province, particularly in Beregovo Region, on the territory of a Hungarian compact settlement. The actual numbers of Magyar Roma are probably slightly higher as not all of them have identity documents. Additionally, many describe themselves as "Hungarians." Their large settlements are located near the cities of Uzhgorod, Beregovo, and Mukachevo. According to the 2001 census, the Roma population of the city of Beregovo comprises 1,700 people, or 6.4% of the city's population (the number of ethnic Hungarians was 12,800, or 48.1% of the population).⁶⁷ For the same time period the population of the Beregovo tabor (Roma village) of 360 homes (Otdel'nyi Khutor region), according to data from observers, comprises two to three thousand people.⁶⁸

During the Soviet period most of the Roma in Zakarpatskye worked in manufacturing. For example, in Beregovo, there was a meat-processing facility and brick and wood-processing factories.⁶⁹ Many worked at traditional trades and businesses, and began traveling to the Russian Soviet Republic starting in the 1970s, including to the Far East. Magyar Roma were railroad workers, teachers, and secretaries. Inter-ethnic marriages were widespread. In the 1990s the economic situation in the region sharply declined. Many enterprises closed, and

the remainder laid off Roma workers first. By the early 1990s, only 31.1% of the able-bodied Roma had regular work.⁷⁰ The educational level of the Roma also fell. In 1999, according to data from the State Statistics Committee of Ukraine, out of 1000 families in Zakarpatye five had a secondary vocational education, 79 had a general secondary education, 406 had a basic secondary education, 384 had a primary education, and 126 could not read or write at all.⁷¹ By the year 2000 the proportion of illiterate persons rose significantly.

Magyar Roma were forced to seek any opportunity to earn a living. To start with they turned to traditional crafts and unskilled labour. Even today in Beregovo one encounters families that prepare sun-dried bricks, engage in horse trading, and perform small smithing jobs.⁷²

The women often work as janitors and cleaners and participate in petty trade; the men work as loaders, casual labourers, at markets, construction sites, repair work, and sawmills.⁷³

The total poverty and lack of opportunity for thousands of people to eke out intermittent earnings within a small region led to Roma from Zakarpatye joining mass migration to large Ukrainian and Russian cities. Since the early 1990s Ukraine has become the main migration donor for Russia, occupying a leading position in numbers of regular (43% of all migrants in 1994, 30% of all migrants in 2001)⁷⁴ and irregular (Ukrainian men 32%, Ukrainian women 46.7%)⁷⁵ of immigrants to Russia. Around 230,500 residents of Russia have Ukrainian citizenship, 22.5% of all foreign nationals living in the Russian Federation.⁷⁶ 36.8% of the population of Western Ukraine at some point migrated to Russia.⁷⁷ The general number of temporary or short-term migrants from Ukraine is measured at between two and seven million people.⁷⁸

In the 1990s groups of Roma from Zakarpatye took inter-city electric trains toward the Russian border,⁷⁹ then crossed it (often without any documents), and made it to the large Russian cities of Moscow and St. Petersburg by railway. Settling on the outskirts of metropolises and scraping by on odd jobs, they built temporary accommodations and entire camps. Although the majority of Magyar Roma remain in Zakarpatye, the new lifestyle

engendered a particular social group among them comprised of the permanent and temporary population of outlying camps in Russia and Ukraine.

In this way Magyar Roma found their niche in immigration into Russia. They usually have no education at all (like 1% of the entire population of irregular immigrants to Russia) or have an unfinished secondary education (like 6% of all irregular people in Russia). The goal of their arrival was contingent work (7% of all irregular immigrants to Russia).⁸⁰

Examination of a Concrete Situation: A Camp of Zakarpatye Magyar Roma on the Outskirts of St. Petersburg

Magyar Roma began attempting to migrate from Zakarpatye Province in Ukraine to St. Petersburg in 1994. Since that time the camp has become a place of permanent or temporary residence of natives from Beregovo and Mukacevo (the Tovt, Lakatos, Tonto, Gorvat, Varga, Fontosh, Forkosh, Pap, and Balog families), whose numbers significantly increased after the 1998 and 2001 floods in Zakarpatye. Many of the Hungarian Roma then lost their personal documents (passports and birth certificates), which had been submitted for reissuance to the administration of the city of Beregovo, which was flooded.

Standards of Living, including the right to housing

The Hungarian Magyar camp is located in an industrial zone in the outskirts of St. Petersburg, adjacent to the St. Petersburg-Moscow railroad line and a garbage dump.⁸¹ The camp consists of small shacks made of plywood, polyethylene, linoleum, iron sheets, and other makeshift materials and that stand ½ to two meters apart. Two to ten people live in each structure. There are no amenities (electricity, running water, heat, or sewers). Water from a perforated water pipe on the territory of an unauthorized dump is used for household needs, preparing food, and drinking; swamp water is used for personal hygiene.

Handling of rubbish and pit latrines is a problem. Household garbage is often just thrown out of the shack onto the street, and therefore the en-

the space of the camp fills up with garbage very quickly. Small children play there and go to the toilet. For this purpose the adults simply go 10 meters from the camp toward the swamp. Regular pogroms (see below), accompanied by the destruction of the Magyars' structures and property right in the camps, also lead to the littering of the territory.

The population of the camp is not constant and depends on seasonal migration; on average 35 to 100 people live at the camp. The majority are undocumented temporary migrants who have come from Subcarpathian Ukraine for work and who send the bulk of their earnings home, where their children remain cared for by relatives. A smaller group are the permanent inhabitants of the camp who have already been living there 10-20 years with their children and even grandchildren, who were born in Russia. Their ties with Zakarpatye are weaker.

Illiterate Magyar Roma in an undocumented situation have several ways to make a living: collecting scrap metal for sale to private resellers, casual labour in factories that surround the camp.

The camp is located 300 meters from a garbage dump for household and industrial waste, and therefore the principal form of employment (particularly in warm weather) of its inhabitants is collecting scrap metal. Both men and women work at the dump. Collecting scrap metal is difficult physical work (the metal is counted and sold by the metric ton), and therefore many in the labor suffer from various types of injuries.

