



International
Labour
Office



European Bank
for Reconstruction and Development



Preventing Forced Labour Exploitation
and Promoting Good Labour Practices
in the Russian Construction Industry



**Preventing Forced Labour Exploitation and
Promoting Good Labour Practices in the
Russian Construction Industry**

Copyright © International Labour Organization and European Bank for Reconstruction and Development 2009

First published 2009

For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org

Short excerpts may be reproduced without authorization, on condition that the source is indicated.

ILO Cataloguing in Publication Data

Preventing forced labour exploitation and promoting good labour practices in the Russian construction industry /

International Labour Office. - Geneva: ILO, 2009

1 v.

ISBN: 9789221226802 (Print); 9789221226819 (web pdf)

International Labour Office

Forced labour / migrant worker / workers rights / code of conduct / construction industry / Russian Federation

13.01.2

The designations employed in this publication and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office or the European Bank for Reconstruction and Development concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in this publication rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office or the European Bank for Reconstruction and Development of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office or European Bank for Reconstruction and Development and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Cover designed by Jessica PETON

Printed in Switzerland

PREFACE

There is growing international awareness that fundamental labour rights, enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights and its Follow-up, should form an integral part of corporate social responsibility strategies. At the United Nations Global Compact Leaders Summit that took place in Geneva in July 2007, innovative practices with regards to labour standards were presented among other principles of the Global Compact. The summit provided the ILO with a platform to present its 10 principles for business leaders to combat forced labour and trafficking. The freedom from forced labour as defined in two of the ILO's core Conventions is probably the least understood labour standard that ILO Member States and social partners should promote. It is often assumed that forced labour is a concern of the past or a crime that has nothing to do with mainstream business. While it is true that forced labour exists mainly in the informal or unregulated part of the labour market, it can affect mainstream business through complex supply chains and the irregular employment of workers, in particular migrant workers who were trafficked. Wherever forced labour occurs, it is often accompanied by violations of other fundamental labour rights, such as denial of the freedom of association, discrimination or violation of basic health and safety standards.

In 2001, the ILO's Governing Body set up the Special Action Programme to Combat Forced Labour (SAP-FL) to spearhead research and technical cooperation with an aim of eliminating all forms of forced labour. In Europe, SAP-FL has commissioned more than ten country assessments, covering mainly labour intensive economic sectors that could be vulnerable to forced labour practices. In 2003, the ILO launched a report in the Russian Federation highlighting serious forms of exploitation and abuse suffered by migrant workers. The construction industry was affected as one sector among others as it generated a high demand for flexible, low skilled and cheap labour. Since then, awareness on the trafficking of migrant labour to the Russian Federation has increased and significant legal changes were introduced to better protect workers and to punish employers using irregular migrant workers more effectively. Between 2004 and 2006, the ILO implemented pilot activities with government and workers organisations in particular to improve the protection of migrant workers.

At the same time, one can observe an increase of CSR initiatives across Russian industries, most notably the adoption of the Social Charter by the Russian Union of Industrialists and Entrepreneurs (RUIE) in 2004. Two years later, the Russian Managers Association published a memorandum on principles of corporate social responsibility. Furthermore, business associations representing construction companies have adopted their own charters and codes of conduct. In 2007, former President Putin signed a new law on self-regulating organisations which creates the right of associations to regulate their own industries. It is expected that the new law will reduce the regulatory burden for business and will enhance the role of business associations in establishing good practice.

The EBRD is an important investor in the Russian Federation. The Bank's investments are in a variety of sectors ranging from infrastructure and energy to general industry, property, retails and financial institutions. Many of these projects involve a construction phase. All EBRD-financed projects are required to meet national labour law as well as the principles and standards enunciated in the ILO core labour conventions, including Convention No. 29 on forced labour. These requirements apply irrespective of whether the project is carried out directly by the project developer/sponsor or by a contractor, and they apply to all phases of the project, including the construction phase. Other major financial institutions such as IFC

and the commercial banks that are signatories to the Equator Principles have similar requirements. Like EBRD, they consider the use of exploitative labour practices and forced labour in project financed by them unacceptable. Hence, the presence of such practices in the construction sector is a real concern as well as a reputational risk for international financing institutions, affecting a large number of investment projects including property development, infrastructure and natural resources projects and any project involving the construction of new facilities.

In 2006, EBRD and ILO jointly commissioned this research out of a common interest in protecting labour rights of workers employed in the Russian construction industry. The research was designed in cooperation with the Coordination Council of Russian Employers (CCEUR) that also assisted in the implementation of this research and multi-stakeholder consultations. The double purpose of the report is to provide an overview of the situation in the Russian construction industry as well as to assess the feasibility of an industry-wide code of conduct in light of international good practice. The research design and preliminary results were discussed during an expert roundtable in Moscow in November 2006. It was followed by consultations with various Russian stakeholders from the industry as well as with workers' organisations.

It is hoped that the present report will further stimulate the debate on this subject and lead to concrete measures of self-regulation. These measures should be backed by effective follow-up and monitoring mechanisms. We would like to thank the Analytical Centre of CCEUR¹ for the facilitation of this research and dialogue, the Levada Research Centre for carrying out the survey and Ms. Tatjana Youdina for writing the legal part of this report. Thanks are also extended to Ms. Blanka Hančilova for contributing additional research to this report, translation and technical editing. The final version of this report was prepared by EBRD and ILO in 2008.

¹ When this work was carried out, CCEUR and RUIE were in a process of restructuring.

TABLE OF CONTENTS

- Preface..... 3
- List of Abbreviations..... 6
- Introduction 7
- Methodology 8
- Russian construction sector – an overview 9
 - EMPLOYERS’ ASSOCIATIONS 10
 - TRADE UNIONS 11
 - EMPLOYMENT IN CONSTRUCTION, WAGES AND LABOUR CONDITIONS 12
- Migration in the Russian Federation 15
 - MIGRATION DATA AND TRENDS..... 15
 - RUSSIAN MIGRATION POLICY AND LEGISLATION 16
- Migrants in the Russian construction sector 19
 - IRREGULAR MIGRATION, INFORMAL ECONOMY AND EXPLOITATIVE LABOUR PRACTICES..... 26
 - ACCESS TO JUSTICE FOR MIGRANT WORKERS 28
- Self-regulation as means to improve labour practices in the Russian construction sector 30
 - INTERNATIONAL GOOD PRACTICE EXAMPLES ON CORPORATE RESPONSIBILITY..... 30
 - Multi-stakeholder Initiatives 30
 - Framework agreements 33
 - RELEVANT FACTORS FOR THE CONSTRUCTION INDUSTRY IN RUSSIA..... 34
 - Development of corporate governance and CSR initiatives in Russia..... 35
 - FEASIBILITY OF SELF-REGULATION IN THE RUSSIAN CONSTRUCTION INDUSTRY 36
 - Stakeholder consultations..... 39
- Recommendations 40
- Glossary of Key Terms 41
- Literature and Sources..... 45

LIST OF ABBREVIATIONS

- ASR** – Association of Builders of Russia
- BWI** - Building and Wood Workers International
- CCEUR** - Coordinating Council of Employers' Unions of Russia
- CIP** - Corporate Involvement Program
- CSR** – Corporate Social Responsibility
- EBRD** - European Bank for Reconstruction and Development
- ETI** - The Ethical Trading Initiative in the United Kingdom
- FLA** - Fair Labour Association in the USA
- FMS** - Federal Migration Service
- GDP** – Gross Domestic Product
- IALM** - International Association on Labour Migration
- IFBWW** - International Federation of Building and Wood Workers
- IFC** – International Finance Corporation
- ILO** – International Labour Organization
- IPO** - Initial Public Offer
- NGO** – Non Governmental Organisation
- OECD** – Organisation for Economic Co-operation and Development
- OSH** – Occupational Safety and Health
- RSS** – Russian Union of Builders
- RUIE** - Russian Union of Industrialists and Entrepreneurs
- SAI** - Social Accountability International
- SAP-FL** – Special Action Programme to Combat Forced Labour

INTRODUCTION

Throughout the world, the construction industry has the potential to generate much needed employment and to contribute to economic development. Despite this, the industry has to struggle with a poor image, due to the construction of low quality buildings as well as the particular nature of the work, which is often difficult and dangerous. Flexible labour practices have increased due to outsourcing practices that are now the norm in most countries. The Russian construction industry has seen a significant growth after the financial crisis in 1998. Most of the construction companies are now private, employing around 5 million workers. A significant number are migrant workers, among them many without a legal residence or a work permit. They are particularly vulnerable to labour exploitation and coercive labour practices.

The purpose of this report is to assess possibilities to improve labour practices in the Russian construction industry. In particular, the report covers the following subjects:

- Situation of the Russian construction industry, including industry trends, social partners and employment issues
- Migration trends in the Russian Federation and the situation of migrant workers in the construction sector
- Analysis of Russian and international practices on self-regulation in light of the situation in the construction industry
- Presentation of employers' perspective based on a non-representative survey of 74 companies as well as 34 expert interviews

The report should be seen as an initial attempt to analyse labour conditions in Russia's construction sector and to discuss the feasibility of using the elements of corporate responsibility as tools to address some of the deficiencies, especially related to labour rights and the exploitation of migrant workers.

In particular, the report assesses the feasibility of adopting a sector-wide corporate code of conduct as one of the means to improve labour practices in the construction industry, protect vulnerable migrant workers, and increase awareness and self-regulation among employers, employers' organizations and other stakeholders in the Russian Federation. In addition such a code could provide EBRD and other financing institutions and investors with a practical tool to reduce the risk of exploitation of migrant workers occurring in the construction phase of projects financed or sponsored by such institutions.

The report is structured as follows: In the first part, an overview of the Russian construction sector with a focus on use of migrant labour is provided; the second part discusses the development of the Russian migration law and policy framework. This background provides an overall context in which employers in the construction industry operate. Part three looks at linkages between the employment of migrant workers and the structure of the construction sector more specifically. Finally, an overview of international good practice examples in the area of corporate social responsibility is given and discussed with regards to issues identified in the context of the Russian construction sector. The last chapter also contains information on stakeholder consultations that were carried out in the preparation of this report as well as recommendations for further action.

METHODOLOGY

The research team reviewed secondary sources and collected primary data from experts from trade unions and various state agencies and representatives of construction companies in five regions of Russia. The secondary sources used for the report included various research studies and newspaper articles. Sources of primary data included Russian official statistics, legislation and primary qualitative research among selected companies and experts.

The research team conducted structured face-to-face interviews with 72 managers of Russian construction companies from five regions (Moscow – 21 respondents, Moscow district (Podmoskovye) – 10 respondents, St. Petersburg – 17 respondents, Perm region– 12 respondents and Rostov region – 12 respondents). The construction companies were selected according to size and regional criteria.

Furthermore, questionnaires were sent to 33 experts from Federal Employment Service (9 experts), regional bodies of State Labour inspection (10 experts), trade unions (8 experts), unions of employers (4 experts) and Federal Migration Service (1 expert) and Association “Labour Migration” (1 expert). The expert survey was self-administered and it is important to notice that not all experts answered all questions.

In most cases, the responses from companies’ representatives and experts did not differ substantially and the report notes all instances where there was a significant difference. The scope of this study did not allow for collecting the data from a representative sample of respondents. The survey information is therefore indicative of the opinions of the respondents from construction companies and those of contacted experts only. It cannot be extrapolated to the larger population.

Conclusions and recommendations provided in the report are drawn from the analysis of the international best practices regarding tools of self-regulation, analysis of the national (Russian Federation) practices of use of such tools, analysis of the situations in the construction business, in particular labour practices and the role of migrant labour, and the legal framework governing labour and migration. The report also reflects the results of the stakeholder workshop to discuss an earlier draft of the report and options for Code of Conduct that took place on 30 November 2006 in Moscow.

RUSSIAN CONSTRUCTION SECTOR – AN OVERVIEW

The Russian construction sector is mostly private. Out of 112,640 companies registered in 2005 (the latest data available), 94 per cent were private,² and 90 per cent of all companies had less than 100 employees.³ The average number of employed in the construction industry in 2005 was 4,916,000 persons, which corresponds to 7.4 per cent of all employed.⁴ The sector is dominated by several big companies, often successors of state-owned enterprises, who are then subcontracting mid-size and small companies for certain types of work. There is a notable lack of data on some sub-sectors of the construction sector such as infrastructure. Most data available captures the construction of buildings.

After recovering from the 1998 Russian financial crisis, the construction industry has grown by between 10-12 per cent annually. In the first half of 2006, the sector's profit grew by 68 per cent compared to the same period in 2005. The share of unprofitable companies corresponds to the average level in the country (35.9 per cent). While the volume of construction work decreased in 2006, investments into the construction industry continued to grow (see tables below). The share of investments in construction, however, decreased in comparison with other economic sectors.⁵

Table 1: Volume of construction work according to different forms of ownership (in actual prices; bln.RUR; for 1995 - trln. RUR)

	1995	2000	2001	2002	2003	2004	2005	2006 ¹⁾
Total volume of construction work performed	145,7	503,8	703,8	831,0	1042,7	1313,5	1711,7	1148,3
Forms of ownership:								
State	18,1	52,9	59,1	63,2	77,2	81,3	95,9	100,9
Municipal	1,7	4,5	7,0	7,5	7,3	9,6	13,7	12,8
Corporate	62,9	322,0	482,8	601,6	795,6	1025,6	1384,8	819,8
Mixed	61,2	111,9	133,0	124,6	125,1	120,2	128,4	123,3
Other	1,8	12,5	21,9	34,1	37,5	76,8	88,9	91,5

Source: Russian Federal Statistical Service (Rosstat), download at: <http://www.gks.ru/wps/portal>

Table 2: Investments in construction industry (actual prices)

² Remaining construction companies are municipally owned (2 per cent), state-owned (2 per cent) and with other forms of ownership (2 per cent).

