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2021

RESEARCH AND ANALYSIS OF UNREGISTERED HUMAN TRAFFICKING CASES IN THE KYRGYZ REPUBLIC

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INTRODUCTION

International organizations and civil society in the Kyrgyz Republic have been discussing about an assumption that a large number of human trafficking cases and related human trafficking crimes are not really reflected in general statistics and are often not recorded for quite a long time.

A key task of the research is to provide responses to the following questions:

1. Why do not often victims of human trafficking (VoTs) apply to law enforcement agencies?
2. What are the obstacles that prevent to register crimes of trafficking in persons, as well as to investigate and bring to justice perpetrators operating in the area of human trafficking?
3. What measures need to be taken to increase the number of registered, investigated crimes of trafficking in persons and to bring criminals to justice?

The first part of the document contains information on the general situation of human trafficking, and provides data of international organizations and National Statistical Committee (NSC) of the Kyrgyz Republic on the number of people who have received assistance from CSOs. The chapter reflects the information obtained in the course of the research from representatives of CSOs on the number of VoTs who sought assistance from NGOs and Crisis Centers (CCs) in 2017-2020. In addition, it provides official statistics on the number of registered crimes and cases brought to trial under the article of the Criminal Code of the Kyrgyz Republic “human trafficking”.

The second part of the report contains an analysis of the data obtained from the results of the qualitative research when conducting interviews with victims of human trafficking crimes, representatives of various organizations (government agencies, non-governmental, and international organizations) and individual industry experts. Besides, we have provided participants' opinions on the reasons for not contacting the law enforcement agencies, and listed difficulties that prevent to register crimes and prosecute criminal proceedings of human traffickers.

The third part of the document presents conclusions and recommendations based on the results of the analysis of information obtained through the desk and qualitative research. They relate to measures that will increase the number of VoT appeals to law enforcement agencies, and will remove currently existing obstacles to investigate the crimes.

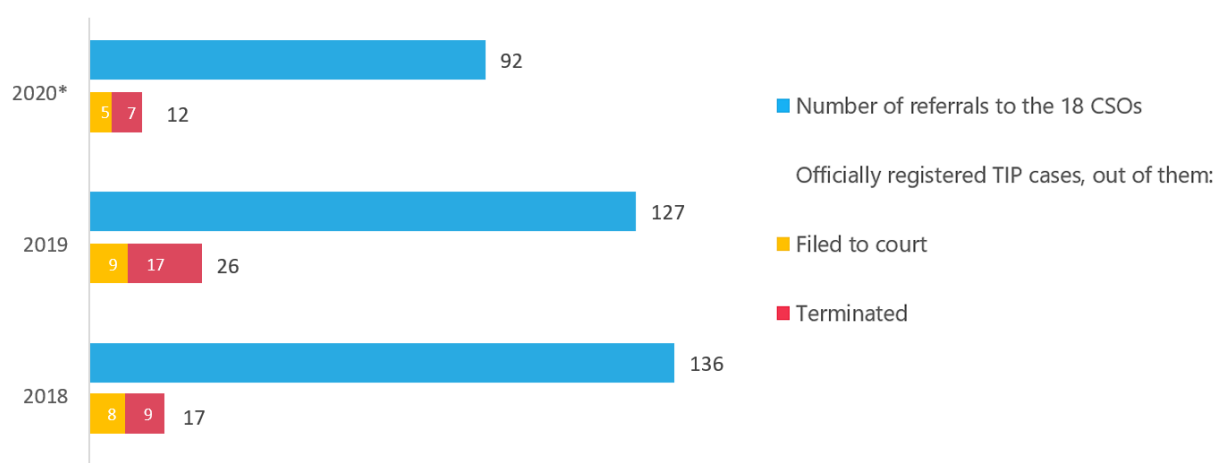
The peculiarity of the research is that it provides data obtained through interviews and group discussions with both VoTs and various organizations and experts who deal with human trafficking cases in the country and play an important role in shaping policy to combat human trafficking in the Kyrgyz Republic. This document contains outcomes of the initial qualitative research and review of documents and reports on combating human trafficking. The report will be useful for all stakeholders to plan further efforts on preventing human trafficking.

EXECUTIVE SUMMARY OF THE RESEARCH

The purpose of this research is to collect and analyze information about unregistered human trafficking cases and obstacles that prevent the prosecution of human traffickers. In order to collect primary information and analyze it, we have conducted in-depth interviews and focus group discussions with various target groups: VoTs, representatives of CSOs, current and former employees of the Prosecutor's office and the Ministry of Internal Affairs, judges, lawyers, experts and employees of a number of ministries and departments that are actors of the National Referral Mechanism (NRM).

The hypothesis that the majority of human trafficking cases are not registered in the Unified Register of Crimes and Misdemeanors (URCM/ERRP), therefore, the criminals are not criminally prosecuted has been confirmed by the data obtained from organizations that directly interact with VoTs.