The population of the camp works both at the nearest vegetable warehouse, engaged in unloading and packaging vegetables, and performing casual labour in car repair shops and garages, nearby warehouses, and industrial facilities. The work is on a project basis (from 500 to 800 rubles per day); however it is often not paid on time and in the agreed amount.

Magyar Roma live in extreme poverty and constantly experience a lack of necessities. They find their clothing in dumpsters. Magyar migrants eat rarely and irregularly, in the best case once or twice a day. They heat their dwellings with home-made stoves, which are stoked continually during the winter, usually with household rubbish (plastic, rubber tires, plywood, etc.). They also prepare food on the stoves (outside in the summer). Fire safety

is a critical problem for the camp population, especially in winter when the fire must be maintained day and night. Frequently several families suddenly find themselves without shelter as a result of a fire.

Their basic diet consists of the cheapest ready-to-cook foods, as well as herring, potatoes, and bread. The Magyars experience great difficulty due to a lack of funds to obtain children's food, and therefore small children, starting as infants, eat practically the same food that their parents do.

Health

As a consequence of insufficient food of poor quality, lack of conditions to maintain personal hygiene or access to clean drinking water, unsanitary surrounding conditions, and the overcrowding of dozens of people on a small area, a number of illnesses and problems are assuming epidemic proportions. The camp residents relate instances where their children have died as a result of worm infections. They also continually complain of symptoms of hepatitis and worms (sharp pains in the stomach, general weakness and depression, and exhaustion, accompanied by allergic reactions, stomach upset, and lowered immunity).

Tuberculosis is another serious problem. According to data from human rights monitoring (end of August, 2010), several women who worked at the vegetable warehouse were ill with tuberculosis, and one of them, Zinaida Balog, was seriously ill. Some of the Magyar Roma who have left prison or the DCFN (6 Zakhar'evskaya Street in St. Petersburg) are carriers of tuberculosis.

A high child mortality rate is a consequence of the health and disease situation at the camp. A Ukrainian citizen named Charlotta Tovt, who was a permanent resident of the camp from 1994 to 2008, bore 10 children during that time, three of which died.

Official data from the State Statistics Committee of Ukraine also indicates the extremely serious health care situation in places where Roma have compact settlements. Approximately half the Roma in Zakarpatye (and therefore the inhabitants of Magyar camps) suffer from bronchial and pulmonary illnesses, a fifth from stomach and intestinal illnesses, and 16% from tuberculosis. The mortality

rate among children under the age of one is 11%.⁸² However, in Russia the situation is aggravated by the fact that the attempts of the Magyar to apply for medical assistance are generally fruitless in view of the practice of discrimination based on ethnicity and citizenship practiced by employees of the health care system. Many residents of the camp on the outskirts of St. Petersburg lack identity documents, have expired personal documents, or have valid documents for Ukrainian citizenship. This is not a basis, however, for limiting their rights to health protection and medical assistance on an equal footing as guaranteed by Part 1, Article 41 of the Constitution of the Russian Federation. Moreover, the principle of non-discrimination is guaranteed by Article 17 of the Foundations of Legislation of the Russian Federation Regarding the Health of Citizens. Article 18 of the Foundations guarantees stateless persons equal right to health care; Article 39 guarantees the equal right to free emergency medical assistance to all citizens of the Russian Federation and to all individuals present on its territory.

With the help of human rights activists, many residents of the camp have managed to register with the charitable organization “Nochlezhka” as homeless, in which case the Law of St. Petersburg establishes the right to free medical assistance to citizens without a residence registration as well as to citizens whose identity has not been established.⁸³ This medical assistance should be provided immediately and paid for by the Territorial Fund for Mandatory Medical Insurance (TFM-MI) of St. Petersburg.⁸⁴

However, in practice these legislative provisions are not followed, and Roma migrants in St. Petersburg cannot obtain any medical assistance as a rule. The story of Sharlotta Tovt, a permanent resident of a Magyar camp, is an example of discriminatory treatment that Roma migrants encounter. The family of Sharlotta Tovt and Shandor Balog lived on the territory of St. Petersburg for more than 10 years. Sharlotta bore 10 children, one of whom was not given to the mother by workers at the hospital where he had been admitted due to illness. Instead he was sent to a “Baby House” and later adopted abroad. Three of her other children died before the age of three in conditions of hunger, cold, and illness. In the spring of 2008 Sharlotta gave birth to her tenth child prematurely; however, despite her weakness she was discharged on the third day. She recuperated in the unsanitary condi-

tions of the Magyar camp. She had lost a lot of weight, could not eat or drink, continually felt weak, had pain in her stomach and chest, and had difficulty breathing. In July, 2008 Sharlotta’s husband and her neighbors accompanied by human rights activists from ADC Memorial called an ambulance for Sharlotta and took her to Municipal Hospital No. 26 in St. Petersburg. Sharlotta Tovt had a certificate of registration as a homeless person issued by OO “Nochlezhka” that confirmed her right to receive medical assistance at the expense of the TFM-MI on the basis of St. Petersburg legislation. Nevertheless, hospital employees refused not only to hospitalize her but even to examine her, explaining their refusal by saying “she’s a dirty Gypsy.” After several hours of unsuccessful waiting in the waiting room, Sharlotta, who could only stand up with difficulty, was shown the door with the diagnosis “bruise to the left toes” and a recommendation to be “seen by a doctor near her place of residence.” Sharlotta was also advised to “eat normally.” Three weeks later she died on her cot in the camp at the age of 33. After the visit to Municipal Hospital No. 26 she refused to call an ambulance, considering herself destined to die and being absolutely convinced that nobody would help her. After Sharlotta’s death her body was confiscated by the police and cremated, and the camp subjected to another pogrom⁸⁵

In addition to article 12 of the ICESCR, the ICESCR recognizes – in its article 10, the family as the “natural and fundamental group unit of society” and insists on the provision of state services of particular support, protection, and assistance to the family in general and to mothers during the prenatal and postpartum periods, as well as to children and teenagers. ICESCR emphasizes the impermissibility of “discrimination of any kind” in providing that support, protection, and assistance, particularly as regards children.⁸⁶

Unfortunately, in Russia Magyar Roma encounter not only the lack of any support, protection, and assistance for their mothers and children but with the practice of discrimination aimed at destroying their families.