³ See Russian Federal Statistical Service (Rosstat), http://www.gks.ru/free_doc/2006/b06_13/15-02.htm, accessed on 21 May 2007.

⁴ See Russian Federal Statistical Service (Rosstat), http://www.gks.ru/free_doc/2006/b06_13/05-06.htm, accessed on 21 May 2007.

⁵ See Russian Federal Statistical Service (Rosstat), <http://www.gks.ru>

Years	Bln. RUR	per cent
2002	80,1	5,6
2003	102,2	5,6
2004	123,1	5,6
2005	172,7	6,0
2006	239,8	6,8

Source: Russian Federal Statistical Service, download at: <http://www.gks.ru/wps/portal/>

There are several factors restricting construction activities. First, the industry is burdened with the cost of building roads and power infrastructure in the vicinity of the to-be-built buildings. The price of connecting new building to municipal services – water, sewage disposal, electricity, etc. – currently constitutes 10-15 per cent of the total cost of construction of the housing units. Finally, up to one third of the apartments constructed may have to be “given to the state” to be allocated in state social housing programmes.

Second, there is a *de-facto* monopolisation of several supply services, such as, for instance, cement production and the supply of metal reinforcements for concrete.⁶ The price of construction material doubled in the first half of 2006. Various legislative and administrative issues complicate the work of the construction companies: for example, the inefficient and slow issuance of construction permits (it can take over two years to get a construction permit) strains the companies’ ability to repay bank credits. World Bank research has shown that in January 2006, 22 licensing procedures that took up to 21 months to complete were needed for building a warehouse in Moscow. The procedure cost 273 per cent of per capita income, as compared to 72 per cent in OECD countries.⁷

Construction companies cite high taxes, the insolvency of customers and high costs of building material as the most important factors restricting their business. Lack of qualified staff was also mentioned as an important factor: In 1995, about 10 per cent of construction companies complained about shortages of skilled workers, in 2006 – 26 per cent.⁸

EMPLOYERS’ ASSOCIATIONS

The leading employers’ associations in the construction sector at the federal level are the Russian Union of Builders (headed by Viktor N. Zabelin) and the Association of Russian Builders (President Nikolai P. Koshman).

The Russian Union of Builders⁹ (RSS) today unites construction companies from across 80 territories, regions and republics of the Russian Federation. Established in Moscow in 1990, it protects the interests of employers and investors and also state authorities involved in the

⁶ See: “Moscow real estate market, Moscow apartments for rent and sale: an overview”; <http://www.beatrix.ru/eng/info.php?grp=3>; accessed on 21 May 2007.

⁷ Doing Business Report 2007, The World Bank, <http://www.doingbusiness.org/ExploreTopics/DealingLicenses/Details.aspx?economyid=159>, accessed on 1 June 2007.

⁸ See: Federal State Statistics Service (Rosstat), http://www.gks.ru/free_doc/2006/b06_11/16-07.htm, accessed on 21 May 2007.

⁹ Webpage: <http://www.omorrss.ru/>, accessed on 04 June 2008.

construction sector. Currently, the most important members of the Union are companies and associations, which were formerly state enterprises. There are about 35,000 members from practically all Russian Federation republics. The Union participates in the development of legislation and it is actively seeking the development international contacts.¹⁰

According to RSS, one of the most important problems affecting the construction sectors is the shortage of skilled professionals. In 2005, the number of construction workers was 4.4 million of which an estimated 1.2 – 1.5 million were low qualified migrant workers from CIS countries. RSS underlines the need for vocational training programmes that should be implemented in partnership with construction companies.¹¹

The Association of Builders of Russia (ASR) was established in 2005, following an administrative reform, which abolished Russia's state construction company (Gosstroy), the state urban technical oversight agency (Gosgortekhnadzor) and other state agencies formerly tasked with the setting of prices. The aim was to ensure better protection of common interests and to guarantee participation in the implementation of the federal "Accessible Housing" project. Today, the Association represents more than 450 companies including construction firms, investment banks, insurance companies and mortgage providers.¹²

The goals of ASR are to improve the investment climate in the construction industry and to contribute to the further growth of the industry. It participates in legislative processes and provides legal advice to its members. In a speech a major conference on labour migration in May 2007, the president of ASR underlined the need of qualified specialists in construction and proposed training programmes specifically targeted at migrant workers.¹³

TRADE UNIONS

The largest trade union in the construction sector is the Russian Federation Professional Union of Workers in the Construction and Building Materials Industries,¹⁴ one of the oldest in Russia, having been established during the communist revolution in 1917. The Union has 655,342 members and branches in 74 entities of the Russian Federation. Some 26.8 per cent of its members are under 35 years of age and 34.5 per cent are female.

Following the collapse of the Soviet Union, many trade unions struggled to re-establish themselves in a less favourable economic environment, marked by strong market pressure and a weakness of the state to enforce legislation, including labour law. While the trade unions were in general capable of negotiating relatively good collective agreements, these were often not effectively implemented and the state did not provide efficient access to justice.

¹⁰ Webpage: <http://www.omorrss.ru/index.php?s=57&m=28>, accessed on 25 June 2007.

¹¹ Information was taken from Russian report submitted in March 2007.

¹² Among the founders of the Association of Builders of Russia there were companies: ZAO "Inteko" private company; OOO "Miraks Group" limited company; OAO "Glavmosstroj" public company; OAO "Moskapstroj" public company; OAO "Dwelling" public company; OOO "BSK" limited company; OAO "Krasnodarvodstroj" public company; ZAO "Barkli" private construction company; OAO "PIK" public company; OOO "South-Regional Construction Complex" limited company; OAO "Magnitostroj" public company; ZAO "New Ecological and Energy Technologies" private company; ZAO "National Town Planning Institute" private company.

¹³ A summary of the speech can be downloaded at: <http://www.a-s-r.ru>, accessed on 4 June 2008.

¹⁴ Webpage: <http://strop-rf.ru/>, accessed on 25 May 2007.

The issue of clandestine employment of migrant workers in Russia has been on the agenda of the Russian trade unions and the Building and Wood Workers' International (BWI, former International Federation of Building and Wood Workers) for some time now. In May 2005, the BWI and the CIS Confederation "Stroitel" affiliates held a workshop on Labour Migration in the construction sector in the CIS region, looking into the situation of irregular migrants, who cannot regularize their migration or employment status and often end up exposed to exploitative labour practices. The workshop participants emphasized the need to intensify activities aimed at organizing migrant workers, protecting their rights and interests, and at development of cooperation and collaboration of building workers' unions of the region in this field. Currently, there is a growing understanding that trade unions have a legitimate interest in migration and labour related issues.¹⁵

In 2005, with the assistance of the ILO, the Construction and Building Materials Industry Workers' Union of the Russian Federation engaged a Tajik officer to encourage migrant workers to join the trade union. The trade union also gave practical assistance to migrants in difficult conditions such as lack of access to health care, accommodation and claim of wage arrears. Almost 3000 migrants joined the trade union in Russia and nearly 6 million rubles of wages were paid out after trade union intervention with employers who attempted to delay or avoid payment of salaries. In addition, the union membership card has reportedly protected some migrants from harassment by the police.¹⁶ The activities however could not be continued on the same scale after the end of the ILO-sponsored project in early 2006.. Trade unions continue some of these activities, thereby using their own resources and relying mainly on volunteers.

EMPLOYMENT IN CONSTRUCTION, WAGES AND LABOUR CONDITIONS

In 2005, according to official sources 4.9 million workers (7.4 per cent of the country's labour force) were employed in the construction industry, 79 per cent of them were men. Within the construction sector, persons in managerial posts accounted for 9.8 per cent, specialists for 11.2 per cent, other employees for 1.8 per cent and manual workers for 77.2 per cent.

The construction industry is one of the most risky industrial sectors in terms of occupational hazards. It is the sector with the fourth highest number of injured workers (7,200) and it has the highest number of lethal accidents (19.5 per cent of all deadly accidents, 515 persons) in 2005. The main causes of injury and occupational related diseases in construction are depreciation of machinery, non-observation of safety rules and training requirements, gross negligence and gross violations by technical staff of construction technologies. More than one fifth of all injuries happened to workers who were under influence of alcohol.¹⁷

The construction industry is characterized by a high fluctuation of staff, which is the result of seasonal work, difficult, often poor, labour conditions and relatively low remuneration. The

¹⁵ Statement of the IFBWW / CIS Confederation "Stroitel" affiliates' workshop on Labour migration in construction in the CIS region, Moscow, 19 May 2005, document received from ILO Office in Moscow.

¹⁶ Based on information from Michael Y. Kartashov, International Secretary of FITUR Construction and Building Materials Industry Workers' Union of the Russian Federation, ILO seminar for Kazakhstan trade unions, Almaty, 16 – 17 July 2007.

¹⁷ Федеральная служба по труду и занятости. Доклад о результатах работы в 2005 году по осуществлению государственного надзора и контроля, Moskva, 2006. (Federal Service for Labour and Employment, Report on results of the state oversight and control in 2005, Moscow 2006).

average nominal wage in the construction industry was 8869 Roubles in 2005, which was insignificantly higher than the average wage of 8550 Roubles,¹⁸ but this was not enough to attract sufficient number of skilled and unskilled construction workers. This gap is then filled by legal and irregular labour migrants, who are more likely to consent to inferior labour conditions and lower remuneration than Russian workers, due to, among other things, lack of access to the regular labour market. Overall, there is only limited information about migrant workers in the Russian construction sector, as discussed below.

The Labour Code specifies that the State Labour Inspection is responsible for the “supervision and control over the observance of the Labour Code and other legal acts, containing labour regulations in all organizations on the territory of the Russian Federation”.¹⁹ The State Labour Inspection is mandated to look only into labour law violations and it can do so only in cases where there is a clearly established labour relation, i.e. where there is a written employment contract. In other cases, for example, when a person is ‘working’ without a contract or where the ‘employer’ is not registered, they cannot prove the existence of a labour relationship and have to refer the case to other law enforcement agencies.²⁰

In 2005 (the latest year for which data are available), the Federal Labour Inspection agencies carried out 252,000 inspections, including 26,900 inspections in the construction industry. In total, labour inspections noted almost two million violations of the labour legislation, out of which three fourths were connected with labour protection. In the first six months of 2006, 13,800 labour inspections took place (11.4 per cent of the total number of inspections) in the construction industry. These revealed 123,900 violations (12.5 per cent of all documented violations).²¹ Most violations concerned breaches of occupational safety rules,²² remuneration agreements (such as late payment of wages) and issues relating to employment contracts.²³

¹⁸ See: Federal State Statistics Service (Rosstat), <http://www.gks.ru/wages/oktober05/okt05.htm>, accessed on 21 May 2007. From September 2005, the minimum wage was 800 Roubles.

¹⁹ Labour Code, Chapter 57: State Supervision and Control over the Observance of the Labour Code and Other Legal Acts Containing Labour Regulations. <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>, accessed on 20 June 2007.

²⁰ In 2007, police conducted 139 human trafficking investigations, 35 of which were forced labour cases.

²¹ See: Федеральная служба по труду и занятости. Доклад о результатах работы в 2005 году по осуществлению государственного надзора и контроля, Moskva, 2006. (Federal Service for Labour and Employment, Report on results of the state oversight and control in 2005, Moscow 2006).

²² The main causes of injury and occupational related diseases in construction are depreciation of machinery, non-observation of safety rules, gross negligence and gross violations by technical staff of construction technologies. More than one fifth of all injuries happened to a worker who was under influence of alcohol.

²³ Among the most widespread violations of the Labour Code requirements related to a labour agreement are: absence of a written agreement, inclusion of provisions worsening the worker’s position as compared to the labour legislation in agreements (reduction of a wage for violation of the labour discipline, refusal of wage indexation to adjust to inflation, penalties, absence of substantial conditions in agreements (Article 57 of the Labour Code), establishing arbitrary probation periods when hiring and so on), change of conditions of a labour agreement without notification of a worker, illegal conclusion of civil-legal agreements, cancellation of labour agreements.

Also, violations of rights of women,²⁴ violations of labour rights of minors (up to 18 years of age),²⁵ and violations of rules for work and rest and recuperation²⁶ were widespread.

²⁴ For example, women were required to perform heavy work or work in hazardous conditions (105 000 women in 2005), pregnant women and mothers were fired, allowances for nursing of a child up to the age of 3 years child care benefits (a legal entitlement up to 3 years of age of child) were not paid, women were required to work overtime.

²⁵ Among these, some youth were paid less than minimum wage and required to work overtime. Four persons under 18 years of age died on a construction site in 2005.

²⁶ Among these: absence of internal rules on rest and recuperation, schedules of work, absence of annual paid leave days, requirement to work overtime.

MIGRATION IN THE RUSSIAN FEDERATION

MIGRATION DATA AND TRENDS²⁷

During the last years of the Soviet Union and immediately after its fall, immigration into Russia grew significantly. In early 1990s, many ethnic Russians from the newly independent republics decided to migrate to Russia, often fleeing ethno-political conflicts. The first wave of economic reforms in early 1990s, the liberalisation of the economy and the resulting growth of small and medium enterprises created a high demand for labour. Living conditions in the Russian Federation were often better than those in other former Soviet countries and many migrants came to seek employment, as well as better life for themselves and their families. These migrants often had strong social and cultural links with Russia following decades or even centuries of shared past in the Russian Empire and the Soviet Union. They very often spoke Russian and could count on the assistance of wide Diaspora networks that resided in Russia during Soviet times.

After 1994 there is a notable decrease in immigration and by 2004 the number of immigrants had decreased 20 times compared to 1994.²⁸ There are several potential reasons for such drop. By 1994, most of the post-Soviet conflicts had subsided and the social and economic conditions in the new states began to improve, reducing incentives to migrate. Also, by mid-1990s, almost all ethnic Russians from countries such as Moldova and the South Caucasus states had already left for Russia. The 1998 financial crisis in Russia and resulting economic contraction led to a decrease in demand for labour, which then led to a decrease in immigration. In late 1990s and especially after 2001 as the perceived threat of terrorism increased, the immigration legislation and measures toughened, leading to a further decrease of (regular) immigration.