The data obtained in the course of this research confirm that VoTs most often seek help from CSOs. The interviews with representatives of CSOs and VoTs, as well as data received from them, show that most cases of human trafficking are not registered in ERPP, which is one of the main reasons for the small number of investigations. So, for 3 years – from 2018 to 2020 – 355 VoTs approached 18 CSOs for help. According to the representative of the Criminal Police Service (SCM) of the Ministry of Internal Affairs of the Kyrgyz Republic, 55 crimes were registered during the same period, 31 criminal proceedings were discontinued and 24 cases were referred to the judicial authorities.



* Data for January-November 2020

In the course of the in-depth interviews with both VoTs and representatives of the research target groups, represented by representatives of CSOs, prosecutor's offices, the Ministry of Internal Affairs, judicial authorities, State Migration Service (SMS), international organizations, as well as industry experts and lawyers, the following main reasons for not applying to law enforcement agencies by VoTs were indicated.

1. FAILURE TO ENSURE CONFIDENTIALITY OF PERSONAL DATA BY LAW ENFORCEMENT OFFICERS.

A key factor of the VoTs reluctance to apply to law enforcement agencies is non-compliance with the confidentiality of personal data of VoTs by the law enforcement agencies. The dissemination of personal data of VoTs can lead to their stigmatization by the society, which, accordingly, can significantly affect their future life.

2. LOW LEVEL OF LEGAL LITERACY OF VOTS; FEAR OF BEING BROUGHT TO CRIMINAL RESPONSIBILITY.

VoTs are reluctant or unable to apply to law enforcement agencies as they have low level of legal literacy and do not know their rights and obligations, as well as they were often exploited and isolated.

In addition, VoTs often decide not to apply to the law enforcement agencies because they are afraid of possible persecution by the law enforcement agencies for the crimes committed while being in the VoT status and forced by exploiters. As a result, many VoTs continue to be exploited by traffickers.

3. LOW LEVEL OF TRUST IN REPRESENTATIVES OF LAW ENFORCEMENT AND JUDICIAL BODIES.

The majority of respondents associate the low statistics of appeals/requests for help with the well-established belief of VoTs that law enforcement officers are not able to provide the victim-centered help.

The low level of trust in law enforcement agencies is the result of the collective perception of their activities and the negative experience of the VoTs interaction with law enforcement agencies.

Along with the insufficient operational efficiency of the public authorities, victims face incompetence and the lack of a gender-sensitive approach focused on the needs and interests of VoTs by public servants.

In addition, VoTs are afraid of corruption in law enforcement agencies and that in some cases, law enforcement officials may be accomplices of criminals who are engaged in human trafficking.

In addition to the VoTs concerns regarding the possible leakage of confidential data, another important factor influencing on the reluctance of VoTs to ask for help from law enforcement agencies is the imperfection of the system of ensuring the security of victims and witnesses in connection with participation in criminal proceedings.

4. RECONCILIATION OF VOTS WITH CRIMINALS PRIOR TO LODGING A COMPLAINT WITH LAW ENFORCEMENT AGENCIES.

The reluctance of VoTs to cooperate with law enforcement agencies, distrust to law enforcement officers, fear for their own safety, along with a biased attitude of law enforcement officials towards VoTs, often force VoTs to make a decision to reconcile, which also influences on the reduction in the number of appeals to law enforcement agencies.

5. PRACTICE OF RE-QUALIFICATION OF HUMAN TRAFFICKING CASES INTO SIMILAR CRIMES.

In reality, when VoTs apply to law enforcement agencies for help, human trafficking cases have been sometimes reclassified as similar crimes. Law enforcement agencies apply the practice of reclassifying criminal cases for related articles due to the fact that a pre-trial investigation of cases of trafficking in persons often has a cross-border nature and requires interaction with law enforcement agencies of the countries of origin/destination of VoTs.

The lack of international legal cooperation on detection and investigation of crimes related to human trafficking makes it difficult to conduct law-enforcement intelligence-gathering activities, collect evidence, and bring to justice those who are responsible for this crime.

Summarizing the answers of the research participants, we can say that many respondents agreed on the importance of the following activities:

1. **Conduct awareness-raising activities** to prevent human trafficking and reduce the stigmatization of VoTs, increase general legal literacy and civic responsibility. Such work may include the development and dissemination of training and information materials on combating trafficking

in persons, especially in the Kyrgyz language, for the public and organizations that interact with migrants and VoTs (CSOs, law enforcement agencies, etc.).