Discrimination begins the moment a child is born. The mother, who has no identity documents or has a passport as a citizen of Ukraine, is often discharged in only two or three days, and is deprived of the ability to take her child with her. Due to not having identity documents, the mother is practically unable to retrieve her child, who is sent to a special institution—the Baby House—for subsequent

adoption. Thus Maria Fontosh, Anastasia Ivanova, Sharlotta Tovt, and many others have children they did not see, and parents go years without knowing the fate of their children or where and how they are.

However, sometimes undocumented mothers are able to bring the child back to the family: according to information, discharging a mother's newborn from maternity hospital No. 16 in St. Petersburg, which provides obstetrical care to women without documents, costs 8,000 rubles. Usually Roma migrants are not able to earn such money honestly; as a rule it is the well-to-do who wish to adopt a newborn "orphan" who are able to do this.

In those rare cases when Magyars are able to reunify their families, it is almost impossible to obtain a birth certificate, especially if the parents' identity documents have been lost. The only document the maternity hospital will issue is a certificate that a woman with a particular name gave birth to a boy or a girl with a certain weight and height. Thus children of Magyar Roma acquire irregular status from the first months of their lives. Undocumented children are in constant danger of being separated from their parents during police raids. For example, in March of 2010, during the destruction of a camp of Magyar Roma near Moscow, 44 children were torn away from their parents and distributed among hospitals and shelters.⁸⁷

Children detained by police in Northwest Russia who have no documents will wind up by court decision in a state institution, the "Tranzit" shelter located in St. Petersburg, which specializes in working with children of migrants, orphans, and children from impoverished families that have been torn from their families, as well as those not at their parents' permanent residence.⁸⁸ Despite the fact that one of the shelter's goals is "assistance in returning a child to its parents or persons taking their place," a child that winds up in the shelter "Tranzit" without documents, who officially has no parents or has parents whose citizenship cannot be determined may never see its own father and mother again but will be sent to a Russian orphanage or deported if the country of origin can be established, and also wind up in a social institution there. The fear of permanently losing children perpetually experienced by Roma migrants becomes leverage applied by police and FMS officials who intentional-

ly use children as hostages. Thus at the beginning of September, 2009 children of undocumented Roma migrants were detained by policemen. The parents had to come to the precinct to collect their children, but were then charged themselves with violating the migration regulations, arrested, and transferred to a transit center, where they spent more than a year.⁸⁹

In this way the actions of state services of the Russian Federation, which are obligated to ensure protection and support of the family regardless of citizenship and the status of children and parents, destroy these families in the cruelest way and force Roma migrants to continually live with the threat of permanently losing their closest relatives. In many Magyar Roma families at the camp in St. Petersburg mothers recall one or more children that they will never see again.

Access to Education

States parties to the ICESCR acknowledge the right of everyone to education and emphasize that to enjoy this right primary education shall be compulsory and free to all. The Covenant also emphasizes that "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."⁹⁰

According to the data of the Ukrainian State Statistics Committee, the educational level of Magyar Roma in Ukraine is fairly low. But among those who migrated to Russia, children of Roma have grown up in the 16 years of the existence of the St. Petersburg camp who have never attended school in their lives. The vast majority of Roma migrants, especially those younger than 25, cannot read or write at all, while literate people of the older generation become fewer and fewer.

Roma parents do not have the opportunity to send a child to school or to kindergarten since the children, like their parents, often lack identity documents. Moreover, the closest class is more than a kilometer from the camp. The staff of ADC Memorial is not familiar with any actions by the Russian authorities directed at promoting fundamental education for the children of Roma migrants to ensure that education is accessible, adapted, available and acceptable.⁹¹

Forced evictions, Violence and Pogroms Against the Camps

The Magyar camp periodically moves to a new place not far from the previous one. The reason for these moves are the continual pogroms and threats of pogroms by the police (including as part of operation "Tabor," which is periodically conducted by law enforcement agencies). Thus, in 2004 a military raid was accompanied by automatic rifle fire directed the legs of the defenseless Roma.⁹² This continual atmosphere of terror forces the Roma to change their living place approximately once every two to four months in order to wait things out before a new threat arises. For example, between June, 2008 and April, 2009 the Magyar camp moved from place to place five times: four times after visits from the police, who threatened to destroy the tabor and relocate all its residents, and once after a pogrom during the night of August 10-11 of 2008, when 16 Roma shacks were burned and broken as a result of a night raid by an "assault team of the Ministry of Internal Affairs (MIA)."

At the end of July 2008 policemen arrived at a Magyar Roma camp and ordered them to leave their assigned territory and to leave Russia entirely by 16 August. The Roma did not accede to this demand and moved the camp further from the St. Petersburg-Moscow railroad.

During the night of August 10-11 2008 the residents of the tabor were awakened by a noise; people in masks were ripping the door of their dwelling from its hinges. The frightened, sleepy Roma began to run out of their tents. The attackers set the homes of the Roma on fire, beating the fleeing men and women as they attempted to save their property and documents. There were seven or eight attackers, according to witnesses, and only one of them was in a police uniform. The attackers called themselves an "assault group of the MIA" but did not display any warrants or credentials. They had a pre-arranged plan of action. Two men set the shacks on fire, and the rest controlled the exits from the tabor. The pogrom lasted only 20 minutes; after assuring themselves that the burning homes could no longer be extinguished, the attackers disappeared. As a result of the raid Shandor Tonto, aged 17, was severely beaten and his nose broken. Some documents were burned also; thus Dendi Gorvat, aged 22, was left without a birth certificate. Sixteen shacks were burned and broken and all the property within them destroyed. Dozens of people, both adults and children, were left without clothing, food, or shelter at the beginning of autumn.

Aladar Forkosh, aged 31: "They ripped off the door and yelled, 'Are there any men here?' And I'm sitting there, and I said, 'No.' They didn't realize I was a man, and they closed the door and kept going." Natalya Ivanova, aged 22: "Then they began yelling they were going to burn it. They also hit two women...twice."