The inflow of migrants offset up to a large degree the natural loss of Russian population, which between 1992 and 2004 equalled 10.4 million people. However, despite that fact that between 1990 and 2000, Russia experienced the second highest influx of immigrants compared to all other countries (13.3 million people),²⁹ the latest official data still suggest a

²⁷ It should be noted the collection of migration data in Russia has been subject to structural and policy impediments: After the break up of the Soviet Union, no adequate mechanism was in place to deal with unprecedented levels of migration. Subsequent difficulties in collecting reliable data included rapid legislative changes, proliferation of agencies, and underfunding. See Chudinovskikh, Olga: "Transformation of Migration Data Collection in Post-Soviet Countries: Case of the Russian Federation"; available at: epc2006.princeton.edu/download.aspx?submissionId=60472, accessed on 21 May 2007; and Olga Chudinovskikh: "Migration Statistics in the Russian Federation: Basic Problems and Solutions", presentation; available at: www.unece.org/stats/documents/2005/01/migration/5.e.ppt, accessed on 21 May 2007. Despite these difficulties, certain trends can be observed, which are described in this section.

²⁸ Rybakovsky, Leonid and Sergey Ryazantsev, "International Migration in the Russian Federation" (UN/POP/MIG/2005/11), United Nations Expert Group Meeting on International Migration and Development, New York, 6-8 July, 2005, p.5. Available online at http://www.un.org/esa/population/meetings/ittmigdev2005/P11_Rybakovsky&Ryazantsev.pdf, accessed 14 May 2007.

²⁹ Rybakovsky, Leonid and Sergey Ryazantsev, "International Migration in the Russian Federation" (UN/POP/MIG/2005/11), United Nations Expert Group Meeting on International Migration and Development, New York, 6-8 July, 2005, p.3. Available online at

net decrease of the Russian population, which means that Russia is facing a deepening demographic crisis.

RUSSIAN MIGRATION POLICY AND LEGISLATION

The influx of ethnic Russians and other migrants mainly from the former Soviet republics, which followed the break-up of the Soviet Union, confronted the Russian government with a multitude of issues. Initially, it designed ambitious plans of support for selected groups of these migrants who were mainly ethnic Russians or Russo-phone, but often they were not backed by sufficient financial and administrative resources to implement them.

In his May 2006 State-of-the-Nation address, former Russian President Vladimir Putin acknowledged the need for an effective migration policy as one of the ways to overcome the demographic crisis. According to him, Russia's priority remains to attract compatriots and Russian-speaking population from abroad and to encourage skilled migration to Russia.³⁰ However, this has not been sufficiently well expressed in the migration policy and Russian migration legislation, which have been in flux since the break-up of the Soviet Union.³¹

In early 1990s, Russian migration legislation was relatively liberal, providing avenues for legal immigration and acquisition of citizenship for many former Soviet Union citizens. Since mid-1990s, immigration legislation has been overhauled on several occasions, reflecting the tightening of the migration space and prevention of irregular migration. In 2002, a number of key legislative acts were amended and among other things, quotas for foreign workers introduced.

In 2003, there were only 380,000 legally employed migrants, in 2005 – 702,500.³² At the same time, conservative estimates of the number of clandestinely employed migrant workers range between 3 to 5 millions.³³

http://www.un.org/esa/population/meetings/ittmigdev2005/P11_Rybakovsky&Ryazantsev.pdf, accessed 14 May 2007.

³⁰ See <http://www.mosnews.com/column/2006/05/11/PutinAddress.shtml>, accessed on 21 May 2007. Most of the policy suggestions from the Russian researchers focus on discussing the migration potential of the persons that fit a “non-threatening” ethno-linguistic profile – ethnic Russians or other Slavic people, or Russophones from the former Soviet republics. These are termed “compatriots” and specific political and legislative measures are designed to attract them to Russia. For more details see: Ziegler, Charles, “Russian Diaspora in Central Asia: Russian Compatriots and Moscow's Foreign Policy”, *The Demokratizatsiya journal*, Winter 2006, p1-p.13, available online at http://findarticles.com/p/articles/mi_qa3996/is_200601/ai_n16537301/pg_1, accessed on 1 June 2007.

³¹ For example, at the state policy level, there are contradictions between the Conception of the Demographic Development of Russia (adopted in 2001) and the Conception of Migration Process Regulation in Russia (adopted in 2003) and later migration legislation. For more details see: Rybakovsky, Leonid and Sergey Ryazantsev, “International Migration in the Russian Federation” (UN/POP/MIG/2005/11), United Nations Expert Group Meeting on International Migration and Development, New York, 6-8 July, 2005, p 20. Available online at http://www.un.org/esa/population/meetings/ittmigdev2005/P11_Rybakovsky&Ryazantsev.pdf, accessed 14 May, 2007.

³² See: Monitoring of legal foreign labour migration for the period of 2004 to 2005; Collection. – Moskva, Federal Migration Service, 2006. Out of these, 84 per cent were men. The overwhelming majority (87 per cent) of migrants worked in Russia for between nine and twelve months. More than 91 per cent were employed by legal entities on the basis of an employment contract (87 per cent), the rest workers were sub-contractors. Less than a half (48 per cent) of all legal foreign workers came from CIS countries. The greatest number of legal foreign workers came from China (22.9 per cent), Ukraine (20.2 per cent), Turkey (10.5 per cent), Vietnam (7.9 per cent), Tajikistan (7.5 per cent) and Uzbekistan (7.2 per cent). About 40 per cent (272,000) were employed in the construction sector, 30 per cent (214,000) in trade, around 7 per cent in agriculture and forestry and another 7

More restrictive regulation coupled with the growing need for additional labour and an inconsistent application of the migration legislation and the labour law, created an ample space for the emergence of irregular migration and illegal employment and “pushed many into the shadow economy”.³⁴

In January 2007, several key pieces of legislation entered into force, which simplified administrative requirements for stay and employment.³⁵ For 2007, there was an unprecedented hike in the quota for foreign workers – 309,000 for countries whose citizens require visas to enter the Russian Federation and 6 million for migrants who do not require visa, from 380,000 in 2003.³⁶ In order to better reflect the labour market needs for migrant labour and in an attempt to curb the space for corruption, the amended Law on Legal Status of Foreign Citizens in the Russian Federation eased considerably some of the previous provisions regarding the application for work permits, while it increased fines for clandestine employment of migrants. To become eligible for a work permit, foreigners who have been staying legally in the Russian Federation at the time when the law entered into force had to leave Russia and to re-enter it, upon which they could register and apply for a work permit.³⁷

The law has eased the link between employers and employees for those labour migrants who do not require a visa for entry to the Russian Federation. They can now apply directly for a

per cent in manufacturing industry. Almost 5 per cent were employed in transport and communications. The highest increase by countries of origin incurred in Turkmenistan, Tajikistan, Kyrgyzstan and Uzbekistan. This is the consequence of difficult socio-economic conditions in these countries and also demographic growth. The number of official labour migrants from outside of the former Soviet Union, especially China, Vietnam and Turkey is growing steadily and data from early 2000s shows China providing around one fifth of all legal migrant workers.

³³ According to other estimates by researchers, the number is between 5 and 7 million; see Rybakovsky, Leonid and Sergey Ryazantsev, “International Migration in the Russian Federation” (UN/POP/MIG/2005/11), United Nations Expert Group Meeting on International Migration and Development, New York, 6-8 July, 2005, p.14. Available online at

http://www.un.org/esa/population/meetings/ittmigdev2005/P11_Rybakovsky&Ryazantsev.pdf, accessed 14 May, 2007. Tyuryukanova, Elena: Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings; ILO Geneva 2006, p xvii

³⁴ Andrienko, Yuri and Sergei Guriev: Understanding Migration in Russia: A policy note; New Economic School, CEFIR Policy Paper Series, No 23, November 2005, p 3 and 38; www.cefir.ru/download.php?id=216, accessed on 20 June 2007.

³⁵ Федеральный закон Российской Федерации от 18 июля 2006 г. N 110-ФЗ “О внесении изменений в Федеральный закон ‘О правовом положении иностранных граждан в Российской Федерации’ и о признании утратившими силу отдельных положений Федерального закона ‘О внесении изменений и дополнений в некоторые законодательные акты Российской Федерации’” (Federal Law Nr 110-F3 from 18 June 2006 on Amendments to the Federal Law on the Legal Status of Foreigners in the Russian Federation) and Федеральный закон Российской Федерации от 18 июля 2006 г. N 109-ФЗ О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации (Federal Law nr 109-F3 from 18 June 2006 on Migration Data on foreigners and stateless persons in the Russian Federation).

³⁶ The quota for 2007 was set by governmental decree (постановление правительства) RF Number 682 from 15 November 2006.

³⁷ Кодекс Российской Федерации об административных правонарушениях, (Administrative Violations Code,) Art 18.10 and 18.11 (Illegal employment of foreigners in the Russian Federation and Violations of immigration rules). Migrants, who have duly registered their places of residence, but who are employed illegally, may be fined in the amount of 20 to 50 minimum wages. In addition, they may be also deported or administratively expelled from the country. Employers who will engage irregular labour force may be fined from 20 to 40 times the minimum wage, officials from 40 to 50 times the minimum wage and legal personalities from 4000 to 5000 times the minimum wage. See also: “Трудовая миграция: взгляд изнутри”, (Labour Migration from inside), Newspaper Solidarnost, Nr 02, 17 January 2007.

work permit at the local office of the Federal Migration Service (FMS), rather than depending on their employer as before.³⁸ In practice, however, for some time the local branches of the FMS were not always aware of the new legislation and the modalities of its implementation, as reported by the Russian newspapers.³⁹ According to the FMS, the situation is now improving, as more instructions on legislation implementation are being prepared and distributed to the field offices.⁴⁰

The current legislation is clearly more liberal than the set of laws governing migration between 2002 and 2007. It does not, however, provide for an amnesty for irregular migrants who are currently in the country. As a consequence, irregular migrants currently in the Russian Federation cannot make use of the more liberal employment legislation, in other words they are not eligible for applying for a work permit. They remain in a legally precarious situation, which makes them vulnerable to exploitation. The latest developments however suggest that the FMS has in fact opened a venue for some of them to legalize their status. According to a FMS instruction, migrants without a regularized status, but with prospective employers who will certify that they will hire the worker, can apply for a “duplicate” migration card, thus regularize their migration status, after which they can apply for a work permit.

³⁸ To apply, a personal identity document (usually a passport), migration card (issued when a foreigner enters the Russian Federation) and receipt confirming the payment of all fees required by the state are needed. Currently, the fee is set at 1000 RUR. The FMS is then to decide within ten days. Employers are allowed to employ all holders of work permits and they need to inform about this FMS and executive bodies (local government bodies).

³⁹ “Трудовая миграция: взгляд изнутри”, (Labour Migration from inside), Newspaper Solidarnost, Nr 02 from 17 January 2007.

⁴⁰ Interview with Sergey I. Boldyrev, Deputy Head of the Division of the External Labour Migration, Federal Migration Service, Moscow, 4 July 2007.

MIGRANTS IN THE RUSSIAN CONSTRUCTION SECTOR

The limited research on labour migration in Russia conducted so far suggests that the highest share, about 40 or more per cent, of all migrants are engaged in the construction sector,⁴¹ which is attractive for migrant labourers because of its strong demand for both skilled and unskilled labourers, the pronounced need for temporary, seasonal labour and because many Russian citizens are not ready to perform the difficult and dirty work for the remuneration offered. To gain a better understanding of what construction companies think of migrant labour, the researchers have addressed 72 of them from five Russian regions and a group of experts.⁴²

Nine out of ten of the company heads interviewed considered labour shortages to be a problem and more than a third of all respondents thought that the shortages were acute. Half of all interviewed experts agreed that labour shortages are significant.

Chart 1. Is labour shortage a problem in your region? (n=72)

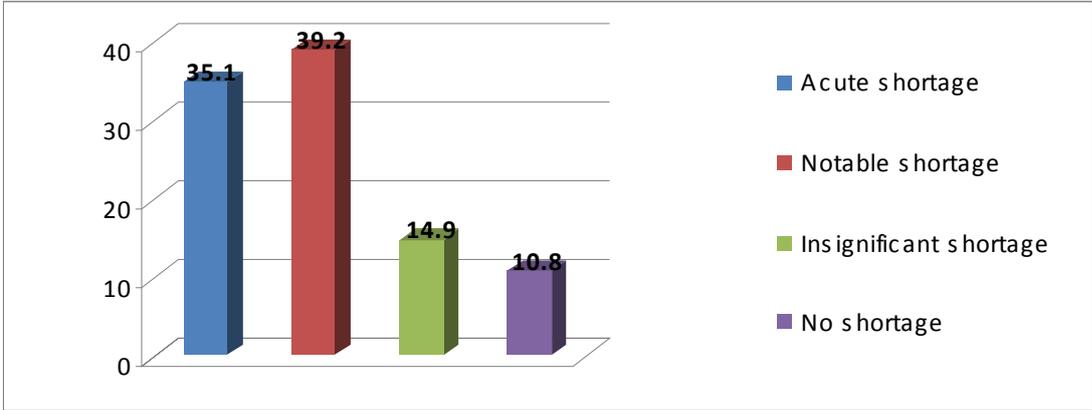
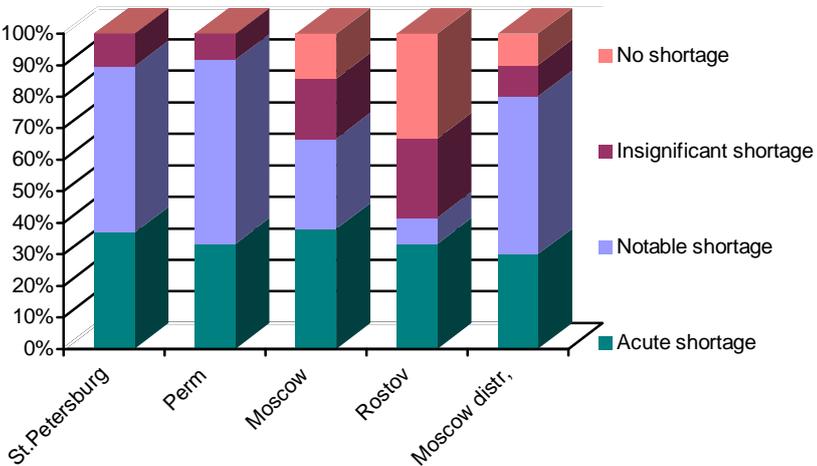


Chart 2 below provides a regional breakdown. It shows that the labour shortage affects St. Petersburg, Perm and Moscow district more than the other regions. The greatest shortage was identified in (receding order): workers in basic technological areas, specialists in basic technological cycles, qualified workers for modern machinery, repairmen and unskilled workers.