2. **Enhance capacities of law enforcement officials**, as well as various government agencies that may interact with VoTs. At the same time, the most important aspects of interaction with VoTs are:
 - Application of a victim-centered approach;
 - Compliance with the confidentiality of VoTs personal data.
3. **Carry out preventive measures with migrant workers to minimize the possibility of being lured into trafficking.** Migrant workers are the most vulnerable group, and they are often the ones who become VoTs. There is an urgent need to implement measures aimed at informing and training migrant workers in analyzing job offers and employers, as well as creating their awareness about the procedures for processing documents required to work abroad, which in turn will lead to a more informed selection of job/employer.
4. **Coordinate efforts and cooperate on dealing with VoTs and combating against human trafficking.** Coordination of actions of all stakeholders is extremely important to combat more efficiently against trafficking in human beings. Along with the lack of clear coordination of the activities of organizations involved in combating and preventing trafficking in persons, there are certain gaps in the work of the coordinating body.
5. **Enhance capacities of CSOs and attorneys.** A strong civil society is an integral part of the fight against human trafficking. Taking into account that currently the majority of activities on interaction with VoTs is assigned to representatives of CSOs, enhancing their capacity and expertise on human trafficking will lead to significant progress in the fight against this problem.
6. **Control and monitor implementation of the National Referral Mechanism (NRM).** Taking into account the main conclusions of the research, it is necessary to monitor activities of all NRM actors on a regular basis, in order to further analyze their actions and develop recommendations for improving their activities.
7. **Improve procedures for investigating and judicial proceedings of cases of trafficking in persons.** Since one of the main reasons for the low official statistics on cases of trafficking in persons is the reluctance of VoTs to apply to the relevant authorities, due to the lack of effective procedures for investigating these cases, in particular with the participation of foreign citizens, it is very important to improve the procedures for investigating and judicial proceedings of such cases.
8. **Improve institutional memory among government officials.** The research revealed that the majority of international organizations working on combating human trafficking conduct various trainings on a regular basis aimed at improving the skills, knowledge, and capacities of government employees working in this field. However, due to the frequent staff rotation, the knowledge gained is not fully applied. Therefore, a way to enhance capacities of employees of government departments involved in the fight against human trafficking should be the subsequent conduct of internal training activities and the transfer of knowledge to new employees by their colleagues who have completed training courses.

During the interview, representatives of CSOs and international organizations identified the passivity of state bodies as the main obstacles, which is expressed in conducting perfunctory/formalistic activities and the periodic request for information from various departments. This, in turn, affects the efficiency of decision-making and interdepartmental interaction. According to respondents, these factors have a negative impact on the provision of timely assistance to VoTs, investigation, and prosecution of criminals.

The proposed recommendations aimed at improving the effectiveness of the work were obtained by interviewing and analyzing the responses of a number of people involved in the fight against human trafficking. These recommendations relate to the actions of government agencies and CSOs, which will help to increase the number of appeals of VoTs to law enforcement agencies.

The recommendations are addressed not only to the government bodies, but also to interested international organizations and civil society. Despite the fact that this research focuses on studying the problem of human trafficking in the Kyrgyz Republic, the recommendations developed can undoubtedly be used by all stakeholders to prevent human trafficking at the interregional level.

RECOMMENDATIONS

In the course of the research, respondents were asked the following questions and requested to provide their recommendations that would help to improve the situation in the fight against human trafficking:

1. How to encourage VoTs to apply to law enforcement agencies for help?
2. How can we improve the work of law enforcement agencies in criminal prosecution of cases related to human trafficking?
3. How can we minimize the difficulties and obstacles for VoTs?

We have grouped the proposed recommendations according to the factors that influence on the refusal of VoTs to apply to law enforcement agencies for help.

Given that at least 7 main factors have been identified that influence on the number of applications/requests received from VoTs, some recommendations can be attributed to several factors at the same time.

Recommendations received in the course of the survey of respondents

- Enhance capacities of journalists to create public awareness about human trafficking, to conduct journalistic investigations of crimes on human trafficking, taking into account the specifics of crimes and respecting the confidentiality of information
- Enhance capacities of law enforcement officials, judges, and prosecutors to apply a victim-centered approach
- Control or regulate activities of Tourist Companies and employment agencies abroad through licensing
- Increase the severity of punishment for human trafficking by introducing amendments and additions to Article 171 of the Criminal Code of the Kyrgyz Republic
- Develop indicators of the effectiveness of the use of the National Referral Mechanism
- Establish an automated database on human trafficking, with statistical reporting forms and methods for collecting data on human trafficking.

In addition, recommendations have been developed for all stakeholders who deal with the fight against human trafficking and provide assistance to VoTs, based on the analysis of the respondents' responses. The recommendations were segmented based on the gaps they address.