Gita Lakatosh, aged 24: "I...ran over there, I was holding my son. They broke down the door and I said: 'Don't you dare burn my hut; there's a child here.' And I could see the huts were already burning there in the back. I started dragging things out and said to my husband, 'Go, run.' One of our guys ran and they caught him and began beating him. They beat him severely...When I started to put out the fire they hit me, but I wasn't afraid anyway. I said, Let me put the fire out in my hut, because there are children here... He started setting fire to a second hut, and hit a woman there too..."

Shandor Balog, aged 32, a widow and father of six children: "I wanted to at least take some food, for the children, but they didn't let me take anything; they just burned it all."⁹³

As a result of continual pogroms Magyar Roma are regularly deprived of housing, property, warm things, and personal documents without which they cannot count on medical assistance, legal work, or returning to their homeland. The last pogrom on the camp in St. Petersburg known to ADC Memorial occurred in September, 2010. Magyar Roma camps in other regions are subjected to similar attacks. On March 10, 2010, the media related the elimination of a similar camp on the outskirts of Moscow, accompanied by the burning of Roma shacks and other property.⁹⁴

Incidents of racially motivated armed attacks on Roma migrants are frequent.

In 2004 on the way to the store the Magyar Roma Anna and Luiza Forkosh were subjected to an attack by a group of young people with shaved heads. The attackers managed to knock the victims down and inflict a number of knife wounds, from which one of the victims, Anna Forkosh, died, while Luiza managed to escape wounded. The victim called the police, who detained the suspects. At the precinct Luiza identified the murderer of Anna Forkosh; however despite this the arrested people disappeared somewhere and there was no case opened into Anna's murder. The residents of the Roma population and especially Luiza herself were extremely interested in the capture of the true murderers, but they were unable to get anywhere.

For many years all attempts to obtain some sort of information on Anna Forkosh's case produced no result. Only in 2010 from an investigator of the procuracy, who was bringing a case against the Neo-Nazi group Voevodina, which had committed an entire series of attacks and murders based on hatred, did it become known that Anna Forkosh had been killed by members of the same gang. However, due to Anna Forkosh's lack of documents it was difficult to obtain permission to exhume her body so the investigation was not concluded and Anna's murder was not included in the indictment. Thus a group of murderers were not prosecuted for the sole reason that their victim was an undocumented migrant.⁹⁵

In June, 2008, T. Forkosh, a resident of the Obukhov camp, endured an attack by several young people, who took his bag of groceries from him and inflicted several knife wounds in the shape of crosses. To all appearances the nature of the wounds had a certain ritual significance to the attackers. After knocking the victim to the ground, they sucked blood from the knife wounds. T. Forkosh wound up in the hospital in critical condition. The doctors summoned an investigator, to whom the victim gave testimony and told them the place of residence of attackers, who were drug-addicted residents of the Rybatskoe area of St. Petersburg that were known to him. However, no criminal case was instituted despite the investigator's promise to the victim.⁹⁶

Materials from two cases sent by attorneys of ADC Memorial to the European Court of Human Rights in the name of the residents of Magyar camps attest to the fact that Roma Magyar are becoming victims of multi-faceted discrimination in Russia.

The Complaint to the ECHR "Fontosh v. Russia" of 29 October 2009

ADC Memorial attorneys Marina Nosova and Olga Tseytlina prepared a complaint submitted to the European Court of Human Rights on 3 November 2009, in which the petitioner, Ilona Aleksandrovna Fontosh, seeks acknowledgement that her rights were violated by Russian Federation authorities during the period she was held in detention at IZ 47/5, compensation for moral harm, and acknowledgement from the ECHR of the violations of Convention standards, in particular of Articles 3, 5, 8, 14, and 13.

Ilona Fontosh, born 1995, an undocumented migrant from Zakarpatye Province of Ukraine, resides in a Magyar camp. On 16 February 2009, aged 14, she was

detained by policemen on suspicion of stealing a cellular phone worth 1400 rubles as part of a group of 13 Magyar girls. The telephone was returned to its owner, and a criminal case was instituted against Ilona Fontosh. Lacking identity documents and knowledge of Russian, Ilona Fontosh, afraid of being sent to the juvenile shelter "Tranzit," gave the name Mal'vina Aleksandrovna D'erd', born 1990. Ilona Fontosh was seven months pregnant. The investigator did not establish her age but considered her an adult and the investigation determined the level of restriction to be confinement under guard. Ilona Fontosh spent five months and seven days in the women's isolator No. 5 in St. Petersburg, where she was sent without any medical examination. The criminal case against her was investigated for five months and 12 days, after which it was terminated in connection with active repentance.

During the course of the investigation it was established that the petitioner was named Ilona Alexandrovna Fontosh and not Mal'vina Aleksandrovna D'erd', as genetic expertise had confirmed the relationship of Ilona to a witness, her mother Maria Iosifovna Fontosh, a permanent resident of the Magyar camp. The plaintiff's age was not established. Nevertheless, a criminal case against M. A. D'erd' (not I. A. Fontosh) was dismissed on non-exculpatory grounds rather than on basis of her minority, which does not give the petitioner the right to compensation for damage caused by being held under guard without justification. The dismissal of the criminal case was not appealed, as resuming it would have led to a worsening of I. Fontosh's situation since her victimization would have continued.

On 29 April 2009, Ilona Fontosh gave birth to a child while in detention. The child was removed from its mother at the age of one month and two days with no explanation and placed in a children's hospital for children without parental care, and then sent to a children's home. The plaintiff knew nothing of the fate of her child under she was released on 24 July 2009, a month and 24 days later. The authorities deny removing the child, and a check by the procurator did not uncover any violations of the law on this account.

In relation to Ilona Fontosh the most severe form of restriction was chosen, considering her pregnancy and minority. Ilona's identity was established only two months after her imprisonment; as a consequence the Russian court confirmed the necessity of keeping her in confinement. The possibility of an alternate level of restriction was not considered, despite the medical recommendations to hospitalize her. Additionally, the court in its official capacity stated that time spent in a police cell "is better than in a Roma tabor," for a suspect, in violation of the basic right to non-discrimination.