⁴¹ Tyuryukanova, Elena: Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings; ILO Geneva 2006, p 51. A research on migration from Moldova suggested that 60 per cent of Moldovan migrants in Russia work in the construction sector, almost as many as from Armenia, research on Tajikistan suggested that more than half of Tajik migrants are engaged in construction. See: Minasyan, Anna and Blanka Hancilova: Labour Migration from Armenia in 2002 – 2005: A sociological Survey of Households, OSCE and Advanced Social Technologies, 2005, p 42; Migration and Remittances in Moldova, IOM Moldova 2004, p 15; available at: tcc.iom.int/iom/images/uploads/IOM-%20Migration%20and%20Remittances%20in%20Moldova,%202005_1125648013.pdf, accessed on 21 May 2007; Olimova, Saodat and Igor Bosc: “Labour Migration from Tajikistan”, IOM Geneva, July 2003, p 31; available at: www.iom.int/documents/publication/en/tajik_study_oct_03.pdf, accessed on 21 May 2007

⁴² For more details on the methodology of the survey, refer please to section Introduction and Methodology.

Chart 2. Distribution of answers by pilot regions (n=72)



Respondents from the construction companies considered that internal (from other regions of Russia) and foreign migrants can fill the labour shortage and that domestic migrants are more likely to fill qualified positions in basic technological areas and foreign migrants are mostly slated as unskilled workers. Three out of four representatives of construction companies considered that there is either a very strong (35 per cent) or strong (40 per cent) need to attract foreign workers.

The opinion of experts was almost evenly split between those who believe that there is a need to attract foreign workers and those who did not. Amongst the reasons for employing foreign workers, respondents from construction companies mentioned the lack of a local cadre with relevant qualifications, and the fact that foreign workers were willing to work for lower wages and what employers considered to be an unjustifiably high level of expectations with regard to salaries and working conditions demanded by local workers.

Among the companies surveyed in the framework of this project, three out of five reported that they employed foreign workers, who accounted for between 15 per cent and 50 per cent of their total workforces. 26 per cent indicated that the share of foreign workers among all construction workers in their region is less than ten per cent; 42 per cent believed that it is between 10 and 30 per cent and 26 per cent believed it is more than 30 per cent.⁴³ Interestingly, when asked what is the share of clandestinely employed construction workers among all construction workers in their region, 32 per cent said that it is less than 10 per cent; 40 per cent indicated it is between 10 and 30 per cent and 22 per cent said the share of clandestinely employed construction workers is more than 30 per cent.

⁴³ The remaining ones did not provide any answer.

Chart 3. What share of foreign workers is employed in construction in your region? (As a share of the total number of people employed in that sector) (n=72)

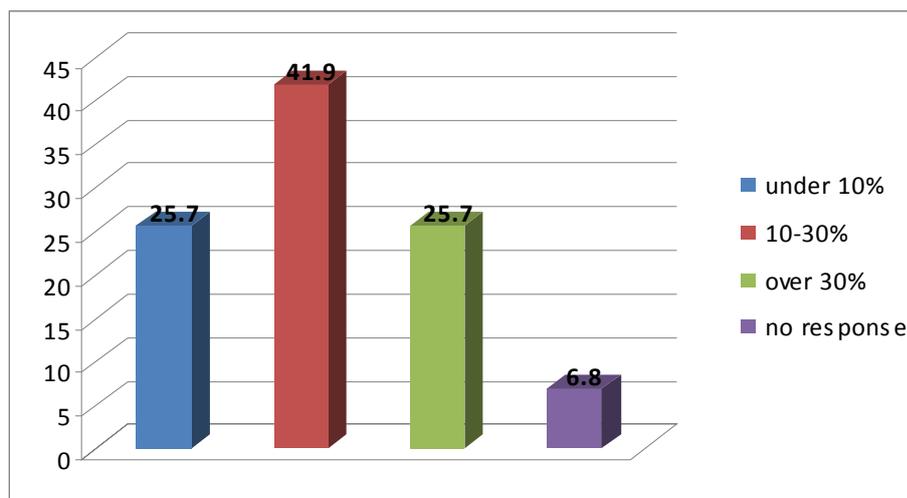
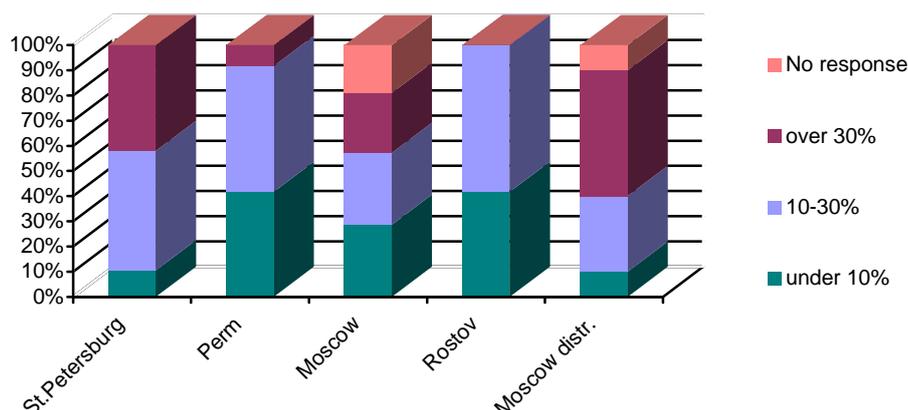


Chart 4. Distribution of answers by pilot regions (n=72)



The ratio of foreign to domestic employees in construction is perceived to be the highest in St. Petersburg and the Moscow District, which generally corresponds to the official figures on foreign workers:

Moscow – 239,500 workers, 56,000 workers (23.4 per cent) out of them were employed in construction;

Moscow District (Podmoskoviye) – 51,500 workers; 22,400 workers (43.4 per cent) out of them were employed in construction;

St. Petersburg – 23,500 workers, 13,000 workers (55.4 per cent) out of them were employed in construction;

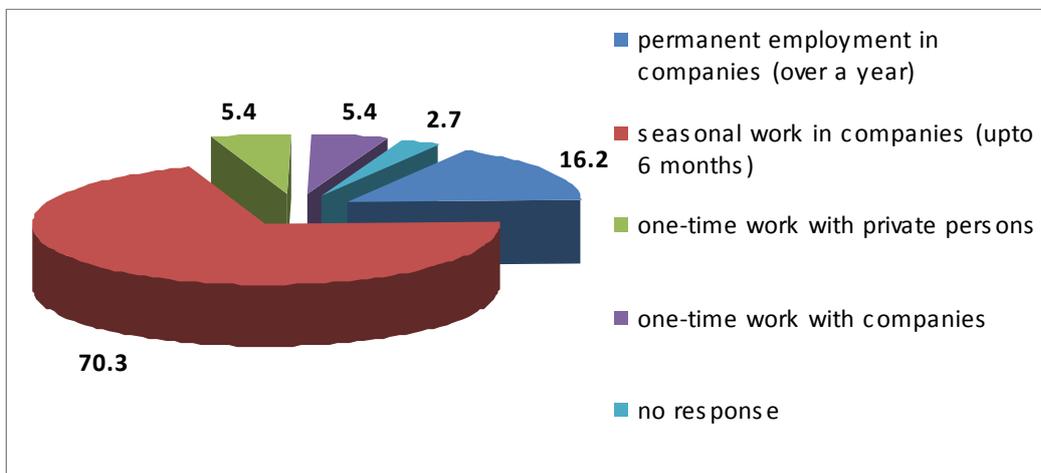
Rostov Region – 3,000 workers, 1,300 workers (42.2 per cent) out of them were employed in construction;

Perm Region – 6,600 workers, 2,300 workers (34.8 per cent) out of them were employed in construction.

There is no consensus amongst the surveyed companies whether there is a link between the size of a company and its engagement of foreign workers. Around half of respondents see no link, a third of respondents consider that medium-size companies are more likely to employ foreigners and around 25 per cent consider that the bigger the company is, the more likely it is to employ foreigners.

70 per cent of the companies surveyed considered that foreign migrants are usually employed seasonally (for less than 6 months), almost always as low-skilled (in 73 per cent of cases) or unskilled (in 26 per cent of cases) labourers. 16 per cent of the respondents consider that foreign workers are employed permanently (for a year or longer).

Chart 5. What kind of jobs do you think foreign workers do? (n=72)

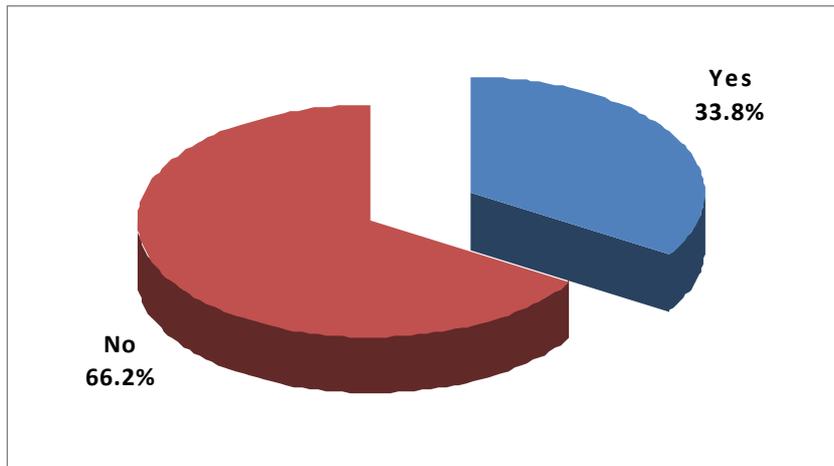


Regarding recruitment of foreign workers, 56 per cent of the companies surveyed indicated that more than half of migrant workers are recruited through informal channels, such as informal intermediaries or after they have directly applied for a job at the construction site. 30 per cent said that workers contact the human resources departments of the companies and indicating their wish to be considered. Only 11 per cent of companies use formalised private or state employment agencies to hire workers.

Two-thirds of the surveyed representatives of the construction business were not satisfied with the existing system of legalising/registering foreign workers. The length of the registration process (51 per cent), the high number of documents which have to be submitted by the company to the state (46 per cent), corruption (“it is impossible to employ foreigners without bribing someone”) (32 per cent) and the limitation imposed by quotas (23 per cent) were mentioned as the main shortcomings.⁴⁴

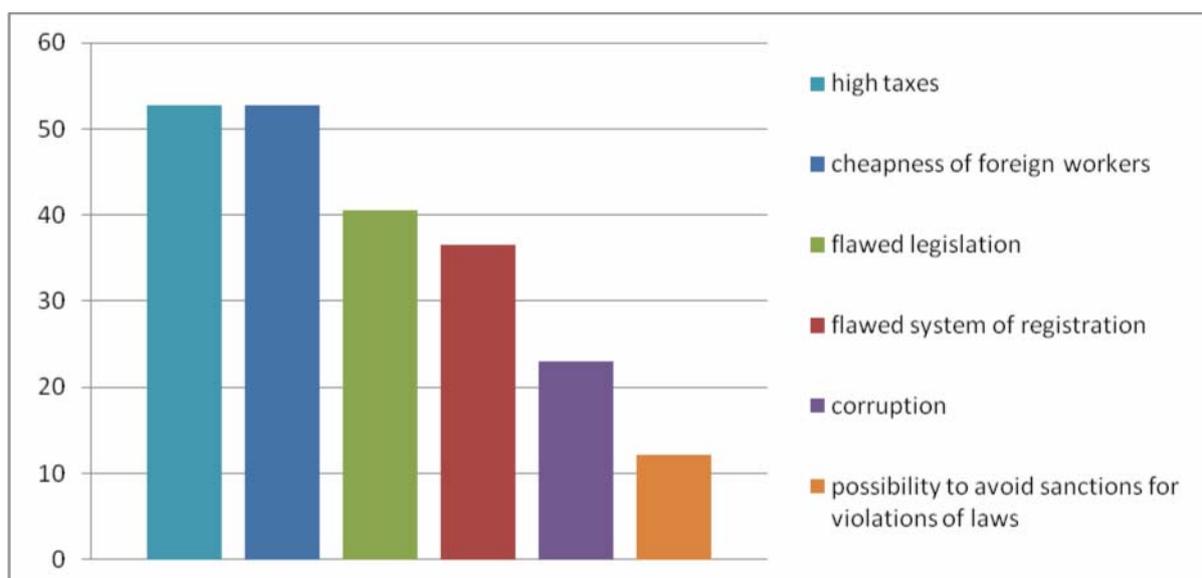
⁴⁴ For details see section on migration and labour legislation.