Coordinate efforts and cooperate on dealing with VoTs and combating human trafficking

- Consulates, diplomatic missions, and CSOs should strengthen interaction and cooperation with CSOs of the countries of destination, namely:
 - a. Make a list of CSOs from other countries to explore further opportunities for cooperation related to providing help for VoTs and facilitating the return of VoTs to their countries of origin.
 - b. Develop a concept of a mechanism for interaction with CSOs from other countries to make possible for VoTs and/or their near and dear ones to turn for help to law enforcement agencies in other countries on the facts of human trafficking.
- Create a platform for interaction between VoTs and near and dear ones of VoTs under the auspices of CSOs to share experience on how to reintegrate into society, overcome psychological barriers, and provide moral support when applying to law enforcement agencies.
- Improve interaction with the country's business community (associations, private sector), to involve them in the process of preventing and combating human trafficking. Conduct trainings on how to identify abusive employers and to apply to law enforcement agencies aiming at bringing them to justice.
- Create a one-stop-center for the coordination of the CSOs work to align the collection of statistics on human trafficking. The center should operate in the framework of a coordinating body for combating human trafficking and should be created based on the experience of implementing a similar center in Kazakhstan.

Enhance capacities of government officials to combat human trafficking

- Introduce training modules on the application of a victim-centered approach in the curricula of the law faculties of the Higher Educational Institutions and Academy of the Ministry of Internal Affairs
- Conduct training activities for all NRM actors, including State Inspectorate for Environmental and Technical Safety (SIETS) and Ministry of Education and Science (MOES).

Enhance capacities of CSOs and attorneys

- Conduct training activities for CSO employees to improve communication skills when communicating remotely with VoTs through social platforms and messengers.
- Introduce a victim-centered approach into the training program for attorneys during identification, investigation, and judicial review of cases related to human trafficking.
- Conduct regular training activities for CSOs, on the following topics:
 - a. Fundraising and reducing dependence on grants.
 - b. Interaction and cooperation with volunteer organizations.
 - c. Capacity building and sustainable development

- Organize training activities for CSOs on the effective use of online resources to disseminate the necessary information among vulnerable segments of the population, on the following topics:
 - a. How to search for work abroad.
 - b. How to avoid falling into a trafficking ring.
 - c. What to do in case of getting enslaved.
 - d. What assistance is provided by government agencies and CSOs in the destination countries.

Carry out information and educational work among the population and VoTs

- Raise awareness of citizens as part of the pre-migration training
- Implement measures aiming at removing barriers for VoTs in difficult life situations to seek assistance, through the publication contact data of hotlines in public places and the media
- Establish a database of employers and private employment agencies that employ Kyrgyz citizens abroad. This database should take into account all cases of illegal or unethical actions of employers in order to reduce the risks of working for abusive employers. Involve the State Inspectorate for Environmental and Technical Safety, Ministry of Labor and Social Development, trade unions, and business associations in this project.

Monitor and control implementation of the National Referral Mechanism

- Strengthen Government control and monitoring of the implementation of the unified system of public administration on preventing and combating trafficking in persons and implementation of the National Referral Mechanism.
- Introduce mechanisms for monitoring the effectiveness of the assistance provided to VoTs by CSOs and Crisis Centers (CCs) by interviewing VoTs.

Improve procedures for investigating and judicial proceedings on cases of trafficking in persons

- Involve female law enforcement officers to investigate cases, if a VoT is a woman.
- In the absence of the necessary technical conditions or in the case of the impossibility of ensuring confidentiality, conduct interviews in places where the victim would feel protected.
- Conduct trials related to human trafficking in private (behind closed doors). Restrict access to meetings of persons who are not directly related to the process.
- Develop comments on the articles of the Criminal Code of the Kyrgyz Republic related to human trafficking and related crimes.
- Develop methodological recommendations for the investigation of crimes related to human trafficking and related crimes.

Comply with the confidentiality of personal data of VoTs in the process of identification and referral of VoTs

- Develop mechanisms for actors of the National Referral Mechanism to identify and assign the status of a victim of human trafficking one time, without the need to re-request personal data when interacting with actors of the National Referral Mechanism.
- Introduce uniform procedures for encoding/encrypting the personal data of VoTs who have applied for help.

Introduce amendments to the legislation

- Introduce amendments into the Law of the Kyrgyz Republic “On State-guaranteed Legal Aid” to include VoTs in the category of persons entitled to receive free qualified legal assistance regardless of their financial situation.
- Introduce changes and amendments into the Criminal Procedure Code of the Kyrgyz Republic, including the possibility of returning a criminal case to law enforcement agencies for further investigation due to a lack of evidence.

Improve institutional memory among government employees

- Ensure the continuity of the acquired skills and knowledge by employees of state bodies through conducting internal trainings.
- Improve the awareness of both current and new government officials on combating trafficking in persons by assessing the knowledge gained.

Finance measures on preventing and combating trafficking in persons

- Consider the possibility of including the following item to the expenditure of the regional and municipal budgets: “Provision of rehabilitation assistance to VoTs and vulnerable migrants”.