Thus the provisions for of protecting Ilona's rights envisioned by Russian legislation were ineffective, considering the ineffective action or lack of action by the state agencies concerned. Requests from the petitioner's attorney to the investigator and the procurator regarding a quick investigation of the criminal case, a change in the measure of restriction, and for the officials of the investigative isolator who permitted the removal of Ilona's child to be prosecuted were denied. The courts did not consider I. Fontosh's arguments that she should not be held under guard for so long.

Ilona Fontosh spent the 32nd week of her pregnancy in a women's cell in dreadful conditions. A crowded cell held 17-20 other women and was extremely stuffy (Irina fainted many times due to the lack of fresh air). There was a lack of sufficient ventilation and heat and a complete lack of meat, milk, and fish products in the food. Neither before nor after the birth was any special medical examination and assistance provided to Ilona, and no measures for supervising the condition of mother and child were taken.

In confinement Ilona could not even count on meeting with her relatives, who were refused a visit based on their lack of identity documents. Thus Ilona Fontosh's stay in investigative isolator No. 5 was accompanied at times by significant and extended physical suffering, a psychological condition of humiliation and depression, and the lack of any support or defense guaranteed by the norms of international law and others.

The Case of "Lakatosh and Others v. Russia" No. 32002/10 of 26 May 2010⁹⁷

At the request of petitioners Memorial attorneys Olga Tseytlina and Anton Petrov prepared and delivered a complaint to the European Court of Human Rights based on inhuman and degrading treatment, failure to take action to deport the petitioners out of the Russian Federation in relation to extended detention at the DCFN, the lack of the right to challenge the lawfulness of the petitioners' detention at the DCFN, as well the deprivation of the effective means of defense both with regard to the inhuman and degrading treatment and with respect to the deprivation of freedom, in violation of Articles 3, 5(1)(f), 5(4) and 13 of the European Convention for the Defense of Fundamental Human Rights and Freedoms.

On 22 September 2009 Anna Lakatosh, Pavel Gabor, and Aladar Forkosh, Magyar Roma from the city of Beregovo in Zakarpatskye Province in Ukraine, who had

no identity documents, were detained during an FMS raid on the territory of a Magyar settlement. On 24 September 2009 the Kolpinsky District Court in St. Petersburg found those detained guilty of violating the residence regulations for foreign nationals in the Russian Federation and sentenced them to a pay fine of 2,000 rubles, as well as to additional punishment in the form of deportation.

Before the deportation, without indicating the time of its fulfillment, the Magyar Roma were placed at the DCFN of the Central Internal Affairs Directorate of St. Petersburg and Leningrad Province, which is a transit center for individuals serving an administrative arrest of 15 days. According to Russian legislation, those who have violated migration regulations may be at the DCFN until their identity and citizenship has been determined for up to one year.

The detention conditions for undocumented migrants at the DCFN cannot be considered satisfactory under any circumstances. Magyar Roma are held in over-filled cells (four to six prisoners in a space of four square meters), without bedding (mattresses, blankets, pillows, and sheets), with no means of maintaining personal hygiene, and with insufficient access to sunlight and fresh air. The toilets are located directly in the cells and not separated from the rest of the space at all, including from the beds of the prisoners, on which they must take their meals since there are no tables. The prisoners' food consisted of black bread, kasha, and tea. The fare contained absolutely no fruits, vegetables, meat, dairy products, and the prisoners were forbidden to prepare their own food and to boil water.

The prisoners were completely isolated from the outside world. There was no radio or television in the cells. The prisoners were forbidden to use cellular phones and were not provided with books and newspapers. They were kept continually in the cells and were only taken out for no more than 25 minutes in good weather for a daily walk. They were permitted visits only with close relatives.

Staff from the Center failed to take sufficient steps to establish the identity and citizenship and of those detained. In response to an inquiry by ADC Memorial attorneys in November 2009-January 2010 regarding the possibility of deportation, the General Consul of Ukraine replied that, since they had never received passports as citizens of Ukraine, it was impossible to confirm their Ukrainian citizenship. On 11 February 2010, in response to an inquiry about the possibility of deportation, an ADC Memorial attorney received an answer from the DCFN that, due to the lack of information on their citizenship and the lack of identity documents, it was impossible to deport them from the Russian Federation. Thus after more than four months of detention in the

DCFN, A. Lakatos, P. Gabor, and A. Forkosh the impossibility of establishing their identity and citizenship as well as of deporting them from the Russian Federation was confirmed. However, the DCFN administration did not decide to release the violators of the migration regulations in violation of the court order regarding their deportation. The Roma migrants were released only in October 2010, after an entire year of detention had passed. They remained violators of the migration regulations. During a year of detention the state agencies of Ukraine and the Russian Federation never could establish either the identity or the citizenship due to the ineffective and insufficient efforts undertaken.

Spending a year in conditions of insufficient food and the impossibility of maintaining personal hygiene broke both the physical and psychological health of the Magyar Roma. Anna Lakosh experienced epileptic seizures and Aladar Forkosh became ill with tuberculosis. They frequently fainted from hunger. The prisoners spent a year in a degrading, depressed condition, were parted from their families, and received no concern, protection, or support as provided by international law in such circumstances.

After the maximum possible period of detention, Anna Lakatos, Pavel Gabor, and Aladar Forkosh were released with broken health and with no guarantees or hopes of avoiding a second imprisonment. Considering their lack of identity documents they remain to this day violators of the migration regulations in any country they may be.

On the basis of data from human rights monitoring and accompaniment, the media, complaints of the Magyar petitioners to the ECHR, and human rights reports it can be confirmed that Roma migrants in the Russian Federation systematically encounter not only violation of their rights, including those guaranteed by international instruments such as the ICCPR, the ICESCR introduced by the Chairman of the Duma Committee on Labour and Social Policy, Andrei Isayev, and State Duma deputy Mikhail Tarasenko R and ILO Conventions, but institutionalized dual discrimination by state agencies and social services. Being simultaneously Roma (members of one of the historically most discriminated-against ethno-sociological groups) and undocumented migrants (individuals practically deprived of the guarantees of legal protection), Roma migrants find themselves in extremely difficult circumstances and lack any possibility of integrating into Russian society on an equal basis. Perhaps you could add a reference to “dual discrimination” (as referred to in the title of this section) and link it with the

concept of “multiple discrimination” which is used by the Committee in its General Comments no.20 (for instance: The Committee on ESC rights has recognized the existence and the specific impacts multiple discrimination can have on individuals or groups of individuals + requires States to immediately take measures to address such discrimination).