Chart 6. Do you consider the current⁴⁵ system of officially registering foreign workers acceptable? (n=72)



The experts' opinion was almost evenly split between two groups based on their professional background. Out of 9 experts representing state agencies who answered this question, 8 were content with the system of registration and issuance of work permits. However, out of 8 respondents from trade unions, 7 were discontent and noted the length of the registration procedure and the high number of documents that needs to be submitted as the main shortcomings of the existing system. Among the factors inducing construction companies to violate the law, high taxes and the relative cheapness of foreign workers was mentioned by 53 per cent or respondents, followed flawed legislation (41 per cent) and by flawed system of registration/issuance of work permits (37 per cent). The next reasons were corruption (23 per cent) and the possibility to avoid sanctions for violations of laws (12 per cent). The experts were mainly in accord with these opinions.

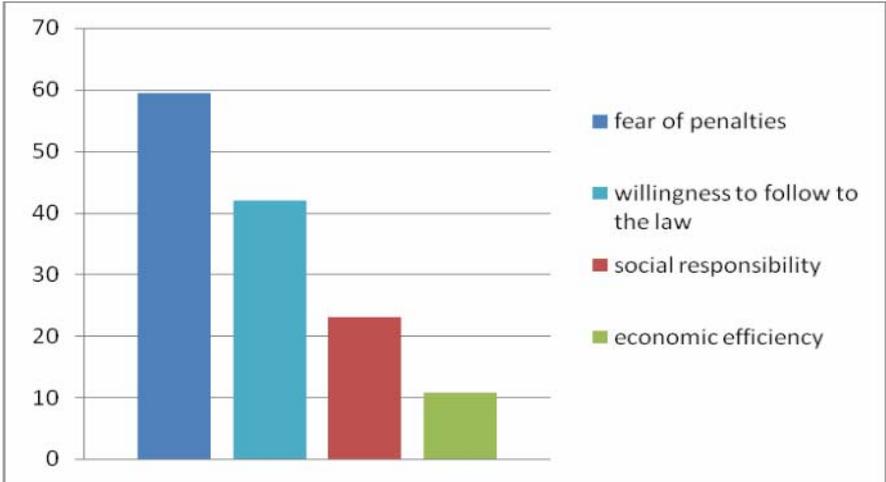
Chart 7. What are the factors inducing construction companies to violate the law? (n=72)



⁴⁵ The research was conducted prior to the introduction of the new migration law in 2006.

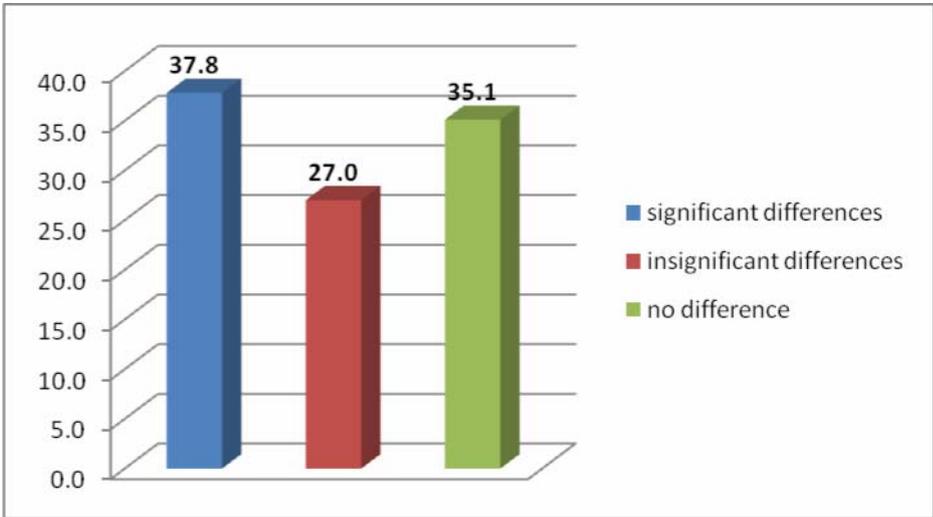
In discussing the factors inducing construction companies to follow the legislation most respondents from companies noted the fear of penalties (60 per cent), followed by willingness to follow to the law (42 per cent) and social responsibility (23 per cent). However, only 8 out of 72 construction companies’ representatives (11 per cent) considered that law-obedience is effective from the economic point of view.

Chart 8. What are the factors inducing construction companies to follow the legislation? (n=72)



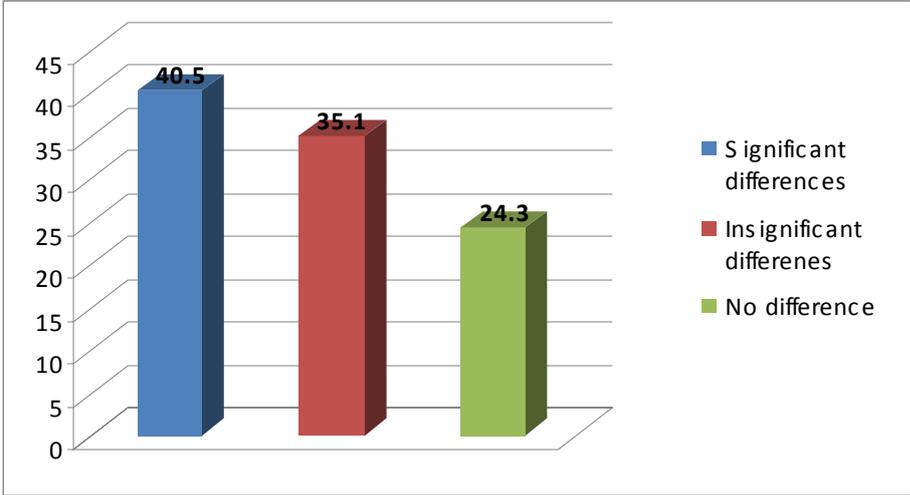
Most companies’ representatives noted significant differences in status of the local and foreign workers when it comes to the labour rights. Three-fourths of the surveyed think the foreign workers are having worse conditions of labour, two fifths consider these differences significant. This inequality is most visible in areas of access to leave, availability of paid sick leave and working hours. Some 40per cent of respondents considered that the pay is significantly different for local and foreign employees with the same qualifications, but almost as many believed that there is no difference.

Chart 9. Is there a difference in pay for local and foreign employees with the same qualifications in the same company? (n=72)



Approximately two-thirds of experts also consider that foreign workers' access to obligatory and additional social and health insurance is significantly worse than that of local workers.

Chart 10. Do you think that the working conditions of foreign workers differ from those of the locals in the same company? (n=72)



According to some data, less than 30 per cent of migrants have a work permit and not more than one-half of migrants are registered to a place of residence. At the present time, there are cases when an employer registers for appearance 10 per cent to 15 per cent of the total number of labour migrants employed in construction.

A 2003 IOM research on Tajik migration provides some information about employment practices of Russian construction employers. “Employers often fictitiously employ Russian citizens for the full working week, using such “dead souls” in the reporting and during building site inspections, when in fact they have hired Tajik construction brigades. It is difficult enough to reveal clandestine workers on a construction site. Nobody will check the documents of all the workers on the site, inspectors judge according to the number, and if the checking is meticulous, the employer agrees to a bribe that is insignificant compared to money saved by using unregistered foreign workers.” It further confirms that irregular Tajik workers are frequently paid less than agreed or not all.”⁴⁶

⁴⁶ Olimova, Saodat and Igor Bosc: “Labour Migration from Tajikistan”, IOM and Scientific Center Sharq, July 2003, p 43. See also the following ILO reports that analyzed the situation of Tajik migrant workers in the Russian construction industry: Социальный статус работников из Таджикистана в строительной отрасли в Москве и Московской области, Женева, Февраль 2006

IRREGULAR MIGRATION, INFORMAL ECONOMY AND EXPLOITATIVE LABOUR PRACTICES

Experts believe that in 2006, there were about 750,000 (about 1 per cent of workforce) foreigners legally employed in the Russian Federation and that the share of clandestinely employed foreigners, most often with unregulated migration status, lays between 5 and 7 per cent (3.75 and 5.25 millions) of the total workforce, which amounted to 74.6 million persons in 2006.⁴⁷ In summer 2006, the Head of the Federal Migration Service, Konstantin Romodanovskiy, named two main reasons for the high numbers of irregular labour migrants: first, difficulties in acquiring work permits and second, incentives for employers to use cheap and “right-less” labour.⁴⁸ The dependence of clandestine migrant labour is particularly high in sectors such as such as construction, commerce, catering, car-maintenance services, tourism and entertainment.⁴⁹

The characteristics, work and life conditions of clandestinely employed migrants in the Russian Federation have not been yet studied in necessary scope and depth. There are many reasons for this – most importantly, irregular migrants are a difficult group to study because they are mobile and prefer to avoid official authorities out of fear of legal repercussions because of their irregular migration status. Consequently, there is no uniform framework for data collection and analysis and the group cannot be mapped by regular sociological methods such as large-scale quantitative surveys. Often the only source of information are smaller, qualitative studies, which provide useful information about those irregular migrants who participated in the study but these results cannot be generalized to a large irregular migrant population.

In the Russian Federation context only a handful studies shed light on the characteristics of irregular migrants. Most importantly a 2003 ILO study on forced labour looked into the situation of 442 migrants in three Russian Federation regions. Several other studies look into the migration of groups (Armenians, Moldovans and Tajiks).⁵⁰ All studies clearly show that the absence of a regularized migration status and the resulting fear of detention and expulsion if found by the state authorities, makes irregular migrants extremely unlikely to approach official bodies (police, inspectorates, or even the trade unions) to seek redress in cases of violations of their rights. This strongly contributes to migrants’ exploitation.

The 2003 ILO sponsored research, suggests that three out of four migrant workers engage in clandestine labour relations, without a work permit and that migrants do not trust the Russian

⁴⁷ The calculation is based on expert estimates and data from Rosstat.

⁴⁸ See: www.rg.ru/2006/07/07/migranti.html, accessed on 17 May 2007. Most Russian official sources quote figures between 20 and 25 per cent see for example: <http://newsfromrussia.com/main/2003/09/16/49990.html>, accessed on 27 May 2007, for data for 2003 and <http://www.themoscowtimes.com/stories/2005/04/27/002.html>, accessed on 27 May 2007, for 2004 data. In 2005, the Russian police estimated the shadow economy to account for 40 per cent of GDP, see <http://www.highbeam.com/doc/1P1-113796657.html>, accessed on 27 May 2007.]

⁴⁹ Human Trafficking in the Russian Federation: Inventory and Analysis of the current situation and responses, 2006, UNICEF, ILO, CIDA, March 2006, p 35 and 55.

⁵⁰ Tyuryukanova, Elena: Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings; ILO Geneva 2006; Minasyan, Anna and Blanka Hancilova: Labour Migration from Armenia in 2002 – 2005: A sociological Survey of Households, OSCE and Advanced Social Technologies, 2005, p 42; Migration and Remittances in Moldova, IOM Moldova 2004, p 15; Olimova, Saodat and Igor Bosc: “Labour Migration from Tajikistan”, IOM Geneva, July 2003, p 31; ILO: “Социальный статус работников из Таджикистана в строительной отрасли в Москве и Московской области”, Женева, Февраль 2006

authorities and try to avoid any contact with them.⁵¹ The fear of police increases the likelihood of exploitation inasmuch it limits the migrants freedom of movement and choice. Irrespective of whether a migrant is properly registered or not an encounter with the police is likely to mean that the migrant has to pay some sort of fine or a bribe or risk being detained or even deported.

According to the ILO 2003 survey, most migrants had to work extra-time without pay (62 per cent), their wages were not paid on time (39 per cent), they had to perform work to which they have not given their consent (38 per cent), they had to work without pay (24 per cent), were sexually exploited (22 per cent of polled women), and they were subjected to psychological violence, threats, blackmail (21 per cent) and restrictions of freedom of movement (20 per cent). In more than 20 per cent of cases the passports of migrants were kept by the employer, which is an infringement of law in itself and an element of coercion.⁵² The ILO study mentions several specific cases of exploitative labour practices and forced labour in the construction sector. The most widespread forms of coercion in the construction sector are involuntary work (43per cent of forced labour cases), non-payment of wages (24 per cent), limited freedom of movement (22 per cent) and debt bondage (12 per cent).⁵³

To conclude, the Russian labour market is especially interesting for (and interested in) migrants from the former Soviet republics, who speak Russian and know Russian culture. Irregular migrants usually come for shorter periods and they are interested in seasonal jobs, which can pay more than regular, taxed jobs and provide the opportunity to work longer hours and thus to earn more in a given time. At the same time, many these seasonal jobs are of low-status and in the shadow economy.

⁵¹ Tyuryukanova, Elena: *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings*; ILO Geneva 2006, pp xix and 62 -65; Olimova, Saodat and Igor Bosc: "Labour Migration from Tajikistan", IOM Geneva, July 2003, p 45; available at: www.iom.int/documents/publication/en/tajik_study_oct_03.pdf, accessed on 21 May 2007.

⁵² Tyuryukanova, Elena: *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings*; ILO Geneva 2006, p 76.

⁵³ Tyuryukanova, Elena: *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings*; ILO Geneva 2006, p 45, 46, and 77-78.

ACCESS TO JUSTICE FOR MIGRANT WORKERS

Legal redress for the worst forms of exploitation, such as forced labour, is possible under criminal law and under civil law. Legal redress (compensation for damages) for less extreme forms of exploitation could, at least in theory, come under civil and/or labour law. Under the Palermo protocol against Trafficking in Human Beings, the Russian Federation “shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”(Art. 6(6)).⁵⁴ This provision has not yet been implemented in practice.

The Labour Code prohibits forced labour, which is defined as the “performance of work under duress by menaces of applying some penalty (violent act)”. It also includes “disregard of set dates for payment of wages as well as their incomplete payment; the employer requiring the employee to perform his/her work duties when the employee is not provided with group or individual protection means or the work is hazardous to the employee's life or health.”⁵⁵ This definition is wider than the international definition of forced labour contained in the ILO Convention No. 29 that defines forced labour as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2). However, the Russian legislation does not specify in the necessary detail “the forms of duress” which makes the application of this article problematic.

As mentioned above, labour inspection should play an important role in identifying exploitative labour practices. Yet, from the point of view of a clandestinely employed irregular migrant, contacts with labour inspectors are problematic. Labour inspectors are looking mainly at the actions of employers, checking whether these are in conformity with the labour legislation. Without adequate training and sensitisation, they are not likely to assist clandestine workers and advise them on their rights. Furthermore, it is hardly possible to prove the existence of a labour relationship in an absence of a written contract. Court practice suggests that legal redress under labour law is open only to cases where a written labour contract has been duly registered with the local authorities in order to pay social insurance (e.g. pension, unemployment insurance) and in the service record book (the main document intended for recording of labour activities and seniority of an employee).

However, only documented migrants, who possess a work permit, can enter a legal employment relationship. This means that irregular migrants cannot initiate a claim, because they cannot (due to the lack of a regular migration status) apply for a work permit and register to pay social benefits. Similarly, anybody employed in the shadow economy cannot make a claim, because they do not have a written, registered contract.

⁵⁴ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, UN GA Res. 55/25. The Palermo Protocol Article 3 (a) defines ‘Trafficking in persons’ as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.” ‘Exploitation’ shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

⁵⁵ Labour Code, Art 4. <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>, accessed on 20 June 2007.

Labour migrants could also bring labour disputes to the Justices of Peace, a special layer of courts, as specified by the Civil Procedural Code of Russia (Article 23) and the Law on Justices of the Peace (Article 3). But it is likely that the Justices of Peace would also require a duly registered contract as a proof of employment relationship.

Though there is a possibility to claim compensation under the civil law, either as a separate claim or in connection with an ongoing criminal case under the trafficking statute, so far no cases have been recorded where a victim of trafficking or exploitative labour practices brought a claim to the court. The reasons are many – starting from lack of knowledge on part of the victims about this possibility, the need to prove a causal link between the act of the exploiter/trafficker and its consequences to general lack of trust of victims to the court system and their wish to move beyond the traumatizing experience.⁵⁶

Since formal legal redress is hardly available, other mechanisms such as the mediation of trade unions and non-governmental organizations have developed. Usually the trade union or NGO call the employer on behalf of the worker and request payment of due wages. If this is not enough, they pay a visit to the employer. According to them, most cases can be resolved, at least partially, since the employers are often afraid of contact with law enforcement agencies.⁵⁷ Although these mechanisms are more effective than formal legal redress, they are problematic because they bring the settlement of often-serious disputes outside of the scope of the influence of the state.

⁵⁶ Interview with Elena Tyuryukanova, Moscow, 5 July 2007.

⁵⁷ Фонд Таджикистан: Содержательный отчёт за период с января по май 2008 г., Москва 2008.

SELF-REGULATION AS MEANS TO IMPROVE LABOUR PRACTICES IN THE RUSSIAN CONSTRUCTION SECTOR

INTERNATIONAL GOOD PRACTICE EXAMPLES ON CORPORATE RESPONSIBILITY

Over the last decade, there have been major developments in many sectors with regard to the implementation of labour standards through the adoption of voluntary codes of conduct. In the 1970s a number of institutional declarations and codes of conduct were adopted to try to regulate the activities of multinational enterprises when operating outside their home country. The ILO Multinational Enterprise Declaration and the OECD Guidelines for Multinational Enterprises are well known references. Both documents contain specific provisions in relation to labour standards and enforcement mechanisms. The thrust of these documents, including the revisions to the OECD Guidelines, which were effected in 2000, were to ensure something more than simple compliance with ILO core standards, looking to introduce good industrial relations systems and consultation with workers alongside a floor of minimum standards.⁵⁸

From the 1990s, however, private initiatives gained momentum a new type of codes came into existence, which were specifically aimed at heading off criticism about the way in which private sector companies benefited from the advantages of globalization by allegedly using cheap labour across borders. There were a number of notable high-profile cases in the early 1990s, for example the sports clothing and shoe giant Nike found itself having to defend the working practices of suppliers in Vietnam alleged to have engaged in instances of labour rights violations.

The development of codes of conduct on labour issues from 1990s was initially characterized by a number of international companies each adopting their own code of conduct. Typically, codes either directly referenced certain ILO standards, or summarised the standards alongside requirements to comply with national law. Of crucial importance was the adoption of Declaration on Fundamental Principles and Rights at Work and its Follow-up by the International Labour Conference in 1998. Codes commonly refer to fundamental principles, hours of work, wages as well as occupational safety and health. Their adoption was often spearheaded by the perception that national law and, in particular, its enforcement is sometimes found lacking when compared to the international obligations adopted by the country.

Multi-stakeholder Initiatives

Alongside with individual companies' codes of conduct, many multi-stakeholder groups, comprised of companies, trade unions and non governmental organizations, were formed to adopt a specific codes of conduct or work together on the principles for implementation of codes of conduct. Among the most important of these are the Ethical Trading Initiative in the

⁵⁸ OECD guidelines:

[http://www.oilis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5/\\$FILE/JT00115758.PDF](http://www.oilis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5/$FILE/JT00115758.PDF), accessed on 27 June 2007. Download of ILO Declaration: <http://www.ilo.org/public/english/employment/multi/tripartite/index.htm>

United Kingdom (ETI), the Fair Labour Association in the USA (FLA) and Social Accountability International (SAI).⁵⁹

The Ethical Trading Initiative in the United Kingdom (ETI)

The Ethical Trading Initiative, established in 1998, comprises currently 39 companies (predominantly in the food and garment retail and supply sectors), NGOs, and trade unions including the International Confederation of Free Trade Unions, the British Trades Unions Congress and global union federations including the International Union of Food Workers. All members commit to the implementation of an agreed baseline code of conduct, which was negotiated between the parties. The issues covered in the ETI code are prohibition of forced labour, child labour, discrimination, harsh or inhumane treatment and excessive working hours; freedom of association and collective bargaining, safe working conditions, living wages and provision of regular employment.

The aim of the ETI is not to provide auditing or certification of workplaces, but is rather to provide a forum within which member companies, in partnership with Trade Unions and NGOs, can learn about the best ways to bring about continuous improvement of labour standards within their global supply chains. The ETI also runs training courses for its members, and has carried out a number of pilot projects, ranging from country level initiatives through to process driven initiatives such as risk assessment. All ETI members are required to report annually to the ETI on their efforts to implement the code in accordance with a detailed reporting framework.

The Fair Labour Association in the USA (FLA)

The FLA is a US-based voluntary membership organisation. It represents a coalition of companies in the garment/apparel sector, universities and NGOs. There are currently 12 large US companies participating in the FLA, who commit to a programme of workplace standards implementation, monitoring and remediation in order to bring their manufacturing sites into compliance with the FLA Code of Conduct. Colleges and universities are able to affiliate to the FLA to promote fair and decent conditions in the production of goods bearing their logo; affiliation means that they require their licensees to participate in the FLA licensee program. While trade unions are not directly represented in the FLA, human and labour rights advocates and organisations do play an important role. The NGO Advisory Council of the FLA facilitates the involvement of local and international NGOs to help ensure that code implementation ultimately results in worker empowerment and the meaningful protection of workers' rights. The FLA Workplace Code of Conduct is based on labour standards defined by the ILO.

All companies that adopt the Code of Conduct undertake to comply with the FLA Code principles in all factories that manufacture its products as well as with all applicable laws of the country of manufacture, and agree to apply the higher standard in cases of differences or conflicts. Member companies are also expected to require their licensees and contractors and, in the case of a retailer, their suppliers to comply with applicable local laws and with the Code and to apply the higher standard in cases of differences or conflicts. These commitments require designating a person or division in the company responsible for promoting Code compliance at all levels of the supply chain. Company compliance personnel must be trained

⁵⁹ For a list of multi-stakeholder initiatives, refer to: http://www.corporate-accountability.org/eng/actors/multistakeholder_initiatives/, accessed on 25 June 2007.

and they in turn need to ensure that Code standards are recognized as a basis for continuing business relationships with suppliers and contractors.

The FLA accredits monitors to conduct independent external monitoring of facilities used by companies participating in the FLA. The FLA monitoring methodology requires monitors to demonstrate independence, impartiality and a high degree of rigor and thoroughness in assessing compliance with the FLA Code of Conduct. In the interests of working with a range of potential monitors, the FLA has wide-ranging accreditation criteria. At the time of writing, some 18 organisations, a mix of private companies and NGOs, had been accredited. Companies are required to allow independent monitors to visit supplying factories on an unannounced basis. The FLA also carries out some verification and review of both member companies' procedures, systems and monitoring reports.

Social Accountability International (SAI)

Social Accountability International (SAI) is a US-based, non-profit organisation concerned with the development, implementation and oversight of voluntary social accountability standards for companies. In 1996, SAI convened an international multi-stakeholder Advisory Board of experts from trade unions, businesses and NGOs to develop Social Accountability 8000 (SA8000). SA 8000 is a voluntary workplace standard, with an associated verification system, developed and monitored by SAI. Unlike the ETI and FLA schemes, the SA 8000 independent verification method draws many elements from the quality management system certification used in the ISO programmes, and includes a management component as part of the standards' provisions.

The SA 8000 standard is currently in use by businesses and some public bodies around the world and is broadly recognised by trade unions and NGOs as a strong workplace standard. It is based on international workplace standards derived from ILO conventions and the UN Universal Declaration of Human Rights and the Convention on the Rights of the Child.

For companies implementing SA 8000, there are two options: certification to SA8000 or involvement in the Corporate Involvement Program (CIP). Companies that operate *manufacturing and production* facilities can have individual facilities certified to SA 8000 through audits by one of the accredited certification bodies. Since the SA8000 system became fully operational in 1998, there are certified facilities in 30 countries on five continents and across 22 industries. Companies that focus on *retail* or that combine manufacturing and retail can join the SA8000 Corporate Involvement Program, a two-level program that entails company evaluation of SA8000, implementing the standard over some time, and public reporting on the implementation progress.⁶⁰

To certify conformance to SA8000, every facility seeking certification must be audited. Assessment of compliance to the SA8000 Standard is available only through third party, SAI-accredited, independent organizations ('Certification Bodies'). Certification Bodies obtain accreditation from SAI who conduct an impartial assessment of competence and grants the

⁶⁰ To certify conformance to SA8000, every facility seeking certification must be audited. Assessment of compliance to the SA8000 Standard is available only through third party, SAI-accredited, independent organizations ('Certification Bodies'). Certification Bodies obtain accreditation from SAI who conduct an impartial assessment of competence and grants the ability to issue SA8000 certifications only to those organizations that qualify. These accredited Certification Bodies are required to follow SAI procedures and are subject to SAI's periodic review of their work in the field. There are currently 13 organisations that have the status of Certification Bodies, mostly professional services private sector companies in the field of inspection services and quality assurance.

ability to issue SA8000 certifications only to those organizations that qualify. These accredited Certification Bodies are required to follow SAI procedures and are subject to SAI's periodic review of their work in the field. There are currently 13 organisations that have the status of Certification Bodies, mostly professional services and private sector companies in the field of inspection services and quality assurance.

Framework agreements

Fifty companies operating in different industries have signed international framework agreements with five global union federations. The first one was signed by the French food multinational Danone in 1988, then the hotel chain ACCOR signed the second in 1995. Since 2000, the number of agreements signed per year has accelerated to reach 50 by the end of 2006.⁶¹ The framework agreements commit both parties to working towards implementing international labour standards throughout the relevant multinational company's value chain and, also, specifically for the respect of trade union rights.

In the construction sector, Skanska, Hochtief, Impregilo, Ballast Nedam, Veidekke, Royal BAM Groep have signed framework agreements with Building and Wood Workers International (BWI), a global trade union federation. These framework agreements reiterate the companies' commitment to implement core ILO standards and, in addition that the company should also agree to offer decent wages and working conditions as well as to provide a safe and healthy working environment. Framework agreements are a starting point and floor for further negotiations between the local affiliates of the Global Union Federations and the local operations of the Multinational Enterprises. In many cases they contain a complaint and/or monitoring system and cover also suppliers and subcontractors. The monitoring systems in framework agreements are based on an active involvement of workers and provisions for annual meetings between the company and the trade union to review the general application of the agreement.

To conclude, there are no straightforward recipes how to improve implementation of core labour standards. Experience from around the world suggests that an effective and adequately resourced governmental labour inspection system, complemented by voluntary industry-led measures, is the best way to enforce labour standards. Given that labour inspection systems are often weak or not always in place, companies that are committed to good practice codes have had to rely on their own, company-driven audits and monitoring reports. While these voluntary initiatives have scored some successes, a growing body of thinking, including a 2006 report from the Ethical Trading Initiative (ETI), is emphasising limitations of audit-based programmes for improving labour standards across the supply chain. The focus of the criticism is lack of professionalism of many auditors, as well as fraud related to obtaining a positive audit report.⁶² There are many voices, especially from civil society groups, who argue

⁶¹ Other signatories include Swedish furniture company IKEA; the banana company Chiquita; the German pencils producers Faber-Castell and Staedler; oil companies in Norway (Statoil), Italy (ENI) and Russia (Lukoil); car producers in Germany and France like Volkswagen, Daimler-Chrysler, Renault and Peugeot-Citroën; Spanish and French electricity producers Endesa and EDF; telecom companies in Spain (Telefonica) and Greece (OTE), and retailers in France (Carrefour) and Sweden (H&M), Dutch Construction company Royal Volker Wessels Stevin NV (VolkerWessels) and the Building and Wood Workers International (BWI).

⁶² Getting smarter at auditing: Tackling the growing crisis in ethical trade auditing; ETI, November 2006, <http://www.ethicaltrade.org/Z/lib/2006/11/smart-audit/index.shtml>, accessed on 25 June 2007.