65 Shkurenok, N. Homes of Tajik Roma set on fire in Gorelovo // ADC Memorial Bulletin No. 27, September 2009. (<http://www.memorial.spb.ru/www/203.html?lang=ru>).

66 This term will be utilized in this report.

67 On the number and composition of the population of Ukraine for the national census of 2001 (<http://www.ukrcensus.gov.ua/results/general/nationality/Zakarpaty/>).

68 Bessonov, N. V. Roma and the press. Issue 2. M., 2003. P.26.

69 Ibid., P.53.

70 Bielikov, O.V. The Roma of Ukraine at the end of the twentieth century: problems and approaches to solving them (http://www.iai.donetsk.ua/_u/iai/dtp/CONF/13/articles/sec2/stat22.html).

71 Ibid.

72 Bessonov, N. V. Roma and the press. Issue 2. M., 2003. P.53.

73 Bessonov, N. V. Are there nomadic Roma now? (<http://gypsy-life.net/foto-06.htm>).

74 Population migration. Edition 2. M., 2001. Pp. 88-89.

75 Ibid. P. 133.

76 A. V. Kuz'min. Migration: problems of inter-cultural communication. VSGTU, Ulan-Ude, 2006. P.40.

77 Labour migration of the population of Ukraine during the transformation of economic and social relations // Labour migration in the CIS: social and economic effects. M., 2001. P. 29.

78 Ibid. P.27

79 Ibid.

80 Population migration. Edition 2. M., 2001. P. 134.

81 Complaint of D.A. Politskovoï on the activity of an unauthorized dump (http://www.rtr.spb.ru/People_Line/viewmsg_d.asp?ID=117424&FID=117424)

82 Bielikov, O.V. The Roma of Ukraine at the end of the twentieth century: problems and approaches to solving them (http://www.iai.donetsk.ua/_u/iai/dtp/CONF/13/articles/sec2/stat22.html).

83 Part 5 of the Law No. 556-107 of St. Petersburg of 14 December 2009 “On the territorial program of state guarantees to provide citizens of the Russian Federation with free medical assistance in St. Petersburg for 2010.”

84 Order No. 174-A of 26 June 2006 of the Territorial Fund for Mandatory Medical Insurance of St. Petersburg “On the special procedure for financing mandatory medical insurance on the territory of St. Petersburg in the form of payment on invoices for medical assistance (medical services) under mandatory medical insurance in unusual situations.”

85 S.B. Kulaeva. Persecuted // ADC Memorial Bulletin No. 23, October 2008 (<http://www.memorial.spb.ru/catalog/?p=484>).

86 ICESCR, Article 10.

- 87 The tabor in Ramenki is leaving (<http://news.rambler.ru/Russia/r/5607281/>).
- 88 Website of the “Tranzit” shelter for orphaned and delinquent children <http://fiodor.ru/about>.
- 89 Materials from human rights monitoring of ADC Memorial
- 90 ICESCR, Article 13.2(a) and (d).
- 91 General Comment no.13 (the right to education), E/C.12/1999/10.
- 92 On the Situation of Roma in Russia. Appendix to the NGO Shadow Report “On the Implementation of the Framework Convention for the Protection of National Minorities By the Russian Federation.” 2006. (<http://www.memorial.spb.ru/www/504.html?lang=ru>).
- 93 Interview with Magyar Roma, including an audio recording // ADC Memorial Archive.
- 94 The tabor in Ramenki is leaving (<http://news.rambler.ru/Russia/r/5607281/>).
- 95 S. Kulaeva. Racist crimes affect everyone // ADC Memorial Bulletin No. 28, 2010. (<http://www.memorial.spb.ru/www/571.html?lang=ru>).
- 96 S. Kulaeva. Persecuted // ADC Memorial Bulletin No. 23, 2008. (<http://memorial.spb.ru/www/246.html?lang=ru>).
- 97 <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Lakatosh&sessionid=63151495&skin=hudoc-cc-en>.

Conclusion

The problem of discrimination in the sphere of social, economic, and cultural rights is extremely critical in the contemporary Russian Federation. A multi-faceted approach to the recognition of this problem and the taking of steps to immediately eliminate all forms of discrimination is doubtless required in accordance with Article 2 (Part 2) of the International Covenant on Economic, Social and Cultural Rights.

In this sense the fulfillment of the requirements of General Comment 20 “Non-Discrimination in Economic, Social, and Cultural Rights,” in particular of the following, is extremely important:

39. States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.

With regard to ensuring a non-discriminatory approach to compliance with the rights of migrants, the legislation of the Russian Federation and the practices of law enforcement should be mentioned with General Comment No. 20:

30. The ground of nationality should not bar access to Covenant rights, e.g., all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.

Representatives of groups that suffer from multiple discrimination (such as the Roma migrants) deserve particular attention. In this regard the authoritative interpretation provided by the Committee on Economic, Social and Cultural Rights in its General Comment No. 20 (on non-discrimination) must be taken into account:

17. Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds... Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.

It is essential to also consider the right to protection from discrimination of all persons regardless of their place of residence or lifestyle (noted, for example, in General Comment No. 20):

34. The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; e.g., whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle.

Without a doubt the fulfillment of States' obligations under the International Covenant on Economic, Social and Cultural Rights, and in light of the authoritative interpretation of the Committee on the principle of non-discrimination in economic, social and cultural rights the Russian government has a clear and immediate obligation to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights protected in the Covenant to protect vulnerable groups such as ethnic minorities and migrants.

Recommendations

To address the problems described in the present report and to tackle discrimination faced by migrants and ethnic minorities in enjoyment of their social and economic rights, ADC Memorial recommends:

To the Government of the Russian Federation

General recommendations

- Ratify the UN Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

- Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Ratify ILO Convention No. 97 of 1949 concerning Migration for Employment and the ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions);
- Include information on migrant workers in reports to the UN Treaty Bodies, including the Committee on Economic Social and Cultural Rights and Committee on the Elimination of Racial Discrimination;
- Include information on the situation of migrant workers and steps taken to protect their rights in reports submitted to the Universal Periodic Review of the UN Human Rights Council and to the Committee on Economic, Social and Cultural Rights.