“that non-statutory rules are not adequately enforced and effectively block more traditional statutory approaches to enforcing social and environmental standards of behavior”.⁶³

RELEVANT FACTORS FOR THE CONSTRUCTION INDUSTRY IN RUSSIA

There are a number of themes that emerge from the development of multi-stakeholder codes of conduct in the food and apparel sector and framework agreements in the construction business, which are relevant for the construction industry in Russia.

Emphasis on migrant workers: Some of the initiatives that have developed around codes of conduct have had a specific emphasis on migrant workers. The most prominent of these is the the code of conduct for labour providers in the UK agriculture sector that preceded the introduction of a licencing scheme. Since employers’ had a central role to play in this process, there was high acceptance of this new licensing scheme. However, the scheme is still based on using the power of commercial relations to press for enforcement of labour standards, rather than traditional labour law sanction mechanisms. This is particularly relevant given the difficulties in using such traditional methods in sectors dominated by migrant workers.

Consensus: Those codes, which have had the most impact and are developing in the most promising ways, are those that are based on consensus at their outset and are also subject to a process of continual review and improvement. In instances where companies, or industries, have sought to develop an isolated, independent standard without the wider input and engagement of other stakeholders - particularly the representatives of workers - there have been few if any successful cases in advancing compliance with international labour standards. This is particularly the case in relation to the development and review of effective and credible forms of implementation, auditing and monitoring methodologies.

Monitoring mechanisms and review of company procedure: Both ETI and FLA have a procedure in place whereby companies are required to report annually on the implementation of the code within their supply chain. The reports are expected to identify major non-compliances with code provisions, as well as stating how companies build capacity to comply with the code throughout the supply chain. The framework agreements also contain provision for annual review of progress. Without any form of ongoing reporting and monitoring, there is a real danger that codes will not be fully enforced or implemented. Worse, the code will be discredited if companies are able to sign up for marketing purposes without the intention to implement the code. There is also growing emphasis on measures that go beyond reporting, in particular remediation and capacity building.

Fighting unfair competition: International experience also suggests that companies who took a lead in self-regulation had an interest in levelling the playing field and fighting unfair competitors. Indeed, as illegal practices are not sustainable in the long-run, first movers may be able to capitalize on the public relation value of their decision. The companies adopting the corporate code of conduct might draw on ethical aspects of responsibility (refraining from violations of the rights of workers), but they can also claim they provide more and better jobs on the domestic market.

⁶³ Zadek, Simon: The logic of collaborative governance: Corporate Responsibility, Accountability and the Social Contract; Working Paper 17, Corporate Social Responsibility Initiative, Harvard University, January 2006, p 6, available at: http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_17_zadek.pdf, accessed on 27 June 2007.

Mix of interventions: Finally, limiting socially irresponsible behaviour will surely require a combination of market-driven and regulatory interventions for which the UK Gangmaster licensing schemes can once again serve as model. By drawing on lessons from other industries and countries, one has to be bear in mind, however, that construction is not trade-related and pressure of international buyers or through trade agreements will therefore be limited. In addition, CSR initiatives and related civil society groups are only emerging but steadily growing in the Russian Federation. A mix of interventions involving different stakeholders is therefore the most promising approach.

Development of corporate governance and CSR initiatives in Russia

CSR initiatives have evolved substantially over recent years in the Russian Federation; however, they mainly concerned large companies that are interested in initial public offers (IPO) of shares, foreign direct investment and also in new tools to manage their human resources. For the time being, the necessity of accepting a Code of Conduct is dictated mainly by the need to strengthen the corporate culture, image and reputation. Large and medium-sized companies and companies with predominant state control have been rather slow in adjusting to CSR-related changes.⁶⁴

In 2003, the first Code of corporate conduct was introduced in the Russian business practice. The Code was prepared to improve the management of joint-stock companies, to provide for better protection of rights and interests of shareholders and to provide disclosure information to investors. In addition, the Code aimed at improving the issue of low business ethics in Russia, which had a negative impact on capital inflow into the country and on the economic development of the country as a whole. Similarly, the codes of corporate responsibility adopted today by Russian companies are mainly focused on “classic” issues of corporate governance, i.e. improving the co-operation with shareholders and partners rather than relations with employees (which companies see as being addressed by other means such as collective bargaining). For large owners aiming at increasing the share cost of an enterprise and attracting new shareholders, such a Code appears to be rather a useful instrument - it allows them to demonstrate to potential shareholders their willingness to be held publicly accountable and thus, to draw attention of the potential, mostly foreign investors. However, Codes are often merely a declaration of intentions and do not contain clear commitments or compliance monitoring mechanisms. And unless the Code of Conduct has been declared to be a part of the company charter or other bylaws, the Code cannot be referenced in court.⁶⁵

There are, however, many positive trends with regard to self-regulation. The number of companies that adopt Codes of Conduct is increasing. In early 2007, more than 40 Russian companies had adopted a CSR system and sustainable reporting practices.⁶⁶ Most of these companies are in the resource exaction or chemical industry and only indirectly related to the construction business. Some companies have started projects aimed at the well being of their

⁶⁴ Alexey Kostin, Executive Director, Corporate Social Responsibility Russian Ctr: “Russia: The Evolving Corporate Responsibility Landscape”, in: Compact Quarterly, March 2007, volume 2007, issue 1.

⁶⁵ Ratnikov, Kiril: “The Russian Code of Corporate Conduct underwent serious changes with market wishes in mind”, available at http://www.corp-gov.org/bd/db.php3?db_id=437&base_id=3, accessed on 25 May 2007.

⁶⁶ Alexey Kostin, Executive Director, Corporate Social Responsibility Russian Ctr: “Russia: The Evolving Corporate Responsibility Landscape”, in: Compact Quarterly, March 2007, volume 2007, issue 1.

employees or communities in which they work. In 2004, Russian Union of Industrialists and Entrepreneurs (RUIE) adopted the Social Charter of Russian Business in which basic principles of corporate social responsibility were formulated. By early 2007, 200 companies had signed the charter and 90 companies are in the process of submitting their non-financial reports based on the Global Compact Principles.⁶⁷

FEASIBILITY OF SELF-REGULATION IN THE RUSSIAN CONSTRUCTION INDUSTRY

The Russian construction industry has adopted some documents. There are: the “Charter of Builders of Russia”, the “Code of Honor of Construction Business of the Russian Union of Builders” and the “Code of Honor of Member Associations of Builders of Don” worked out by the Association of Builders of Russia. These documents set out general principles rather than detailed guidelines. While CSR initiatives in construction are still nascent, apart from the existing by-laws of business associations, other stakeholders related to this subject have moved ahead. An example is the Russian “International Association on Labour Migration” (IALM) that includes over 70 private employment agencies from Russia, Tajikistan and Moldova as member organisations. IALM has developed a code of conduct on ethical recruitment and is actively engaged in policy dialogue and advocacy to promote safe labour migration.⁶⁸

The assessment of the feasibility of adopting a sector-wide Code of Conduct as an instrument for improving business ethics and preventing exploitation of workers did not reveal clear cut answers. In most cases the companies were split as to the feasibility of the adoption of a code of conduct.

Almost half of representatives from the construction companies were aware of Codes of Conduct in Russia (46per cent) and abroad (43per cent). Importantly, 14 per cent of respondents from the construction companies stated that adopting a industry-wide Code of Conduct is extremely necessary, and 70 per cent believed that such a Code of Conduct would be of use. The rest (16 per cent) did not see any use in it.

The small companies (under 100 employees) were five times more likely (in 25 per cent of cases) to think a Code of Conduct would be of no use than representatives of companies with 500 and more employees (among these only 5 per cent saw no use in it). Similarly, when asked what they think about adoption of a sector-wide Code of Conduct, 43 per cent of small companies were against, this is twice as many as in the group of medium (19 per cent) and large (21 per cent) companies.

In general, almost 90 per cent of companies that employ migrant workers consider the adoption of a Code of Conduct very necessary or necessary. In the group of companies that do not employ migrant workers 78 per cent agreed with this opinion. When asked whether there is a necessity to adopt a Code of Conduct to regulate labour standards in the industry, the majority (55 per cent) of companies agreed that there is a necessity to adopt it. However, among the small companies, 57 per cent do not consider this necessity high or do not see it at all.

⁶⁷ The UN Global Compact was set up in 2000 on the initiative of the former UN secretary General Kofi Annan. It is based on ten principles covering human rights, labour, environment, and anti-corruption. It seeks to mainstream the ten principles in business action and catalyze action in support for UN goals.
<http://www.unglobalcompact.org/>

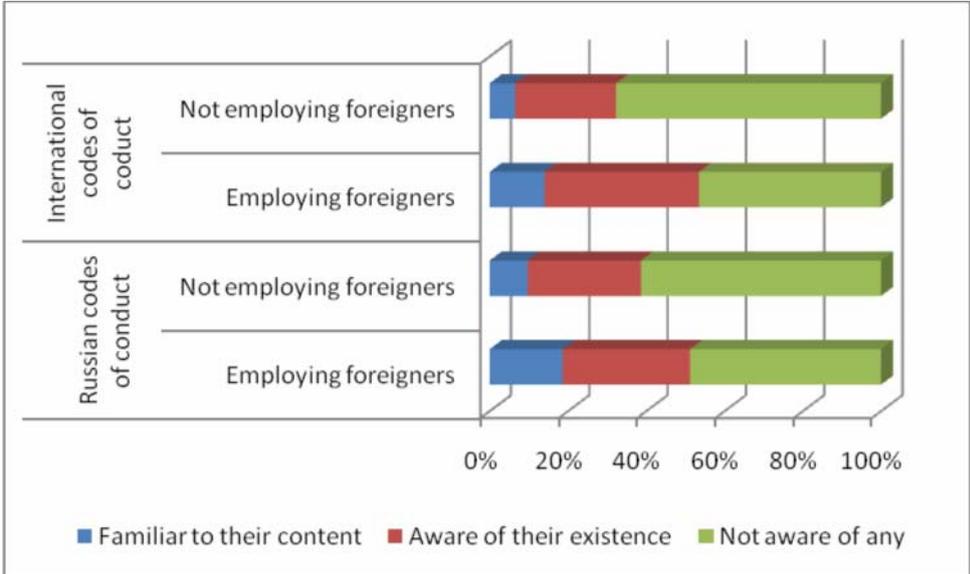
⁶⁸ Source: <http://www.trudmigration.ru>

Further, when asked to assess the likelihood of adopting a sector-wide Code of Conduct, the majority of companies (64 per cent) said that the likelihood is low, while 35 claimed the likelihood as high. Among small companies, three out of four believed that the likelihood of adoption of an industry-wide Code of Conduct is low. Approximately three out of ten companies believed that adoption of the Code of Conduct would not be of any use for their company.

Among experts, one third considered adopting of the Code of Conduct extremely useful, because it may promote investments, equal conditions of labour and encourage companies to compete on the basis of quality and efficiency rather than cheap labour.

Almost half of representatives from construction companies were aware of Codes of Conduct in Russia and abroad (46 per cent and 43 per cent respectively). A remarkable finding was that those companies who employ foreigners are generally more informed about the corporate codes of conduct.

Chart 11. Are you aware of the Codes of Conduct in Russia and abroad? (n=72)

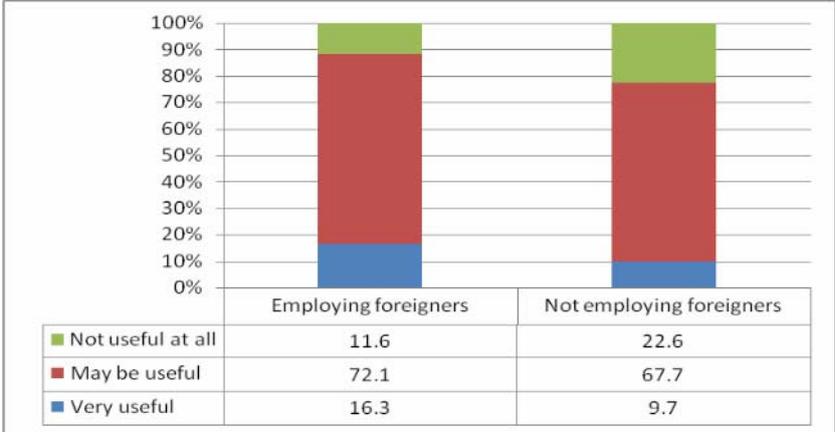


Importantly, 14 per cent of respondents from construction companies stated that adopting Code of Conduct would be extremely useful, and 70 per cent believed that a Code of Conduct would be of use. The rest (16 per cent) did not see any use in it.

The small companies (under 100 employees) were five times more likely (in 25 per cent of cases) to think a Code of Conduct would be of no use than representatives of companies with 500 and more employees (among these only 5 per cent saw no use in it). Similarly, when asked what they think about adoption of sector-wide Code of Conduct, 43 per cent of small companies were against, this is twice as many as in the group of medium (19 per cent) and large (21 per cent) companies.

In general, almost 90 per cent of companies that employ migrant workers consider the adoption of a Code of Conduct very necessary or necessary. In the group of companies that do not employ migrant workers 77 per cent agrees with this opinion.