Migration policy

- Introduce the possibility for migrants to register themselves without a receiving person (employer, family), on a declaratory basis;
- Increase the flexibility of the registration and quota system, including by enabling migrants to legalize their stay on a declaratory basis and to obtain work permits for longer periods (three to five years) with the subsequent possibility of permanent regularisation in the country;
- Pay special attention to the situation and specific needs of women migrant workers and child migrants as particularly vulnerable groups;
- Increase the transparency of the drafting process of any legislation on migration and ensure – that civil society is effectively consulted;
- Widen the categories of settlement territories provided for by the state program for assisting the voluntary resettlement in the Russian Federation of compatriots living abroad;
- Ensure that migrant workers have access to effective appeals against deportation and that detention and deportation of migrant workers are made in full compliance with Russia's human rights obligations;
- Introduce a state responsibility (including

responsibility of the Federal Migration Service) for the actions of intermediary firms that are not prosecuted as illegal.

Employment Relations:

- Exercise strict control over private entities to ensure the respect of just, equally favourable social and employment conditions for migrant workers (such control should not penalise workers who have been abused by private or public companies and who are therefore found to be in irregular situations upon control by the State of these companies);
- Include a chapter in the Labour Code of the Russian Federation (Section XII) dedicated to the particularities of regulating the employment of foreign workers that requires employment contracts be entered into with the employer for whom work is factually performed;
- Introduce standard procedures for courts to review labour conflicts in the absence of an employment agreement, and to shift the burden of proof;
- Rigorously enforce the legal requirement for employers to provide written employment contracts to workers, including migrant workers;
- Guarantee equal payments to migrant workers and Russian citizens;
- Ensure equal protections and access to redress mechanisms to all migrant workers, including those without employment contracts, such as workers who have only retainer contracts or no contracts at all;
- Train law enforcement agencies to investigate complaints of migrant workers more rigorously, both as to the facts of crimes and in connection with labour disputes, stressing the necessity of verifying all complaints on labour issues, even if the employment relation is not officially formulated, as well as emphasizing the acceptability of alternative proofs of the existence of an employment relationship besides a contract;
- Rigorously investigate, prosecute and sanction employers who confiscate passports,

withhold wages, force employees to work illegal overtime, or commit other violations of Russian law;

- Promote the provision by employers of legal migrant workers of policies of mandatory medical insurance (MMI);
- Provide economic incentives for companies which seek to hire migrants legally;
- Establish a system of recruitment for migrant workers, monitored by the state, NGO's and trade unions, which ensures respect for the rights of migrant workers, including by controlling the activities of intermediary agencies and ensuring that employment contracts are concluded with the final employer;
- Increase cooperation in the fight against forced labour and human trafficking.

Right to Housing:

- Simplify the procedure for registering as in need of improved housing, removing the requirement to provide a registration certificate;
- Adopt a national policy on housing with specific measures towards vulnerable groups such as Roma and migrant workers.

Education:

- Add a separate article to the draft federal law "On education in the Russian Federation" regarding the right of foreign nationals and stateless persons to education;
- Remove from Article 27 of the draft federal law the provision that the procedure for enrollment in an educational institution shall be established by the charter of the educational institution and place that procedure in a sublegislative act that clearly regulates the activity of the administration of an educational institution when foreign nationals or stateless persons (parents or children) without documents apply;
- Establish the obligation of regional governing bodies to assist in obtaining documents for children who have entered school without them.

Health Protection and Medical Assistance:

- Include as an addendum to the Decree N 546 of the Government of the Russian Federation of 1 September 2005 “On the confirmation of Rules for providing medical assistance to foreign citizens on the territory of the Russian Federation” the explicit medical criteria “conditions presenting a direct threat to life or requiring immediate medical intervention”;
- Introduce mandatory medical insurance for employers of foreign workers and liability for avoiding this obligation.

Social Security:

- Eliminate the dependence of the payment of social benefits on the existence of permanent registration;
- Introduce the fair regulation of pension security of foreign workers;
- Provide in the federal law “On additional measures for support of families with children” the equal right to a maternal (family) grant for a single father (if the mother is a foreign national or a stateless person).

To Countries of Departure:

- Sign the CIS Convention on the Legal Status of Migrant Workers - Citizens of CIS Members and Their Families, ratify international acts affecting migrant workers, including the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Migration for Employment Convention No. 97 of 1949 and the ILO Migrant Workers Convention No. 143 of 1975;
- Ensure the effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and in particular, strengthen measures aimed at fighting against forced labour and human trafficking;
- Provide increased access to consular assistance by extending consular representation;

- Enhance the labour departments of embassies and consulates in working with migrant workers, in particular introduce into the embassy at least one attaché position for employment issues or an analogous employee;
- Establish an embassy hotline specifically for migration and labour-related questions, and ensure that the staff of that hotline have training to provide information and referrals to relevant legal, social, and other services to those who call;
- Regularly conduct explanatory programs for those migrant workers going to Russia, including in rail, bus terminals, and airports;
- Improve cooperation with the Russian Federation, including within the framework of bilateral and regional mechanisms, in order to facilitate a swift return home for migrants who have wound up in a difficult situation in connection with the loss of documents, including identity documents, and for other reasons.

To International Organizations:

To The Council of Europe:

- Continue to insist that the Russian Federation sign the protocol to implement a mechanism for collective complaints for violations of the European Social Charter.

To the UN:

- Insist that the Russian Federation ratify The International Convention on the Protection of the Rights of All Migrants;
- Pay special attention to corporate-related abuses suffered by vulnerable groups such as migrant workers as part of the work of the UN on the issue of business and human rights, such as through investigations.