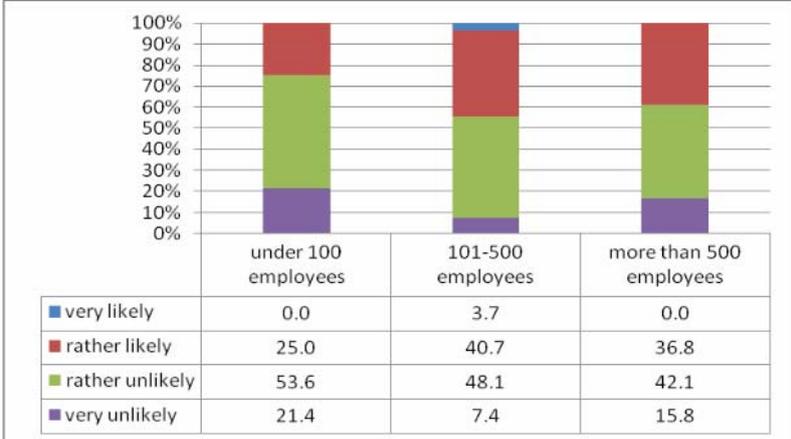
Chart 12. Do you consider the elaboration of Code of Conduct or similar documents aiming at increasing the attractiveness of the construction sector for investors on the basis of improvement of relations with personnel useful?



When asked to assess whether there is a necessity to adopt Code of Conduct, which would regulate labour standards in the industry the majority (55 per cent) of companies agreed that there is a necessity to adopt it. However, among the small companies, 57 per cent consider that there is not a strong need for such a code or that there is no need at all.

Further, when asked to assess the likelihood of adopting a sector-wide Code of Conduct, the majority of companies (64 per cent) assessed that the likelihood is low, while 35 assessed the likelihood as high. Among small companies, three out of four believed that the likelihood of adoption of Code of Conduct is low.

Chart 13. How likely it is that the construction companies of your region would accept a sector-wide Code of Conduct? (n=72)



Among experts, one third considered adoption of an industry-wide Code of Conduct extremely useful, because it may promote investments, and equalize conditions of activity and competitiveness.

Stakeholder consultations

In November 2006, CCEUR, ILO and EBRD initiated a stakeholder workshop on Code of Conduct in the construction industry. Workshop participants included representatives from relevant employers' and workers' organisations, government and researchers who worked on this report. The participants stressed that any endeavour to improve labour practices in the Russian industry have to be grounded in the Russian context.

The workshop participants mentioned that a sector-wide Code of Conduct for the construction industry has potentially an important function of levelling the playing field upwards, so that those who save on labour cost by exploiting their workers do not undercut law-abiding companies. To do so, the Code should be inclusive and encompass all workers rather than targeting only a group of them. The model Code of Conduct should be kept flexible to allow adoption at various levels – the industry association level, at the holding level, or at the enterprise level. The code should also cover recruitment agencies, possibly through links to their code of conduct.

Representatives from trade unions and the international institutions recommended that the code should be clear, practical and specific, restating and elaborating on relevant Russian labour law and ILO standards, and should contain a monitoring mechanism to ensure credibility. An example to work from would be the BWI Model Framework Agreement. The most relevant international example would be the BWI Model Framework Agreement and, in the Russian context, the new charter of the Association of Builders of Russia. Importantly, the international actors, such as financial institutions and their clients, have a role to play by taking the bidding companies' labour policies and compliance record into account when tendering and awarding construction contracts and thus demonstrating the business rationale for improving labour practices and better adherence to the legal framework.⁶⁹

There are certain benefits for the Russian construction industry stemming from adoption of voluntary agreements. Acceptance of corporate responsibility would allow the industry to hold a responsible position in the community and voluntary agreements are also open for negotiation. Companies that wish to work with international contractors/sponsors or in a project financed by international financial institutions or large commercial banks are increasingly expected to meet good labour standards and to ensure these in their supply chains. In addition, the ILO International Labour Conference 2007 concluded unanimously that core labour standards and decent work objectives should be integrated into all public procurement and the lending practices of international financial institutions.

⁶⁹ See report of meeting (ILO and EBRD).

RECOMMENDATIONS

There may also be a need to look beyond corporate responsibility to a wider set of tools that may in their total positively influence labour practices in the construction industry. These would include: strengthening of collective bargaining; promoting better working conditions, improved labour inspection and law enforcement and support for protection mechanisms that would serve labour migrants.

Promoting investor decisions based on respect for labour standards

- Stakeholders should discuss the most suitable tool that would find wide acceptance in the industry while at the same time assist in the decision-making process of investors such as EBRD. This tool could be an industry-wide code of conduct, a multi-stakeholder initiative or a framework agreement, provided that such a tool would be linked to an effective monitoring and enforcement mechanism. Closer cooperation with the Global Compact Network should be established, in particular with regard to labour standards. Partnerships with other organisations such as SAI could also be formed in order to build local capacity of workers on employers on CSR.
- EBRD and other financing institutions could raise awareness among investors working in the Russian construction sector about exploitative labour practices possibly used by some of their sub-contractors and create incentives for responsible investment. This could be done, for example, by launching a process that would lead to an annual “award” for an investor that demonstrates credible efforts to implement good labour practices. Such an initiative could be linked to the Annual Russian Business Award. Cooperation with Chambers of Commerce could also be considered to raise awareness about exploitative labour practices possibly used by some business partners and sub-contractors.

Strengthening government and trade union monitoring capacity

- ILO could support the ongoing work of trade unions to address rights of migrant workers as well as the operation of an existing legal advice centre to represent forced labour and exploitative labour claims in courts or in alternative dispute settlement mechanisms. This would also include support for mechanisms of social dialogue.
- ILO could support training of law enforcement officials, in particular labour inspectors and immigration authorities to improve the identification of exploitative labour practices affecting in particular irregular migrant workers. Labour inspection training should incorporate guidelines on occupational safety and health management systems (ILO-OSH 2001) that has been approved as the Inter-state standard GOST 12.0.230-2007 in the Russian Federation and the CIS countries.

GLOSSARY OF KEY TERMS⁷⁰

Corporate Social Responsibility (CSR)

Corporate Social Responsibility (CSR) is a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.

Decent Work

Decent work can be defined as productive work in which rights are protected, which generates an adequate income, with adequate social protection. Also means sufficient work, in the sense that all should have full access to income-earning opportunities.

Discrimination

Convention No. 111 (1958) aims to promote equality of opportunity and treatment in respect of employment and occupation. Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex religion, political opinion, national extraction or social origin (or any other motive determined by the State concerned) which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Forced Labour

According to the ILO Forced Labour Convention No. 29 (1930) the term “forced or compulsory labour” shall mean ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. Convention No. 29 does not apply to five categories of work or compulsory service, subject to certain conditions and guarantees. The five categories are: compulsory military service, certain civic obligations, prison labour, work exacted in cases of emergency, and minor communal service. The illegal exaction of forced or compulsory labour shall be punishable as a penal offence.

Fundamental principles and rights at work

The ILO 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up states that “all Members, even if they have not ratified the Conventions in questions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: a) freedom of association and the effective recognition of the right to collective bargaining, b)

⁷⁰ Main sources of this glossary are: ILO and other UN Conventions as well as ILO (Gianni Arrigo, Giuseppe Casale): Glossary on Labour Law, Industrial Relations and European Union Institutions, Geneva 2003.

the elimination of all forms of forced or compulsory labour, c) the effective abolition of child labour, and d) the elimination of discrimination in respect of employment and occupation”.

Informal economy

According to the ILO Resolution concerning decent work and the informal economy, ILC 90, 2002 the term “informal economy” refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.

Migrant Workers

According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the term “migrant worker” refers to “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (art. 2.1). ILO Convention No. 97 (1949) applies to migrants for employment. It has various provisions aimed at regulating the conditions under which the migration of persons for employment shall take place and ensuring equality of treatment for migrant workers in certain respects. Migrant workers (supplementary provisions) Convention No. 143 (1975) concerns equality of opportunity and treatment and the elimination of abuses. Article 5 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* defines the terms 'documented' and 'regular' as follows: “. . . migrant workers and members of their families: (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.” See: United Nations. 1990. "International Convention on The Protection of the Rights of All Migrant Workers and Members of Their Families: Adopted by the General Assembly at its 45th session on 18 December 1990 (A/RES/45/158)." New York: United Nations. For the purposes of this report, the terms 'irregular' and 'undocumented' migrants will be used interchangeably.

Occupational safety and health at work

Concerns the physical and mental health of workers and includes the study of work methods, conditions of work and factors in the working environment that may cause diseases or injuries, the protection of workers' lives and physical well-being by eliminating or controlling risks in the working environment or the system of work within which workers operate (ILO Occupational Safety and Health Convention No. 155 (1981)).

Private Employment Agency

Any natural or legal person or enterprise, licensed or not, independent of the public authorities, which provides one or more of the following labour market services: a) Services

for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship, which may arise there from; b) Services consisting of employing workers with a view of making them available to a third party; c) other services related to job seeking, determined by the competent authority after consulting the most representative employers' and workers' organisations, such as the provision of job-related information that do not set out to match offers and applications for employment (ILO Private Employment Agencies Convention No. 181 (1997)).

Recruitment

The term "recruitment" refers to job advertising, candidate canvassing, candidate selection, job brokerage, direct hiring or hiring by delegation. It is a free act of contractual agreement whereby one party commits itself to pay pre-determined wages in exchange for which the other party commits itself to perform pre-determined tasks in a pre-determined time.

Right to organise and collective bargaining

Convention No. 98 (1949) concerns the protection of workers who are exercising the right to organise; the non-interference between workers' and employers' organisations; the promotion of voluntary collective bargaining. Workers shall enjoy adequate protection against acts of anti-union discrimination. They shall be protected more particularly against refusal to employ them by reason of their trade union membership and against dismissal or any other prejudice by reason of trade union membership or participation in trade union activities.

Trafficking in human beings

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000), "Trafficking in persons" shall mean 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs' (Art. 3 a).

Wages / Minimum wage

Convention No. 95 (1949) defines wages as remuneration or earning, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered. Wages shall normally be paid directly to the worker concerned. The Convention protects the worker's liberty to dispose freely of his or her wages without any coercion to make use of works stores. Convention No. 131 (1970) concerns protection against excessively low wages covering all groups of wage earners whose terms of employment are such that coverage would be appropriate. These groups shall be determined either in agreement or after consultation with the representative organisations of employers

and workers concerned. Minimum wage is a wage level defined in law or agreement that is the lowest possible rate, which an employer is permitted to pay. Failure to apply them shall incur appropriate penal or other sanctions.

LITERATURE AND SOURCES

IN ENGLISH

- Andrienko, Yuri and Sergei Guriev: *Understanding Migration in Russia: A policy note*, New Economic School, CEFIR Policy Paper Series, No. 23, November 2005
- Bigg, Claire: *Russia: System Presents Uphill Climb to Labour Migrants*, RFE/RL, 8 November 2005
- Chudinovskikh, Olga: *Migration Statistics in the Russian Federation: Basic Problems and Solutions*, presentation; available at: www.unece.org/stats/documents/2005/01/migration/5.e.ppt
- Chudinovskikh, Olga: *Transformation of Migration Data Collection in Post-Soviet Countries: Case of the Russian Federation*; available at: <http://epc2006.princeton.edu/download.aspx?submissionId=60472>
- ETI: *Getting smarter at auditing: Tackling the growing crisis in ethical trade auditing*, November 2006
- ILO: *Tripartite meeting on the construction industry in the twenty-first century: Its image, employment prospects and skill requirements*, Geneva 2001
- IOM Moldova: *Migration and Remittances in Moldova*, 2004
- Kostin, Alexey, Executive Director, Corporate Social Responsibility Russian Ctr: *Russia: The Evolving Corporate Responsibility Landscape*, in: *Compact Quarterly*, March 2007, volume 2007, issue 1
- Malpani, Rohit: *Legal Aspects of Trafficking for Forced Labour Purposes in Europe*; Working Paper 48, ILO Geneva, 2005
- Minasyan, Anna and Blanka Hancilova: *Labour Migration from Armenia in 2002 – 2005: A sociological Survey of Households*, OSCE and Advanced Social Technologies, 2005
- Olimova, Saodat and Igor Bosc: *Labour Migration from Tajikistan*, IOM and Scientific Center Sharq, July 2003
- Ratnikov, Kiril: *The Russian Code of Corporate Conduct underwent serious changes with market wishes in mind*, available at http://www.corp.gov.bd/db.php3?db_id=437&base_id=3
- Ruggie, John Gerard: *Business and Human Rights: The evolving international agenda*; Working Paper 38, Corporate Social Responsibility Initiative, Harvard University, June 2007

- Rybakovsky, Leonid and Sergey Ryazantsev, *International Migration in the Russian Federation* (UN/POP/MIG/2005/11), United Nations Expert Group Meeting on International Migration and Development, New York, 6-8 July, 2005
- The Office of the United Nations High Commissioner for Human Rights: Report No.2 prepared for the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, May 2007
- The World Bank: *Doing Business Report 2007*
- Tyuryukanova, Elena: *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings*; ILO Geneva 2006
- UN/IOM Working Group on Trafficking in Human Beings: *Human Trafficking in the Russian Federation: Inventory and Analysis of the Current Situation and Responses*, Moscow 2006
- Zadek, Simon: *The logic of collaborative governance: Corporate Responsibility, Accountability and the Social Contract*; Working Paper 17, Corporate Social Responsibility Initiative, Harvard University, January 2006
- Ziegler, Charles, *Russian Diaspora in Central Asia: Russian Compatriots and Moscow's Foreign Policy*, The Demokratizatsiya journal, Winter 2006

IN RUSSIAN

- Emeljanova, Elena: “Может ли профсоюз помочь иностранным?” (Can trade unions help migrant workers?), in: Solidarnost newspaper, No. 35 from 22 September 2004
- Федеральная служба по труду и занятости. Доклад о результатах работы в 2005 году по осуществлению государственного надзора и контроля, Москва, 2006. (Federal Service for Labour and Employment, Report on results of the state oversight and control in 2005, Moscow 2006).
- МОТ: “Социальный статус работников из Таджикистана в строительной отрасли в Москве и Московской области” (Social status of workers from Tajikistan in the construction sector of Moscow and Moscow district), Женева, Февраль 2006



ILO Special Action Programme
to Combat Forced Labour

www.ilo.org/forcedlabour



European Bank
for Reconstruction and Development

www.ebrd.com