To The European Union:

- Allocate attention to the problem of discrimination against ethnic minorities, including Roma, within the framework of bilateral consultation on human rights with the Russian Federation;

- Facilitate the recognition of the impermissibility of dual discrimination against Roma migrants and the development of mechanisms to protect the rights of these vulnerable groups;
- Ensure that decisions taken during the dialogue on migrations issues strictly respect the provisions of the main HR instruments ratified by Russia and the States of the European Union.
- Immediately cease any unlawful and discriminatory practice towards employees (and in particular vulnerable groups such as migrant workers) such as the confiscation of identity documents; recruitment without any written contract, withholding wages, physical or psychological harassment, etc.;
- Companies dealing with intermediary recruitment agencies should act with due diligence to ensure workers referred to by such agencies benefit

To public or private companies operating in Russia:

- Act in strict compliance with the national legislation and international fundamental principles on labour standards;

Executive summary

This report focuses on the situation of migrant workers in general and Roma migrants in particular in Russia, and on the discrimination these two vulnerable groups face in accessing social and economic rights. It is based on information gathered by the NGO ADC Memorial in St Petersburg and the North-West region of Russia, including complaints received by them and cases brought to court.

The general context is characterised by impunity for violations of the rights of migrants. Migrants are frequently victims of xenophobic assaults, lacking protection from the police and the justice system generally. In some cases the police target migrants for bribes and extortion. States of origin generally do not afford their nationals adequate protection.

Russia ratified the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1973. Violations suffered by migrants and documented by ADC Memorial amount to violations of the general prohibition on non-discrimination (art. 2 ICESCR), the right to work under favorable and just conditions (art. 7), the right to social security (art. 9), the right to an adequate standard of living, including adequate housing (art. 11), the right to the highest attainable standard of health (art.12) and the right to education (art. 13).

Migrants forced into irregularity Russian migration policy is based on a strict quota system, under which only a limited number of migrants have access to work permits. Since July 2010, migrants providing personal or domestic services can also purchase a “patent” in order to work legally.

This report shows that the burden of administrative requirements and obstacles (including obtaining registration, health certificates, work permits etc.) is such that, instead of obtaining these documents from the FMS (Russian Federal Migration Service), migrants often turn to “intermediary agencies”. ADC Memorial’s investigations demonstrate that many of these firms cheat and exploit migrants, providing false documents, faking registration or failing to deliver services paid for.

Lack of access to economic and social rights Migrants who are in irregular situations are not only particularly vulnerable to abuse by the police, but are also unable to access social and economic rights. Access to health care, education and many social allowances is conditional on registration of permanent or at least temporary residence.

Abuse by employers and intermediary agencies Migrants, particularly those in irregular situations, also face abuse and exploitation by employers (confiscation of passports, unlimited working hours, lack of payment of wages, fines). They do not benefit from health insurance or care, despite the fact that they often carry out dangerous work (eg. cleaning snow and ice from roofs). The report documents the increasing practice of “outsourcing” by many employers (including shops etc.): employing migrant workers through intermediary agencies. Such migrants sign agreements with the intermediary agencies, and many have no employment contracts (or even retainer contracts) with their final employers. Many such migrants have sought ADC Memorial’s assistance, finding themselves without recourse when they are abused by their employers. Though in a recent case brought by ADC Memorial to St Petersburg court, the court found that the lack of an employment contract in and of itself does not demonstrate the lack of an employment relationship, it remains very difficult to hold employers accountable in such situations.

Particular vulnerability of Roma migrants The report shows that Roma migrants in Russia face dual discrimination, as Roma minorities and as migrants. Central Asian Roma (Mugat) and Hungarian speaking Magyar from Ukraine face the same difficulties, with severe violations of their economic and social rights, including their right to an adequate standard of living, their right to adequate housing and their right to health. The slums in which they live generally have no running water, no sanitary services and no electricity. They are frequently targeted by the police, sometimes with the use of violence, and are forcibly evicted. They only have access to emergency health care, and going to hospital puts women at risk of having their children confiscated. Two cases brought to the European Court of Human Rights by ADC Memorial

show how Roma are subjected to unlawful detention and inhuman and degrading treatment. Principal recommendations To the Russian government

Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the UN Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, ILO Conventions N° 97 of 1949 and N° 143 of 1975.

Introduce the following changes into legislation and practice to ensure the implementation of social and economic rights, in particular of migrants and ethnic minorities, in the Russian Federation:

- o Increase the flexibility of the registration and quota system, including by enabling migrants to legalize their stay on a declaratory basis and to obtain work permits for longer periods (three to five years) with the subsequent possibility of permanent regularisation in the country;

- o Exercise strict control over private entities to ensure that they respect the rights of migrant workers, including the right to just working conditions, which are equally favourable to migrants as to Russian nationals;

- o Provide economic incentives for companies which seek to hire migrants legally;

- o Rigorously enforce the legal requirement for employers to provide written employment contracts to workers, including migrant workers;

- o Guarantee the right to equal pay for equal work for migrant workers and Russian nationals;

- o Introduce standard procedures for courts to judge employment disputes in cases in which there is no written employment agreement, and shift the burden of proof of the employment relationship;

- o Rigorously investigate, prosecute and sanction employers who confiscate passports, withhold wages, force employees to work overtime, or commit other violations of Russian law;

- o Introduce mandatory medical insurance for employers of foreign workers and liability for avoiding this obligation;

- o Establish a system of recruitment for migrant workers, monitored by the state, NGO's and trade unions, which ensures respect for the rights of migrant work-

ers, including by controlling the activities of intermediary agencies and ensuring that employment contracts are concluded with the final employer.

- o Add a provision to the draft federal law "On education in the Russian Federation" regarding the right of foreign nationals and stateless persons to education and establish the obligation of regional governing bodies to assist in obtaining documents for children who have entered school without them;

- o Eliminate the requirement of permanent residence registration for the receipt of social benefits.

To public or private companies operating in Russia

- o Act in strict compliance with national and international labour law and fundamental principles on labour standards;

- o Immediately cease unlawful and discriminatory practices towards employees (and in particular vulnerable groups such as migrant workers) such as the confiscation of identity documents; employment without written contracts, withholding payment of wages, physical or psychological harassment, etc.

- o Companies dealing with intermediary recruitment agencies must act with due diligence to ensure workers referred by such agencies benefit from equal treatment to other employees, in strict compliance with labour law and standards.